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VOLUME 888

CASES

DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

OCTOBER 14, 2020 - NOVEMBER 3, 2020

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(as of June 2023)

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 12017. October 14, 2020]

ROGER B. DAP-OG, *Complainant, v.* **ATTY. LUEL C. MENDEZ,** *Respondent*.

SYLLABUS

LEGAL ETHICS; ATTORNEYS; DISBARMENT PROCEEDINGS; THE COURT MAY SUSPEND OR DISBAR A LAWYER FOR ANY MISCONDUCT SHOWING ANY FAULT OR DEFICIENCY IN HIS MORAL CHARACTER, HONESTY, PROBITY OR GOOD DEMEANOR, WHETHER IN HIS PROFESSION OR PRIVATE LIFE BECAUSE GOOD CHARACTER IS AN ESSENTIAL QUALIFICATION FOR THE ADMISSION TO THE PRACTICE OF LAW AND FOR THE CONTINUANCE OF SUCH PRIVILEGE; CASE AT BAR.— Moreover, we have ruled that "the Court may suspend or disbar a lawyer for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor, whether in his profession or private life because good character is an essential qualification for the admission to the practice of law and for the continuance of such privilege."

As applied in this case, Atty. Mendez clearly did not meet the lofty standards reposed on lawyers. There is no excuse for respondent's unlawful and dishonorable behavior. Even assuming for the sake of argument that respondent's allegations against

> Roger were true, that the latter swindled the former's clients, no person should take the law into his own hands. In this regard, this Court must remind respondent that while he can represent his clients with zeal, he must do so within the bounds of the law.

D E C I S I O N

HERNANDO, *J.*:

This is a complaint for disbarment filed by Roger B. Dap-og (Roger) against respondent Atty. Luel C. Mendez (Atty. Mendez) for allegedly mauling Roger and hurling invectives at him.

The facts of the case are as follows.

On February 12, 2014, Roger was at the compound of the Community Environment and Natural Resources Office (CENRO), Department of Environment and Natural Resources (DENR) XI, Bangkal, Davao City, to accompany his brother Ruben B. Dap-og (Ruben) to attend a hearing/conference in a case entitled *Heirs of Betil Sigampong Rep. by Rodolfo Sigampong, Protestants versus Timotea Ninsnea, et al., Respondents*[1] where Roger's wife, Gemma Dap-og (Gemma) was one of the respondents. Protestants therein were represented by Atty. Mendez[2] while Atty. Lilibeth O. Ladaga (Atty. Ladaga)[3] was Gemma's counsel. During the hearing, the parties agreed, with the concurrence of the Acting Special Land Investigator, that some of the impleaded respondents therein, including Gemma, be dropped as parties to the case after establishing that they were not occupying the subject lot.[4]

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[1] *Rollo*, p. 169.

[2] Id. at 171.

[3] Id.

[4] Id. at 171-172.

After the hearing, Roger, together with Ruben and Atty. Ladaga, went to the CENRO canteen to photocopy some documents.[5] The parties had conflicting versions as to what transpired next.

Complainant's version:

According to Roger, Atty. Mendez approached their table and asked for his name.[6] Meanwhile, Rodolfo Sigampong (Rodolfo), one of the protestants in the CENRO case, verbally confirmed the latter's identity as Roger Dap-og.

Roger then shook hands with Atty. Mendez. However, he was surprised when Atty. Mendez suddenly called him a demon. He then demanded an explanation from Atty. Mendez. Instead of answering, Atty. Mendez, who was sitting then, stood up from where he was seated and tried to grab Roger from across the table. Roger managed to move back but Atty. Mendez still managed to scratch his neck. Atty. Mendez then slapped Roger's left cheek.

Roger tried to move away but respondent, together with Rodolfo and several others, pursued him and managed to land some punches on him.[7] Roger's companion, Jimmy Dela Peña (Jimmy) eventually succeeded in disengaging Roger from Atty. Mendez but not before the latter hit Roger's right shoulder.[8] During the commotion, the group of Atty. Mendez was hurling invectives and accusations at Roger.

Afterwards, Roger went to the Matina Police Station to have the incident recorded in their blotter.[9] He also proceeded to the Southern Philippines Medical Center for a medical examination. The Medical Certificate[10] dated February 12, 2014 issued by

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[5] Id. at 169.

[6] Id.

[7] Id. at 170.

[8] Id.

[9] Id. at 171.

[10] Id. at 9.

Dr. Joffrey S. Betanio (Dr. Betanio) revealed that Roger sustained several physical injuries, *viz.*:

SOFT TISSUE CONTUSION PARASTERNAL LINE AT LEVEL OF T2
CONTUSION HEMATOMA SHOULDER RIGHT
T/C FRACTURE CLAVICLE RIGHT
SECONDARY TO ALLEGED MAULING[11]

Roger suffered bruises for several days and his right shoulder was fractured. He also felt humiliated and psychologically tormented after the incident. He averred that he is now constantly in fear and anxious for his personal safety due to the death threats hurled at him by respondent's group.[12]

Consequently, Roger filed a complaint for Less Serious Physical Injuries, Grave Slander and Grave Threat against Atty. Mendez before the Office of the City Prosecutor, Davao City.[13]

Respondent's version:

Atty. Mendez denied Roger's allegedly malicious accusations against him.[14]

Respondent alleged that he was at the CENRO canteen to discuss case-related matters with his clients, including Rodolfo, but the discussion was interrupted upon the arrival of Roger.[15] Atty. Mendez invited Roger to their table which the former acquiesced. Atty. Mendez then asked Roger why he is siding with the other parties. Rodolfo then declared that Roger is without principles or scruples and that he swindled Rodolfo and his family. At this point, Roger stood up and told Rodolfo to stop. Roger shouted invectives at them and was later joined by Ruben.[16]

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[11] Id.

[12] Id. at 171.

[13] Id.

[14] Id.

[15] Id. at 172.

[16] Id.

Respondent alleged that the tension between his client, on one hand, and Roger on the other, escalated into a shouting match. Atty. Mendez claimed that while there was an exchange of vindictive words and heated argument, Roger was never threatened or physically harmed.[17]

Report and Recommendation of the Integrated Bar of the Philippines (IBP):

On May 7, 2014, Roger filed the instant complaint with the IBP Commission on Bar Discipline (CBD).[18] After due proceedings, the Investigating Commissioner[19] issued a Report and Recommendation[20] recommending that Atty. Mendez be suspended from the practice of law for a period of three (3) months.

The IBP Board of Governors (BOG), in Resolution No. XXII-2015-41[21] dated October 3, 2015, modified the findings of facts and the recommended penalty of the Investigating Commissioner by increasing the penalty of suspension from the practice of law to one (1) year.

Aggrieved, Atty. Mendez filed a Motion for Reconsideration[22] which was denied by the IBP BOG in Resolution No. XXII-2017-1090[23] dated May 27, 2017.[24]

Hence, this case is now before Us for final action pursuant to Section 12 (b), Rule 139-B of the Rules of Court.

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[17] Id. at 174.

[18] Id. at 2.

[19] Oscar Leo S. Billena.

[20] *Rollo*, pp. 169-177.

[21] Id. at 167.

[22] Id. at 111-116.

[23] Id. at 165.

[24] Id. at 165.

Issue

Whether or not Atty. Mendez should be held administratively liable based on the allegations on the Complaint.

Our Ruling

We affirm the findings of the IBP and adopt the recommended penalty of suspension from the practice of law for one (1) year.

Section 27, Rule 138 of the Revised Rules of Court provides:

> SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court **for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct**, or by reason of his conviction of a crime involving moral turpitude, or **for any violation of the oath which he is required to take before admission to practice**, or for a willful disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis supplied)

Relevantly, Rule 1.01, Canon 1, of the Code of Professional Responsibility (CPR) provides:

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

The records of this case show without a shadow of doubt that Atty. Mendez exhibited Gross Misconduct unbecoming of an officer of the court.

There is no dispute that an incident happened on February 12, 2014 at the CENRO Compound of the DENR in Bangkal, Davao City, involving the group of respondent on the one hand, and the group of Roger on the other. While the parties presented two different versions of the incident, we find Roger's version to be more credible as the same is supported by substantial evidence.

As aptly found by the IBP, the denial of Atty. Mendez, while attested by his own witnesses, could not overcome the positive declaration of Roger and his witnesses.[25] In particular, the affidavit of Atty. Ladaga deserves much weight there being no proof of personal interest or bias against respondent.[26] In her Affidavit,[27] Atty. Ladaga narrated the incident as follows:

6. I was so shocked by that outburst. I just did not expect it to come from him considering that a few short minutes before that, he was still asking Roger Dap-og his name. And then, Roger Dap-og said: *"Unsay Demonyo? Ikaw ang demonyo kay wa gani ka kaila nako, wa pud ko kaila nimo, pataka ka lang ug estorya."* (What demon? You are the demon! You don't know me, I don't also know you yet you are talking nonsense!) Immediately after these words were uttered, Atty. Mendez suddenly stood up, reached across the table and looked as he wanted to grab Dap-og across the table. As I was seated practically between them, Atty. Mendez had to reach across the table with me in between. Thankfully in my surprise, I instinctively pushed back my chair away from the table, getting myself away from Atty. Mendez;

7. I immediately stood up and went near the door of the canteen. I saw Roger Dap-og immediately moved away from the table. However, Atty. Mendez followed him with Rodolfo Sigampong and five (5) other men plus one (1) woman. I thought at first that Rodolfo Sigampong and the others were trying to prevent Atty. Mendez from committing further violence upon Roger Dap-og but they however also joined the fray;

8. I saw Roger Dap-og kept backing away and tried to block the punches they were throwing at him. Some of them were even grabbing his shirt. I saw several people coming nearer to look at the commotion going on, including the security guard. I called to the security guard telling him to make the group stop. But the young security guard just kept on watching the commotion doing nothing about it;

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[25] Id. at 174.

[26] *Id.*

[27] *Id.* at 94-97.

9. All the while these people where also shouting invectives and accusations against Dap-og. Among them were: *"Lami ka patyon! Ipabarang ta ka! Mangingilad! Sindikato! Traydor!"* (It would be a pleasure to kill you! Swindler! Traitor!);

10. I heard Roger Dap-og shouted back at them: *"Kung totoo yan, kasuhan nyo ako! Ifile na sa court!"* (If that were true, then bring it to court, file your case against me!) At which point Atty. Mendez said: *"Paghulat lang. Kasuhan ta ra ka. Mangingilad ka!"* (Just wait. I will file a case against you. You swindler!) To which Roger Dap-og answered: *"Sige lang, Atty., ipa disbar ta pud ka!"* (Go ahead, Atty. I'll also have you disbarred!);

11. Twice during the commotion, when I saw Roger Dap-og able to extricate himself from the group, I approached Atty. Mendez asking him to stop by saying: *"Tama na na, sir"* (That's enough, sir.) To which he would only say: *"Pasensya ka na, panyera."* (My apologies, panyera.) To my utter dismay, however, whenever the group of his clients again managed to surround Roger Dap-og, he went and joined the fray again;

12. The commotion finally stopped when Ruben Dap-og shouted at them to stop and was already visibly angry. He said *"Tama na! Undang na kung dili ninyo gusto nga mangil-ad ang padulungan nato niini."* (Enough! Stop now if you do not want to get things end up badly for all of us!). The group of Atty. Mendez moved away from Roger Dap-og and went to the canteen. At that point, the photocopied documents we were waiting for arrived;

x x x[28]

The foregoing narration corroborates Roger's account, and validates as well his claim that he suffered injuries as reflected in his Medical Certificate[29] and the fact too that he had the incident reported in a Police Blotter.[30] Both the said certificate and blotter were prepared by disinterested parties. Absent any evidence that these documents were prepared in bad faith or are otherwise defective in any manner, the presumption that

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[28] Id. at 95-96.

[29] Id. at 9.

[30] Id. at 7-8.

these documents were independently prepared in good faith and should thus be given weight, stands.

To be more specific, the Medical Certificate dated February 12, 2014 by Dr. Betanio showed that Roger indeed sustained several physical injuries. The said Medical Certificate stated the following diagnosis:

SOFT TISSUE CONTUSION PARASTERNAL LINE AT LEVEL OF T2
CONTUSION HEMATOMA SHOULDER RIGHT
T/C FRACTURE CLAVICLE RIGHT
SECONDARY TO ALLEGED MAULING [31]

The foregoing pieces of evidence when taken as a whole would clearly exhibit that physical blows were indeed inflicted upon Roger's person by respondent and his group, contrary to respondent's denial.

Instead of procuring evidence to rebut Roger's evidence, such as the alleged Closed Circuit Television footage mentioned by respondent but never submitted,[32] the latter merely enumerated his supposed achievements that he himself admitted to be irrelevant to the instant case.[33] We must remind respondent that this Court applies the law based on the ultimate facts culled from the evidence presented by both parties, regardless of the parties' perceived achievements. In fact, a stricter and more rigid standard of conduct must be observed by lawyers, such as respondent, given that the legal profession is innately imbued with the duty to administer justice.

The case of *Soriano v. Dizon*[34] reiterates the purpose of disbarment proceedings in relation to the protection of administration of justice, to wit:

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[31] Id. at 9.

[32] Id. at 115.

[33] Id. at 114-115.

[34] 515 Phil. 635 (2006).

The purpose of a proceeding for disbarment is to protect the administration of justice by requiring that those who exercise this important function be competent, honorable and reliable — lawyers in whom courts and clients may repose confidence. x x x.[35]

Moreover, we have ruled that "the Court may suspend or disbar a lawyer for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor, whether in his profession or private life because good character is an essential qualification for the admission to the practice of law and for the continuance of such privilege."[36]

As applied in this case, Atty. Mendez clearly did not meet the lofty standards reposed on lawyers. There is no excuse for respondent's unlawful and dishonorable behavior. Even assuming for the sake of argument that respondent's allegations against Roger were true, that the latter swindled the former's clients, no person should take the law into his own hands. In this regard, this Court must remind respondent that while he can represent his clients with zeal, he must do so within the bounds of the law.[37]

The very point of having a justice system based on the rule of law is to avoid situations such as what happened in this case; every man is presumed innocent and deserves a day in court.

Thus, the Court cannot countenance respondent's pugilistic behavior and brand of vigilante "justice," as it is this Court's duty to uphold the rule of law and not the rule of men. Respondent, being a lawyer and an officer of the court, should know this basic principle and should have acted accordingly. Canon 1 of the CPR provides:

CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

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[35] Id. at 646.

[36] *Bautista v. Ferrer*, A.C. No. 9057, July 3, 2019.

[37] Canon 19, Code of Professional Responsibility.

Disappointingly, Roger, who is not a lawyer, appears to have more respect for the law and legal processes than respondent.

In imposing the penalty of suspension on Atty. Mendez, we take note of the fact that respondent's mauling of Roger, coupled with the use of verbal insults and threats, happened in broad daylight and in front of other people, including respondent's fellow lawyer Atty. Ladaga. Moreover, respondent appears to have shown no remorse in what he did to Roger and would instead prefer to showboat his supposed achievements in a futile attempt to undermine his despicable acts.

In *Bautista v. Ferrer*, which involved a lawyer who not only used offensive language but practically took matters into her own hands, we held:

> In *Canlapan v. Atty. Balayo, Sangalang v. Intermediate Appellate Court, Atty. Torres v. Atty. Javier*, and *Re: Complaints of Mrs. Milagros Lee and Samantha Lee against Atty. Gil Luisito R. Capito*, the Court suspended erring lawyers for periods ranging from one (1) month to three (3) months for their insulting, offensive, and improper language. In the present case, however, Ferrer not only exclaimed foul words and expletives directed at Bautista, she practically took matters into her own hands in detaining and confronting Bautista in the police station as well as in depriving her of her belongings without due process of law. This vindictive behavior must be met with suspension from the practice of law for a period of one (1) year in line with *Spouses Saburnido v. Madroño, Gonzalez v. Atty. Alcaraz*, and *Co v. Atty. Bernardino*. [38] (Citations omitted)

Similar to the above, respondent in this case not only hurled offensive language, accusations, and threats at Roger, Atty. Mendez also "took matters into his own hands" when he physically assaulted the latter in a humiliating fashion. Thus, we agree with the IBP's recommendation to suspend Atty. Mendez from the practice of law for a period of one (1) year.

WHEREFORE, the Court finds Atty. Luel C. Mendez **GUILTY** of violating the Lawyer's Oath and Canon 1, Rule 1.01 of the

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[38] *Bautista v. Ferrer, supra* note 36.

Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of one (1) year effective immediately. Atty. Mendez is **WARNED** that a repetition of the same or similar acts will be dealt with more severely.

Respondent is **DIRECTED** to file a Manifestation to this Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.[39]

Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Luel C. Mendez as a member of the Bar; the Integrated Bar of the Philippines; and the Office of the Court Administrator for dissemination to all trial courts for their information and guidance.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Inting,* and *Delos Santos, JJ.,* concur.

Baltazar-Padilla, J., on leave.

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[39] *Heir of Unite v. Guzman,* A.C. No. 12061, October 16, 2016.

SECOND DIVISION

[A.C. No. 12247. October 14, 2020]

ELPIDIO J. VEGA, Deputy Government Corporate Counsel, and EFREN B. GONZALES, Assistant Government Corporate Counsel, OFFICE OF THE GOVERNMENT CORPORATE COUNSEL, *Complainants, v.* **ATTY. RUDOLF PHILIP B. JURADO, Former Government Corporate Counsel, and ATTY. GABRIEL GUY P. OLANDESCA, Former Chief of Staff, OFFICE OF THE GOVERNMENT CORPORATE COUNSEL**, *Respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT PROCEEDINGS; COMPLAINANT MUST SATISFACTORILY ESTABLISH THE ALLEGATIONS OF HIS COMPLAINT THROUGH SUBSTANTIAL EVIDENCE. — Settled is the rule that in disbarment proceedings, the complainant must satisfactorily establish the allegations of his complaint through substantial evidence. Thus, to compel the exercise by the Court of its disciplinary powers, the records of the case must disclose the dubious character of the act done, and the motivation thereof must be clearly demonstrated.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; MISTAKES COMMITTED BY A PUBLIC OFFICIAL ARE NOT ACTIONABLE ABSENT ANY CLEAR SHOWING THAT THEY WERE MOTIVATED BY MALICE OR GROSS NEGLIGENCE AMOUNTING TO BAD FAITH; CASE AT BAR. — To begin with, mistakes committed by a public official are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith. It is axiomatic that a public official enjoys the presumption of regularity in the discharge of his official duties and functions. Here, the fact that Atty. Jurado previously acted as VACC's counsel in its complaint against PAGCOR prior to becoming the chairperson of OGCC does not derail the presumption that Opinion No. 174 was properly issued. Hence, Opinion No. 174 is deemed regularly and validly issued.

3. LEGAL ETHICS; ATTORNEYS; DISCIPLINARY PROCEEDINGS; A LAWYER IS NOT ANSWERABLE FOR EVERY ERROR OR HONEST MISTAKE COMMITTED AND WILL BE PROTECTED AS LONG AS HE ACTS HONESTLY AND IN GOOD FAITH TO THE BEST OF HIS SKILL AND KNOWLEDGE; CASE AT BAR.— The rule is that a lawyer is not answerable for every error or honest mistakes committed, and will be protected as long as he acts honestly and in good faith to the best of his skill and knowledge. Here, other than being Atty. Jurado's Chief of Staff, Atty. Olandesca was only tasked to review and proofread Opinion No. 174, nowhere did complainants point out any overt act that would warrant the imposition of any liability against him.

D E C I S I O N

INTING, *J.*:

A Verified Disbarment Complaint Affidavit[1] (disbarment complaint) dated June 4, 2018 was filed by Deputy Government Corporate Counsel, Elpidio J. Vega, and Assistant Government Corporate Counsel, Efren B. Gonzales (collectively, complainants), Office of the Government Corporate Counsel (OGCC) against former Government Corporate Counsel, Atty. Rudolf Philip B. Jurado (Atty. Jurado), and former Chief of Staff, Atty. Gabriel Guy P. Olandesca (Atty. Olandesca) (collectively, respondents), of the OGCC for violation of the Canons of the Code of Professional Responsibility (CPR).

The Antecedents

On September 29, 2016, in response to a request for opinion on whether Aurora Pacific Economic Zone and Freeport Authority (APECO) and Cagayan Economic Zone Authority (CEZA) were allowed to issue online gaming licenses and/or accreditations to Business Process Outsourcing (BPO) companies that will operate inside Clark Freeport Zone (CFZ) and with request to review the proposed Memoranda of Agreement (MOA)

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

between Clark Development Corporation (CDC) and APECO, CDC, and CEZA, the OGCC rendered Opinion No. 152,[2] Series of 2016, *viz.*:

> It cannot be argued that both CEZA and APECO are authorized by their respective charters to issue gaming licenses and accreditations. *However, such gaming license or accreditation is limited only to persons operating and activities within the territorial bounds of CEZA and APECO as provided in their respective charters. For areas outside CEZA and APECO, the authority to issue gaming license and permit is with the Philippine Amusement and Gaming Corporation (PAGCOR).*[3] (Italics supplied.)

Opinion No. 152 states that while both CEZA and APECO are authorized to issue gaming licenses and accreditations, such is limited only to persons operating and to activities within the territorial bounds of CEZA and APECO whereas, Philippine Amusement and Gaming Corporation (PAGCOR) has the authority to issue gaming licenses and permits for areas outside CEZA and APECO.

Opinion No. 152 further states that:

> x x x *The MOA need not be reviewed considering that the activities included therein, i.e., regulation/administration of CEZA or APECO licensed or accredited enterprise within CFZ, cannot be done without encroaching the authority of PAGCOR.*[4] (Italics supplied.)

It thus follows that all gaming activities outside the territorial jurisdictions of these two economic zones are to be regulated by PAGCOR, pursuant to its mandate which is "to centralize and integrate the right and authority to operate and conduct games of chance into one corporate entity to be controlled, administered, and supervised by the Government."[5]

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[2] *Id.* at 15-20.

[3] *Id.* at 18.

[4] *Id.* at 20.

[5] Section 1 (a) of Presidential Decree No. 1869, Series of 1983, as amended (PAGCOR Charter).

On July 25, 2017, the OGCC through Atty. Jurado, issued Opinion No. 174,[6] Series of 2017, extending APECO's licensing jurisdiction beyond its territory, to wit:

> Verily, the extent of APECO's licensing jurisdiction with respect to an online gaming activity extends beyond its territory but only as far as the PEZA zones. The extension of APECO's jurisdiction beyond its territory would therefore appear to qualify as an exception to the principle that activities of a locator within an economic zone should be limited within the territory of the latter (subject to the power of control and supervision of PEZA) since its enabling law itself expressly provides. x x x[7]

In *precis*, Opinion No. 174 states that under the current laws (APECO's expanded authority under its amended charter, among others),[8] APECO is not allowed to operate outside the Aurora Special Economic Zone except in the Philippine Economic Zone Authority (PEZA) controlled/zone areas so long as APECO has an agreement (*i.e.*, MOA or Memorandum of Undertaking) with PEZA.[9]

On May 28, 2018, during a speech after the signing of Ease of Doing Business and Efficient Government Service Delivery Act of 2018,[10] President Rodrigo R. Duterte publicly announced the dismissal of Atty. Jurado from the OGCC for allegedly overstepping his authority by allowing APECO to issue franchises beyond its jurisdiction.[11]

Hence, the disbarment complaint filed by complainants.

Complainants allegations are as follows:

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[6] *Rollo*, pp. 21-36.

[7] *Id.* at 34.

[8] Republic Act No. (RA) 9490, as amended by RA 10083. Entitled "Aurora Pacific Economic Zone and Freeport Act of 2010," approved on April 22, 2010.

[9] *Rollo*, pp. 25-30.

[10] RA 11032.

[11] *Rollo*, pp. 382-385.

First, Atty. Jurado, through Opinion No. 174, unduly extended the authority of APECO to license online gaming activities beyond its territory. While Republic Act No. (RA) 9490, as amended, authorizes APECO to enter into mutual cooperation agreement with PEZA for the utilization of PEZA's resources, facilities, and assets — it does not, however, state that APECO's authority to license gaming activities also extends to PEZA's resources, facilities, and assets.[12]

Second, (1) PEZA is separate and independent from APECO, thus, the latter cannot expand its powers and functions beyond the Aurora Special Economic Zone;[13] (2) PEZA, pursuant to Section 51 of RA 7916[14] recognizes PAGCOR as the licensing authority of gaming activities in PEZA territories;[15] (3) Executive Order No. (EO) 13,[16] Series of 2017, expressly states that the jurisdiction of gaming regulators is limited within the extent of their respective territorial jurisdiction;[17] (4) in a Legal Opinion dated August 22, 2017,[18] the Office of the Solicitor General (OSG) opined that APECO is not authorized to operate online gaming activities outside its territorial jurisdiction which is confined only within the Aurora Special Economic Zone and that the Mutual Cooperation Agreement between APECO and

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[12] *Rollo*, p. 4.

[13] *Id.* at 5.

[14] Section 51 of RA 7916 provides:

SECTION 51. *Ipso-Facto Clause*. — All privileges, benefits, advantages or exemptions granted to special economic zones under Republic Act No. 7227, shall *ipso-facto* be accorded to special economic zones already created or to be created under this Act. The free port status shall not be vested upon new special economic zones.

[15] *Rollo*, p. 4.

[16] Entitled "Strengthening the Fight Against Illegal Gambling and Clarifying the Jurisdiction and Authority of Concerned Agencies in the Regulation and Licensing of Gambling and Online Gaming Facilities, and for Other Purposes," approved on February 2, 2017.

[17] *Rollo*, pp. 5-6.

[18] *Id.* at 66-83.

PEZA wherein the latter authorized APECO to operate online gaming activities within PEZA jurisdiction is violative of RA 9490, as amended.[19]

Third, Atty. Jurado had always been averse to PAGCOR.[20] Even before assuming his duty as the Government Corporate Counsel, Atty. Jurado was the counsel of the Volunteers Against Crime and Corruption (VACC) who filed a petition for *certiorari* and prohibition against PAGCOR before the Court of Appeals on February 8, 2017.[21] Hence, Opinion No. 174 is tainted with Atty. Jurado's own personal bias against PAGCOR.[22] Atty. Olandesca is implicated in the administrative complaint as he is Atty. Jurado's Chief of Staff.

In their Comment,[23] respondents stressed that complainants did not disclose all the circumstances material to the controversy: (1) both complainants were discovered by the Commission on Audit (COA) to have been receiving a monthly allowance of ₱15,000.00 or ₱180,000.00 per year, from PAGCOR;[24] (2) Opinion No. 152 which was issued in PAGCOR's favor, were executed by the complainants, both of whom have been receiving monthly allowances from PAGCOR;[25] (3) that respondents did not receive a single centavo from any government-owned and -controlled corporation (GOCC) such as, but not limited to, PAGCOR and APECO;[26] (4) it was the Congress, acting on the proposal of Senator Miguel Zubiri, which expanded APECO's authority and allowed it to operate within the PEZA zones through an amendment of APECO's charter;[27] (5) there was no

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[19] *Id.* at 7.

[20] *Id.* at 6.

[21] *Id.*

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

[23] *Id.* at 86-123.

[24] *Id.* at 87.

[25] *Id.*

[26] *Id.* at 88.

[27] *Id.*

inconsistency between Opinion No. 152 and Opinion No. 174 because the former pertains to APECO's particular authority to operate specifically within the CFZ, while the latter pertains to APECO's generic authority to operate outside the Aurora Special Economic Zone which includes PEZA zone;[28] and (6) the OSG does not have any legal authority to render legal opinions on inquiries posed by GOCCs, unless there exists a prior presidential approval, as such authority resides only with the OGCC.[29] Respondents, thus, maintained that complainants have no cause of action against them.

The Issue

Whether the complaint presents a sufficient basis to disbar respondents.

The Court's Ruling

Settled is the rule that in disbarment proceedings, the complainant must satisfactorily establish the allegations of his complaint through substantial evidence.[30] Thus, to compel the exercise by the Court of its disciplinary powers, the records of the case must disclose the dubious character of the act done, and the motivation thereof must be clearly demonstrated.[31]

Complainants maintain that respondents used their positions to further their own personal grudge against PAGCOR in issuing Opinion No. 174, in violation of Rule 1.02, Canon 1, Canon 5, Rule 15.01, Rule 15.03, Canon 15, and Canon 17 of the CPR.[32] Further, in showing that the OGCC may be influenced by interest other than the Government's own, respondents violated Rule 18.03, Canon 18 of the CPR.[33]

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

[29] *Id.* at 89.

[30] *Ick v. Atty. Amazona,* A.C. No. 12375, February 26, 2020.

[31] *Munar, et al. v. Atty. Bautista, et al.*, 805 Phil. 384, 398-399 (2017), citing *Armav v. Atty. Montevilla*, 581 Phil. 1, 7 (2008).

[32] *Rollo*, pp. 7-9.

[33] *Id.* at 10.

The contention is without merit.

To begin with, mistakes committed by a public official are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith.[34] It is axiomatic that a public official enjoys the presumption of regularity in the discharge of his official duties and functions.[35]

Here, the fact that Atty. Jurado previously acted as VACC's counsel in its complaint against PAGCOR prior to becoming the chairperson of OGCC does not derail the presumption that Opinion No. 174 was properly issued. Hence, Opinion No. 174 is deemed regularly and validly issued.

The allegation that respondents unduly preferred APECO over PAGCOR and utilized their public positions to advance their personal interests in issuing Opinion No. 174 is nothing, but bare allegations unsupported by evidence.[36]

The rule is that a lawyer is not answerable for every error or honest mistakes committed, and will be protected as long as he acts honestly and in good faith to the best of his skill and knowledge.[37] Here, other than being Atty. Jurado's Chief of Staff, Atty. Olandesca was only tasked to review and proofread Opinion No. 174, nowhere did complainants point out any overt act that would warrant the imposition of any liability against him.

Verily, the disbarment complaint against Atty. Olandesca has no basis and should be dismissed for lack of merit.

The Court notes that government lawyers who, in the course of performance of their respective mandates render legal opinions, in the absence of a patent violation of a law, morals, public

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[34] *Soriano v. Ombudsman Marcelo, et al.*, 578 Phil. 79, 90 (2008).

35 *Yap v. Lagtapon*, 803 Phil. 652, 662 (2017), citing *Gatmaitan v. Gonzales*, 525 Phil. 658, 671 (2006).

[36] *Rollo*, p. 9.

[37] See *In re Filart*, 40 Phil. 205, 207 (1919); see also *Adarne v. Atty. Aldaba*, 173 Phil. 142, 147 (1978).

policy or good customs, should not, as they could not, be held liable for their opinions.[38] In *Zulueta v. Nicolas*,[39] the Court held that it is highly dangerous to set a judicial precedent by making responsible for damages the provincial prosecutor of Rizal for refusing to lodge a complaint if his refusal is rational and made in good faith, considering that he was merely rendering an opinion in the exercise of his sound discretion that there was no ground for filing a grievance. To set this precedent against prosecutors would put them in a situation where, in the fulfillment of their obligation in the exercise of sound discretion, they were always threatened with a lawsuit if their opinions were contrary to that of complainants like a sword of Damocles hanging over their heads.[40]

In their Comment, Atty. Jurado insists that Section 12 (f) in relation to Section 12(g)[41] of RA 9490, as amended, expanded the scope of APECO's authority by allowing it to extend its operations within the PEZA controlled areas so long as APECO has an agreement with PEZA.[42]

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[38] *Orocio v. Commission on Audit*, 287 Phil. 1045, 1065-1066 (1992).

[39] 102 Phil. 944 (1958).

[40] *Id.* at 947.

[41] Section 12 (f) and (g) of RA 9490 provides:

SECTION 12. *Powers and Functions of the Aurora Economic Zone and Freeport Authority (APECO).* — The APECO shall have the following powers and functions:

x x x x

(f) To operate on its own, either directly or through a subsidiary entity, or concession or license to others, tourism-related activities, including games, amusements and nature parks, recreational and sports facilities such as casinos, online game facilities, golf courses and others under priorities and standards set by the APECO;

(g) To authorize the APECO to enter into mutual cooperation agreement with the PEZA for the utilization of the PEZA's resources, facilities and assets;

x x x x

[42] *Rollo*, p. 92.

Atty. Jurado's interpretation of RA 9490 clearly contravenes another statute and oversteps the bounds of Apeco's jurisdiction. Nowhere in Section 12(f), as amended, does it state that this authority of APECO can be extended in PEZA location. Section 12(f) merely provides that APECO can operate on its own, either directly or through a subsidiary entity, or concession or license to others, tourism-related activities, including games, amusements and nature parks, recreational and sports facilities such as casinos, online game facilities, golf courses and other priorities and standard.

As elucidated by former Chief Justice Reynato S. Puno in *Mariano, Jr. v. COMELEC*,[43] the importance of drawing with precise strokes the territorial boundaries of a local unit of government cannot be overemphasized, to wit:

> x x x The boundaries must be clear for they define the limits of the territorial jurisdiction of a local government unit. It can legitimately exercise powers of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are ultra vires. *Needless to state, any uncertainty in the boundaries of local government units will sow costly conflicts in the exercise of governmental powers which ultimately will prejudice the people's welfare. This is the evil sought to be avoided by the Local Government Code in requiring that the land area of a local government unit must be spelled out in metes and bounds, with technical descriptions*. (Emphasis omitted; Italics supplied.)[44]

It is inconceivable to adopt the opinion issued by Atty. Jurado that the metes and bounds of the Aurora Special Economic Zone is not determinative of APECO's limits of jurisdictional operation.

While the Court is not disposed to impose upon Atty. Jurado what may be considered in a lawyer's career as the extreme penalty of disbarment absent a clear *indicia* of bad faith or malice, Atty. Jurado is, however, not free from any liability.

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[43] 312 Phil. 259 (1995).

[44] *Id.* at 265-266.

In *Berenguer v. Carranza*,[45] even if there is no intent to deceive on the part of the lawyer, he should not be allowed to free himself from a charge thereafter instituted against him by the mere plea that his conduct was not willful.[46] In this case, Atty. Jurado completely disregarded Opinion No. 152, EO 13, and RA 7916 when he issued Opinion No. 174. As a result, no less than the President of the Philippines criticized Atty. Jurado and publicly called him a "fool" for allowing APECO to grant franchises to areas outside Aurora Province.[47]

It is evident that Atty. Jurado fell short of what is expected of him as a lawyer in issuing Opinion No. 174 in disregard of an existing law and jurisprudence, albeit without bad faith.

The Court notes that Atty. Jurado, as then Government Corporate Counsel, should not only avoid all impropriety, but also should avoid the appearance of impropriety in line with the principle that a public office is a public trust.[48] Verily, any act that falls short of the exacting standards for public office shall not be countenanced.

WHEREFORE, respondent Atty. Rudolf Philip B. Jurado is hereby **REPRIMANDED** and **STERNLY WARNED** that a repetition of an offense of this character would be much more severely dealt with. The disbarment complaint against respondent Atty. Gabriel Guy P. Olandesca is **DISMISSED** for lack of merit.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando,* and *Delos Santos, JJ.,* concur.

Baltazar-Padilla, J., on leave.

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[45] 136 Phil. 75 (1969).

[46] *Id.* at 81.

[47] *Rollo*, p. 382.

[48] Section 1, Article XI, CONSTITUTION.

THIRD DIVISION

[A.C. No. 12733. October 14, 2020]

SPOUSES VIRGINIA and RAMON ALDEA, *Complainant, v.* **ATTY. RENATO C. BAGAY,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARY PUBLIC; NOTARIES PUBLIC MUST OBSERVE WITH UTMOST CARE THE BASIC REQUIREMENTS IN THE PERFORMANCE OF THEIR DUTIES. — Notaries public are constantly reminded that notarization is not an empty, meaningless, and routinary act. A private document is converted into a public document once it has undergone notarization and makes it admissible in evidence. Consequently, a notarized document is by law, entitled to full faith and credit upon its face; for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.

The responsibility to faithfully observe and respect the legal solemnity of the oath in an acknowledgment or *jurat* is more pronounced when the notary public is a lawyer. A graver responsibility is placed upon him by reason of his solemn oath under the Code of Professional Responsibility to obey the laws and to do no falsehood or consent to the doing of any. He is mandated to the sacred duties appertaining to his office, such duties being dictated by public policy and impressed with public interest. Failing in his duties, he must bear the commensurate consequences.

2. ID.; ID.; 2004 NOTARIAL RULES; A NOTARY PUBLIC IS FORBIDDEN TO NOTARIZE A DOCUMENT UNLESS THE SIGNATORY IS PRESENT AND PERSONALLY KNOWN TO THE FORMER OR OTHERWISE IDENTIFIED THROUGH COMPETENT EVIDENCE OF IDENTITY. — [T]he 2004 Notarial Rules forbid a notary public to notarize a document unless the signatory thereto is personally present before the notary public at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity, . . .

If the person appearing before the notary public is not personally known to the latter, Section 2 (b), Rule IV of the 2004 Notarial Rules require the presentation of a competent evidence of identity. Section 12, Rule II of the same Rules defines competent evidence of identity as: (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or (b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction, who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public a documentary identification. **The purpose of these rules is for the notary to verify the genuineness of the signature of the affiant and to determine that the document is the signatory's free act and deed.**

3. ID.; ID.; ID.; NOTARIZING A DOCUMENT IN THE ABSENCE OF THE SIGNATORIES THEREOF AND OF COMPETENT EVIDENCE OF THEIR IDENTITY AMOUNT TO NEGLIGENCE FOR WHICH LIABILITY ATTACHES NOT ONLY AS A NOTARY PUBLIC, BUT ALSO AS A LAWYER.— [Atty. Bagay], however, failed to refute the fact that Virginia and Leonida were not present on the day of notarization. Such negligent act is fraught with dangerous possibilities considering the conclusiveness on the due execution of a document that our courts and the public accord to notarized documents.

Furthermore, Atty. Bagay did not personally know the persons who executed the subject document. He merely relied on the community tax certificates of the people who appeared before him, which, however, are not competent evidence of identity under Section12, Rule II of the 2004 Notarial Rules. As the Court held in the past, reliance on the community tax certificates alone is a punishable indiscretion by the notary public.

Based on the established facts, Atty. Bagay was clearly negligent in the discharge of his duties and functions, not only as a notary public, but also as a lawyer. His acts and omissions resulted not only in the damage to those directly affected by the notarized document, but also in undermining the integrity of a notary public and in degrading the function of notarization. He should, thus, be held liable for such negligence not only as a notary public but also as a lawyer.

4. ID.; ID.; ID.; ID.; THE ABSOLUTION IN THE CRIMINAL CASE DOES NOT AFFECT THE ADMINISTRATIVE CHARGE.— The fact that Atty. Bagay was absolved in the criminal case filed by Virginia is of no moment; it does not exculpate him from the present administrative charge because what is at issue here is his act of notarizing a document, without complying with the 2004 Notarial Rules.

5. ID.; ID.; ID.; PENALTY FOR VIOLATION OF THE NOTARIAL RULES; PREVIOUS INFRACTIONS AS A NOTARY PUBLIC ARE CONSIDERED IN IMPOSING A PENALTY.— Based on existing jurisprudence, when a lawyer commissioned as a notary public fails to discharge his duties as such, he is meted the penalties of revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two (2) years, and suspension from the practice of law, usually from six (6) months to one (1) year.

It is worthy to point out, however, that in *Angeles, Jr. v. Bagay*, decided on 03 December 2014, the Court found Atty. Bagay administratively liable for notarizing (18) documents while he was outside the country and/or were signed by his secretary in his absence. . . .

. . .

Consequently, the Court holds that the recommended penalties against Atty. Bagay by the IBP Board should be modified accordingly to put premium on the importance of the duties and responsibilities of a notary public. Pursuant to the pronouncement in *Loberes-Pintal v. Baylosis*, Atty. Bagay is meted the penalty of two (2) years suspension from the practice of law, revocation of his notarial commission, and a permanent ban from becoming a notary public.

D E C I S I O N

ZALAMEDA, *J.*:

This is a Complaint for Disbarment[1] filed before the Integrated Bar of the Philippines Commission on. Bar Discipline (IBP-

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

CBD) against respondent Atty. Renato C. Bagay (Atty. Bagay) for violations of the Code of Professional Responsibility (CPR) and the 2004 Rules on Notarial Practice (2004 Notarial Rules).

Antecedents

Dominador C. Libang and Maura D. Libang (spouses Libang, collectively) died on 02 June 1996 and 30 September 2000, respectively. They left a parcel of land containing an area of 7,214 square meters with improvements registered under Transfer Certificate of Title (TCT) No. T-5690 located at Limay, Bataan (subject property),[2] which was in part inherited by their legitimate daughter, complainant Virginia Libang Aldea (Virginia).

Sometime later, Virginia discovered the existence of an Extra-Judicial Settlement of Estate with Sale, purportedly executed by the heirs of spouses Libang, transferring the ownership of the subject property to spouses Enrico and Arlina Datu. It was notarized by Atty. Bagay on 28 May 2010. Consequently, Virginia, assisted by her husband Atty. Ramon Aldea, filed a criminal complaint for estafa through falsification of public documents against respondent and several others before the Office of the City Prosecutor of Balanga City,[3] as well as the complaint for disbarment against Atty. Bagay.

According to Virginia, the signature as appearing above her printed name in the Extra-Judicial Settlement of Estate with Sale was forged, simulated and falsified, as she was never a party to the document, and did not participate in the signing and execution thereof. She also assailed the community tax certificate bearing her name. Moreover, she maintained that Atty. Bagay acted with malice in notarizing the spurious document, notwithstanding the absence of the affiants therein. Virginia swore that she did not appear and acknowledge the document before Atty. Bagay on 28 May 2010[4] while Leonida

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[2] Id. at 3.

[3] Id.

[4] Id.

L. Cabulao (Leonida), another heir, was already dead as early as 22 November 1990.[5]

Atty. Bagay, in response, admitted his notarization on 28 May 2010 of the Extra-Judicial Settlement of Estate with Sale, with Leonida and Virginia, along with a certain Juan D. Libang, as purported affiants. He recorded such document under Doc. No. 75, Page No. 16, Book No. CDCXVI, Series of 2010. He allegedly notarized the document in good faith, and without motive of being a party to the falsity of the document, as he did not know any of the parties therein. He then pointed out that the Office of the City Prosecutor of Balanga City already absolved him as a conspirator in the criminal complaint for estafa through falsification of public documents since his only participation was the subscription and swearing in of its signatories.[6]

Report and Recommendation of the IBP-CBD

In its Report and Recommendation, the IBP-CBD found Atty. Bagay administratively liable. It recommended the imposition of the penalties of suspension of six (6) months from the practice of law against respondent, revocation of his present notarial commission, and suspension as a notary public for two (2) years.

The IBP-CBD found that based on the evidence, Atty. Bagay violated Section 12, Rule II and Section 2 (b), Rule IV of the 2004 Notarial Rules, as well as the CPR. It did not consider Atty. Bagay's claim of good faith. On the contrary, the IBP-CBD found Atty. Bagay to have seriously neglected his duty as a notary public for failing to verify the identities of the parties to the document he notarized.[7]

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[5] Id.

[6] Id. at 78-79.

[7] Id. at 372-378; Report and Recommendation, signed by IBP Commissioner Suzette A. Mamon.

Report and Recommendation of the IBP Board of Governors

In its Resolution[8] dated 22 March 2018, the IBP Board of Governors (IBP Board) adopted the findings of the IBP-CBD but increased the penalty of suspension from the practice of law to one (1) year.

Ruling of the Court

The Court adopts the recommendations of the IBP Board but modifies the penalty imposed.

Notaries public are constantly reminded that notarization is not an empty, meaningless, and routinary act.[9] A private document is converted into a public document once it has undergone notarization and makes it admissible in evidence. Consequently, a notarized document is by law, entitled to full faith and credit upon its face; for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.[10]

The responsibility to faithfully observe and respect the legal solemnity of the oath in an acknowledgment or *jurat* is more pronounced when the notary public is a lawyer. A graver responsibility is placed upon him by reason of his solemn oath under the Code of Professional Responsibility to obey the laws and to do no falsehood or consent to the doing of any. He is mandated to the sacred duties appertaining to his office, such duties being dictated by public policy and impressed with public interest. Failing in his duties, he must bear the commensurate consequences.[11]

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[8] Id. at 370; Notice of IBP Board Resolution, signed by National Secretary Patricia-Ann T. Prodigalidad.

[9] See *Angeles v. Ibañez*, 596 Phil. 99 (2009); *Dela Cruz-Sillano v. Pangan*, 592 Phil. 219 (2008); *Legaspi v. Landrito*, 590 Phil. 1 (2008); *Pantoja-Mumar v. Flores*, 549 Phil. 261 (2007); *Gonzales v. Ramos*, 499 Phil. 345 (2005); *Dela Cruz v. Zabala*, 485 Phil. 83 (2004); *Follosco v. Mateo*, 466 Phil. 305 (2004); *Aquino v. Manese*, 448 Phil. 555 (2003).

[10] Id.

[11] *Legaspi v. Landrito*, 590 Phil. 1, 6-7 (2008); A.C. No. 7091, 15 October 2008.

In this vein, the 2004 Notarial Rules forbid a notary public to notarize a document unless the signatory thereto is personally present before the notary public at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity, *viz.*:

> Rule IV, Section 2. *Prohibitions.* — x x x x
>
> (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —
>
> (1) is not in the notary's presence personally at the time of the notarization; and
>
> (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.[12]

If the person appearing before the notary public is not personally known to the latter, Section 2 (b), Rule IV of the 2004 Notarial Rules require the presentation of a competent evidence of identity. Section 12, Rule II of the same Rules defines competent evidence of identity as: (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or (b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction, who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public a documentary identification. **The purpose of these rules is for the notary to verify the genuineness of the signature of the affiant and to determine that the document is the signatory's free act and deed**.[13]

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[12] 2004 Rules on Notarial Practice, A.M. No. 02-8-13-SC, 06 July 2004.

[13] See *Dela Cruz-Sillano v. Pangan*, 592 Phil. 219-229 (2008); A.C. No. 5851, 25 November 2008.

In this case, Atty. Bagay admits notarizing the Extra-Judicial Settlement of Estate with Sale on 28 May 2010. By affixing his signature and notarial seal on the document, he attested that Virginia and Leonida personally appeared before him on the day it was notarized and verified the contents thereof. He, however, failed to refute the fact that Virginia and Leonida were not present on the day of notarization. Such negligent act is fraught with dangerous possibilities considering the conclusiveness on the due execution of a document that our courts and the public accord to notarized documents.[14]

Furthermore, Atty. Bagay did not personally know the persons who executed the subject document. He merely relied on the community tax certificates of the people who appeared before him, which, however, are not competent evidence of identity under Section 12, Rule II of the 2004 Notarial Rules. As the Court held in the past, reliance on the community tax certificates alone is a punishable indiscretion by the notary public.[15]

Based on the established facts, Atty. Bagay was clearly negligent in the discharge of his duties and functions, not only as a notary public, but also as a lawyer.[16] His acts and omissions resulted not only in the damage to those directly affected by the notarized document, but also in undermining the integrity of a notary public and in degrading the function of notarization. He should, thus, be held liable for such negligence not only as a notary public but also as a lawyer.[17] The fact that Atty. Bagay was absolved in the criminal case filed by Virginia is of no moment; it does not exculpate him from the present administrative

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[14] See *Loberes-Pintal v. Baylosis*, 804 Phil. 14, 19 (2017); A.C. No. 11545, 24 January 2017.

[15] See *Japitana v. Parado*, 779 Phil. 182, 190 (2016); A.C. No. 10859, 26 January 2016.

[16] See *Angeles, Jr. v. Bagay*, 749 Phil. 114, 122 (2014); A.C. No. 8103, 03 December 2014.

[17] See *Agbulos v. Viray*, 704 Phil. 1, 8-9 (2013); A.C. No. 7350, 18 February 2013.

charge because what is at issue here is his act of notarizing a document, without complying with the 2004 Notarial Rules.

Having established Atty. Bagay's administrative liability, the Court must now determine the proper penalty to be imposed upon him in this case.

Based on existing jurisprudence, when a lawyer commissioned as a notary public fails to discharge his duties as such, he is meted the penalties of revocation of his notarial commission, disqualification from being commissioned as a notary public for a period of two (2) years, and suspension from the practice of law, usually from six (6) months to one (1) year.[18]

It is worthy to point out, however, that in *Angeles, Jr. v. Bagay*,[19] decided on 03 December 2014, the Court found Atty. Bagay administratively liable for notarizing (18) documents while he was outside the country and/or were signed by his secretary in his absence. For being grossly negligent in his duty as notary public therein, the Court revoked his notarial commission and disqualified him from being commissioned as a notary public for a period of two (2) years. The Court likewise suspended him from the practice of law for three (3) months, with a warning that a repetition of a similar violation will be dealt with more severely.

Despite such stern warning, Atty. Bagay was unperturbed, as he is here once again found liable for being negligent in notarizing documents, showing his propensity to brazenly violate or take lightly the 2004 Notarial Rules and Rule 1.01[20] of the CPR.

Consequently, the Court holds that the recommended penalties against Atty. Bagay by the IBP Board should be modified

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[18] Id.; see also Malvar v. Baleros, 807 Phil. 16, 30 (2017); A.C. No. 11346, 08 March 2017.

[19] Supra at note 16.

[20] RULE 1.01. A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

accordingly to put premium on the importance of the duties and responsibilities of a notary public. Pursuant to the pronouncement in *Loberes-Pintal v. Baylosis*,[21] Atty. Bagay is meted the penalty of two (2) years suspension from the practice of law, revocation of his notarial commission, and a permanent ban from becoming a notary public.

WHEREFORE, premises considered, respondent Atty. Renato C. Bagay is hereby found **GUILTY** of violating Rule 1.01, Canon 1 of the Code of Professional Responsibility and the 2004 Rules on Notarial Practice. He is **SUSPENDED** from the practice of law for two (2) years, effective immediately. The Court **REVOKES** his notarial commission, if any, and **PERMANENTLY DISQUALIFIES** him from being commissioned as a notary public, effective immediately, with a **STERN WARNING** that the repetition of a similar violation will be dealt with even more severely. He is **DIRECTED** to **REPORT** the date of his receipt of this Decision to enable this Court to determine when his suspension shall take effect.

Let copies of this Decision be furnished to the Office of the Bar Confidant, to be appended to Atty. Renato C. Bagay's personal record as attorney. Likewise, let copies of this Decision be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for dissemination to all courts in the country for their information and guidance.

SO ORDERED.

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

Leonen, J., on official leave.

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[21] Supra at note 14.

SECOND DIVISION

[OCA IPI No. 20-3093-MTJ. October 14, 2020]

PRESIDING JUDGE MARIGEL S. DAGANI-HUGO, Regional Trial Court, Branch 3, Butuan City, Agusan del Norte, *Complainant, v.* **JUDGE DENNIS B. CASTILLA, Municipal Trial Court in Cities, Branch 1, Butuan City, Agusan del Norte**, *Respondent*.

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; DISCIPLINARY PROCEEDINGS; ERRORS COMMITTED BY A JUDGE IN THE EXERCISE OF HIS ADJUDICATIVE FUNCTIONS CANNOT BE CORRECTED THROUGH ADMINISTRATIVE PROCEEDINGS BUT SHOULD INSTEAD BE ASSAILED THROUGH AVAILABLE JUDICIAL REMEDIES. — Jurisprudence is replete with cases holding that errors, if any, committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings, but should instead be assailed through available judicial remedies.

2. ID.; ID.; ID.; A JUDGE MAY NOT BE ADMINISTRATIVELY CHARGED FOR MERE ERRORS OF JUDGMENT IN THE ABSENCE OF SHOWING OF ANY BAD FAITH, MALICE OR CORRUPT PURPOSE; CASE AT BAR. — Moreover, a judge may not be administratively charged for mere errors of judgment, in the absence of showing of any bad faith, malice or corrupt purpose. In this instant case, there was no evidence showing that in issuing said order, Judge Castilla was motivated by bad faith, fraud, dishonesty or corruption.

D E C I S I O N

DELOS SANTOS, *J.*:

The Case

This instant case against Judge Dennis B. Castilla (Judge Castilla), Municipal Trial Court in Cities (MTCC) of Butuan

City, Agusan del Norte, Branch 1, stemmed from the counter-charges filed by Presiding Judge Marigel S. Dagani-Hugo (Judge Hugo), Regional Trial Court (RTC) of Butuan City, Agusan Del Norte, Branch 3, in an administrative case docketed as OCA IPI No. 17-4750-RTJ.

Antecedents

In a Complaint[1] dated September 7, 2017, Judge Castilla charged Judge Hugo with Ignorance of the Law and Conduct Prejudicial to the Best Interest of Service before the Office of the Court Administrator (OCA). The allegations of Judge Castilla are synthesized as follows:

(1) Judge Hugo, when she was still a provincial prosecutor, caused the dismissal of four (4) counts of theft and two (2) counts of Estafa that Judge Castilla filed against Engineer Hospicio C. Ebarle, Jr., Arcadio L. Racasa, Jr.,[2] and six (6) other accused. Judge Castilla claimed that Judge Hugo was biased in approving the recommendation of dismissal because of the latter's membership in a fraternity called Alphans;

(2) Judge Hugo dismissed a rape case, in which some person raised a concern on how the said rape case was dismissed;

(3) The then Provincial Prosecutor Hugo conspired with her process server, Noel Indonto, in filing a baseless and fabricated charge of perjury against one Mary Grace E. Wang (Wang);

(4) On September 5, 2017, Judge Hugo, who was then the Chairperson of the Committee on Parking and Beautification, inexplicably occupied his parking space. According to Judge Castilla, he was told by the security personnel that his parking space was reassigned upon the directive of Judge Hugo. He claims that he had been using said parking space for the last 10 years, and was

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[1] *Rollo* (OCA IPI No. 17-4750-RTJ), pp. 1-6.

[2] Also referred to as Arcadio L. Racaza, Jr. in other parts of the *rollo*.

thus humiliated when the guard prohibited him from parking in said space and directed him to park in his newly assigned space where he had difficulty to park due to its location;

(5) Judge Hugo, while she was still a prosecutor, together with Judge Castilla's former wife, Climarie Castilla (Climarie) connived in filing a case against him for violation of Republic Act No. 9262 or the Violence Against Women and Their Children Act of 2004 (VAWC).

In her Comment[3] dated November 23, 2017, Judge Hugo denied the allegations of Judge Castilla and countered that the complaint was ill-motivated because Judge Castilla bears a grudge against her. First, Judge Hugo explained that the Estafa and Theft cases filed by Judge Castilla were dismissed upon the recommendation of Prosecutor Cyril G. Viva for lack of probable cause. She maintained that said finding was affirmed by another prosecutor, who eventually resolved the motion for reconsideration. According to Judge Hugo, the Department of Justice (DOJ) sustained the dismissal, when Judge Castilla elevated the dismissal of the said cases for review. Second, Judge Hugo countered that her supposed "dismissal of a certain rape case raised by some person" was a complete hearsay. Third, on the filing of the perjury case against Wang, Judge Hugo strongly denied being personally involved in the filing of the said case. Fourth, as regards the parking re-assignment Judge Hugo explained that the re-assignment of priority parking slots was made due to security concerns following the murder of Judge Godofredo B. Abul, Jr. She added that a recommendation[4] for the parking re-assignment was submitted by the Committee on Parking and Beautification and was approved by Executive Judge Emmanuel E. Escatron per Office Memorandum No. 34-2017[5] dated August 17, 2017. Lastly, Judge Hugo claimed that

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[3] *Rollo* (OCA IPI No. 17-4750-RTJ), pp. 56-60.

[4] Id. at 92.

[5] Id. at 91.

she never had a hand on the VAWC complaint filed by Climarie against him.

On February 1, 2018, Judge Hugo filed a Supplemental Comment[6] and prayed that the same be considered as her initiatory complaint against Judge Castilla. Judge Hugo alleged that it was Judge Castilla who possessed reprehensible behavior and committed acts prejudicial to the best interest of service. The counter-charges of Judge Hugo are the following: (1) Judge Castilla does not respect hierarchy of courts; (2) Judge Castilla is fond of insulting his colleagues; (3) Judge Castilla does not follow office memorandum; and (4) Judge Castilla's involvement with a lawyer of the Public Attorney's Office (PAO) showed lack of integrity.

Judge Hugo submitted several documents in support of her counter-charges, to wit: (1) copy of Omnibus Order[7] dated August 8, 2016 issued by Judge Castilla, showing that he ignored a directive of RTC-Branch 5, Butuan City, for him to conduct further proceedings on revived criminal cases; (2) copy of an Order of Dismissal[8] dated December 16, 2013 issued by Judge Castilla, that showed unwarranted words against a prosecutor; (3) Affidavit[9] dated January 14, 2019 executed by Judge Augustus L. Calo, attesting to the allegation that Judge Castilla does not follow the office memorandum on flag raising and flag lowering ceremonies; and (4) Transcript[10] of messages, culled from Judge Castilla's cellular phone, that showed exchange of text messages between Judge Castilla and the said PAO lawyer, his alleged paramour.

In his Reply[11] dated April 16, 2018, Judge Castilla submitted documents in support of his allegations in his original complaint.

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[6] Id. at 97-99.

[7] Id. at 144-148.

[8] Id. at 500.

[9] Id. at 501-503.

[10] Id. at 536-546.

[11] Id. at 180-200.

Judge Castilla reiterated past misdemeanors allegedly committed by Judge Hugo during her stint as provincial prosecutor. Judge Castilla denies the counter-charges hurled against him and reiterated the allegations in his complaint against Judge Hugo.

The OCA's Report and Recommendation

The OCA found that the issues presented by the conflicting claims of Judge Castilla and Judge Hugo should be ventilated in a formal investigation, where parties can present their respective evidence. It was recommended that the complaint be referred to the Executive Justice of the Court of Appeals, Cagayan de Oro City.[12]

Thus, the Court issued a Resolution[13] dated October 10, 2018 referring the case to the Presiding Justice of the Court of Appeals, Cagayan de Oro City, for raffle, investigation, report, and recommendation within 90 days from receipt of records.

Report and Recommendation of the Investigating Justice

In his Report and Recommendation,[14] Investigating Justice Oscar V. Badelles (Justice Badelles) found that the charges against Judge Hugo warrant a dismissal.

As regards the counter-charges against Judge Castilla, it was held that he was guilty of gross misconduct by failing to obey the lawful order of a superior court, and by failing to be impartial and granting undue advantage to a certain PAO lawyer whom he allegedly had an illicit affair. Justice Badelles found probable cause against Judge Castilla for violation of Canons 2 and 4 of the Code of Judicial Conduct, after giving credence to the transcript of the short message exchanges between Judge Castilla and the said PAO lawyer. The dispositive portion reads as follows:

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[12] Id. at 352.

[13] Id. at 353-354.

[14] Id. at 364-376.

WHEREFORE, it is respectfully recommended that the complaint against Judge Marigel Dagani-Hugo be DISMISSED.

We further recommend, after finding probable cause, that the case against Judge Dennis B. Castilla be elevated to an Administrative Charge. We further recommend, after trial, that Judge Castilla be meted the penalty of FINE in the amount of [₱]40,000.00, with a STERN WARNING that a repetition of the same or similar offense shall be dealt with more severely, for violation of Canons 2 and 4 of the Code of Judicial Conduct of the Philippine Judiciary.

IT IS SO RECOMMENDED.[15]

On January 8, 2020, the Court issued a Resolution dismissing the administrative matter against Judge Hugo for lack of merit, and ordered that the counter-charges against Judge Castilla be docketed as a separate administrative matter.

On June 1, 2020, Judge Castilla filed a Most Urgent Manifestation/Appeal for Dismissal, praying for the outright dismissal of the counter-charges against him.

Issue

The issue for the Court's resolution is whether or not Judge Castilla is administratively liable.

The Court's Ruling

Judge Castilla was charged with the following acts: (1) does not respect hierarchy of courts; (2) fond of insulting his colleagues; (3) does not follow office memorandum; and (4) involvement with a lawyer of the PAO.

Justice Badelles found that Judge Castilla violated Canons 2 and 4 of Code of Judicial Conduct — the canons on integrity and impropriety, respectively. Consequently, Judge Castilla was held guilty of gross misconduct.

The Court does not agree with the findings and recommendation of Justice Badelles.

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[15] Id. at 376.

In *Re: Letter of Lucena Ofendoreyes*,[16] the Court explained:

> Jurisprudence dictates that in administrative proceedings, complainants bear the burden of proving the allegations in their complaints by substantial evidence. If they fail to show in a satisfactory manner the facts upon which their claims are based, the respondents are not obliged to prove their exception or defense. The same goes with administrative cases disciplining for grave offense court employees or magistrates. The evidence against the respondent should be competent and should be derived from direct knowledge.[17]

After judicious evaluation of the records of this case, it appears that the pieces of evidence submitted by Judge Hugo fell short of competence and were not derived from direct knowledge.

First, the Court notes that the 36 cases being used as subject in the allegation of disrespect to higher courts were not cases of Judge Castilla but of the other branch of the RTC. If at all, the persons who stand to have direct knowledge and thereby possibly aggrieved by Judge Castilla's order were the prosecutor, the judge, or the complaining witnesses of the dismissed criminal cases. If there were valid grounds, the said order of Judge Castilla could have been assailed by the proper parties to the appropriate courts.

Jurisprudence is replete with cases holding that errors, if any, committed by a judge in the exercise of his adjudicative functions cannot be corrected through administrative proceedings, but should instead be assailed through available judicial remedies.[18] Moreover, a judge may not be administratively charged for mere errors of judgment, in the absence of showing of any bad faith, malice or corrupt purpose.[19] In this instant case, there was no evidence showing that in issuing said order, Judge Castilla was motivated by bad faith, fraud, dishonesty or corruption.

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[16] 810 Phil. 369 (2017).

[17] Id. at 374.

[18] *Re: Bueser*, 701 Phil. 462, 468 (2013).

[19] *Araos v. Luna-Pison*, 428 Phil. 290, 297 (2002).

Second, in support of her charge that Judge Castilla was fond of insulting his colleagues, Judge Hugo submitted a copy of the former's Order of Dismissal, in which she claimed that words therein were personally insulting to the handling prosecutor of the case, Assistant Prosecutor Atty. Ruth C. Sanchez. Again, similar to the first allegation, the evidence of Judge Hugo was not from direct knowledge and was insufficient to warrant administrative liability.

Nevertheless, the Court seizes this occasion to reaffirm *Guanzon v. Rufon*[20] and declare once again that "although respondent judge may attribute his intemperate language to human frailty, his noble position in the bench nevertheless demands from him courteous speech in and out of court. Judges are required to always be temperate, patient and courteous, both in conduct and in language."[21]

Third, to prove Judge Castilla's illicit affair, Judge Hugo submitted a transcript of exchanges of text messages between Judge Castilla and the PAO lawyer assigned to his court, his alleged paramour.

In this regard, the Court agrees with the findings of Justice Badelles that this charge was not duly proven.

It must be noted that the transcript of text messages was a court document originally used and taken from the declaration of nullity of marriage case filed by Judge Castilla against his former wife, Climarie. While the said transcript was an attachment to an affidavit filed by Climarie to the said case, the same and its contents cannot be considered as competent, and from direct knowledge of Judge Hugo with respect to this instant administrative case. Significantly, the following were not verified or authenticated: (1) the identity of the cellular phone from which the messages were culled; (2) the identity of the cellular phone numbers, if they indeed belong to Judge Castilla and the PAO lawyer; and (3) if the "JC" and "JB" in

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[20] 562 Phil. 633 (2007).

[21] Id. at 638.

the said transcript were certainly Judge Castilla and the PAO lawyer.

Under Sections 8 and 11, Rule 140 of the Rules of Court, a judge found guilty of immorality can be dismissed from service, if still in the active service, or may forfeit all or part of his retirement benefits, if already retired, and disqualified from reinstatement or appointment to any public office including government-owned or controlled corporations. We have already ruled that if a judge is to be disciplined for a grave offense, the evidence against him should be competent and derived from direct knowledge.[22] Again, the Court finds that Judge Hugo failed to satisfy this quantum of evidence.

Basic is the rule that in administrative proceedings, complainant bears the *onus* of establishing the averments of her complaint. If complainant fails to discharge this burden, respondent cannot be held liable for the charge.[23]

As regards the claim that Judge Hugo did not follow Office Memorandum No. 1-2017 directing all judges and court personnel to strictly observe flag raising and flag lowering ceremonies, Judge Castilla was unpretentious to acknowledge his deficiencies and the Court finds that he was able to satisfactorily explain his absences.

Flag ceremonies inspire patriotism and evoke the finest sentiments of love of country and people.[24] Accordingly, the Court regularly issues policies addressed to the courts that directs compliance to observance of flag raising and flag lowering ceremonies. However, the Court understands that like in any other mandated activities of the courts, perfect and unremarkable attendance will not always be possible.

WHEREFORE, the Court **DISMISSES** the complaint against Judge Dennis B. Castilla for lack of factual and legal merit.

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[22] *Macias v. Macias*, 617 Phil. 18, 28 (2009).

[23] Id.

[24] *Martinez v. Lim*, 601 Phil. 338, 342 (2009).

SO ORDERED.

Perlas-Bernabe (*Chairperson*), *Hernando,* and *Inting, JJ.*, concur.

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 187307. October 14, 2020]

LAND BANK OF THE PHILIPPINES, *Petitioner, v.* **DEL MORAL, INC.,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; REQUISITES.— For a claim of *res judicata* to prosper, the following requisites must concur: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be, between the two cases, identity of parties, subject matter, and causes of action.

2. ID.; ID.; ID.; ID.; EFFECTS.— The doctrine of *res judicata* has two aspects, to wit: (1) the effect of a judgment as bar to the prosecution of a second action upon the same claim, demand or cause of action; and (2) preclude relitigation of a particular fact or issue in another action between the same parties on a different claim or cause of action.

. . .

By the principle of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies; and constitutes an absolute bar to subsequent actions involving the same claim, demand or cause of action. *Res judicata* is based on the ground that the party to be affected, or some other with whom he/she is in privity, has litigated the same matter in the former action in a court of competent jurisdiction, and should not be permitted to litigate it again.

3. ID.; SPECIAL CIVIL ACTIONS; EMINENT DOMAIN; JUST COMPENSATION; THE DETERMINATION OF JUST COMPENSATION IS A JUDICIAL FUNCTION WHICH CANNOT BE CURTAILED OR LIMITED BY LEGISLATION, MUCH LESS BY ADMINISTRATIVE RULE. — The determination of just compensation is a judicial

function which cannot be curtailed or limited by legislation, much less by an administrative rule. Section 57 of R.A. No. 6657 vests the Special Agrarian Courts the "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." While Section 17 of R.A. No. 6657 requires the due consideration of the formula prescribed by the DAR, the determination of just compensation is still subject to the final decision of the proper court.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner LBP.

M.P. Ramos & Associates and Nicanor B. Padilla, Jr. for respondent.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this Petition is the Decision[1] dated May 9, 2008 and Resolution[2] dated March 26, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 98033 which affirmed the computation of just compensation by the Regional Trial Court (RTC), Urdaneta City, Pangasinan, Branch 45, sitting as a Special Agrarian Court (SAC) in Agrarian Case No. U-1505.

The Antecedents

Respondent Del Moral, Inc. (Del Moral) is a domestic family corporation and the registered owner of several parcels of land situated in different municipalities in Pangasinan with a total area of 125.2717 hectares. These parcels of land were originally tobacco farmlands. 102.9766 hectares of Del Moral's property

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[1] *Rollo*, Vol. I, pp. 64-74; penned by Associate Justice Rosmari D. Carandang (now a Member of this Court) and concurred in by Associate Justices Portia Aliño Hormachuelos and Estela M. Perlas-Bernabe (now a Member of this Court).

[2] Id. at 77-81.

were later placed under the coverage of the agrarian reform program under Presidential Decree (P.D.) No. 27.[3]

On July 17, 1987, Executive Order (E.O.) No. 228[4] was issued which (1) provided for the full land ownership to qualified farmer-beneficiaries covered by P.D. No. 27; (2) determined the value of remaining unvalued rice and corn lands subject to P.D. No. 27; and (3) provided for the manner of payment by the farmer beneficiary and mode of compensation to the landowner. Pursuant to Section 2 of E.O. No. 228, the Department of Agrarian Reform (DAR) computed the just compensation to be paid to Del Moral in the total amount of ₱342,917.81.

In 1992, petitioner Land Bank of the Philippines (LBP) informed Del Moral of the approval of its monetary claim pertaining to the 102.9766 hectares of farmlands which were placed under the coverage of P.D. No. 27. The LBP assigned the original total valuation in the amount of ₱342,917.81 or roughly ₱3,329.30 per hectare as just compensation to Del Moral. However, Del Moral found the assigned valuation made by the DAR and the LBP to be grossly inadequate and unreasonably low. Thus, Del Moral filed a petition on April 26, 2002 before the RTC for the proper determination of just compensation.

The RTC Ruling:

On October 16, 2006, the RTC rendered its Decision[5] computing the just compensation based on the recent fair market value of the property, instead of using the prevailing factors at the time of the taking. The court *a quo* used the formula in

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[3] Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor. Approved: October 21, 1972.

[4] Declaring Full Land Ownership to Qualified Farmer Beneficiaries Covered by Presidential Decree No. 27: Determining the Value of Remaining Unvalued Rice and Corn Lands Subject to P.D. No. 27; and Providing for the Manner of Payment by the Farmer Beneficiary and Mode of Compensation to the Landowner. Approved: July 17, 1987.

[5] *Rollo*, Vol. 1, pp. 160-174; penned by Presiding Judge Joven F. Costales.

DAR Administrative Order (A.O.) No. 5 (Series of 1998)[6] and fixed the amount of just compensation at ₱216,104,385.00. In addition, it awarded Del Moral ₱90 million as temperate damages and PhP10 million as nominal damages. The RTC also imposed legal interest on the monetary awards at the rate of six percent (6%) per *annum* to be computed from the finality of judgment until the amount is actually and fully paid.

The RTC denied[7] both motions for reconsideration[8] filed by the DAR and the LBP. Hence, they both filed separate petitions for review before the CA. The DAR's petition was docketed as CA-G.R. SP No. 98373 while the LBP's the appeal was docketed as CA-G.R. SP No. 98033.

DAR's Appeal:

On October 30, 2007, the CA in CA-G.R. SP No. 98373[9] affirmed the RTC's computation for just compensation but reduced the award for temperate and nominal damages to ₱10 million and ₱1 million, respectively. The CA ratiocinated that Republic Act (R.A.) No. 6657, otherwise known as the *Comprehensive Agrarian Reform Law*, should be applied in computing just compensation because its passage into law came before the completion of Del Moral's agrarian reform process. While the expropriation proceeding for the subject properties was initiated under P.D. No. 27, the process was still incomplete considering that the just compensation has yet to be settled.

Upon denial of its motion for reconsideration,[10] the DAR filed a Petition for Review on *Certiorari*, docketed as G.R.

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[6] Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired Pursuant to Republic Act No. 6657.

[7] Records, Book 3, pp. 848-859. See Order dated February 5, 2007.

[8] Id. at 817-827; 829-834.

[9] CA *rollo*, pp. 524-537; penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr. (now a retired Member of this Court).

[10] Records, Book 3, pp. 1207-1210.

No. 181183, before this Court. However, on June 4, 2008, this Court denied the said petition for failure to (1) state the material date when it filed its motion for reconsideration; and (2) submit a verification of the petition, a certificate of non-forum shopping, and an affidavit of service that shows competent evidence of the affiants' identities.[11] On October 28, 2008, this Resolution became final and executory and the corresponding entry of judgment was issued.[12]

LBP's Appeal:

On May 9, 2008, prior to the finality of the denial of the DAR's Petition for Review before this Court, the CA issued the assailed Decision denying the LBP's appeal regarding the proper computation of just compensation. Aware of its earlier pronouncement in CA-G.R. SP No. 98373, the CA similarly affirmed the RTC's computation for just compensation and reduced the award for damages to conform to its previous ruling. The appellate court reasoned that the appeal of the LBP was practically anchored on the same issues and errors as assigned by the DAR in CA-G.R. SP No. 98373. Thus, the appellate court found no reason to depart from its previous ruling in CA-G.R. SP No. 98373, which involved the same subject matter, issues and parties, with the government represented by the DAR through the Provincial Agrarian Reform Office (PARO) in CA-G.R. SP No. 98373 and the LBP in CA-G.R. SP No. 98033.

Moreover, the CA, applying the doctrine laid down in *Land Bank of the Philippines v. Natividad*[13] which reiterated the ruling in *Office of the President v. Court of Appeals*,[14] held that when payment of just compensation is not effected immediately after the taking of the property, then just compensation must be computed based on the market value of the landholding prevailing at the time of payment. Since the agrarian reform process is

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[11] Id. at 1472-1473; see Entry of Judgment.

[12] Id.

[13] 497 Phil. 737, 747 (2005).

[14] 413 Phil. 711, 716 (2001).

not yet complete upon the coverage and taking of the subject properties in 1972, the just compensation to be paid to Del Moral is yet to be settled. In fact, the just compensation had not been judicially determined until after 35 years from the time of taking. Also, even if the deposits made by the LBP for the account of the owners in the total amount of PhP342,917.81 is to be considered as the determination of just compensation, the same cannot be considered as payment within a reasonable time as it was deposited only in 1992 or after the lapse of 20 years from the time of taking in 1972.

Unsatisfied, the LBP moved for reconsideration. However, the CA was not persuaded in its assailed Resolution dated March 26, 2009 because of the following: (1) the computation for just compensation had already been definitively resolved in CA-G.R. SP No. 98373; (2) the extreme delay in the payment of just compensation is simply unjust, inequitable, and unrealistic to compute the corresponding just compensation for the subject landholding based on its value in 1972; and (3) *Lubrica v. Land Bank of the Philippines*[15] enunciates that in the event of long delay in the payment of just compensation, the computation must be based on the fair market value of the property prevailing at the time of payment.

Hence, the LBP filed this present Petition.

The Writ of Execution and the LBP's Motion for a Temporary Restraining Order (TRO)/Preliminary Injunction:

Meanwhile, as a result of the finality of this Court's Resolution dated October 28, 2008 in G.R. No. 181183, Del Moral filed a motion for execution on March 12, 2009. The LBP, in turn, filed its comment/opposition saying that despite being an indispensable party, it cannot be bound with the finality of the decision because it was not made a party to the appeal. The LBP even mentioned that it filed a separate appeal, docketed

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[15] 537 Phil. 571, 583 (2006).

as CA-G.R. SP No. 98033, which was still pending before the CA at that time.

On April 24, 2009, the RTC granted the motion for execution reasoning that by the LBP's own admission, it is merely a custodian of the Agrarian Reform Fund (ARF), thus complementing the duties of the DAR with respect to agrarian reform. Both parties are therefore governed by the same facts, laws and jurisprudence covering just compensation cases. As held in *Tropical Homes, Inc. v. Judge Fortun*,[16] in appellate proceedings, the reversal of the judgment on appeal is binding only on the parties to the appealed case and does not affect or inure to the benefit of those who did not join or were not parties to the appeal except where the rights and liabilities of the parties appealing are so interwoven and dependent on each other as to be inseparable, in which case a reversal as to one operates as a reversal to all.

Moreover, the RTC ratiocinated that even if both the DAR and the LBP filed separate appeals, their obligation is joint and several or solidary in nature. Hence, even if the LBP is not a party to the appeal made by the DAR, the former is necessarily affected by the judgments/orders made therein.

From this Order, on May 26, 2009, the LBP directly filed an urgent verified motion/application for the issuance of a TRO/ preliminary injunction with this Court to restrain or enjoin the RTC, its agents, representatives, or any person acting for and in its behalf from enforcing the writ of execution. The LBP mainly argued that the RTC had no jurisdiction to issue a writ of execution.

Issues

The issues to be resolved in this case are the following:

1. Whether the LBP is bound by the final and executory judgment against the DAR regarding the computation of just compensation and the award for temperate and nominal damages;

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[16] 252 Phil. 83, 93 (1989).

2. Whether the just compensation to be paid to Del Moral was properly computed; and

3. Whether the awards for temperate and nominal damages, as well as the legal interest imposed, are proper.

With the enactment of R.A. No. 9700,[17] amending R.A. No. 6657, the LBP argues that the issue as to which formula should be followed in computing the just compensation is already mooted. R.A. No. 9700 amended Section 7 of R.A. No. 6657 to read: *"all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of Republic Act No. 6657, as amended."* Considering that the amount of just compensation for the acquisition of the subject landholdings is being challenged until now, the LBP claims that this case falls squarely within the ambit of the amendment.

Nonetheless, the LBP insists that the computation does not comply with the valuation factors under R.A. No. 6657, as implemented by DAR A.O. No. 2 (2009), and the pertinent valuation guidelines. The amount of ₱216,104,385.00, or ₱2,098,522.57 per hectare, is wrong because it was determined based solely on the current fair market value of the subject landholdings. A cursory reading of the assailed rulings would show that no other factors, *i.e.*, acquisition cost, sworn valuation by the owner, mortgage value, payment of taxes by the owner, and the social and economic benefits contributed by the farmers, were considered. Thus, the LBP posits that the courts *a quo*, by only using the current fair market value to determine just compensation, disregarded the applicable laws and existing jurisprudence.

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[17] Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of All Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise Known as the Comprehensive Agrarian Reform Law of 1988, as Amended, and Appropriating Funds Therefor. Approved: August 7, 2009.

Moreover, the LBP argues, together with the DAR, that it had not committed any culpable act or omission amounting to bad faith in including the subject landholdings to the coverage of the agrarian reform program and in determining the just compensation to be paid as they were merely implementing the guidelines set by law. The LBP adds that there was no delay in the payment of just compensation as to warrant the award of damages because it had deposited in cash and in agrarian reform bonds the total amount of ₱342,917.81 as payment for just compensation. Finally, the LBP suggests that damages cannot be paid out of the ARF as this fund is answerable only for the payment of just compensation for the properties subject of agrarian reform.

On the other hand, Del Moral contends that the Court's ruling in G.R. No. 181183 can no longer be disturbed under the doctrine of law of the case because said judgment has attained finality.

Assuming that there could be a different judgment arrived at in this case, Del Moral maintains that the computation for just compensation is in accordance with law and jurisprudence. The LBP did not bother to present any contrary evidence regarding the current market value of the subject landholdings. It was only Del Moral who presented such evidence. Hence, Del Moral concludes that the value of the subject landholdings is already incontrovertible and conclusive.

The Court's Ruling

For a claim of *res judicata* to prosper, the following requisites must concur: (1) there must be a final judgment or order; (2) the court rendering it must have jurisdiction over the subject matter and the parties; (3) it must be a judgment or order on the merits; and (4) there must be, between the two cases, identity of parties, subject matter, and causes of action.[18]

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[18] *Sendon v. Ruiz*, 415 Phil. 376, 383 (2001); *Linzag v. Court of Appeals*, 353 Phil. 506, 522 (1998); *Cagayan de Oro Coliseum, Inc. v. Court of Appeals*, 378 Phil. 498, 519 (1999); *Mirpuri v. Court of Appeals*, 376 Phil. 628, 664-665 (1999); *Saura v. Saura, Jr.*, 372 Phil. 337, 350 (1999).

The doctrine of *res judicata* has two aspects, to wit: (1) the effect of a judgment as bar to the prosecution of a second action upon the same claim, demand or cause of action; and (2) preclude relitigation of a particular fact or issue in another action between the same parties on a different claim or cause of action.[19]

Indeed, Agrarian Case No. U-1505 had been the subject of appeal twice before the CA. In both instances, the appeal was dismissed.

The first was on October 30, 2007 in CA-G.R. SP No. 98373 filed by the DAR. The decision in part reads:

> In resolving such controversy in the *Lubrica* case, the Supreme Court made [mention] of the ruling enunciated in *Land Bank of the Philippines v. Natividad* which reiterated the ruling in *Office of the President v. Court of Appeals*, which finally settled that the expropriation of the landholdings did not take place on the effectivity of PD 27 on October 21, 1972, but that seizure would take effect on the payment of just compensation judicially determined.
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> The Supreme Court also stated in *Lubrica* case, *supra*, that the expropriation proceeding was initiated under PD 27 but the agrarian reform process is still incomplete considering that the just compensation to be paid has yet to be settled, and considering the passage of RA No. 6657 before the completion of the process, the just compensation should be determined and the process concluded under the said law; that RA No. 6657 is the applicable law, with PD No. 27 and EO 228 having only suppletory application. The very didactic ruling in *Natividad* case, *supra*, that was cited in the *Lubrica* case, *supra*, is to the effect that since 30 years had passed and petitioners therein had yet to be benefitted (sic) from it, while the farmer-beneficiaries have already been harvesting its produce for the longest time, are events which rendered the applicability of PD No. 27 inequitable. It is worthy to note that in the instant case 35 long years has since passed and still the Respondent has not been given the amount it deserves to receive in exchange for the 102.9793 hectares expropriated by the government.

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[19] *Linzag v. Court of Appeals*, supra at 522.

To date, the Supreme Court's very explicit, exhaustive and comprehensive discussion on just compensation in *Lubrica* case is the most recent and remains the controlling case in point. Perforce, We are thereby compelled to apply the same principles in the case at bar.[20] (Citations omitted)

The second case was, again, in CA-G.R. SP No. 98033 filed by the LBP, which was promulgated on May 9, 2008. The Decision reads:

In the case of *LBP v. Natividad* (458 SCRA 441), which reiterated the doctrine laid down in the case of *Office of the President, Malacañang, Manila vs. Court of Appeals* (361 SCRA 390), the High Court pronounced that while a parcel of farmland may have been acquired and seized by the government pursuant to P.D. No. 27, nonetheless, if the determination of just compensation has dragged on for a long period of time, then the expropriation should not be considered to have taken place upon the effectivity of P.D. No. 27 on October 21, 1972, but the taking must otherwise be deemed to have taken place on the date of payment of just compensation as judicially determined. Corollarily, predicated primarily on lack of payment for a considerable length of time, the Supreme Court ruled in the cases of *Josefina Lubrica vs. LBP* (507 SCRA 415) and *Heirs of Francisco R. Tantoco, Sr. vs. Court of Appeals* (489 SCRA 590) that expropriation of landholdings covered under R.A. No. 6657 takes place, not on the effectivity of the Act on June 15, 1988, but rather on the date of payment of just compensation.

With the foregoing recent pronouncements, it is settled that when payment of just compensation is not effected immediately after the taking of the property, then just compensation must be computed on the basis of the market value of the landholding prevailing at the time of payment. Under the factual circumstances of the case, We hold that the agrarian reform process is still incomplete upon the coverage and taking of the landholding in 1972, as the just compensation to be paid to Del Moral has yet to be settled. As a matter of fact, the amount of just compensation was not judicially determined until after 35 years have elapsed from the time of taking. And even if we consider the determination of the compensation and the deposits made by LBP for the account of the owners in 1992,

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[20] CA *rollo*, pp. 534-535.

where the value was fixed at only P342,917.81, after the lapse of 20 years from the time of taking in 1972, just the same, it cannot be considered as payment made within a reasonable time, but a classic case of "confiscatory taking" of private property without due compensation. It would certainly be inequitable to compute the just compensation on the basis of the values/factors obtaining in 1972 in view of the failure of the proper authorities to determine the sum of just compensation for a considerable length of time. That just compensation must be computed based on the current market value of the landholding is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the context of its equivalent being real, substantial, full and ample, with payment made within a reasonable period and not after the lapse of 20 or more years.[21]

All the elements of *res judicata* are present in the case at bar. First, there is a final judgment or order, that is, the RTC Decision dated October 16, 2006 as affirmed by the CA in its Decision dated October 30, 2007 in CA-G.R. SP No. 98373 had already become final and executory by virtue of this Court's Resolution dated June 4, 2008 in G.R. No. 181183 which denied the DAR's Petition for Review on *Certiorari* before this Court. Thereafter, on October 28, 2008, the corresponding Entry of Judgment was issued.

Second, both the CA and the RTC have jurisdiction over (1) the subject matter, that is, the computation of just compensation of the subject properties and the awards for temperate and nominal damages as well as legal interest; and (2) the parties, namely, LBP, DAR and Del Moral. Third, the RTC Decision dated October 16, 2006 and CA Decision dated October 30, 2007 in CA-G.R. SP No. 98373 are judgments on the merits, the rights and obligations of the parties with respect to the causes of action and the subject matter of the case having been unequivocally determined and resolved.

Lastly, CA-G.R. SP No. 98033 and CA-G.R. SP No. 98373 refer to the same subject matter, raise the same issues and involve

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[21] *Rollo*, pp. 70-72.

the same parties. Although CA-G.R. SP No. 98373 was an appeal filed only by the DAR, for purposes of *res judicata,* we have held that only a substantial identity of parties is required and not absolute identity.[22] The LBP may not be impleaded in CA-G.R. SP No. 98373 which had already attained finality, however, the LBP has community of interest with the DAR as both parties represented the government's interest in the expropriation of Del Moral's 102 hectares of landholdings.

Applying the principle of *res judicata* or bar by prior judgment, the present case becomes dismissible. Section 47, Rule 39 of the Rules of Court enunciates the rule of *res judicata* or bar by prior judgment, thus:

> SEC. 47. *Effect of judgments or final orders*. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
>
> x x x x
>
> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors-in-interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity[.]

By the principle of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies; and constitutes an absolute bar to subsequent actions involving the same claim, demand or cause of action.[23] *Res judicata* is based on the ground that the party to be affected, or some other with whom he/she is in privity, has litigated the same matter in the former action

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[22] *Sendon v. Ruiz,* supra note 18, citing *Sempio v. Court of Appeals*, 348 Phil. 627, 636 (1998), *Anticamara v. Ong*, 172 Phil. 322, 326-327 (1978).

[23] *Bardillon v. Barangay Masili of Calamba, Laguna*, 450 Phil. 521, 528 (2003).

in a court of competent jurisdiction, and should not be permitted to litigate it again.[24]

The records reveal that the two appeals before the CA stemmed from the same factual circumstances between the same parties as both the DAR and the LBP were parties in Agrarian Case No. U-1505 before the RTC for the proper determination and payment of just compensation. To reiterate, the DAR's appeal of the RTC's Agrarian Case No. U-1505 before the CA docketed as CA-G.R. SP No. 98373 was already terminated in our Resolution dated June 4, 2008. Meanwhile, the LBP filed a separate appeal of the same RTC Agrarian Case No. U-1505, before the CA docketed as CA-G.R. SP No. 98033, which is now the subject of this review. This explains why CA-G.R. SP No. 98373 and CA-G.R. SP No. 98033 having identical subject matter, cause of action, and involving the same parties, existed.

Thus, when we dismissed the DAR's Petition for Review on *Certiorari* in G.R. No. 181183 of the CA's Decision dated October 30, 2007 in CA-G.R. SP No. 98373 which affirmed the RTC's computation for just compensation but reduced the award for temperate and nominal damages to ₱10 million and ₱1 million, respectively, the Decision of the RTC in Agrarian Case No. U-1505 became the law of the case and constituted a bar to any relitigation of the same issues in any other proceeding under the principle of *res judicata*.

For elucidation, we will discuss further the issue on the proper computation of the just compensation as well the award of damages. In *Lubrica v. Land Bank of the Philippines*,[25] we declared that just compensation should be computed using the values at the time of payment judicially determined and not at the time of taking in 1972 considering that the government and the farmer-beneficiaries have already benefited from the land although ownership thereof has not yet been transferred

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[24] *Development Bank of the Philippines v. Court of Appeals*, 409 Phil. 717, 727 (2001) citing *Watkins v. Watkins*, 117 CA2d 610, 256 P2d 339 (1953).

[25] Supra note 15 at 580.

in their names. In the same manner, Del Moral was deprived of its landholdings since 1972 and until now, it has not been paid just compensation for its properties. It would certainly be inequitable to determine just compensation based on the guidelines provided by P.D. No. 27 and E.O. No. 228 considering the lapse of a considerable length of time. Just compensation should be determined in accordance with R.A. No. 6657, and not P.D. No. 27 or E.O. No. 228 considering that just compensation is the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full, and ample. Both the RTC and CA, therefore, correctly considered the values of the subject properties at the time of payment judicially determined and not at the time of taking in 1972.

We have reiterated in *Land Bank of the Philippines v. Spouses Chu*,[26] that when the agrarian reform process is still incomplete as the just compensation due the landowner has yet to be settled, just compensation should be determined, and the process concluded, under Section 17 of R.A. No. 6657, which enumerates the specific factors to be considered in ascertaining just compensation, *viz.*:

> SECTION 17. Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, and the sworn valuation by the owner, the tax declarations, the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

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[26] 808 Phil. 179 (2017) citing *Land Bank of the Philippines v. Natividad, supra* note 13, *Lubrica v. Land Bank of the Philippines, supra* note 15, *Land Bank of the Philippines v. Gallego, Jr.*, 596 Phil. 742 (2009), *Land Bank of the Philippines v. Heirs of Maximo and Gloria Puyat*, 689 Phil. 505 (2012) and *Land Bank of the Philippines v. Santiago, Jr.*, 696 Phil. 142 (2012).

However, during the pendency of this case, R.A. No. 9700 was enacted on August 7, 2009 which amended Section 7 of R.A. No. 6657, *viz.*:

Section 5. Section 7 of Republic Act No. 6657, as amended, is hereby further amended to read as follows:

> SEC. 7. Priorities. — The DAR, in coordination with the Presidential Agrarian Reform Council (PARC) shall plan and program the final acquisition and distribution of all remaining unacquired and undistributed agricultural lands from the effectivity of this Act until June 30, 2014. Lands shall be acquired and distributed as follows:

Phase One: During the five (5)-year extension period hereafter all remaining lands above fifty (50) hectares shall be covered for purposes of agrarian reform upon the effectivity of this Act. All private agricultural lands of landowners with aggregate landholdings in excess of fifty (50) hectares which have already been subjected to a notice of coverage issued on or before December 10, 2008; rice and corn lands under Presidential Decree No. 27; all idle or abandoned lands; all private lands voluntarily offered by the owners for agrarian reform: Provided, That with respect to voluntary land transfer, only those submitted by June 30, 2009 shall be allowed: Provided, further, That after June 30, 2009, the modes of acquisition shall be limited to voluntary offer to sell and compulsory acquisition: Provided, furthermore, **That all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of Republic Act No. 6657**, as amended: x x x. (Emphases supplied.)

However, despite the foregoing, we have held in *Land Bank of the Philippines v. Spouses Chu*[27] that R.A. No. 9700 applies to landholdings that are yet to be acquired and distributed by the DAR. This is further strengthened by Paragraph VI (Transitory Provision) of DAR A.O. No. 02-09, the implementing rules of R.A. No. 9700, which specifically provides that:

VI. Transitory Provision

With respect to cases where the Master List of ARBs has been finalized on or before July 1, 2009 pursuant to Administrative Order

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[27] *Supra* note 26.

No. 7, Series of 2003, the acquisition and distribution of landholdings shall continue to be processed under the provisions of R.A. No. 6657 prior to its amendment by R.A. No. 9700.

However, **with respect to land valuation, all Claim Folders received by LBP prior to July 1, 2009 shall be valued in accordance with Section 17 of R.A. No. 6657 prior to its amendment by R.A. No. 9700**. (Emphasis supplied)

Thus, based on the foregoing, the amendments introduced by R.A. No. 9700 and its implementing rules with respect to the factors to be considered in computing just compensation shall not be applicable in the case at bar as Del Moral's claim was approved by the LBP as early as 1992, or 17 years before July 1, 2009. Hence, the proper determination of just compensation of Del Moral's landholdings shall be based on Section 17 of R.A. No. 6657 prior to its amendment by R.A. No. 9700. The RTC and the CA are therefore duty bound to utilize the basic formula prescribed and laid down in pertinent DAR regulations existing prior to the passage of R.A. No. 9700 to determine just compensation.

Nevertheless, we explained in *Land Bank of the Philippines v. Spouses Chu*[28] citing *Land Bank of the Philippines v. Kho*,[29] that:

Nonetheless, the RTC, acting as a SAC, is reminded that it is not strictly bound by the different [formulas] created by the DAR if the situations before it do not warrant their application. To insist on a rigid application of the formula goes beyond the intent and spirit of the law, bearing in mind that the valuation of property or the determination of just compensation is essentially a judicial function which is vested with the courts, and not with administrative agencies. Therefore, the RTC must still be able to reasonably exercise its judicial discretion in the evaluation of the factors for just compensation, which cannot be restricted by a formula dictated by the DAR when faced with situations that do not warrant its strict application. However,

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[28] Id.

[29] 787 Phil. 478 (2016). See *Heirs of Pablo Feliciano, Jr. v. Land Bank of the Philippines*, 803 Phil. 253 (2017).

the RTC must explain and justify in clear [terms] the reason for any deviation from the prescribed factors and formula.[30]

The determination of just compensation is a judicial function which cannot be curtailed or limited by legislation, much less by an administrative rule.[31] Section 57 of R.A. No. 6657 vests the Special Agrarian Courts the "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." While Section 17 of R.A. No. 6657 requires the due consideration of the formula prescribed by the DAR, the determination of just compensation is still subject to the final decision of the proper court. We reiterated this in *Alfonso v. Land Bank of the Philippines*[32] to wit:

> Out of regard for the DAR's expertise as the concerned implementing agency, courts should henceforth consider the factors stated in Section 17 of RA 6657, as amended, as translated into the applicable DAR formulas in their determination of just compensation for the properties covered by the said law. **If, in the exercise of their judicial discretion, courts find that a strict application of said formulas is not warranted under the specific circumstances of the case before them, they may deviate or depart therefrom, provided that this departure or deviation is supported by a reasoned explanation grounded on the evidence on record. In other words, courts of law possess the power to make a final determination of just compensation.** [Emphasis supplied.]

Thus, the CA correctly affirmed the findings of the RTC. The LBP's argument on mandatory adherence to the provisions of the law and administrative orders must fail. The RTC's judgment must be given due respect as an exercise of its legal duty to arrive at a final determination of just compensation.

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[30] Id. at 492.

[31] *Land Bank of the Philippines v. Manzano*, G.R. No. 188243, January 24, 2018 citing *National Power Corporation v. Spouses Zabala*, 702 Phil. 491, 499-501 (2013).

[32] 801 Phil. 217 (2016).

We affirm the findings of the RTC regarding its computation of the just compensation based on the present or current fair market value of the subject properties founded on the evidence presented by Del Moral, that is, the Appraisal Report dated March 21, 2005[33] prepared by the expert witness Manrico Alhama (Alhama), a licensed real estate broker or appraiser. The RTC properly gave credence on the testimony of Alhama as an expert witness and his appraisal report which considered the area, technical descriptions stated in the title, boundaries, bodies of water surrounding the subject properties, actual and potential use of the subject properties, distance to roads and highways, agro-industrial zones, hospitals, public market and other infrastructures. An ocular inspection and interview of the residents and barangay officials were also conducted. The appraisal report likewise considered the Land Usage Map of Rosales, Pangasinan-Municipal Planning and Development Office to determine the comprehensive land use planning and the proximity of the subject properties to the urban center of Rosales, Pangasinan.

The RTC properly disregarded the valuation presented by the LBP using the formula provided in E.O. No. 228, that is, AGP (average gross production in 50 kilos for the last three normal crop years prior to the effectivity of P.D. No. 27 or in 1972) x 2.5 (constant factor) x ₱35.00/cavan (the government support price for *palay* in 1972), because the said formula was based solely on the production of the land without considering other factors such as the value of the land.

Regarding the award of temperate and nominal damages, we hold that temperate or moderate damages may be recovered if pecuniary loss has been suffered but the amount cannot be proved with certainty from the nature of the case.[34] The trial and appellate courts found that Del Moral was unable to use productively the 102 hectares of its landholdings after it was deprived of its

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[33] Records, p. 350.

[34] CIVIL CODE, Article 2224.

possession in 1972. With the passage of time, it is, however, impossible to determine Del Moral's losses with any certainty. Thus, considering the particular circumstances of this case, the award of ₱10 million as temperate damages is reasonable.

Although *res judicata* applies in this case, for the greater interest of justice, nominal damages of ₱1 million should be deleted as temperate and nominal damages are incompatible and thus, cannot be granted concurrently. We affirm the imposition of legal interest of six percent (6%) per *annum* from the time this judgment becomes final and executory until this judgment is wholly satisfied.

WHEREFORE, the Petition is **DENIED**. The Decision dated May 9, 2008 and Resolution dated March 26, 2009 of the Court of Appeals in CA-G.R. SP No. 98033 are hereby **AFFIRMED** with **MODIFICATION** in that the nominal damages in the amount of ₱1 million is **DELETED**. All monetary awards are subject to interest at the rate of six percent (6%) per *annum* from the finality of this Decision until fully paid.

SO ORDERED.

Peralta,[*] *C.J., Inting,* and *Delos Santos, JJ.*, concur.

Baltazar-Padilla, J., on leave.

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[*] Vice Senior Associate Justice Estela M. Perlas-Bernabe per raffle dated April 9, 2013; see *rollo,* Vol. II, p. 757.

SECOND DIVISION

[G.R. No. 200863. October 14, 2020.]

REPUBLIC OF THE PHILIPPINES, *Petitioner*, *v.* **HEREDEROS DE CIRIACO CHUNACO DISTELERIA INCORPORADA,** *Respondent*.

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; COMMONWEALTH ACT NO. 141 (PUBLIC LAND ACT OF 1936); JUDICIAL CONFIRMATION OF IMPERFECT TITLE, REQUISITES OF. — Section 11 of Commonwealth Act (C.A.) No. 141, or the *Public Land Act of 1936* (PLA), recognizes judicial confirmation of imperfect titles as a mode of disposition of alienable public lands. Section 48(b) thereof, as amended by P.D. No. 1073, identifies those entitled to judicial confirmation of their title:. . .

HCCDI needed to prove that: (1) the land forms part of the alienable and disposable land of the public domain; and (2) it, by itself or through its predecessors-in-interest, had been in open, continuous, exclusive and notorious possession and occupation of the subject land under a bona fide claim of ownership from June 12, 1945 or earlier.

2. ID.; ID.; POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL PATRIMONY; REGALIAN DOCTRINE; CLASSES OF LANDS OF THE PUBLIC DOMAIN. — Under the Regalian Doctrine, all the lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony. Thus, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State.

Lands of the public domain are classified under Section 3, Article XII of the 1987 Constitution into (1) agricultural, (2) forest or timber, (3) mineral lands, and (4) national parks. The 1987 Philippine Constitution also provides that "[a]gricultural lands of the public domain may be further

classified by law according to the uses to which they may be devoted."

3. ID.; ID.; COMMONWEALTH ACT NO. 141 (PUBLIC LAND ACT OF 1936); CLASSIFICATION OF LANDS OF THE PUBLIC DOMAIN; THE PRESIDENT OF THE PHILIPPINES HAS THE AUTHORITY TO CLASSIFY THE LANDS OF PUBLIC DOMAIN.— C.A. No. 141 classified lands of the public domain into three main categories, namely: mineral, forest, and disposable or alienable lands. Only agricultural lands were allowed to be alienated[;] while mineral and timber or forest lands are not subject to private ownership unless they are first reclassified as agricultural lands and so released for alienation. The President, upon the recommendation of the proper department head, has the authority to classify the lands of the public domain into alienable or disposable, timber and mineral lands. Without such classification, the land remains as unclassified land until released therefrom and rendered open to disposition.

4. ID.; ID.; POLITICAL LAW; PRESIDENTIAL DECREE NO. 705 (REVISED FORESTRY CODE OF THE PHILIPPINES); THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) HAS A DELEGATED POWER TO DECLARE AGRICULTURAL LANDS AS ALIENABLE AND DISPOSABLE LANDS OF PUBLIC DOMAIN.— In several cases, the Court has recognized the authority of the DENR Secretary to classify agricultural lands of the public domain as alienable and disposable lands, provided it must first be declared as agricultural lands of the public domain. The DENR Secretary can invoke his power under Section 1827 of the Revised Administrative Code of 1917 to classify forest lands into agricultural lands. Once so declared, the DENR Secretary can invoke his delegated power under Section 13 of P.D. No. 705 to declare such agricultural lands as alienable and disposable lands of the public domain.

However, both the President and the DENR Secretary cannot delegate their discretionary power to classify lands as alienable and disposable as the same is merely delegated to them under C.A. No. 141 and P.D. No. 705, respectively. *Delegata potestas non potest delegari.* What has once been

delegated by Congress can no longer be further delegated or redelegated by the original delegate to another.

5. ID.; ID.; TWIN CERTIFICATIONS REQUIREMENT; APPLICATIONS FOR LAND REGISTRATION PRIOR TO JUNE 26, 2008 MAY BE APPROVED BASED ON SUBSTANTIAL COMPLIANCE.— [A]n applicant for land registration must prove that the land sought to be registered has been declared by the President or the DENR Secretary as alienable and disposable land of the public domain. Specifically, an applicant must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. A certificate of land classification status issued by the CENRO or PENRO of the DENR and approved by the DENR Secretary must also be presented to prove that the land subject of the application for registration is alienable and disposable, and that it falls within the approved area per verification survey by the PENRO or CENRO. A CENRO or PENRO certification alone is insufficient to prove the alienable and disposable nature of the land sought to be registered. It is the original classification by the DENR Secretary or the President which is essential to prove that the land is indeed alienable and disposable.

However, despite the stringent rule held in *Republic v. T.A.N. Properties, Inc.* (*T.A.N. Properties*) that the absence of the twin certifications justifies the denial of an application for registration, our subsequent rulings in *Republic v. Vega* (Vega) and *Republic v. Serrano* (Serrano) allowed the approval of the application based on substantial compliance. . . .

. . . [I]t is worth noting that the trial court rendered its decision on the application prior to June 26, 2008, the date of promulgation of *T.A.N Properties.* In this case, HCCDI cannot be required to comply with the strict rules laid down in *T.A.N. Properties, Inc*. as it had no opportunity to comply with its twin certifications requirement.

Applying *Vega* and *Serrano,* We find that despite the absence of a certification by the CENRO and a certified true copy of the original classification by the DENR Secretary or the President, HCCDI substantially complied with the

requirement to show that the subject property is indeed alienable and disposable based on the evidence on record.

6. ID.; ID.; COMMONWEALTH ACT NO. 141 (PUBLIC LAND ACT OF 1936); JUDICIAL CONFIRMATION OF IMPERFECT TITLE; TAX DECLARATIONS; TAX DECLARATIONS OR REALTY TAX PAYMENTS OF PROPERTY ARE GOOD INDICIA OF POSSESSION IN THE CONCEPT OF AN OWNER.— In this case, HCCDI and its predecessors-in-interest admittedly have been in possession of the subject lot only from 1980, which is the earliest date of the tax declaration presented by HCCDI. Although it claims that it possessed the subject lot through its predecessors-in-interest since 1943 as testified to by Leonides and Alekos, the tax declarations belie the same. While belated declaration of a property for taxation purposes does not necessarily negate the fact of possession, tax declarations or realty tax payments of property are, nevertheless, good *indicia* of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or, at least constructive possession.

It bears stressing that the subject lot was declared for taxation purposes only in 1980 or four years after the heirs of Ciriaco executed the Deed of Assignment in 1976 in favor of HCCDI. This gives rise to the presumption that HCCDI claimed ownership or possession of the subject lot starting in the year 1980 only. It is worth noting that Ciriaco and his heirs did not declare the subject lot for taxation purposes during their alleged possession and occupation of the subject property from 1943 until 1976. In fact, HCCDI presented only the tax declarations for the years 1980, 1983, 1985, 1991, 1994, 1997, 2000, 2003 and 2004 to prove its alleged actual and physical possession of Lot No. 3246 without any interruption for more than 30 years. This intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession, and occupation. In the absence of other competent evidence, tax declarations do not conclusively establish either possession or declarant's right to registration of title.

7. ID.; ID.; ID.; ID.; A PRIVATE CORPORATION CANNOT APPLY FOR REGISTRATION OF THE LAND OF THE PUBLIC DOMAIN UNDER THE 1973 AND 1987

CONSTITUTIONS .— [A]nent the issue of prohibition against a private corporation applying for registration of the land of the public domain, we agree with petitioner that HCCDI, having acquired Lot No. 3246 through a Deed of Assignment executed in 1976, was prohibited to acquire any kind of alienable and disposable land of the public domain under the 1973 Constitution.

Under the 1935 Constitution, there was no prohibition against corporations from acquiring agricultural land. Private corporations could acquire public agricultural lands not exceeding 1,024 hectares while individuals could acquire more than 144 hectares. However, when the 1973 Constitution took effect, it limited the alienation of lands of the public domain to individuals who were citizen of the Philippines. Private corporations, even if wholly-owned by Filipino citizens, were prohibited from acquiring alienable lands of the public domain. At present, the 1987 Constitution continues the prohibition against private corporations from acquiring any kind of alienable land of the public domain.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Del Rosario Law Office for respondent.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this Petition for Review on *Certiorari*[1] is the March 2, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 88495, which affirmed the September 25, 2006 Decision[3] of the Municipal Trial Court (MTC) of Guinobatan, Albay in LRA Case No. 01-03 granting the application of

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[1] *Rollo*, pp. 9-31.

[2] CA *rollo*, pp. 93-105; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Ramon M. Bato, Jr. and Florito S. Macalino.

[3] Records, pp. 136-145, penned by Judge Aurora Binamira-Parcia.

respondent Herederos de Ciriaco Chunaco Disteleria Incorporada (HCCDI) for land registration of Lot No. 3246 located in Barangay Masarawag, Guinobatan, Albay.

The Antecedents

HCCDI, a domestic corporation with principal office at Barangay Masarawag, Guinobatan, Albay, applied for land registration of Lot No. 3246 with the MTC of Guinobatan, Albay docketed as LRA Case No. 01-03.[4] HCCDI claimed ownership and actual possession of Lot No. 3246, with an area of 71,667 square meters (sqm), and an assessed value of ₱56,930.00, on the ground of its continuous, adverse, public and uninterrupted possession in the concept of an owner since 1976 by virtue of a Deed of Assignment[5] executed by the heirs of Ciriaco Chunaco (Heirs of Chunaco) who, in turn, had been in continuous, adverse, public, and uninterrupted possession of the subject lot in the concept of an owner since 1945 or earlier. The subject lot is bounded on the (1) southwest by: (a) Lot No. 3241 owned by Vicente Olavario; (b) Lot No. 3244 owned by Florencia Miranda and Celestino Palevino; (c) Lot No. 3245 owned by Benjamin Olavario; (d) and Lot No. 3250 owned by the Department of Education Culture and Sports; (2) northwest by: (a) Lot No. 3249 owned by Asuncion Salinas; (b) Lot No. 3248 owned by Cleofas Mar; and (c) Lot No. 3743 owned by Domingo Olaguer; (3) northeast by Lot No. 3247 owned by Leonida Ocampo; (4) northeast and southeast by a barangay road.[6]

HCCDI attached the following documents in its application: (a) Tracing Cloth of Lot No. 3246;[7] (b) Technical Description of Lot No. 3246;[8] and (c) Certificate in Lieu of the Lost Surveyor's Certificate.[9]

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[4] Id. at 1-7.

[5] Folder of Exhibits, pp. 19-30.

[6] *Rollo*, pp. 34-35; see also Folder of Exhibits, p. 45.

[7] *Rollo*, pp. 53-54.

[8] Id. at 55.

[9] Id. at 56.

Petitioner Republic of the Philippines (Republic), through the Office of the Solicitor General (OSG), opposed[10] HCCD's application and alleged that neither HCCDI nor its predecessors-in-interest, the Heirs of Chunaco, had been in open, continuous, exclusive and notorious possession and occupation of the subject lot for a period of not less than 30 years. Lot No. 3246 has not been classified as alienable and disposable land of the public domain for at least 30 years prior to the filing of the subject application. Moreover, the muniments of title and/or the tax declarations and tax payment receipts of HCCDI, if any, attached to or alleged in the application for land registration, did not constitute as competent and sufficient evidence of a *bona fide* acquisition of the subject lot or of its open, continuous, exclusive and notorious possession, and occupation thereof, in the concept of an owner, for a period of not less than 30 years. Lastly, the claim of ownership in fee simple on the basis of a Spanish title or grant can no longer be availed of by HCCDI because it failed to file an appropriate application for registration within six months from February 16, 1976 as required by Presidential Decree (P.D.) No. 892.[11]

In its Reply,[12] respondent HCCDI prayed for the denial of petitioner Republic's opposition on grounds that said opposition was evidentiary in nature and had no legal and factual basis.

Subsequently, the MTC issued an order of general default except against the herein petitioner Republic.[13] Thereafter, trial ensued. HCCDI presented Leonides Chunaco (Leonides) and Alekos Chunaco (Alekos) as witnesses.

The Land Management Office (LMO) of the Department of Environment and Natural Resources (DENR), Region V, Rawis, Legazpi City, through Land Investigator Anastacia L. Abaroa (Abaroa), conducted an ocular inspection and submitted a

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[10] Id. at 69-71.

[11] Id.

[12] Records, p. 76.

[13] Id. at 69.

Report[14] in compliance with the MTC's January 29, 2004 Order.[15] As per the LMO's Report, the subject property is within the alienable and disposable zone as classified on March 30, 1926 and outside of the forest zone or forest reserve or unclassified public forest, existing civil or military reservation, or watershed or other establishment reservation. Also, the subject lot has never been forfeited in favor of the government for non-payment of taxes nor confiscated as bond in connection with any civil or criminal case.

The ocular inspection conducted by Abaroa showed that the subject property located about six kilometers away from the *poblacion*, is a coconut plantation occupied and/or possessed by HCCDI. It does not encroach upon an established watershed, river bed, or riverbank protection, creek, right of way, park site or any area devoted to general public use such as, public roads, plaza, canals, streets, *etc.*, or devoted to public service such as, town walls or fortresses. Lastly, the subject property is covered by: (a) survey plan Ap-05-005158 which was approved by the Director of Lands/Regional Land Director/Land Registration Commission and re-approved by the Bureau of Lands on April 11, 2003 in view of P.D. No. 239 dated July 9, 1973; and (b) Tax Declaration No. 2002-05-028-00872 as payment for real property taxes in 2004.[16]

Moreover, a Certification[17] issued by the DENR, Region V, Legazpi City states that based on its records, Lot No. 3246 was surveyed for Ciriaco Chunaco. The subject lot or any portion thereof is not identical to any kind of previously approved isolated survey. Subsequently, the Community Environment and Natural Resources Office (CENRO) of the DENR, Legazpi City issued a Certification[18] stating that it cannot ascertain whether Lot

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[14] Id. at 84-86.

[15] Id. at 81.

[16] Id. at 84-86.

[17] Folder of Exhibits, p. 47.

[18] Id. at p. 51.

No. 3246 was covered by any kind of public land application or was issued a patent or title due to the fire in February 1992 which destroyed its records.

Likewise, the Land Registration Authority (LRA) submitted its Report[19] to the trial court. The LRA found that upon verification of its Cadastral Record Books, Lot No. 3246 was previously applied for original registration under the cadastral proceedings docketed as Court Cadastral Case No. 32, GLRO Cad. Record No. 1093. However, the copy of the decision in the said cadastral proceedings had been lost or destroyed as a result of World War II. Hence, the LRA could not verify whether or not the subject lot is already covered by a land patent. A subsequent Certification[20] of the LRA states that after due verification in its Index Book of Records in the Municipality of Guinobatan, Albay, Lot No. 3246 has no available records in the Registry of Deeds. Also, no certificate of title, whether original or patent, has been issued as to it.

Other government agencies or offices likewise submitted their certifications and/or report in compliance with the MTC's September 4, 2003 Notice of Initial Hearing.[21] The Office of the Provincial Engineer of Albay issued a Certification/ Clearance[22] stating that upon its inspection and verification, the subject lot did not encroach upon any portion of the provincial road right of way nor any portion of any provincial government property. Thus, it offered no objection or opposition to HCCDI's application for registration.

The Department of Public Works and Highways (DPWH), Office of the District Engineer, Albay 2nd Engineering District Office, Paulog, Ligao City informed the trial court that upon verification, a portion of the subject lot was proposed as a school site of Masarawag National High School and that there

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[19] Records, p. 91.

[20] Folder of Exhibits, p. 52.

[21] Records, pp. 37-38.

[22] Id. at 51.

were no ongoing public works projects which may affect Lot No. 3246.[23] Also, the subject lot did not encroach upon any portion of the national highway.[24] Thus, the DPWH likewise interposed no objection to HCCDI's application.[25]

Lastly, the Department of Agrarian Reform issued its Certification[26] stating that the subject lot has not yet been covered by Operation Land Transfer or the Comprehensive Agrarian Reform Program pending the issuance of the approved Inventory/ List of Untitled Privately Claimed Agricultural Lands.

Ruling of the Municipal Trial Court:

On September 25, 2006, the MTC rendered its Decision[27] granting HCCDI's application for land registration and confirming its title to Lot No. 3246. The trial court found that HCCDI's evidence sufficiently established HCCDI's and its predecessors-in-interest's actual, continuous, open, public, peaceful, adverse, and exclusive possession of Lot No. 3246 for 59 years. Thus, pursuant to paragraph 1, Section 14 of P.D. No. 1529, respondent's title to Lot No. 3246 is confirmed and registered in its name.

Ruling of the Court of Appeals:

The appellate court rendered its assailed March 2, 2012 Decision[28] affirming the September 25, 2006 Decision of the MTC in LRA Case No. 01-03. The CA found the February 20, 2004 Report submitted by Land Investigator Abaroa of the LMO, Legazpi City sufficient to prove that the subject lot is indeed alienable and disposable. Certifications from concerned agencies

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[23] Id. at 65 & 107.

[24] Id. at 65 & 68.

[25] Id. at 65.

[26] Folder of Exhibits, p. 48.

[27] Records, pp. 136-145.

[28] CA *rollo*, pp. 93-105.

were likewise submitted by HCCDI to prove that there was no opposition nor objection to its application for registration. Thus, the CA ruled that HCCDI amply discharged its burden in proving that the subject lot is alienable and disposable.

The CA likewise gave weight to the testimony of Leonides that HCCDI and its predecessors-in-interest have been in open, continuous, exclusive and notorious possession, and occupation of the subject lot under a *bona fide* claim of acquisition and ownership since June 12, 1945 or earlier. Although Leonides admitted no knowledge on how his father Ciriaco Chunaco (Ciriaco) acquired the subject lot, such admission was not fatal to HCCDI's application as the latter only needed to prove actual possession and occupation under a *bona fide* claim of ownership. Also, the fact that the subject lot had been declared for taxation purposes only in 1980 does not necessarily negate the open, continuous, exclusive and notorious possession of HCCDI and its predecessors-in-interest since 1943. Thus, the CA granted HCCDI's application for land registration of Lot No. 3246.

Hence, petitioner Republic, through the OSG, filed this Petition for Review on *Certiorari* under Rule 45.

Issues

The issues to be resolved in this case are the following:

1) Does Lot No. 3246 form part of the alienable and disposable land of the public domain?

2) Has respondent HCCDI sufficiently proven that it has been in open, continuous, exclusive possession and occupation of the subject lot since June 12, 1945 or earlier?

3) Is respondent HCCDI prohibited from owning lands pursuant to Section 11, Article XIV of the 1973 Constitution; Section 3, Article XII of the 1987 Constitution; and the ruling of this Court in the *Director of Lands v. Intermediate Appellate Court*? [29]

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[29] 230 Phil. 590 (1986).

Petitioner argues that all lands of the public domain belong to the State pursuant to Section 2, Article XII of the 1987 Constitution. All lands that do not categorically and positively appear to be of private dominion are presumed to belong to the State. In this case, petitioner argues that HCCDI's reliance on the survey plan which stated that Lot No. 3246 is alienable and disposable is untenable because a survey plan does not *ipso facto* convert a land into an alienable and disposable land of the public domain as well as into a private property. A survey plan is not an incontrovertible evidence that the land being claimed is part of the alienable and disposable land of the public domain.

Petitioner further argues that it is not enough that the land is declared by the LRA in its report as alienable and disposable land. The applicant must prove that the DENR Secretary approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through the survey conducted by the CENRO or the Provincial Environment and Natural Resources Office (PENRO). Also, the applicant must present the certified true copy of the original classification approved by the DENR Secretary.

Moreover, petitioner contends that other than the bare assertions of Leonides, no other competent evidence was shown that HCCDI and its predecessors-in-interest have possessed and occupied the subject lot since June 1945 or earlier. Also, no other evidence was presented by HCCDI to corroborate the testimony of Leonides that the subject lot was previously owned by his father since 1943. In fact, the earliest date of the tax declarations proffered by HCCDI was in 1980 which negates its allegation that HCCDI was in open, continuous, exclusive and notorious possession, and occupation of the subject land since June 1945 or earlier.

Lastly, petitioner points out that Section 11, Article XIV of the 1973 Constitution then prevailing at the time the subject lot was allegedly transferred to HCCDI, clearly prohibits private

corporations or associations from owning alienable lands of the public domain. This provision was carried over to the 1987 Constitution, specifically in Section 3, Article XII thereof. Petitioner maintains that the subject lot is undeniably part of the public domain in 1976, even assuming it to be alienable and disposable. In fact, when the application for registration was filed, the subject lot is still a part of the public domain which precludes HCCDI from confirming its ownership thereof.

HCCDI, on the other hand, cites the ruling in *Secretary of the Department of Environment and Natural Resources v. Yap*[30] that the positive act of the government declaring the land as alienable and disposable not only covers a presidential proclamation or an executive order, an administrative action, a legislative act or a statute but even investigation reports of the Bureau of Lands. HCCDI maintains that the February 20, 2004 Report prepared by Land Investigator Abaroa is an adequate, incontrovertible and conclusive evidence that the subject land is alienable and disposable.

Moreover, HCCDI claims that it is in open, continuous, exclusive possession, and occupation of the subject lot since June 12, 1945 or earlier. It presented the testimony of Leonides to prove that the subject lot was previously owned by his father in 1943 and that the said land was inherited by him and his siblings. In addition, it presented reports from government agencies, namely, February 20, 2004 Report and Certification issued by the Regional Surveys Division (RSD) in order to corroborate the testimony of Leonides that HCCDI and its predecessors-in-interest were in actual, continuous, open, public, peaceful, adverse and exclusive possession of the subject land for fifty-nine (59) years.

Lastly, HCCDI opines that an exception to the Constitutional prohibition on private corporations or associations owning lands of the public domain is when the land has been in the possession of an occupant since time immemorial which would justify the presumption that the land had never been part of the public

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[30] 589 Phil. 156, 182 (2008).

domain or that it had been a private property even before the Spanish conquest. In this case, Leonides and his family occupied the subject land in 1943 until 1976 which entitled them to register the subject land in their name. Thus, the subject land, being in the possession of a Filipino citizen since time immemorial, was converted *ipso jure* into a private land and its successor-in-interest is therefore not prohibited from acquiring the subject land and apply for its judicial confirmation of title therefor.

The Court's Ruling

The petition is meritorious.

Section 11 of Commonwealth Act (C.A.) No. 141, or the *Public Land Act of 1936* (PLA), recognizes judicial confirmation of imperfect titles as a mode of disposition of alienable public lands. Section 48(b) thereof, as amended by P.D. No. 1073, identifies those entitled to judicial confirmation of their title:

(b) Those who by themselves or through their predecessors-in-interest have been in **open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945**, immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a government grant and shall be entitled to a certificate of title under the provisions of this chapter. (Emphasis ours.)

Moreover, Section 14(1) of P.D. No. 1529, otherwise known as the *Property Registration Decree* complements C.A. No. 141 and enumerates the qualified applicants for original registration of title, thus:

SEC. 14. *Who may apply.* — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the

public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

Based on the foregoing, HCCDI needed to prove that: (1) the land forms part of the alienable and disposable land of the public domain; and (2) it, by itself or through its predecessors-in-interest, had been in open, continuous, exclusive and notorious possession and occupation of the subject land under a bona fide claim of ownership from June 12, 1945 or earlier.[31]

Lot No. 3246 forms part of the alienable and disposable land of the public domain.

Under the Regalian Doctrine, all the lands of the public domain belong to the State, and that the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony. Thus, all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State.

Lands of the public domain are classified under Section 3, Article XII of the 1987 Constitution into (1) agricultural, (2) forest or timber, (3) mineral lands, and (4) national parks. The 1987 Philippine Constitution also provides that "[a]gricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted."

Furthermore, C.A. No. 141 classified lands of the public domain into three main categories, namely: mineral, forest, and disposable or alienable lands.[32] Only agricultural lands were allowed to be alienated while mineral and timber or forest lands are not subject to private ownership unless they are first reclassified as agricultural lands and so released for alienation.[33]

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[31] *Mistica v. Republic*, 615 Phil. 468, 476 (2009) citing *In Re: Application for Land Registration of Title, Fieldman Agricultural Trading Corporation v. Republic*, 573 Phil. 241, 251 (2008).

[32] Commonwealth Act No. 141, Section 6.

[33] *Director of Forestry v. Villareal*, 252 Phil. 622, 636 (1989).

The President, upon the recommendation of the proper department head, has the authority to classify the lands of the public domain into alienable or disposable, timber and mineral lands.[34] Without such classification, the land remains as unclassified land until released therefrom and rendered open to disposition.[35]

In several cases,[36] the Court has recognized the authority of the DENR Secretary to classify agricultural lands of the public domain as alienable and disposable lands, provided it must first be declared as agricultural lands of the public domain. The DENR Secretary can invoke his power under Section 1827 of the Revised Administrative Code of 1917 to classify forest lands into agricultural lands. Once so declared, the DENR Secretary can invoke his delegated power under Section 13 of P.D. No. 705[37] to declare such agricultural lands as alienable and disposable lands of the public domain.[38]

However, both the President and the DENR Secretary cannot delegate their discretionary power to classify lands as alienable and disposable as the same is merely delegated to them under C.A. No. 141 and P.D. No. 705, respectively. *Delegata potestas non potest delegari*. What has once been delegated by Congress can no longer be further delegated or redelegated by the original delegate to another.[39]

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[34] Commonwealth Act No. 141, Sections 6 & 7.

[35] *Manalo vs. Intermediate Appellate Court,* 254 Phil. 799, 805-806 (1989).

[36] *Dumo v. Republic*, G.R. No. 218269, June 6, 2018 citing *Republic v. Heirs of Spouses Ocol*, 799 Phil. 514, 534 (2016); *Republic v. Lualhati*, 757 Phil. 119, 130-132 (2015); *Republic v. Sese*, 735 Phil. 108, 121 (2014); *Spouses Fortuna v. Republic of the Philippines*, 728 Phil. 373, 385 (2014); *Republic v. Remman Enterprises, Inc.*, 727 Phil. 608, 624 (2014); *Republic v. City of Parañaque*, 691 Phil. 476 (2012); *Republic v. Heirs of Juan Fabio*, 595 Phil. 664, 686 (2008); *Republic v. T.A.N. Properties, Inc.*, 578 Phil. 441 (2008).

[37] Revised Forestry Code of the Philippines.

[38] *Director of Forestry v. Villareal*, supra note 33.

[39] *Gonzales v. Philippine Amusement and Gaming Corporation,* 473 Phil. 582, 593-594 (2004). See *Heirs of Felimo Santiago v. Lazaro,* 248 Phil. 593, 600 (1988).

In sum, an applicant for land registration must prove that the land sought to be registered has been declared by the President or the DENR Secretary as alienable and disposable land of the public domain. Specifically, an applicant must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. A certificate of land classification status issued by the CENRO or PENRO of the DENR and approved by the DENR Secretary must also be presented to prove that the land subject of the application for registration is alienable and disposable, and that it falls within the approved area per verification survey by the PENRO or CENRO.[40] A CENRO or PENRO certification alone is insufficient to prove the alienable and disposable nature of the land sought to be registered. It is the original classification by the DENR Secretary or the President which is essential to prove that the land is indeed alienable and disposable.

However, despite the stringent rule held in *Republic v. T.A.N. Properties, Inc.* (*T.A.N. Properties*) that the absence of the twin certifications justifies the denial of an application for registration, our subsequent rulings in *Republic v. Vega*[41] (Vega) and *Republic v. Serrano*[42] (Serrano) allowed the approval of the application based on substantial compliance. Even so, *Vega* and *Serrano* were mere *pro hac vice* rulings and did not in any way abandon nor modify the rule on strict compliance pronounced in *T.A.N. Properties*.[43] We explained in *Republic v. San Mateo*[44] as to the basis of our approval of the applications for land registration based on substantial compliance, *viz.*:

In Vega, the Court was mindful of the fact that the trial court rendered its decision on November 13, 2003, way before the rule on

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[40] *Republic v. T.A.N. Properties, Inc.*, supra note 36, at 452-453. *See* also *Republic v. Roche*, 638 Phil. 112, 117-118 (2010).

[41] 654 Phil. 511 (2011).

[42] 627 Phil. 350 (2010).

[43] *Espiritu, Jr. v. Republic*, 811 Phil. 506, 519-520 (2017).

[44] 746 Phil. 394 (2014).

strict compliance was laid down in T.A.N. Properties on June 26, 2008. Thus, the trial court was merely applying the rule prevailing at the time, which was substantial compliance. Thus, even if the case reached the Supreme Court after the promulgation of T.A.N. Properties, the Court allowed the application of substantial compliance, because there was no opportunity for the registrant to comply with the Court's ruling in T.A.N. Properties, the trial court and the CA already having decided the case prior to the promulgation of T.A.N. Properties.[45]

Evidently, HCCDI did not present: (a) a copy of the original classification approved by the DENR Secretary or the President and certified as a true copy by the legal custodian of the official records; and (b) a certificate of land classification status issued by the CENRO or PENRO and approved by the DENR Secretary. Nevertheless, it is worth noting that the trial court rendered its decision on the application prior to June 26, 2008, the date of promulgation of *T.A.N. Properties*. In this case, HCCDI cannot be required to comply with the strict rules laid down in *T.A.N. Properties, Inc.* as it had no opportunity to comply with its twin certifications requirement.

Applying *Vega* and *Serrano*, We find that despite the absence of a certification by the CENRO and a certified true copy of the original classification by the DENR Secretary or the President, HCCDI substantially complied with the requirement to show that the subject property is indeed alienable and disposable based on the evidence on record.

First, Land Investigator Abaroa's Report[46] dated February 20, 2004, which was issued upon the order of the MTC, states that the entire area is within the alienable and disposable zone as classified as such on March 30, 1926. It further states that the subject property is outside of the forest zone or forest reserve or unclassified public forest, existing civil or military reservation, or watershed or other establishment reservation. Also, it has

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[45] Id. at 456-457.

[46] Records, pp. 84-86.

never been forfeited in favor of the government for non-payment of taxes nor confiscated as bond in connection with any civil or criminal case.

It further describes the property, which is located about six kilometers away from the *poblacion*, as a coconut plantation occupied and/or possessed by HCCDI. Moreover, the subject property does not encroach upon an established watershed, river bed, or riverbank protection, creek, right of way, park site or any area devoted to general public use such as, public roads, plaza, canals, streets, *etc.*, or devoted to public service such as, town walls or fortresses.

Second, the Report states that the subject property is covered by: (a) survey plan Ap-05-005158 which was approved by the Director of Lands/Regional Land Director/Land Registration Commission and re-approved by the Bureau of Lands on April 11, 2003 in view of P.D. No. 239 dated July 9, 1973; and (b) Tax Declaration No. 2002-05-028-00872 as payment for real property taxes in 2004.

Lastly, the LRA and other concerned government agencies never raised the issue that the land subject of registration was not alienable and disposable. No objection to the application on the basis of the nature of land was filed aside from the *pro forma* opposition filed by the OSG. In fact, the trial court required certain government agencies or offices to submit its claim on Lot No. 3246 or any of its portion and/or report to verify the nature of the land sought to be registered by HCCDI.

To reiterate, the DENR, through Land Investigator Abaroa, submitted its Report which declared the subject property as within the alienable and disposable zone. The LRA, on the other hand, submitted its Report[47] finding that the subject property was previously applied for original registration under cadastral proceedings docketed as Court Cadastral Case No. 32, GLRO Cad. Record No. 1093. However, it could not verify whether or not the subject lot is already covered by a land patent as the

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[47] Id. at 91.

copy of the said decision in the said cadastral proceedings had been lost or destroyed as a result of the war. Also, the DPWH informed the trial court that a portion of the subject property was proposed as a school site of Masarawag National High School and that there were no ongoing public works projects which may affect Lot No. 3246.[48] Other government offices, namely, the Office of the Provincial Engineer of Albay[49] and the DAR,[50] likewise did not oppose nor object on HCCDI's application for registration.

In *Vega*, we declared that the absence of any effective opposition from the government together with the applicant's other pieces of evidence on record substantially proved that the subject property is alienable and disposable, *viz.*:

> The *onus* in proving that the land is alienable and disposable still remains with the applicant in an original registration proceeding; and the government, in opposing the purported nature of the land, need not adduce evidence to prove otherwise. In this case though, there was no effective opposition, except the *pro forma* opposition of the OSG, to contradict the applicant's claim as to the character of the public land as alienable and disposable. **The absence of any effective opposition from the government, when coupled with respondents' other pieces of evidence on record persuades this Court to rule in favor of respondents**.[51] (Emphasis ours.)

From the foregoing, we find that the evidence presented by HCCDI and the absence of any countervailing evidence by petitioner, substantially establishes that the land applied for is alienable and disposable. Hence, both the trial court and appellate court committed no reversible error in declaring that the subject property is alienable and disposable land of the public domain.

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[48] Id. at 65 & 107.

[49] Id. at 51.

[50] Folder of Exhibits, p. 48.

[51] *Republic v. Vega*, supra note 41, p. 526.

HCCDI failed to prove its and its predecessors-in-interest's possession and occupation of Lot No. 3246 under a bona fide claim of ownership since June 12, 1945 or earlier.

While we hold that Lot No. 3246 is part of alienable and disposable land of the public domain, HCCDI's application must fail due to non-compliance with Section 14 (1) of P.D. No. 1529 which requires the applicant and its predecessors-in-interest to prove that they have been in open, continuous, exclusive and notorious possession, and occupation of the land under a *bona fide* claim of ownership since June 12, 1945 or earlier. In this case, HCCDI and its predecessors-in-interest admittedly have been in possession of the subject lot only from 1980, which is the earliest date of the tax declaration presented by HCCDI. Although it claims that it possessed the subject lot through its predecessors-in-interest since 1943 as testified to by Leonides and Alekos, the tax declarations belie the same. While belated declaration of a property for taxation purposes does not necessarily negate the fact of possession, tax declarations or realty tax payments of property are, nevertheless, good *indicia* of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or, at least constructive possession.[52]

It bears stressing that the subject lot was declared for taxation purposes only in 1980[53] or four years after the heirs of Ciriaco executed the Deed of Assignment in 1976 in favor of HCCDI. This gives rise to the presumption that HCCDI claimed ownership or possession of the subject lot starting in the year 1980 only. It is worth noting that Ciriaco and his heirs did not declare the subject lot for taxation purposes during their alleged possession and occupation of the subject property from 1943 until 1976.

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[52] *Republic v. Alconaba*, 471 Phil. 607, 622 (2004).

[53] Folder of Exhibits, p. 31.

In fact, HCCDI presented only the tax declarations[54] for the years 1980, 1983, 1985, 1991, 1994, 1997, 2000, 2003 and 2004 to prove its alleged actual and physical possession of Lot No. 3246 without any interruption for more than 30 years. This intermittent and sporadic assertion of alleged ownership does not prove open, continuous, exclusive and notorious possession, and occupation. In the absence of other competent evidence, tax declarations do not conclusively establish either possession or declarant's right to registration of title.[55]

Based on the foregoing, we find that the MTC and CA committed reversible error in finding that HCCDI had registerable title over Lot No. 3246 when it failed to prove its and its predecessors-in-interest's possession and occupation since June 12, 1945 or earlier. Thus, HCCDI has no right under Section 14(1) of P.D. No. 1529.

HCCDI, as a corporation, cannot apply for registration of the land of the public domain.

Finally, anent the issue of prohibition against a private corporation applying for registration of the land of the public domain, we agree with petitioner that HCCDI, having acquired Lot No. 3246 through a Deed of Assignment executed in 1976, was prohibited to acquire any kind of alienable and disposable land of the public domain under the 1973 Constitution.

Under the 1935 Constitution, there was no prohibition against corporations from acquiring agricultural land.[56] Private corporations could acquire public agricultural lands not exceeding 1,024 hectares while individuals could acquire more than 144 hectares.[57] However, when the 1973 Constitution took effect, it limited the alienation of lands of the public domain to individuals who

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[54] Id. at 31-41.

[55] *Wee v. Republic*, 622 Phil. 944, 956 (2009).

[56] *Republic v. T.A.N. Properties, Inc.*, *supra* note 36, p. 458.

[57] Id. at 460.

were citizen of the Philippines.[58] Private corporations, even if wholly-owned by Filipino citizens, were prohibited from acquiring alienable lands of the public domain. [59] At present, the 1987 Constitution continues the prohibition against private corporations from acquiring any kind of alienable land of the public domain.[60]

Contrary to the contention of HCCDI, our ruling in *Director of Lands v. Intermediate Appellate Court (Director of Lands)*[61] is not applicable on the case at bar. In the said case, we allowed the land registration proceeding of the five parcels of land with an area of 481,390 sqm in favor of Acme Plywood & Veneer Co., Inc. (Acme), which acquired the said parcels of land from the Dumagat tribe in 1962. Although the land registration proceeding was instituted during the effectivity of the 1973 Constitution which prohibited private corporations from holding alienable lands of the public domain except by lease not to exceed 1,000 hectares, we ruled that Acme acquired registrable title as the land was already private land when Acme acquired it from its owners in 1962.

In the case at bar, the evidence on record reveals that HCCDI acquired Lot No. 3246 through a Deed of Assignment executed by the Heirs of Chunaco in favor of HCCDI on August 13, 1976. To reiterate, both HCCDI and its predecessors-in-interest have not shown to have been, as of date, in open, continuous, and adverse possession of Lot No. 3246 for 30 years since June 12, 1945 or earlier. In other words, when HCCDI acquired Lot No. 3246 through a Deed of Assignment, the subject property was not yet private. Thus, the prohibition against private corporation acquiring alienable land of the public domain under the 1973 Constitution applies.

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[58] *Id.* at 458.

[59] *Id.* at 458-459.

[60] *Id.* at 459.

[61] *Director of Lands v. Intermediate Appellate Court*, *supra* note 29.

In sum, HCCDI failed to prove that its predecessors-in-interest had already acquired a vested right to a judicial confirmation of title by virtue of their open, continuous, and adverse possession in the concept of an owner for at least 30 years since June 12, 1945 or earlier. More importantly, HCCDI, as a private corporation, cannot apply for the registration of Lot No. 3246 in its name due to the prohibition under the 1973 Constitution. Hence, its application for registration of Lot No. 3246 must necessarily fail.

WHEREFORE, the Petition is **GRANTED**. The assailed March 2, 2012 Decision of the Court of Appeals in CA-G.R. CV No. 88495 affirming the September 25, 2006 Decision of the Municipal Trial Court of Guinobatan, Albay in LRA Case No. 01-03, is **REVERSED** and **SET ASIDE**. The application for the registration of title filed by Herederos de Ciriaco Chunaco Disteleria Incorporada, in said registration case is hereby **DISMISSED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Inting and *Delos Santos, JJ.*, concur.

Baltazar-Padilla, J., on leave.

THIRD DIVISION

[G.R. No. 206563. October 14, 2020]

UEM MARA PHILIPPINES CORPORATION (now known as CAVITEX INFRASTRUCTURE CORPORATION), *Petitioner, v.* **ALEJANDRO NG WEE,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PRELIMINARY ATTACHMENT; A WRIT OF PRELIMINARY ATTACHMENT CEASES TO EXIST UPON ENTRY OF JUDGMENT IN THE PROCEEDING WHERE IT WAS ISSUED.— Rule 57, Section 1 of the Rules of Court provides that the remedy of preliminary attachment may be obtained *at the commencement of the action or* ***at any time before entry of judgment***. This means that a preliminary attachment writ ceases to exist upon entry of judgment in the proceeding where it was issued. . . .

In the case at bar, the preliminary attachment writ against UEM MARA was issued by the Regional Trial Court (RTC) of Manila, Branch 39, in a case for sum of money docketed as Civil Case No. 00-99006. That case has been decided with finality by this Court in a 2017 Decision.

2. ID.; ID.; ID.; A WRIT OF PRELIMINARY ATTACHMENT LOSES ITS BASIS WHEN THE PARTY TO WHICH IT IS DIRECTED IS ABSOLVED FROM LIABILITY. — Not only did this Court dispose of Civil Case No. 00-99006 with finality,it also decided the case in favor UEM MARA. Consequently, the assailed preliminary attachment writ has ceased to exist, not only because of the final adjudication of the main case *per se*, but also because it has lost basis in view of the absolution from liability of the party to which it was directed.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for petitioner.
Cadiz Tabayoyong & Partners for respondent.

D E C I S I O N

GAERLAN, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court against the August 29, 2012 Decision[1] and the March 27, 2013 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 120695, which reinstated the writ of preliminary attachment on the share of petitioner UEM Mara Philippines Corporation (UEM MARA) in the income of the Manila-Cavite Tollway Project. The said writ was issued by the Regional Trial Court (RTC) of Manila, Branch 39, in a case for sum of money docketed as Civil Case No. 00-99006.

The antecedent facts are recounted by the CA as follows:

> Civil Case No. 00-99006 stems from a Complaint for sum of money, which included an application for the issuance of a writ of preliminary attachment, filed by [Alejandro Ng Wee][3] against [UEM MARA] along with several other defendants namely: Luis Juan L. Virata, Power Merge Corporation, UEM Development Phils., Inc., United Engineers (Malaysia) Berhad, Majlis Amanah Rakyat, Renong Berhad, Wesmont Investment Corporation, Antonio T. Ong, Anthony A.T. Reyes, Simeon S. Cua, Manuel N. Tan Kian See, Mariza Santos-Tan, Vicente T. Cualoping, Henry T. Cualoping, Manuel A. Estrella and John Anthony B. Espiritu.
>
> Briefly, [Ng Wee] sought to hold the defendants therein jointly and severally liable for the amount of ₱210,595,991.62. [Ng Wee] claims that through the enticement of officers of Westmont Bank and Westmont Investment Corporation (Wincorp, for brevity) with the promise of high yield and no risk, [Ng Wee] placed a sizable amount of funds with Wincorp. Most of [Ng Wee]'s money placements with Wincorp were later loaned to Power Merge Corporation ("Power

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[1] *Rollo*, pp. 13-31; penned by Associate Justice Romeo F. Barza, with the concurrence of Associate Justices Noel G. Tijam (now a retired Member of this Court) and Ramon A. Cruz.

[2] Id. at 33-34.

[3] Hereinafter referred to as Ng Wee.

Merge," for brevity), the entire shareholdings of which was beneficially owned by Mr. Luis Juan Virata. However, when [Ng Wee] heard news of the adverse financial condition and questionable operations of Wincorp, he made his own investigation on Wincorp's transactions and discovered that his money placements were loaned to a corporation that Wincorp knew to have neither the capacity nor the obligation to pay back the said money placements. [Ng Wee] discovered that Power Merge was a fairly new corporation with a subscribed capitalization of only ₱37,000,000.00, had no track record and was not an ongoing business concern. Yet, it was given by Wincorp a credit line facility in the huge amount of over ₱2,500,000,000.00. In addition, [Ng Wee] further discovered that, through a side agreement, Wincorp agreed that Power Merge would not be liable to pay the amounts given it under the Power Merge Credit Line Facility. Moreover, [Ng Wee] further discovered that the Power Merge Credit Line Facility was actually part of the fraudulent scheme between, among others, Wincorp and its directors, on the one hand, and Mr. Virata, on the other hand that traces its origin from the Hottick Line Credit Facility.

On November 6, 2000, the trial court granted the application for the issuance of a writ of attachment. Pursuant thereto, the court sheriff served a Notice of Garnishment dated November 7, 2000, on, among others, the then Public Estates Authority, now known as the Philippine Reclamation Authority (PRA) which sought to garnish "the proportionate share of [UEM MARA] in the Project Income of the Tollway Project which are collected by the Public Estates Authority and/or any of its subsidiaries, affiliates, agents and/or entities or persons acting on its behalf."

In a Letter dated November 13, 2000, the PRA advised the court sheriff that, as of November 7, 2000, there is no income which can be allocated for [UEM MARA] which can be garnished since the net revenue between the parties has not yet been distributed. Apart from the foregoing, [Ng Wee] was also able to attach a house and lot of Mr. Virata located in Forbes Park, Makati City, covered under TCT No. 133645.

Subsequently, [UEM MARA] and defendant Virata filed a Motion to Dismiss (with Urgent Motion to Discharge Writ of Attachment) anchored on the following grounds: 1) that the complaint is not prosecuted in the name of the real party in interest; and 2) that the complaint fails to state a cause of action. However, this was denied by the trial court in its Omnibus Order dated October 23, 2001, and

Order dated October 14, 2002. Aggrieved, defendant Virata and [UEM MARA] elevated the matter to this Court on certiorari.

On August 21, 2003, this Court, through its Special Ninth Division, issued a Decision in CA-G.R. SP No. 74610 denying the petition for certiorari of defendant Virata and [UEM MARA] for lack of merit as well as their subsequent motion for reconsideration thereof. Undeterred, defendant Virata and [UEM MARA] filed a petition for review before the High Court docketed as G.R. No. 162928. Unfortunately, the said petition was denied by the Supreme Court in its Resolutions dated May 19, 2004, and August 23, 2004.

Sometime in 2010, defendant Virata and [UEM MARA] filed an Urgent Motion to Discharge Writ of Attachment before the trial court alleging that they were willing to post a counter-bond to discharge the writ of preliminary attachment issued against their properties. As expected, this was opposed by [Ng Wee].

On May 20, 2010, the trial court issued an Order granting defendant Virata's urgent motion to discharge, subject to the posting of a counter-bond, but only insofar as the property covered by TCT No. 133645. x x x

To the aforesaid order, both parties filed motions for reconsideration. Defendant Virata and [UEM MARA] filed a Motion for Partial Reconsideration alleging that the trial court failed to provide any basis in not granting the discharge of the attachment as against UMPC's property. On the other hand, [Ng Wee], in his Motion for Reconsideration, argued that the amount of counter-bond was grossly less than the value of the subject property attached in the instant case. As expected, both parties filed their respective oppositions thereto.

On June 29, 2010, the trial court issued an Order which held in abeyance the resolution of the aforesaid motions for reconsideration as well as setting the case for hearing in order to determine the value of the property covered under TCT No. 133645. x x x

x x x x

Consequently, a Subpoena *Duces Tecum Ad Testificandum* was served to the General Manager of the Public Estates Authority (PEA)/ Philippine Reclamation Authority ordering the same to testify and bring with him/her, during the 22 July 2010 hearing, documents pertaining to the notice of garnishment dated 07 November 2000 which was served on the PRA and its compliance thereto.

In a Letter dated July 20, 2010, the PRA informed the court, among others, of the non-compliance of the notice of garnishment due to the following:

> "b. On November 8, 2000, PRA referred the said notices of garnishment to our statutory counsel, the Office of the Government Corporate Counsel (OGCC) for legal advice and assistance regarding the matter. [x x x]
>
> c. In a letter dated November 13, 2000, OGCC informed Branch Sheriff Conrado Lamano of the Regional Trial Court of Manila-Branch 37, that the Notice of Garnishment cannot be affected considering that the contract for the Tollway Project is with [UEM-MARA] and not with UEM Development Philippines, Incorporated, which is ostensibly a separate company. [x x x]
>
> d. Likewise, the PRA, in a letter dated November 13, 2000, wrote the Branch Sheriff informing him that the joint venture of PRA in the Tollway Project is UEM-MARA Philippine Corporation and not UEM Development Phils., Inc. and that there is no income which can be allocated to Mr. Virata which can be garnished. [x x x]"

Taking note of PRA's allegation that no income which can be allocated for UMPC or Mr. Virata can be garnished, defendant Virata and [UEM MARA] filed a Motion to Quash (Subpoena *Duces Tecum and Ad Testificandum* dated July 16, 2010) arguing that the relevancy of the books, documents, things being subpoenaed does not appear. In his Opposition thereto, [Ng Wee] countered the following:

> "2.0 It is most respectfully submitted, however, that the PRA's 07 November 2000 letter, on the contrary, gives relevance to the subpoena issued by the Honorable Court.
>
> 3.0 The last paragraph of the said 07 November 2000 letter expressly provides as follows:
>
> > "The distribution of the respective net revenue share of the parties must first be approved by the Joint Venture Project Committee. To date, there is no distribution of the net revenue between the parties because there is no net revenue approved for distribution by the Joint Venture Project Committee. Thus, there is no income which can be allocated for [UEM MARA]

> or the Coastal Road Corporation or Mr. Juan Luis L. Virata, which can be garnished."
>
> 4.0 It is plain from the foregoing that no net income was garnished at that time because no net revenue was approved for distribution by the Joint Project Committee. Hence, it appears from the foregoing that, had there been such approval by the Joint Venture Project Committee after November 2000 there might have been an income which can be allocated for either defendants Virata or [UEM MARA] and which could be garnished.
>
> 5.0 Accordingly, based on the said paragraph of the 07 November 2000 letter, it is most respectfully submitted that the appearance of the General Manager of the PRA is still necessary to determine if: (a) the Joint Venture Project Committee had, in fact, approved the distribution of the respective net revenue share of the parties after November 2000; and (b) if there was an income which was allocated for either defendants Virata or UEM-MARA which could be garnished."

[Ng Wee] then filed a Manifestation and Motion for the Issuance of a Subpoena *Duces Tecum and Ad Testificandum* reiterating its request that the trial court issue another subpoena to the General Manager of the PRA to clarify matters. In its Opposition thereto, defendant Virata and [UEM MARA] argued that the issuance of a new subpoena is unreasonable and oppressive, their stand that, as there is no income of [UEM MARA] which can be garnished, the relevancy of the subject documents being subpoenaed has not been established since there are no properties of [UEM MARA] in possession of the PRA.

In a subsequent Manifestation submitted by the PRA to the trial court, the PRA, among other matters, reiterated that, as of date of PRA's letter to Sheriff Lamano, there is no distribution of the net revenue between PRA and UMPC because there is no net revenue approved for distribution by the Joint Venture Project Committee. Thus, there is no income which can be allocated for UMPC that may be garnished at that time.

In his Reply to the opposition by defendant Virata and [UEM MARA] to the re-issuance of a subpoena to the PRA, [Ng Wee] countered that, contrary to the defendants' claim that there is no income for defendant [UEM MARA] which can be garnished, the

Audited Financial Statements of [UEM MARA] for the years 2000 and 2001 show that its share in the toll fees amounting to ₱171,535,275.00 and ₱166,192,476.00, respectively, were listed as revenues by [UEM MARA] for the said years.

In its Order dated February 2, 2011, the trial court granted [Ng Wee]'s motion for the re-issuance of a subpoena to the General Manager of the PRA. x x x

x x x x

Defendant Virata and [UEM MARA] filed a Motion for Reconsideration arguing that the issuance of a subpoena to the PRA is unnecessary on account of the following:

"2.1 The Court already noted PRA's acknowledgment of receipt of the Notice of Garnishment dated November 7, 2000;

2.2 The Court already noted PRA's manifestation that Luis Juan L. Virata is not a party to the Toll Operation Agreement for the Manila Cavite Toll Expressway Project and thus has no income that may be garnished.

2.3 The Notice of Garnishment only intended to garnish income allotted by the PRA as of November 7, 2000 and did not cover the period of November 13, 2000 to July 2010 for which the Court intends to subpoena the PRA."

In its Opposition, [Ng Wee] argued that the garnishment was not limited to the net revenue share of UMPC in the Tollway Project as of the date of service of the notice of garnishment, or on 07 November 2000, but even after, i.e.[,] from 14 November 2000 to the present, since what was garnished was the proportionate share of UMPC in the project income, which was being collected by the then PRA.

On May 26, 2011, the trial court rendered the assailed Order wherein it modified the amount of counter-bond to be posted by defendant Virata, insofar as Virata's Forbes Park property covered under TCT No. 133645 from ₱60,000,000.00 to ₱174,100,000.00, but lifted and set aside the writ of attachment on the project income of [UEM MARA] regarding the Manila-Cavite Tollway Project. The *fallo* of the assailed order reads:

"WHEREFORE, the Motion for Partial Reconsideration (Re: Order dated May 20, 2012) filed by defendants Luis Juan L. Virata and UEM-Mara Philippines Corporation through counsel

> and a Motion for Reconsideration (Re: Order dated 20 May 2010) filed by plaintiff Alejandro Ng Wee through counsel are partially GRANTED. The Court's Order dated May 20, 2010 is modified in the sense that the amount of counter-bond insofar as defendant Luis Juan L. Virata's Forbes Park property covered by TCT No. 133645 is changed from ₱60,000,000.00 to ₱174,100,000.00.
>
> Accordingly, the Writ of Attachment on the Project Income of defendant UEM-Mara Philippines Corporation regarding the Manila-Cavite Tollway Project is LIFTED and SET ASIDE. On the other hand, set the amount of counter-bond on defendant Luis Juan Virata's Forbes Park property at One Hundred Seventy Four Million One Hundred Thousand Pesos (₱174,100,000.00) as security for the payment of any judgment that the attaching property may recover in this case. Upon posting of the said counter-bond, the Writ of Attachment on defendant Virata's Forbes Park property located at No. 9 Balete Road, South Forbes Park, Barangay Forbes Park, Makati City will be LIFTED and SET ASIDE.
>
> SO ORDERED."[4] (Citations omitted)

As earlier mentioned, the CA granted the writ of certiorari in favor of Ng Wee and reinstated the preliminary attachment writ as against UEM MARA's project income. The CA held that the trial court, in dissolving the preliminary attachment writ, grossly misapprehended the facts regarding the existence of UEM MARA's income from the Manila-Cavite Tollway project.

According to the CA, the trial court erred in giving full credence to the PRA's claim that UEM MARA has yet to earn any income from the tollway project because the same has not yet been allocated by the project's management committee. Considering that Ng Wee was able to submit UEM MARA's audited financial statements from the same year of the service of the notice of garnishment, which show that UEM MARA earned income from the project, the trial court should have at least conducted a hearing to determine the veracity of the PRA's

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[4] *Rollo*, pp. 14-25.

claim as against the financial statements submitted by Ng Wee. Accordingly, the CA ruled that the trial court committed grave abuse of discretion in lifting the preliminary attachment as against UEM MARA without conducting a hearing for the purpose, *viz.*:

> **WHEREFORE**, the Order dated May 26, 2011, of Branch 39 of the Regional Trial Court of Manila, in Civil Case No. 00-99006, **insofar as it ordered the discharge of the Writ of Attachment on the Project Income of private respondent UEM-Mara Philippines Corporation regarding the Manila-Cavite Tollway Project**, is hereby **ANNULLED** and **SET ASIDE**. Accordingly, the preliminary attachment over the proportionate share of UEM-MARA Philippines Corporation in the Project Income of the Manila-Cavite Tollway Project, is **RESTORED**.
>
> **SO ORDERED**.[5] (Emphasis in the original)

UEM MARA thus filed the present petition, arguing that the CA erred in: 1) finding that the RTC committed grave abuse of discretion for its supposed gross misapprehension of the facts on the enforcement of the attachment writ; 2) failing to consider UEM MARA's argument that the lifting of the preliminary attachment writ was justified despite the absence of a counter-bond; and 3) granting *certiorari* over an error of judgment.[6]

In the recent case of *Lorenzo Shipping v. Villarin*,[7] this Court expounded on the nature of a preliminary attachment writ, *viz.*:

> A writ of preliminary attachment is a provisional remedy issued upon order of the court where an action is pending to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the Sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching creditor against the defendant. It is governed by Rule 57 of the Revised Rules of Court.

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[5] Id. at 30-31.

[6] Id. at 51-52.

[7] G.R. Nos. 175727 & 178713, March 6, 2019.

The provisional remedy of attachment is available in order that the defendant may not dispose of his property attached, and thus secure the satisfaction of any judgment that may be secured by plaintiff from defendant. The purpose and function of an attachment or garnishment is two-fold. First, it seizes upon property of an alleged debtor in advance of final judgment and holds it subject to appropriation thus preventing the loss or dissipation of the property by fraud or otherwise. Second, it subjects to the payment of a creditor's claim property of the debtor in those cases where personal service cannot be obtained upon the debtor.[8]

Rule 57, Section 1 of the Rules of Court provides that the remedy of preliminary attachment may be obtained *at the commencement of the action or* ***at any time before entry of judgment***. This means that a preliminary attachment writ ceases to exist upon entry of judgment in the proceeding where it was issued. In *Adlawan v. Judge Tomol*,[9] this Court held:

Attachment is an ancillary remedy. It is not sought for its own sake but rather to enable the attaching party to realize upon relief sought and expected to be granted in the main or principal action.

The remedy of attachment is adjunct to the main suit, therefore, it can have no independent existence apart from a suit on a claim of the plaintiff against the defendant. In other words, an attachment or garnishment is generally ancillary to, and dependent on, a principal proceeding, either at law or in equity, which has for its purpose a determination of the justice of a creditor's demand.

x x x x

More recently, this Court ruled that the garnishment of property to satisfy a writ of execution operates as an attachment and fastens upon the property a lien by which the property is brought under the jurisdiction of the court issuing the writ. It is brought into *custodia legis* under the sole control of such court.

During the life of the attachment, the attached property continues in the custody of the law, the attaching officer being entitled to its possession and liability for its safe keeping.

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[8] Id., citing *Adlawan v. Judge Tomol*, 262 Phil. 893, 904 (1990).

[9] *Adlawan v. Judge Tomol*, id.

Based on the above-cited principles, it is obvious that the writ of preliminary attachment issued is already dissolved and rendered non-existent in view of the withdrawal of the complaint by Aboitiz and Company, Inc. More importantly, even if the writ of attachment can be considered independently of the main case, the same, having been improperly issued as found by respondent Judge Tomol himself, is null and void and cannot be a justification for holding petitioners' properties in *custodia legis* any longer.

To reiterate, an attachment is but an incident to a suit; and unless the suit can be maintained, the attachment must fall.[10]

This principle is reiterated in the recent case of *Yu v. Miranda*,[11] where this Court affirmed the denial of a motion for intervention filed by a party claiming interest in the properties subject of a preliminary attachment writ, *viz.*:

Moreover, jurisprudence has held that a writ of preliminary attachment is only a provisional remedy issued upon order of the court where an action is pending; it is an ancillary remedy. **Attachment is only adjunct to the main suit. Therefore, it can have no independent existence apart from a suit on a claim of the plaintiff against the defendant.** In other words, an attachment or garnishment is generally ancillary to, and dependent on, a principal proceeding, either at law or in equity, which has for its purpose a determination of the justice of a creditor's demand. **Any relief against such attachment could be disposed of only in that case**.

Hence, with the cessation of Civil Case No. B-8623, with the RTC's Decision having attained the status of finality, the attachment sought to be questioned by the petitioners Yu has legally ceased to exist.[12] (Emphasis and underlining in the original)

In the case at bar, the preliminary attachment writ against UEM MARA was issued by the Regional Trial Court (RTC) of Manila, Branch 39, in a case for sum of money docketed as Civil Case No. 00-99006. That case has been decided with finality

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[10] Id. at 904-906.

[11] *Yu v. Miranda*, G.R. No. 225752, March 27, 2019.

[12] Id., citing *Adlawan v. Judge Tomol*, supra note 8.

by this Court in a 2017 Decision,[13] the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the Court resolves:
>
> 1. To **PARTIALLY GRANT** the Petition for Review on Certiorari of Luis Juan L. Virata and UEM-MARA, docketed as G.R. No. 220926;
>
> 2. To **DENY** the Petition for Review on Certiorari of Westmont Investment Corporation, docketed as G.R. No. 221058;
>
> 3. To **DENY** the Petition for Review of Manuel Estrella, docketed as G.R. No. 221109;
>
> 4. To **DENY** the Petition for Review on Certiorari of Simeon Cua, Henry Cualoping, and Vicente Cualoping, docketed as G.R. No. 221135; and
>
> 5. To **DENY** the Petition for Review on Certiorari of Anthony Reyes, docketed as G.R. No. 221218.

The September 30, 2014 Decision and October 14, 2015 Resolution of the Court of Appeals in CA-G.R. CV No. 97817 affirming the July 8, 2011, Decision of the Regional Trial Court, Branch 39 of Manila is hereby **AFFIRMED** with **MODIFICATION**. As modified, the dispositive portion of the trial court Decision in Civil Case No. 00-99006 shall read:

> **WHEREFORE**, premises considered, judgment is hereby rendered in favor of plaintiff, ordering the defendants Luis L. Virata, Westmont Investment Corporation (Wincorp), Antonio T. Ong, Anthony T. Reyes, Simeon Cua, Vicente and Henry Cualoping, Mariza Santos-Tan, and Manuel Estrella to jointly and severally pay plaintiff as follows:
>
> 1. The sum of Two Hundred Thirteen Million Two Hundred Ninety Thousand Four Hundred Ten and 36/100 Pesos (₱213,290,410.36), which is the maturity amount of plaintiff's investment with legal interest at the rate of twelve (12%) percent per annum from the date of filing of the complaint on October 19, 2000 until June 30, 2013 and six percent (6%) from July 1, 2013 until fully paid.

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[13] *Virata, et al. v. Ng Wee*, 813 Phil. 252 (2017) and Resolution on Motion for Reconsideration, 828 Phil. 710 (2018).

2. Liquidated damages equivalent to ten percent (10%) of the maturity amount, and attorney's fees equivalent to five percent (5%) of the total amount due plus legal interest at the rate of twelve (12%) percent per annum from the date of filing of the complaint until June 30, 2013 and six percent (6%) from July 1, 2013 until fully paid.

3. ₱100,000.00 as moral damages.

4. Additional interest of six percent (6%) per annum of the total monetary awards, computed from finality of judgment until full satisfaction.

5. The complaint against defendants Manuel Tankiansee and UEM-MARA Philippines Corporation is dismissed for lack of merit.

The cross claim of Luis Juan L. Virata is hereby GRANTED. Westmont Investment Corporation (Wincorp), Antonio T. Ong, Anthony T. Reyes, Simeon Cua, Vicente and Henry Cualoping, Mariza Santos-Tan, and Manuel Estrella are hereby ordered jointly and severally liable to pay and reimburse Luis Juan L. Virata for any payment or contribution he (Luis Juan L. Virata) may make or be compelled to make to satisfy the amount due to plaintiff Alejandro Ng Wee. All other counterclaims against Alejandro Ng Wee and cross-claims by the defendants as against each other are dismissed for lack of merit.

Cost against the defendants, except defendants Manuel Tankiansee and UEM-MARA Philippines Corporation.

SO ORDERED. [14] (Underscoring removed)

Notably, this Court held that UEM MARA cannot be held liable for Ng Wee's investment losses, *viz.*:

b. *UEM-MARA* cannot be held liable

There is, however, merit in the argument that UEM-MARA cannot be held liable to respondent Ng Wee. The RTC and the CA held that the corporation ought to be held solidarily liable with the other petitioners "*in order that justice can reach the illegal proceeds from the defrauded investments of [Ng Wee] under the Power Merge account*." According to the trial court, Virata laundered the proceeds

[14] Id. at 353-355.

of the Power Merge borrowings and stashed them in UEM-MARA to prevent detection and discovery and hence, UEM-MARA should likewise be held solidarily liable.

We disagree.

UEM-MARA is an entity distinct and separate from Power Merge, and it was not established that it was guilty in perpetrating fraud against the investors. It was a non-party to the "*sans recourse*" transactions, the Credit Line Agreement, the Side Agreements, the Promissory Notes, the Confirmation Advices, and to the other transactions that involved Wincorp, Power Merge, and Ng Wee. There is then no reason to involve UEM-MARA in the fray. Otherwise stated, respondent Ng Wee has no cause of action against UEM-MARA. UEM-MARA should not have been impleaded in this case.

A cause of action is the act or omission by which a party violates a right of another. The essential elements of a cause of action are (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 in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.

The third requisite is severely lacking in this case. Respondent Ng Wee cannot point to a specific wrong committed by UEM-MARA against him in relation to his investments in Wincorp, other than being the object of Wincorp's desires. He merely alleged that the proceeds of the Power Merge loan was used by Virata in order to acquire interests in UEM-MARA, but this does not, however, constitute a valid cause of action against the company even if we were to assume the allegation to be true. It would indeed be a giant leap in logic to say that being Wincorp's objective automatically makes UEM-MARA a party to the fraud. UEM-Mara's involvement in this case is merely incidental, not direct.[15]

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[15] Id. at 338-339.

Not only did this Court dispose of Civil Case No. 00-99006 with finality,[16] it also decided the case in favor UEM MARA. Consequently, the assailed preliminary attachment writ has ceased to exist, not only because of the final adjudication of the main case *per se*, but also because it has lost basis in view of the absolution from liability of the party to which it was directed.

WHEREFORE, the present petition is hereby **GRANTED**. The August 29, 2012 Decision and the March 27, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 120695 are **REVERSED** and **SET ASIDE**. The writ of preliminary attachment issued by the Regional Trial Court of Manila, Branch 39, in Civil Case No. 00-99006 is **DEEMED LIFTED**.

SO ORDERED.

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

Leonen (Chairperson), J., on official leave.

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[16] This Court, in its March 21, 2018 resolution, already directed the issuance of an entry of judgment. *Virata, et al. v. Ng Wee*, Resolution on motion for reconsideration, supra note 13.

SECOND DIVISION

[G.R. No. 210741. October 14, 2020]

MARIA LEA JANE I. GESOLGON and MARIE STEPHANIE N. SANTOS, *Petitioners, v.* **CYBERONE PH., INC., MACIEJ MIKRUT, and BENJAMIN JUSON,** *Respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; CORPORATIONS; PIERCING THE CORPORATE VEIL; WHEN APPLICABLE. — The doctrine of piercing the corporate veil applies only in three basic instances, namely: (a) when the separate distinct corporate personality defeats public convenience, as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (b) in fraud cases, or when the corporate entity is used to justify a wrong, protect a fraud, or defend a crime; or (c) is used in alter ego cases, *i.e.*, where a corporation is essentially a farce, since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs conducted as to make it merely and instrumentality, agency, conduit or adjunct of another corporation.

2. REMEDIAL LAW; CIVIL PROCEDURE; SUMMONS; SUMMONS BY EXTRATERRITORIAL SERVICE FOR NON-RESIDENT FOREIGN CORPORATION NOT DOING BUSINESS IN THE PHILIPPINES, WHEN PROPER. — CyberOne AU, as a non-resident foreign corporation which is not doing business in the Philippines, may be served with summons by extraterritorial service, to wit: (1) when the action affects the personal status of the plaintiffs; (2) when the action relates to, or to subject of which is property, within the Philippines, in which the defendant claims a lien or an interest, actual or contingent; (3) when the relief demanded in such action consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; and (4) when the defendant non-resident's property has been attached within the Philippines. In these instances, service of summons may be effected by (a) personal service out of the

country, with leave of court; (b) publication, also with leave of court; or (c) any other manner the court may deem sufficient.

3. ID.; ID.; ID.; EXTRATERRITORIAL SERVICE OF SUMMONS APPLIES ONLY WHERE THE ACTION IS *IN REM* OR *QUASI IN REM* BUT NOT IF AN ACTION IS *IN PERSONAM*. — Extraterritorial service of summons applies only where the action is *in rem* or *quasi in rem* but not if an action is *in personam* as in this case; hence, jurisdiction over CyberOne AU cannot be acquired unless it voluntarily appears in court. Consequently, without a valid service of summons and without CyberOne AU voluntarily appearing in court, jurisdiction over CyberOne AU was not validly acquired.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; FOUR-FOLD TEST. — The four-fold test used in determining the existence of employer-employee relationship involves an inquiry into: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and method by which the work is to be accomplished.

APPEARANCES OF COUNSEL

Navarro Santos Law Office for petitioners.
Falcon Law Offices for private respondents.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this petition[1] is the September 2, 2013 Decision[2] and January 10, 2014 Resolution[3] of the Court of Appeals (CA)

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[1] *Rollo*, pp. 3-35.

[2] CA *rollo*, pp. 450-462; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang.

[3] Id. at 516-518.

in CA-G.R. SP No. 128807 which set aside the November 26, 2012 Decision[4] and January 21, 2013 Resolution[5] of the National Labor Relations Commission (NLRC) and dismissed the complaint for illegal dismissal filed by petitioners Maria Lea Jane I. Gesolgon (Gesolgon) and Marie Stephanie N. Santos (Santos) against respondents CyberOne PH., Inc. (CyberOne PH), Maciej Mikrut (Mikrut) and Benjamin Juson (Juson).

The Antecedents

In their Complaint dated May 5, 2011,[6] Gesolgon and Santos alleged that they were hired on March 3, 2008 and April 5, 2008, respectively, by Mikrut as part-time home-based remote Customer Service Representatives of CyberOne Pty. Ltd. (CyberOne AU), an Australian company.[7] Thereafter, they became full time and permanent employees of CyberOne AU and were eventually promoted as Supervisors.

Sometime in October 2009, Mikrut, the Chief Executive Officer (CEO) of both CyberOne AU and CyberOne PH, asked petitioners, together with Juson, to become dummy directors and/or incorporators of CyberOne PH to which petitioners agreed. As a result, petitioners were promoted as Managers and were given increases in their salaries. The salary increases were made to appear as paid for by CyberOne PH.

However, in the payroll for November 16 to 30, 2010, Mikrut reduced petitioners' salaries from ₱50,000.00 to ₱36,000.00, of which ₱26,000.00 was paid by CyberOne AU while the remaining ₱10,000.00 was paid by CyberOne PH. Aside from the decrease in their salaries, petitioners were only given ₱20,000.00 each as 13th month pay for the year 2010.

Sometime in March 2011, Mikrut made petitioners choose one from three options: (a) to take an indefinite furlough and

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[4] *Rollo*, pp. 59-78.

[5] Id. at 55-57.

[6] Id. at 88-91.

[7] Id. at 108-109.

be placed in a manpower pool to be recalled in case there is an available position; (b) to stay with CyberOne AU but with an entry level position as home-based Customer Service Representative; or (c) to tender their irrevocable resignation. Petitioners alleged that they were constrained to pick the first option in order to save their jobs. In April 2011, petitioners received ₱13,000.00 each as their last salary.

Hence, petitioners filed a case against respondents and CyberOne AU for illegal dismissal. They likewise claimed for non-payment or underpayment of their salaries and 13th month pay; moral and exemplary damages; and attorney's fees.

On the other hand, CyberOne PH, Mikrut and Juson denied that any employer-employee relationship existed between petitioners and CyberOne PH. They insisted that petitioners were incorporators or directors and not regular employees of CyberOne PH. They claimed that petitioners were employees of CyberOne AU and that the NLRC had no jurisdiction over CyberOne AU because it is a foreign corporation not doing business in the Philippines.

Ruling of the Labor Arbiter (LA):

In his March 30, 2012 Decision,[8] the LA held that petitioners are not employees of CyberOne PH as the latter did not exercise control over them. Also, since there was no evidence showing that CyberOne PH and CyberOne AU are one and the same entity, the presumption that they have personalities separate and distinct from one another stands. The LA ruled that petitioners are merely shareholders or directors of CyberOne PH and not its regular employees.

Also, since CyberOne AU is a foreign corporation not doing business in the Philippines, then the LA has no jurisdiction over it. Hence, petitioners' complaint had to be dismissed for lack of merit.

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[8] Id. at 79-87.

Ruling of the National Labor Relations Commission:

In its November 26, 2012 Decision,[9] the NLRC ruled that petitioners are employees of CyberOne AU and CyberOne PH. The fact that petitioners are nominal shareholders of CyberOne PH does not preclude them from being employees of CyberOne PH.

Moreover, the NLRC noted that for January 2010 to April 2011, CyberOne PH paid petitioners their ₱20,000.00 monthly salary and ₱1,000.00 monthly allowance net of withholding tax and other mandatory government deductions. Respondents did not present any proof of payment of director's fee to petitioners. Similarly, CyberOne AU was shown to have previously paid petitioners' salaries for services actually rendered including allowance and phone CSR allowance as per the terms of employment and pay slips presented by petitioners.

The NLRC also found that petitioners were illegally dismissed from service. It ratiocinated that due to respondents' allegations that petitioners had not made enough progress on their leadership skills and failed to follow the directives of the management which resulted in the issuance of several warnings by CyberOne AU, they effectively admitted they indeed terminated or eventually dismissed petitioners, although on unsubstantiated grounds as it turned out. Also, the NLRC held that respondents' claim that they received a number of complaints and non-compliance reports from call center customers which prompted them to terminate petitioners' services but later on decided to give them furlough status, is additional proof that they had indeed terminated petitioners.

The NLRC noted that the Furlough Notifications dated March 30, 2011 issued by CyberOne AU to petitioners were, in fact, notices of dismissal. Petitioners were informed that respondent CyberOne AU was unable to provide them with work but that it may engage their services again in the future.

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[9] Id. at 59-78.

The NLRC concluded that petitioners were dismissed without valid cause and due process.

Lastly, the NLRC noted that CyberOne AU is doing business in the Philippines due to its participation in the management, supervision or control of CyberOne PH which is indicative of a continuity of commercial dealings or arrangements. Thus, the doctrine of piercing the corporate veil must be applied as to it.

The NLRC thus reversed and set aside the LA's March 30, 2012 Decision, to wit:

> WHEREFORE, all of the foregoing premises considered, judgment is hereby rendered finding merit in the instant appeal; the appealed Decision is hereby VACATED and SET ASIDE, and a new one rendered declaring complainants to have been ILLEGALLY DISMISSED by Respondents who are hereby ordered to reinstate complainants to their previous or equivalent position without loss of seniority rights and privileges, and to solidarity pay complainant (1) their backwages from the time of their dismissal up to the time of their reinstatement, and (2) their respective 13th month and service incentive leave pays in the sums ₱1,175,113.64 (Maria Lea Jane Gesolgon) and ₱1,175,113.64 (Marie Stephanie N. Santos) or ₱2,350,227.28 as of October 30, 2012.
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> The computation of this Commission's Computation and Examination Unit (CEU) forms part of this Decision.
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> SO ORDERED.[10]

Respondents moved for reconsideration of the NLRC's November 26, 2012 Decision but this was denied by the NLRC in its January 21, 2013 Resolution[11] for lack of merit.

Ruling of the Court of Appeals:

In its assailed September 2, 2013 Decision,[12] the appellate court reversed the findings of the NLRC and ruled that no

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[10] Id. at 75-76.

[11] Id. at 55-57.

[12] CA *rollo*, pp. 450-462.

employer-employee relationship existed between petitioners, on one hand, and respondent CyberOne PH, on the other hand. First, the appellate court found no evidence that CyberOne PH hired petitioners as its employees. It held that the NLRC's reliance on the pay slips presented by petitioners as proof that they were employees of respondent CyberOne PH was flawed.

On the contrary, the CA found no substantial evidence that petitioners were under the payroll account of CyberOne PH. The CA noted that the pay slips presented by petitioners were mere photocopies and not the original duplicates of computerized pay slips. In particular, the pay slips for the period October 1, 2009 to March 16, 2011, the period within which petitioners were allegedly hired by CyberOne PH, indicated that the salaries were paid in Australian dollars. The CA pointed out that it was unusual for a Philippine corporation to pay its employees' wages in foreign currency. For the CA, this only served to highlight the fact that petitioners were employees of CyberOne AU and not CyberOne PH.

The appellate court also stressed that the Furlough Notifications were issued by CyberOne AU and not by CyberOne PH. This means that CyberOne PH did not have the power of termination over the petitioners. The Resignation Letters of petitioners also showed that they resigned as directors of CyberOne PH and not as employees.

Lastly, there was no evidence that CyberOne PH exercised control over the means and method by which petitioners performed their job. Petitioners also failed to present evidence as regards their duties and responsibilities as employees of CyberOne PH.

The appellate court also held that the NLRC misapplied the doctrine of piercing the corporate veil. It ruled that although it was established that Mikrut and CyberOne AU owned majority of the shares of CyberOne PH, such fact may not be a basis for disregarding the independent corporate status of CyberOne PH. Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not

in itself sufficient reason for disregarding the fiction of separate corporate personalities. There was no evidence on record to show that the policies, corporate finances, and business practices of CyberOne PH were completely controlled by CyberOne AU. Also, no evidence was presented to show that CyberOne PH was organized and controlled, and its affairs conducted, in a manner that made it merely an instrumentality, agency, conduit or adjunct of CyberOne AU or that it was established to defraud third persons, including herein petitioners. Hence, the appellate court concluded that CyberOne AU and CyberOne PH are two distinct and separate entities.

The *fallo* of the CA's Decision dated September 2, 2013 reads:

> WHEREFORE, the petition is GRANTED. The assailed Decision dated November 26, 2012 and Resolution dated January 21, 2013 of the public respondent National Labor Relations Commission (NLRC), Second Division, in NLRC LAC No. 05-001446-12 (NLRC NCR No. 05-07138-11), are hereby SET ASIDE. Accordingly, the Complaint for Illegal Dismissal against petitioners in NLRC-NCR Case No. 05-07138-11 is hereby DISMISSED.
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> SO ORDERED.[13]

Petitioners moved for reconsideration of the CA's September 2, 2013 Decision but it was consequently denied by the appellate court in its January 10, 2014 Resolution.[14]

Hence, petitioners filed this Petition for Review on *Certiorari* under Rule 45.

Issue

The issues to be resolved in this case are the following:

1. Whether or not petitioners were employees of CyberOne PH and CyberOne AU.
2. Whether or not petitioners were illegally dismissed.

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[13] Id. at 462.

[14] Id. at 516-518.

Our Ruling

We find the Petition without merit.

A perusal of the records reveals that Gesolgon and Santos were hired on March 3, 2008 and April 5, 2008, respectively, as home-based Customer Service Representatives of CyberOne AU, a corporation organized and existing under the laws of Australia.[15] However, on March 30, 2011 petitioners were notified by CyberOne AU of their dismissal through Furlough Notifications[16] placing their employment on hold in view of the company's cost-cutting measure. The Furlough Notifications showed that CyberOne AU was actually terminating the services of petitioners effective April 15, 2011. Petitioners were required to return, on or before April 1, 2011, any company assets, documents, laptop computers, VPN router, office keys and identification tags that were in their possession.

At the outset, since there is an issue involving the piercing of the corporate veils of CyberOne PH and CyberOne AU, it must be emphasized that the records are bereft of any showing that this Court has acquired jurisdiction over CyberOne AU, a foreign corporation, through a valid service of summons, although respondent CyberOne PH, Mikrut and Juson were validly served with summons.

Notably, CyberOne AU is a foreign corporation organized and existing under the laws of Australia and is not licensed to do business in the Philippines. CyberOne AU did not appoint and authorize respondents CyberOne PH, a domestic corporation, and Mikrut, the Managing Director of CyberOne AU and a stockholder of CyberOne PH, as its agents in the Philippines to act in its behalf. Also, it was not shown that CyberOne AU is doing business in the Philippines.

While it is true that CyberOne AU owns majority of the shares of CyberOne PH, this, nonetheless, does not warrant the

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[15] *Rollo*, pp. 108-109.

[16] Id. at 176-177.

conclusion that CyberOne PH is a mere conduit of CyberOne AU. The doctrine of piercing the corporate veil applies only in three basic instances, namely: (a) when the separate distinct corporate personality defeats public convenience, as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (b) in fraud cases, or when the corporate entity is used to justify a wrong, protect a fraud, or defend a crime; or (c) is used in alter ego cases, *i.e.*, where a corporation is essentially a farce, since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.[17]

We find that the application of the doctrine of piercing the corporate veil is unwarranted in the present case. First, no evidence was presented to prove that CyberOne PH was organized for the purpose of defeating public convenience or evading an existing obligation. Second, petitioners failed to allege any fraudulent acts committed by CyberOne PH in order to justify a wrong, protect a fraud, or defend a crime. Lastly, the mere fact that CyberOne PH's major stockholders are CyberOne AU and respondent Mikrut does not prove that CyberOne PH was organized and controlled and its affairs conducted in a manner that made it merely an instrumentality, agency, conduit or adjunct of CyberOne AU. In order to disregard the separate corporate personality of a corporation, the wrongdoing must be clearly and convincingly established.

Moreover, petitioners failed to prove that CyberOne AU and Mikrut, acting as the Managing Director of both corporations, had absolute control over CyberOne PH. Even granting that CyberOne AU and Mikrut exercised a certain degree of control over the finances, policies and practices of CyberOne PH, such control does not necessarily warrant piercing the veil of corporate fiction since there was not a single proof that CyberOne PH

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[17] *Prisma Construction and Development Corporation v. Menchavez*, 628 Phil. 495, 506-507 (2010).

was formed to defraud petitioners or that CyberOne PH was guilty of bad faith or fraud.

Hence, the doctrine of piercing the corporate veil cannot be applied in the instant case. This means that CyberOne AU cannot be considered as doing business in the Philippines through its local subsidiary CyberOne PH. This means as well that CyberOne AU is to be classified as a non-resident corporation not doing business in the Philippines.

Considering the foregoing, We now go back to the issue of whether this Court has acquired jurisdiction over CyberOne AU.

Sections 12 and 15, Rule 14, of the Rules of Court suppletorily apply:

> Sec. 12. *Service upon foreign private juridical entity*. — When the defendant is a foreign private juridical entity which has transacted business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.
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> x x x x x x x x x
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> Sec. 15. *Extraterritorial service*. — When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 6; or by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer.

Applying the foregoing, CyberOne AU, as a non-resident foreign corporation which is not doing business in the Philippines, may be served with summons by extraterritorial service, to wit: (1) when the action affects the personal status of the plaintiffs; (2) when the action relates to, or the subject of which is property, within the Philippines, in which the defendant claims a lien or an interest, actual or contingent; (3) when the relief demanded in such action consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; and (4) when the defendant non-resident's property has been attached within the Philippines. In these instances, service of summons may be effected by (a) personal service out of the country, with leave of court; (b) publication, also with leave of court; or (c) any other manner the court may deem sufficient.[18]

Extraterritorial service of summons applies only where the action is *in rem* or *quasi in rem* but not if an action is *in personam*[19] as in this case; hence, jurisdiction over CyberOne AU cannot be acquired unless it voluntarily appears in court.[20] Consequently, without a valid service of summons and without CyberOne AU voluntarily appearing in court, jurisdiction over CyberOne AU was not validly acquired. Consequently, no judgment can be issued against it, if any. Any such judgment will only bind respondents CyberOne PH, Mikrut, and Juson.

In any event, the determination of whether there exists an employer-employee relationship between petitioners and CyberOne PH is ultimately a question of fact. Generally, only errors of law are reviewed by this Court. Factual findings of administrative and quasi-judicial agencies specializing in their respective fields, especially when affirmed by the appellate

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[18] *Banco Do Brasil v. Court of Appeals*, 389 Phil. 87, 99 (2000) cited in the case of *NM Rothschild & Sons (Australia) Ltd. v. Lepanto Consolidated Mining Co.*, 677 Phil. 351-375 (2011).

[19] *Perkin Elmer Singapore Pte. Ltd. v. Dakila Trading Corporation*, 556 Phil. 822, 838 (2007).

[20] Id. at 843-845.

court, are accorded high respect, if not finality.[21] However, in this case, the findings of the NLRC are in conflict with that of the LA and CA. Thus, as an exception to the rule, We now look into the factual issues involved in this case.

The four-fold test used in determining the existence of employer-employee relationship involves an inquiry into: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the employer's power to control the employee with respect to the means and method by which the work is to be accomplished.[22]

Based on record, petitioners were requested by respondent Mikrut to become stockholders and directors of CyberOne PH with each one of them subscribing to one share of stock. However, petitioners contend that they were hired as employees of CyberOne PH as shown by the pay slips indicating that CyberOne PH paid them ₱10,000.00 monthly net of mandatory deductions. Other than the pay slips presented by petitioners, no other evidence was submitted to prove their employment by CyberOne PH. Petitioners failed to present any evidence that they rendered services to CyberOne PH as employees thereof. As correctly observed by the appellate court:[23]

> But as pointed out earlier, other than the payslips mentioned, no other documents tending to prove their employment with CyberOne PH., Inc., were submitted by the private respondents. It bears stressing that no employment contracts, or at least a job offer, was presented by the private respondents to bolster their claim. True, there is no requirement under the law that the contract of employment of the kind entered into by an employer and an employee should be in any particular form. Nevertheless, We emphasize the fact that the private respondents initially presented as evidence a copy of the Job Offer dated March 3, 2008, which showed that respondent Gesolgon was

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[21] *Basay v. Hacienda Consolacion and/or Bouffard*, 632 Phil. 430, 444 (2010).

[22] *Bazar v. Ruizol*, 797 Phil. 656, 665 (2016), citing *Royale Homes Marketing Corporation v. Alcantara*, 739 Phil. 744 (2014).

[23] CA *rollo*, pp. 450-462.

hired as Remote Customer Service Representative of CyberOne AU, and not CyberOne PH., Inc.

As to the power of dismissal, the records reveal that petitioners submitted letters of resignation as directors of CyberOne PH and not as employees thereof. This fact negates their contention that they were dismissed by CyberOne PH as its employees. Lastly, the power of control of CyberOne PH over petitioners is not supported by evidence on record. To reiterate, petitioners failed to prove the manner by which CyberOne PH allegedly supervised and controlled their work. In fact, petitioners failed to mention their functions and duties as employees of CyberOne PH. They merely relied on their allegations that they were hired and paid by CyberOne PH without specifying the terms of their employment as well as the degree of control CyberOne PH had over the means and method by which their work would be accomplished.

As it is established that petitioners are not employees of CyberOne PH, there is no need for this Court to delve into the issues of petitioners' illegal dismissal, their monetary claims and the probative value of the pay slips presented by petitioners. Based on the foregoing, this Court is convinced that petitioners are not employees of CyberOne PH, but stockholders thereof.

To summarize, the Court did not acquire jurisdiction over CyberOne AU. CyberOne PH is neither the resident agent nor the conduit of CyberOne AU upon which summons may be served. Also, there existed no employer-employee relationship between petitioners and CyberOne PH. Hence, there is no dismissal to speak of, much more illegal dismissal.

WHEREFORE, the Petition is **DENIED**. The assailed September 2, 2013 Decision and January 10, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 128807 are hereby **AFFIRMED**. No cost.

SO ORDERED.

Perlas-Bernabe S.A.J. (*Chairperson*), *Inting,* and *Delos Santos, JJ.*, concur.

Baltazar-Padilla, J., on leave.

SECOND DIVISION

[G.R. No. 216634. October 14, 2020]

HON. PAQUITO N. OCHOA, JR., in his capacity as Executive Secretary, HON. ROZANNO RUFINO B. BIAZON, and ATTY. JUAN LORENZO T. TAÑADA, in their respective capacities as Commissioner and Deputy Commissioner of the Bureau of Customs, *Petitioners*, *v.* **ATTY. CHRISTOPHER S. DY BUCO,** *Respondent*.

[G.R. No. 216636. October 14, 2020]

SANYO SEIKI STAINLESS STEEL CORPORATION, *Petitioner*, *vs.* **ATTY. CHRISTOPHER S. DY BUCO,** *Respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; THE PHRASE "PARTY ADVERSELY AFFECTED BY THE DECISION" REFERS TO THE GOVERNMENT EMPLOYEE AGAINST WHOM THE ADMINISTRATIVE CASE IS FILED FOR THE PURPOSE OF DISCIPLINARY ACTION, OR THE DISCIPLINING AUTHORITY WHOSE DECISION IS IN QUESTION. — In administrative cases, appeals are extended to the party adversely affected by the decision. The phrase "party adversely affected by the decision" refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action, or the disciplining authority whose decision is in question. This definition does not include the private complainant in the administrative case. It is elementary that in an administrative case, a complainant is a mere witness. No private interest is involved in an administrative case as the offense committed is against the government.

2. ID.; ID.; ADMINISTRATIVE CHARGES; MISCONDUCT AND GRAVE MISCONDUCT, DEFINED. — Misconduct generally means a wrongful, improper or unlawful conduct

motivated by a premeditated, obstinate or intentional purpose. To constitute as an administrative offense, the misconduct which is an intentional wrongdoing or deliberate violation of a rule of law or standard of behavior, should relate to or be connected with the performance of the official functions and duties of a public officer. To be characterized as Grave Misconduct, the transgression must be accompanied by the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule which must be proved by substantial evidence. x x x There is flagrant disregard of an established rule or, analogously, willful intent to violate the law constitutive of Grave Misconduct when the public official or employee concerned, through culpable acts or omission, clearly manifests a pernicious tendency to ignore the law or rules.

3. ID.; ID.; ID.; GRAVE ABUSE OF AUTHORITY AND OPPRESSION, DEFINED. — Neither was there Grave Abuse of Authority and Oppression. Jurisprudence defines it as a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury constituting an act of cruelty, severity, or excessive use of authority.

4. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; ADMINISTRATIVE DUE PROCESS, DISCUSSED. — Although administrative due process cannot be fully equated with due process in its strict judicial sense and technical rules of procedure are not strictly applied, the observance of fairness in the conduct of any investigation is at the very heart of procedural due process. Administrative due process mandates that the party being charged is given an opportunity to be heard. Due process is complied with if the party who is properly notified of the allegations and the nature of the charges against him or her is given an opportunity to defend himself or herself against those allegations, and such defense was considered by the tribunal in arriving at its own independent conclusions. The essence of due process is that a party is afforded reasonable opportunity to be heard and to submit any evidence he/she may have in support of his/her defense.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Offices for petitioners Sanyo Seiki Stainless Steel Corp.

Office of the Solicitor General for petitioners in G.R. No. 216636.

Gorriceta Africa Cauton & Saavedra for respondent Dy Buco.

D E C I S I O N

INTING, *J.*:

These are consolidated Petitions for Review on *Certiorari*[1] filed pursuant to Rule 45 of the Rules of Court assailing the Decision[2] dated August 15, 2014 and the Resolution[3] dated January 29, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 126239. The assailed Decision dismissed the complaint and reversed and set aside the Decision of the Office of the President (OP) that found Atty. Christopher S. Dy Buco (Atty. Dy Buco), among others, guilty of Grave Misconduct, Grave Abuse of Authority and Oppression, Gross Incompetence and Inefficiency, and Conduct Prejudicial to the Best Interest of the Service with the penalty of dismissal from service and the concomitant accessory penalties meted out upon them.

The Antecedents

Atty. Dy Buco, together with Deputy Commissioner Gregorio B. Chavez (Deputy Commissioner Chavez), Edgar Quiñones (Quiñones), Francisco Fernandez, Jr. (Fernandez), Alfredo Adao (Adao), Jose Elmer Velarde (Velarde), Thomas Patric Relucio

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[1] *Rollo* (G.R. No. 216634, Vol. 1), pp. 39-59; (G.R. No. 216636, Vol. 1), 16-44.

[2] *Rollo* (G.R. No. 216634, Vol. 1), pp. 64-83; penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Isaias P. Dicdican and Michael P. Elbinias, concurring.

[3] *Id.* at 84-86; penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Isaias P. Dicdican and Zenaida T. Galapate-Laguilles, concurring.

(Relucio), and Jim Erick Acosta (Acosta), are members of the Run-After-The-Smugglers (RATS) Group of the Bureau of Customs (BOC).

On June 30, 2011, then BOC Commissioner Angelito A. Alvarez (Commissioner Alvarez) issued four Letters of Authority (LOAs) dated June 30, 2011 addressed to the following entities: (a) Sanyo Seiki Stainless Steel Corp. (Sanyo Seiki) Warehouse, New York St., Industrial Subd., Meycauayan, Bulacan (Bulacan address);[4] (b) McConnell Stainless, Incorporated (McConnell), located at the same Bulacan address;[5] (c) Sanyo Seiki Stainless Steel Corp. Warehouse, RSBS Building, Dagat-dagatan Avenue, near corner 93 Road, Malabon (Malabon address);[6] and (d) Cowlyn Precision (Cowlyn) Warehouse located at the same Malabon address.[7] The LOAs were similarly worded as follows:

> Sir,
>
> This is to inform you that the following Customs Officers:
>
> ATTY. CHRISTOPHER DY BUCO
> SA II EDGAR QUIÑONES
> SA II FRANCISCO FERNANDEZ
> SA II ALFREDO ADAO
> SA I JOSE ELMER VELARDE
> SA I THOMAS PATRIC RELUCIO
> SA I JIM ERICK ACOSTA
>
> duly authorized by this Office, are directed to enforce Section 2536 of the Tariff and Customs Code of the Philippines (TCCP), as amended. Accordingly, they may demand evidence of payment of duties and taxes and/or other import documents on foreign articles in your premises, either openly offered for sale or kept in storage and/or that pending reconciliation of the documents you may submit, a detailed inventory of said foreign articles/motor vehicle if necessary.

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[4] See Letter dated June 30, 2011, *rollo* (G.R. No. 216636, Vol. 1), p. 492.

[5] *Id.* at 493.

[6] *Id.* at 494.

[7] *Id.* at 495.

x x x x x x x x x[8]

Commissioner Alvarez also issued Mission Order Nos. 046-11[9] and 041-11[10] of even date and directed at the Bulacan· address of Sanyo Seiki and McConnell respectively. Meanwhile, he issued Mission Order No. 042-11[11] which pertained to Cowlyn's Malabon address and Mission Order No. 043-11[12] which, in turn, referred to Sanyo Seiki's Malabon address.

On July 1, 2011, the RATS Group (Atty. Dy Buco, Quiñones, Fernandez, Adao, Velarde, Relucio, and Acosta) requested for police assistance for the service and implementation of the LOAs and Mission Orders at the Bulacan address.[13] When they arrived at the Bulacan address, the warehouse security guards demanded for a copy of the Mission Order and instructed the RATS Group to wait for the warehouse legal representative outside the premises.[14] However, no one arrived so the RATS Group, except for Acosta, left the premises. Eventually, one Atty. Neil Jerome Rapatan (Atty. Rapatan) arrived and confirmed to Acosta that the warehouse belonged to Sanyo Seiki. Thereafter, the RATS Group and the elements of the Meycauayan police stationed themselves in a vacant lot 20 meters away from the warehouse.[15]

Meanwhile, Quiñones, Fernandez, and Relucio tried to serve the LOAs and Mission Orders for the Malabon address on July 4, 2011 with the assistance of *Punong Barangay* Alexander Mangasar of Brgy. 14, Zone 2, District 2 of Caloocan City.

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[8] *Id.* at 492-495.

[9] *Id.* at 480.

[10] *Id.* at 481.

[11] *Id.* at 483.

[12] *Id.* at 482.

[13] *Rollo* (G.R. No. 216634, Vol. 1), p. 67.

[14] *Id.* at 68.

[15] *Id.*

However, they were also denied access to the warehouse so they just left.[16]

On July 9, 2011, Acosta followed and intercepted an Isuzu delivery truck with Plate Number ZJN-869 that left the Bulacan warehouse. He demanded from the driver the evidence of payment of duties and taxes of the finished stainless steel products aboard the truck. However, what the driver presented were receipts issued by Sanyo Seiki to its local clients.[17] Acosta then brought the delivery truck to the nearest police station.

Atty. Rapatan, acting as Legal Counsel for Sanyo Seiki, explained that the confiscated steel products were locally purchased, but he could not present evidence to prove it.[18] Hence, the RATS Group issued a Warrant of Seizure and Detention[19] against the delivery truck and its cargo.[20]

On July 12, 2011, Atty. Rapatan and Adrian Retardo went to the RATS Office to present Sales Invoice No. 0832[21] to prove that the steel products were locally purchased from Speedwealth Commercial Company (SCC).[22] However, the confiscated delivery truck and its cargo were not released because, upon checking with the records on the BOC Mobile Customs System, Acosta discovered that SCC was neither an accredited importer nor engaged in the manufacture of steel products.[23] He further revealed that SCC is a partnership of the Chan family in the same way that Sanyo Seiki is likewise owned and controlled by the Chans.[24]

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[16] *Id.*

[17] *Id.* at 69.

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

[19] *Rollo* (G.R. No. 216636, Vol. 2), p. 534.

[20] *Rollo* (G.R. No. 216634, Vol. 1), p. 70.

[21] *Rollo* (G.R. No. 216636, Vol. 1), p. 111.

[22] *Rollo* (G.R. No. 216634, Vol. 1), p. 70.

[23] *Id.* at 70-71.

[24] *Id.* at 70.

Thereafter, Sanyo Seiki filed a Letter-Complaint with the OP demanding for an investigation relative to the implementation of the subject LOAs and Mission Orders against Atty. Dy Buco and the members of the RATS Group.[25]

On September 29, 2011, the OP, through then Executive Secretary Paquito N. Ochoa, Jr. (Hon. Ochoa), formally charged Atty. Dy Buco, Deputy Commissioner Chavez, Quiñones, Fernandez, Adao, Velarde, Relucio, and Acosta with Grave Misconduct, Grave Abuse of Authority, Oppression, and Conduct Prejudicial to the Best Interest of the Service.[26]

Ruling of the OP

In the Decision[27] dated January 26, 2012, the OP found Atty. Dy Buco, together with the other members of the RATS Group, guilty of Grave Misconduct, Grave Abuse of Authority and Oppression, Gross Incompetence and Inefficiency, and Conduct Prejudicial to the Best Interest of the Service. The dispositive portion of the Decision reads:

> WHEREFORE, in view of the foregoing, this Office finds respondents Deputy Commissioner Gregorio B. Chavez, Atty. Christopher Dy Buco, Edgar Quinones, Francisco Fernandez, Alfredo Adao, Jose Elmer Velarde, Thomas Patric Relucio and Jim Erick Acosta, GUILTY of GRAVE MISCONDUCT, GRAVE ABUSE OF AUTHORITY AND OPPRESSION, GROSS INCOMPETENCE AND INEFFICIENCY, CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, and hereby imposes the penalty of DISMISSAL from service, with the accessory penalties of CANCELLATION OF ELIGIBILITY, FORFEITURE OF RETIREMENT BENEFITS, and PERPETUAL DISQUALIFICATION FROM REEMPLOYMENT IN GOVERNMENT SERVICE. Furthermore, for respondent Chavez his temporary appointment as Acting Deputy Commissioner, Bureau of Customs, is deemed terminated, effective immediately.

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[25] *Id.* at 71.

[26] See Formal Charge in OP-DC Case No. 11-G-017, *id.* at 149-150.

[27] *Id.* at 251-263; signed by Executive Secretary Paquito N. Ochoa, Jr.

SO ORDERED.[28]

The OP ruled that it had jurisdiction over the administrative complaint since Executive Order No. (EO) 13 abolished the then Presidential Anti-Graft Commission (PAGC) and transferred all its powers and functions to the OP which included the power to investigate and hear administrative complaints, provided that: (1) the official to be investigated must be a presidential appointee in the government or any of its agencies or instrumentalities; and (2) the said official must be occupying the position of Assistant Regional Director, or an equivalent rank, or higher. It further ruled that considering Deputy Commissioner Chavez is a presidential appointee as the BOC's Deputy Commissioner for Assessment and Operations Coordinating Group and, in a concurrent capacity, the Executive Director of the RATS Group, he is under the direct disciplining authority of the President; and that the other officers in the administrative complaint who were all members of the RATS Group, together with herein Atty. Dy Buco, were charged to have acted in conspiracy with Deputy Commissioner Chavez; thus, the OP also had jurisdiction over them.[29]

As to the merits, the OP found Atty. Dy Buco, together with the other members of the RATS Group, guilty of Grave Misconduct, Grave Abuse of Authority and Oppression for enforcing patently defective Mission Orders against Sanyo Seiki. It declared that the Mission Orders enforced against Sanyo Seiki were addressed to McConnell and Cowlyn.

The OP further ruled that even if Atty. Dy Buco and his team aborted the search upon Sanyo Seiki's refusal for their entry to the warehouse, their act of stationing themselves outside and within the vicinity of Sanyo Seiki's warehouse for several days constituted a violation of Section 3(e)[30] of the Anti-Graft

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[28] *Id.* at 263.

[29] *Id.* at 255-256.

[30] Section 3(e) of Republic Act No. 3019 provides:

and Corrupt Practices Act under Republic Act No. (RA) 3019 and Willful Oppression under the color of law under Section 3604 of the Tariff and Customs Code.[31]

The OP furthermore ruled that there was also Gross Incompetence and Inefficiency committed by Atty. Dy Buco and his group in their failure to obtain Mission Orders which are sufficient in form and substance before proceeding in its implementation and execution; that Atty. Dy Buco and his group are liable for Conduct Prejudicial to the Best Interest of the Service as their acts constituted harassment, corrupt and retaliatory tactics against Sanyo Seiki for the latter's filing of criminal and administrative charges against Deputy Commissioner Chavez with the Office of the Ombudsman (Ombudsman); that the seizure of Sanyo Seiki's truck without a warrant was flawed considering the absence of probable cause; and that Atty. Dy Buco and his group had no authority to demand payment of duties and taxes on account of the sales invoice presented by Sanyo Seiki showing that the seized stainless steel items were not imported, but locally purchased from a common bonded warehouse.

As to the existence of conspiracy, the OP concluded that it was Deputy Commissioner Chavez who was on top of the operations because he was the one who requested for the issuance of the Mission Orders and even requested for continuing police assistance in the implementation of the LOAs and Mission

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

x x x x x x x x x

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

[31] *Rollo* (G.R. No. 216634, Vol. 1), p. 258.

Orders; and that it was also him who instructed Atty. Dy Buco to handle Sanyo Seiki's truck after its seizure without a warrant.

The OP denied the Motion for Reconsideration filed by Atty. Dy Buco in a Resolution[32] dated July 27, 2012. Thus, he appealed to the CA.

Ruling of the CA

On August 15, 2014, the CA found the appeal meritorious.[33] It reversed and set aside the OP Decision and dismissed the complaint against Atty. Dy Buco.[34] It ruled that Atty. Dy Buco had in his favor the presumption of regularity in the performance of his official duties as he acted with due care in the implementation of the Mission Orders. According to the CA, the OP misunderstood and misinterpreted the LOAs and Mission Orders issued by the BOC which were addressed to McConnell, Cowlyn, and Sanyo Seiki, although it appears therein that the respective warehouses of Sanyo Seiki had the same addresses with those of Cowlyn in Malabon and McConnell in Bulacan. The CA did not give weight to the conclusion of the OP that the LOAs and the Mission Orders were improperly implemented considering that Atty. Dy Buco and the members of the RATS Group were never allowed entry to the warehouse, nor did they persist in entering it.

The CA further held that there was neither Grave Misconduct nor Grave Abuse of Authority in the alleged implementation of the Mission Orders as the Meycauayan Police certified that no untoward incident took place and that Atty. Dy Buco left the premises without having entered the warehouse. The CA furthermore held that there is also no proof that Atty. Dy Buco committed Gross Incompetence and Inefficiency considering that the Mission Orders were not enforced at that time and he was not present during the apprehension of the delivery truck.

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[32] *Id.* at 292-297; signed by Executive Secretary Paquito N. Ochoa, Jr.

[33] *Id.* at 75.

[34] *Id.* at 82.

The dispositive portion of the CA Decision reads:

> WHEREFORE, premises considered, the Petition is GRANTED. The Decision dated January 26, 2012, and the Resolution dated July 27, 2012, issued by the Office of the President in OP DC Case No. 11-G-017, insofar as it found herein petitioner Atty. Christopher S. Dy Buco guilty of the offenses charged against him, are REVERSED and SET ASIDE; consequently, the complaint against him is DISMISSED. Atty. Christopher S. Dy Buco is ordered REINSTATED immediately to his former or equivalent position in the Bureau of Customs without loss of seniority or diminution in his salaries and benefits. In addition, he shall be paid his salary and such other emoluments corresponding to the period he was out of the service by reason of the judgment of dismissal decreed by the Office of the President.
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> SO ORDERED.[35]

Aggrieved by the CA Decision, Hon. Ochoa, in his capacity as Executive Secretary of the OP; Hon. Rozanno Rufino B. Biazon (Hon. Biazon), in his capacity as Commissioner of the BOC; and Atty. Juan Lorenzo T. Tañada (Atty. Tañada), in his capacity as Deputy Commissioner of the BOC (collectively, petitioners), elevated the case to the Court *via* a petition for review on *certiorari* citing as lone error the following:

> WHETHER OR NOT RESPONDENT IS GUILTY OF GRAVE MISCONDUCT, GRAVE ABUSE OF AUTHORITY OR OPPRESSION, GROSS INCOMPETENCE AND INEFFICIENCY, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.[36]

Similarly, Sanyo Seiki filed its petition which raised the following arguments, to wit:

> A.
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> THE COURT OF APPEALS' DECISION AND RESOLUTION WERE NOT IN ACCORD WITH LAW AND WITH THE

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[35] *Id.* at 82.

[36] *Id.* at 47.

APPLICABLE DECISION/S OF THIS HONORABLE COURT IN FINDING THAT DY BUCO'S GUILT WAS NOT PROVEN BY SUBSTANTIAL EVIDENCE.

B.

THE COURT OF APPEALS' DECISION AND RESOLUTION WERE NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISION/S OF THIS HONORABLE COURT IN FAILING TO RULE THAT THERE WAS CONSPIRACY BETWEEN DY BUCO AND HIS CO-RESPONDENTS IN OP-DC CASE NO. 11-G-017 AS DULY ESTABLISHED BY EVIDENCE ON RECORD AND FULLY SUPPORTED BY THE FACTUAL CIRCUMSTANCES PRESENTED AND OBTAINING IN OP-DC CASE NO. 11-G-017.

C.

THE COURT OF APPEALS' DECISION AND RESOLUTION WERE NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISION/S OF THIS HONORABLE COURT IN FAILING TO RULE THAT THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES IN FAVOR OF DY BUCO WAS SUFFICIENTLY OVERCOME IN THIS CASE.[37]

Our Ruling

The petitions lack merit.

Before delving into the substantial matters, the Court shall first address the issue raised by Atty. Dy Buco in his Consolidated Comment[38] questioning the legal personality of Sanyo Seiki to appeal the CA Decision.

Atty. Dy Buco alleges the following: Sanyo Seiki, as a private complainant, is a mere government witness that cannot appeal from the decision and resolution rendered in an administrative case. With respect to the petition filed by the OP, through the Office of the Solicitor General (OSG), it lacks the signatures of Hon. Biazon and Atty. Tañada as the respective Commissioner and Deputy Commissioner of the BOC in the verification and

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[37] *Rollo* (G.R. No. 216636, Vol. 1), p. 26. Underscoring omitted.

[38] *Rollo* (G.R. No. 216634, Vol. 2), pp. 473-552.

certificate against forum shopping. Hon. Biazon and Atty. Tañada are not real parties-in-interest and with no legal personality to file the petition as they are no longer connected with the BOC. Hon. Ochoa, acting on behalf of the OP, is also not the real party-in-interest, but an adjudicator who must remain partial and detached.

"Aggrieved party" who may appeal in an administrative case.

In administrative cases, appeals are extended to the party adversely affected by the decision.[39] The phrase "party adversely affected by the decision" refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action, or the disciplining authority whose decision is in question.[40] This definition does not include the private complainant in the administrative case. It is elementary that in an administrative case, a complainant is a mere witness.[41] No private interest is involved in an administrative case as the offense committed is against the government.[42]

By inference or implication, considering that only an aggrieved party who is adversely affected by a decision in an administrative case is authorized to file an appeal in cases falling under the Civil Service Commission and the Ombudsman, the Court sees no reason to deviate from this doctrine with respect to appeals on administrative cases falling under the jurisdiction of the OP. To reiterate, there are no private interests involved in an administrative case and the only aggrieved party is the one

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[39] *Paredes v. Civil Service Commission,* 270 Phil. 165, 181 (1990).

[40] *CSC v. Dacoycoy*, 366 Phil. 86, 105 (1999); *Office of the Ombudsman v. Gutierrez,* 811 Phil. 389, 402 (2017).

[41] *Gonzales v. Judge De Roda,* 159-A Phil. 413, 413-414 (1975); *Paredes v. Civil Service Commission,* supra note 39 at 182; *National Appellate Board v. P/Insp. Mamauag,* 504 Phil. 186, 193 (2005).

[42] *National Appellate Board v. P/Insp. Mamauag,* 504 Phil. 186, 193 (2005).

who shall be adversely affected by a decision imposing a penalty of suspension or removal from service.

In the instant case, Sanyo Seiki, as petitioner herein, cannot be considered as an aggrieved party because it is not the respondent in the administrative case below. As correctly opined by Atty. Dy Buco, Sanyo Seiki, as the complainant, is not the party adversely affected by the decision inasmuch as it has no legal personality to interpose an appeal before the Court. Consequently, the petition of Sanyo Seiki, being the private complainant below, should be denied as it has no legal interest or standing to appeal and seek the nullification of the CA Decision exonerating Atty. Dy Buco from the administrative charges of Grave Misconduct, Grave Abuse of Authority and Oppression, Gross Incompetence and Inefficiency and Conduct Prejudicial to the Best Interest of the Service for it merely acted as a government witness in an administrative case bereft of any private interest.

With respect to the lack of signatures of Hon. Biazon and Atty. Tañada in the petition, in *Torres v. Specialized Packaging Development Corp.*,[43] the Court gave due course to a petition even if the verification and certification against forum shopping were not signed by all of the parties. It found substantial compliance in the signatures of just two of the petitioners in the verification considering that they were unquestionably real parties-in-interest who undoubtedly have sufficient knowledge and belief to swear to the truth of the allegations in the petition. The same rule was applied by the Court in *Cavile v. Heirs of Cavile*,[44] wherein the Court decreed that the signing by only one of the 22 petitioners in the certificate of non-forum shopping as substantial compliance as the petitioners had a common interest in the property involved, they being relatives and co-owners of that property. Applying these principles to the case at bench, the signature of Hon. Ochoa, acting on behalf of the OP, in the verification and certificate against non-forum shopping is

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[43] 477 Phil. 540 (2004).

[44] 448 Phil. 302 (2003).

sufficient as substantial compliance taking into account their common interest in the exercise of their disciplining authority over erring government officials in the BOC.

In the same vein, the OP, as the disciplining authority has a legal interest to appeal the CA Decision being a "party adversely affected by the decision." Emanating from the constitutional mandate of control over all the executive departments, bureaus and offices as well as faithful execution of the law, the direct disciplining authority of the President which proceeds from the well-settled principle that unless otherwise provided by the Constitution, the power to appoint carries with it the power to discipline and remove public officials and employees, the OP has concurrent jurisdiction with the Office of the Ombudsman to hear, investigate, receive, gather, and evaluate intelligence reports and information on administrative cases against all presidential appointees in the executive department and any of its instrumentalities or agencies on the basis of a complaint or *motu proprio*.[45] The OP exercises quasi-judicial functions to resolve administrative disciplinary cases over erring government officials and employee who commit acts inimical to government and public interest. In the case of *Office of the Ombudsman v. Gutierrez*,[46] the Court ratiocinated that the Ombudsman is vested with legal interest to appeal a decision reversing its ruling being the disciplining authority whose decision is being assailed, pursuant to its mandate under the Constitution bestowing wide disciplinary authority, which includes prosecutorial powers. Similar to the Ombudsman, the Court also views that the OP enjoys the same authority as it cannot be detached, disinterested and neutral specially when defending its decisions in administrative cases against government personnel since the offense is committed against the government and public interest. As a disciplining authority, the OP and the Ombudsman have a direct constitutional and legal interest in the accountability of public officers. Indeed, in keeping with its duty to preserve

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[45] Executive Order No. 73 (2018).

[46] 811 Phil. 389 (2017).

the integrity of public service, the OP should likewise be given the opportunity to act fully within the parameters of its authority.

The Court shall now discuss the substantial arguments raised by the OP.

As a general rule, only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts.[47] However, the findings of fact of the OP are different from those of the CA. Thus, it is necessary for the Court to take a second look at the factual matters surrounding the present case.

Pursuant to EO 13, series of 2010, the PAGC was abolished and their vital functions, particularly the investigative, adjudicatory and recommendatory functions and other functions inherent or incidental thereto, were transferred to the office of the Deputy Secretary for Legal Affairs of the OP, and the Investigative and Adjudicatory Division was created. In its repealing clause under Section 6, it effectively modified EO 12 dated April 16, 2001 which created the PAGC. Section 4 of EO 12, series of 2001 provides for the scope of authority of the PAGC which covers other public officials and private persons *who act in conspiracy*, collusion, or connivance with any covered Presidential Appointee.

In the present case, Atty. Dy Buco and the other members of the RATS Group were charged by the OP with (1) Grave Misconduct; (2) Grave Abuse of Authority; (3) Oppression; and (4) Conduct Prejudicial to the Best Interest of the Service for having acted in conspiracy with Deputy Commissioner Chavez, a presidential appointee for alleged impropriety of the implementation of the LOAs and Mission Orders.[48] With the four charges, there are three acts which are being complained of: (a) implementation of the Mission Orders and LOAs; (b) conduct of a stakeout outside the premises of Sanyo Seiki; and

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[47] *Office of the Ombudsman v. Racho*, 656 Phil. 148, 157 (2011), citing *Office of the Ombudsman v. Lazaro-Baldazo*, 543 Phil. 130, 133 (2007).

[48] *Rollo* (G.R. No. 216634, Vol. 1), pp. 149-150.

(c) confiscation of the delivery truck and its cargo of stainless steel.

The main defense of Atty. Dy Buco against the administrative charges against him is the existence of the Mission Orders and LOAs. Armed with these Mission Orders and LOAs, Atty. Dy Buco asserts that he merely attempted to enforce them in good faith, within the scope of his authority, and in obedience to an order issued by a superior for some lawful purpose.

The Mission Orders and LOA were issued pursuant to Section 2536 of the Tariff and Customs Code of the Philippines.

The issuance of the LOAs and Mission Orders, the stakeout, and the seizure of the delivery truck and its cargo were all authorized exercise of the visitorial and inspection powers of the BOC and sanctioned by Section 2536[49] of the Tariff and Customs Code of the Philippines.

As correctly found by the CA, the OP appeared to have misunderstood the import of the LOAs and Mission Orders.

There was no Grave Misconduct committed in the implementation of the LOAs and Mission Orders addressed to McConnell, Sanyo Seiki, and Cowlyn. Misconduct generally means a wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose.[50] To constitute

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[49] Section 2536 of the Tariff and Customs Code provides:

SECTION 2536. *Seizure of Other Articles.* — The Commissioner of Customs and Collector of Customs and/or any other customs officer, with the prior authorization in writing by the Commissioner, may demand evidence of payment of duties and taxes on foreign articles openly offered for sale or kept in storage, and if no such evidence can be produced, such articles may be seized and subjected to forfeiture proceedings: Provided, however, That during such proceedings the person or entity for whom such articles have been seized shall be given the opportunity to prove or show the source of such articles and the payment of duties and taxes thereon.

[50] See *Office of the Ombudsman v. Magno, et al.*, 592 Phil. 636, 658 (2008).

as an administrative offense, the misconduct which is an intentional wrongdoing or deliberate violation of a rule of law or standard of behavior, should relate to or be connected with the performance of the official functions and duties of a public officer.[51] To be characterized as Grave Misconduct, the transgression must be accompanied by the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule which must be proved by substantial evidence.[52]

To support their argument that Atty. Dy Buco committed Grave Misconduct, the OSG harped on the attempt of the RATS Group to implement the LOAs and Mission Orders against Sanyo Seiki that was not the addressee; and that there was a clear intent to violate the law and established rules. In the Decision of the OP, it ruled that Atty. Dy Buco's acts were a flagrant violation of the authority contained in the Mission Orders.

The records of the case reveal otherwise. The elements of Grave Misconduct, particularly violation of the law or flagrant disregard of an established rule, are not attendant here.

There is flagrant disregard of an established rule or, analogously, willful intent to violate the law constitutive of Grave Misconduct when the public official or employee concerned, through culpable acts or omission, clearly manifests a pernicious tendency to ignore the law or rules.[53] In *Imperial, Jr. v. Government Service Insurance System*,[54] the Court elucidated the instances where flagrant disregard of rules is present, to wit:

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[51] *Ganzon v. Arlos*, 720 Phil. 104, 113 (2013) as cited in *Field Investigation Office of the Office of the Ombudsman v. Castillo*, 794 Phil. 53, 61 (2016).

[52] *Office of the Ombudsman v. Rojas*, G.R. Nos. 209274 & 209296-97, July 24, 2019, citing *De Guzman v. Office of the Ombudsman, et al.*, 821 Phil. 681, 699 (2017).

[53] *Id.*, citing *Field Investigation Office of the Office of the Ombudsman v. Castillo*, 794 Phil. 53, 62-63 (2016).

[54] 674 Phil. 286 (2011).

Flagrant disregard of rules is a ground that jurisprudence has already touched upon. It has been demonstrated, among others, in the instances when there had been open defiance of a customary rule; in the repeated voluntary disregard of established rules in the procurement of supplies; in the practice of illegally collecting fees more than what is prescribed for delayed registration of marriages; when several violations or disregard of regulations governing the collection of government funds were committed; and when the employee arrogated unto herself responsibilities that were clearly beyond her given duties. The common denominator in these cases was the employee's propensity to ignore the rules as clearly manifested by his or her actions.[55]

There are two Mission Orders dated June 30, 2011 directed at the Bulacan address: Mission Order No. 046-11[56] directed against Sanyo Seiki, and Mission Order No. 041-11[57] in the name of McConnell. There are also Mission Order No. 043-11[58] which pertained to Sanyo Seiki's Malabon address and Mission Order No. 042-11[59] issued to Cowlyn in the same Malabon address. In addition, there are four LOAs dated June 30, 2011 addressed to the following: (a) Sanyo Seiki in the Bulacan address;[60] (b) McConnell located at the same Bulacan address;[61] (c) Sanyo Seiki in the Malabon address;[62] and (d) Cowlyn located at the same Malabon address.[63] Atty. Dy Buco admitted that only Mission Order No. 041-11 was presented at the Bulacan address. He justified that upon arrival at the target place, they saw the signage "*Connel Specialty Steel, Inc., New York Street, Meycauayan Industrial Subd., Brgy. Pantoc, Meycauayan,*

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[55] *Id.* at 297. Citations and emphasis omitted.

[56] *Rollo* (G.R. No. 216636, Vol. 1), p. 480.

[57] *Id.* at 481.

[58] *Id.* at 482.

[59] *Id.* at 483.

[60] *Id.* at 492.

[61] *Id.* at 493.

[62] *Id.* at 494.

[63] *Id.* at 495.

Bulacan" which led them to inquire first from the security guards if the warehouse belonged to McConnell or Connell Specialty Steel, Inc. while presenting Mission Order No. 041-11.[64] Instead of an answer, the security guards took Mission Order No. 041-11 and informed the RATS Group to wait for a legal representative from the warehouse. The legal representative only arrived after two hours when the group had already left the place and without having entered the premises to implement the Mission Orders and LOAs.[65] Based on the surrounding circumstances, the RATS Group had no opportunity to present Mission Order No. 046-11 as they were already refused entry early on. Also, their desistance to enter the warehouse was justified because insisting on the implementation of the LOAs and Mission Orders despite uncertainty as to the actual occupants in the subject address would make them criminally and administratively liable. The attendant facts are contrary to the OP's speculative conclusion that their desistance to enter the warehouse proves the lack of a valid Mission Order.

Neither was there Grave Abuse of Authority and Oppression. Jurisprudence defines it as a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury constituting an act of cruelty, severity, or excessive use of authority.[66] No substantial evidence was presented against Atty. Dy Buco to prove that there was a showcase of cruelty, severity, or excessive use of authority against Sanyo Seiki considering that the RATS Group did not successfully implement the LOAs and Mission Orders. There was also no showing that the RATS Group insisted on implementing the Mission Orders and LOAs despite the presence of police assistance to aid them because they needed to confirm first that they were in the right address.

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[64] See Consolidated Comment, *rollo* (G.R. No. 216634, Vol. 2), p. 480.

[65] *Id.*

[66] *Office of the Ombudsman v. Caberoy*, 746 Phil. 111, 119 (2014). Citations omitted.

The Court likewise upholds the findings of the CA that Atty. Dy Buco neither participated in the stakeout outside the premises of Sanyo Seiki nor was he present during the apprehension of the latter's delivery truck and cargo. If at all, Atty. Dy Buco's participation in the seizure of the delivery truck and its cargo was when he correctly refused to release the confiscated cargo in the absence of the required documents to prove that there was no violation of the tariff and importation laws.

More importantly, allegations against the propriety of the seizure proceedings should be ventilated in the proper forum, which is the Collector of Customs, anchored upon the policy of placing no unnecessary hindrance on the government's drive not only to prevent smuggling and other frauds upon Customs, but more importantly, to render effective and efficient the collection of import and export duties due the State to enable the government to carry out the functions it has been instituted to perform.[67]

Indeed, the Court rules that there was no law nor any established rule violated by Atty. Dy Buco in the implementation of the LOAs and Mission Orders; and that no grave abuse of authority nor oppression was committed by him in the confiscation of Sanyo Seiki's cargo.

As regards the charge of Conduct Prejudicial to the Best Interest of the Service, nothing in the questioned acts could have possibly tarnished the image and integrity of public office[68] in light of the fact that the acts complained of were not in violation of any law, or established rule and were justified as faithful performance of a duty.

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[67] *Jao v. CA*, 319 Phil. 105, 115 (1995), citing *Commissioner of Customs v. Judge Makasiar*, 257 Phil. 864, 873 (1989).

[68] See *Michaelina Ramos Balasbas v. Patricia B. Monayao*, G.R. No. 190524, February 17, 2014 and *Pia v. Gervacio, Jr.*, 697 SCRA 220, 230 (2013) as cited in *Office of the Ombudsman-Visayas v. Castro*, 759 Phil. 68-81 (2015).

Due process in administrative cases should be observed.

With respect to Atty. Dy Buco's liability for Gross Inefficiency and Incompetence, the Court similarly finds that this charge was not included in the Formal Charge, thus, Atty. Dy Buco cannot be held liable therefor. The Rules on Investigation and Adjudication of Administrative Cases, particularly, Section 1, Article IV on Administrative Adjudication[69] provides:

SECTION 1. *Formal Charge*. — The Formal Charge shall narrate the ultimate facts constituting an offense, specifying the law, issuance, rule or regulation violated and accompanied by certified true copies of testamentary and/or documentary evidence substantiating the same. Upon filing of the Formal Charge, the complaint shall be docketed as an Administrative Case for purposes of adjudication.

Similarly, the Uniform Rules on Administrative Cases in the Civil Service[70] provides:

SECTION 16. *Formal Charge*. — After a finding of a *prima facie* case, the disciplining authority shall formally charge the person complained of. The formal charge shall contain a specification of charge(s), a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, a directive to answer the charge(s) in writing under oath in not less than seventy-two (72) hours from receipt thereof, an advice for the respondent to indicate in his answer whether or not he elects a formal investigation of the charge(s), and a notice that he is entitled to be assisted by a counsel of his choice.

If the respondent has submitted his comment and counter-affidavits during the preliminary investigation, he shall be given the opportunity to submit additional evidence.

The disciplining authority shall not entertain requests for clarification, bills of particulars or motions to dismiss which are

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[69] Presidential Anti-Graft Commission Rules on Investigation and Adjudication of Administrative Cases, March 4, 2008.

[70] Uniform Rules on Administrative Cases in the Civil Service, CSC Resolution No. 991936, September 14, 1999.

obviously designed to delay the administrative proceedings. If any of these pleadings are interposed by the respondent, the same shall be considered as an answer and shall be evaluated as such.

Although administrative due process cannot be fully equated with due process in its strict judicial sense and technical rules of procedure are not strictly applied, the observance of fairness in the conduct of any investigation is at the very heart of procedural due process.[71] Administrative due process mandates that the party being charged is given an opportunity to be heard.[72] Due process is complied with if the party who is properly notified of the allegations and the nature of the charges against him or her is given an opportunity to defend himself or herself against those allegations, and such defense was considered by the tribunal in arriving at its own independent conclusions.[73] The essence of due process is that a party is afforded reasonable opportunity to be heard and to submit any evidence he/she may have in support of his/her defense.[74]

In *Geronga v. Hon. Varela*,[75] the Court pronounced the requisites of due process in administrative proceedings as follows:

> Two fundamental requirements of due process in administrative cases are that a person must be duly informed of the charges against him; and that he cannot be convicted of an offense or crime with which he was not charged. A deviation from these requirements renders the proceeding invalid and the judgment issued therein a lawless thing that can be struck down any time.[76]

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[71] *Vivo v. Phil. Amusement and Gaming Corporation*, 721 Phil. 34, 39 (2013).

[72] *Iglesias v. Ombudsman, et al.*, 817 Phil. 338, 358 (2017). Citations omitted.

[73] *Id., Gutierrez v. Commission on Audit, et al.*, 750 Phil. 413, 430 (2015).

[74] *Concerned Officials of MWSS v. Hon. Vasquez*, 310 Phil. 549, 566 (1995) as cited in *Gonzales III v. Office of the President of the Phils.*, 694 Phil. 52 (2012).

[75] 570 Phil. 39 (2008).

[76] *Id.* at 54. Citations omitted.

In the instant case, the Formal Charge against Atty. Dy Buco did not include the charge of Gross Inefficiency and Incompetence. Neither was there an allegation in the Formal Charge of conspiracy among the RATS Group and Deputy Commissioner Chavez which made the act of one as the act of all. Thus, there was a violation of due process with respect to Atty. Dy Buco's right to be duly informed of the allegations and the nature of the charges against him which included his concomitant right to an opportunity to defend himself adequately. It is only through a formal charge for Gross Inefficiency and Incompetence and commission of the acts in conspiracy that Atty. Dy Buco could have truly and sufficiently defended himself and presented evidence to prove his defenses. The charge of Gross Inefficiency and Incompetence is different from the other offenses of Grave Misconduct, Grave Abuse of Authority, Oppression, and Conduct Prejudicial to the Best Interest of the Service which Atty. Dy Buco was accused of in the Formal Charge.

WHEREFORE, the petitions are **DENIED**. The Decision dated August 15, 2014 and the Resolution dated January 29, 2015 respectively of the Court of Appeals in CA-G.R. SP No. 126239 are **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe S.A.J. (*Chairperson*), *Hernando,* and *Delos Santos, JJ.*, concur.

Baltazar-Padilla, J., on leave.

FIRST DIVISION

[G.R. No. 225193. October 14, 2020]

BERNARDINE S. SANTOS-GANTAN, *Petitioner, v.* **JOHN-ROSS C. GANTAN,** *Respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; VOID AND VOIDABLE MARRIAGES; PSYCHOLOGICAL INCAPACITY OF A SPOUSE AS A GROUND TO VOID A MARRIAGE.— Article 36 of the Family Code as amended recognizes the psychological incapacity of a spouse as a ground to void a marriage, . . .

Psychological incapacity refers to a mental incapacity that causes a party to be non-cognitive of the basic marital covenants which must be assumed and discharged by the parties to the marriage. As expressed by Article 68 of the Family Code, these marital covenants include their mutual obligations to live together, observe love, respect, and fidelity and to help and support each other. The law has intended to confine "psychological incapacity" to the most serious cases of personality disorders that clearly demonstrate an utter insensitivity or inability to give meaning and significance to the marriage. It is the inability to understand the obligations of marriage, as opposed to a mere inability to comply with them.

To constitute psychological incapacity, the personality disorder must be characterized by (a) gravity; (b) juridical antecedence; and (c) incurability. It must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.

2. ID.; ID.; ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; THE ABSENCE OF PERSONAL EXAMINATION BY A PHYSICIAN IS NOT FATAL AS LONG AS THE

TOTALITY OF EVIDENCE SUFFICIENTLY SUPPORTS A FINDING OF PSYCHOLOGICAL INCAPACITY.–– There is no requirement that the person to be declared psychologically incapacitated be personally examined by a physician.

. . .

The absence of such personal examination is not fatal so long as the totality of evidence sufficiently supports a finding of psychological incapacity. Consequently, petitioner bears the burden of proving the gravity, juridical antecedence, and incurability of respondent spouse's psychological incapacity. . . .

. . .

The fact that Dr. Dela Cruz was not able to personally examine respondent *per se* does not nullify her finding of psychological incapacity, especially when such omission was attributable to respondent's own failure or refusal to appear for interview despite repeated invitations that he or his relatives had received. . . . Dr. Dela Cruz' assessment of respondent's condition cannot be considered prejudiced and partial as it was based on information she gathered from petitioner herself and the couple's relatives and common friends, and not merely on information provided by petitioner alone.

3. ID.; ID.; ID.; ID.; ID.; ID.; ID.; EXPERT OPINION; TRIAL COURTS MUST GIVE DUE REGARD TO EXPERT OPINION ON THE PARTIES' PSYCHOLOGICAL AND MENTAL DISPOSITION.–– It also bears noting that **the procedures adopted by Dr. Dela Cruz in his expert opinion, including the facts and data she used to come up with his expert conclusions, are procedures, facts and data that other psychologists rendering an opinion in relation to a petition under Article 36, *Family Code*, would rely upon. This is because of the very nature of Article 36 *whereby the otherwise inadmissible facts or data are the bread and butter of every psychiatric of psychological expert opinion,*** that ***is, psychiatrists and psychologists reasonably rely upon such type of facts and data in rendering their opinions*.**

Thus, our case law has reminded trial courts to give due regard to expert opinion on the parties' psychological and mental disposition.

4. ID.; ID.; ID.; ID.; ID.; DISSOLVING MARITAL BONDS ON GROUND OF PSYCHOLOGICAL INCAPACITY IS ACTUALLY PROTECTING THE SANCTITY OF MARRIAGE. — In dissolving marital bonds on ground of psychological incapacity of either spouse, the Court is not demolishing the foundation of families. By preventing a person who is afflicted with a psychological disorder and incapable of complying with the essential marital obligations from remaining in that sacred bond, the Court is actually protecting the sanctity of marriage. In the first place, there is no marriage to speak of since it is void from the very beginning.

APPEARANCES OF COUNSEL

Frank John S. Abdon for petitioner.

D E C I S I O N

LAZARO-JAVIER, *J.*:

PREFATORY

The oft-referred "totality of evidence" is a short and simple way of expressing the allocation of the burden of proof in a civil case for nullity of marriage under Article 36, *Family Code*. The burden of proof lies upon the petitioner to prove his or her case by preponderance of evidence or balance of probabilities. The burden of proof is discharged by the petitioner if he or she is able to prove his or her cause of action *more likely than not*.

The rule of totality of evidence does not add a new dimension in terms of structuring or facilitating the analysis in an Article 36 petition. In fact, this rule does not address the usual *happenstance* in petitions like the present one, where there are no two (2) versions of the claims asserted in the civil case. The narrative is *often* solely that of the petitioner and his or her witnesses, and *frequently*, all the trial court has by way of the respondent's version is the clinical narration of the factual basis of the expert report, which in turn *typically* arises from the examination of the petitioner and other resource persons who *may or may not* be witnesses in the civil case.

It is in this oft-repeated context that trial courts are directed to apply the totality of evidence rule. The rule makes no reference to *how* trial courts should assess facts that are asserted in the expert report *but* do not appear in sworn proof on the trial of the civil case, being data outside of the trial record or facts not in evidence. The lack of a precise and bright-line analytical framework for this type of expert report pervades the trial record of petitions for declaration of nullity of marriage under Article 36 of the *Family Code* and impacts on the evaluation of the totality of evidence.

This gap has contributed to the supposed "strait-jacketed" and one-size-fits-all understanding and application of the criteria laid down in *Molina*. Especially since there is only one (1) version of the facts, *which is made worse by the fact that the version is self-serving*, that is, *it comes from the party solely interested in the grant of the Petition*, the gap or lacuna has made the totality of evidence rule, together with the allocation of the burden of proof, more likely than not **prone to** the *circular reasoning fallacy*. The trial court's analysis begins with what it is trying to end with, *i.e.*, the analysis starts with a statement of the issue and ends with a conclusion that declares the issue as a statement. In a case such as the present one, the circular reasoning takes the form that *what the expert says is true, what is true is what the expert says*.

The Case

This Petition for Review on *Certiorari*[1] seeks to reverse and set aside the following dispositions of the Court of Appeals in CA-G.R. CV No. 100277:

(1) Decision[2] dated June 29, 2015 which reversed the grant of the petition for declaration of nullity of the marriage

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[1] *Rollo*, pp. 3-24.

[2] Penned by Now Supreme Court Associate Justice Rodil V. Zalameda and concurred in by Associate Justices Sesinando E. Villon and Pedro B. Corales, *id.* at 28-39.

between petitioner Bernardine S. Santos-Gantan and respondent John Ross C. Gantan; and

(2) Resolution[3] dated June 3, 2016 which denied petitioner's motion for reconsideration.

Antecedents

On March 23, 2010, petitioner filed the petition[4] below citing Article 36 of the Family Code. The case was docketed Civil Case No. 13-0-2010 FC and raffled to the Regional Trial Court-Branch 73, Olongapo City.[5] Petitioner essentially stated:

She first met respondent in 1999 when the latter was only nineteen (19) years old. They got married twice by civil rites: first, on May 28, 2002 in Angeles City, and later, on December 18, 2002 in Baguio City. She was then thirty-two (32) years old while he, only twenty-two (22) years old. They do not have common children, nor any conjugal properties.[6]

Being next door neighbors, she knew long before that he was irresponsible and had been in and out of school. She observed that he did not speak much, easily got bored, and exhibited a short temper when drunk. He was also irritable and unable to keep a job.[7] Yet she still married him hoping he would change. But he did not. He continued to be lackadaisical and irresponsible which often caused his termination from work.[8]

Their relationship was all rosy during the courtship stage but eventually became a roller coaster ride after they got married. Respondent was often unruly and violent, especially when drunk. He had anger management issues. Whenever he drank with his friends, he would almost always end up fighting with them.

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[3] *Id*. at 26-27.

[4] *Id*. at 40-47.

[5] *Id*. at 29.

[6] *Id*. at 29.

[7] *Id*. at 52.

[8] *Id*. at 30.

He frequently abused her physically, even during their petty arguments. One time, he severely beat her up, causing her to be hospitalized. She even suffered a miscarriage due to his fits of anger.[9]

He was also verbally and emotionally cruel to her. He often refused to be intimate with her because he was having short-term illicit affairs with older or married women. He loathed and insulted her, calling her "thin," "old," "ugly" and "old hag."[10]

In 2006, respondent left to work in Korea where he later had an illicit affair. When his overseas employment expired, he decided to live with his paramour. From then on, they have been separated.[11]

She consulted a clinical psychologist, Dr. Martha Johanna Dela Cruz (Dr. Dela Cruz), who opined that their marriage should be nullified on ground of her husband's psychological incapacity. Dr. Dela Cruz was not able to interview respondent as the latter did not come despite repeated invitations. She, nonetheless, collated the information provided by petitioner herself, the couple's relatives and common friends.[12]

Based on her assessment, Dr. Dela Cruz diagnosed respondent with *"Axis II Anti-Social Personality Disorder,"* characterized by a pervasive pattern of disregard for and violation of the rights of others. She explained that people suffering from this disorder are chronically irresponsible, unsupportive, and have total disregard for the rights of others and the rules of society. They commit criminal acts with no remorse and typically have a pattern of legal problems, deception, impulsivity, irritability, aggressiveness, physical assault and intimidation, reckless disregard for the safety of others, unwillingness to meet normal standards for work, support and parenting, and failure to conform

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

[10] *Id*. at 30.

[11] *Id*. at 30.

[12] *Id*. at 31.

to social norms with respect to lawful behaviors.[13] Dr. Dela Cruz concluded that respondent's personality disorder is serious, grave, incurable and has juridical antecedence, rendering him psychologically incapacitated to perform his responsibilities as husband.[14] It was depicted through his constant deceitfulness as indicated by repeated lying and conning method to achieve personal pleasure. He also exhibited consistent irresponsibility, lack of remorse, ill treatment of others, indifference, and rationalizing action which hurt others.[15]

John Ross did not respond to the petition.

During the hearing, Dr. Dela Cruz, who elaborated on her report and explained the link between the manifestation of respondent's psychological incapacity and the psychological disorder itself. Petitioner herself also testified on the facts upon which the psychological report was based.

The Trial Court's Ruling

By Decision[16] dated February 23, 2012, the trial court granted the petition and declared *void ab initio* the marriage between petitioner and respondent, *viz*.:

> x x x The Clinical Documentation (Exhibit "F") shows that defendant was seen with Antisocial Personality Disorder. There is therefore inability to pursue fundamental adult life tasks including close and meaningful intimate relationship.
>
> Such personality disorder is serious or grave considering that it is fully engraved into the system of the defendant. It distorted the concept of marital relationship. It is incurable because it is clinically permanent and has a stable, long standing pattern. Time, according to the expert witness, does not change personality disorder or any scientific breakthrough which might help the defendant to acknowledge his incapacity. The personality disorder of the defendant can be traced

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[13] *Id*. at 31, 54.

[14] *Id*. at 31, 53-54.

[15] *Id*. at 85-97, 54.

[16] Penned by Judge Norman V. Pamintuan, *id*. at 51-56.

during the latter's early formative years and continuously reaching its full manifestation even before, during and after marriage.

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Applying the totality of evidence rule and after considering the evidence submitted by the plaintiff and the convincing findings of the clinical psychologist that defendant John Ross C. Gantan is afflicted with grave, pre-existing and incurable psychological incapacity, the marriage which the parties had contracted should be dissolved.

WHEREFORE, judgment is hereby rendered declaring the marriage entered into by and between **BERNARDINE S. SANTOS-GANTAN and JOHN-ROSS C. GANTAN** on May 28, 2002 and December 18, 2002 at the Municipal Trial Court Branch 3, Angeles City and Branch 3, Municipal Trial Court in Baguio City, respectively, as null and void ab initio based on Article 36 of the Family Code.

Upon the finality of this Decision, issue a Decree of Nullity to be registered with the proper local civil registries and the National Statistics Office, and let copies hereof be furnished the Local Civil Registrar General, Manila, for appropriate action after payment of necessary legal fees due their respective offices.

SO ORDERED.[17]

The Office of the Solicitor General (OSG) filed a motion for reconsideration, assailing the totality rule from which the trial court based its decision, more specifically the credibility of petitioner herself and the clinical psychologist.[18] It asserted that Dr. Dela Cruz's psychological report did not deserve credit in view of her failure to personally examine respondent and her utter reliance on petitioner's version of events.[19]

Petitioner opposed.[20]

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

[18] *Id*. at 6.

[19] *Id*. at 57.

[20] *See* Annex "E", *id.* at 6.

Under Order[21] dated October 2, 2012, the trial court denied the motion for reconsideration.

Proceedings before the Court of Appeals

On appeal, the OSG faulted the trial court when it granted the petition for nullity of the marriage. It argued in the main that the totality of evidence failed to prove that respondent was psychologically incapacitated to comply with his marital obligations.[22]

The Court of Appeals Ruling

By Decision[23] dated June 29, 2015, the Court of Appeals reversed and dismissed the petition.

It ruled that the totality of the evidence on record failed to establish that respondent is psychologically incapacitated to comply with his marital obligations. Respondent's acts of physical violence and infidelity do not necessarily equate to psychological incapacity. Too, respondent's alleged psychological incapacity was not shown to have juridical antecedence.

Petitioner's Motion for Reconsideration[24] was denied under Resolution[25] dated June 3, 2016.

The Present Petition

Petitioner now seeks affirmative relief from the Court and prays that the assailed dispositions of the Court of Appeals be reversed and her marriage with respondent be declared *void ab initio*. She faults the Court of Appeals for disregarding the expert findings of Dr. Dela Cruz. She argues that the lack of personal examination and interview of respondent did not *per se* invalidate the findings of Dr. Dela Cruz.

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

[22] *Id*. at 32-33.

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

[24] *Id*. at 65-80.

[25] *Id*. at 26-27.

In its Resolution[26] dated August 8, 2016, the Court required respondent to file his comment on the petition within ten (10) days from notice. This resolution was served in respondent's address in Quezon City but was returned undelivered with the postmaster's notation "RTS-Unknown." Pursuant to the Court's directives,[27] petitioner ascertained respondent's whereabouts and informed the Court on April 23, 2018 of respondent's correct and current address in Porac, Pampanga.[28] Thereafter, on October 25, 2018, petitioner furnished respondent a copy of the petition through registered mail.[29] Records, however, do not bear any Comment filed by respondent. Accordingly, such comment is deemed dispensed with.

The Court resolves to decide the case on the merits, sans respondent's comment.

Issue

Did the Court of Appeals commit reversible error when it reversed the trial court's decision granting the petition for declaration of nullity of her marriage with respondent?

Ruling

We rule in the affirmative.

Article 36 of the Family Code as amended recognizes the psychological incapacity of a spouse as a ground to void a marriage, *viz*.:

> Art. 36. A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.

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[26] *Id*. at 98.

[27] *Id*. at 102-103, 110, Resolutions dated April 25, 2017 and January 8, 2018, respectively.

[28] *Id*. at 111-112.

[29] *Id*. at 122.

Psychological incapacity refers to a mental incapacity that causes a party to be non-cognitive of the basic marital covenants which must be assumed and discharged by the parties to the marriage. As expressed by Article 68[30] of the Family Code, these marital covenants include their mutual obligations to live together, observe love, respect, and fidelity and to help and support each other. The law has intended to confine "psychological incapacity" to the most serious cases of personality disorders that clearly demonstrate an utter insensitivity or inability to give meaning and significance to the marriage.[31] It is the inability to understand the obligations of marriage, as opposed to a mere inability to comply with them.[32]

To constitute psychological incapacity, the personality disorder must be characterized by (a) gravity; (b) juridical antecedence; and (c) incurability. It must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.[33]

In ***Ngo Te v. Yu-Te***,[34] the Court pronounced that each case must be judged according to its own facts, guided by findings of experts in the field of psychology and decisions by church tribunals, *viz*.:

Lest it be misunderstood, we are not suggesting the abandonment of *Molina* in this case. We simply declare that, as aptly stated by Justice Dante O. Tinga in *Antonio v. Reyes*, there is need to emphasize

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[30] Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

[31] *Santos v. Court of Appeals*, 310 Phil. 21, 40 (1995).

[32] *Republic of the Philippines v. Mola Cruz*, G.R. No. 236629, July 23, 2018, citing *Antonio v. Reyes*, 519 Phil. 337, 351 (2006).

[33] *Santos v. CA, et al.*, supra note 31, at 39.

[34] 598 Phil. 666, 699 (2009).

other perspectives as well which should govern the disposition of petitions for declaration of nullity under Article 36. At the risk of being redundant, we reiterate once more the principle that each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations but according to its own facts. And, to repeat for emphasis, courts should interpret the provision on a case-to-case basis; guided by experience, the findings of experts and researchers in psychological disciplines, and by decisions of church tribunals.

Here, the Court of Appeals reversed the trial court's verdict and chided it for purportedly relying on the medical findings of Dr. Dela Cruz which it found to be inconclusive, unreliable, and inaccurate due to the doctor's failure to personally examine the supposed psychologically incapacitated spouse, respondent, and the latter's parents. The Court of Appeals, thus, discredited Dr. Dela Cruz' findings and testimony for alleged lack of probative value.

We do not agree.

There is no requirement that the person to be declared psychologically incapacitated be personally examined by a physician.[35]

Camacho-Reyes v. Reyes[36] ordains that the non-examination of one of the parties will not automatically render as hearsay or invalidate the findings of the examining psychiatrist or psychologist, since marriage, by its very definition, necessarily involves only two (2) persons. As such, the totality of the behavior of one spouse during the cohabitation and marriage is generally and genuinely witnessed mainly by the other.[37]

The absence of such personal examination is not fatal so long as the totality of evidence sufficiently supports a finding of psychological incapacity. Consequently, petitioner bears the burden of proving the gravity, juridical antecedence, and

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[35] *Marcos v. Marcos*, 397 Phil. 840, 842 (2000).

[36] *Camacho-Reyes v. Reyes*, 642 Phil. 602, 627 (2010).

[37] *Id*.

incurability of respondent spouse's psychological incapacity.[38] ***Zamora v. Court of Appeals***[39] clearly decrees:

> Even in the subsequent case of *Republic v. Court of Appeals* (also known as the Molina case), wherein the Court laid down the guidelines in the interpretation and application of the aforementioned article, **examination of the person by a physician in order for the former to be declared psychologically incapacitated was likewise not considered a requirement.** What is important, however, as stated in *Marcos v. Marcos*, is the presence of evidence that can adequately establish the party's psychological condition. **If the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.** (Emphasis supplied)

To be fair to the Court of Appeals, there is a genuine issue to be considered whenever the psychological report appears to be one-sided and based on facts that were not the subject of evidence during the trial. The facts could be one-sided if it comes only from petitioner and individuals related to her. This raises questions about the reliability, accuracy, impartiality and fairness of the psychological report.

The fact that Dr. Dela Cruz was not able to personally examine respondent *per se* does not nullify her finding of psychological incapacity, especially when such omission was attributable to respondent's own failure or refusal to appear for interview despite repeated invitations that he or his relatives had received. As for the absence of respondent's parents, Dr. Dela Cruz aptly explained that they could not be subjected to evaluation or examination as they were already staying abroad as illegal aliens. Nonetheless, Dr. Dela Cruz' assessment of respondent's condition cannot be considered prejudiced and partial as it was based on information she gathered from petitioner herself and the couple's relatives and common friends, and not merely on information provided by petitioner alone.

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[38] *Republic v. Javier*, G.R. No. 210518, April 18, 2018, citing *Vinas v. Parel-Viñas*, 751 Phil. 762, 769-770 (2015).

[39] *Zamora v. Court of Appeals*, 543 Phil. 701, 708 (2007).

It also bears noting that **the procedures adopted by Dr. Dela Cruz in his expert opinion, including the facts and data she used to come up with his expert conclusions, are procedures, facts and data that other psychologists rendering an opinion in relation to a petition under Article 36, *Family Code*, would rely upon. This is because of the very nature of Article 36 *whereby the otherwise inadmissible facts or data are the bread and butter of every psychiatric of psychological expert opinion***, that ***is, psychiatrists and psychologists reasonably rely upon such type of facts and data in rendering their opinions.***

Thus, our case law has reminded trial courts to give due regard to expert opinion on the parties' psychological and mental disposition.[40] In ***Kalaw v. Fernandez***:[41]

> Moreover, it is already settled that the courts must accord weight to expert testimony on the psychological and mental state of the parties in cases for the declaration of the nullity of marriages, for by the very nature of Article 36 of the Family Code the courts, "despite having the primary task and burden of decision-making, must not discount but, instead, must consider as decisive evidence the expert opinion on the psychological and mental temperaments of the parties."[42]

The Court rules that the totality of evidence presented here has sufficiently established that respondent is afflicted with psychological incapacity which hindered him from performing his duties as husband to petitioner.

Petitioner testified on how respondent fail to observe mutual love, respect, and fidelity, let alone, render mutual help and support to her. She mainly averred that they were no longer living together as husband and wife. Respondent had abandoned her and is already living with his paramour and their daughter.[43] He had been abusing her physically, mentally, and emotionally.

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[40] *Tani-De La Fuente v. De La Fuente, Jr.*, 807 Phil. 31, 48 (2017), citing *Halili v. Santos-Halili,* 607 Phil. 1, 4 (2009).

[41] 750 Phil. 482 (2015).

[42] *Id*. citing *Ngo Te v. Yu-Te*, supra note 34, at 700.

[43] *Rollo*, p. 76.

He had been having illicit affairs with older and married women while ignoring and rejecting her need for love, affection and intimacy. He often mocked, insulted and called her names, such as "thin," "ugly," and "old hag." He was short-tempered and violent. He frequently hurt or assaulted her physically, even causing her to get hospitalized and suffer a miscarriage. His lackadaisical and irresponsible attitude often caused his termination from employment and left him jobless and unable to support the family. All these reflect his lack of remorse, deception, impulsivity, irritability, aggressiveness, physical assault and intimidation, reckless disregard for the safety of others, unwillingness to meet normal standards for work, support and parenting, and failure to conform to social norms with respect to lawful behaviors.[44]

To aid in her assessment of the couple's psychological condition, Dr. Dela Cruz gave questionnaires to the other informants consisting of the couple's friends and relatives. Their answers to the questionnaires elicited the various behaviors which they reportedly observed from respondent. Dr. Dela Cruz then collated and reflected this information in her report.

Dr. Dela Cruz's clinical documentation[45] indubitably showed that respondent exhibited the following behaviors as observed by petitioner and the other resource persons: anger, baiting and picking fights, belittling, condescending and patronizing speech, blaming, bullying, chaos manufacture, cheating, chronic broken promises, emotional abuse, impulsiveness and impulsivity, lack of boundaries, lack of conscience, manipulation, "not my fault" syndrome, objectification, pathological lying, physical abuse, raging, violence and impulsive aggression, testing, threats, and verbal abuse.[46]

After keen assessment and evaluation of petitioner and information gathered from the latter herself and other informants,

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[44] *Id*. at 29-20, 52-52.

[45] *Id*. at 85-97.

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

Dr. Dela Cruz diagnosed respondent to be suffering from "Axis II Anti-Social Personality Disorder" characterized by a pervasive pattern of disregard for and violation of the rights of others. She found that respondent was: (1) deceitful, as indicated by his repeated lying and conning method to achieve personal pleasure; (2) consistently irresponsible, as indicated by his repeated failure to sustain consistent work behavior or honor financial obligations; and (3) lacked remorse, as indicated by being indifferent to or rationalizing his having hurt or mistreated others.[47]

Dr. Dela Cruz showed a medical link between respondent's psychological incapacity and the acts or behaviors that manifest the same. Her testimony, as corroborated by petitioner, amply proved that respondent's anti-social personality disorder made him deceitful, irresponsible, remorseless, unfaithful, violent, ill-tempered, and inconsiderate of other's safety. It was so grave and serious to the point that it distorted his concept of marital relationship, thus, incapacitating him to fully comprehend, assume, and carry out the essential marital obligations.[48] It has also caused great damage to the spouses' marital union, as well as their social and personal relationships[49] She explained that respondent's personality disorder was fully engraved into his system and has rendered him unable to pursue fundamental adult life tasks, including close and meaningful intimate relationship. It was clinically permanent with a stable and long-standing pattern. She testified that its root cause existed during respondent's teen years, arising from his family set-up.[50] Respondent's parents, being overseas workers, left him under the care of his uncle. His family became dysfunctional over the years, resulting in his loss of emotional and psychological continuity of contact and attachment. Respondent carried this

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[47] *Id*. at 85-97, 54.

[48] *Id*. at 55.

[49] *Id*. at 96.

[50] *Id*. at 96.

dysfunctional concept of family on to his engagement and, later on, marriage with petitioner.[51]

Ultimately, Dr. Dela Cruz concluded that respondent's personality disorder was clinically permanent, incurable, grave and already existent at the time of the celebration of his marriage to petitioner, albeit it became manifest only during their marriage.

To repeat, ***in view of the very nature of Article 36, as psychiatrists and psychologists reasonably rely upon such type of facts and data in rendering their opinions,*** courts must give due regard to expert opinion on the parties' psychological and mental disposition.[52]

The trial court, therefore, correctly accorded evidentiary weight to Dr. Dela Cruz' psychological evaluation and conclusions based on all the vital information she gathered from petitioner and the couple's relatives and common friends. Her findings were properly anchored on a holistic psychological evaluation of the parties as individuals and as a married couple and verified with other resource persons.

Kalaw v. Fernandez[53] further stressed that the trial court's findings and evaluation on the existence or non-existence of a party's psychological incapacity deserve credence and should be final and binding for it was in better position to observe and examine the demeanor of the witnesses while they were testifying.[54] We cannot ignore the trial court's findings and evaluation and substitute our own only because marriage is regarded as an inviolable social institution. The fulfilment of the State's constitutional mandate to protect marriage as an inviolable social institution only applies to a valid marriage.

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[51] *Id*. at 60.

[52] *Tani-De La Fuente v. De La Fuente, Jr.*, *supra* note 40, at 48, citing *Halili v. Santos-Halili*, 607 Phil. 1, 4 (2009); *Kalaw v. Fernandez*, *supra* note 41, at 510.

[53] Supra note 41.

[54] *Id*. at 500-501 citing *Collado v. Intermediate Appellate Court*, 283 Phil. 102, 109 (1992); *People v. Basmayor*, 598 Phil. 194, 207-208 (2009).

The Court cannot afford the same protection to a marriage that is *void ab initio* because such a marriage has no legal existence.[55]

Indeed, the totality of evidence has sufficiently established here that respondent is psychologically incapacitated at the time he got married to petitioner and continue to be so thereafter. He is truly non-cognitive of the basic marital covenants such as the mutual obligation to live together, observe love, respect and fidelity, and render help and support to each other. Such psychological incapacity is enough to declare the nullity of his marriage with petitioner even if such incapacity becomes manifest only after its solemnization.

In dissolving marital bonds on ground of psychological incapacity of either spouse, the Court is not demolishing the foundation of families. By preventing a person who is afflicted with a psychological disorder and incapable of complying with the essential marital obligations from remaining in that sacred bond, the Court is actually protecting the sanctity of marriage. In the first place, there is no marriage to speak of since it is void from the very beginning.[56] As ***Ngo Te v. Yu-Te***[57] aptly enunciates, the declaration of nullity of marriage under Article 36 will merely provide a decent burial to a stillborn marriage.

ACCORDINGLY, the Petition is **GRANTED**. The marriage of Bernardine S. Santos-Gantan and John-Ross C. Gantan is declared **VOID AB INITIO**. The Court of Appeals' Decision dated June 29, 2015 and Resolution dated June 3, 2016 in CA-G.R. CV No. 100277 are **REVERSED** and **SET ASIDE**. The trial Court's Decision dated February 23, 2012 in Civil Case No. 13-0-2010 FC, declaring the marriage between Bernardine S. Santos-Gantan and John-Ross C. Gantan as *void ab initio* is **REINSTATED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Lopez, and *Rosario,*[*] *JJ.,* concur.

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[55] *Kalaw v. Fernandez*, supra note 41, at 500-501.

[56] *Ngo Te v. Yu-Te*, supra note 34, at 698.

[57] *Id.* at 699.

[*] Designated Member per Special Order No. 2794 dated October 9, 2020.

FIRST DIVISION

[G.R. No. 225538. October 14, 2020]

YON MITORI INTERNATIONAL INDUSTRIES,[*] *Petitioner*, *v.* **UNION BANK OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; EVERY CIVIL ACTION MUST BE PROSECUTED OR DEFENDED IN THE NAME OF THE REAL PARTY IN INTEREST.— [A]s a general rule, every civil action must be prosecuted or defended in the name of the real party in interest, that is, the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.

2. ID.; ID.; ID.; THE REAL PARTY IN INTEREST TO FILE A PETITION IS NOT THE SINGLE PROPRIETORSHIP, BUT ITS OWNER AND OPERATOR.— Section 1, Rule 3 of the 1997 Rules of Court provides that only natural and juridical persons or entities authorized by law may be parties in a civil action. A single proprietorship is *not* considered a separate juridical person under the Civil Code.

The Petition was filed solely in the name of Yon Mitori. As a single proprietorship, Yon Mitori has no juridical personality separate and distinct from its owner and operator Tan. Accordingly, the Petition should have been filed in Tan's name, the latter being the real party in interest who possesses the legal standing to file this Petition.

3. ID.; ID.; ID.; SUBSTITUTION OF A PARTY; THE SUBSTITUTION OF A SINGLE PROPRIETORSHIP BY ITS OWNER WOULD NEITHER CONSTITUTE A CHANGE IN THE IDENTITY OF THE PARTIES NOR CAUSE ANY PREJUDICE ON THE ADVERSE PARTY.—

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[*] A single proprietorship owned and operated by Rodriguez Ong Tan; see *rollo*, pp. 9, 82 and 102.

> [T]he Court permits the substitution of Tan as petitioner herein in the interest of justice, pursuant to Section 4, Rule 10 of the 1997 Rules of Court: . . .
>
> In *Juasing Hardware v. Mendoza* (*Juasing*), the Court held that the filing of a civil action in the name of a single proprietorship is merely a formal, and not a substantial defect. Substitution of the party in such cases would not constitute a change in the identity of the parties, and would not cause any prejudice on the adverse party, . . .
>
> . . .
>
> . . . As in *Juasing*, no prejudice will result from Yon Mitori's substitution in this case. Tan has been consistently named as owner and operator of Yon Mitori throughout the proceedings below. Moreover, the fact that this Petition was filed in furtherance of Tan's interests is apparent from the allegations in the pleadings filed before the Court and accordingly furnished to Union Bank.

4. COMMERCIAL LAW; BANKING LAWS; COLLECTING BANK; CHECKS; THE COLLECTING BANK'S OBLIGATION TO CREDIT IN THE DEPOSITOR'S ACCOUNT THE AMOUNT OF THE CHECK IS ONLY AFTER PAYMENT OR CLEARANCE OF THE CHECK BY THE DRAWEE BANK.— Jurisprudence defines a collecting bank as "any bank handling an item for collection except the bank on which the check is drawn." Upon receipt of a check for deposit, the collecting bank binds itself to "credit the amount in [the depositor's] account or infuse value thereon only after the drawee bank shall have paid the amount of the check or [after] the check [is] cleared for deposit."

In this case, Tan deposited the BPI Check in his account with Union Bank for collection. Clearly, Union Bank stands as the collecting bank in this case. By receiving the BPI Check from Tan, Union Bank obliged itself, as collecting bank, to credit Tan's account *only* after BPI, as drawee, shall have paid the amount of the said check *or* after the check is cleared for deposit.

5. ID.; ID.; ID.; ID.; CIVIL LAW; HUMAN RELATIONS; PRINCIPLE OF UNJUST ENRICHMENT; TO RETAIN THE PROCEEDS OF THE DISHONORED CHECK WOULD BE UNJUST ENRICHMENT.— As correctly observed by the CA, the dishonor of the BPI Check is not disputed. Evidently, Union Bank was under no obligation to effect payment in favor of Tan *precisely* because the BPI Check which Tan deposited for collection had been dishonored. **Allowing Tan to retain the proceeds of the dishonored BPI Check despite not being entitled thereto would therefore permit unjust enrichment at Union Bank's expense.**

The principle of unjust enrichment is codified under Article 22 of the Civil Code. . . .

There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity, and good conscience.

For the principle to apply, the following requisites must concur: (i) a person is unjustly benefited; and (ii) such benefit is derived at the expense of or with damages to another. . . .

The requisites for the application of the principle of unjust enrichment are clearly present in this case. Here, it was unequivocally established that Tan withdrew and utilized the proceeds of the BPI Check fully knowing that he was not entitled thereto.

. . .

Thus, based on the principle of unjust enrichment, Tan is bound to return the proceeds of the BPI Check which he had no right to receive.

6. ID.; ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; WHOEVER ALLEGES GROSS NEGLIGENCE OF THE COLLECTING BANK IN CREDITING A DISHONORED CHECK IN THE PAYEE'S ACCOUNT HAS THE BURDEN OF PROOF. — It is well established that whoever alleges a fact has the burden of proving it because mere allegation is not evidence. The records

show that while Tan harped on Union Bank's alleged gross negligence, he failed to cite the specific provision of law, banking regulation, or internal rule which had been violated by Union Bank. What is clear from the evidence on record is that due to a technical error in Union Bank's system, the funds corresponding to the value of the BPI Check were credited to Tan's account *before* actual return and clearance. Because of this error, said funds were *inadvertently* made available for Tan's withdrawal upon Union Bank's mistaken belief that the check had already been cleared. Upon notice of the BPI Check's dishonor, Union Bank's officer immediately notified Tan of such fact. . . .

Clearly, Tan failed to substantiate his imputation of gross negligence. While Union Bank concedes that a technical error in its own system allowed Tan to withdraw the proceeds of the BPI Check before clearance, this error cannot be likened to the blatant violation of internal procedure committed by PNB's Division Chief in *PNB v. Cheah*.

7. ID.; ID.; ID.; ID.; CIVIL LAW; AGENCY; OBLIGATIONS OF AGENTS; ARTICLE 1909 ON THE RESPONSIBILITY OF AN AGENT FOR LOSSES DUE TO ITS NEGLIGENCE; A DEPOSITOR WHO DOES NOT SUFFER LOSSES ARISING FROM THE BANK'S TECHNICAL ERROR IS OBLIGATED TO RETURN ERRONEOUSLY CREDITED FUNDS WITH 6% INTEREST PER ANNUM.— By invoking Article 1909 as applied in *Metrobank v. CA*, Tan appears to assert that he, as principal-depositor, suffered losses because of the technical error in Union Bank's system. This assertion is clearly false.

As stated, Tan had no right to receive the proceeds of the BPI Check. **Evidently, Tan did not suffer any loss as a result of Union Bank's technical error. On the contrary, Tan unduly *gained* from the technical error, as it allowed him to withdraw and utilize funds which he had *no right* to receive.**

The fact that Tan received the BPI Check for value in the ordinary course of business does not negate his obligation to return the funds erroneously credited in his favor. . . .

. . .

. . . [T]he sum due to Union Bank . . . not being a loan or forbearance of money, is subject to 6% interest per annum. In turn, such interest should be computed from the time when the amount due had been established with reasonable certainty, which, in this case, was the date of Union Bank's *extrajudicial* demand.

APPEARANCES OF COUNSEL

Flores Law Office for petitioner.
Office of the General Counsel Union Bank of the Philippines.

D E C I S I O N

CAGUIOA, *J.*:

The Case

This is a Petition for Review on *Certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court assailing the February 3, 2016 Decision[2] (assailed Decision) and July 5, 2016 Resolution[3] (assailed Resolution) rendered by the Court of Appeals (CA), Eleventh Division in CA-G.R. CV No. 102802.

The assailed Decision and Resolution affirmed, with modification, the February 24, 2014 Decision[4] and May 19, 2014 Order[5] issued by the Regional Trial Court (RTC) of Pasig City, Branch 166, in Civil Case No. 71670.

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[1] *Rollo*, pp. 8-30, excluding Annexes.

[2] Id. at 31-38. Penned by Associate Justice Sesinando E. Villon, with Associate Justices Rodil V. Zalameda (now a Member of the Court) and Pedro B. Corales concurring.

[3] Id. at 39-40.

[4] Id. at 41-47. Penned by Presiding Judge Rowena De Juan-Quinagoran.

[5] CA *rollo*, pp 51-52.

The RTC granted the Complaint for Sum of Money filed by Union Bank of the Philippines (Union Bank) against Rodriguez Ong Tan (Tan), the registered owner and operator of Yon Mitori International Industries (Yon Mitori).[6]

The Facts

The CA summarized the facts as follows:

> [Tan], doing business under the name and style of [Yon Mitori], is a depositor, maintaining Current Account No. 027-03-000181-8, [with] the Commonwealth, Quezon City branch of [Union Bank].
>
> On November 12, 2007, Tan deposited in said Union Bank account, the amount of ₱420,000.00 through Bank of the Philippine Islands (BPI) Check No. 0180724 [(BPI Check)]. x x x
>
> [The BPI Check was drawn against the account of Angli Lumber & Hardware, Inc.[7] (Angli Lumber), one of Tan's alleged clients.][8]
>
> [The BPI Check was entered in Tan's bank record thereby increasing his balance to ₱513,700.60 from his previous deposit of ₱93,700.60.[9] In the morning of November 14, 2007, Tan withdrew from the said account the amount of ₱480,000.00. Later that day, the BPI Check was returned to Union Bank as the account against which it was drawn had been closed. It was then that Union Bank discovered that Tan's account had been mistakenly credited. Thus, the branch manager of Union Bank's Commonwealth, Quezon City branch immediately called Tan to recover the funds mistakenly released. However, Tan refused to return the funds, claiming that the BPI Check proceeded from a valid transaction between Angli Lumber and Yon Mitori.[10]
>
> During the course of its investigation, Union Bank discovered that Tan previously deposited five BPI checks drawn by Angli Lumber

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[6] See *rollo*, pp. 46-47.

[7] Also appears as "Angli Hardware, Incorporated" in some parts of the *rollo*.

[8] See Comment, *rollo*, p. 83.

[9] *Rollo*, p. 32.

[10] See RTC Decision, *rollo*, p. 42.

against the same BPI account, and that these five checks were all previously dishonored.[11]

Thereafter, on November 20, 2007, Union Bank [through the bank manager of its Commonwealth branch],[12] sent Tan a letter demanding reimbursement of the amount of ₱420,000.00, by reason of the fact that [the] "(f)unds against said deposit was inadvertently allowed due to technical error on the system prior to actual return of your check deposit which was not yet clear on withdrawal date," it appearing that [the BPI Check] was dishonored by BPI for being drawn against a closed account. Tan refused to return the said amount. Union Bank then debited the available balance reflected in [Tan's] account amounting to ₱34,700.60[13] and thereafter instituted [a Complaint for Sum of Money (Complaint)] before the RTC, for the recovery of [the remaining balance amounting to] ₱385,299.40 plus consequential damages.[14]

RTC Proceedings

In its Complaint, Union Bank alleged that the value of the BPI Check had been inadvertently credited to Tan's account due to a technical error in its system.[15]

For his part, Tan alleged that the BPI Check had been given to him for value in the course of business. Tan claimed that he should not be faulted for withdrawing the value of said check from his account since Union Bank made the corresponding funds available by updating his account to reflect his new balance. After ascertaining that the value of the BPI Check had been

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[11] See *rollo*, pp. 90-91.

[12] Id. at 42.

[13] The Court notes that an additional amount of ₱1,000.00 was credited to Tan's account following the erroneous deposit of the ₱420,000.00 check, thereby bringing Tan's balance to ₱514,700.60. Accordingly, Tan's remaining balance after the withdrawal of ₱480,000.00 amounted to ₱34,700.60.

[14] *Rollo*, pp. 31-32.

[15] Id. at 43.

credited, Tan withdrew ₱480,000.00 from his account to pay one of his suppliers.[16]

Tan further argued that Union Bank wrongfully and unlawfully deducted the amount of ₱34,700.60 from his account.[17]

On February 24, 2014, the RTC ruled in favor of Union Bank. The dispositive portion of the RTC Decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered in favor of [Union Bank] and against [Yon Mitori and Tan] by ordering the latter:
>
> 1. To pay [Union Bank] the amount of ₱385,299.40 representing the withdrawal mistakenly given to x x x Tan;
> 2. To pay [Union Bank] 12% per annum legal interest computed from the time judicial demand was made on June 13, 2008 until the same is fully paid;
> 3. To pay [Union Bank] the amount of ₱100,000.00 as attorney's fees; and
> 4. To pay the duly receipted cost of suit in the amount of ₱14,954.20.
>
> **SO ORDERED**.[18]

The RTC found all the requisites for the application of *solutio indebiti* under Article 2154 of the Civil Code present. It held that since Union Bank mistakenly released the amount of ₱480,000.00 in favor of Tan without being obligated to do so, Tan must be ordered to return said amount to preclude unjust enrichment at Union Bank's expense.[19]

Further, the RTC ruled that under Article 1980 of the Civil Code, "fixed, savings, and current deposits of money in banks

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[16] Id. at 43, 44.

[17] Id. at 43-44.

[18] *Rollo*, pp. 46-47.

[19] Id. at 44-45.

and similar institutions shall be governed by the provisions concerning [simple] loan." By reason of the erroneous payment made in Tan's favor, Tan and Union Bank became mutual debtors and creditors of each other. This gave rise to Union Bank's right to set-off the erroneous payment made against Tan's remaining deposit, consistent with the principle of legal compensation under the Civil Code.[20]

Finally, the RTC held that Union Bank should be awarded attorney's fees and cost of suit since it was compelled to litigate due to Tan's unjustified refusal to return the funds mistakenly released to him.[21]

Aggrieved, Tan filed a motion for reconsideration which the RTC denied in its Order dated May 19, 2014.[22] The RTC held that "[a]lthough [Union Bank may have been] negligent when it paid to [Tan] the face value of the check as alleged by [Tan],"[23] Tan is still liable to return the funds mistakenly released to him since Union Bank was under no obligation to release these funds in his favor.[24]

CA Proceedings

Tan filed an appeal *via* Rule 41 and named Yon Mitori as co-appellant.[25] Therein, Tan maintained that the proximate cause of Union Bank's loss is its own gross negligence.[26]

Following an exchange of pleadings, the CA issued the assailed Decision, the dispositive portion of which reads:

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[20] Id. at 45-46.

[21] Id. at 46.

[22] Id. at 11.

[23] As quoted in the Petition, *rollo*, p. 20. Emphasis and underscoring omitted.

[24] See id.

[25] Id. at 31.

[26] Id. at 33.

WHEREFORE, in light of all the foregoing, the [D]ecision dated February 24, 2014 of Branch 166 of the [RTC] of Pasig City in Civil Case No. 71670 is hereby **AFFIRMED with MODIFICATION** in that the award of attorney's fees and cost of suit in favor of [Union Bank] are hereby deleted, and the rate of legal interest imposed on the awarded sum, reduced to six percent (6%) *per annum*.

SO ORDERED.[27]

Foremost, the CA stressed that the fact of dishonor of the BPI Check for the reason "Account Closed" is undisputed. On this basis, the CA affirmed the RTC's findings and held that Tan would be unjustly enriched at Union Bank's expense if he were permitted to derive benefit from the funds erroneously credited to his account.[28] As well, the CA upheld the application of legal compensation in the case.[29]

Nevertheless, the CA found the award of attorney's fees and cost of suit in favor of Union Bank improper. Since the banking industry is impressed with public interest, all bank personnel are burdened with a high level of responsibility insofar as care and diligence in the custody and management of funds are concerned.[30] Here, the evidence shows that the proximate cause of the unwarranted crediting of the value of the BPI Check was Union Bank's technical error. Thus, while Union Bank was compelled to litigate to protect its rights, such fact alone does not justify an award of attorney's fees and cost of suit there being no showing that Tan acted in bad faith in refusing to reimburse the amount so credited.[31]

Finally, the CA modified the legal interest rate applied on the awarded sum from 12% to 6% per annum, in accordance with the Court's ruling in *Nacar v. Gallery Frames*.[32]

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[27] Id. at 37.

[28] See id. at 33-34.

[29] Id. at 36.

[30] Id.

[31] Id. at 37.

[32] 716 Phil. 267 (2013) [En Banc, per J. Peralta]; *rollo*, p. 37.

Subsequently, Tan filed a Motion for Reconsideration,[33] still with Yon Mitori as co-appellant. Tan argued that the uniform findings of the RTC and CA with respect to Union Bank's negligence serves as sufficient basis to hold the latter solely liable for its loss.[34] Tan also averred that the principle of *solutio indebiti* applies only in cases where the claimant unduly delivers something because of mistake, and *not* when such delivery results from the claimant's negligence, as in this case.[35]

On July 5, 2016, the CA issued the assailed Resolution denying said Motion for Reconsideration for lack of merit.[36] Tan received a copy of the assailed Resolution on July 11, 2016.[37]

Subsequently, Tan's counsel filed a "Motion for Additional Time to File Appeal"[38] (Motion for Time) before the Court, praying for an additional period of thirty (30) days from July 26, 2016, or until August 25, 2016 to file a petition for review.[39]

On August 25, 2016, Tan's counsel filed this Petition. Notably, the Petition names Yon Mitori as sole petitioner even as it describes Yon Mitori as "a single proprietorship duly registered under Philippine law, owned and operated by [Tan]."[40]

On November 9, 2016, the Court issued a Resolution[41] granting the Motion for Time and directing Union Bank to file its comment on the Petition within ten (10) days from notice.

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[33] *Rollo*, pp. 48-58.

[34] See id. at 49.

[35] Id. at 53.

[36] Id. at 39.

[37] Id. at 10.

[38] Id. at 3-6.

[39] Id. at 4.

[40] Id. at 9.

[41] Id. at 59.

In compliance with the Court's Resolution, Union Bank filed its Comment[42] on April 17, 2017, to which a Reply[43] had been filed.

The Petition maintains that the proximate cause of Union Bank's loss is its own gross negligence. Thus, it is barred from recovering damages under Article 2179 of the Civil Code.[44]

In addition, the Petition reiterates that Union Bank's gross negligence also precludes the application of *solutio indebiti* in this case[45] as there can be no reimbursement under this principle if payment is made as a result of one's negligence.[46] The Petition relies on the Court's ruling in *Philippine National Bank v. Cheah Chee Chong*[47] *(PNB v. Cheah)* where the Court held that under the principle of *solutio indebiti*, no recovery is due "if the mistake done is one of gross negligence."[48]

Finally, the Petition contends that as collecting agent, Union Bank is responsible for losses arising from its own negligence pursuant to Article 1909 of the Civil Code. Thus, the Petition argues that Article 1909 should be applied to hold Union Bank solely liable for its own loss, based on the Court's ruling in *Metropolitan Bank and Trust Company v. Court of Appeals*[49] *(Metrobank v. CA)*.[50]

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[42] Id. at 82-101.

[43] Id. at 163-169.

[44] Id. at 12-13.

[45] See id. at 15.

[46] See id. at 15-18.

[47] G.R. Nos. 170865 and 170892, April 25, 2012, 671 SCRA 49 [First Division, per J. Del Castillo].

[48] Id. at 64, quoted in the Petition, *rollo*, p. 18.

[49] G.R. No. 88866, February 18, 1991, 194 SCRA 169 [First Division, per J. Cruz].

[50] *Rollo*, pp. 14-15.

Issue

The sole issue for the Court's resolution is whether the CA erred when it affirmed the RTC Decision directing Tan to return the value of the BPI Check with legal interest.

The Court's Ruling

The Petition is denied for lack of merit.

Yon Mitori has no separate juridical personality.

Before delving into the substantive issues, the Court must emphasize that as a general rule, every civil action must be prosecuted or defended in the name of the real party in interest, that is, the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.[51]

In turn, Section 1, Rule 3 of the 1997 Rules of Court provides that only natural and juridical persons or entities authorized by law may be parties in a civil action. A single proprietorship is *not* considered a separate juridical person under the Civil Code.[52]

The Petition was filed solely in the name of Yon Mitori. As a single proprietorship, Yon Mitori has no juridical personality separate and distinct from its owner and operator Tan. Accordingly, the Petition should have been filed in Tan's name,

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[51] See 1997 RULES OF COURT, Rule 3, Sec. 2.

[52] Article 44 of the Civil Code states:

> ART. 44. The following are juridical persons:
>
> (1) The State and its political subdivisions;
>
> (2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;
>
> (3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

the latter being the real party in interest who possesses the legal standing to file this Petition.

Nevertheless, the Court permits the substitution of Tan as petitioner herein in the interest of justice, pursuant to Section 4, Rule 10 of the 1997 Rules of Court:

> SEC. 4. *Formal Amendments.* — A defect in the designation of the parties and other clearly clerical or typographical errors may be summarily **corrected by the court at any stage of the action, at its initiative or on motion, provided no prejudice is caused thereby to the adverse party.** (Emphasis supplied)

In *Juasing Hardware v. Mendoza*[53] *(Juasing)*, the Court held that the filing of a civil action in the name of a single proprietorship is merely a formal, and not a substantial defect. Substitution of the party in such cases would not constitute a change in the identity of the parties, and would not cause any prejudice on the adverse party, thus:

> Contrary to the ruling of respondent Judge, the defect of the complaint in the instant case is merely formal, not substantial. Substitution of the party plaintiff would not constitute a change in the identity of the parties. No unfairness or surprise to private respondent Dolla, defendant in the *court a quo*, would result by allowing the amendment, the purpose of which is merely to conform to procedural rules or to correct a technical error.[54]

In *Juasing*, the Court ruled that the lower court erred in not allowing the amendment of the complaint filed therein to correct the designation of the party plaintiff, for while the complaint named the sole proprietorship "Juasing Hardware" as plaintiff, the allegations therein show that said complaint was actually brought by its owner.[55]

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[53] No. L-55687, July 30, 1982, 115 SCRA 783 [Second Division, per J. Guerrero].

[54] Id. at 787.

[55] See id. at 786-787.

This Petition warrants the same course of action. As in *Juasing*, no prejudice will result from Yon Mitori's substitution in this case. Tan has been consistently named as owner and operator of Yon Mitori throughout the proceedings below. Moreover, the fact that this Petition was filed in furtherance of Tan's interests is apparent from the allegations in the pleadings filed before the Court and accordingly furnished to Union Bank.

Having settled the foregoing procedural matter, the Court now proceeds to resolve the substantive issues.

Tan is bound to return the proceeds of the dishonored BPI Check based on the principle of unjust enrichment.

Jurisprudence defines a collecting bank as "any bank handling an item for collection except the bank on which the check is drawn."[56] Upon receipt of a check for deposit, the collecting bank binds itself to "credit the amount in [the depositor's] account or infuse value thereon only after the drawee bank shall have paid the amount of the check or [after] the check [is] cleared for deposit."[57]

In this case, Tan deposited the BPI Check in his account with Union Bank for collection. Clearly, Union Bank stands as the collecting bank in this case. By receiving the BPI Check from Tan, Union Bank obliged itself, as collecting bank, to credit Tan's account *only* after BPI, as drawee, shall have paid the amount of the said check *or* after the check is cleared for deposit.[58]

As correctly observed by the CA, the dishonor of the BPI Check is not disputed. Evidently, Union Bank was under no obligation to effect payment in favor of Tan *precisely* because

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[56] *Areza v. Express Savings Bank, Inc.*, 742 Phil. 623, 639 (2014) [First Division, per J. Perez].

[57] *Id.* at 639.

[58] See id.

the BPI Check which Tan deposited for collection had been dishonored. **Allowing Tan to retain the proceeds of the dishonored BPI Check despite not being entitled thereto would therefore permit unjust enrichment at Union Bank's expense**.

The principle of unjust enrichment is codified under Article 22 of the Civil Code. It states:

> ART. 22. 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.

There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity, and good conscience.[59]

For the principle to apply, the following requisites must concur: (i) a person is unjustly benefited; and (ii) such benefit is derived at the expense of or with damages to another.[60] Expounding on these requisites, the Court, in *University of the Philippines v. Philab Industries, Inc.*,[61] held:

> Unjust enrichment claims do not lie simply because one party benefits from the efforts or obligations of others, but instead it must be shown that a party was unjustly enriched in the sense that the term unjustly could mean illegally or unlawfully.
>
> **Moreover, to substantiate a claim for unjust enrichment, the claimant must unequivocally prove that <u>another party knowingly received something of value to which he was not entitled</u> and that the state of affairs are such that it would be unjust for the**

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[59] *Gaisano v. Development Insurance and Surety Corp.*, 806 Phil. 450, 464 (2017) [Third Division, per J. Jardeleza].

[60] *Osmeña-Jalandoni v. Encomienda*, 806 Phil. 566, 577 (2017) [Second Division, per J. Peralta].

[61] G.R. No. 152411, September 29, 2004, 439 SCRA 467 [Second Division, per J. Callejo, Sr.].

person to keep the benefit. Unjust enrichment is a term used to depict result or effect of failure to make remuneration of or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them; to be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. Unjust enrichment is not itself a theory of reconvey. Rather, it is a prerequisite for the enforcement of the doctrine of restitution.[62] (Emphasis and underscoring supplied; italics omitted)

The requisites for the application of the principle of unjust enrichment are clearly present in this case. Here, it was unequivocally established that Tan withdrew and utilized the proceeds of the BPI Check fully knowing that he was not entitled thereto.

To note, Tan's transaction records show that prior to the deposit of the BPI Check subject of the present case, Tan had deposited five other checks drawn against the same account.[63] During Tan's cross-examination before the RTC, Tan admitted that Union Bank notified him that all five checks he had previously deposited had all been dishonored for the reason "Account Closed" — which notification was made *before* he deposited the BPI Check subject of the present case, thus:

"Q: Mr. Witness, it appears that you had previously deposited BPI Checks also issued or also made by [Angli Lumber]. I think these x x x BPI Checks were also deposited in your bank, Union Bank, is that correct Mr. Witness?

A: That is correct, sir.

Q: In fact on five (5) occasions you had deposited BPI Checks [i]ssued by [Angli Lumber] drawn against its BPI [a]ccount and you deposited the same to your bank, x x x Union Bank in this case, is that correct, Mr. Witness?

A: Yes, sir.

Q: **In those five (5) occasions, Mr. witness, do you confirm that all of these checks were returned to you because the account of [Angli Lumber] was closed, is that correct?**

A: **Yes, sir.** x x x

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[62] Id. at 484-485.

[63] *Rollo*, pp. 90-91.

Q: Mr. Witness, I have here a return Check Advise dated November 5, 2007. This is before the subject transaction. Can you please tell this [court] if you recognize this written Check Advise?
A: Yes, sir.

Q: You also pointed to a signature. Are you confirming that, that is your signature, Mr. Witness?
A: Yes, sir.

Q: Also, this refers to Check No. 0206925, BPI San Fernando Highway, drawee bank. It was deposited on October 30, 2007?
A: Yes, sir.

Q: Mr. Witness, I also have here a return check advise dated November 7, 2007, can you please tell the court if you recognize this document?
A: Yes, sir.

x x x x x x x x x

Q: Whose signature is that, Mr. Witness?
A: My signature, sir.

Q: This return check advise refers to Check No. 0206927 and also Check No. 0206926 and Check No. 0180723. The drawee bank of these checks are all BPI San Fernando Highway and the date[s] of the deposits are as follows: November 5, 2007 for Check No. 0206926 and November 3, 2007 for Check No. 0180723 all of these return check advise, Mr. Witness [state] that the reason for the return is account closed, do you confirm that, Mr. Witness?

A: Yes, sir.

x x x x x x x x x

Q: **So as early as October, Mr. Witness, you have been given [c]hecks by this [Angli Lumber] and you have been depositing the same in your bank account and all of these checks were returned to you because you were informed that the account had been closed, is that correct?**

x x x x x x x x x

Q: **So these checks were all returned to you for being Account closed?**

A: **Yes, sir.**" x x x [64] (Emphasis and underscoring supplied)

Tan's testimony confirms that he was fully aware that Angli Lumber's account with BPI had been closed. So he could not have expected that the BPI Check in question would be honored. Stated differently, he was cognizant of the BPI Check's impending dishonor at the time he withdrew its proceeds from his Union Bank account. That Tan withdrew the proceeds of the BPI Check soon after discovering that the corresponding funds had been credited to his account despite his knowledge that the account from which the BPI Check was issued had been closed for some time smacks of bad faith if not fraud. Tan's refusal to return the funds despite Union Bank's repeated demands is reprehensible.

On this score, reference to the Court's ruling in *Equitable Banking Corporation v. Special Steel Products, Inc.*[65] *(Equitable Banking)* is proper. In said case, a certain Jose Isidoro Uy (Uy), purchasing officer of International Copra Export Corporation (Interco), presented three crossed checks to Equitable Banking Corporation (Equitable) for collection. These crossed checks were made payable to the order of Special Steel Products, Inc. (SSPI), Interco's supplier.

The crossed checks bore the notation "account payee only." Despite this notation, Equitable deposited the proceeds of the three checks to Uy's personal account upon the latter's instructions. Equitable claimed that it did so believing that Uy was acting upon Interco's instructions. Due to the incident, SSPI and its President Augusto Pardo (Pardo) filed an action for damages against Equitable and Uy.

The Court adjudged Equitable and Uy jointly and severally liable to pay SSPI and Pardo actual, moral, and exemplary damages, as well as costs of suit. Nevertheless, to preclude unjust enrichment, the Court directed Uy to reimburse Equitable

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[64] Id. at 91-94.

[65] G.R. No. 175350, June 13, 2012, 672 SCRA 212 [First Division, per J. Del Castillo].

whatever amount it may be required to pay SSPI and Pardo, thus:

> Equitable then insists on the allowance of [its] cross-claim against Uy. The bank argues that it was Uy who was enriched by the entire scheme and should reimburse Equitable for whatever amounts the Court might order it to pay in damages to SSPI.
>
> Equitable is correct. There is unjust enrichment when (1) a person is unjustly benefited, and (2) such benefit is derived at the expense of or with damages to another. In the instant case, the fraudulent scheme concocted by Uy allowed him to improperly receive the proceeds of the three crossed checks and enjoy the profits from these proceeds during the entire time that it was withheld from SSPI. Equitable, through its gross negligence and mislaid trust on Uy, became an unwitting instrument in Uy's scheme. Equitable's fault renders it solidarily liable with Uy, insofar as respondents are concerned. **Nevertheless, as between Equitable and Uy, Equitable should be allowed to recover from Uy whatever amounts Equitable may be made to pay under the judgment. It is clear that Equitable did not profit in Uy's scheme. Disallowing Equitable's cross-claim against Uy is tantamount to allowing Uy to unjustly enrich himself at the expense of Equitable.** For this reason, the Court allows Equitable's cross-claim against Uy.[66] (Emphasis supplied)

The circumstances which impelled the Court to apply the principle of unjust enrichment in *Equitable Banking* are present in this case.

As stated, Union Bank's obligation to credit Tan's account is contingent upon actual receipt of the value of the BPI Check *or* notice of its clearance. Due to the dishonor of the BPI Check, Union Bank's obligation to credit Tan's account with its proceeds did not attach. Conversely, Tan's right to receive the proceeds of said check did not arise. Nevertheless, Tan withdrew the proceeds of the BPI Check with full and established knowledge that the account against which it was drawn had been closed. As in *Equitable Banking*, Tan, the depositor herein, was unjustly benefited by reason of the erroneous credit made in his favor.

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[66] Id. at 228-229.

Such benefit, in turn, was derived at the expense of Union Bank as the collecting bank.

Thus, based on the principle of unjust enrichment, Tan is bound to return the proceeds of the BPI Check which he had no right to receive.

PNB v. Cheah is inapplicable.

Tan argues that Union Bank should not be allowed to recover the amount erroneously deposited in his account, since said payment was made not because of any mistake of fact or law, but because of Union Bank's own gross negligence. According to Tan, such negligence on the part of Union Bank precludes recovery, pursuant to the Court's ruling in *PNB v. Cheah*.

The Court disagrees.

In *PNB v. Cheah*, petitioner Ofelia Cheah (Ofelia) agreed to accommodate Filipina Tuazon's (Filipina) request to have the latter's Bank of America (BOA) Check cleared and encashed for a service fee of 2.5%. Filipina was a mere acquaintance introduced to Ofelia by her friend Adelina Guarin (Adelina). Filipina enlisted Ofelia's assistance since she did not have a dollar account necessary to encash the BOA Check which was drawn for the amount of $300,000.00.

On November 4, 1992, Ofelia deposited the BOA Check to her joint PNB dollar savings account (DSA) with her Malaysian husband Cheah Chee Chong. Five days later, PNB received a credit advice from Philadelphia National Bank in the United States, stating that the proceeds of the BOA Check had been temporarily credited to PNB' s account as of November 6, 1992.

On November 16, 1992, PNB Division Chief Alberto Garin called Ofelia to inform her that the BOA Check had been cleared and that her joint DSA with Cheah Chee Chong had been credited the amount of $299,248.37 (representing the face value of the BOA Check sans bank charges). Hence, the proceeds of the BOA Check were withdrawn and delivered to Filipina.

On November 20, 1992, PNB received notice that the BOA Check bounced for being drawn against insufficient funds. PNB demanded that Ofelia and Cheah Chee Chong return the funds withdrawn. In turn, Ofelia attempted to retrieve the funds from Filipina, but Filipina claimed that the funds had already been distributed to several other individuals. Thus, Ofelia and Cheah Chee Chong (Spouses Cheah) requested the assistance of the National Bureau of Investigation (NBI) to apprehend the beneficiaries of the BOA Check. Meanwhile, Spouses Cheah and PNB negotiated the terms of reimbursement pending NBI's investigation.

After negotiations between Spouses Cheah and PNB fell through, PNB filed a complaint for sum of money before the RTC. As their main defense, Spouses Cheah claimed that the proximate cause of PNB's injury was its own negligence in paying the BOA Check without waiting for the expiration of its own 15-day clearing period.

The RTC ruled in favor of PNB. However, the CA reversed on appeal, finding that PNB exhibited negligence in allowing the premature withdrawal of the proceeds of the BOA Check. However, the CA also found Ofelia guilty of contributory negligence. Thus, the CA ruled that Spouses Cheah and PNB should be made equally responsible for the resulting loss.

Unsatisfied, the parties filed their respective petitions for review before the Court. Affirming the CA's Decision, the Court ruled:

> Here, while PNB highlights Ofelia's fault in accommodating a stranger's check and depositing it to the bank, it remains mum in its release of the proceeds thereof without exhausting the 15-day clearing period, an act which contravened established banking rules and practice.
>
> It is worthy of notice that the 15-day clearing period alluded to is construed as 15 banking days. As declared by Josephine Estella, the Administrative Service Officer who was the bank's Remittance Examiner, what was unusual in the processing of the check was that the "lapse of 15 banking days was not observed." Even PNB's

agreement with Philadelphia National Bank regarding the rules on the collection of the proceeds of US dollar checks refers to "business/ banking days." Ofelia deposited the subject check on November 4, 1992. Hence, the 15th banking day from the date of said deposit should fall on November 25, 1992. **However, what happened was that PNB Buendia Branch, upon calling up Ofelia that the check had been cleared, allowed the proceeds thereof to be withdrawn on November 17 and 18, 1992, a week before the lapse of the standard 15-day clearing period**.

This Court already held that the payment of the amounts of checks without previously clearing them with the drawee bank especially so where the drawee bank is a foreign bank and the amounts involved were large is contrary to normal or ordinary banking practice. **Also, in *Associated Bank v. Tan*, wherein the bank allowed the withdrawal of the value of a check prior to its clearing, we said that "[b]efore the check shall have been cleared for deposit, the collecting bank can only 'assume' at its own risk x x x that the check would be cleared and paid out."** The delay in the receipt by PNB Buendia Branch of the November 13, 1992 SWIFT message notifying it of the dishonor of the subject check is of no moment, because had PNB Buendia Branch waited for the expiration of the clearing period and had never released during that time the proceeds of the check, it would have already been duly notified of its dishonor. **Clearly, PNB's disregard of its preventive and protective measure against the possibility of being victimized by bad checks had brought upon itself the injury of losing a significant amount of money**.

It bears stressing that "the diligence required of banks is more than that of a Roman *pater familias* or a good father of a family. The highest degree of diligence is expected." PNB miserably failed to do its duty of exercising extraordinary diligence and reasonable business prudence. **The disregard of its own banking policy amounts to gross negligence, which the law defines as "negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected."** x x x

Incidentally, PNB obliges the [S]pouses Cheah to return the withdrawn money under the principle of *solutio indebiti*, which is laid down in Article 2154 of the Civil Code[.]

x x x x x x x x x

"[T]he indispensable requisites of the juridical relation known as *solutio indebiti*, are, (a) that he who paid was not under obligation to do so; and (b) that the payment was made by reason of an essential mistake of fact.

In the case at bench, PNB cannot recover the proceeds of the check under the principle it invokes. In the first place, the gross negligence of PNB, as earlier discussed, can never be equated with a mere mistake of fact, which must be something excusable and which requires the exercise of prudence. No recovery is due if the mistake done is one of gross negligence.

The [S]pouses Cheah are guilty of contributory negligence and are bound to share the loss with the bank.

"Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection."

The CA found Ofelia's credulousness blameworthy. We agree. Indeed, Ofelia failed to observe caution in giving her full trust in accommodating a complete stranger and this led her and her husband to be swindled. Considering that Filipina was not personally known to her and the amount of the foreign check to be encashed was $300,000.00, a higher degree of care is expected of Ofelia which she, however, failed to exercise under the circumstances. Another circumstance which should have goaded Ofelia to be more circumspect in her dealings was when a bank officer called her up to inform that the [BOA C]heck has already been cleared way earlier than the 15-day clearing period. The fact that the check was cleared after only eight banking days from the time it was deposited or contrary to what [PNB Division Chief Alfredo Garin] told her that clearing takes 15 days should have already put Ofelia on guard. She should have first verified the regularity of such hasty clearance considering that if something goes wrong with the transaction, it is she and her husband who would be put at risk and not the accommodated party. **However, Ofelia chose to ignore the same and instead actively participated in immediately withdrawing the proceeds of the check. Thus, we are one with the CA in ruling that Ofelia's prior consultation**

with PNB officers is not enough to totally absolve her of any liability. In the first place, she should have shunned any participation in that palpably shady transaction.[67] (Emphasis supplied; citations omitted)

In *PNB v. Cheah*, the Court ruled that PNB was guilty of gross negligence as its own bank officer permitted Ofelia to prematurely withdraw the proceeds of the BOA Check by advising her of the funds' availability before the expiration of the 15-day clearing period mandated by its own internal rules (*i.e.*, PNB General Circular No. 52-101/88). Despite PNB's gross negligence, the Court nevertheless tempered PNB 's liability due to Ofelia's contributory negligence. Thus, in *PNB v. Cheah*, the parties were made to suffer the resulting loss equally.

A juxtaposition of the circumstances attendant in *PNB v. Cheah* and the present case shows that Tan's reliance on *PNB v. Cheah* does not support his cause. In fact, reliance on *PNB v. Cheah* actually weakens Tan's claim.

It is well established that whoever alleges a fact has the burden of proving it because mere allegation is not evidence.[68] The records show that while Tan harped on Union Bank's alleged gross negligence, he failed to cite the specific provision of law, banking regulation, or internal rule which had been violated by Union Bank. What is clear from the evidence on record is that due to a technical error in Union Bank's system, the funds corresponding to the value of the BPI Check were credited to Tan's account *before* actual return and clearance. Because of this error, said funds were *inadvertently* made available for Tan's withdrawal upon Union Bank's mistaken belief that the check had already been cleared. Upon notice of the BPI Check's dishonor, Union Bank's officer immediately notified Tan of such fact.[69] However, despite repeated demands, Tan refused

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[67] *Philippine National Bank v. Cheah*, supra note 47, at 61-65.

[68] *Dela Cruz v. Octaviano*, 814 Phil. 891, 905 (2017) [Second Division, per J. Peralta].

[69] *Rollo*, p. 42.

to return the amount he had withdrawn insisting that the BPI Check was given to him for value and in the course of business.[70]

Clearly, Tan failed to substantiate his imputation of gross negligence. While Union Bank concedes that a technical error in its own system allowed Tan to withdraw the proceeds of the BPI Check before clearance, this error cannot be likened to the blatant violation of internal procedure committed by PNB' s Division Chief in *PNB v. Cheah*.

More importantly, in *PNB v. Cheah*, respondent Ofelia did *not* benefit from the proceeds of the dishonored BOA Check. While Ofelia deposited said check to facilitate encashment, she subsequently delivered the proceeds to Filipina. In this case, it is established that the funds in dispute had been withdrawn by Tan himself. In fact, Tan acknowledged that he used said funds to pay one of his suppliers.[71] **Allowing Tan to benefit from the erroneous payment would undoubtedly permit unjust enrichment at Union Bank's expense particularly in light of circumstances which indicate that Tan withdrew in bad faith the mistakenly released funds**.

Article 1909 does not preclude recovery on the part of Union Bank.

In an attempt to evade liability, Tan also argues that, as his collecting agent, Union Bank should be held solely responsible for losses arising from its own negligence, pursuant to Article 1909 of the Civil Code. Tan invokes the Court's ruling in *Metrobank v. CA* as basis.

Tan's reliance on *Metrobank v. CA* is misplaced.

In said case, a certain Eduardo Gomez (Eduardo) deposited 38 treasury warrants with a total amount of ₱1,755,228.37 to his account with Golden Savings and Loan Association (Golden Savings). Since Golden Savings did not have its own clearing

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[70] Id. at 44.

[71] Id. at 43.

facilities, its cashier Gloria Castillo endorsed said warrants and deposited them in Golden Savings' account with petitioner Metropolitan Bank and Trust Company (Metrobank).

Gloria went to Metrobank several times to confirm whether the warrants had been cleared. While Gloria was initially told to wait, Metrobank eventually allowed her to withdraw the proceeds of the warrants on behalf of Golden Savings due to "exasperation" over her repeated inquiries, and as a form of accommodation to Golden Savings as a valued client. Thereafter, Eduardo was allowed to withdraw from his deposit account with Golden Savings.

Five days after Eduardo's last withdrawal, Metrobank informed Golden Savings that 32 out of the 38 treasury warrants were dishonored by the Bureau of Treasury. Thus, Metrobank demanded that Golden Savings refund the proceeds previously withdrawn to make up for the deficit in its account. Golden Savings rejected the demand, causing Metrobank to file a complaint for collection of sum of money with the RTC.

The RTC ruled in favor of Golden Savings. The CA affirmed on appeal. Aggrieved, Metrobank filed a petition for review before the Court, alleging, among others, that "[it] cannot be held liable for its failure to collect on the warrants" since it merely acted as a collecting agent.[72]

In its Decision, the Court applied Article 1909 to hold Metrobank liable for the losses suffered by Golden Savings as a result of Metrobank's negligence. The Court held:

> From the above undisputed facts, it would appear to the Court that Metrobank was indeed negligent in giving Golden Savings the impression that the treasury warrants had been cleared and that, consequently, it was safe to allow [Eduardo] to withdraw the proceeds thereof from his account with it. Without such assurance, Golden Savings would not have allowed the withdrawals; with such assurance, there was no reason not to allow the withdrawal. Indeed, Golden

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[72] *Metropolitan Bank and Trust Company v. Court of Appeals*, supra note 49, at 173.

Savings might even have incurred liability for its refusal to return the money that to all appearances belonged to the depositor, who could therefore withdraw it any time and for any reason he saw fit.

It was, in fact, to secure the clearance of the treasury warrants that Golden Savings deposited them to its account with Metrobank. Golden Savings had no clearing facilities of its own. It relied on Metrobank to determine the validity of the warrants through its own services. **The proceeds of the warrants were withheld from [Eduardo] until Metrobank allowed Golden Savings itself to withdraw them from its own deposit. It was only when Metrobank gave the go-signal that [Eduardo] was finally allowed by Golden Savings to withdraw them from his own account**.[73] (Emphasis supplied)

By invoking Article 1909 as applied in *Metrobank v. CA*, Tan appears to assert that he, as principal-depositor, suffered losses because of the technical error in Union Bank's system. This assertion is clearly false.

As stated, Tan had no right to receive the proceeds of the BPI Check. **Evidently, Tan did not suffer any loss as a result of Union Bank's technical error. On the contrary, Tan unduly *gained* from the technical error, as it allowed him to withdraw and utilize funds which he had *no right* to receive.**

The fact that Tan received the BPI Check for value in the ordinary course of business does not negate his obligation to return the funds erroneously credited in his favor. Tan's remedy, if any, lies *not* against Union Bank, but against the drawer of the BPI Check Angli Lumber. All told, Tan's obligation to return the erroneously credited funds to Union Bank stands.

Amount due

The records show that Tan had a balance amounting to ₱93,700.60 *before* the value of the BPI Check was erroneously credited to his Union Bank account.[74] Due to Union Bank's

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[73] *Id.*

[74] *Id.* at 121.

system error, Tan's account was credited with the amount of ₱420,000.00, thereby increasing his balance to ₱513,700.60. Subsequently, Tan's account was credited an additional amount of ₱1,000.00 as a result of a separate encashment.

Later still, Tan withdrew the amount of ₱480,000.00. This left Tan's account with the balance of **₱34,700.60**. To illustrate:

Account balance prior to deposit	₱ 93,700.60
Amount credited due to system error	420,000.00
Separate encashment	1,000.00
Account balance prior to withdrawal	514,700.60
Amount withdrawn	(480,000.00)
Account balance after withdrawal	**₱34,700.60**

Since Tan refused to return the mistakenly credited amount of ₱420,000.00, Union Bank applied Tan's remaining balance of ₱34,700.60 to set off his debt before it filed its Complaint before the RTC.

Thus, the sum due to Union Bank is **₱385,299.40**, as stated in the RTC Decision. This awarded sum, not being a loan or forbearance of money, is subject to 6% interest per annum. In turn, such interest should be computed from the time when the amount due had been established with reasonable certainty, which, in this case, was the date of Union Bank's *extrajudicial* demand on November 20, 2007.

The deletion of damages, attorney's fees and costs of suit was not assailed.

Finally, the Court shall not delve into the issue of damages, attorney's fees, and cost of suit in this Decision considering that Union Bank no longer assailed the deletion of these awards before this Court.

WHEREFORE, the Petition is **DENIED**. The Decision dated February 3, 2016 and Resolution dated July 5, 2016 rendered by the Court of Appeals, Eleventh Division in CA-G.R. CV No. 102802 are **AFFIRMED.**

Petitioner Rodriguez Ong Tan, doing business under the name and style Yon Mitori International Industries, is **ORDERED** to pay respondent Union Bank of the Philippines the amount of **₱385,299.40** with legal interest at the rate of 6% per annum, computed from the time of extrajudicial demand on November 20, 2007 until full payment.

SO ORDERED.

Peralta, C.J. (Chairperson), Lazaro-Javier, Lopez, and *Rosario,*[**] *JJ.*, concur.

[**] Designated additional Member per Special Order No. 2794 dated October 9, 2020.

SECOND DIVISION

[G.R. No. 226144. October 14, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ZZZ,**[1] *Accused-Appellant*.

SYLLABUS

1. CRIMINAL LAW; RAPE; REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NO PERSON, ESPECIALLY ONE OF TENDER AGE, WOULD CRY "RAPE" IF NOT FOR THE QUEST FOR RIGHTFUL JUSTICE.— Article 266-A of the RPC, as amended, describes how the crime of Rape is committed: . . .

There is no reason for the Court to doubt that ZZZ had repeatedly obtained carnal knowledge of the victim, a minor, by means of coercion, threats, and intimidation. To quell all misgivings, if any, in AAA's testimony, the same is reproduced in exhaustive part: . . .

No exact account was made in open court anent the alleged September 13, 2007 and November 6, 2007 incidents. Even so, AAA was still able to lay out the sordid circumstances and the pertinent specifics of her Rape during the said dates in her initiatory *Sinumpaang Salaysay*: . . .

AAA identified this *Sinumpaang Salaysay* as her own on the witness stand. It thus formed part of her direct testimony, and its contents were subjected to cross-examination by the defense. In open court, she readily recognized and pointed to ZZZ as her violator. She recounted the harrowing nights that tormented her for six years of living with ZZZ. The examining physician's *Medico-Legal* Report, which stated "blunt force or penetrating trauma" in AAA's ano-genital examination,

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[1] Initials were used for the name of accused-appellant per Supreme Court Amended Administrative Circular No. 83-2015 or *Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders using Fictitious Names/Personal Circumstances* issued on September 5, 2017.

corroborated the latter's testimony. The Court sees no compelling motive for the victim to lie. After all, no person, especially one of tender age, would ordinarily cry "rape" and subject oneself to the consequent rigors and embarrassments of medical examination and public trial, if not for the quest for rightful justice.

Moreover, ZZZ miserably failed to overturn the burden of evidence against him. His defenses were threefold: denial, alibi, and imputation of ill motive against the victim. All such defenses, however, disintegrate on their own.

2. ID.; ID.; ID.; ID.; ID.; A CLEAR AND CATEGORICAL TESTIMONY OF THE VICTIM, EVEN IF IT STANDS ON ITS LONESOME, MAY SUSTAIN A VERDICT OF GUILT.— [D]enial is an inherently weak defense. While a conviction rests not on the weakness of the defense but on the strength of the evidence against the accused, the Court finds that the prosecution has fully discharged its evidentiary duty. The testimony of the victim was categorical, leaving no room to doubt that ZZZ truly raped her. It is long settled that a clear narration by a victim of the awful circumstances of her defloration, even if it stands on its lonesome, can sustain a strong verdict of guilt.

3. ID.; ID.; ROMANTIC AFFAIRS VOLUNTARILY ENGAGED INTO BY A RAPE VICTIM WITH HER BOYFRIEND WILL NOT OVERWRITE THE FACT OF RAPE COMMITTED BY THE ACCUSED.— ZZZ cannot escape culpability by highlighting AAA's intimate relationship with her boyfriend. . . .

Premarital relationships do not necessarily entail sexual intimacy. Neither can the sexual behavior of a rape victim reverse her violator's criminal culpability. It must always be remembered that the lack of consent is the line crossed in non-Statutory Rape. Romantic affairs voluntarily engaged into by a rape victim, whether before, during, or after the rape incident, will not overwrite the established fact that her violator forcibly obtained carnal knowledge of her without her consent.

4. ID.; ID.; IT IS NOT PHYSICALLY IMPOSSIBLE FOR THE RAPIST TO SEXUALLY ABUSE THE VICTIM EVEN IN THE PRESENCE OF ANOTHER PERSON.— [I]t is not

physically impossible for the rapist to sexually abuse the victim even in the presence of another person. Criminal lust does not discriminate. Undaunted by age, sex, relationship, place, distance, time, aesthetic preferences, or moral considerations, sexual predators attack with reckless abandon and surprising ingenuity, always impelled by the sole aim of having their worldly fill. Perverse desires find ways. A mere arm-span distance from the victim or a lack of privacy will not deter a rapist who has been consumed entirely by lust.

5. ID.; ID.; REMEDIAL LAW; EVIDENCE; MOTIVE; ILL MOTIVE IS INCONSEQUENTIAL IN THE FACE OF AN AFFIRMATIVE AND CREDIBLE DECLARATION OF THE RAPE VICTIM.— [T]hat the victim harbored animosity against the rapist's fatherly discipline hardly dents the evidence proffered against him by the prosecution. Ill motive becomes inconsequential in the face of an affirmative and credible declaration from the rape victim, who had already clearly established the liability of the accused. Moreover, ZZZ's theory is specious at best. It was never corroborated, and bare allegations deserve scant consideration for being self-serving.

6. ID.; ID.; STATUTORY RAPE; WHERE THE VICTIM IS BELOW 12 YEARS OLD, THE CHILD'S CONSENT TO THE SEXUAL INTERCOURSE IS NOT RELEVANT.— [F]or a third count of Rape . . . committed when the victim was only eight years of age, Article 266, Paragraph 1(d), not 1(a), now operates: . . .

Sexual intercourse with a victim who is under 12 years old, as defined under Article 266-A, Paragraph 1(d) of the RPC, is Statutory Rape. Where the victim is below 12 years old, the only subject of inquiry is whether carnal knowledge took place. Under the law, *carnal knowledge* is the act of a man having sexual intercourse or sexual bodily connections with a woman. The victim's consent to the vile act holds no relevance here –– it is settled that a child's consent is immaterial because of his or her presumed incapacity of discerning evil from good.

7. ID.; ID.; NOMENCLATURE OF CRIMES; THE CRIME IS RAPE UNDER ART. 266-A PAR. 1(a) OF THE RPC, AS AMENDED, WITHOUT CORRELATION TO

R.A. NO. 7610, WHERE THE VICTIM IS TWELVE (12) YEARS OLD OR BELOW EIGHTEEN (18) AND THE CRIME WAS COMMITTED THROUGH FORCE OR INTIMIDATION, BUT STATUTORY RAPE IF THE VICTIM IS UNDER TWELVE (12) YEARS OF AGE. — The courts below prosecuted and convicted ZZZ for all three counts of Rape committed against the minor victim as defined under **Article 266-A, Paragraph 1(a) of the RPC in relation to RA 7610**. The Court fixes this error in the nomenclature of ZZZ's crimes. As it now stands, ZZZ is criminally liable for two (2) counts of Rape defined under **Article 266-A, Paragraph 1(a) and one count of Statutory Rape under Paragraph 1(d), all penalized under Article 266-B of the RPC. The correlation to RA 7610 is deleted.** *People v. Tulagan* explains the *ratio* for a correct designation of offenses under Article 266-A, Paragraph 1(a) and Article 266-B of the RPC and not under RA 7610[.]

8. ID.; ID.; RAPE; PENALTY AND DAMAGES. — ZZZ is liable for two counts of Rape . . . and one count of Statutory Rape . . . The penalty of *reclusion perpetua* in each case as imposed by the courts below are unaffected and retained.

. . .

. . . In line with prevailing jurisprudence, the Court increases the amounts of moral damages and civil indemnity from ₱50,000.00 to ₱75,000.00 for each count of rape. The grant of exemplary damages is also restored in the amount of ₱75,000.00, also for each count.

All amounts due shall further earn legal interest of six percent (6%) per *annum* from the date of the finality of this judgment until full payment, following *Nacar v. Gallery Frames*.

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

HERNANDO, *J.*:

On appeal[2] is the November 28, 2014 Decision[3] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04489 which affirmed with modification the March 3, 2010 Decision[4] of the Regional Trial Court, Branch 90 of [redacted],[5] Cavite (RTC). The RTC Decision convicted accused-appellant ZZZ for three (3) counts of Rape under Article 266-A, Paragraph 1 (a) of the Revised Penal Code (RPC), as amended, in relation to Republic Act No. 7610 (RA 7610), as amended, otherwise known as the Act Providing for Stronger Deterrence and Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.

The Facts

On November 26, 2008, ZZZ was charged with three (3) counts of Rape under Article 266-A, Paragraph 1 (a) of the RPC, in relation to RA 7610. The Informations filed before the RTC accused ZZZ as follows:

In Crim. Case No. 5635-09:

That on or about the 13th day of September 2007, in the Municipality of [redacted], Province of Cavite, Philippines, a place within the jurisdiction of this Honorable Court, accused, being the stepfather of one **AAA**,[6] a fifteen (15) year-old minor, having been born on

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[2] All arguments raised in the Appellant's Brief (CA *rollo*, pp. 22-35) filed before the CA adopted and repleaded by the accused-appellant per November 15, 2016 Manifestation, *rollo*, pp. 23-25.

[3] CA *rollo*, pp. 86-98; penned by Associate Justice Myra V. Garcia-Fernandez and concurred in by Associate Justices Fernanda Lampas-Peralta and Francisco P. Acosta.

[4] *Id.* at 8-12.

[5] Geographical location was blotted out per Supreme Court Amended Administrative Circular No. 83-2015, *supra* note 1.

[6] Initials were used for the name of minor victim per Supreme Court Amended Administrative Circular No. 83-2015, *supra* note 1.

October 14, 1991, by means of violence, and intimidation, and by taking advantage of his moral ascendancy being the stepfather of the said minor, with lewd designs and actuated by lust, did then and there willfully, unlawfully and feloniously have carnal knowledge of his said stepdaughter, against her will and consent, thus debasing, degrading and demeaning her intrinsic worth and dignity as a child, to her damage and prejudice.

CONTRARY TO LAW.[7]

In Crim. Case No. 5636-09:

That on or about the 6th day of November 2007, in the Municipality of [redacted] Province of Cavite, Philippines, a place within the jurisdiction of this Honorable Court, accused, being the stepfather of one AAA, a sixteen (16) year-old minor, having been born on October 14, 1991, by means of violence, and intimidation, and by taking advantage of his moral ascendancy being the stepfather of the said minor, with lewd designs and actuated by lust, did then and there willfully, unlawfully and feloniously have carnal knowledge of his said stepdaughter, against her will and consent, thus debasing, degrading and demeaning her intrinsic worth and dignity as a child, to her damage and prejudice.

CONTRARY TO LAW.[8]

In Crim. Case No. 5637-09:

That on or about the year of 1999, in the Municipality of [redacted] Province of Cavite, Philippines, a place within the jurisdiction of this Honorable Court, accused, being the stepfather of one AAA, an eight (8) year-old minor, having been born on October 14, 1991, by means of violence, and intimidation, and by taking advantage of his moral ascendancy being the stepfather of the said minor, with lewd designs and actuated by lust, did then and there willfully, unlawfully and feloniously have carnal knowledge of his said stepdaughter, against her will and consent, thus debasing, degrading a demeaning her intrinsic worth and dignity as a child, to her damage and prejudice.

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[7] Records, pp. 1-2.

[8] Id. at 17-18.

CONTRARY TO LAW.[9]

Upon the prodding of her mother, victim AAA filed an Affidavit of Desistance to withdraw the case against ZZZ.[10] Despite this, arraignment proceeded. ZZZ pleaded not guilty to the charges.[11] Trial ensued. The prosecution presented as its witnesses AAA and Dr. Merle P. Tan (Dr. Tan), who was the examining physician at the University of the Philippines-Philippine General Hospital, Child Protection Unit. ZZZ alone testified for his defense.

Version of the Prosecution:

AAA was born on October 14, 1991.[12] She identified ZZZ as her stepfather.[13] She and her mother began living with ZZZ when her mother separated from her biological father. While able to recall only three specific occasions, AAA testified that ZZZ started perpetrating the acts complained of when she was in grade 5 or since she was 10 years old.[14] It happened at least twice a week to as often as every night in their house and usually whenever her mother was not around. ZZZ would wake AAA up, tell her to keep quiet, remove her shorts and panty, and then insert his organ into her private part. ZZZ would force himself on AAA even if her stepsister, BBB, was sleeping with them, and it never occurred to AAA to wake BBB up during those times. ZZZ always threatened to kill her and her mother if she would disclose the incidents to anyone. She also narrated that accused-appellant committed these sexual acts sometime

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[9] Id. at 36-37.

[10] Id. at 31; Affidavit of Desistance dated January 30, 2009 signed by victim AAA.

[11] Id. at 52; RTC Order dated March 4, 2009.

[12] Id. at 11; Certificate of Live Birth of AAA, Exhibit "B".

[13] TSN, September 1, 2009, p. 4.

[14] Id. at 8; victim initially alleged in her *Sinumpaang Salaysay* that accused-appellant started molesting her in the year 1999 when she was 8 years old (records, p. 44).

before her birthday or on September 13, 2007.[15] She was 16 years old when she was last molested on November 6, 2007.[16] It was only after she disclosed incidents to her boyfriend (who in turn told AAA's mother) that she was able to leave their house, submit herself to a physical examination, and file the complaint against ZZZ.

Dr. Tan conducted her general physical and ano-genital examination.[17] Dr. Tan testified that while there was no evident injury on AAA's genitalia at the time of the examination on November 14, 2007, there was an indentation of her hymen suggesting a possibility that it was penetrated by a blunt object, possibly a sex organ.[18]

Version of the Defense:

ZZZ denied the accusations against him. He averred that he was sleeping at the times he allegedly committed the sexual acts against AAA. He always slept beside his daughter, BBB, and while AAA slept on the same *banig* (mat) and in the same room, the latter stayed in a spot farther away from him. He was strict over AAA and was against her relationship with her boyfriend as he believed that the latter was already married to another person. The sexual acts imputed by AAA against him were all lies, since she and her boyfriend disliked his stern demeanor over their relationship.[19]

The RTC Ruling

The RTC convicted ZZZ as charged. It found his defense of denial and alibi too weak as against the victim's positive identification and categorical testimony of Rape. The trial court also disbelieved ZZZ's unsubstantiated theory that the filing

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[15] Records, p. 44; victim's *Sinumpaang Salaysay*.

[16] Id.

[17] Id. at 55; per Final Medico-Legal Report Number: 2007-4966.

[18] TSN, May 13, 2009, pp. 4-7.

[19] TSN, November 24, 2009.

of the Rape charge was motivated by AAA's hate for him and his manner of discipline. The RTC decreed in its Decision[20] in the following manner:

> WHEREFORE, premises considered, the Court hereby finds the accused guilty beyond reasonable doubt of the crime of rape, as defined and penalized under Article 266-A, par. 1(a) of the Revised Penal Code in relation to R.A. 7610 and hereby sentences the accused to suffer the penalty of *reclusion perpetua* for each criminal information in CRIM. CASE NO. 5635-09; CRIM. CASE NO. 5636-09 and CRIM. CASE NO. 5637-09, and to pay the victim moral damages in the amount of Php50,000.00, civil indemnity ex-delicto in the amount of Php25,000.00. Accordingly, the number of days he spent under detention shall be deducted from the aforesaid judgment.
>
> Costs against the accused.
>
> SO ORDERED.[21]

ZZZ appealed to the CA.[22]

The CA Ruling

The CA did not doubt the victim's credibility and affirmed the RTC's judgment of conviction. It found ZZZ's bare denial as opposed to AAA's positive testimony without evidentiary value, and that ill motive will not overturn an established charge of Rape. The appellate court, however, deleted the award of exemplary damages in the absence of an aggravating circumstance. In its assailed Decision,[23] the CA held in this wise:

> **WHEREFORE**, the appeal is **DENIED**. The decision dated March 3, 2010 of the Regional Trial Court of [redacted], Cavite, Branch 90, finding [ZZZ] guilty beyond reasonable doubt of three (3) counts of rape as defined under Article 266-A, par. 1(a) of the Revised Penal Code in relation to Republic Act No. 7610 and sentencing him to suffer the penalty of *reclusion perpetua* in each

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[20] CA *rollo*, pp. 8-12.

[21] Id. at 12.

[22] Id. at 15; Notice of Appeal.

[23] Id. at 86-98.

case is **AFFIRMED WITH MODIFICATION**. The award of civil indemnity of ₱50,000.00 and moral damages of ₱50,000.00 is **affirmed**. The award of exemplary damages is **deleted**.

SO ORDERED.[24]

ZZZ thus appeals to this Court.[25]

Issue

Whether or not ZZZ's guilt for the crimes charged was proven beyond reasonable doubt.

The Court's Ruling

The appeal has no merit.

Article 266-A of the RPC, as amended, describes how the crime of Rape is committed:

> Art. 266-A. *Rape, When and How Committed*. — **Rape is committed —**
>
> **1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:**
>
> **a) Through force, threat or intimidation**;
>
> b) When the offended party is deprived of reason or is otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority;
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present[.] (Emphasis supplied.)

There is no reason for the Court to doubt that ZZZ had repeatedly obtained carnal knowledge of the victim, a minor, by means of coercion, threats, and intimidation. To quell all misgivings, if any, in AAA's testimony, the same is reproduced in exhaustive part:

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[24] Id. at 97-98.

[25] Id. at 99; Notice of Appeal.

ASST. PROS. JARLOS:
x x x You are the private complainant in this case?
A: Opo.

Q: You know [ZZZ]?
A: Opo.

Q: Why do you know him?
A: Stepfather ko po, Sir.

x x x x x x x x x

Q: Is he inside the Courtroom?
A: Opo.

Q: Please point to him?
A: (Witness is pointing to a man wearing a yellow T-shirt who when asked answered the name of [ZZZ].)

Q: And what year were you born, Madam Witness?
A: September 13, 1991, Sir.

Q: Hindi ba October 14, 1991?
A: Yon pong birthday September 13, 1991, Sir, pero ang nakalagay dyan October 14, 1991.

ASST. PROS. JARLOS:
May we [ask] for a correction, your Honor. Bali September 13, 1991, your Honor.

COURT: What is the date on the Certificate of Live Birth?

ASST. PROS. JARLOS:
October 14, 1991, your Honor. So, your Honor, this is correct.

x x x x x x x x x

COURT: Proceed, Fiscal.

ASST. PROS. JARLOS:
So, how old are you now Madam Witness?

A: Seventeen (17) po.

x x x x x x x x x

Q: And you said that the accused in this case is your stepfather, how come?
A: Asawa po ng mama ko, Sir.

Q: Pagkatapos maghiwalay ng mama mo at [ng] papa mo, siya na ang asawa ngayon ng mama mo?
A: Opo.

x x x x x x x x x

Q: So, you are living with them together?

A: Opo.

x x x x x x x x x

Q: Now, while he was staying with you, do you remember whether there was an unusual incident that happened inside your house between you and the accused in this case?
A: Opo.

Q: What was that?
A: Noong ginalaw niya po ako, Sir.

COURT: Ilang taon ka [noong] una kang ginalaw ng taong yan?
A: Ten (10) years old, Ma'am.

ASST. PROS. JARLOS:
And where did he molest you?
A: Sa bahay po.

x x x x x x x x x

Q: And what time was that when the accused first molested you?
A: Tuwing matutulog po.

Q: During night time?
A: Opo.

COURT: Anong buwan at araw ng unang panghahalay sayo?

A: Grade five (5) po ako.

COURT: So, that was the first rape when she was in grade 5.

ASST. PROS. JARLOS:

x x x x x x x x x

The first time, how did he start molesting you?

A: Tinatakot niya po ako.

Q: What were you doing at that time?

A: Sumusunod lang po ako.

COURT: Ano ang hinihigaan niyo, kama o banig?

A: Banig po.

x x x x x x x x x

ASST. PROS. JARLOS:

Q: You said we, who was your companion?

A: Kapatid ko po.

Q: A younger sibling?

A: Opo.

Q: And when you were about to sleep, what happened if there was any?

A: Tulog na po ako tapos gigisingin niya po ako.

x x x x x x x x x

Q: What did he tell you when he was trying to wake you up?

A: Wag daw po ako maingay. Wag daw po ako magsumbong sa mama ko.

Q: And then, what did you do next?

A: Natakot po ako.

COURT: Sumiping ba sayo?

A: Opo.

Q: Pagkatapos tumabi sa yo, ano ang ginawa niya?

A: Hinubad niya po ang short ko at panti ko.

ASST. PROS. JARLOS:

Q: You were totally nude?

A: Opo.

COURT: Hinubuan ka lang or hinubaran ka?

A: Hinubaran po.

Q: Tinanggal pati pang taas mo?

A: Hindi po.

Q: Yun lang?
A: Tinanggal po yung short at panti ko.

x x x x x x x x x

ASST. PROS. JARLOS:
After he took off your short and panti, what happened next?
A: Pinasok niya po ang kanyang ari.

Q: What about the accused, what was he wearing during that time when he inserted his private organ?
A: Wala po. Hinubad niya rin po.

Q: And how long did it take the accused to insert and remove his penis or organ from your organ?
A: Saglit lang po. Tapos inalis niya po.

Q: Immediately after inserting his organ [into] your organ, what did he do next?
A: He was pumping.

Q: Thereafter he withdrew his organ?
A: Opo.

Q: What happened next after that?
A: Ibinalik niya po sa akin yung short ko at panti ko.

Q: And what did he tell you if there was any?
A: Wag daw po ako magsusumbong sa nanay ko.

COURT: May dala ba siyang patalim?
A: Lagi po siyang may dalang patalim.

Q: Itinututok ba yan sayo?
A: Sabi lang niya na papatayin ako at nanay ko pag nagsumbong ako.

ASST. PROS. JARLOS:
When was that repeated again?
A: Minsan tuwing gabi. Minsan sa isang linggo.

Q: How many times a week?
A: Minsan gabi-gabi.

COURT: Gabi-gabi ba yan ginagawa sa yo?
A: Minsan po.

Q: Isang [beses] sa isang gabi. Halimbawa nangyari ngayon gabi, kinabukasan ginawa pa niya ulit sayo?
A: Minsan po ganon.

Q: Sa isang linggo, ilang araw na ginagawa yan sayo?
A: Mga dalawang [beses] po.

Q: Dalawang [beses] sa isang linggo?
A: Opo.

Q: Tapos titigil. Sa susunod na linggo, gagawin ulit sayo? Ilang [beses] sa susunod na linggo?
A: Minsan tatlong beses.

Q: So, nung sampung taon ka ginagawa niya sayo yan?
A: Opo.

ASST. PROS. JARLOS:
Until when did he stop molesting you, how old were you?
A: Third year high school po.

Q: From that time until he stopped doing that to you, you did not mind telling this to your mother?
A: Natatakot po ako sabihin kasi sabi niya papatayin daw niya kami pag nagsumbong ako sa nanay ko.[26]

No exact account was made in open court anent the alleged September 13, 2007 and November 6, 2007 incidents. Even so, AAA was still able to lay out the sordid circumstances and the pertinent specifics of her Rape during the said dates in her initiatory *Sinumpaang Salaysay*:[27]

9. T[ANONG]: Bakit ka naririto sa aming opisina?
S[AGOT]: Para idemanda ang aking step father [na si ZZZ].

10. T: Bakit naman nais mo siyang idemanda?
S: Kasi po ni-rape niya ako.

x x x x x x x x x

12. T: Kailan at saan naman yung huling pang-rarape sayo?
S: November 6, 2007 bandang 11:00 PM, sa loob ng aking kwarto.

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[26] TSN, September 1, 2009, pp. 3-14.

[27] Records, pp. 9-10.

13. T: Maari mo bang ikwento sa akin ang pangyayari noong November 6, 2007?
S: Matutulog na po ako, pumasok si Papa. Naramdaman ko na hinihipuan ako sa dibdib. Tinanggal niya ang panty ko. Pumatong na po siya sa akin. Pinasok niya yung ari niya sa ari ko. Hinalikan niya ako sa buong katawan. Umalis din siya pagkatapos.

14. T: Gaano kadalas ito ginagawa ng Papa mo?
S: Sa tatlong (3) beses sa isang linggo.

15. T: May natatandaan ka ba petsa?
S: Basta po malimit na niya ako nirarape. Noong bago ako magbirthday September 13, 2007, ni rape ulit ako ni papa.

16. T: Papaano ka ni rape ni Papa?
S: Wala ulit si mama, nagtitinda siya sa gabi. Pumasok ako sa kwarto para matulog. Sumunod si papa sa akin. Pumatong siya sa akin at hinalikan niya ako sa buong katawan. Tapos tinanggal niya ang panty ko. Ipinasok niya ang ari niya sa ari ko. Umalis siya pagkatapos.

[17]. T: Mayroon ka pa ba natatandaan[g] insidente katulad nito?

S: Maraming beses po niya ako nirerape pero hindi [ko po] talaga matandaan ang mga petsa.[28]

AAA identified this *Sinumpaang Salaysay* as her own on the witness stand.[29] It thus formed part of her direct testimony, and its contents were subjected to cross-examination by the defense. In open court, she readily recognized and pointed to ZZZ as her violator. She recounted the harrowing nights that tormented her for six years of living with ZZZ. The examining physician's *Medico-Legal* Report,[30] which stated "blunt force or penetrating trauma" in AAA's ano-genital examination, corroborated the latter's testimony. The Court sees no compelling motive for the victim to lie. After all, no person, especially

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[28] *Id.*

[29] TSN, September 1, 2009, p. 17.

[30] Records, p. 55; Final Medico-Legal Report Number: 2007-4966.

one of tender age, would ordinarily cry "rape" and subject oneself to the consequent rigors and embarrassments of medical examination and public trial, if not for the quest for rightful justice.[31]

Moreover, ZZZ miserably failed to overturn the burden of evidence against him. His defenses were threefold: denial, alibi, and imputation of ill motive against the victim. All such defenses, however, disintegrate on their own.

First, denial is an inherently weak defense. While a conviction rests not on the weakness of the defense but on the strength of the evidence against the accused, the Court finds that the prosecution has fully discharged its evidentiary duty. The testimony of the victim was categorical, leaving no room to doubt that ZZZ truly raped her. It is long settled that a clear narration by a victim of the awful circumstances of her defloration, even if it stands on its lonesome, can sustain a strong verdict of guilt.

Also, ZZZ cannot escape culpability by highlighting AAA's intimate relationship with her boyfriend. The following is his attempt to invite suspicion by alleging in his *Brief* that AAA's live-in relationship with her boyfriend preceded the conduct of her *medico-legal* examination in 2007:

> [Anent] the findings of Dr. Tan of the presence of a deep notch in [AAA's] hymen, the same cannot be conclusively attributed to the alleged rape committed by the accused-appellant, **considering that she started cohabiting with her boyfriend when she was sixteen (16) years old and prior to the medico-legal examination.** [AAA] testified:
>
> ATTY. ANDRADE: But would *(sic)* agree with me that **you undergone *(sic)* examination at PGH. You have already a boyfriend, is it not?**
> A: **Opo.**

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[31] *People v. Bagsic*, 822 Phil. 784, 796 (2017); citing *People v. Basmayor*, 598 Phil. 184, 194 (2009).

This is bolstered by the testimony of the accused:

Q: **Were they already living together before the private complainant file** (sic) **this case?**

A: **Opo. Nagsasama na sila, mayroon na po silang anak.**

ATTY. ANDRADE: No further questions, your Honor.[32]

[Emphasis supplied; original emphasis and citations omitted.]

Premarital relationships do not necessarily entail sexual intimacy. Neither can the sexual behavior of a rape victim reverse her violator's criminal culpability. It must always be remembered that the lack of consent is the line crossed in non-Statutory Rape. Romantic affairs voluntarily engaged into by a rape victim, whether before, during, or after the rape incident, will not overwrite the established fact that her violator forcibly obtained carnal knowledge of her without her consent.

Nonetheless, the trial court had clarified the matter with AAA upon the conclusion of her cross-examination:

COURT:	Just a moment. When for the first time did you have sex with your boyfriend?
A:	Noong nagsama po kami.
Q:	Ito lang 2008?
A:	Opo.[33]

Next, it is not physically impossible for the rapist to sexually abuse the victim even in the presence of another person. Criminal lust does not discriminate. Undaunted by age, sex, relationship, place, distance, time, aesthetic preferences, or moral considerations, sexual predators attack with reckless abandon and surprising ingenuity, always impelled by the sole aim of having their worldly fill. Perverse desires find ways. A mere

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[32] CA *rollo*, pp. 31-32.

[33] TSN, September 1, 2009, p. 1.

arm-span distance from the victim or a lack of privacy will not deter a rapist who has been consumed entirely by lust.

Lastly, that the victim harbored animosity against the rapist's fatherly discipline hardly dents the evidence proffered against him by the prosecution. Ill motive becomes inconsequential in the face of an affirmative and credible declaration from the rape victim, who had already clearly established the liability of the accused.[34] Moreover, ZZZ's theory is specious at best. It was never corroborated, and bare allegations deserve scant consideration for being self-serving.

The designation of the crimes committed by ZZZ, however, must be corrected.

ZZZ faces conviction for three specific charges: one count of Rape committed against the victim when she was 15 years old under Criminal Case No. 5635-09, and another count of Rape in Criminal Case No. 5636-09 when the victim at the time was a 16-year-old. Article 266-A, Paragraph 1 (a) of the RPC applies to these two charges, herein reiterated:

> Art. 266-A. *Rape, When and How Committed.* — Rape is committed —
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> **a) Through force, threat or intimidation**;
>
> x x x x x x x x x (Emphasis supplied.)

He is also found liable for a third count of Rape in Criminal Case No. 5637-09 which he committed when the victim was only eight years of age. Article 266, Paragraph 1 (d), not 1 (a), now operates:

> Art. 266-A. *Rape, When and How Committed.* — Rape is committed —

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[34] *People v. Gersamio*, 763 Phil. 523, 537-538 (2015). Citation omitted.

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

x x x x x x x x x

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[.] (Emphasis supplied.)

Sexual intercourse with a victim who is under 12 years old, as defined under Article 266-A, Paragraph 1 (d) of the RPC, is Statutory Rape.[35] Where the victim is below 12 years old, the only subject of inquiry is whether carnal knowledge took place.[36] Under the law, *carnal knowledge* is the act of a man having sexual intercourse or sexual bodily connections with a woman.[37] The victim's consent to the vile act holds no relevance here — it is settled that a child's consent is immaterial because of his or her presumed incapacity of discerning evil from good.[38]

It bears noting that the initiatory Information in Criminal Case No. 5637-09 had alleged that AAA was eight years old at the time of the commission of the crime. AAA later on declared in open court that she was 10 years of age, not eight, when she was first raped by ZZZ. The discrepancy in age between that which was alleged from that which was proved does not matter. Whether 8 or 10 years, either age still falls under the qualifying bar of Statutory Rape, which is below 12 years old.

Article 266-B of the RPC prescribes the appropriate penalty for the commission of Rape under Paragraph 1, Article 266-A of the same law, *viz.*:

ART. 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

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[35] *People v. Tulagan*, G.R. No. 227363, March 12, 2019.

[36] *People v. Bejim*, 824 Phil. 10, 23 (2018).

[37] *Id.*

[38] *People v. Ronquillo*, 818 Phil. 641, 648 (2017); citing *People v. Arpon*, 678 Phil. 752 (2011) and *People v. Macafe*, 650 Phil. 580, 588 (2010).

The courts below prosecuted and convicted ZZZ for all three counts of Rape committed against the minor victim as defined under **Article 266-A, Paragraph 1 (a) of the RPC in relation to RA 7610**. The Court fixes this error in the nomenclature of ZZZ's crimes. As it now stands, ZZZ is criminally liable for two (2) counts of Rape defined under **Article 266-A, Paragraph 1(a) and one count of Statutory Rape under Paragraph 1(d), all penalized under Article 266-B of the RPC.**[39] **The correlation to RA 7610 is deleted.** *People v. Tulagan*[40] explains the ratio for a correct designation of offenses under Article 266-A, Paragraph 1 (a) and Article 266-B of the RPC and not under RA 7610:

> Assuming that the elements of both violations of Section 5(b) of R.A. No. 7610 and of Article 266-A, paragraph 1(a) of the RPC are mistakenly alleged in the same Information — *e.g.*, carnal knowledge or sexual intercourse was due to "force or intimidation" with the added phrase of "due to coercion or influence," one of the elements of Section 5(b) of R.A. No. 7610; or in many instances wrongfully designate the crime in the Information as violation of "Article 266-A, paragraph 1 (a) in relation to Section 5(b) of R.A. No. 7610," although this may be a ground for quashal of the Information under Section 3(f) of Rule 117 of the Rules of Court — and proven during the trial in a case where the victim who is 12 years old or under 18 did not consent to the sexual intercourse, the accused should still be prosecuted pursuant to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610. Indeed, **while R.A. No. 7610 is a special law specifically enacted to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development, We hold that it is contrary to the legislative intent of the same law if the lesser penalty *(reclusion temporal medium to reclusion perpetua)* under Section 5(b) thereof would be imposed against the perpetrator of sexual intercourse with a child 12 years of age or below 18**.

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[39] *People v. Tulagan*, supra note 35.

[40] Id.

Article 266-A, paragraph 1(a) in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, is not only the more recent law, but also deals more particularly with all rape cases, hence, its short title "*The Anti-Rape Law of 1997*." R.A. No. 8353 upholds the policies and principles of R.A. No. 7610, and provides a "stronger deterrence and special protection against child abuse," as it imposes a more severe penalty of *reclusion perpetua* under Article 266-B of the RPC. x x x [41] (Emphasis supplied.)

Withal, the rectification of ZZZ's conviction for three counts of Rape under a single criminal law provision is in order. ZZZ is liable for two counts of Rape defined in Article 266, Paragraph 1(a) of the RPC in Criminal Case Nos. 5635-09 and 5636-09, and one count of Statutory Rape under Article 266, Paragraph 1 (d) of the RPC, for Criminal Case No. 5637-09. The penalty of *reclusion perpetua* in each case as imposed by the courts below are unaffected and retained.

The awards of damages to AAA also begs modification.

The trial court held ZZZ liable for moral damages of ₱50,000.00, civil indemnity of ₱50,000.00, and exemplary damages of ₱25,000.00 for each count. The appellate court affirmed the grant of moral damages and civil indemnity but canceled the award of exemplary damages after finding no attendant aggravating circumstance in the cases. In line with prevailing jurisprudence,[42] the Court increases the amounts of moral damages and civil indemnity from ₱50,000.00 to ₱75,000.00 for each count of rape. The grant of exemplary damages is also restored in the amount of ₱75,000.00, also for each count.

All amounts due shall further earn legal interest of six percent (6%) per *annum* from the date of the finality of this judgment until full payment, following *Nacar v. Gallery Frames*.[43]

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[41] Id.

[42] See *People v. XXX*, G.R. No. 243789, September 11, 2019; *People v. Francica*, 817 Phil. 972 (2017).

[43] 716 Phil. 267 (2013).

WHEREFORE, the appeal is **DISMISSED**. The November 28, 2014 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04489 is **AFFIRMED with MODIFICATION**. Accused-appellant ZZZ is hereby found **GUILTY** beyond reasonable doubt of two (2) counts of Rape under Article 266-A, Paragraph 1(a), and one (1) count of Statutory Rape defined under Article 266-A, Paragraph 1 (d) of the Revised Penal Code, as amended by Republic Act No. 8353 or the Anti-Rape Law of 1997. He is sentenced to suffer the penalty of *reclusion perpetua* in each case. Accused-appellant ZZZ shall pay the victim AAA the following amounts for every count of Rape and Statutory Rape:

(1) ₱75,000.00 as civil indemnity;

(2) ₱75,000.00 as moral damages; and

(3) ₱75,000.00 as exemplary damages.

All amounts carry legal interest at the rate of six percent (6%) *per annum* from finality of this ruling until fully paid.

SO ORDERED.

Carandang,[*] *Lazaro-Javier,*[*] *Inting,* and *Delos Santos, JJ.*, concur.

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[*] Designated as additional members per Raffle dated October 5, 2020 vice Associate Justices Estela M. Perlas-Bernabe and Priscilla J. Baltazar-Padilla who recused due to prior action in the Court of Appeals.

SPECIAL SECOND DIVISION

[G.R. No. 231878. October 14, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ANTONIO "PAY TONYO" CORROBELLA,** *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; TOTAL EXTINCTION OF LIABILITY; EFFECTS OF THE DEATH OF THE ACCUSED ON THE CRIMINAL CASE; THE CRIMINAL LIABILITY AND CIVIL LIABILITY *EX DELICTO* ARE TOTALLY EXTINGUISHED BY THE DEATH OF THE ACCUSED BEFORE FINAL JUDGMENT.— Under prevailing law and jurisprudence, accused-appellant's death prior to his final conviction by the Court renders dismissible the criminal case against him, in accordance with Article 89 (1) of the Revised Penal Code which states that criminal liability is **totally extinguished** by the death of the accused.

. . .

Thus, upon accused-appellant's death pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for the recovery of the civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal action.

2. ID.; ID.; ID.; EFFECTS OF DEATH ON ACCUSED'S CIVIL LIABILITIES PENDING APPEAL; A SEPARATE CIVIL ACTION MAY BE FILED WITH RESPECT TO THE ACCUSED'S CIVIL LIABILITIES BASED ON SOURCES OTHER THAN DELICTS.— [I]t is well to clarify that accused-appellant's civil liability in connection with his acts against the victim, AAA, may be based on sources other than delicts; in which case, AAA may file a separate civil action against the estate of accused-appellant, as may be warranted by law and procedural rules.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

In a Resolution[1] dated January 8, 2018 (January 8, 2018 Resolution), the Court affirmed *in toto* the Decision[2] dated November 29, 2016 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07391 finding accused-appellant Antonio "Pay Tonyo" Corrobella (accused-appellant) guilty beyond reasonable doubt of three (3) counts of Statutory Rape, the pertinent portion of which reads:

WHEREFORE, the Court **ADOPTS** the findings of fact and conclusions of law in the November 29, 2016 Decision of the CA in CA-G.R. CR HC No. 07391 and **AFFIRMS** said Decision finding accused-appellant Antonio "Pay Tonyo" Corrobella **GUILTY** beyond reasonable doubt of three (3) counts of Statutory Rape, as defined and penalized under Article 266-A, paragraph 1 (d) of the Revised Penal Code, in relation to Section 5 (a) of Republic Act No. 8369 and Republic Act No. 8353. Accordingly, he is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA[3] the

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[1] *Rollo*, pp. 30-31. Signed by Deputy Division Clerk of Court Teresita Aquino Tuazon.

[2] Id. at 2-19. Penned by Associate Justice Ramon Paul L. Hernando (now a member of this Court) with Associate Justices Francisco P. Acosta and Stephen C. Cruz, concurring.

[3] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE

following amounts for each count: (*a*) ₱75,000.00 as civil indemnity; (*b*) ₱75,000.00 as moral damages; and (*c*) ₱75,000.00 as exemplary damages, with legal interest at the rate of 6% per annum on all amounts due from the date of the finality of this Resolution until full payment.

Aggrieved, on February 22, 2018, accused-appellant filed a motion for reconsideration (MR). Subsequently, in a Resolution[4] dated June 25, 2018, the Court required the Office of the Solicitor General to file its comment on the MR, which he complied with on October 10, 2018. Pending resolution of the MR, the Court received a Letter[5] dated January 16, 2020 from the Bureau of Corrections notifying Us of the death of accused-appellant on January 14, 2020, as evidenced by the Notice of Death[6] attached thereto.

Under prevailing law and jurisprudence, accused-appellant's death prior to his final conviction by the Court renders dismissible the criminal case against him, in accordance with Article 89(1) of the Revised Penal Code which states that criminal liability is **totally extinguished** by the death of the accused, to wit:

Article 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:

MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.) See further *People v. Ejercito*, G.R. No. 229861, July 2, 2018. To note, the unmodified CA Decision was not attached to the records to verify the real name of the victim.

[4] Id. at 48.

[5] Erroneously dated as "January 19, 2019," *Id.* at 67.

[6] Id. at 68.

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefore is extinguished only when the death of the offender occurs before final judgment;

x x x x

In *People v. Layag*,[7] the Court thoroughly explained the effects of the death of an accused pending appeal on his liabilities, as follows:

From this lengthy disquisition, we summarize our ruling herein:

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability [,] as well as the civil liability [,] based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."

2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

a) Law
b) Contracts
c) Quasi-contracts
d) x x x
e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure[,] as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

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[7] 797 Phil. 386 (2016).

> 4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with [the] provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[8]

Thus, upon accused-appellant's death pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for the recovery of the civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal action. However, it is well to clarify that accused-appellant's civil liability in connection with his acts against the victim, AAA, may be based on sources other than delicts; in which case, AAA may file a separate civil action against the estate of accused-appellant, as may be warranted by law and procedural rules.[9]

WHEREFORE, the Court resolves to: (*a*) **SET ASIDE** the Court's Resolution dated January 8, 2018 in connection with this case; (*b*) **DISMISS** Criminal Case Nos. P-4433, 4437, and 4438 before the Regional Trial Court of Pili, Camarines Sur, Branch 33, by reason of the death of accused-appellant Antonio "Pay Tonyo" Corrobella; and (*c*) **DECLARE** the instant case **CLOSED AND TERMINATED**. No costs.

Let entry of judgment be issued immediately.

SO ORDERED.

Peralta, C.J., Caguioa, and *Delos Santos, JJ.,* concur.

Baltazar-Padilla, J., on leave.

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[8] Id. at 390-391.

[9] See id. at 391; citations omitted.

FIRST DIVISION

[G.R. No. 237729. October 14, 2020]

SOCIAL HOUSING EMPLOYEES ASSOCIATION, INC. represented by its President Will O. Peran, *Petitioner*, *v.* **SOCIAL HOUSING FINANCE CORPORATION,** *Respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; A LITIGANT MAY IMMEDIATELY RESORT TO JUDICIAL ACTION WHEN THE QUESTION RAISED IS PURELY LEGAL.— [T]he doctrine of exhaustion of administrative remedies is not absolute and a litigant may immediately resort to judicial action when the question raised is purely legal. In this case, there is no issue of fact involved and the controversy centers on whether SHFC lacks authority to negotiate on the economic provisions of the CBA in view of the prohibitions under EO No. 7 and RA No. 10149. Undoubtedly, the issue is a pure question of law. The Court need only to look at the applicable rule to determine whether the adjusted benefits and bonuses may be implemented.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; VOLUNTARY ARBITRATION; APPEALS; PERIOD WITHIN WHICH TO FILE A MOTION FOR RECONSIDERATION; REGLEMENTARY PERIOD TO APPEAL DECISIONS OR AWARDS OF THE VOLUNTARY ARBITRATORS.— [W]e clarified that the 10-day period in Article 276 should be understood as the time within which the adverse party may move for a reconsideration from the decision or award of the voluntary arbitrators. Thereafter, the aggrieved party may appeal to the CA within 15 days from notice pursuant to Rule 43 of the Rules of Court. Here, SHFC received on June 11, 2015 a copy of the PVA's Decision and has 15 days or until June 26, 2015 within which to perfect an appeal. On June 25, 2015, SHFC filed a petition for review with the CA or 14 days after notice of the Decision which is well within the prescribed period.

3. ID.; ID.; COLLECTIVE BARGAINING AGREEMENT (CBA); THE ECONOMIC TERMS OF CBAs OF GOCCs CANNOT BE SUSTAINED IN VIEW OF THE MORATORIUM IN THE INCREASE OF SALARIES AND OTHER BENEFITS IN THE GOCCs AND THE ABSENCE OF PRIOR APPROVAL BY THE PRESIDENT.— [W]e stress that the SOHEAI and SHFC may establish in their CBAs such terms and conditions that are not contrary to law. Notably, there are existing and subsequent laws prohibiting GOCCs like SHFC from negotiating the CBAs' economic provisions. In 1978, the grant of allowances and other benefits to GOCCs must have the approval of the President upon the recommendation of the Budget Commissioner. In 2009, the Senate and House of Representatives Joint Resolution No. 4 authorized the President to approve policies and levels of allowances and benefits. In 2010, EO No. 7 provides a moratorium on increases in salaries, allowances, incentives and other benefits in the GOCCs. In 2011, RA No. 10149 created the Governance Commission for GOCCs and mandated it to develop a compensation and position classification system subject to the approval of the President. In 2016, EO No. 203 expressly disallowed the governing boards of GOCCs, whether chartered or non-chartered, to negotiate the economic terms of their CBAs.

As the CA aptly observed, EO No. 7 and RA No. 10149 are already effective before the negotiation and execution of the 2011 and 2013 CBAs between SOHEAI and SHFC. To be sure, the Governance Commission did not approve the economic terms of the CBAs and informed SHFC that it cannot implement the new benefits and increases. On this score, we stress that GOCCs officials and employees are not entitled to benefits and increases without the approval of the President or the Governance Commission.

4. ID.; ID.; ID.; MONETARY BENEFITS OF GOVERNMENT OFFICIALS AND EMPLOYEES MUST BE ANCHORED IN A LAW.— SOHEAI is not entitled to SONA bonus. A law must authorize the benefit before it may be granted to government officials or employees. Yet, the SONA bonus was given merely as a gratuity. It is not expressly or impliedly anchored in any law. The bonus is not even mentioned in the 2011 and 2013 CBAs. It is neither made part of the wage, salary or compensation

of the employee, nor promised by the employer and expressly agreed upon by the parties.

5. POLITICAL LAW; CONSTITUTIONAL LAW; PUBLIC FUNDS; ALL GOVERNMENT FUNDS ARE NOT SUBJECT TO GARNISHMENT OR LEVY IN THE ABSENCE OF A CORRESPONDING APPROPRIATION.— The rule is and has always been that all government funds are not subject to garnishment or levy, in the absence of a corresponding appropriation as required by law. It is based on obvious considerations of public policy that the functions and services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.

6. ID.; ID.; COMMISSION ON AUDIT (COA); ALL MONEY CLAIMS AGAINST THE GOVERNMENT MUST FIRST BE FILED WITH, AND APPROVED BY, THE COA.— [T]he Commission on Audit (COA) must first approve SOHEAI's money claims even after the issuance of a writ of execution. Apropos is Section 26 of Presidential Decree No. 1445 which vested COA the authority to examine, audit, and settle all debts and claims of any sort due from or owing to the Government, or any of its subdivisions, agencies, or instrumentalities, including all GOCCs[.]

. . .

Verily, all money claims against the Government must first be filed with the COA which must act upon it within 60 days. The rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on *certiorari* and, in effect, sue the State. Otherwise, the claim is premature and must fail.

APPEARANCES OF COUNSEL

Yuvienco Quizon Olalia & Associates for petitioner.
Office of the Government Corporate Counsel for respondent.

RESOLUTION

LOPEZ, *J.*:

The parties in a collective bargaining agreement may establish such stipulations, clauses, terms and conditions as they may deem convenient provided these are not contrary to law, morals, good customs, public order, or public policy.[1]

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals' (CA) Decision[2] dated July 21, 2017 in CA-G.R. SP No. 140975.

ANTECEDENTS

On December 24, 2008, Social Housing Finance Corporation (SHFC), a government-owned and controlled corporation, and Social Housing Employees Association, Inc. (SOHEAI), the legitimate labor organization of its rank-and-file employees, entered into a collective bargaining agreement (CBA).[3] On December 22, 2011,[4] the parties renegotiated the economic provisions of the agreement and adjusted several benefits, to wit:

Pertinent CBA Article	New Benefits and Increases
1. Emergency leave (Article X, Section 4.c)	Increase number of leaves from 3 days to 5 days a year.
2. Insurance and Health Benefits	Provide Insurance Coverage for accident or injury, including going-to and coming-to work.

[1] *Hongkong Bank Independent Labor Union (HBILU) Hongkong and Shanghai Banking Corp. Limited*, 826 Phil. 816, 838 (2018).

[2] *Rollo*, pp. 56-85; penned by Associate Justice Elihu A. Ybañez, with the concurrence of Associate Justices Magdangal M. De Leon and Carmelita Salandanan Manahan.

[3] *Id.* at 6.

[4] *Id.* at 90-103.

3. Transportation Allowance (Article X, Section 10)	Increase from ₱300 per month to ₱500 per month.
4. Funeral/Bereavement Assistance (Article XI, Section 2)	Increase from ₱10,000 to ₱20,000.00 to match funeral grant given by SSS.
5. Children's Allowance (Article X, Section 15)	Increase from ₱30/child to ₱100/child a month.
6. Employee Activities Subsidy (Article XI, Section 4)	Increase from ₱877/employee to ₱1,200/employee per year.
7. Provident Fund (Article X, Section 3)	Increase corporate share in the Provident Fund from 15% to 25%.
8. Anniversary Bonus	A new provision-provide for an anniversary bonus of ₱3,000.00 consistent with Administrative Order 263, series of 1996.[5]

On January 17, 2012, the Governance Commission for government-owned or controlled corporations (GOCCs) (The Commission) informed SHFC that it has no authority to negotiate new increases and benefits.[6] The Commission explained that Executive Order (EO) No. 7 dated September 8, 2010 provides a moratorium on increases in salaries, allowances, incentives and other benefits in the GOCCs. Moreover, Republic Act (RA) No. 10149,[7] approved on June 6, 2011 authorizes the Commission to develop a compensation and position classification system which shall apply to all officers and employees of the GOCCs whether under the Salary Standardization Law or exempt therefrom, subject to the approval of the President.

Accordingly, SHFC revoked the new benefits and increases effective immediately.[8] Aggrieved, SOHEAI requested for a

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

[6] *Id.* at 111-115.

[7] GOCC Governance Act of 2011.

[8] *Rollo*, p. 110.

reconsideration and argued that the revocation violated the policy on non-diminution of benefits.[9] SOHEAI likewise alleged that the grant of annual State of the Nation Address (SONA) bonus in the amount of ₱50,000.00 *per* employee ripened into a regular benefit. However, SHFC denied the request.[10] After the unsuccessful grievance mechanism, SOHEAI requested for preventive mediation with the National Conciliation and Mediation Board.[11] Meantime on December 3, 2013, the parties entered into a new CBA.[12]

Upon failure of mediation, SOHEAI submitted the controversy to the Panel of Voluntary Arbitrators (PVA).[13] SHFC, however, claimed that the PVA has no jurisdiction to settle the issues on the adjustments of the CBA's economic provisions and on whether the SONA bonus has ripened into a regular benefit. Furthermore, SHFC cannot implement the new benefits and increases based on EO No. 7 and RA No. 10149.

On May 12, 2015, the PVA ruled in favor of SOHEAI and ordered SHFC to comply with the collective bargaining agreements. Also, it found that the SONA bonus ripened into a regular benefit,[14] thus:

WHEREFORE, IN VIEW OF THE FOREGOING, judgment is hereby rendered:

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[9] *Id.* at 116-117.

[10] *Id.* at 118.

[11] *Id.* at 9.

[12] *Id.* at 126-138.

[13] *Id.* at 447-449. The following issues were submitted: (1) whether or not the Voluntary Arbitrators have jurisdiction to settle the issues involved considering the rulings made by the Governance [Commission] for GOCC's (GCG); (2) whether or not the complainants are entitled to the benefits claimed despite the prohibition made by the GCG; (3) whether or not the adjustment in the economic provisions as stated in the CBA of 2011 & 2013 may be implemented; and (4) whether or not the SONA bonus has ripened into a regular benefit in favor of the employees. *Id.* at 449.

[14] *Id.* at 204-230.

1. Ordering SHFC to strictly comply with the terms and conditions of the CBA dated December 22, 2011 and December 3, 2013 by granting unto the members of the SOHEAI the new benefits and increases as provided therein.

2. Declaring the SONA Bonus as having ripened into a regular benefit in favor of SHFC employees.

3. Ordering the SHFC to grant the unpaid SONA bonus from 2011 until the same is finally paid in favor of SHFC employees.

SO ORDERED. [15]

On June 11, 2015, SHFC received a copy of the Decision. On June 25, 2015, SHFC elevated the case to the CA through a Petition for Review[16] under Rule 43 of the Rules of Court. SHFC maintained that the PVA has no jurisdiction over the case and reiterated that it has no other recourse but to follow the Governance Commission's directive. In addition, the SONA bonus is not among the benefits authorized by law. Meanwhile, SOHEAI moved for the issuance of a writ of execution.[17] On August 26, 2015, the PVA granted the motion and directed the garnishment of SHFC's funds.[18]

On July 21, 2017, the CA annulled the PVA's ruling for lack jurisdiction. The CA noted that there have been laws already effective which provide that the approval of the President must first be obtained for the establishment of the compensation, allowances, and benefit systems in all GOCCs. Specifically, the new and increased benefits are contrary to EO No. 7 and RA No. 10149. Moreover, the SONA bonus is a mere gratuity and not a demandable obligation. As such, no writ of execution or garnishment should have been issued,[19] *viz.*:

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[15] *Id.* at 230.

[16] *Id.* at 231-256.

[17] *Id.* at 258-261.

[18] *Id.* at 308-311.

[19] *Id.* at 56-84.

There is merit in the petition. **The PVA has no jurisdiction over the present case**.

x x x x

In essence, SOHEAI is questioning the policy formulated and sought to be implemented by the GCG when it prohibited petitioner from abiding by the economic provisions of the 22 December 2011 and 3 December 2013 CBAs concerning the implementation of new benefits and increases, having for its bases Section 9 of EO 7 and RA 10149. x x x.

It must be realized that the enactment on 6 June 2011 of RA 10149 or the "GOCC Governance Act of 2011" amended the provisions in the charters of GOCCs and Government Financial Institutions (GFIs) empowering their Board of Directors/Trustees to determine their own compensation system in favor of the grant of authority to the President of the Philippines to perform this act. **In other words, with the enactment of RA 10149, the President is now authorized to fix the compensation framework of GOCCs.** x x x.

x x x x

x x x This means that the President can now issue an EO containing these same provisions without any legal constraints. **It is pertinent to say, at this point, that considering the terms of RA 10149, the Governing Boards and Managements of all GOCCs are without authority to enter into negotiations for the economic provisions of CBAs**.

That the subject CBAs, as pointed out by the PVA, are mere offshoots of the first CBA executed on 24 December 2008, "or long before the existence of the GCG," is of no significance. For, as early as when Presidential Decree (PD) No. 1597 was issued on 11 June 1978, agencies positions, or groups of officials and employees of the national government, including all GOCCs, were already instructed to observe such guidelines and policies as may be issued by the President governing position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. The authority to approve the grant of allowances and other benefits is vested in the President.

Subsequently, and before the subject CBAs were executed on 22 December 2011 and 3 December 2013, the Senate and House of Representatives Joint Resolution (JR) No. 4 (Series of 2009), otherwise known as the "Salary Standardization Law III," authorized the President to "approve policies and levels of allowances and benefits." x x x.

x x x x

Indeed, there have been laws already effective, even before the enactment of RA 10149, which provide that the approval of the President must first be obtained for the establishment of the compensation, allowances, and benefit systems in all GOCCs. Even RA 10149 itself was enacted prior to the execution of the subject CBAs. It is in this vein that We cannot subscribe to the PVA's view that it has jurisdiction over this suit; especially so with regard to the grant of the SONA bonus. Whether the SONA bonus, which is not even a part of the economic provisions of the CBAs, should be granted to SOHEAI members is clearly outside the jurisdiction of the PVA.

Withal, with the issuance of EO 7 on 8 September 2010, the board of directors/trustees and officers of GOCCs were precluded from increasing the salary rates of, and granting additional benefits to, their employees. x x x.

x x x x

The texts of the legal provisions are clear: that EO 7 extends to all GOCCs regardless of the manner of their creation. The EO does not distinguish between GOCCs created under a special law and those created under the Corporation Code. Where the law does not distinguish, the courts should not distinguish. There should be no distinction in the application of a statute where none is indicated. Where the law does not make any exception, the courts may not exempt something therefrom, unless there is compelling reason to the contrary. Petitioner SHFC is thus covered by EO 7, particularly by its provision on the moratorium on increases in salary rates, and the grant of new increases in the rates of allowances, incentives, and other benefits to members of the board of directors/ trustees, officers, and rank-and-file employees of the GOCCs.

Moreover, on 21 December 2011, or a day before the signing of the CBA on 22 December 2011, petitioner issued Board Resolution No. 274 approving the new CBA, but subject to, the approval of the GCG. x x x.

x x x x

Since this approval of the GCG was not secured, the CBA never became effective including the new benefits under it. Given the foregoing, SOHEAI cannot now insist on the implementation of the new and increased benefits.

x x x x

Verily, RA 10149 declares the policy of the State to ensure, among other things, that reasonable, justifiable, and appropriate remuneration schemes are adopted for the directors/trustees, officers, and employees of GOCCs and their subsidiaries to prevent or deter the granting of unconscionable and excessive remuneration packages. Section 9 of the law unequivocally states that, any law to the contrary notwithstanding, no GOCC shall be exempt from the coverage of the CPCS.

It may not be amiss to add, at this juncture, that on 22 March 2016, President Aquino issued EO 203 approving the CPCS and the Index of Occupational Services (IOS) Framework for the GOCC Sector that was developed by the GCG. **The EO provides, inter alia, that while recognizing the constitutional right of workers to self-organization, collective bargaining and negotiations, the Governing Boards of all GOCCs, whether chartered or non-chartered, may not negotiate with their officers and employees the economic terms of their CBAs**.

Furthermore, We do not agree with the PVA that the SONA bonus has already ripened into a regular benefit. Generally, employees have a vested right over existing benefits voluntarily granted to them by their employer. Thus, any benefit and supplement being enjoyed by the employees cannot be reduced, diminished, discontinued or eliminated by the employer. However, there must be an indubitable showing that the employer agreed to continue giving the benefit knowing fully well that the employees are not covered by any provision of the law or agreement requiring payment thereof.

x x x x

x x x the SONA bonus is not among those authorized by law to be granted to employees of GOCCs. Thus, with the enactment of EO 7, the grant of the SONA bonus from year 2011 can no longer be allowed. After all, a bonus is a mere gratuity or act of liberality of the giver. It is not a demandable and enforceable obligation.

We cannot give Our imprimatur to the PVA's holding that the subject CBAs are "already perfected and enforceable contracts," and as such, petitioner cannot be allowed to renege on their implementation. **It suffices to say that parties to a contract may establish such stipulations, clauses, terms, and conditions as they may deem**

convenient, provided they are not contrary to law, morals, good customs, public order or public policy. True, petitioner and SOHEAI may enter into a contract, but, it should not be contrary to EO 7 and RA 10149.

All things considered, We hold that no writ of execution or garnishment should have been issued in favor of SOHEAI. x x x.

x x x x

FOR THESE REASONS, the petition for review is GRANTED. The Decision, dated 12 May 2015 of the Office of the Panel of Voluntary Arbitrators and its Order dated 28 October 2015, for the garnishment of the funds of the Social Housing Finance Corporation are hereby ANNULLED.

The Court ORDERS the Social Housing Employees Association, Inc. to redeposit the amount of ₱70,228,467.79 to the depository bank of petitioner within ten (10) days from receipt of this Decision.

SO ORDERED.[20] (Emphases supplied; citations omitted.)

SOHEAI sought reconsideration[21] but was denied.[22] Hence, this recourse. SOHEAI insists that the CA should have dismissed outright the SHFC's appeal. SHFC failed to exhaust the administrative remedies when it did not avail of a motion for reconsideration before the PVA. Worse, the appeal was filed beyond the reglementary period since decisions of voluntary arbitrators shall be final and executory after 10 calendar days from notice. Also, SOHEAI avers that the PVA has jurisdiction over the CBA interpretation and implementation. The new benefits and increases must be given because SHFC negotiated on them despite knowledge of the moratorium. Likewise, the SONA bonus have been granted to employees since 2007. Lastly, the writ of execution is proper since SHFC's funds are not exempt from garnishment.[23]

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[20] *Id.* at 71-84.

[21] *Id.* at 405-446.

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

[23] *Id.* at 3-49.

RULING

The petition is unmeritorious.

On procedural matters, the CA did not err in giving due course to SHFC's appeal from the PVA's Decision. Foremost, the doctrine of exhaustion of administrative remedies is not absolute and a litigant may immediately resort to judicial action when the question raised is purely legal.[24] In this case, there is no issue of fact involved and the controversy centers on whether SHFC lacks authority to negotiate on the economic provisions of the CBA in view of the prohibitions under EO No. 7 and RA No. 10149. Undoubtedly, the issue is a pure question of law. The Court need only to look at the applicable rule to determine whether the adjusted benefits and bonuses may be implemented.

Similarly, the appeal was timely filed. Under the Labor Code, the award or decision of PVA shall be final and executory after 10 calendar days from notice.[25] On the other hand, Rule 43 of the Rules of Court provides that an appeal from the judgment or final orders of voluntary arbitrators must be made within 15 days from notice. [26] With these, the Court has alternatively used the 10-day or 15-day reglementary periods.[27] However, the

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[24] *Castro v. Sec. Gloria*, 415 Phil. 645, 651-652 (2001).

[25] LABOR CODE, Art. 276.

[26] RULES OF COURT, Rule 43, Sec. 4.

[27] In *Sevilla Trading Co. v. Semana*, 472 Phil. 220, 231 (2004), the Court established that the decision of the Voluntary Arbitrator became final and executory upon the expiration of the 15-day period within which to elevate the same to the CA via a Petition for Review under Rule 43. In *Coca-Cola Bottlers Phils., Inc., Sales Force Union-PTGWO-Balais v. Coca-Cola Bottlers Phils., Inc.*, 502 Phil. 748, 754 (2005), the Court declared that the decision of the Voluntary Arbitrator had become final and executory because it was appealed beyond the 10-day reglementary period under Article 262-A of the Labor Code. In *Philippine Electric Corp. (PHILEC) v. Court of Appeals, et al.*, 749 Phil. 686, 708 (2014), the Court, in recognizing the variant usage of the periods, held that despite Rule 43 providing for a 15-day period to appeal, we rule that the Voluntary Arbitrator's Decision must be appealed before the Court of Appeals within 10 calendar days from receipt of the Decision as provided in the Labor Code.

confusion has been settled in *Guagua National Colleges v. Court of Appeals*.[28] In that case, we clarified that the 10-day period in Article 276 should be understood as the time within which the adverse party may move for a reconsideration from the decision or award of the voluntary arbitrators.[29] Thereafter, the aggrieved party may appeal to the CA within 15 days from notice pursuant to Rule 43 of the Rules of Court.[30] Here, SHFC received on June 11, 2015 a copy of the PVA's Decision and has 15 days or until June 26, 2015 within which to perfect an appeal. On June 25, 2015, SHFC filed a petition for review with the CA or 14 days after notice of the Decision which is well within the prescribed period.

Anent the merits of this case, we stress that the SOHEAI and SHFC may establish in their CBAs such terms and conditions that are not contrary to law.[31] Notably, there are existing and subsequent laws prohibiting GOCCs like SHFC from negotiating the CBAs' economic provisions. In 1978, the grant of allowances and other benefits to GOCCs must have the approval of the President upon the recommendation of the Budget Commissioner.[32]

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[28] G.R. No. 188492, August 28, 2018, 878 SCRA 362.

[29] *Id.* at 384.

[30] *Id.*

[31] *Supra* note 1.

[32] PD No. 1597, Sec. 5. *Allowances, Honoraria, and Other Fringe Benefits*.— Allowances, honoraria and other fringe benefits which may be granted to government employees, whether payable by their respective offices or by other agencies of government, shall be subject to the approval of the President upon recommendation of the Commissioner of the Budget. For this purpose, the Budget Commission shall review on a continuing basis and shall prepare, for the consideration and approval of the President, policies and levels of allowances and other fringe benefits applicable to government personnel, including honoraria or other forms of compensation for participation in projects which are authorized to pay additional compensation.

Sec. 6. *Exemptions from OCPC Rules and Regulations*. — Agencies positions, or groups of officials and employees of the national government, including government-owned or controlled corporations, who are hereafter exempted by law from OCPC coverage, shall observe such guidelines and

In 2009, the Senate and House of Representatives Joint Resolution No. 4 authorized the President to approve policies and levels of allowances and benefits.[33] In 2010, EO No. 7 provides a moratorium on increases in salaries, allowances, incentives and other benefits in the GOCCs.[34] In 2011, RA No. 10149 created the Governance Commission for GOCCs and mandated it to develop a compensation and position classification system subject to the approval of the President.[35] In 2016, EO No. 203 expressly

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policies as may be issued by the President governing position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. Exemptions notwithstanding, agencies shall report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.

[33] Item No. 9 of JR No. 4 provides: "(9) Exempt Entities. — Government agencies which by specific provision/s of laws are authorized to have their own compensation and position classification system shall not be entitled to the salary adjustments provided herein. Exempt entities shall be governed by their respective Compensation and Position Classification Systems: *Provided*, That such entities shall observe the policies, parameters and guidelines governing position classification, salary rates, categories and rates of allowances, benefits and incentives, prescribed by the President: *Provided further*, **That any increase in the existing salary rates as well as the grant of new allowances, benefits and incentives or an increase in the rates thereof shall be subject to the approval by the President, upon recommendation of the DBM x x x**." (Emphasis supplied.)

[34] EO No. 7, SEC. 9. *Moratorium on Increases in Salaries, Allowances, Incentives, and Other Benefits*. — Moratorium on increases in the rates of salaries, and the grant of new or increases in the rates of allowances, incentives and other benefits, except salary adjustments pursuant to Executive Order No. 8011 dated June 17, 2009 and Executive Order No. 900 dated June 23, 2010, are hereby imposed until specifically authorized by the President; signed on September 8, 2010.

[35] RA No. 10149, SEC. 5. Creation of the Governance Commission for Government-Owned or Controlled Corporations. — There is hereby created a central advisory, monitoring, and oversight body with authority to formulate, implement and coordinate policies to be known as the Governance Commission for Government-Owned or -Controlled Corporations, hereinafter referred to as the GCG, which shall be attached to the Office of the President. x x x.

disallowed the governing boards of GOCCs, whether chartered or non-chartered, to negotiate the economic terms of their CBAs.[36]

As the CA aptly observed, EO No. 7 and RA No. 10149 are already effective before the negotiation and execution of the 2011 and 2013 CBAs between SOHEAI and SHFC. To be sure, the Governance Commission did not approve the economic terms of the CBAs and informed SHFC that it cannot implement the new benefits and increases. On this score, we stress that GOCCs officials and employees are not entitled to benefits and increases without the approval of the President or the Governance Commission. Corollarily, the SHFC's revocation of the CBAs' economic provisions can hardly amount to diminution of benefits. Suffice it to say that SOHEAI is not entitled to the new benefits and increases which yield neither legal nor binding effect. In *PCSO v. Pulido-Tan*,[37] the petitioner's governing board modified the salaries and benefits of its employees. Nevertheless, the Court ruled that petitioner as a GOCC is covered by the Department of Budget and Management's compensation and position standards. Consequently, petitioner's officials and employees were disallowed to receive the benefits and increases. Also, in *GSIS Family Bank Employees Union v. Villanueva*,[38] the petitioner and the GSIS Family Bank, a GOCC, were

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SEC. 8. Coverage of the Compensation and Position Classification System.— The GCG, after conducting a compensation study, shall develop a Compensation and Position Classification System which shall apply to all officers and employees of the GOCCs whether under the Salary Standardization Law or exempt therefrom and shall consist of classes of positions grouped into such categories as the GCG may determine, subject to the approval of the President; approved on June 6, 2011.

[36] EO No. 203, S. 2016, SEC. 2. Collective Bargaining Agreements (CBAs) and Collective Negotiation Agreements (CNA) in the GOCC Sector. — While recognizing the constitutional right of workers to self-organization, collective bargaining and negotiations, the Governing Boards of all covered GOCCs, whether Chartered or Non-chartered, may not negotiate with their officers and employees the economic terms of their CBAs; signed on March 22, 2016.

[37] 785 Phil. 266 (2016).

[38] G.R. No. 210773, January 23, 2019.

prohibited from engaging in negotiations or develop and implement the benefits and increases pursuant to RA No. 10149 and EO No. 203.

Similarly, SOHEAI is not entitled to SONA bonus. A law must authorize the benefit before it may be granted to government officials or employees.[39] Yet, the SONA bonus was given merely as a gratuity. It is not expressly or impliedly anchored in any law. The bonus is not even mentioned in the 2011 and 2013 CBAs. It is neither made part of the wage, salary or compensation of the employee, nor promised by the employer and expressly agreed upon by the parties.[40] We quote with approval the pertinent findings of the CA, thus:

> In the present case, it must be recalled that petitioner started to give the SONA bonus or the SONA Incentive Award of ₱50,000.00 to each of its employees in 2007, raised it to ₱60,000.00 in 2009, and continued giving it up to 2010. Petitioner approved the grant of this Incentive Award in virtue of former President Gloria Macapagal Arroyo's recognition of its performance in nation building and the accomplishment of her Ten Point Agenda in her State of the Nation Address. But, EO 7, which was issued on 8 September 2010 provides:
>
> > "SECTION 3. Total Compensation Framework. — All remuneration granted to members of the board of directors/ trustees, officers and rank-and-file employees of GOCCs and GFIs shall be categorized in accordance with the Total Compensation Framework established under Item (4) of J.R. No. 4. Under this framework, total payment for services rendered by personnel shall be limited to the following categories:
> >
> > a. Basic Salaries, including Step Increments;
> >
> > b. Standard Allowances and Benefits which are given to all employees across agencies;

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[39] *Maritime Industry Authority v. Commission on Audit*, 750 Phil. 288, 330 (2015); *Yap v. Commission on Audit*, 633 Phil. 174, 192 (2010).

[40] *Mega Magazine Publications, Inc. v. Defensor*, 736 Phil. 342, 350 (2014).

c. Specific-Purpose Allowances and Benefits which are given under specific conditions, based on actual performance of work; and

d. Incentives, which are rewards for loyalty to government service and for exceeding performance targets."

It is clear from the above provision that the SONA bonus is not among those authorized by law to be granted to employees of GOCCs. Thus, with the enactment of EO 7, the grant of the SONA bonus from year 2011 can no longer be allowed. After all, a bonus is a mere gratuity or act of liberality of the giver. It is not a demandable and enforceable obligation.[41] (Emphasis supplied.)

Lastly, the CA is correct that no writ of execution or garnishment should have been issued in favor of SOHEAI because SHFC's funds are considered public. The rule is and has always been that all government funds are not subject to garnishment or levy, in the absence of a corresponding appropriation as required by law. It is based on obvious considerations of public policy that the functions and services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.[42]

At any rate, the Commission on Audit (COA) must first approve SOHEAI's money claims even after the issuance of a writ of execution.[43] Apropos is Section 26 of Presidential Decree No. 1445[44] which vested COA the authority to examine, audit, and settle all debts and claims of any sort due from or owing to the Government, or any of its subdivisions, agencies, or instrumentalities, including all GOCCs, *viz.*:

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[41] *Rollo*, pp. 79-81.

[42] *City of Caloocan v. Hon. Allarde*, 457 Phil. 543, 553 (2003).

[43] See *Star Special Watchman and Detective Agency, Inc. v. Puerto Princesa City*, 733 Phil. 62, 81 (2014). See also Section 26 of PD No. 1445 or the Government Auditing Code of the Philippines.

[44] Government Auditing Code of the Philippines; approved on June 11, 1978.

Section 26. *General jurisdiction*. — The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, **as well as the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities. The said jurisdiction extends to all government-owned or controlled corporations**, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including nongovernmental entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government. (Emphasis supplied.)

Verily, all money claims against the Government must first be filed with the COA which must act upon it within 60 days. The rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on *certiorari* and, in effect, sue the State.[45] Otherwise, the claim is premature and must fail.[46]

FOR THESE REASONS, the petition is **DENIED**. The Court of Appeals' Decision dated July 21, 2017 in CA-G.R. SP No. 140975 is **AFFIRMED**.

SO ORDERED.

Peralta, C.J., Caguioa, Lazaro-Javier, and *Rosario, JJ.*, concur.

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[45] Supreme Court Administrative Circular No. 10-2000, October 25, 2000.

[46] *Republic of the Philippines v. Benjohn Fetalvero*, G.R. No. 198008; February 4, 2019.

FIRST DIVISION

[G.R. No. 237982. October 14, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **YOLANDA SANTOS *y* PARAJAS,** *Accused-Appellant*.

SYLLABUS

1. CRIMINAL LAW; QUALIFIED THEFT; ELEMENTS THEREOF.— [T]he elements of qualified theft punishable under Article 310 in relation to Article 308 of the RPC are as follows: (1) there was a taking of personal property; (2) the said property belongs to another; (3) the taking was done without the consent of the owner; (4) the taking was done with intent to gain; (5) the taking was accomplished without violence or intimidation against person, or force upon things; and (6) the taking was done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence.

2. ID.; ID.; ID.; FAILURE TO REMIT PAYMENTS RECEIVED FROM EMPLOYER'S CLIENTS IS MISAPPROPRIATION THAT CONSTITUTES THEFT. — In the instant case, the prosecution was able to establish the presence of all the elements of qualified theft under Article 310 in relation to Article 308 of the RPC. Accused-appellant, as part of her duty as OIC-Property Accountant of Dasman Realty, admitted that she received the payments from Dasman Realty's clients for the period September 2011 to May 2013 in the total amount of ₱1,029,893.33, thus, she had actual possession of the monies, yet failed to remit the same to Dasman Realty. As an employee tasked to merely collect payments from Dasman Realty's clients, she did not have a right over the thing as she was merely entrusted to collect the cash collections in behalf of Dasman Realty. In fact, accused-appellant never asserted any such right over the collections, as she even admitted that upon receipt of the monies, it was her duty to remit the collections to the cashier, . . .

. . . [A]ccused-appellant was entrusted only with the material or physical (natural) or *de facto* possession of the thing, thus, her misappropriation of the same constitutes theft. A sum of

money received by an employee in behalf of an employer is considered to be only in the material possession of the employee.

3. ID.; ID.; INTENT TO GAIN; INTENT TO GAIN MAY BE GLEANED FROM THE OFFENDER'S OVERT ACTS.— [A]ccused-appellant's testimonies were plagued with inconsistencies, which just showed her criminal intent to take the cash collections. . . . Likewise, the fact that the "taking" was accomplished without the use of violence or intimidation against persons, or force upon things was undisputed. Thus, based on the foregoing circumstances, intent to gain is apparent on the part of the accused-appellant. Intent to gain or *animus lucrandi* is an internal act which can be established through the overt acts of the offender, and is presumed from the proven unlawful taking. Actual gain is irrelevant as the important consideration is the intent to gain.

4. ID.; ID.; GRAVE ABUSE OF CONFIDENCE; THE TAKING IS CONSIDERED TO HAVE BEEN DONE WITH GRAVE ABUSE OF CONFIDENCE WHEN THE EMPLOYEE'S POSITION WAS USED TO OBTAIN PAYMENT COLLECTIONS.— [T]he prosecution was able to show that the taking was clearly done with grave abuse of confidence. As OlC-Property Accountant who was tasked, among others, to assist in the collection of the payments being paid by the unit owners and lots, accused-appellant made use of her position to obtain the payment collections due to Dasman Realty. From the nature of her functions, accused-appellant's position entailed a high degree of confidence reposed by Dasman Realty as she had been granted access to funds collectible from clients. She would not have been able to take the money paid by clients if it were not for her position in Dasman Realty. Such relation of trust and confidence was amply established to have been gravely abused when she failed to remit the entrusted amount of collection to Dasman Realty.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY; THE FACTUAL FINDINGS OF TRIAL COURT ARE CONCLUSIVE UPON THE COURT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS.— We find no cogent reason to disturb the above findings of the trial court which were affirmed by the CA and fully supported by the evidence on record. Time and again, the Court has held that

the facts found by the trial court, as affirmed *in toto* by the CA, are as a general rule, conclusive upon this Court, in the absence of any showing of grave abuse of discretion. In this case, none of the exceptions to the general rule on conclusiveness of said findings of facts are applicable. The Court gives weight and respect to the trial court's findings in criminal prosecution because the latter is in a better position to decide the question, having heard the witnesses in person and observed their deportment and manner of testifying during the trial. Absent any showing that the lower courts overlooked substantial facts and circumstances, which if considered, would change the result of the case, this Court gives deference to the trial court's appreciation of the facts and of the credibility of witnesses.

6. CRIMINAL LAW; QUALIFIED THEFT; EACH OCCASION OF "TAKING" CONSTITUTES A SINGLE ACT WITH AN INDEPENDENT EXISTENCE AND CRIMINAL INTENT OF ITS OWN.— [W]e note that the trial court's imposition of a single indivisible penalty for all fourteen (14) counts of qualified theft is improper, as this is not a continues crime where there are series of acts yet there is only one crime committed, hence, there is only one penalty. The diversions of accused-appellant of the payments made by Dasman Realty's clients, on fourteen occasions, *i.e.* from September 13, 2011 to January 19, 2013 cannot be considered as proceeding from a single criminal act since the taking were not made at the *same time* and on the *same occasion*, but on *variable dates*. Each occasion of "taking" constitutes a single act with an independent existence and criminal intent of its own. All the "takings" are not the product of a consolidated or united criminal resolution, because each taking is a complete act by itself. Each taking results in a *complete execution or consummation* of the delictual act of defalcation. . . .

Further, the imposition of a single indivisible penalty of *reclusion perpetua* would lead to confusion considering that there were 14 separate informations against accused-appellant, and she had been in fact convicted on all 14 counts of qualified theft. Consequently, accused-appellant should be sentenced to imprisonment on all 14 counts of qualified theft, under Articles 310, and 309 of the RPC, as amended.

7. ID.; ID.; PROPER PENALTY; RESTITUTION OF THE UNREMITTED PAYMENTS PLUS INTEREST. — The trial court, as affirmed by the appellate court, ordered accused-appellant to restitute the aggregate amount . . . which represents the total value of the unremitted payments to Dasman Realty and Development Corporation. . . .

. . .

Also, pursuant to prevailing jurisprudence, the monetary awards due to Dasman Realty shall earn legal interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until full payment, pursuant to prevailing jurisprudence.

8. ID.; ID.; ID.; FOR PRISON SENTENCES FOR EACH COUNT OF QUALIFIED THEFT, COURTS SHOULD IMPOSE AS MANY PENALTIES AS THERE ARE SEPARATE AND DISTINCT OFFENSES COMMITTED; THE APPLICATION OF SUCCESSIVE SERVICE OF SENTENCES SHOULD NOT YET BE TAKEN INTO ACCOUNT IN THE IMPOSITION OF THE APPROPRIATE PENALTY. — Considering that accused-appellant was convicted of 14 counts of qualified theft with the corresponding 14 prison sentences, Article 70 of the RPC on successive service of sentences will be observed. Applying said article, despite the 14 counts of qualified theft with corresponding prison sentence for each count, the maximum duration of accused-appellant's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon her, and the maximum period shall in no case exceed forty years. However, it must be emphasized that the application of Article 70 of the RPC should not yet to be taken into account in the court's imposition of the appropriate penalty. Article 70 speaks of "service" of sentence, "duration" of penalty and penalty "to be inflicted." Nowhere in the article is anything mentioned about the "imposition of penalty." It merely provides that the prisoner cannot be made to serve more than three times the most severe of these penalties the maximum of which is forty years. Thus, courts should still impose as many penalties as there are separate and distinct offenses committed, since for every individual crime committed, a corresponding penalty is prescribed by law. Each single crime is an outrage against the State for which the latter,

thru the courts of justice, has the power to impose the appropriate penal sanctions.

9. ID.; ID.; PENALTY; RECOMMENDATION FOR THE IMMEDIATE RECTIFICATION OF THE PROVISIONS OF THE LAW ON THE PENALTY FOR SIMPLE THEFT UNDER ARTICLE 309, IN RELATION TO ARTICLE 308 OF THE RPC.— On a final note, there seems to be an oversight on the penalty of qualified theft under Article 310 of the RPC where the value to the thing, or amount stolen is more than ₱5,000.00 but not exceeding ₱20,000.00. . . .

There is . . . a need to ***immediately*** study the provisions of the law on simple theft under Article 309, in relation to Article 308 of the RPC, because the accused here may be serving a sentence more than what he actually deserved as a punishment considering that the highest penalty imposed on the accused in Criminal Cases Nos. R-PSY-14-08614-CR and R-PSY-14-08617-CR, where the amounts involved are ₱12,935.00 and ₱17,716.00, respectively, is the maximum penalty of ten (10) years, two (2) months and twenty-one (21) days. And, where the accused is convicted for two (2) or more crimes, the convicted accused' maximum duration of imprisonment shall not be more than threefold the length of time corresponding to the most severe of the penalties imposed upon the convicted accused under Article 70 of the RPC.

Hence, the accused will serve more than thirty (30) years of imprisonment as the maximum period of imprisonment cannot be more than forty (40) years pursuant to Article 70 of the RPC, whereas, in the other crimes for which the accused was convicted and the amounts involved exceed ₱20,000.00, the maximum penalty is nine (9) years and four (4) months, and applying the three-fold penalty rule under Article 70 of the RPC, the imprisonment of the convicted accused would only be a total of less than thirty (30) years. Moreover, under the new law, the Good Conduct Time Allowance (*GCTA*) of R.A. No. 10592, the computation of good conduct time allowance is based on the maximum penalty. Again, the convicted accused will be deprived of the full application of the law because the basis of computation of GCTA is the maximum penalty which, in this case, is higher than the penalty which should have been imposed.

It is, thus, strongly recommended to Congress that an immediate rectification be done in order to spare not only the accused here in this case but other accused who are undergoing trial or who are serving their sentences of the same crime of Qualified Theft where the value of the thing or amount stolen is more than Five Thousand Pesos (₱5,000.00) but not exceeding twenty thousand pesos (₱20,000.00).

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 this Court is an appeal from the Decision[1] dated November 3, 2017, of the Court of Appeals (*CA*) in CA-G.R. CR-HC. No. 08721, where the CA affirmed the Decision[2] dated August 17, 2016 of the Regional Trial Court (*RTC*) of Pasay City, Branch 118, in Criminal Case Nos. R-PSY-14-08614-CR to R-PSY-14-08627-CR which convicted Yolanda Santos *y* Parajas (*accused-appellant*) of qualified theft.

The antecedent facts are as follows:

On July 11, 2014, fourteen (14) Informations for qualified theft under Article 310 of the Revised Penal Code (*RPC*) were filed against accused-appellant, *to wit*:

Criminal Case No. R-PSY-14-08614-CR[3] for Qualified Theft

That on or about the 13th day of September, 2011, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Ramon Paul L. Hernando (now a Member of the Supreme Court) and Zenaida T. Galapate Laguilles, concurring; *rollo*, pp. 2-23.

[2] CA *rollo*, pp. 64-91.

[3] Records, Vol. 1, pp. 1-2.

Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP12,935.00 belonging to the afore-named private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP12,935.00.

Contrary to law.

Criminal Case No. R-PSY-14-08615-CR[4] for Qualified Theft

That on or about the 12th day of January, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP100,000.00 belonging to the afore-named private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP100,000.00.

Contrary to law.

Criminal Case No. R-PSY-14-08616-CR[5] for Qualified Theft

That on or about the 24th day of January, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP45,200.00 belonging to the afore-named private

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

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

complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP45,200.00

Contrary to law.

Criminal Case No. R-PSY-14-08617-CR[6] for Qualified Theft

That on or about the 2nd day of February, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP17,716.00 belonging to the afore-named private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP17,716.00.

Contrary to law.

Criminal Case No. R-PSY-14-08618-CR[7] for Qualified Theft

That on or about the 14th day of February, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP60,000.00 belonging to the afore-named private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP60,000.00.

Contrary to law.

Criminal Case No. R-PSY-14-08619-CR[8] for Qualified Theft

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[6] *Id.* at 49-50.

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

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

That on or about the 17th day of March, 2013, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP58,014.00 belonging to the afore-named private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP58,014.00.

Contrary to law.

Criminal Case No. R-PSY-14-08620-CR[9] for Qualified Theft

That on or about the 23rd day of April, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP30,000.00 belonging to the afore-named private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP30,000.00.

Contrary to law.

Criminal Case No. R-PSY-14-08621-CR[10] for Qualified Theft

That on or about the 29th day of May, 2013, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there

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[9] *Id.* at 96-97.

[10] *Id.* at 112-113.

willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP300,000.00 belonging to the afore-named private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP300,000.00.

Contrary to law.

Criminal Case No. R-PSY-14-08622-CR[11] for Qualified Theft

That on or about the 29th day of June, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP100,000.00 belonging to the afore-named private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP100,000.00.

Contrary to law.

Criminal Case No. R-PSY-14-08623-CR[12] for Qualified Theft

That on or about the 8th day of November, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP110,000.00 belonging to the afore-named private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP110,000.00.

Contrary to law.

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[11] *Id.* at 128-129.

[12] *Id.* at 144-145.

Criminal Case No. R-PSY-14-08624-CR[13] for Qualified Theft

That on or about the 8th day of December, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP58,014.00 belonging to the afore-named private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP58,014.00.

Contrary to law.

Criminal Case No. R-PSY-14-08625-CR[14] for Qualified Theft

That on or about the 11th day of December, 2012, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP50,000.00 belonging to the afore-named private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP50,000.00.

Contrary to law.

Criminal Case No. R-PSY-14-08626-CR[15] for Qualified Theft

That on or about the 7th day of January, 2013, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant

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[13] *Id.* at 160-161.

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

[15] *Id.* at 192-193.

Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP58,014.00 belonging to the afore-named private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP58,014.00.

Contrary to law.

Criminal Case No. R-PSY-14-08627-CR[16] for Qualified Theft

That on or about the 19th day of January, 2013, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Yolanda P. Santos, while being an OIC property accountant under the employ of the private complainant Dasman Realty and Development Corporation, represented by Ronald B. Bañares, with intent to gain and with grave abuse of confidence reposed upon her by the said private complainant, did then and there willfully, unlawfully and feloniously take, steal, and carry away the amount of PHP30,000.00 belonging to the afore-named private complainant without the latter's knowledge and consent to its damage and prejudice in the aforesaid amount of PHP30,000.00.

Contrary to law.

On July 14, 2014, warrants of arrest were issued against accused-appellant.[17] Upon arraignment, accused-appellant pleaded not guilty on the charges against her.[18] Trial on the merits ensued.

Private complainant Dasman Realty and Development (*Dasman Realty*) is a corporation engaged in realty and development business.[19] Prosecution witness Ronald Bañares (*Bañares*) is one of the officers/employees designated to represent Dasman Realty in the proceedings of this case, as evidenced by the Secretary's Certificate presented in open court.[20] He is

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[16] *Id.* at 208-209.

[17] *Id.* at 222-223.

[18] Records, Vol. 2, p. 231.

[19] *Id.* at 239-246.

[20] *Id.* at 246.

also the bookkeeper of Dasman Realty who was tasked to review the original and acknowledgment receipts issued in connection with the sale transactions of the corporation as well as the collection of payment for association dues and utilities.

In his Judicial Affidavit[21] dated December 8, 2014, Bañares stated that accused-appellant was the Officer In Charge (OIC)-Property Accountant of Dasman Realty for its Dasman Residences project whose duties and responsibilities include, among others, the following:

1. To collect from the buyers the payments for units sold;

2. To collect from the tenants the payments for association dues;

3. To issue receipts for the payments received;

4. To account and liquidate all payments received/collected; and

5. To liquidate and remit all payments received/collected.

Prompted by a report alleging that accused-appellant failed to account for and remit various payments received by her from clients to Dasman Realty, the latter issued a Memorandum dated July 11, 2013[22] authorizing Bañares to conduct a recording and bookkeeping review of the sale transactions and payment receipts due to the corporation under the accountability of accused-appellant. Upon evaluation of the original receipts and acknowledgment receipts as well as records of transactions, Bañares discovered that within the period of August 2011 to July 2013, fourteen (14) receipts,[23] the aggregate value of which amounted to One Million Twenty Nine Thousand Eight Hundred Ninety Three Pesos and 33/100 (₱1,029,893.33) under the accountability of the accused-appellant were unremitted to Dasman Realty.[24]

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[21] *Id.* at 323-332.

[22] *Id.* at 247.

[23] *Id.* at 537-550.

[24] *Id.* at 323-332.

Bañares also stated that all 14 receipts showed the signature of accused-appellant which revealed that she issued several receipts in favor of Dasman Realty's clients, and that she had received payments from them but failed to remit the same to Dasman Realty. He claimed that a review of the customer remittance records maintained by the accused-appellant herself and the customer subsidiary record which is in custody of Dasman Realty, there was nothing to show that accused-appellant reported the subject payments of the clients, and thereafter remitted the same to Dasman Realty. Bañares explained that due to accused-appellant's failure to record the amounts collected as indicated in the subject official receipts and acknowledgment receipts in the designated logbooks and remit the same to the Dasman Realty, she clearly violated the trust and confidence reposed upon her by the former.[25]

In a Memorandum dated September 4, 2013,[26] Bañares reported to Dasman Realty's management the result of the internal review he made. As a result, Dasman Realty, through its counsel, made a formal demand on accused-appellant to liquidate and remit the subject amounts specified in the Memorandum dated September 10, 2013.[27] Thereafter, Bañares claimed that in a meeting on September 25, 2013, accused-appellant admitted her liability for the unremitted collections and offered to settle her obligation through salary deduction until fully paid. Bañares further alleged that on the same day, accused-appellant executed a sworn statement where she admitted that she handled the collection for Dasman Realty somewhere beginning August or September 2011, and that she will pay the money she failed to remit to Dasman Realty.[28]

For its part, the defense presented accused-appellant as its lone witness.

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[25] *Id.*

[26] *Id.* at 255.

[27] *Id.* at 256.

[28] *Id.* at 258-260.

On direct examination, accused-appellant testified that she was employed as OIC-Property Accountant by Dasman Realty from July 2011 to September 2013.[29] She claimed that she does not know Bañares as he was only hired in July 2013 for bookkeeping. She explained that prior to July 2012, Dasman Realty had no bookkeeper and that a certain Arnold Reblando (*Reblando*), its accounting officer, was the one who did the accounting work for it. Accused-appellant claimed that she only found out about the outstanding amount of ₱1,029,893.33 during the board meeting where she was informed about the missing remittances and that she should return the same immediately. Accused-appellant, however, denied that she was the one who took the money. She claimed that she turned over the money to a certain Engineer (*Engr.*) Dejon and the latter remitted the money to a certain Macaldo. However, accused-appellant averred that Engr. Dejon who was previously the administrator of Dasman Realty passed away on October 4, 2012.

Further, accused-appellant likewise claimed that there were times that acknowledgment receipts were used instead of officials receipts for tax purposes. She averred that Reblando likewise instructed her to do "window dressing" which means that all the payments made after the death of Engr. Dejon were made to apply to those the latter failed to remit. Finally, accused-appellant claimed that Dasman Realty filed the instant criminal cases against her only because she knew about the involvement of the owners of Dasman Realty in the ambush of their business partner.

On August 17, 2016,[30] in Criminal Case Nos. R-PSY-14-08614-CR to R-PSY-14-08627-CR, the RTC of Pasay City, Branch 118, rendered judgment convicting accused-appellant of qualified theft, the dispositive portion of which reads:

WHEREFORE, all the foregoing premises considered, the Court finds the [accused-appellant] YOLANDA P. SANTOS, GUILTY

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[29] TSN, March 30, 2015, p. 6.

[30] Records, Vol. 2, pp. 712-739.

beyond reasonable doubt for Qualified Theft and is hereby sentenced to suffer the penalty of *reclusion perpetua* with eligibility for pardon.

The [accused-appellant] is also ordered to indemnify the private complainant, DASMAN REALTY AND DEVELOPMENT CORPORATION, the amount of One Million Twenty Nine Thousand Eight Hundred Ninety Three Pesos and 33/100 (₱1,029,893.33) as stated in the Information which represents the total value of the unremitted payments that were received by the [accused-appellant] in her capacity as the former OIC-Property Accountant of the complainant information plus legal interest computed from the filing of the information until fully paid.

SO ORDERED.[31]

Aggrieved, accused-appellant filed an appeal and sought the reversal of her conviction before the CA. However, in the assailed decision of the appellate court, the latter denied her appeal. The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed Decision dated August 17, 2016 of the RTC, Branch 118, Pasay City in Criminal Case Nos. R-PSY-14-08614-CR to R-PSY-14-08627-CR is hereby AFFIRMED.

SO ORDERED.[32]

Hence, this petition for review on *certiorari*, raising the sole issue of:

Whether the Court of Appeals erred in convicting accused-appellant of the crime of qualified theft despite failure of the prosecution to prove her guilt beyond reasonable doubt.

Accused-appellant would like to impress upon this Court that the prosecution failed to prove that she was the one who took away the cash collections from Dasman Realty's clients. She claimed that the mere fact that the acknowledgment receipts and official receipts showed her initials does not give rise to

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[31] *Id*. at 738-739.

[32] *Rollo*, p. 22.

the presumption that she stole the unremitted collections, in the absence of any proof that she is in possession of the same.

The petition lacks merit.

The crime of theft is defined under Article 308 of the RPC, *to wit*:

> Article 308. Who are liable for theft. — Theft is committed by any person who, with intent to gain but without violence, against, or intimidation of neither persons nor force upon things, shall take personal property of another without the latter's consent.
>
> Theft is likewise committed by:
>
> 1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
>
> 2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or objects of the damage caused by him; and
>
> 3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.

On the other hand, Article 310 of the RPC reads:

> Article 310. Qualified Theft. — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with *grave abuse of confidence*, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance. (Emphasis Ours)

Thus, the elements of qualified theft punishable under Article 310 in relation to Article 308 of the RPC are as follows: (1) there was a taking of personal property; (2) the said property belongs to another; (3) the taking was done without the consent of the owner; (4) the taking was done with intent to gain; (5)

the taking was accomplished without violence or intimidation against person, or force upon things; and (6) the taking was done under any of the circumstances enumerated in Article 310 of the RPC, *i.e.*, with grave abuse of confidence.

In the instant case, the prosecution was able to establish the presence of all the elements of qualified theft under Article 310 in relation to Article 308 of the RPC. Accused-appellant, as part of her duty as OIC-Property Accountant of Dasman Realty, admitted that she received the payments from Dasman Realty's clients for the period September 2011 to May 2013 in the total amount of ₱1,029,893.33, thus, she had actual possession of the monies, yet failed to remit the same to Dasman Realty. As an employee tasked to merely collect payments from Dasman Realty's clients, she did not have a right over the thing as she was merely entrusted to collect the cash collections in behalf of Dasman Realty. In fact, accused-appellant never asserted any such right over the collections, as she even admitted that upon receipt of the monies, it was her duty to remit the collections to the cashier, to *wit:*

x x x x

Q What did you do with the money when you receive it?
A Actually ma'am, every time we received the money we turn it over to the cashier.

Q And when was this official receipt issued?
A This was issued September 13, 2011 ma'am.

Q And Ms. Witness when was the money received turned over to your cashier?
A The same date ma'am.

Q And what is your proof in saying that the money was received by your cashier?
A Because there is a record ma'am.

Q What is the record book!?
A Record Book Receiving Payments.[33] (Emphasis Ours)

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[33] TSN, March 30, 2015, pp. 12-13.

x x x x

Clearly, accused-appellant was entrusted only with the material or physical (natural) or *de facto* possession of the thing, thus, her misappropriation of the same constitutes theft.[34] A sum of money received by an employee in behalf of an employer is considered to be only in the material possession of the employee.[35]

Moreover, accused-appellant identified the customer remittance record she had in her possession as well as her signatures appearing on the same, and explained that it is where she listed down her collections.[36] Thereafter, she claimed that she would remit the payments she had collected from clients to the cashier, and present the customer remittance record to the cashier so that the latter will sign on it as proof that she has received the payment collections.[37] On cross-examination, accused-appellant admitted that while she was able to collect payments from the clients of Dasman Realty, she failed to record 14 official receipts which she had issued to clients in the said remittance records, to wit:[38]

Atty. DASIG

Q Madam witness, in this customer remittance record where you record your collections, am I correct?
A Yes, sir.

Q And whenever you remit your collections to the cashier, Nemia Macaldo, you present this customer remittance record to her and for the cashier to sign that she received the amounts you listed here, am I correct?
A Yes, sir.

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[34] *Matrido v. People*, 610 Phil. 203, 213 (2009).

[35] *Id.*

[36] TSN, April 28, 2015, p. 24.

[37] TSN, Cross-examination, April 28, 2015, pp. 25-26.

[38] *Id.* at 25-26.

Q Madam witness, can you tell us, the fourteen (14) official receipts here, can you tell us if you have recorded these in this customer remittance record?
A This was unremitted.

Q You said your collections, you have to record in this customer remittance record. The question is, will you please look at these official receipts and tell us where in this customer remittance record you recorded these official receipts and acknowledgment receipts.
A Actually, sir, these remitted amounts were the receipts given by Mr. Dejon for me to record to be remitted to Macaldo.

THE COURT

Q The question is, where in this customer remittance record are the fourteen (14) receipts which are the subject matter of these cases. Where?

A They are not there, your Honor.

ATTY. DASIG

Q They are not there. Madam witness, after you received the demand letter of Dasman Realty, you made a reply in the form of a sworn statement as your described it, am I correct?
A Yes, sir.

Q And in your reply or your sworn statement, you were asking the management for you to return the amounts you have not remitted out of your salary, am I correct?
A Because it is your instruction.

Q Just answer yes or no.
A Yes.

Q And the management rejected your proposal, am I correct?
A Yes, sir.[39] (Emphasis Ours)

x x x x

Further, the prosecution likewise sufficiently established the element of intent to gain on the part of accused-appellant based, to *wit*:

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[39] TSN, April 28, 2015, pp. 24-27.

ATTY. DULAY —

Q According to Mr. Bañares, you received subject amounts stated in official and acknowledgment receipts, what can you say about that?
A Actually ma'am I am only the one who signed that with my initial.

Q So, Ms. Witness in Criminal Case No. R-PSY-14-08614-CR marked as Exhibit "D" for the prosecution and Exhibit "D-2" your signature, I'm showing this to you Ms. Witness Exhibits "D" to "D-2", is that your signature?
A My initial ma'am.

Q And Ms. Witness according to this O.R. how much was the sum of pesos?
A ₱12,935.00 ma'am.

Q You received this money?
A Yes, ma'am.

Q What did you do with the money when you received it?
A Actually, ma'am, every time we received the money we turn it over to the cashier.

Q And when was this official receipt issued?
A This was issued September 13, 2011 ma'am.

Q And Ms. Witness when was the money received turned over to your cashier?
A The same date ma'am.

Q And what is your proof in saying that the money was received by your cashier?
A Because there is a record ma'am.

Q What is the record book?
A Record Book Receiving Payments.

Q And who received the payments remitted to the cashier?
A Actually, I turned over the money to Engr. Dejon and Engr. Dejon in turn turned over the money to Ms. Macaldo.

Q And who is this Engr. Dejon?
A Engr. Dejon is the administrator of Dasman Realty & Development Corporation ma'am.

Q Where is he now?
A He's already dead.

Q When did he die?
A October 4, 2012 ma'am.

Q What happened to him?
A He was hospitalized, he died suddenly.

Q Ms. Witness you turned over the payments to Engr. Dejon, is that authorized by your company?
A Yes, ma'am.

Q And who witnessed the payments of customers are being turned over to Engr. Dejon?
A There were three (3) of us, Engr. Dejon, me and one assistant.

Q So, would you have any idea as to where Engr. Dejon put the money that you have turned over to him?
A Actually it's like this ma'am, everything that we have turned over to him, he will turn over to Ms. Macaldo, that is the procedure.

Q And Ms. Macaldo is aware of the fact that it is Engr. Dejon who was receiving money that you have collected?
A Yes, ma'am.

Q Is Ms. Macaldo still connected with Dasman Realty to date or at present?
A Yes, ma'am.[40]

x x x x

Q So, Ms. Witness, do you know after you turned over the said amount to Engr. Dejon, do you know where Engr. Dejon would give his money to?
A To Ms. Macaldo ma'am.

Q Nalalaman po ninyo?
A Opo, ma'am.

Q Alam ninyo?
A Opo ma'am.

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[40] TSN, March 30, 2015, pp. 11-15.

Q Was the money or where the money received by Engr. Dejon given to Ms. Macaldo in your presence?
A No, ma'am.

Q So, you have no idea? How did you know that the money received by Engr. Dejon was or were received by Ms. Macaldo?
A Because it is the process ma'am. That's the instruction given to us by our administrator, Mr. Dasig because I am only the OIC of Property Accountant. So, the instructions were for us to give the money to Engr. Dejon.[41]

x x x x x x x x x

Q Would you please tell the Honorable Court why was (sic) **the acknowledgment receipt instead of an Official Receipt?**
A Because that was given to us instead of a receipt.

Q And who gave you that instruction?
A From the accounting officer.

Q Who was the accounting officer?
A Arnold Reblando?

Q Did you not find it unusual that Mr. Reblando was (sic) **or instructed you to use acknowledgment receipts instead of official receipts?**
A All of that it was for tax receipts.

Q Ms. Witness you were informed that it was for tax receipts?
A Yes, ma'am.

Q And it is to conceal the real sales income of Dasman Realty. Am I correct?
A Yes, ma'am.

Q So, may I invite you to Exhibit "J" under R-PSY-14-08620-CR, the acknowledgment receipt no. 0443, dated April 23, 2012. Would you be able to identify the initial marked by the prosecution as their Exhibit "J-2"?
A Yes, ma'am.

Q And whose initial is that?
A That's my initial ma'am?

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

Q What date is that?

ATTY. DULAY —

Your Honor, may we move that it be noted that the acknowledgment receipt has no date, your Honor?

COURT —

Which acknowledgment receipt? Is that the only acknowledgment receipt?

ATTY. DULAY —

Marked by the prosecution as their Exhibit "J", your Honor. It has no date.

Q Ms. Witness, who made this notation in red ink?
A I do not know ma'am.

COURT —

Who made it?

ATTY. DULAY —

This was not her.

Q Who made this?
A I do not know ma'am.

ATTY. DULAY —

Your Honor, may we move that it be noted that there's a red ink, a notation which says note: unremitted.

Q And from whom did you receive the money?
A From unit 507 ma'am.

Q And for how much?
A ₱30,000.00 pesos ma'am.

Q In all these receipts, did any of the persons who made those payments make any complaints at Dasman Realty?
A Yes, ma'am.

Q May I invite your attention to Exhibit "K", Acknowledgment Receipt No. 0942 dated May 29, 2013 and Exhibit "K-2", was marked for the prosecution and what do you see under Exhibit "K-2"?

A The receipt is with my initial ma'am.

Q And from where did you receive payment?
A From Mary Ann Mondres, ma'am.

Q And how much was the payment made by Mondres?
A The amount is ₱300,000.00 ma'am.

Q And to whom did you turn over the amount made by Ms. Mondres?
A The same to Engr. Dejon ma'am.[42]

x x x x

Q *The said collection was turned over to whom?*
A *Kasi ganito po yan ma'am. Itong mga resibo nato since namatay na si Engineer, kasi hindi lang naman po itong ma'am yung na find out naming na hindi ni-remit ni Engineer. So, ang instruction po sakin ni kuya Arnold is magkaroon ng window dressing. Kung baga uunahin bayaran muna yung mga hindi nabayaran ni Engineer. Instruction nya yon sakin kasi nagsabi na ako eh. Sabi ko bakit may mga resibong ganito?*

COURT —

Ms. Witness, just answer the question asked of you?

ATTY. DULAY —

Q So, Ms. Witness, according to you there was a window dressing?
A Yes, ma'am.

Q What do you mean by window dressing?
A Window dressing means, to remit previous payments which should be remitted by Engr. Dejon to update the old payments.

COURT —

Q That were not remitted?
A Yes, that were not remitted, your Honor.

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[42] TSN, March 30, 2015, pp. 23-27.

ATTY. DULAY —

Q So, Ms. Witness, when you received new instruction, what did you do, if any?
A I followed the instruction ma'am.

Q So, Ms. Witness, this time under Exhibit "M", the acknowledgment Receipt No. 0673, how much was the money involved here?
A ₱110,000.00 ma'am.

Q What did you do with the ₱110,000.00 collection?
A When I found out that some of the previous receipts were not remitted by Engr. Dejon, and from the instruction of Mr. Arnold Reblando to make a window dressing, so what I did was, to remit previous receipts just to update some receipts.

x x x x

Q Why did you have to do that Ms. Witness?
A Because that is the instruction to do that ma'am?

Q Whose instruction?
A From Arnold Reblando ma'am.

Q So, from that date, November 8, 2012, you were already on the monies that you received were applied to monies received by Engr. Dejon not turned over to Dasman Realty?
A Yes, ma'am.[43]

x x x x

From the foregoing, it can readily be seen that accused-appellant's testimonies were plagued with inconsistencies, which just showed her criminal intent to take the cash collections. Accused-appellant's defenses, *i.e.*, from alleging that she turned-over the payments to Macaldo, next to Engr. Dejon, to merely following instructions to issue acknowledgement receipts instead of official receipts, to *window-dressing*, are all self-serving because they were unsupported by evidence. Accused-appellant

[43] TSN, March 30, 2015, pp. 30-33.

was the one tasked to collect the payments from Dasman Realty's clients as in fact she did receive the cash payments as she herself admitted that all the initials in the subject official receipts and acknowledgment receipts are her own initials, yet, there was no proof that said amounts of monies she received were remitted to Dasman Realty. Likewise, the fact that the "taking" was accomplished without the use of violence or intimidation against persons, or force upon things was undisputed. Thus, based on the foregoing circumstances, intent to gain is apparent on the part of the accused-appellant. Intent to gain or *animus lucrandi* is an internal act which can be established through the overt acts of the offender, and is presumed from the proven unlawful taking.[44] Actual gain is irrelevant as the important consideration is the intent to gain.[45]

Furthermore, the prosecution was able to show that the taking was clearly done with grave abuse of confidence. As OIC-Property Accountant who was tasked, among others, to assist in the collection of the payments being paid by the unit owners and lots,[46] accused-appellant made use of her position to obtain the payment collections due to Dasman Realty. From the nature of her functions, accused-appellant's position entailed a high degree of confidence reposed by Dasman Realty as she had been granted access to funds collectible from clients. She would not have been able to take the money paid by clients if it were not for her position in Dasman Realty. Such relation of trust and confidence was amply established to have been gravely abused when she failed to remit the entrusted amount of collection to Dasman Realty.

In sum, We find no cogent reason to disturb the above findings of the trial court which were affirmed by the CA and fully supported by the evidence on record. Time and again, the Court

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[44] *People of the Philippines v. Manlao*, G.R. No. 234023, September 3, 2018.

[45] *People v. Mejares*, G.R. No. 225735, January 10, 2018, 850 SCRA 480, 491.

[46] TSN, March 30, 2015, p. 6.

has held that the facts found by the trial court, as affirmed *in toto* by the CA, are as a general rule, conclusive upon this Court, in the absence of any showing of grave abuse of discretion. In this case, none of the exceptions to the general rule on conclusiveness of said findings of facts are applicable. The Court gives weight and respect to the trial court's findings in criminal prosecution because the latter is in a better position to decide the question, having heard the witnesses in person and observed their deportment and manner of testifying during the trial. Absent any showing that the lower courts overlooked substantial facts and circumstances, which if considered, would change the result of the case, this Court gives deference to the trial court's appreciation of the facts and of the credibility of witnesses.[47]

Proper Penalty

The trial court, as affirmed by the appellate court, ordered accused-appellant to restitute the aggregate amount of One Million Twenty Nine Thousand Eight Hundred Ninety Three Pesos and 33/100 (₱1,029,893.33) which represents the total value of the unremitted payments to Dasman Realty and Development Corporation. The trial court also imposed the single penalty of *reclusion perpetua* for all fourteen (14) counts of qualified theft. However, with the passage of R.A. No. 10951,[48] the penalties of some crimes which are dependent on the value of the subject matter of the crimes have been greatly affected, and one of these is theft. The law being more favorable to the accused, in general, the same is given a retroactive effect, and, thus, the need to revisit the computation of penalties.

Moreover, even without applying R.A. No. 10951, we note that the trial court's imposition of a single indivisible penalty for all fourteen (14) counts of qualified theft is improper, as

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[47] *Miranda v. People*, 680 Phil. 126, 134-136 (2012).

[48] Entitled "An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based and the Fines Imposed under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as 'The Revised Penal Code,' as Amended," approved on August 29, 2017.

this is not a continuous crime where there are series of acts yet there is only one crime committed, hence, there is only one penalty.[49] The diversions of accused-appellant of the payments made by Dasman Realty's clients, on fourteen occasions, *i.e.*, from September 13, 2011 to January 19, 2013 cannot be considered as proceeding from a single criminal act since the taking were not made at the *same time* and on the *same occasion*, but on *variable dates*. Each occasion of "taking" constitutes a single act with an independent existence and criminal intent of its own. All the "takings" are not the product of a consolidated or united criminal resolution, because each taking is a complete act by itself. Each taking results in a *complete execution* or *consummation* of the delictual act of defalcation.[50] There is nothing of record to justify that the intention of accused-appellant when she took the collection in September 13, 2011 was the same intention which impelled her to commit the subsequent "takings" on the following months and years until January 19, 2013.[51] Her intent to unlawfully take the cash collections may arise only when she comes in possession of the payments made by individual clients. As a result, there could be as many acts of "taking" as there are times the accused-appellant diverted the payments to her own personal use and benefit. The similarity of pattern resorted to by accused-appellant in making the diversions does not affect the susceptibility of the acts committed to divisible crimes.[52]

Further, the imposition of a single indivisible penalty of *reclusion perpetua* would lead to confusion considering that there were 14 separate informations against accused-appellant, and she had been in fact convicted on all 14 counts of qualified theft. Consequently, accused-appellant should be sentenced

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[49] See *Mallari v. People*, 250 Phil. 421 (1988).

[50] *Gamboa v. Court of Appeals*, 160-A Phil. 962, 971, (1975).

[51] *The People of the Philippines v. Antonio P. Cid*, 66 Phil. 354, 362-363 (1938).

[52] *Gamboa v. Court of Appeals*, 160-A Phil. 962, 971 (1975).

to imprisonment on all 14 counts of qualified theft, under Articles 310, and 309 of the RPC, as amended.

Article 310 of the RPC, and Article 309 of the RPC, as amended by R.A. No. 10951,[53] provide:

Art. 309. Penalties. — Any person guilty of theft shall be punished by:

"1. The penalty of *prisión mayor* in its minimum and medium periods, if the value of the thing stolen is more than One million two hundred thousand pesos (₱1,200,000) but does not exceed Two million two hundred thousand pesos (₱2,200,000); but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one (1) year for each additional One million pesos (₱1,000,000), but the total of the penalty which may be imposed shall not exceed twenty (20) years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prisión mayor or reclusion temporal, as the case may be.

"2. The penalty of *prisión correccional* in its medium and maximum periods, if the value of the thing stolen is more than Six hundred thousand pesos (₱600,000) but does not exceed One million two hundred thousand pesos (₱1,200,000).

"3. The penalty of *prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000) but does not exceed Six hundred thousand pesos (₱600,000).

"4. *Arresto mayor* in its medium period to *prisión correccional* in its minimum period, if the value of the property stolen is over Five thousand pesos (₱5,000) but does not exceed Twenty thousand pesos (₱20,000).

"5. *Arresto mayor* to its full extent, if such value is over Five hundred pesos (₱500) but does not exceed Five thousand pesos (₱5,000).

"6. *Arresto mayor* in its minimum and medium periods, if such value does not exceed Five hundred pesos (₱500).

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[53] *Id.*

"7. *Arresto menor* or a fine not exceeding Twenty thousand pesos (₱20,000), if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed Five hundred pesos (₱500). If such value exceeds said amount, the provisions of any of the five preceding subdivisions shall be made applicable.

"8. *Arresto menor* in its minimum period or a fine of not exceeding Five thousand pesos (₱5,000), when the value of the thing stolen is not over Five hundred pesos (₱500), and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family."

Art. 310. Qualified theft. — The crime of qualified theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article.

Thus, if the value of the property stolen is over Five Thousand Pesos (₱5,000.00) but does not exceed Twenty thousand pesos (₱20,000.00), as in Criminal Case Nos. R-PSY-14-08614-CR and R-PSY-14-08617-CR where the amounts stolen are ₱12,935.00 and ₱17,716.00, respectively, the penalty under Article 309 (4) of the RPC, as amended, is *arresto mayor* in its medium to *prisión correccional* in its minimum period. However, by virtue of Article 310 of the RPC, qualified theft shall be punished by the penalties next higher by two degrees which is *prisión mayor* in its medium period to *reclusion temporal* in its minimum period which has a prison term of 8 years and 1 day to 14 years and 8 months. There being no aggravating and mitigating circumstances, the range of the penalty that must be imposed as the maximum term should be *prisión mayor* in its medium period to *reclusion temporal* minimum in its medium period, or from 10 years, 2 months and 21 days to 12 years, 5 months and 10 days. Thereafter, applying the Indeterminate Sentence Law, the range of the minimum term that should be imposed upon accused-appellant is anywhere within the period of *prisión correccional* in its medium period to *prisión mayor* in its minimum period which has a range of 2 years, 4 months and 1 day to 8 years. Accordingly, for Criminal Case No. R-PSY-14-08614-CR and Criminal Case No. R-PSY-14-08617-CR, accused-appellant should be sentenced to suffer the

indeterminate penalty of 2 years, 4 months and 1 day of *prisión correccional*, as minimum, to 10 years, 2 months and 21 days of *prisión mayor*, as maximum.

If the amount stolen is more than twenty thousand pesos (₱20,000.00) but does not exceed six hundred thousand pesos (₱600,000.00), as in Criminal Case Nos. R-PSY-14-08615-CR, R-PSY-14-08616-CR, R-PSY-14-08618-CR, R-PSY-14-08619-CR, R-PSY-14-08620-CR, R-PSY-14-08621-CR, R-PSY-14-08622-CR, R-PSY-14-08623-CR, R-PSY-14-08624-CR, R-PSY-14-08625-CR, R-PSY-14-08626-CR, R-PSY-14-08627-CR where the stolen amounts are ₱100,000.00, ₱45,200.00, ₱60,000.00, ₱58,014.00, ₱30,000.00, ₱300,000.00, ₱100,000.00, ₱110,000.00, ₱58,014.00, ₱50,000.00, ₱58,014.00, and ₱30,000.00, respectively, the penalty imposed under Article 309(3) of the RPC, as amended, is *prisión correccional* in its minimum and medium periods. However, qualified theft shall be punished by the penalties next higher by two degrees which is *prisión mayor* in its medium period and maximum periods which has a prison term of 8 years and 1 day to 12 years. This penalty is composed of only two, not three, periods, in which case, Article 65 [4] of the RPC requires the division of the time included in the penalty into three equal portions of time included in the penalty prescribed, forming one period of each of the three portions. Moreover, there being no aggravating and mitigating circumstances, the range of the penalty that must be imposed as the maximum term should be *prisión mayor* in its medium and maximum in its medium period, or 9 years, 4 months and 1 day to 10 years and 8 months. Applying the Indeterminate Sentence Law, the range of the minimum term that should be imposed upon accused-appellant is anywhere within the period of *prisión correccional* in its maximum period to *prisión mayor* in its minimum period which has a range of 4 years, 2 months and 1 day to 8 years. Accordingly, for Criminal Case Nos. R-PSY-14-08615-CR, R-PSY-14-08616-CR, R-PSY-14-08618-CR, R-PSY-14-08619-CR, R-PSY-1408620-CR, R-PSY-14-08621-CR, R-PSY-14-08622-CR, R-PSY-14-08623-CR, R-PSY-14-08624-CR, R-PSY-14-08625-CR, R-PSY-14-08626-CR, R-PSY-14-08627-CR, accused-appellant should be

sentenced to suffer the indeterminate penalty of *4 years, 2 months and 1 day* of *prisión correccional*, as minimum, to 9 years, 4 months and 1 day of *prisión mayor*, as maximum.

Following the above computation of penalties, in sum, the penalty corresponding to each count of qualified theft are as follows:

Criminal case	Amount unremitted/ stolen	Penalties under Art. 309 of the RPC, as amended by RA 10951	Penalties applying Indeterminate Sentence Law
1. Crim. Case R-PSY-14-08614-CR	₱12,935.00	*Arresto mayor* in its medium to *prisión correccional* in its minimum period, if the value of the property stolen is over Five Thousand Pesos (₱5,000.00) but does not exceed Twenty thousand pesos (₱20,000.00)	2 years, 4 months and 1 day of *prisión correccional*, as minimum, to 10 years, 2 months and 21 days of *prisión mayor*, as maximum.
2. Crim. Case R-PSY-14-08615-CR	₱100,000.00	*Prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000.00) but does not exceed Six hundred thousand pesos (₱600,000.00)	4 years, 2 months and 1 day of *prisión correccional*, as minimum, to 9 years, 4 months and 1 day of *prisión mayor*, as maximum.
3. Crim. Case R-PSY-14-08616-CR	₱45,200.00	*Prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000.00) but does not exceed Six hundred thousand pesos (₱600,000.00)	4 years, 2 months and 1 day of *prisión correccional*, as minimum, to 9 years, 4 months and 1 day of *prisión mayor*, as maximum.
4. Crim. Case R-PSY-14-08617-CR	₱17,716.00	*Arresto mayor* in its medium to *prisión correccional* in its minimum period, if the value of the property stolen is over Five	2 years, 4 months and 1 day of *prisión correccional*, as minimum, to 10 years, 2 months and 21 days of *prisión mayor*, as maximum.

		Thousand Pesos (₱5,000.00) but does not exceed Twenty thousand pesos (₱20,000.00)	
5. Crim. Case R-PSY-14-08618-CR	₱60,000.00	*Prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000.00) but does not exceed Six hundred thousand pesos (₱600,000.00)	4 years, 2 months and 1 day of *prisión correccional*, as minimum, to 9 years, 4 months and 1 day of *prisión mayor*, as maximum.
6. Crim. Case R-PSY-14-08619-CR	₱58,014.00	*Prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000.00) but does not exceed Six hundred thousand pesos (₱600,000.00)	4 years, 2 months and 1 day of *prisión correccional*, as minimum, to 9 years, 4 months and one (1) day of *prision mayor*, as maximum.
7. Crim. Case R-PSY-14-08620-CR	₱30,000.00	*Prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000.00) but does not exceed Six hundred thousand pesos (₱600,000.00)	4 years, 2 months and 1 day of *prisión correccional*, as minimum, to 9 years, 4 months and 1 day of *prisión mayor*, as maximum.
8. Crim. Case R-PSY-14-08621-CR	₱300,000.00	*Prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000.00) but does not exceed Six hundred thousand pesos (₱600,000.00)	4 years, 2 months and 1 day of *prision correccional*, as minimum, to 9 years and 4 months and 1 day of *prisión mayor*, as maximum.

9. Crim. Case R-PSY-14-08622-CR	₱100,000.00	*Prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000.00) but does not exceed Six hundred thousand pesos (₱600,000.00)	4 years, 2 months and 1 day of *prision correccional*, as minimum, to 9 years and 4 months and 1 day of *prisión mayor*, as maximum.
10. Crim. Case R-PSY-14-08623-CR	₱110,000.00	*Prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000.00) but does not exceed Six hundred thousand pesos (₱600,000.00)	4 years, 2 months and 1 day of *prisión correccional*, as minimum, 9 years and 4 months and 1 day of *prisión mayor*, as maximum.
11. Crim. Case R-PSY-14-08624-CR	₱58,014.00	*Prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000.00) but does not exceed Six hundred thousand pesos (₱600,000.00)	4 years, 2 months and 1 day of *prisión correccional*, as minimum, 9 years, 4 months and 1 day of *prisión mayor*, as maximum.
12. Crim. Case R-PSY-14-08625-CR	₱50,000.00	*Prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000.00) but does not exceed Six hundred thousand pesos (₱600,000.00)	4 years, 2 months and 1 day of *prisión correccional*, as minimum, to 9 years, 4 months and 1 day of *prisión mayor*, as maximum.
13. Crim. Case R-PSY-14-08626-CR	₱58,014.00	*Prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000.00) but does not exceed Six hundred thousand pesos (₱600,000.00)	4 years, 2 months and 1 day of *prision correccional*, as minimum, 9 years, 4 months and 1 day of *prisión mayor*, as maximum.

14. Crim. Case R-PSY-14-08627-CR	₱30,000.00	*Prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than Twenty thousand pesos (₱20,000.00) but does not exceed Six hundred thousand pesos (₱600,000.00)	4 years, 2 months and 1 day of *prisión correccional*, as minimum, to 9 years, 4 months and 1 day of *prisión mayor*, as maximum.

Considering that accused-appellant was convicted of 14 counts of qualified theft with the corresponding 14 prison sentences, Article 70[54] of the RPC on successive service of sentences will be observed. Applying said article, despite the 14 counts of qualified theft with corresponding prison sentence for each count, the maximum duration of accused-appellant's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon her, and the maximum period shall in no case exceed forty years. However, it must be emphasized that the application of Article 70[55] of the RPC should not yet to be taken into account in the court's imposition of the appropriate penalty.[56] Article 70 speaks of "service" of sentence, "duration" of penalty and penalty "to be inflicted." Nowhere in the article is anything mentioned about the "imposition of penalty." It merely provides that the prisoner cannot be made to serve more than three times the most severe of these penalties the maximum of which is forty years.[57] Thus,

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[54] Article 70 on Successive Service of Sentence. —

x x x x

Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the same maximum period. Such maximum period shall in no case exceed forty years.

[55] *Id.*

[56] See *Mejorada v. Sandiganbayan*, 235 Phil. 400, 410-411 (1987), citing *People v. Escares*, 102 Phil. 677, 679 (1957).

[57] *Id.*

courts should still impose as many penalties as there are separate and distinct offenses committed, since for every individual crime committed, a corresponding penalty is prescribed by law. Each single crime is an outrage against the State for which the latter, thru the courts of justice, has the power to impose the appropriate penal sanctions.[58]

Also, pursuant to prevailing jurisprudence, the monetary awards due to Dasman Realty shall earn legal interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until full payment pursuant to prevailing jurisprudence.[59]

On a final note, there seems to be an oversight on the penalty of qualified theft under Article 310 of the RPC where the value to the thing, or amount stolen is more than ₱5,000.00 but not exceeding ₱20,000.00. The penalty of qualified theft, as earlier discussed, is two (2) degrees higher than that of simple theft under Article 309 of the RPC. Where the value of the thing or amount stolen is more than ₱5,000.00 but not exceeding ₱20,000.00, the penalty consists of three (3) periods which is *arresto mayor* in its medium period to *prisión correccional* in its minimum period or from two (2) months and twenty one (21) days to four (4) months and ten (10) days. The penalty after applying two (2) degrees higher under Article 310 of the RPC, should likewise consist of three (3) periods in accordance with Article 61 of the RPC on graduation of penalties; hence the penalty becomes *prisión mayor* medium to *reclusion temporal* minimum or from eight (8) years and one (1) day to fourteen (14) years and eight (8) months. On the other hand, if the value of the thing or amount stolen is more than ₱20,000.00 but not exceeding ₱600,000.00, the penalty of simple theft under Article 309 of the RPC consists of two (2) periods which is *prisión correccional* minimum to *prisión correccional* medium or from six (6) months and one (1) day to four (4) years and two (2) months. If simple theft, however, becomes qualified under Article 310 of the RPC,

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[58] *Id.*

[59] See *People v. Jugueta*, 783 Phil. 806, 854 (2016).

the penalty is two (2) degrees higher but should likewise consist of two (2) periods in accordance with Article 61 of the RPC on graduation of penalties which is *prisión mayor* medium to *prisión mayor* maximum or from eight (8) years and one (1) day to twelve (12) years. It would appear then that where the value of the thing or amount stolen is more than ₱5,000.00 but not exceeding ₱20,000.00, the maximum penalty is higher than that of the penalty imposed when the value of the things or amount stolen is more than ₱20,000.00 but not exceeding ₱600,000.00. This may have been brought about by the number of periods of the penalties; three (3) periods for the lower amount whereas two (2) periods for the higher amount. A study of the graduated penalties of simple theft in Article 309 of the RPC, however, would show that it is only where the value of the thing or amount stolen is more than ₱5,000.00 but not exceeding ₱20,000.00, that the penalty consists of three (3) periods, it is, thus, believed that this was merely an overlook. Had the law maintained the penalty to consist of two (2) periods, like the other graduated penalties on simple theft, this could have been avoided. Be that as it may, in view of our Decision in *Corpuz v. People*,[60] the Court is constrained to apply the law as it is because the Court has no power or authority to alter the penalty as it would encroach on the power of the Congress to legislate laws, to *wit*:

> There seems to be a perceived injustice brought about by the range of penalties that the courts continue to impose on crimes against property committed today, based on the amount of damage measured by the value of money eighty years ago in 1932. However, this Court cannot modify the said range of penalties because that would constitute judicial legislation. What the legislature's perceived failure in amending the penalties provided for in the said crimes cannot be remedied through this Court's decisions, as that would be encroaching upon the power of another branch of the government. This, however, does not render the whole situation without any remedy. It can be appropriately presumed that the framers of the Revised Penal Code (RPC) had anticipated this matter by including Article 5, which reads:

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[60] 734 Phil. 352 (2014).

ART. 5. *Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties.* — **Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.**

In the same way, the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

The first paragraph of the above provision clearly states that for acts bourne out of a case which is not punishable by law and the court finds it proper to repress, the remedy is to render the proper decision and thereafter, report to the Chief Executive, through the Department of Justice, the reasons why the same act should be the subject of penal legislation. The premise here is that a deplorable act is present but is not the subject of any penal legislation, thus, the court is tasked to inform the Chief Executive of the need to make that act punishable by law through legislation. The second paragraph is similar to the first except for the situation wherein the act is already punishable by law but the corresponding penalty is deemed by the court as excessive. The remedy therefore, as in the first paragraph is not to suspend the execution of the sentence but to submit to the Chief Executive the reasons why the court considers the said penalty to be non-commensurate with the act committed. Again, the court is tasked to inform the Chief Executive, this time, of the need for a legislation to provide the proper penalty.

In his book, Commentaries on the Revised Penal Code, Guillermo B. Guevara opined that in Article 5, the duty of the court is merely to report to the Chief Executive, with a recommendation for an amendment or modification of the legal provisions which it believes to be harsh. Thus:

This provision is based under the legal maxim "*nullum crimen, nulla poena sige lege*," that is, that there can exist no punishable act except those previously and specifically provided for by penal statute.

No matter how reprehensible an act is, if the law-making body does not deem it necessary to prohibit its perpetration with penal sanction, the Court of justice will be entirely powerless to punish such act.

Under the provisions of this article the Court cannot suspend the execution of a sentence on the ground that the strict enforcement of the provisions of this Code would cause excessive or harsh penalty. All that the Court could do in such eventuality is to report the matter to the Chief Executive with a recommendation for an amendment or modification of the legal provisions which it believes to be harsh.

Anent the non-suspension of the execution of the sentence, retired Chief Justice Ramon C. Aquino and retired Associate Justice Carolina C. Griño-Aquino, in their book, The Revised Penal Code, echoed the above-cited commentary, thus:

The second paragraph of Art. 5 is an application of the humanitarian principle that justice must be tempered with mercy. **Generally, the courts have nothing to do with the wisdom or justness of the penalties fixed by law.** "Whether or not the penalties prescribed by law upon conviction of violations of particular statutes are too severe or are not severe enough, are questions as to which commentators on the law may fairly differ; but **it is the duty of the courts to enforce the will of the legislator in all cases unless it clearly appears that a given penalty falls within the prohibited class of excessive fines or cruel and unusual punishment**." A petition for clemency should be addressed to the Chief Executive.

The second paragraph of Art. 5 is an application of the humanitarian principle that justice must be tempered with mercy. Generally, the courts have nothing to do with the wisdom or justness of the penalties fixed by law. "Whether or not the penalties prescribed by law upon conviction of violations of particular statutes are too severe or are not severe enough, are questions as to which commentators on the law may fairly differ; but it is the duty of the courts to enforce the will of the legislator in all cases unless it clearly appears that a given penalty falls within the prohibited class of excessive fines or cruel and unusual punishment." A petition for clemency should be addressed to the Chief Executive.

x x x x

One final note, the Court should give Congress a chance to perform its primordial duty of lawmaking. The Court should not pre-empt

Congress and usurp its inherent powers of making and enacting laws. While it may be the most expeditious approach, a short cut by judicial *fiat* is a dangerous proposition, lest the Court dare trespass on prohibited judicial legislation.[61] (Citations omitted; emphasis in the original)

There is therefore a need to ***immediately*** study the provisions of the law on simple theft under Article 309, in relation to Article 308 of the RPC, because the accused here may be serving a sentence more than what he actually deserved as a punishment considering that the highest penalty imposed on the accused in Criminal Cases Nos. R-PSY-14-08614-CR and R-PSY-14-08617-CR, where the amounts involved are ₱12,935.00 and ₱17,716.00, respectively, is the maximum penalty of ten (10) years, two (2) months and twenty-one (21) days. And, where the accused is convicted for two (2) or more crimes, the convicted accused' maximum duration of imprisonment shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon the convicted accused under Article 70 of the RPC.

Hence, the accused will serve more than thirty (30) years of imprisonment as the maximum period of imprisonment cannot be more than forty (40) years pursuant to Article 70 of the RPC, whereas, in the other crimes for which the accused was convicted and the amounts involved exceed ₱20,000.00, the maximum penalty is nine (9) years and four (4) months, and applying the three-fold penalty rule under Article 70 of the RPC, the imprisonment of the convicted accused would only be a total of less than thirty (30) years. Moreover, under the new law, the Good Conduct Time Allowance *(GCTA)* of R.A. No. 10592,[62] the computation of good conduct time allowance is based on the maximum penalty. Again, the convicted accused will be deprived of the full application of the law because the basis of computation of GCTA is the maximum penalty which,

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[61] Id. at 397-425.

[62] An Act Amending Articles 29, 94, 97, 98 and 99 of Act No. 3815, as Amended, Otherwise Known as the Revised Penal Code, May 29, 2013.

in this case, is higher than the penalty which should have been imposed.

It is, thus, strongly recommended to Congress that an immediate rectification be done in order to spare not only the accused here in this case but other accused who are undergoing trial or who are serving their sentences of the same crime of Qualified Theft where the value of the thing or amount stolen is more than Five Thousand Pesos (₱5,000.00) but not exceeding twenty thousand pesos (₱20,000.00).

WHEREFORE, the appeal is **DENIED**. The Decision dated November 3, 2017 of the Court of Appeals in CA-G.R. CR-HC. No. 08721 finding accused-appellant Yolanda Santos *y* Parajas, **GUILTY** beyond reasonable doubt of fourteen (14) counts of Qualified Theft, defined and penalized under Article 310, in relation to Article 308 of the Revised Penal Code, as amended, is hereby **AFFIRMED** with **MODIFICATION** such that Yolanda Santos is sentenced to suffer the penalty of imprisonment enumerated as follows:

(a) In Criminal Case No. R-PSY-14-08614-CR, two (2) years, four (4) months and 1 day of *prisión correccional*, as minimum, to ten (10) years, two (2) months and twenty one (21) days of *prisión mayor*, as maximum.

(b) In Criminal Case No. R-PSY-14-08615-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prisión mayor*, as maximum;

(c) In Criminal Case No. R-PSY-14-08616-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years and four (4) months and one (1) day of *prision mayor*, as maximum;

(d) In Criminal Case No. R-PSY-14-08617-CR, two (2) years, four (4) months and one (1) day of *prisión correccional*, as minimum, to ten (10) years, two (2) months and twenty one (21) days of *prision mayor*, as maximum;

(e) In Criminal Case No. R-PSY-14-08618-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prision mayor*, as maximum;

(f) In Criminal Case No. R-PSY-14-08619-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prision mayor*, as maximum;

(g) In Criminal Case No. R-PSY-14-08620-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and 1 day of *prision mayor*, as maximum;

(h) In Criminal Case No. R-PSY-14-08621-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prision mayor*, as maximum;

(i) In Criminal Case No. R-PSY-14-08622-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prisión mayor*, as maximum;

(j) In Criminal Case No. R-PSY-14-08623-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prisión mayor*, as maximum;

(k) In Criminal Case No. R-PSY-14-08624-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prisión mayor*, as maximum;

(l) In Criminal Case No. R-PSY-14-08625-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prision mayor*, as maximum;

(m) In Criminal Case No. R-PSY-14-08626-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum,

to nine (9) years, four (4) months and one (1) day of *prisión mayor*, as maximum;

(n) In Criminal Case No. R-PSY-14-08627-CR, four (4) years, two (2) months and 1 day of *prisión correccional*, as minimum, to nine (9) years, four (4) months and one (1) day of *prisión mayor*, as maximum.

The Court further **ORDERS** Yolanda Santos to pay to Dasman Realty and Development Corporation an interest of 6% *per annum* on the aggregate amount of ₱1,029,898.33 to be reckoned from the finality of this judgment until full payment thereof.

Pursuant to Article 5 of the Revised Penal Code, let a Copy of this Decision be furnished the President of the Republic of the Philippines, through the Department of Justice.

Also, let a copy of this Decision be furnished the President of the Senate and the Speaker of the House of Representatives.

SO ORDERED.

Caguioa, Lazaro-Javier, Lopez, and *Rosario, JJ.*, concur.

SECOND DIVISION

[G.R. No. 240277. October 14, 2020]

ACTIVE WOOD PRODUCTS CO., INC., Represented by its President and Chairman, Chua Tiong Sio, *Petitioner*, *v.* **STATE INVESTMENT HOUSE, INC.,** *Respondent*. **HEIRS OF RODRIGUEZ,** *Intervenor*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; WHETHER AN ACTION HAS PRESCRIBED AND THE CLAIM OF FULL PAYMENT IS SUBSTANTIATED ARE FACTUAL ISSUES AND, THEREFORE, THE TRIAL COURT'S FINDINGS THEREON ARE BINDING UPON THE SUPREME COURT.— The disquisition of the remaining issues raised in this case unavoidably requires a re-evaluation of the facts and evidence presented by the parties in the RTC and in the CA. Understandably, this is the reason why AWP, citing intricacies and mix question of facts and law, invokes exception on review of factual findings under Rule 45.

> This Court is not a trier of facts, and it is not its function to examine, review, or evaluate the evidence all over again. . . .
>
> In this case, AWP failed to show that this case falls under any of the exceptions. Pointedly, the Court notes that the factual findings of the RTC that: (1) SIHI's action or claim has not prescribed; and (2) AWP's claim of full payment was not substantiated — were both upheld by the CA, are binding and conclusive upon this Court.

2. ID.; ID.; SPECIAL CIVIL ACTIONS; EXTRAJUDICIAL FORECLOSURE OF REAL ESTATE MORTGAGE; CIVIL LAW; PRESCRIPTION OF ACTIONS; THE 10-YEAR PRESCRIPTIVE PERIOD IS INTERRUPTED UPON THE FILING OF A COMPLAINT FOR INJUNCTION TO RESTRAIN THE INTENDED FORECLOSURE.— Under Article 1155, the prescription of action is interrupted when: (1) they are filed before the court; (2) there is a written

extrajudicial demand by the creditors; and (3) there is any written acknowledgment of the debt by the debtor.

The Court agrees with the conclusion of the CA that the 10-year prescriptive period was interrupted on June 7, 1982 when AWP filed a complaint for injunction to restrain the intended foreclosure and commenced to run again on September 5, 2016 when the RTC dismissed the complaint and lifted the writ of preliminary injunction. In sum, the Court finds that SIHI's right to foreclose has not prescribed.

3. ID.; ID.; ACTIONS; IT IS AN IMPORTANT FUNDAMENTAL PRINCIPLE IN OUR JUDICIAL SYSTEM THAT EVERY LITIGATION MUST COME TO AN END.— [T]he Court takes notice that this case has been pending for almost four (4) decades. It has already reached the CA and this Court for at least three (3) times on different issues. Litigation of this case must now end.

The Court seizes this occasion to remind the parties that it is an important fundamental principle in our judicial system that every litigation must come to an end.

APPEARANCES OF COUNSEL

Tamondong & Associates for petitioner.

Medialdea Ata Bello Suarez Law Office for State Investment House, Inc.

Rizal JF Valmores for heirs of Rodriguez.

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 seeking to reverse and set aside the Decision[2]

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[1] *Rollo*, pp. 13-46.

[2] Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Socorro B. Inting and Rafael Antonio M. Santos, concurring; id. at 48-64.

dated January 30, 2018 and the Resolution[3] dated June 25, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 151996, affirming the Joint Decision[4] dated September 5, 2016 and the Order[5] dated March 28, 2017 of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 18, which declared that: (1) the action of State Investment House, Inc. (SIHI) against Active Wood Products Co., Inc. (AWP) has not prescribed; (2) AWP failed to prove that it had fully paid its obligation with SIHI; and (3) SIHI is allowed to proceed with the extrajudicial foreclosure of real estate mortgage against AWP.

Facts and Antecedent Proceedings

As narrated by the CA in its assailed Decision, the facts and the antecedent proceedings of the instant case are as follows:

> On 07 June 1982, AWP filed a Complaint for Injunction with Prayer for Temporary Restraining Order (TRO) and Writ of Preliminary Injunction against SIHI to prevent the extrajudicial foreclosure of the real estate mortgage it had executed in favor of SIHI. AWP alleged that the real estate mortgage contracts were given as securities for the payment of credit accommodations in the total amount of [₱]6,420,490.00. AWP asserted that by allowing it to pay the interest and related charges even after the maturity dates of the promissory notes that it had executed in favor of SIHI, the latter has expressly novated the terms and conditions stipulated in those documents. Thus, it claimed that SIHI could not foreclose the mortgaged properties based on the stipulations in the original real estate mortgage contracts and promissory notes particularly the acceleration clause which rendered due and demandable the entire loan obligation if not paid on the maturity dates. The injunction case, docketed as Civil Case No. 6518-M, was originally raffled to Branch 20 of the Regional Trial Court (RTC) of Malolos City, Bulacan.
>
> On 09 June 1982, the RTC issued a TRO. On 10 November 1982, the RTC ordered AWP to post an injunction bond of [₱]6M. The

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[3] Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Pablito A. Perez and Rafael Antonio M. Santos, concurring; id. at 65-66.

[4] Not attached to the *rollo*.

[5] Not attached to the *rollo*.

RTC then issued another *Order* on 17 December 1982 that restrained the foreclosure of the real estate mortgage to maintain the status quo.

In its *Answer with Compulsory Counterclaim*, SIHI countered that the real estate mortgage contracts over a parcel of land situated in the Municipality of Bigaa, Province of Bulacan were given as securities for the payment of credit accommodations in the total amount of [₱]5,612,398.80 which obligation had been restructured several times upon the request of AWP. In addition, AWP executed *Financing Agreements* on 09 October 1979 and 23 January 1981, whereby AWP agreed to pay SIHI additional 12% per [*annum*] in case of default in the payment of the obligations on their respective maturity dates and a penalty of a minimum amount of [₱]50 or 2% per month, whichever is [higher,] as liquidated damages. It added that on 05 November 1981, AWP's past due obligation was restructured and AWP negotiated a check worth [₱]6,430,490.09 which would become due on 03 December 1981. AWP sought another extension of payment on its unpaid obligation for which it negotiated another check in the same amount which would fall due on 13 January 1982. It claimed that AWP's obligation as of 11 May 1982, inclusive of interest and charges was [₱]6,875,682.02. It made repeated demands upon AWP to pay its overdue account but the latter failed and refused to do so. On the allegation of novation, it maintained that AWP's original obligation was not extinguished because it was restructured several times.

By way of counterclaim, SIHI prayed for damages, attorney's fees and litigation expenses.

Meanwhile, on 28 June 1983, SIHI filed a *Petition for Extrajudicial Foreclosure* with the Office of the Provincial Sheriff of Bulacan.

On 28 November 1983, the RTC directed the issuance of a Writ of Preliminary Injunction upon filing of an injunction bond. Ex-officio [P]rovincial [S]heriff Victorino P. Evangelista, however, still proceeded with the foreclosure sale on 29 November 1983 and sold the mortgaged properties to SIHI as [the] highest bidder for a total bid price of [₱]7.5M.

On 13 December 1983, AWP filed an Omnibus Motion to cite [S]heriff Evangelista in contempt of court and to nullify the public auction sale.

On 14 February 1984, SIHI filed a *Petition for Writ of Possession* which was raffled to Branch 14 and docketed as LRC Case No. P-39-85. Thereafter, it was consolidated with the original complaint for Injunction initiated by AWP, Civil Case No. 6518-M.

In an *Order* issued on 27 February 1984, the RTC nullified the auction sale conducted by Sheriff Evangelista but denied the motion to cite [S]heriff Evangelista in contempt of court.

On 17 April 1984, the RTC issued a Writ of Preliminary Injunction in favor of AWP and ordered SIHI and the ex-officio provincial sheriff of Malolos, Bulacan to refrain from proceeding with the foreclosure sale of the mortgaged properties.

SIHI challenged the 27 February 1984 and 17 April 1984 *Orders* before the then Intermediate Appellate Court (IAC) which reversed the RTC. On *certiorari*, however, the Supreme Court reversed the IAC and upheld both the 27 February 1984 order that nullified the auction sale and the 17 April 1984 order that issued a writ of preliminary injunction.

Upon motion, AWP filed an *Amended Complaint* dated 23 January 1985 wherein it alleged that the real estate mortgage was null and void because what it secured was not a loan but merely an assignment of receivables. Subsequently, AWP filed a *Motion to Admit Supplemental Complaint* dated 23 August 1990 to implead [S]heriff Evangelista as an additional defendant and to pray for attorney's fees, actual and moral damages. The RTC dismissed the amended complaint with respect to the inclusion of [S]heriff Evangelista as a defendant. AWP filed a petition for review with the Supreme Court but the latter dismissed the petition.

On 25 January 1999, SIHI filed a motion to set the case for pre-trial with respect to the supplemental complaint for additional damages. AWP, on the other hand, moved to cancel the pre-trial conferences set by the RTC.

On 07 June 1999, AWP filed an Omnibus Motion and prayed for the following:

> "1. That the eight (8) Real Estate Mortgage(s) be declared fully paid and automatically extinguished and/or;
>
> 2. That said eight (8) Real Estate Mortgage(s) be also declared barred by the statute of limitation(s);

3. That the seventeen (17) Comprehensive Security Agreement(s); the four AGREEMENTS also (barred) by prescription and be declared without force and effect;

4. The alleged Real Estate Mortgages be both declared null and void and also (barred) by statute of limitations;

5. And all (petitioner's) claims or cause(s) of actions be dismissed, thereafter the above entitled case be dismissed without pronouncement as to (costs)."

The RTC denied AWP's omnibus motion. AWP moved for a reconsideration which was likewise denied by the RTC. AWP went to the Court via a Petition for *Certiorari* with a prayer for a TRO and/or a writ of preliminary injunction (SP No. 55616). On 15 February 2000, the Court issued a resolution that enjoined the RTC from deciding Civil Case No. 6518-M. The TRO was, however, lifted on 09 March 2000. Eventually, on 07 March 2008, the Court dismissed the petition for *certiorari* for lack of merit and affirmed the RTC's denial of AWP's omnibus motion.

Consequently, records of Civil Case No. 6518-M and LRC Case No. P-39-85 were forwarded to the RTC, Branch 18, for further proceedings.[6]

Ruling of the RTC

On September 5, 2016, the RTC rendered a Joint Decision.[7] The dispositive portion reads:

WHEREFORE, in view of the foregoing findings and reasons, a JOINT JUDGMENT is hereby rendered resolving and ordering:

1). That the ten-year prescriptive period of the mortgage action has not lapsed;

2). That AWP had defaulted in the full payment of its mortgage indebtedness to SIHI before and after the nullified foreclosure [on] November 29, 1983;

3). That the petition for extrajudicial foreclosure of real estate mortgage filed by SIHI in 1983 against AWP and the initial stage of

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[6] *Rollo*, pp. 49-54. (Italics in the original; citations omitted)

[7] Not attached to the *rollo*.

the extrajudicial foreclosure proceedings before the November 29, 1983 foreclosure sale remain valid;

4). The lifting and setting aside of the Order of November 28, 1983 and the corresponding Writ of Preliminary Injunction;

5). The dismissal of the main action of Injunction filed by AWP;

6). Allowing SIHI to proceed with the Extrajudicial Foreclosure proceeding taking into consideration the stage when the Foreclosure Sale [on] November 29, 1983 and the Sheriff's Certificate of Sale were nullified, in accordance with Act No. 3135, as Amended; and

7). The dismissal of SIHI's and AWP's respective claims for damages and attorney's fees against each other for lack of preponderance of evidence and proof.

No costs in both instances.

SO ORDERED.[8]

Feeling aggrieved, AWP filed a Motion for Reconsideration[9] but it was denied by the RTC. Consequently, it appealed the Joint Decision of the RTC to the CA.[10]

Meanwhile, a certain Deogenes O. Rodriguez (Rodriguez) filed a Motion for Leave to Intervene[11] asserting ownership and possession of the properties sought to be foreclosed. SIHI opposed the said motion. In an Order[12] dated January 30, 2017, the RTC denied the said motion on the ground that it should have been filed before the rendition of judgment. Rodriguez sought for reconsideration but the RTC denied his motions with finality. He also filed an appeal before the CA.[13]

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[8] *Rollo*, p. 49.

[9] Not attached to the *rollo*.

[10] *Rollo*, p. 55.

[11] Not attached to the *rollo*.

[12] Not attached to the *rollo*.

[13] *Rollo*, pp. 55-56.

In compliance to the CA's Order[14] dated September 26, 2017, SIHI filed a Memorandum,[15] which, however, discussed issues pertaining to Rodriguez' appeal only and nothing about AWP's appeal. SIHI claimed that it did not receive a copy of the Notice of Appeal filed by AWP on February 22, 2017, and that it received AWP's Memorandum on November 16, 2017. After verification with the CA's Judicial Records Division of AWP's filing of appeal, SIHI filed a Manifestation and Motion to Admit Attached Amended Memorandum[16] dated December 1, 2017. AWP opposed SIHI's belated filing of the said amended memorandum, claiming that it furnished SIHI a copy of the Notice of Appeal.[17]

The Ruling of the CA

In its Decision[18] dated January 30, 2018, the CA rejected SIHI's claim that AWP's appeal should be dismissed for failure to furnish a copy of the Notice of Appeal. The CA found from the records that AWP sent a copy of the said notice through a private courier to SIHI. On the other hand, in accepting the Motion to Admit Amended Memorandum as timely-filed, the CA maintained that SIHI was able to explain its reasons for the amendment of the memorandum.[19]

In the main, the CA denied both appeals filed by AWP and Rodriguez. The dispositive portion of the Decision reads:

WHEREFORE, we deny the appeal of Active Wood Products Co., Inc. and we deny the appeal of Deogenes O. Rodriguez. The *Joint Decision* of 05 September 2016 and the *Order* of 28 March 2017 are hereby AFFIRMED.

IT IS SO ORDERED.[20]

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[14] Not attached to the *rollo*.

[15] Not attached to the *rollo*.

[16] Not attached to the *rollo*.

[17] Not attached to the *rollo*.

[18] *Rollo*, pp. 48-64.

[19] *Id.* at 57.

[20] *Id.* at 64.

The CA dismissed the appeal of Rodriguez for failure to file a memorandum, pursuant to Section 1, Rule 50 of the Rules of Court.

As regards AWP's appeal, the CA sustained the RTC's finding that SIHI's right to foreclose the real estate mortgage has not yet prescribed. Applying *Tambunting, Jr. v. Spouses Sumabat*,[21] the CA held that the running of the 10-year prescriptive period was effectively stopped when AWP filed a complaint for injunction with prayer for a writ of preliminary injunction and temporary restraining order on June 7, 1982 against SIHI. The period commenced to run again on September 5, 2016 when such case was dismissed and the writ of preliminary injunction was accordingly lifted by the RTC. Moreover, the CA found that SIHI sufficiently showed that it sent demand letters to AWP on July 30, 1982 and August 2, 1982, which also interrupted the running of the prescriptive period pursuant to Article 1155[22] of the Civil Code.[23]

The CA also gave credence to SIHI's possession of documents pertaining to AWP's obligation and agreed with the RTC that AWP failed to discharge its burden of proving full payment. Notably, the CA ruled that AWP's willingness to pay supposed lawful rates of interest and charges on the original secured loan obligation was a clear admission of its obligation to SIHI.[24]

Issues

The issues for the Court's resolution are:

(1) Whether or not the CA gravely erred in admitting SIHI's Amended Memorandum;

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[21] 507 Phil. 94 (2005).

[22] Art. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

[23] *Rollo*, pp. 58-61.

[24] Id. at 61-64.

(2) Whether or not the CA gravely erred in finding that SIHI's right to foreclose has not prescribed;

(3) Whether or not the CA gravely erred in finding that AWP's obligation to SIHI was not fully extinguished; and

(4) Whether or not the injunction issued in favor of AWP should be affirmed.

Our Ruling

The Court denies the petition.

AWP ascribes grave error against the CA when it admitted SIHI's amended memorandum. Without being specific, AWP said that the admission of the said memorandum violated the CA Rules.[25]

The Court finds that there was no grave error on the part of the CA. SIHI was able to justify its filing of the amended memorandum by showing that: (1) the first memorandum filed on November 2, 2017, which discussed Rodriguez' appeal, was filed within the 30-day non-extendible period as required by the CA; and (2) the filing of the amended memorandum, which was intended to answer AWP's appeal, albeit outside the foregoing 30-day period, was not intended for delay but was only filed because SIHI did not have a copy of AWP's notice of appeal at the outset. In this regard, the Court does not agree with AWP's claim that the admission of SIHI's amended memorandum was prejudicial to its interest and violated its right to due process. As correctly pointed out by the CA, there was no sufficient ground to deny SIHI's Motion to Admit Attached Amended Memorandum.

The disquisition of the remaining issues raised in this case unavoidably requires a re-evaluation of the facts and evidence presented by the parties in the RTC and in the CA. Understandably, this is the reason why AWP, citing intricacies

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[25] Id. at 21.

and mix question of facts and law, invokes exception on review of factual findings under Rule 45.

This Court is not a trier of facts, and it is not its function to examine, review, or evaluate the evidence all over again. In *Carbonell v. Carbonell-Mendes*,[26] the Court held:

> [I]n a petition for review on *certiorari* under Rule 45, the Court is generally limited to reviewing only errors of law. Nevertheless, the Court has enumerated several exceptions to this rule, such as when: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to those of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[27]

In this case, AWP failed to show that this case falls under any of the exceptions. Pointedly, the Court notes that the factual findings of the RTC that: (1) SIHI's action or claim has not prescribed; and (2) AWP's claim of full payment was not substantiated — were both upheld by the CA. The afore-quoted findings of fact of the RTC, as affirmed by the CA, are binding and conclusive upon this Court.

Even granting that this case is cognizable under the petition for review on *certiorari*, the Court holds that the arguments of AWP are still bound to fail.

In its claim that prescription has already set in against SIHI, AWP reiterates that the extrajudicial foreclosure filed by SIHI was not a judicial action, which allegedly did not interrupt the

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[26] 762 Phil. 529 (2015).

[27] Id. at 537.

prescriptive period under Article 1142[28] of the Civil Code. Moreover, it retells that the loan was fully paid with a claim of overpayment. And as for its final point, AWP implies that since this Court, in G.R. No. 70144,[29] affirmed the nullification of the foreclosure sale held on November 29, 1983, SIHI's right of action on the mortgage has prescribed.

In its Comment,[30] SIHI claims that it satisfied all the three (3) modes of interrupting prescription period in Article 1155. *First*, it echoes CA's findings that the filing of the injunction suit on June 7, 1982 effectively stopped the running of the prescription period and the latter commenced to run again on September 5, 2016. *Second*, SIHI also pointed out that AWP never denied the fact that it sent several written extrajudicial demand letters to the latter on July 30, 1982 and August 2, 1982. *Third*, SIHI claims that it also made a judicial demand on its *Answer to Supplemental Complaint* dated July 11, 1991, where judicial foreclosure was prayed as an alternative relief.[31]

Foremost, the Court clarifies that contrary to the allegation of AWP, the Court in G.R. No. 70144 did not make any ruling, much less made any mention, on prescription. While the Court ruled in favor of AWP and affirmed the trial court in nullifying the foreclosure sale, there was no declaration that the right of action by SIHI had already prescribed.

In the main, the Court notes that the CA actually agreed with AWP that extrajudicial foreclosure is not a judicial action that interrupts the running of the prescriptive period in enforcing a right arising from a mortgage. Citing *Tambunting, Jr.* as applicable, the CA then ruled that what effectively stopped the running of the 10-year prescriptive period was AWP's filing of the injunction suit on June 7, 1982. Oddly, AWP did not directly assail and argue against this pronouncement of the CA.

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[28] Art. 1142. A mortgage action prescribes after ten years.

[29] *Active Wood Products, Inc. v. IAC*, March 26, 1990.

[30] *Rollo*, pp. 124-160.

[31] Id. at 147-148.

In *Cando v. Spouses Olazo*,[32] the Court explained:

> [A]n action to enforce a right arising from a mortgage should be enforced within 10 years from the time the right of action accrues; otherwise, it will be barred by prescription and the mortgage creditor will lose his rights under the mortgage. The right of action accrues when the mortgagor defaults in the payment of his obligation to the mortgagee.[33]

In the instant case, it is settled that SIHI's right of action started to accrue in 1981, when AWP defaulted in paying its obligation. AWP's defaults can be gleaned from the following undisputed facts: (1) AWP paid interest and related charges even after the maturity dates; (2) the obligation had to be restructured several times upon the request of AWP; and (3) AWP sought extensions of payment on its unpaid obligation.

Under Article 1155, the prescription of action is interrupted when: (1) they are filed before the court; (2) there is a written extrajudicial demand by the creditors; and (3) there is any written acknowledgment of the debt by the debtor.

The Court agrees with the conclusion of the CA that the 10-year prescriptive period was interrupted on June 7, 1982 when AWP filed a complaint for injunction to restrain the intended foreclosure and commenced to run again on September 5, 2016 when the RTC dismissed the complaint and lifted the writ of preliminary injunction. In sum, the Court finds that SIHI's right to foreclose has not prescribed.

On the basis of the foregoing, the Court deems it unnecessary to discuss the other issues and hereby holds that the CA committed no error in affirming the Joint Decision and the Order rendered by the RTC.

As a final word, the Court takes notice that this case has been pending for almost four (4) decades. It has already reached

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[32] 547 Phil. 630 (2007).

[33] Id. at 637.

the CA and this Court for at least three (3) times on different issues. Litigation of this case must now end.

The Court seizes this occasion to remind the parties that it is an important fundamental principle in our judicial system that every litigation must come to an end. In *Spouses Atienza v. CA*,[34] the Court declared:

> Access to courts is guaranteed. But there must be a limit thereto. Once a litigant's rights have been adjudicated in a valid final judgment of a competent court, he should not be granted an unbridled license to come back for another try. The prevailing party should not be harassed by subsequent suits. For, if endless litigations were to be encouraged, then unscrupulous litigants will multiply in number to the detriment of the administration of justice.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED**. The Decision dated January 30, 2018 and the Resolution dated June 25, 2018 of the Court of Appeals in CA-G.R. SP No. 151996 are hereby **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (*Chairperson*), *Hernando,* and *Gaerlan,* [*] *JJ.,* concur.

Baltazar-Padilla, J., on leave.

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[34] 529 Phil. 159 (2006).

[*] Designated as additional member in lieu of Associate Justice Henri Jean Paul B. Inting per Raffle dated October 12, 2020.

FIRST DIVISION

[G.R. No. 241632. October 14, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **ANGELITO DAYRIT *y* HIMOR,** *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ELEMENTS THEREOF.— Murder is defined and penalized under Article 248 of the RPC, as amended by R.A. No. 7659. To successfully prosecute the crime, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide. In the instant case, the prosecution was able to establish that (1) Ariel and Lourdes were shot and killed; (2) Dayrit killed them; (3) the killing of Ariel and Lourdes was attended by the qualifying circumstance of treachery and evident premeditation; and (4) the killing of Ariel and Lourdes was neither parricide nor infanticide.

2. ID.; ID.; CONSPIRACY; REMEDIAL LAW; EVIDENCE; CONSPIRACY IS PRESENT WHEN BOTH ACCUSED WERE ANIMATED BY THE SAME CRIMINAL INTENT TO KILL THE VICTIMS.— It is worthy to note in this case that both driver and back-rider share the same criminal liability as they were in conspiracy with each other. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to, and are indicative of, a joint purpose, concert of action and community of interest. For conspiracy to exist, it is not required that there be an agreement for an appreciable period prior to the occurrence; it is sufficient that at the time of the commission of the offense, the malefactors had the same purpose and were united in its execution. In the present case, both driver and back-rider were animated by the same criminal intent which is to kill Ariel and Lourdes. As one person was

driving the motorcycle, the other held the gun and fired it upon the victims. Hence, it will not matter whether Dayrit was the one driving the motorcycle or the one that fired the shots.

3. REMEDIAL LAW; EVIDENCE; COMPETENCE AND CREDIBILITY OF WITNESSES; THE FINDINGS OF THE TRIAL COURT ON THE COMPETENCE AND CREDIBILITY OF A CHILD WITNESS WILL NOT BE DISTURBED ON REVIEW.— It is settled that the determination of the competence and credibility of a child as a witness rests primarily with the trial judge as he had the opportunity to see the demeanor of the witness, his apparent intelligence or lack of it, and his understanding of the nature of the oath. As many of these qualities cannot be conveyed by the records of the case, the trial judge's evaluation will not be disturbed on review, unless it is clear from the record that his judgment is erroneous.

In the present case, we find no cogent reason to disturb the findings of the trial court in giving credence to the testimonies of the prosecution witnesses, particularly the children who were the eyewitnesses to the crime. . . .

. . .

The child witness in this case positively identified the accused-appellant several times during the trial as the person who killed Ariel and Lourdes. Such resoluteness cannot be doubted of a child, especially of one of tender age. The testimony of a single witness, when positive and credible, is sufficient to support a conviction even of murder.

4. ID.; ID.; ILL MOTIVE; WHERE THERE IS NO IMPUTATION OF IMPROPER MOTIVE ON THE PART OF THE WITNESSES, IT IS PRESUMED THAT THEY WERE NOT SO ACTUATED.— Jurisprudence tells us that where there is no evidence that the witnesses of 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 the instant case, no imputation of improper motive on the part of the prosecution witnesses was ever made by the accused-appellant.

5. ID.; ID.; DENIAL AND ALIBI; BARE ASSERTIONS THEREOF CANNOT OVERCOME THE CATEGORICAL TESTIMONY OF THE WITNESS.— Anent appellant's

defense of denial and alibi, bare assertions thereof cannot overcome the categorical testimony of the witness. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. On the other hand, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of commission.

6. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS THEREOF; TREACHERY IS PRESENT WHEN THE ATTACK IS SO SUDDEN AND UNEXPECTED THAT THERE IS NO OPPORTUNITY FOR THE VICTIMS TO DEFEND THEMSELVES.— The essence of treachery is the sudden attack by the aggressor without the slightest provocation on the part of the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor arising from the defense which the offended party might make.

In order for treachery to be properly appreciated, two (2) elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself or to retaliate or escape; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.

In the instant case, the records show that in the evening of August 31, 2013, Ariel and Lourdes were merely boarding a tricycle, unaware of the danger. All of a sudden, Dayrit, while on board a motorcycle, launched an attack, shooting at his victims successively. It was clear that the manner of attack employed by Dayrit was deliberate and unexpected. Likewise, there was no opportunity for the victims to defend themselves. With the given circumstances, it is impossible for the victims to retaliate. Clearly, the prosecution has established that the qualifying circumstance of treachery is present.

7. ID.; ID.; ID.; EVIDENT PREMEDITATION; REQUISITES THEREOF; THE TIME THAT HAD ELAPSED WHILE WAITING FOR THE PERFECT OPPORTUNITY TO EXECUTE THE CRIME IS INDICATIVE OF A COOL THOUGHT AND REFLECTION TO CARRY OUT THE CRIMINAL INTENT.— [T]he requisites for the appreciation

of evident premeditation are: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act.

In the present case, . . . it was clearly shown that Dayrit and his companion planned the means on how to carry out and facilitate the killing of the victims. The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a space of time sufficient to arrive at a calm judgment. In this case, the time that had elapsed while monitoring the victims and while waiting for the perfect opportunity to execute the shooting is indicative of a cool thought and reflection on the part of Dayrit to carry out his criminal intent.

8. ID.; AGGRAVATING CIRCUMSTANCES; USE OF A MOTOR VEHICLE; THE USE OF A MOTOR VEHICLE IS AGGRAVATING WHEN IT IS USED EITHER TO COMMIT THE CRIME OR TO FACILITATE ESCAPE.— The use of a motor vehicle is aggravating when it is used either to commit the crime or to facilitate escape. Here, it was established that Dayrit was riding a motorcycle when he followed and fatally shot Ariel and Lourdes. Afterwards, he fled the crime scene on board the motorcycle. Clearly, a motor vehicle was used as a means to commit the crime and to facilitate his escape after the consummation of his plan to kill Ariel and Lourdes.

9. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST; THE ILLEGALITY OF A WARRANTLESS ARREST NOT RAISED PRIOR TO ARRAIGNMENT IS DEEMED WAIVED.— Dayrit never raised the supposed illegality of his arrest prior to his arraignment. Instead, he raised the said issue for the first time in his appeal. As to the legality of his warrantless arrest, appellant is already estopped from questioning such because it was never raised prior to his having entered a plea of not guilty. Moreover, the rule is that an accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment. Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person

of an accused must be made before he enters his plea, otherwise, the objection is deemed waived. Even in the instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection.

10. CRIMINAL LAW; MURDER; PENALTY AND DAMAGES.— In view of the attendant circumstance of treachery which qualified the killing to murder, as well as the presence of evident premeditation, and the generic aggravating circumstance of use of motor vehicle, the imposable penalty would have been death if not for the proscription for its imposition under Republic Act No. 9346. As regards to the award of damages, We agree with the CA in imposing civil indemnity *ex delicto*, moral and exemplary damages in the amount of One Hundred Thousand (₱100,000.00) for each count of Murder, and temperate damages in the amount of Fifty Thousand Pesos (₱50,000.00), in line with our ruling in *People v. Jugueta*. Likewise, the CA is correct in ruling that the monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of the Decision until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the March 21, 2018 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06982, which affirmed with modifications the July 28, 2014 Decision[2] of the Regional Trial Court *(RTC)*, Branch 269, Valenzuela City.

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[1] Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Remedios A. Salazar-Fernando and Jane Aurora C. Lantion, concurring; *rollo*, pp. 2-16.

[2] Penned by Presiding Judge Emma C. Matammu; CA *rollo*, pp. 124-136.

The Facts

Accused-appellant Angelito Dayrit y Himor *(Dayrit)* was indicted for two (2) counts of Murder as defined and penalized under Article 248 of the Revised Penal Code (*RPC*). The accusatory portion of the Informations dated September 4, 2013 alleged:

Criminal Case No. 1218-V-13

That on or about August 31, 2013 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with another person, whose name, identity and present whereabouts are still unknown, with deliberate intent to kill, treachery and evident premeditation, and while on board a motorcycle, did then and there willfully, unlawfully, and feloniously shot with a handgun one ARIEL SERENILLA y DE CHAVEZ, the latter not being armed and not in a position to retaliate and defend himself due to the suddenness of the attack, hitting him on the neck, chin and chest, which caused his death.

CONTRARY TO LAW.[3]

Criminal Case No. 1219-V-13

That on or about August 31, 2013 in Valenzuela City and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with another person, whose name, identity and present whereabouts are still unknown, with deliberate intent to kill, treachery and evident premeditation, and while on board a motorcycle, did then and there willfully, unlawfully, and feloniously shot with a handgun one LOURDES SERENILLA y ESPELETA, the latter not being armed and not in a position to retaliate and defend himself due to the suddenness of the attack, hitting her on the neck, which caused her death.

CONTRARY TO LAW.[4]

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[3] Records, Crim. Case No. 1218-V-13, p. 1.

[4] Records, Crim. Case No. 1219-V-13, p. 1.

In his arraignment, Dayrit pleaded not guilty[5] to the offense charged in the Informations. Thereafter, trial on merits ensued.

The prosecution presented seven (7) witnesses, namely, PSI Jocelyn Cruz, PO3 Alexander Buan, SPO1 Alexander Manalo, victims' son Aliven Serenilla, Lloyd Ontiveros, John Moises Vista and Joseph Emmanuel Soliman. The defense for its part presented four (4) witnesses, including the accused Dayrit, Billy Bragais, Michael John Aquino and Joseph Cabero.

Version of the Prosecution

On August 31, 2013, at around 10 o'clock in the evening, minors Lloyd Ontiveros, John Moises Vista and Joseph Emmanuel Soliman were playing along Anak Dalita Street, Barrio Bitik, Marulas, Valenzuela City. At that time, a man wearing a black jacket and a helmet arrived on board a green and black motorcycle. This man alighted from his motorcycle and removed his helmet to wipe off his perspiration, he is observing a group of persons and among them was Ariel Serenilla *(Ariel)*. Thereafter, Ontiveros approached the man since he recognized him as Angelito Dayrit, who was a school security guard at Serrano Elementary School. Ontiveros then asked Dayrit "*Kuya, bakit po kayo palakadlakad.* " Dayrit replied that he was just waiting for someone. After that, Dayrit boarded the motorcycle and left. Ontiveros then went back to his friends to continue playing. A few second later, Dayrit came back in the same motorcycle with a companion, who also was wearing a black jacket and a helmet. Dayrit, together with his companion, drove back and forth on the same street.

Afterwards, a certain Niño asked Ontiveros to buy some cigarettes. On his way to the store, Ontiveros met Ariel and his wife Lourdes Serenilla *(Lourdes)*. Ontiveros walked together with them and was teased by Ariel. Ariel also had a bicycle in tow. While walking, Ontiveros noticed that the two (2) persons on board the motorcycle he saw earlier were following Ariel and Lourdes. When they reached the store, Ontiveros stayed

[5] Records, Crim. Case No. 1218-V-13, pp. 53-55.

behind, while the spouses continued walking towards the tricycle. As the spouses were boarding the tricycle, two persons on board a motorcycle blocked their way and the back-rider thereof fired a gun four times fatally shooting the spouses. The motorcycle then sped away and went to the direction of Serrano Street.

Meanwhile, Aliven Serenilla, the son of Ariel and Lourdes, was in the house of his cousin at Tampoy, Marulas, Valenzuela City when he learned that his parents were shot. He rushed to the scene where it happened and learned that his parents were brought to Fatima Medical Center. Upon his arrival at the said hospital, he was told that the latter were already dead.

At around 11 o'clock in the evening, the Station Investigation Division of the Valenzuela City Police Station received a telephone call from a security guard of the Fatima Medical Center informing them that the victims from a shooting incident were brought to the said hospital. SPO1 Alexander Manalo, PO3 Edwin Mapula and PO2 Joel Madregalejo arrived at the said hospital and were informed that the victims were being treated inside the emergency room. The police officers were also informed that the shooting incident transpired at Little Tagaytay, Serrano Street corner Anak-Dalita Street to which they proceeded to conduct an investigation. The scene of the crime was already cordoned off by their fellow police officers from Police Community Precinct 3. After the case was turned over to them, they also sought the assistance of the NPD-SOCO Satellite Office in Valenzuela City. They discovered that the spouses victims were about to board a tricycle when two (2) persons on board a motorcycle suddenly shot Ariel and Lourdes, successively. The gunmen fled to the direction going to Serrano Street towards MacArthur Highway. The witnesses who saw the shooting incident were not willing to give their sworn statements.

Further investigation was then conducted by PO3 Alexander Buan, SPO3 Conrado Sy and PO3 Vladimir Magsino. PO3 Buan found out from Genero Dudlao, Lourdes' sibling, that Ariel had a misunderstanding with a certain Angelito Dayrit, and that three (3) children witnessed the shooting incident.

Subsequently, the children were fetched and were shown a picture of Dayrit to which they identified as the one who shot the spouses.

On September 2, 2013, PSI Jocelyn Cruz, a medico-legal officer, conducted a post-mortem examination of the cadavers of Ariel and Lourdes. In her medico-legal report, Ariel sustained three (3) gunshots, one on his face, the other on his neck and another one on his pelvic region. These wounds caused blood loss which resulted radic shock and eventually, his death. In the case of Lourdes, the gunshot's point of entry is located at her lateral neck region. From the injuries sustained by Lourdes, PCI Cruz inferred that these caused her instantaneous death.

On September 3, 2013, the police officers proceeded to the Karuhatan National High School, arrested Dayrit and informed him of his constitutional rights. Dayrit was brought to the police station and, thereafter, to the Valenzuela Medical Center for medical examination.

Version of the Defense

On August 31, 2013, at around 8 o'clock in the evening, accused-appellant Dayrit was at home with his family in Magsaysay Street, Manilas, Valenzuela City, watching television. His cousins, Michael John Aquino, Billy Joe Bragais and other relatives were also there and were discussing about their children's performance in school. At around 11:30 in the evening, Dayrit went to sleep.

Joseph Cabero was in Anak-Dalita Street on the same date, between 9:30 to 10 o'clock in the evening. He saw Ariel and Lourdes walk towards a tricycle. After Lourdes boarded the side car of the vehicle and Ariel was about to board, a motorcycle arrived and stopped beside the tricycle. The motorcycle driver, whom Cabero did not recognize, shot Ariel twice and Lourdes once. Joseph did not see the face of the shooter, but said that the latter had a smaller built compared to Dayrit. Shocked by what he saw, Cabero fled and hid at the side of an apartment across the street. Ten (10) minutes later, he left but he saw the tricycle driver, Raymond, being investigated by the police authorities. He, likewise, gave his statement to the investigator.

On September 3, 2013, while Dayrit was on duty at the Karuhatan National High School, two (2) barangay officials and three (3) police officers in civilian clothes arrived and approached him. The police officers confiscated Dayrit's gun and arrested him. According to Dayrit, he was neither informed of the reason of his arrest nor a warrant of arrest was shown to him. Dayrit was brought to a detention cell at the city hall. The police authorities asked Dayrit about the gun and motorcycle which he allegedly used in killing Ariel and Lourdes but he had no idea who the latter were. Dayrit stated that he does not even own a license to drive a motorcycle. Later on, he was told to stand in line with six (6) other persons.

On July 28, 2014, the RTC convicted Dayrit of the crime charged. The dispositive portion of the Decision states:

> WHEREFORE, accused ANGELITO DAYRIT y HIMOR is hereby found GUILTY beyond reasonable doubt of two counts of Murder under Article 248 of the Revised Penal Code for the death of Ariel Serenilla and Lourdes Serenilla; and is hereby imposed the penalty of *reclusion perpetua* for each count. The accused is further ordered to pay the heirs of the victims ₱100,000.00 as civil indemnity, ₱50,000.00 as temperate damages, and ₱100,000 as moral damages.
>
> The accused may be credited with the corresponding period that he has served under preventive imprisonment, in accordance with Article 29 of the Revised Penal Code and applicable rules.
>
> Cost against the accused.
>
> SO ORDERED.[6]

In concluding the guilt of Dayrit, the RTC ratiocinated:

> x x x x
>
> The identification by Ontiveros of the accused was strongly corroborated by the two other child-witnesses with whom he was playing at the time the accused first arrived near their play area on his orange and black motorcycle. On that first stop, the accused took off his helmet and wiped his perspiration, thus, the children saw his

[6] CA *rollo,* p.136.

face. Their playmate, Ontiveros, also talked with him; hence they gave notice to him. Thus, when they saw the accused again in a lineup of six persons at the detention cell of Valenzuela City Police Station a few days later, they recognized him as the person in black jacket and on board a motorcycle colored orange and black who stopped near their play area and went to look at the group of Ariel Serenilla in the evening of August 31, 2013, just prior to the shooting incident.

The shooting of both victims was sudden and unexpected. The couple apparently had no warning whatsoever of the impending assault. They were simply walking down the road, x x x. They were simply boarding a tricycle when all of a sudden, without any warning at all, they were gunned down. Ariel was shot from behind while boarding the tricycle. Lourdes, although shot frontally after Ariel, was seated inside the small sidecar with only one entrance on the side where Ariel was shot. Under the circumstances, both victims had absolutely no chance to evade the assault. They were clearly treacherously assaulted.

The prior acts of the accused plainly evince evident premeditation on his part. He initially checked the presence of his prey. He and his cohort dressed themselves similarly with black jackets and helmets, evidently to conceal their identities. In going back and forth to Anak-Dalita Street, they ensured that their target was still in the area and were obviously waiting for the right time to carry out their ill design. They were armed with a gun, an object not readily available to anyone. In other words, the accused clearly planned and prepared for murder of his victims.[7]

On appeal, the CA agreed with the findings of the trial court in giving credence to the testimonies of the prosecution witnesses, particularly of the children, who were the eyewitness of the crime. The appellate court was convinced that the qualifying circumstances of treachery and evident premeditation were duly appreciated. Likewise, the CA finds it proper to consider the generic aggravating circumstances of use of a motor vehicle that attended the commission of the crime which the trial court failed to appreciate. The records show that Dayrit was riding a motorcycle when he trailed and fatally shot the victims. It

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[7] *Id.* at 132-135.

was also used to facilitate his escape after the commission of the crime. Lastly, the award of damages was modified by adding exemplary damage in the amount of One Hundred Thousand Pesos (₱100,000.00). The *fallo* of the March 21, 2018 Decision reads:

> WHEREFORE, the instant *Appeal* is DENIED. The July 28, 2014 Decision of the Regional Trial Court, Branch 269, Valenzuela City in Criminal Case Nos. 1218-V-13 and 1219-V-13 is AFFIRMED with the following MODIFICATIONS:
>
> a) Accused-appellant ANGELITO DAYRIT y HIMOR is GUILTY beyond reasonable doubt of two (2) counts of Murder defined under Article 248 of the Revised Penal Code, attended by the aggravating circumstances of evident premeditation and use of motorcycle, and is hereby sentenced to suffer *reclusion perpetua* for each count without eligibility of parole;
>
> b) He is also ORDERED to PAY the heirs of Ariel and Lourdes Serenilla the following amounts for each victim: (a) ₱100,000.00 as civil indemnity (b) ₱100,000.00 as moral damages (c) ₱100,000.00 as exemplary damages; and (d) ₱50,000.00 as temperate damages; and
>
> c) Lastly, he is further ORDERED to pay interest on all monetary awards for damages at the rate of six percent (6%) *per annum* from the date of finality of this *Decision* until full satisfaction thereof.
>
> SO ORDERED.[8]

Now before Us, the People and Dayrit, manifested that that they would no longer file a Supplemental Brief, taking into account the thorough and substantial discussions of the issues in their respective appeal briefs before the CA.

The Court resolves to dismiss the appeal for failure to sufficiently show reversible error in the judgment of conviction to warrant the exercise of our appellate jurisdiction.

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[8] *Rollo*, p.15.

Murder is defined and penalized under Article 248 of the RPC, as amended by R.A. No. 7659. To successfully prosecute the crime, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.[9] In the instant case, the prosecution was able to establish that (1) Ariel and Lourdes were shot and killed; (2) Dayrit killed them; (3) the killing of Ariel and Lourdes was attended by the qualifying circumstance of treachery and evident premeditation; and (4) the killing of Ariel and Lourdes was neither parricide nor infanticide. We agree with the trial court's finding that the prosecution has proven Dayrit's guilt beyond reasonable doubt, as the first element of the offense was proven by presenting the Certificate of Death of Ariel and Lourdes.[10] The RTC correctly held in its Decision, that PSI Cruz, the Medico-Legal Officer of the Northern Police District Crime Laboratory, sufficiently testified that both victims died due to the gunshot wounds they each sustained which lacerated their major organs. Meanwhile, the other elements thereof were substantiated by child witness, Ontiveros.

It is worthy to note in this case that both driver and back-rider share the same criminal liability as they were in conspiracy with each other. Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy may be inferred from the acts of the accused before, during, and after the commission of the crime which indubitably point to, and are indicative of, a joint purpose, concert of action and community of interest. For conspiracy to exist, it is not required that there be an agreement for an appreciable period prior to the occurrence; it is sufficient that at the time of the commission of the offense, the malefactors

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[9] *Johnny Garcia Yap v. People*, G.R. No. 234217, November 14, 2018 and *People v. Racal*, 817 Phil. 665,677(2017).

[10] Records, Crim. Case No. 1218-V-13, pp. 66 and 76.

had the same purpose and were united in its execution.[11] In the present case, both driver and back-rider were animated by the same criminal intent which is to kill Ariel and Lourdes. As one person was driving the motorcycle, the other held the gun and fired it upon the victims. Hence, it will not matter whether Dayrit was the one driving the motorcycle or the one that fired the shots.

It is settled that the determination of the competence and credibility of a child as a witness rests primarily with the trial judge as he had the opportunity to see the demeanor of the witness, his apparent intelligence or lack of it, and his understanding of the nature of the oath. As many of these qualities cannot be conveyed by the records of the case, the trial judge's evaluation will not be disturbed on review, unless it is clear from the record that his judgment is erroneous.[12]

In the present case, we find no cogent reason to disturb the findings of the trial court in giving credence to the testimonies of the prosecution witnesses, particularly the children who were the eyewitnesses to the crime. Ontiveros, together with other child-witnesses, positively identified Dayrit as the author of the killing of Ariel and Lourdes. Before the fatal shooting of the victims, Ontiveros, together with other child-witnesses, saw Dayrit as the person on board a motorcycle. In fact, at the time when the Dayrit took off his helmet and wiped his perspiration, Ontiveros approached him as the latter recognized him together with the other child-witnesses. Further, contained in the *Sinumpaang Salaysay*[13] of Ontiveros are the following:

8. T- Papaano ba binaril sina kuya Ariel at ate Seksek mo, [ikuwento] o nga sa akin lahat ng pangyayari?

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[11] *People v. Richard Dillatan, Sr., et al.*, G.R. No. 212191, September 5, 2018.

[12] *People v. Lawa,* 444 Phil. 191, 203 (2003).

[13] Records, Crim. Case No. 1218-V-13, pp. 11-12.

S- Naglalaro po kami noon ng mga kaibigan ko sa may tapat [ng] bahay nila Angelo sa may taas ng Anak-Dalita tapos po ay may dumating na naka-motorsiklo na kulay green sa unahan at itim sa likod at itong may dala ng motor ay naka-kulay itim na jacket at itim na helmet tapos ay finlash-lightan kame nito tapos ay hinubad niya iyong helmet at jacket niya at nagpunas ng pawis tapos po ay nilapitan ko siya at tinanong ko siya "KUYA BAKIT PO KAYO PALAKAD LAKAD?" dahil bumaba siya ng motorsiklo at naglalakad habang patingin-tingin sa nag-iinuman na sina kuya Ariel and sagot niya sa akin ay may inaantay lang siya tapos pinapauwi na learning lahat pero hindi kami umuwi tapos ay naglaro na lang ako ulit tapos sumakay ulit siya sa motor niya at bumaba ng Anak-Dalita pero maya-maya ay bumalik siya ulit pero may kasama na siyang isang lalaki na naka-itim din na jacket at helmet at iyong kasama [niya] ng kinausap ko kanina ang nagmamaneho ng motor tapos ganun lang po ang ginagawa nila pabalik-balik lang sila sa taas ng Anak-dalita.

9. T- Pagtapos ano pa ang sumunod na nangyari?

S- Habang naglalaro pa rin ako ay inutusan ako ni Niño na bumili ng sigarilyo kaya nagpunta ako sa may baba at nakasabay ko sina kuya Ariel na may dalang bike pati ang asawa na si Ate Seksek at habang naglalakad po kami ay binibiro pa ako ni Kuya Ariel tapos nakita ko na iyong kaninang dalawang lalaking nakamotorskilo ay nakasunod sa amin tapos ay huminto na ako sa tindahan samantalang sina kuya Ariel a[y] naglakad at sumakay ng tricycle at ng umabante iyong tricycle ay hinarang na sila noong naka-motor at pinagbabaril na sila ng lalaking naka-angkas sa motor na siya rin iyong lalaking kinausap ko.

Jurisprudence tells us that where there is no evidence that the witnesses of 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 the instant case, no imputation of improper motive on the part of the prosecution witnesses was ever made by the accused-appellant.

The child witness in this case positively identified the accused-appellant several times during the trial as the person who killed Ariel and Lourdes. Such resoluteness cannot be doubted of a child, especially of one of tender age. The testimony of a single witness, when positive and credible, is sufficient to support a

conviction even of murder.[14] Anent appellant's defense of denial and alibi, bare assertions thereof cannot overcome the categorical testimony of the witness. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. On the other hand, for alibi to prosper, it must be demonstrated that it was physically impossible for appellant to be present at the place where the crime was committed at the time of commission.[15]

Now, it has been established that Dayrit was the one who killed Ariel and Lourdes. The other question to be resolved is whether or not the killing was attended by the qualifying circumstance of treachery and premeditation.

Paragraph 16, Article 14 of the RPC defines treachery as the employment of means, methods, or forms in the execution of the crime against a person 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 the sudden attack by the aggressor without the slightest provocation on the part of the unsuspecting victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor arising from the defense which the offended party might make.[16]

In order for treachery to be properly appreciated, two (2) elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself or to retaliate or escape; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him.[17]

In the instant case, the records show that in the evening of August 31, 2013, Ariel and Lourdes were merely boarding a

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[14] *People v. Avila,* 787 Phil. 346, 358 (2016).

[15] *People v. Bensurto, Jr.,* 802 Phil. 766, 778 (2016).

[16] *People v. Joseph A. Ampo,* G.R. No. 229938, February 27, 2019.

[17] *Id*.

tricycle, unaware of the danger. All of a sudden, Dayrit, while on board a motorcycle, launched an attack, shooting at his victims successively. It was clear that the manner of attack employed by Dayrit was deliberate and unexpected. Likewise, there was no opportunity for the victims to defend themselves. With the given circumstances, it is impossible for the victims to retaliate. Clearly, the prosecution has established that the qualifying circumstance of treachery is present.

Meanwhile, the requisites for the appreciation of evident premeditation are: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused had clung to his determination to commit the crime; and (3) the lapse of a sufficient length of time between the determination and execution to allow him to reflect upon the consequences of his act.[18]

In the present case, Dayrit initially monitored the presence of Ariel and subsequently drove back and forth on Anak-Dalita Street, ensuring that Ariel was still in the area. Dayrit was also seen wearing a black jacket and helmet for him not to be recognized and he secretly followed Ariel and Lourdes while they were on their way to a tricycle. Further, it was clearly shown that Dayrit and his companion planned the means on how to carry out and facilitate the killing of the victims. The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a space of time sufficient to arrive at a calm judgment.[19] In this case, the time that had elapsed while monitoring the victims and while waiting for the perfect opportunity to execute the shooting is indicative of a cool thought and reflection on the part of Dayrit to carry out his criminal intent.

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[18] *People v, Macaspac,* 806 Phil. 285, 293 (2017).

[19] *People v. Lorelo Dagsil,* G.R. No. 218945, December 13, 2017.

Moreover, the CA correctly considered the generic aggravating circumstance of use of a motor vehicle that attended the commission of the crime. In *People v. Herbias*,[20] the Court held:

> The use of motor vehicle may likewise be considered as an aggravating circumstance that attended the commission of the crime. The records show that assailants used a motorcycle in trailing and overtaking the jeepney driven by Saladio after which appellant's back rider mercilessly riddled with his bullets the body of Jeremias. There is no doubt that the motorcycle was used as a means to commit the crime and to facilitate their escape after they accomplished their mission.

The use of a motor vehicle is aggravating when it is used either to commit the crime or to facilitate escape.[21] Here, it was established that Dayrit was riding a motorcycle when he followed and fatally shot Ariel and Lourdes. Afterwards, he fled the crime scene on board the motorcycle. Clearly, a motor vehicle was used as a means to commit the crime and to facilitate his escape after the consummation of his plan to kill Ariel and Lourdes.

Furthermore, Dayrit is assailing the validity of his warrantless arrest. He is claiming that the police officers that arrested him did not have personal knowledge based on the facts and circumstances that he, had in fact, committed the crime. A contravention to Section 5, Rule 113 of the Revised Rules of Court.

We are not persuaded.

According the records of the case, Dayrit never raised the supposed illegality of his arrest prior to his arraignment. Instead, he raised the said issue for the first time in his appeal. As to the legality of his warrantless arrest, appellant is already estopped from questioning such because it was never raised prior to his having entered a plea of not guilty. Moreover, the rule is that an accused is estopped from assailing the legality of his arrest

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[20] 333 Phil. 422, 433 (1996).

[21] *People v. Salahuddin*, 778 Phil. 529, 552 (2016).

if he failed to move to quash the information against him before his arraignment. Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea, otherwise, the objection is deemed waived. Even in the instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection.[22]

In view of the attendant circumstance of treachery which qualified the killing to murder, as well as the presence of evident premeditation, and the generic aggravating circumstance of use of motor vehicle, the imposable penalty would have been death if not for the proscription for its imposition under Republic Act No. 9346. As regards to the award of damages, We agree with the CA in imposing civil indemnity *ex delicto*, moral and exemplary damages in the amount of One Hundred Thousand (₱100,000.00) for each count of Murder, and temperate damages in the amount of Fifty Thousand Pesos (₱50,000.00), in line with our ruling in *People v. Jugueta*.[23] Likewise, the CA is correct in ruling that the monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of the Decision until fully paid.[24]

WHEREFORE, the appeal is **DENIED**. The March 21, 2018 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 06982, convicting Angelito Dayrit y Himor of two (2) counts of Murder, is hereby **AFFIRMED**.

SO ORDERED.

Caguioa and *Lazaro-Javier, JJ.*, concur.

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[22] *People v. Bringcula*, G.R. No. 226400, January 24, 2018, 853 SCRA 142, 154.

[23] 783 Phil. 806 (2016).

[24] See Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013, effective July 1, 2013, in *Nacar v. Gallery Frames, et al*., 716 Phil. 267 (2013).

Rosario, J., agreed with the dissenting opinion of Justice Lopez.

Lopez, J., see concurring and dissenting opinion.

CONCURRING AND DISSENTING OPINION

***LOPEZ, J.*:**

I register my concurrence with the *ponencia* which affirmed the conviction of the accused for two counts of murder with the aggravating circumstances of treachery and use of motor vehicle. However, I disagree that evident premeditation attended the commission of the crime.

For proper reference, there is a need to revisit the facts of the case.

On August 31, 2013 at around 10:00 p.m., Lloyd Ontiveros and his friends saw a man wearing a black jacket and a helmet on board a green and black motorcycle. The man was seen "*palakadlakad*" on the street and observing a group of persons which included Ariel Serenilla. Lloyd recognized the man as Angelito Dayrit and asked him why he was there. Angelito responded that he was waiting for someone and soon left on his motorcycle. After a few seconds, Angelito returned in the same motorcycle with a companion, who was also wearing a black jacket and a helmet. They were driving back and forth along the same street. Later, Lloyd met Ariel and his wife Lourdes Serenilla on his way to buy cigarettes. As they were walking together, Lloyd noticed that Angelito and his companion are following Ariel and Lourdes. Upon reaching the store, Lloyd stayed behind while Ariel and Lourdes boarded a tricycle. Thereafter, Angelito and his companion blocked the tricycle and fired a gun four times that fatally injured Ariel and Lourdes. The assailants then drove the motorcycle and sped away to escape.

In appreciating evident premeditation, the majority ruled that the accused and his cohort monitored the victims and

subsequently drove back and forth on the street to ensure that they remained in the area. The accused and his companion were also wearing helmets and black jackets while stalking their victims showing that they planned the means on how to carry out the crimes. The *ponencia* then concluded that the time between monitoring the victims and waiting for the perfect opportunity to kill them indicated cool thought and reflection on the part the accused.

Notably, evident premeditation has the following elements, to wit: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) a *sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act.*[1] Specifically, the prosecution must establish that a sufficient amount of time had lapsed between the malefactor's determination and execution.[2] Indeed, case law had specified the periods for purposes of reflection or cool thinking on the part of the accused.

In *People v. Mojica*,[3] a period of **one month** from the time of the humiliation inflicted against the accused is enough. In *People v. Lasafin*,[4] **three days'** time is considered sufficient for the accused to meditate upon the crime which he intended to commit. In *People v. Renegado y Señora*,[5] the accused had more or less **sixty-four hours** to ponder over his plan and listen to the advice of his co-employees and of his own conscience. In *People v. Dosal*,[6] a period **one whole day** is enough to appreciate evident premeditation. In *People v. Magayac*,[7] an intervening period of **11 hours** was sufficient for the accused

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[1] *People v. Guillermo,* 361 Phil. 933 (1999).

[2] *People v. Abierra,* G.R. No. 227504, June 13, 2018.

[3] 162 Phil. 657(1976).

[4] 92 Phil. 668 (1953).

[5] 156 Phil. 260(1974).

[6] 92 Phil. 877(1953).

[7] 387 Phil. 1 (2000).

to have a cool reflection on the consequences of his criminal plan. In *People v. Benilo y Restubog*,[8] a six-hour interval between the alleged grave offense committed by the victim against the accused and the assassination was more than sufficient to enable the accused to recover his serenity. In *People v Dumdum, Jr.*,[9] a **one-hour interval** from conceiving the crime and its commission is considered sufficient.

Corollarily, the Court will not appreciate evident premeditation absent showing that there was enough time that had lapsed between the conception and execution of the crime to allow the accused to reflect upon the consequences of his acts.[10] Here, there is no evidence as to the period of time when the accused resolved to commit the crime and had cool thought and reflection to arrive at a calm judgment. The prosecution witnesses only attested that they saw the accused and his companion scouting the area and stalking the victims. Moreover, the assailants were in disguise and in possession of a gun. Yet, these circumstances are insufficient to prove cool thought and reflection of the crime to be executed. In *People v. Chua*,[11] the Court emphasized that the premeditation to kill must be plain and notorious. It must be sufficiently proven by evidence of outward acts showing the intent to kill. *In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient.* More importantly, the fact that a riding in tandem committed the crime should not automatically result in a finding of evident premeditation especially if there are no external acts of deliberate planning. In *People v. Punsalan*,[12] two men on board a motorcycle

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[8] 165 Phil. 871 (1976).

[9] 180 Phil. 628 (1979).

[10] *People v. De Guia*, 257 Phil. 957 (1989); *People v. Baldimo*, 338 Phil. 350 (1997); *People v. Garcia*, 467 Phi. 1102 (2004); *People v. Abierra, supra*; *People v. Illescas*, 396 Phil. 200 (2000); and *People v. Agramon*, G.R. No. 212156, June 20, 2018, 867 SCRA 104.

[11] 357 Phil. 907(1998).

[12] 421 Phil. 1058 (2001).

passed by the victim and his wife who were in front of their store. The riding in tandem then stopped in front of the couple and asked the victim his name. Thereafter, the accused shot the victim four times. The Court did not consider evident premeditation because there is no evidence *as to how and when the plan to kill was decided and what time had elapsed before it was carried out.*

To reiterate, the prosecution has the burden to prove all the elements of evident premeditation beyond reasonable doubt.[13] The Court cannot rely on mere suspicion. Accordingly, I vote to affirm the conviction of the accused for two counts of murder with the aggravating circumstances of treachery and use of motor vehicle sans evident premeditation.

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[13] *People v. Peña*, 353 Phi. 782 (1998).

SECOND DIVISION

[G.R. No. 248370. October 14, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **XXX,**[*] *Accused-Appellant*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FACTUAL FINDINGS OF THE TRIAL COURT ARE ACCORDED WITH RESPECT.— Well-settled is the rule that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court[,] and the appellate courts will not generally disturb the findings of the trial court in this respect. "[F]indings of the trial court, which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings." Certainly, the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial. "The task of taking on the issue of credibility is a function properly lodged with the trial court." Thus, generally, this Court will not re-examine

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[*] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; RA 9262, "An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; *People v. Cabalquinto*, 533 Phil. 703 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances.

evidence that had been analyzed and ruled upon by the trial court.

2. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS THEREOF.— The crime of Statutory Rape is defined in paragraph (1)(d), Article 266-A, as amended, . . .

To hold a conviction for Statutory Rape, the prosecution must establish the following: (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; whether the offended party was deprived of reason or consciousness; or whether it was done through fraudulent machination or grave abuse of authority. The victim's age and fact of intercourse shall sustain a conviction, provided they are alleged in the information and proven in trial.

3. ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; AGE MAY BE ESTABLISHED BY A BAPTISMAL CERTIFICATE.— The Information in Criminal Case No. 6258 alleges that AAA was 11 years old when she was raped by accused-appellant on or about June 14, 2009. AAA's certificate of baptism presented by the prosecution showed that she was born on January 27, 1998; hence, she was indeed 11 years old on June 14, 2009. The Court in the case of *People v. Pruna*, ruled that in the absence of a birth certificate, similar authentic documents such as a baptismal certificate showing the date of birth of the victim would suffice to prove age.

4. ID.; ID.; ID.; ID.; ID.; NEITHER THE ABSENCE OF PHYSICAL INJURIES NOR THE FAILURE TO ASK FOR HELP NEGATES RAPE.— Accused-appellant had carnal knowledge of AAA. Contrary to accused-appellant's arguments, absence of external signs or physical injuries on the complainant's body does not negate the commission of rape. . . .

Furthermore, that the victim did not call for help or even tell her grandmother about the incident cannot be construed to mean that the incident complained of did not take place.

5. ID.; ID.; ID.; ID.; ID.; DENIAL; ALIBI; POSITIVE IDENTIFICATION OF THE ACCUSED; BARE DENIAL AND ALIBI DO NOT PREVAIL OVER THE CATEGORICAL TESTIMONY AND IDENTIFICATION

OF ACCUSED.— Accused-appellant's bare denial and alibi will never prevail over AAA's direct, positive and categorical testimony and identification of accused-appellant as the assailant. His excuses lack probative value inasmuch as he failed to prove that it was impossible for him to be at his house at the time when the rape was committed as he had allegedly gone fishing.

6. ID.; ID.; QUALIFYING CIRCUMSTANCES; MINORITY; RELATIONSHIP; WHERE MINORITY AND RELATIONSHIP OF ACCUSED WITH THE VICTIM ARE ALLEGED IN THE INFORMATION AND PROVED DURING TRIAL, THE CRIME COMMITTED IS QUALIFIED STATUTORY RAPE; PENALTY AND DAMAGES.— Considering that the elements of minority and relationship of accused-appellant with AAA were alleged in the Information and proven during trial, the proper designation of the crime is Qualified Statutory Rape. AAA's age and accused-appellant's relation with her qualified the crime of Rape warranting the imposition of death penalty under paragraph 1, Article 266-B, as amended, of the RPC. However, by virtue of RA 9346, the penalty of *reclusion perpetua* is imposed in lieu of death because of the suspension of the death penalty. Thus, the RTC correctly imposed the penalty of *reclusion perpetua*, without eligibility for parole.

Finally, as for accused-appellant's civil liability, the award of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages should be awarded to AAA in conformity with prevailing jurisprudence.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

RESOLUTION

INTING, *J.*:

This is an appeal[1] from the Decision[2] dated February 26, 2019 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02262. The assailed CA Decision affirmed the Decision[3] dated February 26, 2016 of Branch 32, Regional Trial Court (RTC), [redacted] in Criminal Case Nos. 6257 and 6258 finding XXX (accused-appellant) guilty beyond reasonable doubt of the crime of Rape under paragraph (1), Article 266-A in relation to Article 266-B of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353.[4]

The Antecedents

The case stemmed from two Informations filed before the RTC charging accused-appellant with Rape under paragraph (1)(c), Article 266-A, as amended.

For Criminal Case No. 6257

"That on or about the period from June 1 to 13, 2009, at [redacted] Philippines, and within the jurisdiction of this Honorable Court, said accused, with lewd designs, and with abuse of confidence, he being the father of the offended party, and by means of force, threat, intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge upon one [AAA], an 11-year old girl who is his daughter, without her consent and against her will.

That accused is the father of the offended party is the aggravating/qualifying circumstance present in this case.

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[1] See Notice of Appeal dated March 27, 2019, *rollo*, pp. 17-18.

[2] *Id.* at 5-16; penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Edgardo L. Delos Santos (now a member of the Court) and Emily R. Aliño-Geluz, concurring.

[3] CA *rollo*, pp. 15-32; penned by Presiding Judge Ernesto Lamorin Peñaflor.

[4] The Anti-Rape Law of 1997.

CONTRARY TO LAW."[5]

For Criminal Case No. 6258

That on or about the 14th day of June 2009, in the evening, at [redacted] Philippines, and within the jurisdiction of this Honorable Court, said accused, with lewd designs, and with abuse of confidence, he being the father of the offended party, and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge upon one [AAA], an 11 year old girl who is his daughter, without her consent and against her will.

[That] accused is the father of the offended party is the aggravating/qualifying circumstance present in this case.

CONTRARY TO LAW.[6]

Upon arraignment, accused-appellant pleaded not guilty to both charges.[7] Trial on the merits ensued.

Version of the Prosecution

AAA was then 11 years old when the crime was committed against her person. Accused-appellant is AAA's biological father.

AAA testified as follows:

At around 9:00 p.m., while she was lying in bed, accused-appellant came to her side, and started kissing and touching the sensitive parts of her body. She sensed that accused-appellant was drunk at that time. Accused-appellant undressed her, removed her underwear, and crawled on top of her. Then, he removed his pants and brief and inserted his penis into AAA's vagina. AAA felt pain as accused-appellant made push and pull movements ignoring AAA's tearful plea of "*Pa, stop it, pa*." After sexually satisfying himself, accused-appellant told AAA that she should not tell anyone of the incident as he might be put in jail.[8]

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[5] CA *rollo*, pp. 15-16.

[6] *Id.*

[7] See Minutes dated January 20, 2010, Records, p. 27.

[8] *Rollo*, p. 7.

AAA could not recall the first time accused-appellant molested her. On cross-examination, AAA recounted that on one occasion of rape, her mother was cooking in their house. In another occasion, her mother was in the room when the incident happened. However, later, upon clarification, she declared that her mother was outside the room when the rape occurred, but her mother did not see the incident. AAA told her mother what happened immediately after the incident.[9]

Version of the Defense

The defense presented accused-appellant and his mother, CCC.

In his defense, accused-appellant denied the allegations against him. He insisted that on the dates of the alleged rape incidents, he was at sea fishing for almost two weeks or a total of 14 days. He would leave their residence at 8:00 p.m. and return the following day at 6:00 a.m. One morning, upon his arrival from fishing, he was apprehended by the *barangay* officials unaware of the reason. They immediately brought him to the *barangay* hall and then to the Philippine National Police Headquarters where he was eventually charged with two counts of rape.[10]

On cross-examination, accused-appellant testified that he did not inflict any harm on AAA for the latter to concoct the charge against him. He added that there were times when he would stay at home due to bad weather. He stressed that on June 14, 2009 he was at sea engaged in a fishing activity known as "*tambugan*."[11]

CCC corroborated the statements of accused-appellant. She narrated that her house was situated 100 meters away from accused-appellant's house. Accused-appellant would leave AAA with her every time he went fishing. Accused-appellant would go fishing in the evening and return to his house the following

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[9] *Id.*

[10] *Id.* at 8.

[11] *Id.*

morning. On the dates material to the rape incidents, her son was out fishing while her granddaughter, AAA, was at her (CCC's) residence.[12]

On cross-examination, CCC admitted that during the southwest monsoon season or "*habagat*," her son would not go fishing regularly because the activity is solely dependent on good weather conditions.[13]

The Ruling of the RTC

In the Decision[14] dated February 26, 2016, the RTC found accused-appellant guilty of one count of Rape sentencing him to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered him to pay AAA the following: ₱75,000.00 as moral damages, ₱75,000.00 as civil indemnity, and ₱30,000.00 as exemplary damages. However, the RTC acquitted accused-appellant from the charge under Criminal Case No. 6257 due to want of evidence.[15]

The Ruling of the CA

On February 26, 2019, the CA upheld accused-appellant's conviction. Notably, the CA convicted accused-appellant of Statutory Rape under paragraph (1) (d), Article 266-A, as amended, instead of paragraph (1) (c). Further, it increased the award of exemplary damages to ₱75,000.00, and imposed interest at the rate of 6% *per annum* on the aggregate amount of the monetary awards from the date of finality of judgment until full payment thereof.

Hence, the instant appeal.

The main issue to be resolved is whether the CA correctly found accused-appellant guilty of Statutory Rape under paragraph (1)(d), Article 266-A, as amended.

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[12] *Id.*

[13] *Id.* at 9.

[14] CA *rollo*, pp. 15-32.

[15] *Id.* at 31-32.

The Court's Ruling

The appeal has no merit.

Well-settled is the rule that the matter of ascribing substance to the testimonies of witnesses is best discharged by the trial court and the appellate courts will not generally disturb the findings of the trial court in this respect. "[F]indings of the trial court, which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings."[16] Certainly, the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial.[17] "The task of taking on the issue of credibility is a function properly lodged with the trial court."[18] Thus, generally, this Court will not re-examine evidence that had been analyzed and ruled upon by the trial court.

After a judicious perusal of the records, the Court finds no compelling reason to depart from the uniform factual findings of the RTC and the CA. The Court affirms accused-appellant's conviction for Statutory Rape.

The crime of Statutory Rape is defined in paragraph (1) (d), Article 266-A, as amended, as follows:

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:

x x x x x x x x x

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[16] *People v. Aspa, Jr.*, G.R. No. 229507, August 6, 2018, citing *People v. De Guzman*, 564 Phil. 282, 290 (2007).

[17] *Id.*, citing *People v. Villamin*, 625 Phil. 698, 713 (2010).

[18] *People v. Ilagan*, 455 Phil. 891, 903 (2003).

> (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.

To hold a conviction for Statutory Rape, the prosecution must establish the following: (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; whether the offended party was deprived of reason or consciousness; or whether it was done through fraudulent machination or grave abuse of authority. The victim's age and fact of intercourse shall sustain a conviction, provided they are alleged in the information and proven in trial.[19]

The prosecution established the two elements.

The Information in Criminal Case No. 6258 alleges that AAA was 11 years old when she was raped by accused-appellant on or about June 14, 2009. AAA's certificate of baptism presented by the prosecution showed that she was born on January 27, 1998; hence, she was indeed 11 years old on June 14, 2009. The Court in the case of *People v. Pruna*,[20] ruled that in the absence of a birth certificate, similar authentic documents such as a baptismal certificate showing the date of birth of the victim would suffice to prove age.

Accused-appellant had carnal knowledge of AAA. Contrary to accused-appellant's arguments, absence of external signs or physical injuries on the complainant's body does not negate the commission of rape. Thus, in *People v. ZZZ*:[21]

> The absence of external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape, hymenal laceration not being, to repeat, an element of the crime

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[19] *People v. Deliola*, 794 Phil. 194, 205 (2016) and *People v. Ronquillo*, 818 Phil. 641, 648 (2017), both citing *People v. Gutierrez*, 731 Phil. 353, 357 (2014).

[20] 439 Phil. 440 (2002).

[21] G.R. No. 229862, June 19, 2019.

of rape. A healed or fresh laceration would of course be a compelling proof of defloration. What is more, the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is sufficient to convict.[22]

Furthermore, that the victim did not call for help or even tell her grandmother about the incident cannot be construed to mean that the incident complained of did not take place.

In *Perez v. People*,[23] the Court had the occasion to rule:

x x x the failure to shout or offer tenuous resistance does not make voluntary the victim's submission to the criminal acts of the accused. Rape is subjective and not everyone responds in the same way to an attack by a sexual fiend. Although an older person may have shouted for help under similar circumstances, a young victim such as "AAA" is easily overcome by fear and may not be able to cry for help.

We have consistently ruled that "no standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult. x x x[24]

In *People v. Suarez*,[25] the Court discussed:

The conviction or acquittal of one accused of rape most often depends almost entirely on the credibility of the complainant's testimony. By the very nature of this crime it is generally unwitnessed and usually the victim is left to testify for herself. Her testimony is most vital and must be received with the utmost caution. When a rape victim's testimony, however, is straightforward and marked with consistency despite grueling examination, it deserves full faith and

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[22] *Id.*, citing *People v. Araojo*, 616 Phil. 275, 288 (2009).

[23] 830 Phil. 162 (2018).

[24] *Id.* at 176, citing *People v. Lomaque*, 710 Phil. 338, 352 (2013).

[25] 750 Phil. 858 (2015).

confidence and cannot be discarded. Once found credible, her lone testimony is sufficient to sustain a conviction.[26]

When AAA took the witness stand in 2010, she recalled the following details on how accused-appellant sexually ravished her way back in 2009:

[Direct Examination by Pros. Virgilio Cabral]

Q - As of today you are twelve (12) years old?

A - Yes, sir.

x x x x

Q - And you are grade five?

A - Yes, sir.

x x x x

Q - When was that that you were allegedly rape by your father?

A - In the evening.

Q - In what evening was that?

A - 9:00 o'clock in the evening.

x x x x

Q - Now, tell us how your father able to rape you?

A - He undressed me.

x x x x

Q - So, you were sleeping that time when your father raped you?

A - Yes, sir.

Q - What did your father do that you said he raped you?

A - He drunk first and I was in our house and immediately raped me.

Q - You mean to say that while you were sleeping your father came home drunk?

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[26] *Id.* at 864-865. Citations omitted.

A - Yes, sir.

Q - And when your father arrived home drunk were you awaken?

A - Yes, sir.

Q - And at that time you were lying in bed?

A - Yes, sir.

Q - And your father went to your side?

A - Yes, sir.

Q - And while he was on your side what did your father does to you?

A - He took off my short.

Q - After he took off your shorts what did he do next?

A - He raped me.

Q - Did he kiss you?

A - Yes, sir.

Q - Did he also touch your body?

A - Yes, sir.

Q - Where were you kissed?

A - In my face.

Q - How many times were you kissed by your father?

A - Only one.

x x x x

Q - Did your father took off your panty?

A - Yes, sir.

Q - After he took off your panty what else did your father do?

A - He crawled.

Q - And when he crawled to you, did he place himself on top of you?

A - Yes, sir.

Q - When he placed himself on top of you, was your father without any dress?

A - No dress.

Q - You mean to say he has no dress at that time?

A - None.

x x x x

Q - Did he also take off his brief?

A - Yes, sir.

Q - And after taking off his brief what did he do later to you?

A - He raped me after taking off his brief.

Q - You have been saying your father raped you. You mean to say that your father inserted his penis into your vagina?

A - Yes, sir.

Q - Where is your vagina located in your body?

A - Here (Witness pointing to her private part).

x x x x

Q - How long was your father on top of you while his penis was inside your vagina?

A - He inserted his entire penis.

Q - I will repeat my question your Honor. How long was your father on top of you when his penis was inside your vagina?

A - He touched my body.

Q - You mean to say that while your father was on top of you while his penis was inside your vagina your father continued to touch your body?

A - Yes, sir.

Q - And while your father was on top of you, you felt pain on your whole body?

A - Yes, sir.

Q - And did you cry at the time when your father was on top of you while his penis was inside you vagina?

A - Yes, sir.

Q - And you were crying when you said to your father to stop it?

A - Yes, sir.

Q - And did your father make a push and pull motion while he was on top of you?

A - Yes, sir.

Q - How many times did he make such push and pull motion?

A - Two (2) times.

Q - And after that two (2) times that he had made such push and pull motion did your father eventually remove his penis from your vagina?

A - Yes, sir.[27]

The RTC, as affirmed by the CA, found AAA's testimony to be credible. The Court finds no reason to set aside the RTC's finding considering that AAA's narration is "clear, spontaneous, and straightforward."[28]

In *People v. Deliola*,[29] The Court ruled:

Furthermore, testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says on effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity. No young woman would admit that she was raped, make public the offense and allow the examination of her private parts, undergo the troubles and humiliation of a public trial and endure

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[27] TSN, November 25, 2010, pp. 4-12.

[28] *People v. Rayon, Sr.*, 702 Phil. 672, 680 (2013).

[29] *People v. Deliola, supra* note 19.

the ordeal of testifying to all the gory details, if she had not in fact been raped.[30]

Accused-appellant's bare denial and alibi will never prevail over AAA's direct, positive and categorical testimony and identification of accused-appellant as the assailant. His excuses lack probative value inasmuch as he failed to prove that it was impossible for him to be at his house at the time when the rape was committed as he had allegedly gone fishing.

Considering that the elements of minority and relationship of accused-appellant with AAA were alleged in the Information and proven during trial, the proper designation of the crime is Qualified Statutory Rape. AAA's age and accused-appellant's relation with her qualified the crime of Rape warranting the imposition of death penalty under paragraph 1, Article 266-B, as amended, of the RPC. However, by virtue of RA 9346, the penalty of *reclusion perpetua* is imposed in lieu of death because of the suspension of the death penalty. Thus, the RTC correctly imposed the penalty of *reclusion perpetua*, without eligibility for parole.[31]

Finally, as for accused-appellant's civil liability, the award of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages should be awarded to AAA in conformity with prevailing jurisprudence.[32]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated February 26, 2019 of the Court of Appeals in CA-G.R.

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[30] *Id.* at 280, citing *People v. Suarez, supra* note 25 at 868-869 and *People v. Nical*, 754 Phil. 357, 366 (2015).

[31] The phrase "without eligibility for parole" is not deleted in view of the guidelines provided for in A.M. No. 15-08-02 SC dated August 4, 2015 which states that "(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of RA 9346, the qualification of "*without eligibility for parole*" *shall be used to qualify reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer death penalty had it not been for RA 9346."

[32] *People v. Jugueta*, 783 Phil. 806, 843 (2016).

CR-HC No. 02262 is **AFFIRMED** with **MODIFICATION** in that accused-appellant XXX is hereby found **GUILTY** of Qualified Statutory Rape for which he is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and **ORDERED** to pay AAA ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

All monetary awards are subject to the interest of 6% *per annum* from the finality of this Resolution until fully paid.

SO ORDERED.

Perlas-Bernabe (*Chairperson*), *Gesmundo,*[**] and *Hernando, JJ.*, concur.

Baltazar-Padilla, J., on leave.

[**] Designated as additional member per Raffle dated February 12, 2020.

SECOND DIVISION

[G.R. No. 248694. October 14, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **RANIE ESTONILO *y* DE GUZMAN**, *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS IN CRIMINAL CASES; THE FILING OF A NOTICE OF APPEAL BEFORE THE COURT OF APPEALS IS A WRONG MODE OF APPEAL IF THE SAID COURT MODIFIES THE CONVICTION TO A CRIME NOT PUNISHABLE BY *RECLUSION PERPETUA* OR LIFE IMPRISONMENT.— [T]he general rule is that appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* before it under Rule 45 of the Rules of Court; except when the CA imposed the penalty of "*reclusion perpetua*, life imprisonment or a lesser penalty," in which case, the appeal shall be made by a mere notice of appeal filed before the CA. In this case, Estonilo clearly availed of a wrong mode of appeal by filing a Notice of Appeal before the CA despite the latter court modifying his conviction to a crime not punishable by *reclusion perpetua* or life imprisonment. Nonetheless, in the interest of substantial justice, the Court will resolve this case on the merits in order to resolve the substantial issue at hand with finality.

2. ID.; ID.; ID.; AN APPEAL IN CRIMINAL CASES THROWS THE ENTIRE CASE WIDE OPEN FOR REVIEW.— In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

3. CRIMINAL LAW; ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (R.A. NO. 9208); TRAFFICKING IN PERSONS;

ELEMENTS THEREOF.— Section 3(a) of RA 9208 defines the term "Trafficking in Persons" . . .

For a successful prosecution of Trafficking in Persons, the following elements must be shown: (*a*) the *act* of "recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders"; (*b*) the *means* used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and (*c*) the *purpose* of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."

4. ID.; ID.; QUALIFIED TRAFFICKING IN PERSONS; THE CRIME IS QUALIFIED WHEN, *INTER ALIA*, THE TRAFFICKED PERSON IS A CHILD.— Section 6 of RA 9208 provides that the crime is qualified when, *inter alia*, the trafficked person is a child, . . .

In this case, the courts *a quo* found that the prosecution, through the testimonies of both AAA and BBB, was able to establish that Estonilo had indeed befriended the two (2) minors in order to recruit them and thereafter, pimp them to his clients. For this purpose, he was able to take advantage of AAA and BBB's minority and coerce them into committing sexual acts with one another, under the pretext that they needed to learn how to perform such act with fellow males so that they can earn monetary consideration for the same.

5. ID.; ID.; ID.; NEITHER THE PRESENCE OF THE TRAFFICKER'S CLIENTS NOR THEIR INTERCOURSE WITH THE VICTIM/S IS REQUIRED TO SUPPORT A FINDING OF TRAFFICKING.— [N]either the presence of the trafficker's clients, nor their intercourse with the victim/s, is required to support a finding of trafficking. . . .

Thus, the fact that neither AAA or BBB had sexual contact with any of Estonilo's clients will not affect the latter's criminal liability for Qualified Trafficking in Persons. To be sure, the gravamen of the crime of trafficking is "the act of recruiting

or using, with or without consent, a fellow human being for [*inter alia*,] sexual exploitation[.]"

6. ID.; ID.; ID.; PENALTY AND DAMAGES. — Anent the proper penalty to be imposed on Estonilo, Section 10(c) of RA 9208 states that persons found guilty of Qualified Trafficking shall suffer the penalty of life imprisonment and a fine of not less than ₱2,000,000.00 but not more than ₱5,000,000.00, for each count thereof. Finally, and pursuant to prevailing jurisprudence, Estonilo must also pay AAA and BBB each the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages, plus legal interest of six percent (6%) per annum from finality of judgment until full payment.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Ranie Estonilo *y* De Guzman (Estonilo) assailing the Decision[2] dated November 23, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08617, which affirmed with modification the Judgment[3] dated July 28, 2016 of the Regional Trial Court of [redacted], Pampanga, Branch 61 (RTC) in Criminal Case Nos. 10-5894 and 10-5895, and accordingly, found Estonilo guilty beyond reasonable doubt of two (2) counts of violation of Section 5 (a) (5), Article III of Republic Act No. (RA) 7610,[4] otherwise known as the "Special Protection

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[1] See Notice of Appeal dated December 28, 2017; *rollo*, pp. 21-22.

[2] *Id.* at 3-20. Penned by Associate Justice Jhosep Y. Lopez with Associate Justices Ramon M. Bato, Jr. and Samuel H. Gaerlan (now a member of this Court), concurring.

[3] CA *rollo* at 59-74. Penned by Judge Bernardita Gabitan-Erum.

[4] Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE,

of Children Against Abuse, Exploitation, and Discrimination Act."

The Facts

This case stemmed from two (2) separate Informations filed before the RTC, each charging Estonilo of Qualified Trafficking in Persons, defined and penalized under Section 4, in relation to Section 6(a) of RA 9208,[5] otherwise known as the "Anti-Trafficking in Persons Act of 2003," the accusatory portions of which read:

Criminal Case No. 10-5894

That during the period from March 6, 2010 to March 13, 2010, in the [redacted] Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously recruit, transport, harbor, maintain, hire, provide and/or receive [redacted] a minor 12 years old, by any means or under the pretext of domestic employment or sexual exploitation taking advantage of the vulnerability of the minor in violation of Section 4 in relation to Sec. 6 (a) Republic Act No. 9208.

CONTRARY TO LAW.[6]

Criminal Case No. 10-5895

That during the period from March 6, 2010 to March 13, 2010, in the [redacted] Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously recruit, transport, harbor, maintain, hire, provide and/or receive [redacted] a minor 11 years old, by any means or under the pretext of domestic

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EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992.

[5] Entitled "AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS, AND FOR OTHER PURPOSES," approved on May 26, 2003.

[6] CA *rollo*, p. 59.

employment or sexual exploitation taking advantage of the vulnerability of the minor in violation of Section 4 in relation to Sec. 6 (a) Republic Act No. 9208.

CONTRARY TO LAW.[7]

The prosecution claimed that sometime in January 2010, Estonilo approached AAA,[8] then 12 years old, in an effort to convince the latter to "*mamakla*" in exchange for money. For this purpose, Estonilo even introduced him to a "client" who offered ₱2,000.00 for AAA's sexual services, but AAA refused. However, Estonilo was persistent with his recruiting efforts, and this culminated in the evening of March 6, 2010. On that night, AAA was on his way home with his friend, BBB, then 11 years old, when Estonilo called their attention. Estonilo persistently coerced AAA to have sex with BBB at a nearby vacant lot in exchange for ₱300.00 so that they will learn how to perform sexual acts. The children acceded and had sexual contact with each other with AAA inserting his penis into BBB's mouth and anus. About a week later, or on March 13, 2010, AAA, BBB, and their friends were frolicking at a swimming pool when Estonilo arrived with his bicycle. Estonilo called AAA and told him to have sexual contact with BBB at a nearby bathroom. Fearing that Estonilo might get mad, AAA and BBB again had sexual contact with each other. At that time, Estonilo

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[7] *Id.* at 60.

[8] The identity of the victim or any information which could establish or compromise his identity, as well as those of his immediate family or household members, shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, known as the "RE: RULE ON VIOLENCE AGAINST WOMEN AND THEIR CHILDREN," effective November 15, 2004, (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 (2014), citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]).

even suggested that AAA have sex with BBB's 11-year old aunt who was with them, but AAA refused. The next day, AAA felt pain while urinating, prompting his mother to bring him to a doctor. After examination, the doctor revealed that AAA contracted an infection because of anal intercourse and the same might progress into a sexually transmitted disease if left untreated. This resulted in AAA divulging his ordeal to his mother.[9]

For his part, Estonilo mainly relied on denials, averring that he does not know AAA or BBB personally, and that he is busy with his maintenance job in a hotel during weekdays and his *carinderia* during weekends.[10]

The RTC Ruling

In a Judgment[11] dated July 28, 2016, the RTC found Estonilo guilty beyond reasonable doubt of two (2) counts of Qualified Trafficking in Persons, and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱2,000,000.00 for each count, and to pay AAA and BBB ₱20,000.00 each as moral damages.[12]

The RTC found that the prosecution was able to establish beyond reasonable doubt that Estonilo took advantage of the vulnerability of two (2) minors, namely, AAA and BBB, to engage in sexual acts with one another in exchange for money. On this note, the RTC found untenable Estonilo's bare defenses of denial in the face of the clear and categorical testimonies made by both AAA and BBB describing their ordeal under the hands of Estonilo.[13]

Aggrieved, Estonilo appealed[14] to the CA.

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[9] *Rollo*, pp. 4-5. See also CA *rollo*, pp. 60-69.

[10] *Id.* at 5-6. See also CA *rollo*, pp. 69-70.

[11] CA *rollo*, pp. 59-74.

[12] *Id.* at 74.

[13] *Id.* at 70-74.

[14] See Notice of Appeal dated September 7, 2016; *id.* at 17.

The CA Ruling

In a Decision[15] dated November 23, 2017, the CA modified the RTC ruling, finding Estonilo guilty beyond reasonable doubt of two (2) counts of the crime of violation of Section 5(a), paragraph (5), Article III of RA 7610. Accordingly, the CA sentenced him to suffer the penalty of imprisonment for an indeterminate period of fourteen (14) years and eight (8) months of *reclusion temporal*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum for each count, and ordered him to pay AAA and BBB each the amount of ₱50,000.00 as civil indemnity.[16]

The CA held that the prosecution had indeed established beyond reasonable doubt the fact that Estonilo, through coercion and for monetary consideration, ordered AAA and BBB to engage in sexual conduct with one another. However, it opined that Estonilo could not be held criminally liable for Qualified Trafficking in Persons, as it was not shown that Estonilo committed acts of trafficking, *i.e.*, how he recruited, obtained, hired, provided, offered, transported, transferred, maintained, harbored, or received AAA and/or BBB for the purpose of trafficking. This notwithstanding and applying the variance doctrine as enunciated in Sections 4 and 5, Rule 120 of the Revised Rules of Criminal Procedure, the CA ruled that Estonilo's acts of offering money and imposing his will on the victims constitute a violation of Section 5(a), paragraph (5), Article III of RA 7610, and as such, he must be held criminally liable therefor.[17]

Hence, this appeal.[18]

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[15] *Rollo*, pp. 3-20.

[16] *Id.* at 19.

[17] *Id.* at 8-19.

[18] See Notice of Appeal dated December 28, 2017; *id.* at 21-22.

The Issue Before the Court

The issue for the Court's resolution is whether or not Estonilo should be held criminally liable for his supposed acts against AAA and BBB.

The Court's Ruling

As a preliminary matter, the general rule is that appeals of criminal cases shall be brought to the Court by filing a petition for review on *certiorari* before it under Rule 45 of the Rules of Court;[19] except when the CA imposed the penalty of "*reclusion perpetua*, life imprisonment or a lesser penalty," in which case, the appeal shall be made by a mere notice of appeal filed before the CA.[20] In this case, Estonilo clearly availed of a wrong mode of appeal by filing a Notice of Appeal before the CA[21] despite the latter court modifying his conviction to a crime not punishable by *reclusion perpetua* or life imprisonment. Nonetheless, in the interest of substantial justice, the Court will resolve this case on the merits in order to resolve the substantial issue at hand with finality.[22]

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[19] Section 3 (e), Rule 122 of the Revised Rules on Criminal Procedure reads:

> Section 3. *How appeal taken*. —
>
> x x x x
>
> (e) Except as provided in the last paragraph of Section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on *certiorari* under Rule 45.

[20] Section 13 (c), Rule 124 of the Revised Rules on Criminal Procedure reads:

> Section 13. *Certification or appeal of case to the Supreme Court*. —
>
> x x x x
>
> (c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

[21] See Notice of Appeal dated December 28, 2017; *rollo*, pp. 21-22.

[22] See *Ramos v. People*, 803 Phil. 775, 783 (2017).

In criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[23]

Guided by the foregoing consideration, and as will be explained hereunder, the Court deems it proper to reinstate the RTC ruling convicting Estonilo of Qualified Trafficking in Persons under Section 4(a) in relation to Section 6(a) of RA 9208.[24]

Section 3(a) of RA 9208 defines the term "Trafficking in Persons" as the "recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the persons, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." The same provision further provides that "[t]he recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as 'trafficking in persons' even if it does not involve any of the means set forth in the preceding paragraph." In this regard, Section 4 of the same law provides the acts constituting

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[23] *Id.*, citing *People v. Bagamano*, 793 Phil. 602, 607 (2016).

[24] While RA 9208 had already been amended by RA 10364 effective February 6, 2013, it must be noted that the acts complained of were committed during the period of March 6 to March 13, 2010, and hence, the former is controlling.

"Trafficking in Persons."[25] Portions of this provision pertinent to this case read:

SECTION 4. *Acts of Trafficking in Persons*. — It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) To recruit, transport, transfer, harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage; x x x

For a successful prosecution of Trafficking in Persons, the following elements must be shown: *(a)* the *act* of "recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders"; *(b)* the *means* used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and *(c)* the *purpose* of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."[26] In addition, Section 6 of RA 9208 provides that the crime is qualified when, *inter alia*, the trafficked person is a child, to wit:

SECTION 6. *Qualified Trafficking in Persons*. — The following are considered as qualified trafficking:

(a) When the trafficked person is a child; x x x

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[25] *People v. XXX and YYY*, G.R. No. 235652, July 9, 2018, 871 SCRA 424, 435.

[26] *People v. Hirang*, 803 Phil. 277, 289 (2017), citing *People v. Casio*, 749 Phil. 458, 742-473 (2014).

In this case, the courts *a quo* found that the prosecution, through the testimonies of both AAA and BBB, was able to establish that Estonilo had indeed befriended the two (2) minors in order to recruit them and thereafter, pimp them to his clients. For this purpose, he was able to take advantage of AAA and BBB's minority and coerce them into committing sexual acts with one another, under the pretext that they needed to learn how to perform such acts with fellow males so that they can earn monetary consideration for the same. Hence, the Court finds no reason to overturn the findings of the RTC, as affirmed by the CA, as there was no showing that they overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case. It bears pointing out that the RTC was in the best position to assess and determine the credibility of the witnesses presented by both parties.[27] As such, Estonilo's criminal liability for the aforesaid acts must stand.

In this regard, the CA erred in opining that no trafficking existed as "there was no person to whom [Estonilo] endorsed or recruited his victims,"[28] and further stressing that the sexual acts transpired not between AAA or BBB and any of Estonilo's clients, but between AAA and BBB themselves.[29] As aptly pointed out by Associate Justice Ramon Paul L. Hernando, neither the presence of the trafficker's clients, nor their intercourse with the victim/s, is required to support a finding of trafficking. As held in *People v. Aguirre*:[30]

> Furthermore, **the presence of the trafficker's clients is not an element of the crime of recruitment or transportation of victims** under Sections 3(a) and 4(a) of RA 9208. In the same vein, the law does not require that the victims be transported to or be found in a brothel or a prostitution den for such crime of recruitment or transportation to be committed. In fact, it has been held that the act

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[27] See *People v. Naciongayo*, G.R. No. 243897, June 8, 2020, citing *Cahulogan v. People*, G.R. No. 225695, March 21, 2018.

[28] See *rollo*, p. 15.

[29] *Id.*

[30] 820 Phil. 1085 (2017).

of sexual intercourse need not have been consummated for recruitment to be said to have taken place. **It is sufficient that the accused has lured, enticed[,] or engaged its victims or transported them for the established purpose of exploitation, which includes prostitution, sexual exploitation, forced labor, slavery, and the removal or sale of organs.** In this case, the prosecution has satisfactorily established accused-appellants' recruitment and transportation of private complainants for purposes of prostitution and sexual exploitation.[31] (Emphases and underscoring supplied)

Thus, the fact that neither AAA nor BBB had sexual contact with any of Estonilo's clients will not affect the latter's criminal liability for Qualified Trafficking in Persons. To be sure, the gravamen of the crime of trafficking is "the act of recruiting or using, with or without consent, a fellow human being for [*inter alia*,] sexual exploitation"[32] — which, as already discussed, was established to have been committed by Estonilo.

Anent the proper penalty to be imposed on Estonilo, Section 10(c) of RA 9208 states that persons found guilty of Qualified Trafficking shall suffer the penalty of life imprisonment and a fine of not less than ₱2,000,000.00 but not more than ₱5,000,000.00, for each count thereof. Finally, and pursuant to prevailing jurisprudence, Estonilo must also pay AAA and BBB each the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages, plus legal interest of six percent (6%) per annum from finality of judgment until full payment.[33]

WHEREFORE, the appeal is **DENIED**. The Decision dated November 23, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08617 is **AFFIRMED** with **MODIFICATIONS** as follows:

(a) In Criminal Case No. 10-5894, accused-appellant Ranie Estonilo *y* De Guzman is found **GUILTY** beyond

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[31] *Id.* at 1103.

[32] *People v. Rodriguez*, 818 Phil. 625, 640 (2017).

[33] See *People v. Maycabalong*, G.R. No. 215324, December 5, 2019.

reasonable doubt of Qualified Trafficking in Persons, defined and penalized under Section 4 (a), in relation to Section 6 (a) of RA 9208. Accordingly, he is sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱2,000,000.00. In addition, he is ordered to pay the victim, AAA, the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages, both with legal interest of six percent (6%) per annum from the finality of this Decision until full payment; and

(b) In Criminal Case No. 10-5895, accused-appellant Ranie Estonilo *y* De Guzman is found **GUILTY** beyond reasonable doubt of Qualified Trafficking in Persons, defined and penalized under Section 4 (a), in relation to Section 6 (a) of RA 9208. Accordingly, he is sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱2,000,000.00. In addition, he is ordered to pay the victim, BBB, the amounts of ₱500,000.00 as moral damages and ₱100,000.00 as exemplary damages, both with legal interest of six percent (6%) per annum from the finality of this Decision until full payment.

SO ORDERED.

Hernando, Inting and *Delos Santos, JJ.*, concur.

Baltazar-Padilla, J., on leave.

FIRST DIVISION

[A.C. No. 10933. November 3, 2020]

WILSON B. TAN, *Complainant, v.* **ATTY. JAMES ROULYN R. ALVARICO**, *Respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; REMEDIAL LAW; EVIDENCE; QUANTUM OF PROOF AND BURDEN OF PROOF IN DISCIPLINARY OR DISBARMENT PROCEEDINGS; THE COMPLAINANTS HAVE THE BURDEN OF PROOF TO ESTABLISH BY SUBSTANTIAL EVIDENCE THE ALLEGATIONS IN THEIR COMPLAINTS.— An attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the Court, he is presumed to have performed his duties in accordance with his oath. In disbarment proceedings, the quantum of proof is substantial evidence and the burden of proof is on the complainant to establish the allegations in his complaint.

. . .

The basic rule is that reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on. Charges based on mere suspicion and speculation cannot be given credence. Thus, failure on the part of complainant to discharge his burden of proof by substantial evidence requires no other conclusion than that which stays the hand of the Court from meting out a disbarment order.

2. ID.; ID.; ID.; ID.; ID.; THE QUANTUM OF PROOF IN DISCIPLINARY PROCEEDINGS AGAINST LAWYERS IS SUBSTANTIAL EVIDENCE, NOT PREPONDERANCE OF EVIDENCE.—[B]ased on a survey of jurisprudence, the quantum of proof for administrative proceedings against lawyers is substantial evidence and not preponderance of evidence. We stressed that this pronouncement ought to control and quell any further confusion on the proper evidentiary threshold. Moreover, we recognized that the evidentiary threshold of substantial evidence, as opposed to preponderance of evidence,

is more in keeping with the primordial purpose of and essential considerations attending disciplinary cases:. . .

3.ID.; ID.; CONFLICT OF INTEREST; A LAWYER IS PROHIBITED FROM REPRESENTING OTHER PERSONS WHOSE INTERESTS OPPOSE THOSE OF A FORMER CLIENT.—[A] lawyer is prohibited from representing other persons whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases. Conflict of interest exists when a lawyer represents inconsistent interests of two or more opposing parties.

In *Paces Industrial Corporation v. Atty. Salandanan*, the Court emphasized that the rule prohibiting conflict of interests is grounded in the fiduciary obligation of loyalty, recognizing that the nature of the attorney-client relationship is one of trust and confidence of the highest degree. . . .

4. ID.; ID.; ID.; ATTORNEY-CLIENT RELATIONSHIP; THE ABSENCE OF A FORMAL ENGAGEMENT WOULD NOT PRECLUDE THE FINDING OF AN ATTORNEY-CLIENT RELATIONSHIP, AND THE ABSENCE OF SUCH RELATIONSHIP WOULD NOT PRECLUDE THE FINDING OF A VIOLATION OF THE RULE ON CONFLICT OF INTERESTS.— Atty. Alvarico argues that there was no attorney-client relationship between him and complainant that would give rise to representation of conflicting interests.However, in *Solatan v. Atty. Inocentes*, the Court found that the respondent-attorney represented conflicting interests even if there was no employment relation offered or accepted because he gave unsolicited advice to the adverse party. To establish the professional relation, it is sufficient that the advice and assistance of an attorney are sought and received in any manner pertinent to his profession. Thus, the absence of a formal engagement would not preclude the finding of an attorney-client relationship, and the absence of such relationship would not preclude the finding of a violation of the rule on conflict of interests.

5. ID.; ID.; ID.; ENGAGING IN NEGOTIATIONS WITH THE ADVERSE PARTY TO REACH A SETTLEMENT DESIGNED PURSUANT TO THE INTERESTS OF THE CLIENT IS NOT REPRESENTATION OF CONFLICT OF

INTERESTS.— Engaging in negotiations with the adverse party is not *per se* representation of conflicting interests. A survey of jurisprudence shows that negotiation would lead to a violation of the rule on conflicting interests when the respondent-attorney negotiates with the client's adversary in opposition to his client's interest or claim.

. . .

In the case at bar, during the negotiations between complainant and Atty. Alvarico, the latter did not represent the former's interests because his offer to settle the civil aspect of the case through the payment of the value of the allegedly stolen steering wheel is in the interest of his client Manco who was criminally charged for the theft thereof. The settlement of the civil aspect of the theft case filed against his client was towards his client's interest, and even encouraged by our legal system and aligned with the duty of an attorney. The civil aspect of theft is subject to mandatory Court-Annexed Mediation (*CAM*) and Judicial Dispute Resolution (*JDR*) wherein parties are encouraged to reach a settlement and put an end to litigation. Further, a lawyer is encouraged under Rule 1.04 of the Code of Professional Responsibility to encourage his clients to settle a controversy if it would admit of a fair settlement.

In negotiating with complainant, Atty. Alvarico remained loyal to the cause of his client Manco. In contrast to the above-cited jurisprudence wherein the Court found a conflict of interest, the terms of settlement offered by Atty. Alvarico were designed pursuant to the interests of his client Manco, and not to the benefit of complainant. This was acknowledged by Manco himself when he stated in his Affidavit that it was he who asked Atty. Alvarico to reach a settlement with complainant.

6. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY OF EVIDENCE; ADMISSION BY SILENCE; THE FAILURE TO CROSS-EXAMINE A PARTY ON A MATTER NOT RELATED TO THE SUBJECT OF THE CASE DOES NOT AMOUNT TO ADMISSION BY SILENCE.— Complainant asserts that since Atty. Alvarico did not cross-examine him on his testimony regarding the offer of commission, Atty. Alvarico's silence must be considered an admission. Section 33, Rule 130 of the Revised Rules on Evidence provides for admission by silence. . . .

To appreciate the application of the rule on admission by silence, we must determine if such declaration made by complainant called for an action or comment if not true, and if it were possible for Atty. Alvarico to refute the same when such was uttered. Notably, when complainant was testifying on the alleged offer of commission, he was on direct examination for the criminal case of theft filed against Manco. We find Atty. Alvarico's explanation sufficient to negate a finding of admission by silence. Indeed, the imputations made by complainant during direct examination for the criminal case he filed against Manco were shocking, unexpected, and in no way related to the subject matter of theft. Making such statements during direct examination for an unrelated case casts doubt as to whether such declaration called for an immediate action or comment in the course of judicial proceedings. Further, we agree with Atty. Alvarico that it would be immaterial to the issues in the criminal case for theft had he cross-examined complainant on the alleged commission. It would be improper for Atty. Alvarico to respond to the allegations made against him, who was not even the accused in the criminal case being heard.

In *Grefaldeo v. Judge Lacson*, we found respondent Judge's failure to comment on the charges despite numerous opportunities to be an admission by silence. Here, Atty. Alvarico did not remain silent but in fact actively responded to the allegations of complainant in the instant case.

7. LEGAL ETHICS; ATTORNEYS; DISBARMENT AND DISCIPLINE OF ATTORNEYS; THE POWER TO DISBAR WILL ONLY BE WIELDED BY THE SUPREME COURT WHEN SUBSTANTIAL EVIDENCE WOULD PROVE THE LACK OF FITNESS TO ENGAGE IN THE PRACTICE OF LAW.— We warn against the filing of malicious suits against members of the bar. As we held in *Tabuzo v. Atty. Gomos*, "the primary purpose of administrative disciplinary proceedings against delinquent lawyers is to uphold the law and to prevent the ranks of the legal profession from being corrupted by unscrupulous practices—not to shelter or nurse a wounded ego." This Court will only wield our power to disbar when substantial evidence would prove the lack of fitness to engage in the practice of law.

D E C I S I O N

PERALTA, *C.J.*:

Before this Court is an administrative complaint[1] for disbarment filed by Wilson B. Tan *(complainant)* against respondent Atty. James Roulyn R. Alvarico *(Atty. Alvarico)* on grounds of conflict of interest and betrayal of trust and confidence of client, in violation of the Code of Professional Responsibility.

Complainant is the offended party in Criminal *(Crim.)* Case No. 2014-22652 for theft pending before Branch 44 of the Regional Trial Court of Dumaguete City. Respondent is the counsel for the accused Blas Fier "Buddy" Manco *(Manco)*.[2]

Complainant alleged in his Complaint that Atty. Alvarico personally approached and spoke with him, telling him that he can convince his client Manco to settle, provided complainant give him 15 percent (15%) commission. However, complainant countered and told Atty. Alvarico that only 5% shall be his share by way of commission. Complainant and Atty. Alvarico allegedly met several times to discuss this proposal, but no settlement was reached due to the latter's insistence of a 15% commission.[3]

Complainant contends that Atty. Alvarico had violated Rule 15.03 and Canon 17 of the Code of Professional Responsibility, and should therefore be disbarred.[4] In Complainant's Position Paper submitted to the Integrated Bar of the Philippines *(IBP)* Commission on Bar Discipline *(CBD)*, he claims:

> Thus the No Counsel No Dealing Rule as well as the proscription against conflict of interest are violated by respondent.

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

[2] *Id.* at 219.

[3] *Id.* at 1-2.

[4] *Id.* at 1.

But what worsened these violations is his attempt at selling his client down-the-drain in order that in his conceived Judas Escariot scheme of settlement, he becomes richer by the 15% agent's commission out from the pocket of his client. Although the attempt at settlement did not materialize, yet the preliminary actuations of respondent in offering himself as an agent of the accuser of his client nonetheless earned for him a betrayal of trust and confidence against his unknowing client. For certainly respondent did not previously inform his client of his becoming a settlement agent on commission of complainant.[5]

In support of his Complaint, complainant presented Atty. Alvarico's Affidavit dated 30 June 2015[6] to prove that the settlement talks were exclusively between himself and Atty. Alvarico, that settlement "fizzled out" due to the alleged insistence of the 15% commission, and that there was conflict of interest and betrayal of trust and confidence by Atty. Alvarico against his client Manco.[7]

Complainant also offered the Transcript of Stenographic Notes *(TSN)* taken during the hearing of Crim. Case No. 2014-22652 on August 10, 2015 to support his argument that Atty. Alvarico's failure to cross-examine him upon his testimony on the settlement and commission is an implied admission of the charges.[8]

For his part, Atty. Alvarico denied the charges against him[9] for being utterly baseless, fabricated, and unfounded.[10]

Atty. Alvarico admitted he is the counsel for the accused Manco, and that at the behest of his client, has asked complainant if there was any possibility of amicable settlement.[11] He argues

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[5] *Id.* at 174.

[6] *Id.* at 218.

[7] *Id.* at 173.

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

[9] *Id.* at 59-67.

[10] *Id.* at 59.

[11] *Id.* at 246.

that there is no conflict in this case because he never represented conflicting interest, but solely the interest of his client Manco. No attorney-client relationship was established with complainant as the settlement negotiations were done according to his duty to defend his client Manco, the accused in the criminal case. He negotiated with complainant with the consent, authority and at the instance of his client Manco.[12]

As regards complainant's allegations that Atty. Alvarico was negotiating with him for monetary gain, Atty. Alvarico responded with a clear denial that he never demanded from complainant any commission, arguing that complainant had made up such outrageous statement.[13]

Atty. Alvarico also admitted that at the behest of his client Manco, he asked complainant if there was a possibility of amicably settling the case as Manco was willing to pay for the value of the alleged stolen steering wheel. Complainant then made known his demands, which was for Manco to pay ₱350,000.00 plus ₱50,000.00 for every month of delay. Atty. Alvarico then informed complainant that Manco was only willing to pay for the value of the alleged stolen steering wheel.[14] During this first meeting, Manco was present and never heard Atty. Alvarico asking or negotiating for any commission. In support of this, Atty. Alvarico presented Manco's Affidavit dated February 23, 2017[15] wherein Manco stated:

> That, the complaint of Dr. Tan against Atty. Alvarico are again false, untrue, fabricated, and unbelievable because what Dr. Tan failed to state and consider in his complaint is that it was me who asked Atty. Alvarico to approach Dr. Tan and to offer to settle the case;
>
> That, Dr. Tan also failed to state in his complaint that I was present during the first time Atty. Alvarico first approached Dr. Tan after the hearing of my case and that I heard all the demands made by Dr.

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[12] *Id.* at 60.

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

[14] *Id.* at 219.

[15] *Id.* at 225-226.

Tan but I never heard Atty. Alvarico ask for any commission from Dr. Tan;[16]

x x x x

Further, the private prosecutor was present when Atty. Alvarico first approached complainant, as testified by complainant himself and recorded in the TSN:

A: Yes sir. There were three (3) times that the defense counsel approached me. In fact, the first time from this Honorable Court you and I, my lawyer, when we were downstairs, the defense counsel asked me if I could [possibly] accept for settlement which in front of you I told him that I will be charging three hundred fifty thousand (₱350,000.00) pesos. x x x[17]

Thereafter, Atty. Alvarico met complainant in chance meetings at the Hall of Justice to ask if he had considered his client Manco's offer.[18] Atty. Alvarico argues that every time he would speak with complainant, he would keep his client Manco aware and updated of the demands of complainant. Manco rejected complainant's demands for being grossly excessive and large considering the value of the subject steering wheel is only ₱28,000.00. Hence, no such settlement was ever had.[19]

As regards the cross-examination, Atty. Alvarico explained that he did not cross-examine complainant on the commission-related allegations because such were incredible and outrageous, leaving him shocked and confused. Further, he believed such were immaterial to the issues in Crim. Case No. 2014-22652 concerning the alleged theft of the steering wheel from complainant's car.[20]

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[16] *Id.* at 225.

[17] *Id.* at 221.

[18] *Id.* at 219-221.

[19] *Id.* at 62.

[20] *Id.* at 63.

Atty. Alvarico posits that complainant filed the Complaint against him as complainant was enraged by the Affidavit[21] he executed in support of Atty. Camelo D. Pidor's *(Atty. Pidor)* defense in the criminal case for threats filed by complainant.[22] He also notes of complainant's propensity for filing cases against persons who get in his way,[23] including court personnel, lawyers and judges.[24]

On November 22, 2017, the IBP Investigating Commissioner recommended the dismissal of the Complaint for failure of complainant to prove by preponderance of evidence the charges against Atty. Alvarico.[25] The Commissioner found that Atty. Alvarico's act of approaching complainant to discuss the possibility of a compromise is not conflict of interest, but actually in the interest of his client. As regards the allegation that Atty. Alvarico asked for a commission on the negotiation, complainant's documentary exhibits proved only that the former was indeed counsel for the accused Manco. Complainant failed to prove such allegation, which was found to be self-serving, apart from being unsubstantiated, and hence deserving of very little weight.[26]

On January 19, 2019, the IBP Board of Governors issued a Notice of Resolution adopting the findings of fact and recommendation of the IBP Commissioner to dismiss the Complaint.[27]

Complainant filed a Motion for Reconsideration dated August 12, 2019[28] reiterating his arguments in his Complaint. In addition, he emphasized that the non-reaction and conduct

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[21] *Id.* at 218.

[22] *Id.* at 220.

[23] *Id.* at 223.

[24] *Id.* at 60.

[25] *Id.* at 245-248.

[26] *Id.* at 248.

[27] *Id.* at 243.

[28] *Id.* at 250-251.

of Atty. Alvarico was an "admission by silence." Moreover, Atty. Alvarico's position paper was belatedly filed without documentary attachments, and therefore should have been considered a mere scrap of paper.[29]

In a letter dated September 27, 2019,[30] the IBP-CBD transmitted to this Court the Notice of Resolution of the IBP Board of Governors, as well as the records of the instant case.

As a preliminary procedural matter, it is fit to note that Bar Matter No. 1645 *(B.M. No. 1645)* dated 13 October 2015 amended Section 12 of Rule 139-B on the Review and Recommendation by the Board of Governors, as follows:

Sec. 12. Review and Recommendation by the Board of Governors. —

a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report.

b) After its review, the Board, by the vote of a majority of its total membership, shall recommend to the Supreme Court the dismissal of the complaint or the imposition of disciplinary action against the respondent. The Board shall issue a resolution setting forth its findings and recommendations, clearly and distinctly stating the facts and the reasons on which it is based. The resolution shall be issued within a period not exceeding thirty (30) days from the next meeting of the Board following the submission of the Investigator's report.

c) The Board's resolution, together with the entire records and all evidence presented and submitted, shall be transmitted to the Supreme Court for final action within ten (10) days from issuance of the resolution.

d) Notice of the resolution shall be given to all parties through their counsel, if any.[31]

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[29] *Id.* at 250.

[30] *Id.* at 241.

[31] Bar Matter No. 1645 (October 13, 2015).

Hence, a resolution of the IBP Board of Governors, arising from its review of the report of the IBP Investigating Commissioner, and which either recommends the dismissal of the complaint or the imposition of disciplinary action, shall be transmitted to the Supreme Court for final action. B.M. No. 1645 did away with the procedure of filing a motion for reconsideration as well as a petition for review of the resolution of the IBP Board of Governors.[32] Thus, the Court will proceed to take final action on the Complaint.

The Court's Ruling

The Court finds no cogent reason to depart from the findings and recommendations of the IBP Board of Governors.

An attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the Court, he is presumed to have performed his duties in accordance with his oath.[33] In disbarment proceedings, the quantum of proof is substantial evidence and the burden of proof is on the complainant to establish the allegations in his complaint.[34]

Substantial evidence is defined under Section 6, Rule 133 of the 2019 Amendments to the 1989 Revised Rules on Evidence[35] as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion,"[36] while burden of proof is defined under Section 1, Rule 131 as "the duty of a party to present evidence on the facts in issue necessary to

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[32] *Edgar M. Rico v. Attys. Jose R. Madrazo, Jr., Antonio V.A. Tan and Leonido C. Delante*, A.C. No. 7231, October 1, 2019.

[33] *BSA Tower Condominium Corporation v. Atty. Reyes*, A.C. No. 11944, June 20, 2018; *Zara v. Atty. Joyas*, A.C. No. 10994, June 10, 2019.

[34] *Id.*

[35] A.M. No. 19-08-15-SC.

[36] Section 6, Rule 133, 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC).

establish his or her claim or defense by the amount of evidence required by law."[37]

The basic rule is that reliance on mere allegations, conjectures and suppositions will leave an administrative complaint with no leg to stand on.[38] Charges based on mere suspicion and speculation cannot be given credence.[39] Thus, failure on the part of complainant to discharge his burden of proof by substantial evidence requires no other conclusion than that which stays the hand of the Court from meting out a disbarment order.[40]

In the IBP Commissioner's Report and Recommendation adopted by the IBP Board of Governors, the quantum of proof by which the charges against respondent were assessed was preponderance of evidence,[41] which is defined under Section 1, Rule 133 of the Revised Rules on Evidence[42] as "superior weight of evidence on [where] the issues involved lies."[43] Notably, however, the Court has already clarified in *Reyes v. Atty. Nieva*[44] that based on a survey of jurisprudence, the quantum of proof for administrative proceedings against lawyers is substantial evidence and not preponderance of evidence. We stressed that this pronouncement ought to control and quell any further confusion on the proper evidentiary threshold. Moreover, we recognized that the evidentiary threshold of substantial evidence, as opposed to preponderance of evidence, is more in keeping with the primordial purpose of and essential considerations attending disciplinary cases:[45]

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[37] Section 1, Rule 131, 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC).

[38] *Elisa Zara v. Atty. Vicente Joyas*, A.C. No. 10994, 10 June 2019.

[39] *Supra* note 33.

[40] *Supra* note 32.

[41] *Rollo*, p. 248.

[42] A.M. No. 19-08-15-SC.

[43] Section 1, Rule 133, 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC).

[44] *Reyes v. Atty. Nieva*, 794 Phil. 360 (2016).

[45] *Id.* at 379.

Besides, the evidentiary threshold of substantial evidence — as opposed to preponderance of evidence — is more in keeping with the primordial purpose of and essential considerations attending this type of cases. As case law elucidates, '[d]isciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor.'[46]

A survey of administrative cases recently promulgated in the year 2020 affirms that the Court has been applying substantial evidence as the quantum of proof in disbarment proceedings.[47]

Guided by the foregoing, the Court finds that complainant failed to discharge his burden of proof as he did not establish his claims through relevant evidence as a reasonable mind might accept as adequate to support the conclusion that Atty. Alvarico is guilty of representing conflicting interests and betrayal of trust and confidence reposed in him by his client Manco.

Complainant alleges that Atty. Alvarico violated Rule 15.03 and Canon 17 of the Code of Professional Responsibility.

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[46] *Id.* at 379-380, citing *Pena v. Aparicio*, 552 Phil. 512, 521 (2007).

[47] *Wilma L. Zamora v. Atty. Makilito Mahinay*, A.C. No. 12622, February 10, 2020; *Jonathan C. Parungao v. Atty. Dexter B. Lacuanan*, A.C. No. 12071, March 11, 2020; *Atty. Pedro B. Aguirre v. Atty. Crispin T. Reyes*, A.C. No. 4355, January 8, 2020.

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."

Canon 17 — "A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him."

Under these rules, a lawyer is prohibited from representing other persons whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases. Conflict of interest exists when a lawyer represents inconsistent interests of two or more opposing parties.[48]

In *Paces Industrial Corporation v. Atty. Salandanan*,[49] the Court emphasized that the rule prohibiting conflict of interests is grounded in the fiduciary obligation of loyalty, recognizing that the nature of the attorney-client relationship is one of trust and confidence of the highest degree:

> The rule prohibiting conflict of interest was fashioned to prevent situations wherein a lawyer would be representing a client whose interest is directly adverse to any of his present or former clients. In the same way, a lawyer may only be allowed to represent a client involving the same or a substantially related matter that is materially adverse to the former client only if the former client consents to it after consultation. The rule is grounded in the fiduciary obligation of loyalty. Throughout the course of a lawyer-client relationship, the lawyer learns all the facts connected with the client's case, including the weak and strong points of the case. Knowledge and information gathered in the course of the relationship must be treated as sacred and guarded with care. It behooves lawyers, not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice. The nature of that relationship is, therefore, one of trust and confidence of the highest degree.[50] (Citations omitted)

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[48] *Paces Industrial Corp. v. Atty. Salandanan*, 814 Phil. 93, 98 (2017).

[49] *Supra*.

[50] *Id.* at 101.

The case of *Aniñon v. Atty. Sabitsana, Jr.* provides three tests in determining whether there is a conflict of interest:

> 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.[51]

Engaging in negotiations with the adverse party is not *per se* representation of conflicting interests. A survey of jurisprudence shows that negotiation would lead to a violation of the rule on conflicting interests when the respondent-attorney negotiates with the client's adversary in opposition to his client's interest or claim.

In *Celedonio v. Atty. Estrabillo*, the Court found that the respondent-attorney violated Rule 15.03 and Canon 17 when he negotiated with the adversary of his client to settle the case. In that case, the respondent-attorney told the complainant that he would help her out in negotiating with his client on the dropping of charges filed against the complainant's husband. As part of the help he extended to the complainant, the respondent-attorney prepared and filed a motion for extension and motion for postponement of the TRO hearing on behalf of the complainant, the adverse party in the case filed by him for his client. The preparation and filing of those motions run counter with the interest of his client as it would delay the judgment sought by his client in filing the case and deprive the client of a remedy to protect his property rights. The Court rejected the

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

respondent-attorney's explanation that he was forwarding his client's interests in filing those motions as he would extend the chance of getting a settlement with the complainant, which is the end favored by his client. The Court held:

> The rules are clear. The relationship between a lawyer and his/her client should ideally be imbued with the highest level of trust and confidence. The legal profession dictates that it is not a mere duty, but an obligation, of a lawyer to accord the highest degree of fidelity, zeal and fervor in the protection of the client's interest. Thus, part of the lawyer's duty in this regard is to avoid representing conflicting interests. Jurisprudence is to the effect that a lawyer's act which invites suspicion of unfaithfulness or double-dealing in the performance of his duty already evinces inconsistency of interests. In broad terms, lawyers are deemed to represent conflicting interests when, in behalf of one client, it is their duty to contend for that which duty to another client requires them to oppose.[52] (Citations omitted)

In *Ong v. Atty. Grijaldo*,[53] the Court considered the negotiations of the respondent-attorney with his client's opponent to be in violation of his duties as a lawyer. In that case, the respondent-attorney approached his client's opponent and offered to delay the hearing of the Batas Pambansa Blg. 22 case in exchange for money. His offer to delay the case would have frustrated his client's interests, to the benefit of his client's opponent. The Court characterized such act to be double-dealing and conflict of interest, and an unethical practice of law, to *wit*:

> Respondent's act of propositioning his client's opponent and offering to delay the case against her was intended to benefit the latter. Hence, such act amounted to double-dealing and conflict of interest, and was unethical practice of law. Attorneys, like Caesar's wife, must not only keep inviolate their client's confidence, but must also avoid the appearance of treachery and double-dealing, for only then can litigants be encouraged to entrust their secrets to their

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[52] *Celedonio v. Atty. Estrabillo*, 813 Phil. 12, 19-20 (2017).

[53] 450 Phil. 1 (2003).

attorneys which is of paramount importance in the administration of justice.[54]

In *Capinpin v. Atty. Cesa*,[55] the Court found the respondent-attorney's negotiation with his client's opponent to be a clear violation of Rule 15.03, even if such negotiation was allegedly within the knowledge of his client because of the absence of written consent. The respondent-attorney represented conflicting interests when he assisted his client's opponent in forestalling the foreclosure and settling the loan obligation due to his client for a lesser amount, which was opposed to his client's interest in being able to foreclose and obtain the best amount to cover the loan obligation. The respondent-attorney's admission that he received payment of professional fees from his client's opponent made matters worse for him as it gave an impression that he was being paid for services rendered or to be rendered in favor of such adverse party's interest, which, needless to say, conflicts that of his client's.[56]

Atty. Alvarico argues that there was no attorney-client relationship between him and complainant that would give rise to representation of conflicting interests.[57] However, in *Solatan v. Atty. Inocentes*,[58] the Court found that the respondent-attorney represented conflicting interests even if there was no employment relation offered or accepted because he gave unsolicited advice to the adverse party. To establish the professional relation, it is sufficient that the advice and assistance of an attorney are sought and received in any manner pertinent to his profession. Thus, the absence of a formal engagement would not preclude the finding of an attorney-client relationship, and the absence of such relationship would not preclude the finding of a violation of the rule on conflict of interests.[59]

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[54] *Id.* at 12.

[55] 813 Phil. 1 (2017).

[56] *Id.* at 9.

[57] *Rollo*, p. 60.

[58] 503 Phil. 622 (2005).

[59] *Id.* at 631-632.

In the case at bar, during the negotiations between complainant and Atty. Alvarico, the latter did not represent the former's interests because his offer to settle the civil aspect of the case through the payment of the value of the allegedly stolen steering wheel is in the interest of his client Manco who was criminally charged for the theft thereof. The settlement of the civil aspect of the theft case filed against his client was towards his client's interest, and even encouraged by our legal system and aligned with the duty of an attorney. The civil aspect of theft is subject to mandatory Court-Annexed Mediation *(CAM)* and Judicial Dispute Resolution *(JDR)* wherein parties are encouraged to reach a settlement and put an end to litigation.[60] Further, a lawyer is encouraged under Rule 1.04 of the Code of Professional Responsibility to encourage his clients to settle a controversy if it would admit of a fair settlement.[61]

In negotiating with complainant, Atty. Alvarico remained loyal to the cause of his client Manco. In contrast to the above-cited jurisprudence wherein the Court found a conflict of interest, the terms of settlement offered by Atty. Alvarico were designed pursuant to the interests of his client Manco, and not to the benefit of complainant. This was acknowledged by Manco himself when he stated in his Affidavit that it was he who asked Atty. Alvarico to reach a settlement with complainant.[62] Moreover, Atty. Alvarico was not remiss in apprising Manco on the updates concerning the negotiations, as admitted by the latter in his Affidavit.[63]

Complainant's allegations that Atty. Alvarico proposed terms unfavorable to his client when he asked for a commission are self-serving and unsubstantiated. The Affidavit of Atty. Alvarico presented by complainant proved nothing more than the negotiations between the parties, and did not in any way show solicitation of commission.

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[60] A.M. No. 11-1-6-SC-PHILJA.

[61] Rule 1.04, Code of Professional Responsibility.

[62] *Rollo*, p. 225.

[63] *Id.* at 226.

Complainant asserts that since Atty. Alvarico did not cross-examine him on his testimony regarding the offer of commission, Atty. Alvarico's silence must be considered an admission. Section 33, Rule 130 of the Revised Rules on Evidence[64] provides for admission by silence:

> An act or declaration made in the presence and within the hearing or observation of a party who does or says nothing when the act or declaration is such as naturally to call for action or comment if not true, and when proper and possible for him or her to do so, may be given in evidence against him or her.[65]

To appreciate the application of the rule on admission by silence, we must determine if such declaration made by complainant called for an action or comment if not true, and if it were possible for Atty. Alvarico to refute the same when such was uttered. Notably, when complainant was testifying on the alleged offer of commission, he was on direct examination for the criminal case of theft filed against Manco. We find Atty. Alvarico's explanation sufficient to negate a finding of admission by silence. Indeed, the imputations made by complainant during direct examination for the criminal case he filed against Manco were shocking, unexpected, and in no way related to the subject matter of theft. Making such statements during direct examination for an unrelated case casts doubt as to whether such declaration called for an immediate action or comment in the course of judicial proceedings. Further, we agree with Atty. Alvarico that it would be immaterial to the issues in the criminal case for theft had he cross-examined complainant on the alleged commission. It would be improper for Atty. Alvarico to respond to the allegations made against him, who was not even the accused in the criminal case being heard.

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[64] A.M. No. 19-08-15-SC.

[65] Section 33, Rule 130, 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC).

In *Grefaldeo v. Judge Lacson*,[66] we found respondent Judge's failure to comment on the charges despite numerous opportunities to be an admission by silence.[67] Here, Atty. Alvarico did not remain silent but in fact actively responded to the allegations of complainant in the instant case.

In our resolution of this case, we considered the records forwarded by the IBP Board of Governors, including Atty. Alvarico's position paper despite the alleged belated filing as raised by Complainant in his Motion for Reconsideration.[68] There is no indication in the record if Atty. Alvarico was delayed in filing his position paper on 11 May 2017[69] as he was given fifteen days from receipt of the IBP's Order dated 24 February 2017 to submit his position paper[70] and no proof was proffered on the date of receipt. In any case, even if such were belatedly filed, we find no reason to disregard Atty. Alvarico's position paper. In *Tulio v. Atty. Buhangin*,[71] we found that the respondent-attorney deliberately refused to comply with the IBP's directive to file his position paper without any valid explanation.[72] Here, the IBP did not require such explanation from Atty. Alvarico, but in fact, accepted and considered his position paper.

The Court, therefore, agrees with the IBP Board of Governor's finding that the complaint against Atty. Alvarico should be dismissed for failure of complainant to prove the charges.

In conclusion, we recall our pronouncement in *Munar, et al. v. Atty. Bautista, et al.*:[73]

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[66] 355 Phil. 266 (1998).

[67] *Id.* at 272-273.

[68] *Rollo*, p. 250.

[69] *Id.* at 219.

[70] *Id.* at 162.

[71] 785 Phil. 292 (2016).

[72] *Id.* at 301.

[73] 805 Phil. 384, 398-399 (2017).

Disbarment is the most severe form of disciplinary sanction and, as such, the power to disbar must always be exercised with great caution, only for the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the bar.

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It is well-settled that protection is afforded to members of the Bar who are at times maliciously charged, not just by their clients.[74]

We warn against the filing of malicious suits against members of the bar. As we held in *Tabuzo v. Atty. Gomos*, "the primary purpose of administrative disciplinary proceedings against delinquent lawyers is to uphold the law and to prevent the ranks of the legal profession from being corrupted by unscrupulous practices — not to shelter or nurse a wounded ego."[75] This Court will only wield our power to disbar when substantial evidence would prove the lack of fitness to engage in the practice of law.

WHEREFORE, finding the recommendation of the IBP to be fully supported by the evidence on record and applicable laws, the Court **RESOLVES** to **DISMISS** the case against Atty. James Roulyn R. Alvarico for lack of merit, and consider the same as **CLOSED** and **TERMINATED**.

SO ORDERED.

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

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[74] *Id.* at 398-399.

[75] *Achernar B. Tabuzo v. Atty. Jose Alfonso M. Gomos*, A.C. No. 12005, July 23, 2018.

EN BANC

[A.C. No. 11241. November 3, 2020]

PROFESSIONAL SERVICES, INC., *Complainant, v.* **ATTY. SOCRATES R. RIVERA,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; THE FAILURE OF A LAWYER TO RETURN THE MONEY ENTRUSTED BY A CLIENT UPON DEMAND CREATES A PRESUMPTION THAT THE FORMER HAS APPROPRIATED THE SAME FOR HIS OR HER OWN USE.— The Court has always stressed that, "the relationship between a lawyer and his client is highly fiduciary and ascribes to a lawyer a great degree of fidelity and good faith."Thus, when they receive money from a client for a particular purpose, they are bound to render an accounting of how the money was spent for the said purpose; and, in case the money was not used for the intended purpose, they must immediately return the money to the client.Failure of a lawyer to return the money entrusted to him by his/her client upon demand creates a presumption that he/she has appropriated the same for his/her own use.

2. ID.; ID.; DISHONEST AND DECEITFUL CONDUCT; A LAWYER'S SCHEME TO DEFRAUD A CLIENT CONSTITUTES DISHONEST AND DECEITFUL CONDUCT.— Atty. Rivera made the complainant believe that collection cases would be filed to recover money from persons who had obligations to pay complainant. However, after receipt of the funds intended as filing fees, Atty. Rivera duped the complainant as he did not spend the amount as intended and instead, appropriated the funds for his own benefit. He resorted to false pretenses and misrepresentations to deceive the complainant into parting with its money. Atty. Rivera even had the audacity to use fake stamps of courts of justice and other government offices to give his dishonest scheme an appearance of truth and credibility. Atty. Rivera succeeded in deceiving his client and besmirching the reputation of the courts.

Further,Rule 1.01, Canon 1 of the CPR commands that "as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing." The Court has always reminded lawyers not to engage in unlawful, dishonest, or deceitful conduct. Clearly, Atty. Rivera failed to heed the tenets of the CPR. His elaborate scheme to defraud his client constitutes dishonest and deceitful conduct of the highest order.

3. ID.; ID.; ID.; PENALTY; WHILE THE ULTIMATE PENALTY OF DISBARMENT CAN NO LONGER BE IMPOSED UPON A DISBARRED LAWYER, THE COURT MAY STILL APPROVE THE RECOMMENDATION TO DISBAR FOR THE PURPOSE OF RECORDING IT IN THE RESPONDENT LAWYER'S PERSONAL FILE IN THE OFFICE OF THE BAR CONFIDANT, AS WELL AS IMPOSE A FINE.— Considering that Atty. Rivera had already been meted the penalty of disbarment in A.C. No. 9114, our pronouncement in *Valmonte v. Quesada, Jr.* finds relevance:

> However, considering that the Court had already imposed upon respondent the ultimate penalty of disbarment for his gross misconduct and willful disobedience of the lawful orders of the court in an earlier complaint for disbarment filed against him in *Zarcilla v. Quesada, Jr.*, the penalty of [another disbarment] can no longer be imposed upon him. The reason is obvious: "[o]nce a lawyer is disbarred, there is no penalty that could be imposed regarding his privilege to practice law."
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> But while the Court can no longer impose the penalty upon the disbarred lawyer, it can still give the corresponding penalty only for the sole purpose of recording it in his personal file with the Office of the Bar Confidant (OBC), which should be taken into consideration in the event that the disbarred lawyer subsequently files a petition to lift his disbarment.
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> In addition, the Court may also impose a fine upon a disbarred lawyer found to have committed an offense prior to his/her disbarment as the Court does not lose its exclusive jurisdiction over other offenses committed by a disbarred lawyer while he/she was still a member of the Law Profession. In fact, by imposing a fine, the Court is able "to assert its

authority and competence to discipline all acts and actuations committed by the members of the Legal Profession."

In fine, for the sole purpose of recording it in Atty. Rivera's personal file in the OBC, we hereby adopt the findings of the IBP and approve its recommendation to disbar Atty. Rivera. In addition, we hereby impose upon him a fine in the amount of ₱100,000.00.

APPEARANCES OF COUNSEL

Vera Law for complainant.

D E C I S I O N

PER CURIAM:

This administrative case arose from a verified complaint[1] filed by Professional Services, Inc. (complainant) against the respondent, Atty. Socrates R. Rivera (Atty. Rivera), before the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) for defrauding the complainant of the amount of ₱14,358,477.15 in violation of Canon 1, Rules 1.01, and 1.02; Canon 7; Canon 16, Rules 16.01, 16.02, and 16.03, of the Code of Professional Responsibility (CPR).

The Facts:

Complainant is a medical care and hospital management business entity. It engaged the services of Atty. Rivera as Head of its Legal Services Department sometime in September 2008. As such, Atty. Rivera was tasked to determine what cases and legal actions could be filed and pursued to protect complainant's interests. Most of these cases involved collection cases.

To facilitate the filing of cases on complainant's behalf, Atty. Rivera had the authority to request for cash advances to cover the expenses related to the filing of collection cases subject to liquidation and must be supported by official receipts.

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[1] *Rollo*, Vol. I, pp. 2-8.

Complainant alleged that Atty. Rivera accepted and misappropriated the amount of ₱14,358,477.15 through an elaborate scheme as follows:

1. From 2009 to 2012, while still working for complainant, Atty. Rivera misrepresented and pretended to have filed civil actions and/or instituted proceedings purportedly for and on behalf of complainant when in fact none was filed;
2. Atty. Rivera pretended to have paid filing and other miscellaneous fees in connection with said actions and/or proceedings he allegedly filed;
3. Atty. Rivera pocketed the money purportedly for filing fees and other related fees in the total amount of ₱14,358,477.15.[2]

Atty. Rivera filled out cash advance slips and fraudulently stated that the amounts he requested were for filing fees and/or expenses related to the filing of collection cases for the complainant. To make the transaction appear credible, Atty. Rivera attached a copy of the first page of the complaints he was supposed to file. He then submitted the cash advance slip with the attached first page of the complaint to complainant's Accounting Department.

Relying on Atty. Rivera's representations, complainant's Accounting Department processed the requested cash advance and prepared the checks payable to Atty. Rivera. Upon release of the check, Atty. Rivera immediately deposited and/or withdrew the amount specified therein.

Since complainant requires liquidation for all cash advances by authorized employees, Atty. Rivera submitted liquidation slips with fake official receipts purportedly covering the expenses made in relation to the fraudulent filing. Complainant found out that the receipts that Atty. Rivera had submitted were fraudulent because the Clerk of Court of the Pasig Regional Trial Court (RTC) certified that the purported official receipts were in fact spurious.[3]

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[2] Id. at 4.

[3] Id. at 64.

Atty. Rivera's fraudulent scheme would have gone unnoticed had he not requested Sylvia Nacpil (Nacpil), complainant's Vice-President for Finance Services, to sign more cash advance slips. When Atty. Rivera asked Nacpil for more cash advances, the latter asked Aida Placido (Placido), complainant's Chief Accountant, for a report on Atty. Rivera's outstanding cash advances. Placido, in turn, asked Atty. Rivera to comment in writing on his outstanding cash advances. He replied stating that he had submitted some of the liquidations while the others were on the table of complainant's Chief Finance Officer (CFO), Ms. Benita J. Macalagay. (Macalagay). It was discovered, however, that there were no such liquidation slips submitted to Macalagay prompting complainant to further investigate the matter.[4]

Upon further investigation, complainant discovered that Atty. Rivera forged the signature of his immediate supervisor, Atty. Martin Samson (Atty. Samson), and that of the CFO, in his attempt to deceive all those who relied on said signatures as part of the liquidation process.

Upon audit, complainant discovered that Atty. Rivera's cash advances purportedly to pay filing fees for civil cases, mediation fees, and miscellaneous expenses relative to these cases which remained unliquidated had amounted to ₱14,358,477.15. However, no case was actually filed for the said amount of advances for the filing fees of 156 collection cases. The handwritten receipts Atty. Rivera submitted to liquidate his cash advances were all fake as certified by the Clerk of Court of the Pasig RTC.[5]

On September 10, 2012, when confronted with the foregoing, Atty. Rivera admitted that he forged the signatures of Atty. Samson and the CFO on the liquidation forms.[6]

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[4] Id.

[5] *Rollo*, Vol. IV, p. 1442.

[6] Id.

Thereafter, an inventory of Atty. Rivera's files and belongings revealed that the latter kept rubber stamps inside his office cabinet with the following engravings: "RTC Pasig City Office of the Clerk of Court"; "RTC Branch 22 Clerk of Court (Atty. Selen Cordez)"; "Original Signed"; and "Office of the Prosecutor."[7]

Atty. Rivera made the complainant believe that complaints would be filed to recover money from purported defendants who had obligations to pay complainant. However, after receipt of the funds intended as legal fees, respondent did not spend the amount as intended and instead, appropriated the funds for his own benefit. He resorted to false pretenses and misrepresentations to deceive the complainant into parting with its money in the total amount of ₱14,358,477.15.

On January 10, 2013, complainant filed the present disbarment case before the IBP. Atty. Rivera was directed to file his answer within 15 days from receipt thereof.

Atty. Rivera filed a Motion for Extension asking for an additional period of 15 days to file his Answer. However, Atty. Rivera, failed to file his Answer.

On March 14, 2014, the CBD set a hearing for mandatory conference. Atty. Rivera failed to appear at the hearing. Another mandatory conference was held on May 29, 2014, but Atty. Rivera again did not appear. As a result, he was declared in default and the complainant was directed to file its position paper.

Report and Recommendation of the Integrated Bar of the Philippines:

In his Report and Recommendation[8] dated February 21, 2015, Investigating Commissioner Romualdo A. Din, Jr. (Commissioner Din, Jr.) recommended that Atty. Rivera be disbarred from the practice of law.

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[7] Id.

[8] Id. at 1437-1448.

Commissioner Din, Jr. found that:

"[Atty. Rivera] disobeyed Rule 1.01 of the Code for committing acts of dishonesty. x x x His scheme, more than anything else, is a form of cheating to the extent of defrauding the complainant. He cheated by coming up with fake receipts not only to effectuate his plan to acquire money from complainant but also to cover up his wrongdoing.

The respondent likewise violated Rule 16 of the Code for failing to perform the mandate to hold sacred and safely keep and protect the money of one's client. His failure to give true and proper liquidation of the amounts he skimmed from his clients is a violation of Rule 16.01 of the Code. By doing so, he violated the client-lawyer relationship which is founded on trust and confidence."[9]

In Resolution No. XXI-2015-246 dated April 18, 2015, the IBP Board of Governors adopted and approved the report and recommendation of Commissioner Din, Jr. that Atty. Rivera be disbarred from the practice of law and his name stricken off from the Roll of Attorneys for violation of Canon 1, Rule 1.01; Canon 7; and Canon 16, Rule 16.01 of the CPR.

Our Ruling

After a careful review of the records, the Court finds Atty. Rivera guilty of grave professional misconduct in violating the CPR and defrauding his client. The Court agrees with the recommendation of the IBP that Atty. Rivera should be disbarred and his name removed from the Roll of Attorneys.

The CPR pertinently provides:

CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

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

CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

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[9] Id. at 1445.

Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.

CANON 17 — A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

The Court has always stressed that, "the relationship between a lawyer and his client is highly fiduciary and ascribes to a lawyer a great degree of fidelity and good faith."[10] Thus, when they receive money from a client for a particular purpose, they are bound to render an accounting of how the money was spent for the said purpose; and, in case the money was not used for the intended purpose, they must immediately return the money to the client.[11] Failure of a lawyer to return the money entrusted to him by his/her client upon demand creates a presumption that he/she has appropriated the same for his/her own use.[12]

In this case, Atty. Rivera undoubtedly fell short of such standard when he performed a series of fraudulent acts against the complainant. In fact, what Atty. Rivera did to the complainant demonstrates the complete opposite of how a lawyer should approach and treat a client. Atty. Rivera made the complainant believe that collection cases would be filed to recover money from persons who had obligations to pay complainant. However, after receipt of the funds intended as filing fees, Atty. Rivera duped the complainant as he did not spend the amount as intended and instead, appropriated the funds for his own benefit. He resorted to false pretenses and misrepresentations to deceive the complainant into parting with its money. Atty. Rivera even had the audacity to use fake stamps of courts of justice and other government offices to give his dishonest scheme an appearance of truth and credibility. Atty. Rivera succeeded in deceiving his client and besmirching the reputation of the courts.

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[10] *CF Sharp Crew Management, Inc. v. Torres*, 743 Phil. 614, 619 (2014).

[11] Id. at 620.

[12] Id.

Further, Rule 1.01, Canon 1 of the CPR commands that "as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing."[13] The Court has always reminded lawyers not to engage in unlawful, dishonest, or deceitful conduct. Clearly, Atty. Rivera failed to heed the tenets of the CPR. His elaborate scheme to defraud his client constitutes dishonest and deceitful conduct of the highest order.

The Court takes note of Atty. Rivera's disregard of the disbarment case against him in ignoring the notices and failing to appear in the mandatory conference before the IBP.

Section 27, Rule 138 of the Rules of Court provides that a lawyer may be disbarred or suspended by this Court for any of the following acts: (1) deceit; (2) malpractice; (3) gross misconduct in office; (4) grossly immoral conduct; (5) conviction of a crime involving moral turpitude; (6) violation of the Lawyer's Oath; (7) willful disobedience of any lawful order of a superior court; and (8) willfully appearing as an attorney for a party without authority to do so.

We note that this is not the first time Atty. Rivera has been found guilty of deceit and grave misconduct. The Court is aware of his previous administrative cases which show his propensity to deceive his clients and disregard the CPR. In *Petelo v. Rivera*,[14] Atty. Rivera was suspended from the practice of law for a period of one (1) year for allowing a non-lawyer to file an unauthorized civil complaint and to cause the annotation of a notice of *lis pendens*, which acts were found not only to be dishonest and deceitful, but at the same time an act intended to deceive a court of law.[15] And just recently,[16] in A.C. No. 9114, *Reyes v. Rivera*, we disbarred Atty. Rivera and ordered his name stricken

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[13] *Spouses Lopez v. Limos*, 780 Phil. 113, 122 (2016).

[14] A.C. No. 10408, October 16, 2019.

[15] *Id.*

[16] October 6, 2020.

off the Roll of Attorneys for his reprehensible acts of misrepresenting to have filed a petition for declaration of nullity of marriage and furnishing his client with a fake decision despite due receipt of professional fees.

Considering that Atty. Rivera had already been meted the penalty of disbarment in A.C. No. 9114, our pronouncement in *Valmonte v. Quesada, Jr.*[17] finds relevance:

> However, considering that the Court had already imposed upon respondent the ultimate penalty of disbarment for his gross misconduct and willful disobedience of the lawful orders of the court in an earlier complaint for disbarment filed against him in *Zarcilla v. Quesada, Jr.*, the penalty of [another disbarment] can no longer be imposed upon him. The reason is obvious: "[o]nce a lawyer is disbarred, there is no penalty that could be imposed regarding his privilege to practice law."
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> But while the Court can no longer impose the penalty upon the disbarred lawyer, it can still give the corresponding penalty only for the sole purpose of recording it in his personal file with the Office of the Bar Confidant (OBC), which should be taken into consideration in the event that the disbarred lawyer subsequently files a petition to lift his disbarment.
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> In addition, the Court may also impose a fine upon a disbarred lawyer found to have committed an offense prior to his/her disbarment as the Court does not lose its exclusive jurisdiction over other offenses committed by a disbarred lawyer while he/she was still a member of the Law Profession. In fact, by imposing a fine, the Court is able "to assert its authority and competence to discipline all acts and actuations committed by the members of the Legal Profession." (Citations omitted).

In fine, for the sole purpose of recording it in Atty. Rivera's personal file in the OBC, we hereby adopt the findings of the IBP and approve its recommendation to disbar Atty. Rivera. In addition, we hereby impose upon him a fine in the amount of ₱100,000.00.[18]

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[17] A.C. No. 12487, December 4, 2019.

[18] See *Valmonte v. Quesada, Jr.*, id.

WHEREFORE, the Court hereby **FINDS** respondent Socrates R. Rivera **GUILTY** of violation of the Code of Professional Responsibility and the Lawyer's Oath and is hereby **DISBARRED** from the practice of law. His name is ordered **STRICKEN OFF** the Roll of Attorneys. However, considering that he has already been disbarred in A.C. No. 9114 (*Reyes v. Rivera*), this penalty can no longer be imposed but nevertheless should be considered in the event that he should apply for the lifting of his disbarment. **ACCORDINGLY**, and **IN VIEW OF HIS CONTINUING DISBARMENT**, a penalty of **FINE** in the amount of ₱100,000.00 is imposed upon him.

Further, he is **ORDERED TO RETURN** the amount of ₱14,358,477.15 to complainant Professional Services, Inc. within ten (10) days from receipt of this Decision, which shall earn legal interest at the rate of six percent (6%) *per annum* from his receipt of this Decision until full payment.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into the records of respondent Socrates R. Rivera. Copies shall likewise be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator, which shall circulate the same to all courts in the country for their information and guidance.

SO ORDERED.

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

EN BANC

[A.C. No. 12173. November 3, 2020]

ATTY. ANTONIO B. MANZANO, *Complainant, v.* **ATTY. CARLOS P. RIVERA,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; NOTARIES PUBLIC; NOTARIZATION; NOTARIES PUBLIC MUST OBSERVE WITH UTMOST CARE THE BASIC REQUIREMENTS IN THE PERFORMANCE OF THEIR DUTIES BECAUSE OF THE SIGNIFICANT EFFECTS OF NOTARIZATION.— Notarization converts a private document into a public document and makes such document admissible as evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Consequently, notaries public must therefore observe with utmost care the basic requirements in the performance of their duties.

We have repeatedly emphasized that notarization is not a mere empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. In other words, to protect substantive public interest, those not qualified or authorized to act must be prevented from imposing upon the public, the courts, and the administrative offices in general.

2. ID.; ID.; ID.; 2004 RULES ON NOTARIAL PRACTICE; THE ACT OF MAKING IT APPEAR THAT A LAWYER IS A COMMISSIONED NOTARY PUBLIC IS A VIOLATION OF THE LAWYER'S OATH, THE CODE OF PROFESSIONAL RESPONSIBILITY (CPR), AND THE NOTARIAL RULES.— Section 11 of the 2004 Rules on Notarial Practice is clear. Only a person who is commissioned as notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years commencing the first day of January of the year in which the commissioning is made, unless earlier revoked or the notary public has resigned under these Rules and the Rules of Court. Hence, a violation thereof should therefore not

be dealt with lightly to preserve the integrity of notarization.In the case at bench, it was sufficiently proven that Atty. Rivera was not commissioned as a notary public at the time he notarized the Answer that was filed by the defendants in Civil Case No. 33-467-2014. . . . Thus, Atty. Rivera is indubitably liable for gross violation of the notarial rules which should not be dealt with lightly by the Court.Atty. Rivera's act of making it appear that he was a duly commissioned notary public is in blatant disregard of the Lawyer's Oath to obey the laws, *i.e.* the Notarial Law, and to do no falsehood. It likewise constitutes a transgression of Rule 1.01 of Canon 1 of the Code of Professional Responsibility (CPR), which states that: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

Not only did Atty. Rivera violate Rule 1.01 of Canon 1; he also transgressed Canon 7 of the CPR, which mandates that every lawyer shall "uphold at all times the integrity and dignity of the legal profession," and Rule 7.03 . . . .

3. **ID.; ID.; GOOD MORAL CHARACTER IS A CONTINUING CONDITION FOR MEMBERSHIP IN THE BAR.—** Atty. Rivera's misdeed further lessens the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession. He is expected to possess the high standards of morality to remain a member of the bar. In *Advincula v. Macabata*, we emphasized that good moral character is a continuing condition to preserve membership in the Bar in good standing.

4. **ID.; ID.; LAWYERS MUST PROMPTLY AND COMPLETELY COMPLY WITH THE LAWFUL ORDERS OF THE INTEGRATED BAR OF THE PHILIPPINES (IBP).—** Atty. Rivera's conduct during the course of the administrative proceedings manifests a blatant disregard to his oath "to obey the laws as well as the legal orders of the duly constituted authorities therein." He failed to comply with the directives of the Investigating Commissioner to submit his Answer and Position Paper without justifiable reason. He ignored the scheduled mandatory conferences despite receipt of notices. These acts depict his deliberate defiance to the lawful orders of the IBP, of which he is a member. More importantly, as an officer of the Court, Atty. Rivera ought to have known that the orders of the IBP must be complied with promptly and completely

since it is designated by the Court to investigate complaints against erring lawyers like him.

D E C I S I O N

HERNANDO, *J.*:

This is a Petition[1] for disbarment filed by Atty. Antonio B. Manzano (Atty. Manzano) against respondent Atty. Carlos P. Rivera (Atty. Rivera) for falsification of public documents, and allegedly notarizing the Answer filed in Civil Case No. 33-467-2014 without the personal appearance of the affiants, and worse, without a notarial commission.

Factual Antecedents:

On August 19, 2014, Lupo G. Tan, Rema Tan-Manzano, and Sonia G. Tan, represented by Atty. Manzano, filed a complaint for *accion publiciana* against Pedro Pando, Rene Bloza, Arcelie Bayaca (Bayaca),[2] and Marlon Urata (Urata)[3] before the Regional Trial Court (RTC), Branch 33 of Ballesteros, Cagayan, docketed as Civil Case No. 33-467-2014.

In his Return of Summons[4] dated September 12, 2014, the Sheriff assigned at RTC Branch 33 reported that he failed to personally serve a copy of the complaint and its annexes against defendants Bayaca, who was abroad, and Urata, who was in Manila.

On October 14, 2014, the defendants, through their counsel, Atty. Rivera, filed their Answer[5] before the RTC. A copy thereof was mailed to Atty. Manzano's address in Las Piñas City.[6] The

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[1] *Rollo*, pp. 2-7.

[2] Referred to as Aracelie Bayaca in the Petition.

[3] Referred to as Marlon Lerata in the Petition.

[4] *Rollo*, p. 14.

[5] Id. at 15-18.

[6] Id. at 19.

Answer appeared to have been signed by Pando and Bloza. Interestingly, it also bore the signatures of Bayaca and Urata.

The Answer was prepared and notarized on the same date by Atty. Rivera in his law office situated in Tuguegarao City, Cagayan. However, upon inquiry, Atty. Rivera was not commissioned as a notary public for and in the Province of Cagayan at the time he notarized the Answer in 2014 as stated in the Certification[7] issued by the Office of the Clerk of Court of the RTC of Tuguegarao City, Cagayan.

Believing that the signatures of Bayaca and Urata were forged, Atty. Manzano advised Lupo Tan to file a criminal complaint[8] for Falsification of Public Documents and Use of Falsified Documents against Atty. Rivera, Pando and Bloza before the City Prosecution Office of Tuguegarao City.

In the Counter-Affidavit[9] that was filed before the prosecutor's office, Atty. Rivera admitted that he prepared the Answer for the defendants Pando, Bloza, Bayaca, and Urata in the civil case. He, however, denied knowing that the signatures of Bayaca and Urata were forged. He professed that it was only Pando and Bloza who personally appeared before him at the time that he notarized the Verification. They merely assured him that they will bring the Answer to Bayaca and Urata for them to affix their signatures therein so they could file it on time before the RTC.

Atty. Rivera further admitted that his notarial commission has already expired in 2014. Hence, he pleaded before the City Prosecutor to spare him from the criminal complaint and just file the proper administrative complaint against him before the Integrated Bar of the Philippines (IBP).

On June 30, 2015, the City Prosecutor found probable cause to indict Atty. Rivera and his co-respondents for Falsification

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[7] Id. at 8.

[8] Id. at 20-22.

[9] Id. at 47-49.

of Public Documents under par. 1, Article 172 in relation to par. 2, Article 171 of the Revised Penal Code.

Thereafter, Atty. Manzano filed the instant Petition for disbarment against Atty. Rivera for Malpractice, Dishonesty, and Falsification of Public Document. He maintained that Atty. Rivera admitted in his Counter-Affidavit that he prepared the Answer and notarized its Verification without the presence of Bayaca and Urata. Worse, Atty. Rivera was not in fact commissioned as a notary public in 2014 in Tuguegarao City as evidenced by the Certification from the Office of the Clerk of Court.

Atty. Rivera, in turn, initially requested for an extension of time to file his Answer to the Petition.[10] However, he did not file his Answer.[11] Atty. Rivera likewise did not appear during the scheduled mandatory conference.[12]

The IBP-Commission on Bar Discipline then directed Atty. Manzano and Atty. Rivera to submit their respective verified Position Papers[13] but it was only Atty. Manzano who submitted his Position Paper.[14]

Report and Recommendation of the IBP:

In a Report and Recommendation,[15] the Investigating Commissioner[16] found no substantial evidence to prove that Atty. Rivera forged the signatures of Bayaca and Urata in the Answer. Nonetheless, he found Atty. Rivera liable for Gross Misconduct for having notarized the Verification without a valid notarial commission. He also ignored the administrative

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[10] Id. at 26.

[11] Id. at 40.

[12] Id.

[13] Id.

[14] Id. at 41-44.

[15] Id. at 55-60.

[16] Jose Alfonso M. Gomos.

proceedings by failing to file his Answer and Position Paper, and to attend the mandatory conference. These acts showed his tendency to disregard lawful orders in defiance of the Lawyer's Oath. Thus, the Investigating Commissioner recommended that Atty. Rivera be suspended from the practice of law for a period of three years, and be barred from being commissioned as notary public for the same period.

In its Resolution No. XXII-2017-1242,[17] the IBP Board of Governors affirmed the findings of the Investigating Commissioner but modified the recommended penalty to suspension from the law practice for three years and perpetual disqualification from being commissioned as a notary public.

No motion for reconsideration has been filed by either party.

Issue

Whether or not Atty. Rivera is administratively liable for committing the acts complained of.

Our Ruling

We adopt the findings of the IBP and approve its recommended penalty to suspend Atty. Rivera from the practice of law for a period of three years and to perpetually disqualify him from being commissioned as a notary public.

Notarization converts a private document into a public document and makes such document admissible as evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Consequently, notaries public must therefore observe with utmost care the basic requirements in the performance of their duties.[18]

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[17] *Rollo*, p. 53.

[18] *Villaflores-Puza v. Arellano*, 811 Phil. 313, 315 (2017), citing *Mariano v. Echanez*, 785 Phil. 923, 927-928 (2016), citing *St. Louis University Laboratory High School (SLU-LHS) Faculty and Staff v. Dela Cruz*, 531 Phil. 213, 226 (2006); *Zaballero v. Montalvan*, 473 Phil. 18, 24 (2004).

We have repeatedly emphasized that notarization is not a mere empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public.[19] In other words, to protect substantive public interest, those not qualified or authorized to act must be prevented from imposing upon the public, the courts, and the administrative offices in general.[20]

Corollarily, Section 11 of the 2004 Rules on Notarial Practice[21] is clear. Only a person who is commissioned as notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years commencing the first day of January of the year in which the commissioning is made, unless earlier revoked or the notary public has resigned under these Rules and the Rules of Court.[22] Hence, a violation thereof should therefore not be dealt with lightly to preserve the integrity of notarization.

In the case at bench, it was sufficiently proven that Atty. Rivera was not commissioned as a notary public at the time he notarized the Answer that was filed by the defendants in Civil Case No. 33-467-2014. The Certification[23] issued by the Office of the Clerk of Court of the RTC of Tuguegarao City, Cagayan duly showed that Atty. Rivera was not commissioned as a notary public for and in the Province of Cagayan in 2014. Thus, Atty. Rivera is indubitably liable for gross violation of the notarial rules which should not be dealt with lightly by the Court.

Atty. Rivera's act of making it appear that he was a duly commissioned notary public is in blatant disregard of the Lawyer's Oath to obey the laws, *i.e.*, the Notarial Law, and to

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[19] *Almazan, Sr. v. Suerte-Felipe*, 743 Phil. 131, 136-137 (2014), citing *Tan Tiong Bio v. Gonzales*, 557 Phil. 496, 504 (2007).

[20] *Collantes v. Mabuti*, A.C. No. 9917, January 14, 2019.

[21] A.M. No. 02-8-13-SC. Approved: July 6, 2004.

[22] Id.

[23] Records, pp. 20-22.

do no falsehood.[24] It likewise constitutes a transgression of Rule 1.01 of Canon 1 of the Code of Professional Responsibility (CPR), which states that: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."[25]

Not only did Atty. Rivera violate Rule 1.01 of Canon 1; he also transgressed Canon 7 of the CPR, which mandates that every lawyer shall "uphold at all times the integrity and dignity of the legal profession," and Rule 7.03 which provides:

> A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Atty. Rivera's misdeed further lessens the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession. He is expected to possess the high standards of morality to remain a member of the bar. In *Advincula v. Macabata*,[26] we emphasized that good moral character is a continuing condition to preserve membership in the Bar in good standing, thus:

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[24] Rules of Court, Form 28.

The Lawyer's Oath states:

LAWYER'S OATH

I, . . . , do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support and defend its Constitution and **obey the laws as well as the legal orders of the duly constituted authorities therein**; I will **do no falsehood**, nor consent to its commission; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit nor give aid nor consent to the same; I will not delay any man's cause for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients; and I impose upon myself this obligation voluntarily without any mental reservation or purpose of evasion. So help me God. [Emphasis Supplied.]

[25] *Almazan, Sr. v. Suerte-Felipe, supra* note 19, at 136.

[26] 546 Phil. 431 (2007).

Lawyers have been repeatedly reminded that their possession of good moral character is a continuing condition to preserve their membership in the Bar in good standing. The continued possession of good moral character is a requisite condition for remaining in the practice of law. In *Aldovino v. Pujalte, Jr.*, we emphasized that:

> This Court has been exacting in its demand for integrity and good moral character of members of the Bar. They are expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence reposed by the public in the fidelity, honesty, and integrity of the legal profession. Membership in the legal profession is a privilege. And whenever it is made to appear that an attorney is no longer worthy of the trust and confidence of the public, it becomes not only the right but also the duty of this Court, which made him one of its officers and gave him the privilege of ministering within its Bar, to withdraw the privilege.

It is the bounden duty of lawyers to adhere unwaveringly to the highest standards of morality. The legal profession exacts from its members nothing less. Lawyers are called upon to safeguard the integrity of the Bar, free from misdeeds and acts constitutive of malpractice. Their exalted positions as officers of the court demand no less than the highest degree of morality. We explained in *Barrientos v. Daarol* that, "as officers of the court, lawyers must not only in fact be of good moral character but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community."

Lawyers are expected to abide by the tenets of morality, not only upon admission to the Bar but also throughout their legal career, in order to maintain their good standing in this exclusive and honored fraternity. They may be suspended from the practice of law or disbarred for any misconduct, even if it pertains to his private activities, as long as it shows him to be wanting in moral character, honesty, probity or good demeanor.[27] [Citations Omitted.]

Moreover, Atty. Rivera's conduct during the course of the administrative proceedings manifests a blatant disregard to his

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[27] Id. at 439-440.

oath "to obey the laws as well as the legal orders of the duly constituted authorities therein."[28] He failed to comply with the directives of the Investigating Commissioner to submit his Answer and Position Paper without justifiable reason. He ignored the scheduled mandatory conferences despite receipt of notices. These acts depict his deliberate defiance to the lawful orders of the IBP, of which he is a member.[29] More importantly, as an officer of the Court, Atty. Rivera ought to have known that the orders of the IBP must be complied with promptly and completely since it is designated by the Court to investigate complaints against erring lawyers like him.[30]

All told, we find no reason to depart from the findings of the IBP. To repeat, Atty. Rivera violated not only the Notarial Law but also the Lawyer's Oath when he notarized the Answer filed by the defendants in a civil case without a notarial commission. In the same vein, his act constitutes a violation of the CPR, in particular Rule 1.01, Rule 7.03, and Canon 7.

We now proceed to discuss the propriety of the recommended penalty that should be imposed against Atty. Rivera.

The instant case is on all fours with *Villaflores-Puza v. Arellano*[31] wherein therein respondent Atty. Arellano notarized affidavits of his witnesses without a notarial commission and did not participate in the administrative proceedings without valid cause. As a consequence, thereof, he was meted the penalty of suspension from the practice of law for three years and was permanently barred from being commissioned as a notary public. Thus, in line with the prevailing jurisprudence, we find that the recommended penalties of the IBP to suspend Atty. Rivera from the practice of law for three years and to perpetually disqualify him from being commissioned as a notary public are just and proper.

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[28] RULES OF COURT, Form 28, The Lawyer's Oath.

[29] *Villaflores-Puza v. Arellano*, *supra* note 18, at 316.

[30] Id.

[31] *Supra* note 18, at 316.

WHEREFORE, respondent Atty. Carlos P. Rivera is found **GUILTY** of violating the 2004 Rules on Notarial Practice, Canon 7, and Rules 1.01 and 7.03 of the Code of Professional Responsibility, and the Lawyer's Oath. Accordingly, he is **PERPETUALLY DISQUALIFIED** from being commissioned as a notary public. Atty. Rivera is likewise **SUSPENDED** from the practice of law for a period of **three (3) years** and is **STERNLY WARNED** that a repetition of the same will be dealt with more severely.

Respondent is **DIRECTED** to file a Manifestation to this Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Carlos P. Rivera as an attorney; to the Integrated Bar of the Philippines; and to the Office of the Court Administrator for dissemination to all courts throughout the country for their guidance and information.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

EN BANC

[A.C. No. 12815. November 3, 2020]

EDRALYN B. BERZOLA, *Complainant, v.* **ATTY. MARLON O. BALDOVINO,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT AND DISCIPLINE OF ATTORNEYS; A LAWYER WHO KNOWINGLY ASSISTS WITNESSES TO MISREPRESENT THEMSELVES OR TO IMPERSONATE ANOTHER IS GUILTY OF DECEITFUL CONDUCT AND OF VIOLATION OF THE RULES ON NOTARIAL PRACTICE.— A lawyer must exert every effort and consider it his duty to assist in the speedy and efficient administration of justice. Any act on his part which visibly obstructs, perverts, impedes or degrades the administration of justice constitutes misconduct and justifies disciplinary action. Indeed, a lawyer must represent his client within the bounds of the law lest he transgresses his corresponding duties to the court, the bar, and the public. Specifically, a "*lawyer shall not knowingly assist a witness to misrepresent himself or to impersonate another*." Otherwise, the lawyer is as equally guilty as the witness who falsely testifies in court. This amounts to a deceitful conduct which is a ground for disbarment or suspension not to mention the possible criminal prosecution. Here, convincing evidence exist that Atty. Baldovino represented Lawrence in the case for nullity of marriage despite his absence in the Philippines. Thereafter, Atty. Baldovino knowingly presented another person to act on Lawrence's behalf during the proceedings and an expert witness who does not have the required qualifications. These further resulted in violations of the rules on notarial practice.

2. ID.; ID.; 2004 RULES ON NOTARIAL PRACTICE; A NOTARY PUBLIC SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE SIGNATORY TO THE DOCUMENT IS IN THE NOTARY'S PRESENCE PERSONALLY AT THE TIME OF THE NOTARIZATION, AND PERSONALLY KNOWN TO THE NOTARY PUBLIC OR OTHERWISE IDENTIFIED THROUGH COMPETENT

EVIDENCE OF IDENTITY.— Corollarily, Atty. Baldovino violated the 2004 Rules on Notarial Practice which provides that a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity. The purpose of these requirements is to enable the notary public to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed. If the signatory is not acting of his or her own free will, a notary public is mandated to refuse to perform a notarial act. In this case, Atty. Baldovino notarized the verification attached to the petition for nullity of marriage and the judicial affidavit in the absence of Lawrence.

3. **ID.; ID.; DISBARMENT AND DISCIPLINE OF ATTORNEYS; THE SUPREME PENALTY OF DISBARMENT IS METED OUT IN CLEAR CASES OF MISCONDUCT THAT SERIOUSLY AFFECT THE STANDING AND CHARACTER OF THE LAWYER AS AN OFFICER OF THE COURT AND MEMBER OF THE BAR. —** Taken together, the acts and omissions of Atty. Baldovino reveal his moral flaws that bring intolerable dishonor to the legal profession. They constitute deceitful conduct for which he may be disbarred or suspended. In determining the imposable penalty against an erring lawyer, the purpose of disciplinary proceedings must be considered which is to protect the administration of justice by requiring that those who exercise this important function shall be competent, honorable, and reliable men in whom courts and clients may repose confidence. While the assessment of disciplinary sanction is primarily addressed to the Court's sound discretion, the penalty should neither be arbitrary or despotic, nor motivated by personal animosity or prejudice. Rather, it should ever be controlled by the imperative need to scrupulously guard the purity and independence of the bar. Thus, the supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and member of the bar. The Court will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers where the evidence calls for it. Verily, Atty. Baldovino is guilty of gross misconduct and is unfit to continue his membership in the bar.

APPEARANCES OF COUNSEL

Yuvienco Quizon Olalia & Associates for complainant.
Marimier I. Marcos-Rivera for respondent.

D E C I S I O N

***PER CURIAM*:**

A lawyer who knowingly assists a witness to misrepresent himself or to impersonate another is guilty of deceitful conduct and deserves administrative sanctions.

ANTECEDENTS

On January 28, 2002, Lawrence Antonio (Lawrence) and Edralyn Berzola (Edralyn) were lawfully married in Sta. Ignacia, Tarlac. On December 9, 2009, Presiding Judge Liberty Castañeda of the Regional Trial Court (RTC) Branch 67 of Paniqui, Tarlac declared their marriage void in a Decision rendered in Civil Case No. 128-P'09.[1] Upon checking the records of the case, Edralyn learned that Lawrence personally submitted himself to a psychological examination on February 27, 2009. Afterwards, Atty. Marlon Baldovino (Atty. Baldovino) represented Lawrence in filing a petition for nullity of marriage on March 26, 2009 on the ground of psychological incapacity.[2] Atty. Baldovino likewise notarized the verification attached to the petition[3] that Lawrence signed on March 25, 2009 and his judicial affidavit[4] executed on June 10, 2009. However, Lawrence was absent in the Philippines on those dates since he left for Italy as an undocumented worker on August 7, 2007 and returned only on March 14, 2011. Also, Atty. Baldovino indicated that Lawrence

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[1] *Rollo* at 29; also referred to as Civil Case No. 128-09 in some parts of the records.

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

[3] *Id.* at 38-43.

[4] *Id.* at 53-58.

is a resident of Barangay Cabayaoasan, Paniqui, Tarlac instead of Barangay Cabugbugan, Sta. Ignacia, Tarlac. Worse, Edralyn discovered that her signature was forged to make it appear that she personally received the summons although she was not in the Philippines at the time it was served on April 10, 2009.[5] Lastly, the psychologist who examined Lawrence was not registered with the Professional Regulatory Commission. Aggrieved, Edralyn filed a complaint for falsification and use of falsified document against Lawrence and Atty. Baldovino before the office of the public prosecutor. In his counter-affidavit, Lawrence revealed that he never participated in the proceedings in Civil Case No. 128-P'09 but merely relied on the representation of his counsel.

Thereafter, Edralyn filed a complaint for disbarment against Atty. Baldovino for mocking the judicial processes and conniving with Lawrence to conceal the annulment proceedings from her. As supporting evidence, Edralyn submitted the following: (a) a copy of her marriage contract with Lawrence with notation on the decree of nullity; (b) a copy of the petition for nullity of marriage; (c) a copy of Lawrence's psychological evaluation report dated February 27, 2009; (d) a copy of the decision in Civil Case No. 128-P'09; (e) affidavit of her mother Rosalinda Berzola Tomei recounting that Lawrence arrived in Rome on August 8, 2007 under an assumed name and that he stayed with them for several months;[6] (f) affidavit of Dianne Santos narrating that she saw her cousin Lawrence at the train station in Rome on several occasions in February, March and June 2009 and that both of them applied for Italy's amnesty program for illegal workers and returned in the Philippines in 2011;[7] (g) information on Italy's Amnesty Program for undocumented foreign workers who were still employed at the time the program was opened on June 30, 2009;[8] (h) certification from the Bureau of

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[5] *Id.* at 14-15.

[6] *Id.* at 59-60.

[7] *Id.* at 63.

[8] *Id.* at 62.

Immigration (BOI) showing that Lawrence's earliest travel record of arrival to the Philippines was on March 14, 2011;[9] (i) certification that Lawrence is not a *bona fide* resident of Barangay Cabayaoasan; (j) certification that the psychologist who examined Lawrence was not registered with the Professional Regulatory Commission; and (k) a copy of Lawrence's counter-affidavit before the public prosecutor.

On the other hand, Atty. Baldovino averred that in 2009 a man came to his office and inquired about the procedure for annulment of marriage. The person identified himself as Lawrence Antonio who is residing in Barangay Cabayaoasan, Paniqui, Tarlac. Accordingly, he represented the man claiming to be Lawrence in filing a petition for nullity of marriage. Atty. Baldovino added that the affidavits of Edralyn's witnesses are self-serving. Further, the case against him is a pure legal conclusion absent evidence that Lawrence left the Philippines in 2009 since his travel documents only showed that he returned in the country in 2011.[10] In her Reply,[11] Edralyn explained that Atty. Baldovino could have ascertained the true identity of his client, assuming that someone misrepresented himself as Lawrence, by requesting documents or asking questions. At any rate, Lawrence already admitted that he hired the services of Atty. Baldovino but did not participate in the case. Clearly, Atty. Baldovino knowingly misrepresented another person as Lawrence before the court.

On May 29, 2017, the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) recommended the disbarment of Atty. Baldovino for securing a favorable judgment through false pretenses, insidious machinations and unethical conduct,[12] to wit:

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[9] *Id.* at 64-65.

[10] *Id.* at 86-87.

[11] *Id.* at 91-104.

[12] *Id.* at 191-200.

Here, the evidence against the respondent is simply overwhelming. Complainant had sufficiently and satisfactorily proven that respondent violated the Canons of Professional Responsibility when through false pretenses, insidious machinations and unethical conduct, he was able to secure a judgment in Civil Case No. 128-P'09.

The following facts are undisputed: a) respondent was counsel of record for complainant's husband, Lawrence Antonio, in a petition for the declaration of nullity of marriage x x x denominated as Civil Case No. 128-P'09; b) respondent drafted the petition, prepared the Judicial Affidavit of Lawrence Antonio and presented a person who identified and attested to the declarations in the Judicial Affidavit; c) respondent also presented a certain Dr. Carina S. Roman, a purported psychologist who it turns out, is not even registered with the Professional Regulatory Commission.

At all times material to the filing of the said case and up to the issuance of a Decision therein, [*i.e.*], the year 2009, respondent's client Lawrence Antonio was not in the Philippines at all. This is primordially supported by the Certification of the Bureau of Immigration that the very first or earliest record of Antonio's travel was on March 14, 2011 which is the date of his arrival in the Philippines. There is no record of her husband's departure from the Philippines prior to March 14, 2011 x x x, which, together with Affidavit of Rosalinda Berzola Tomei x x x, reinforces complainant's assertion that her husband left the Philippines under an assumed name. Lending credence to Antonio's absence in 2009 is the [*Regolarizzazione Colf E Badanti*] x x x, under which the Italian government implemented an amnesty program for undocumented domestic helpers who as of June 30, 2009 had been illegally employed for at least three months and who were still employed at the time the program was opened. It is thus plausible that Antonio would have remained in Italy until after his employment status would have been legalized. That Antonio was in Italy in the year 2009 is further bolstered by Dianne Santos' sworn statement that she and her cousin Lawrence Antonio had several opportunities to see each other at the train station in other areas of Rome, including the months of February, March and June, 2009 and that she and Lawrence were able to return to the Philippines for the first time only in 2011 x x x. **Most telling of all is the declaration of Lawrence Antonio himself in his Counter-Affidavit filed before the Prosecutor's Office x x x that he had**

not participated in the judicial proceeding for the annulment of marriage. Portions of his statements are as follows:

> *"In this case, I hired the services of a legal counsel to represent me in the annulment of my marriage contract. I paid the fees required of me. I was told the annulment papers will be processed. I believe in good faith to (sic) my legal counsel."*

He reiterated his non-participation, maintaining thus:

> *"4. If the complainant claims that I was liable because I benefitted from the malpractice of the legal profession and the judiciary, the records will show that I NEVER was a part of the proceedings; In this case, I hired the services of a legal counsel to represent me in the annulment of my marriage contract. I paid the fees required of me. I was told the annulment papers will be processed. I believe in good faith to (sic) my legal counsel."*

Lawrence Antonio's affidavit is actually heavily punctuated with the above disclaimer. **Respondent on the other hand, was not able to provide any countervailing evidence other than his puerile assertion that he was led to believe that the person he had been dealing was Lawrence Antonio. Such assertion however, is simply incredulous. It taxes credulity to believe that he had been able to initiate a petition for declaration of nullity of marriage, prepare the Judicial Affidavit and present the purported affiant without having discovered that the person he was supposedly dealing with as his client was not Lawrence Antonio.** In the same vein, respondent could not satisfactorily explain why he presented as an expert witness one Carina Roman, a supposed psychologist who was not in fact accredited nor registered with the Professional Regulatory Commission. These are all the false schemes which respondent employed to secure a judgment. He had knowingly assisted witnesses to represent themselves and/or impersonate another, in violation of Rule 12.06.

x x x x

Respondent has fallen below such exacting standard of honesty and fair dealing. Considering that respondent had violated Canons 1 (Rule 1.01 [1.02]), 7, 10 (Rule 10.01), Rule 12.06, and 19 (Rule 19.01) of the Code of Professional Responsibility, the undersigned recommends that respondent be DISBARRED from the practice of law.

Respectfully submitted.[13] (Emphases supplied.)

The IBP Board of Governors adopted the Commission's findings.[14] Atty. Baldovino moved for a reconsideration.[15] On June 17, 2019, the IBP partly granted the motion and modified the penalty to two years suspension, *viz.*:

RESOLVED to partially GRANT the Motion for Reconsideration and MODIFY the penalty from disbarment to Two (2) Years SUSPENSION from the practice of law.

RULING

The Court adopts the IBP's findings with modification as to the penalty.

A lawyer must exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.[16] Any act on his part which visibly obstructs, perverts, impedes or degrades the administration of justice constitutes misconduct and justifies disciplinary action. Indeed, a lawyer must represent his client within the bounds of the law lest he transgresses his corresponding duties to the court, the bar, and the public.[17] Specifically, a "*lawyer shall not knowingly assist a witness to misrepresent himself or to impersonate another.*"[18] Otherwise, the lawyer is as equally guilty as the witness who falsely testifies in court.[19] This amounts to a deceitful conduct which is a ground for disbarment or suspension not to mention the possible criminal prosecution. Here, convincing evidence exist that Atty. Baldovino represented Lawrence in the case for nullity of marriage despite

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[13] *Id.* at 198-200.

[14] *Id.* at 190.

[15] *Id.* at 201-207.

[16] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 12.

[17] *Reyes v. Atty. Vitan*, 496 Phil. 1, 5 (2005).

[18] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 12.06.

[19] Eldrid C. Antiquiera, Comments on Legal and Judicial Ethics, Second Edition (2018), p. 67.

his absence in the Philippines. Thereafter, Atty. Baldovino knowingly presented another person to act on Lawrence's behalf during the proceedings and an expert witness who does not have the required qualifications. These further resulted in violations of the rules on notarial practice.

Foremost, Atty. Baldovino admitted that Lawrence is his client in Civil Case No. 128-P'09 and that he is the counsel of record who drafted the petition for nullity of marriage. Both Atty. Baldovino and Lawrence did not deny these facts. Also, it was proven that Lawrence was abroad when the case was filed until it was decided. The affidavits of Rosalinda Berzola Tomei and Dianne Santos, information on Italy's Amnesty Program, certification from the BOI, and Lawrence's counter-affidavit before the public prosecutor established this finding. In stark contrast, Atty. Baldovino did not disprove these evidence but merely argued that the person he was dealing as his client was not Lawrence. Yet, Atty. Baldovino failed to substantiate this theory. He did not even attempt to describe the alleged impostor or to present any corroborating witness. Atty. Baldovino could have gathered testimonies from court personnel who are supposed to have seen his client during the trial. We stress that bare assertion is not evidence.[20] As the IBP aptly observed, it is highly impossible for Atty. Baldovino to draft a petition and prepare a judicial affidavit without discovering the real identity of his client. At most, Atty. Baldovino allowed another person to sign these documents. To be sure, the questioned signatures on the petition and the judicial affidavit (first set) varied from the standard signatures in Lawrence's passport and counter-affidavit in the criminal case (second set). The swash and the leg of the letter "*A*" on the judicial affidavit are connected while it is disconnected in the second set. Also, the letters "*n*," "*t*," "*o*" and "*i*" cannot be ascertained in the second set unlike in the first set. Further, the word "*Antonio*" can be effortlessly read in the first set but it is not visible in the second set. These differences in the handwriting characteristics are clearly

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[20] *Dra. Dela Llana v. Biong*, 722 Phil. 743, 757 (2013).

discernible to the naked eye and support the conclusion that another person signed on behalf of Lawrence who was abroad during the entire proceedings.

Corollarily, Atty. Baldovino violated the 2004 Rules on Notarial Practice which provides that a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity.[21] The purpose of these requirements is to enable the notary public to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed. If the signatory is not acting of his or her own free will, a notary public is mandated to refuse to perform a notarial act.[22] In this case, Atty. Baldovino notarized the verification attached to the petition for nullity of marriage and the judicial affidavit in the absence of Lawrence.

Finally, this Court takes judicial notice of the report in *Office of the Court Administrator v. Judge Castañeda, et al.*[23] that the RTC Branch 67 is a haven for couples who want their marriages to be judicially declared void and that Judge Castañeda committed blatant irregularities in deciding these cases. Coincidentally, it was Judge Castañeda who declared void the marriage between Lawrence and Edralyn. It is not farfetched that Atty. Baldovino chose this venue to secure a favorable ruling although he presented a purported psychologist as an expert witness and despite the lack of a valid service of summons to Edralyn, to wit:

> The serious infractions committed by Judge Castañeda were in cases involving petitions for nullity and annulment of marriage and legal separation, **the most disturbing and scandalous of which was**

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[21] 2004 Rules on Notarial Practice, Rule IV, Sec. 2 (b).

[22] *Miranda, Jr. v. Alvarez, Sr.*, A.C. No. 12196, September 3, 2018, 878 SCRA 489, 501; and *Gaddi v. Atty. Velasco*, 742 Phil. 810, 816 (2014).

[23] 696 Phil. 202 (2012).

the haste with which she disposed of such cases. For the year 2010 alone, Judge Castañeda *granted* a total of 410 petitions of this nature. **The audits likewise showed that she acted on these petitions despite the fact that it was not verified**; that the OSG or the OPP were not furnished a copy of the petition within 5 days from its filing; **that the petition did not recite the true residence of the parties**, which should be within the territorial jurisdiction of Branch 67 for at least 6 months prior to the filing of the petition; or that the docket fees have not been fully paid and **jurisdiction over the person of the respondents have not been acquired**.

x x x x

The OCA has extensively elucidated on the transgressions committed by Judge Castañeda, which the Court adopts in its entirety. For her blatant disregard of the provisions of A.M. Nos. 02-11-10-SC and 02-11-11-SC, Judge Castañeda is thus found guilty of gross ignorance of the law and procedure. x x x.

x x x x

Moreover, the reprehensible haste with which she granted petitions for nullity and annulment of marriage and legal separation, despite non-compliance with the appropriate rules and evident irregularities in the proceedings, displayed her utter lack of competence and probity, and can only be considered as grave abuse of authority.[24] (Emphasis supplied.)

Taken together, the acts and omissions of Atty. Baldovino reveal his moral flaws that bring intolerable dishonor to the legal profession. They constitute deceitful conduct for which he may be disbarred or suspended.[25] In determining the imposable penalty against an erring lawyer, the purpose of disciplinary proceedings must be considered which is to protect the administration of justice by requiring that those who exercise this important function shall be competent, honorable, and reliable men in whom courts and clients may repose confidence. While the assessment of disciplinary sanction is primarily addressed to the Court's sound discretion, the penalty should

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[24] *Id.* at 224-225.

[25] See RULES OF COURT, Rule 138, Sec. 27.

neither be arbitrary or despotic, nor motivated by personal animosity or prejudice. Rather, it should ever be controlled by the imperative need to scrupulously guard the purity and independence of the bar. Thus, the supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and member of the bar.[26] The Court will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers where the evidence calls for it.[27] Verily, Atty. Baldovino is guilty of gross misconduct and is unfit to continue his membership in the bar.

FOR THESE REASONS, Atty. Marlon O. Baldovino is **DISBARRED** from the practice of law and his name is **ORDERED STRICKEN** from the Roll of Attorneys. He is also **PERPETUALLY DISQUALIFIED** from being commissioned as a notary public.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into Atty. Marlon O. Baldovino's records. Copies shall likewise be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts concerned.

SO ORDERED.

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

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[26] *Ting-Dumali v. Atty. Torres*, 471 Phil. 1, 14 (2004).

[27] *Garcia v. Atty. Manuel*, 443 Phil. 479, 489 (2003).

FIRST DIVISION

[A.C. No. 12839. November 3, 2020]

ROMMEL N. REYES, *Complainant, v.* **ATTY. GERALD Z. GUBATAN,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY (CPR); LAWYERS ARE PROHIBITED FROM BORROWING MONEY FROM THEIR CLIENTS TO PREVENT THEM FROM TAKING ADVANTAGE OF THEIR INFLUENCE OVER THE LATTER. — The relationship between lawyers and their clients is inherently imbued with trust and confidence — and as true as any natural tendency goes, this trust and confidence is susceptible to abuse. The rule prohibiting lawyers from borrowing from their clients is intended to prevent the lawyer from taking advantage of his influence over the client as the rule presumes that the client is disadvantaged by the lawyer's ability to use all legal maneuverings to renege on his obligation.

In this case, as correctly found by the IBP, there is no doubt that Atty. Gubatan obtained several loans from Reyes and the Corporation, which are evidenced by promissory notes and an acknowledgment/agreement. These loans appear to have been contracted during the existence of a lawyer-client relationship among the parties, when Atty. Gubatan was employed by the Corporation and retained as legal consultant and special assistant to the president. Consequently, Atty. Gubatan clearly violated [Canon 16 and Rule 16.04] of the CPR.

2. ID.; ID.; UNDULY BORROWING MONEY FROM CLIENTS AND REFUSING TO PAY THE SAME CONSTITUTE ABUSE OF TRUST AND CONFIDENCE AND A VIOLATION OF CANON 7 OF THE CPR. — [I]n unduly borrowing money from Reyes and the Corporation and refusing to pay the same, Atty. Gubatan abused the trust and confidence reposed in him by his clients. In doing so, he failed to uphold the integrity and dignity of the legal profession, in contravention of Canon 7 of the CPR.

3. ID.; ID.; LAWYERS ARE NOT ENTITLED TO UNILATERALLY APPROPRIATE THEIR CLIENTS' MONEY FOR THEMSELVES BY THE MERE FACT THAT THE CLIENTS OWE THEM ATTORNEY'S FEES; A SEPARATE ACTION MAY BE FILED FOR THE COLLECTION OF PROFESSIONAL FEES. — Indeed, a lawyer is entitled to protection against any attempt on the part of a client to escape payment for legal services. However, any disagreement as regards professional fees is not a matter that a lawyer could simply take into his own hands, for there are proper legal steps to be followed in order to recover his just due. Lawyers are not entitled to unilaterally appropriate their clients' money for themselves by the mere fact that the clients owe them attorney's fees. Hence, regardless of the veracity of his claim of non-payment of professional fees, Atty. Gubatan is not justified in refusing to pay his debts to Reyes and the Corporation. In any event, the disposition of the instant administrative case is without prejudice to any action that Atty. Gubatan may institute to collect his professional fees.

4. ID.; ID.; DELIBERATE FAILURE TO PAY JUST DEBTS CONSTITUTES GROSS MISCONDUCT FOR WHICH A LAWYER MAY BE SANCTIONED WITH SUSPENSION FROM THE PRACTICE OF LAW. — As for the penalty, the IBP Board recommended that Atty. Gubatan be reprimanded. The Court disagrees. Jurisprudence holds that the deliberate failure to pay just debts constitutes gross misconduct for which a lawyer may be sanctioned with suspension from the practice of law. Lawyers are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. They must, at all times, faithfully perform their duties to society, to the bar, the courts, and their clients, which include prompt payment of financial obligations.

5. ID.; ID.; FINDINGS DURING ADMINISTRATIVE-DISCIPLINARY PROCEEDINGS HAVE NO BEARING ON THE LIABILITIES OF THE PARTIES INVOLVED WHICH ARE PURELY CIVIL IN NATURE, AS THE SAME SHOULD BE THRESHED OUT IN A PROPER PROCEEDING OF SUCH NATURE. — [T]he Court notes that the IBP Board was correct in not including an order for the return of the money borrowed by Atty. Gubatan from Reyes

and the Corporation since these loans were contracted in his private capacity. In *Tria-Samonte v. Obias*, the Court held that the "findings during administrative-disciplinary proceedings have no bearing on the liabilities of the parties involved which are purely civil in nature — meaning, those liabilities which have no intrinsic link to the lawyer's professional engagement — as the same should be threshed out in a proper proceeding of such nature." In any case, the return of the money herein is already the subject of two complaints filed by Reyes and the Corporation against Atty. Gubatan for collection of sum of money with damages.

APPEARANCES OF COUNSEL

Soller & Omila Law Offices for complainant.
Manuel F. Manuel for respondent.

R E S O L U T I O N

CAGUIOA, *J.*:

The instant disbarment complaint stemmed from a complaint-affidavit[1] filed before the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) by Rommel N. Reyes (Reyes) against Atty. Gerald Z. Gubatan (Atty. Gubatan) for violation of the Code of Professional Responsibility (CPR).

Reyes alleged that he is the President and Chairman of Integra Asia Konstruct, Inc. (Corporation). He and Atty. Gubatan have been friends since they were schoolmates in college and because of this friendship, he agreed to lend money to Atty. Gubatan on six different occasions.[2]

On October 3, 2006, Reyes agreed to lend Atty. Gubatan the sum of ₱88,000.00 which was payable in 30 days. The loan is evidenced by a promissory note.[3]

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[1] *Rollo*, pp. 2-7.

[2] Id. at 206.

[3] Id. at 206-207.

On November 20, 2006, despite the lapse of the 30-day period without paying the first loan he contracted, Atty. Gubatan again borrowed ₱150,000.00 with an interest of 2% per month. This second loan was evidenced by an Acknowledgment/Agreement where he promised to pay Reyes immediately after the release of his loan with Banco de Oro.[4]

On November 24, 2006, Atty. Gubatan borrowed from Reyes the amount of ₱17,000.00 payable in 30 days, as evidenced by a promissory note.[5]

After these three loan transactions, Atty. Gubatan went to Reyes and tried to borrow money again. Because Reyes claimed that he no longer had personal funds to lend him, Atty. Gubatan persuaded him to be allowed to borrow from the Corporation.[6]

On December 19, 2006, Atty. Gubatan borrowed from the Corporation the amount of ₱200,000.00 with 2% interest per month. This was evidenced by a promissory note.[7]

Thereafter, on August 12, 2007, Atty. Gubatan again asked Reyes for a loan, this time amounting to ₱57,676.00 payable in 30 days. This was likewise evidenced by a promissory note.[8]

Despite the fact that the foregoing promissory notes and an acknowledgment/agreement were all duly signed and executed by Atty. Gubatan, he failed and refused to pay his obligations to Reyes and the Corporation.[9]

On March 13, 2009, Reyes sent a demand letter to Atty. Gubatan demanding the settlement of his loans amounting to ₱769,014.00 inclusive of interest. Atty. Gubatan still failed to pay. Hence, on September 15, 2009, Reyes filed the instant

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[4] Id. at 207.

[5] Id.

[6] Id.

[7] Id.

[8] Id.

[9] Id. at 207-208.

complaint. In addition, Reyes and the Corporation also filed two complaints against Atty. Gubatan for collection of sum of money with damages before the Metropolitan Trial Court in Quezon City (MTC).[10]

In his Answer, Atty. Gubatan claimed that he was employed by the Corporation and retained as Legal Consultant and Special Assistant to the Chairman and President. By virtue of said employment, Atty. Gubatan, who is based in Dagupan City, was required by Reyes to be at the office of the Corporation in Quezon City at least once a week.[11]

Aside from his work in the Corporation, Atty. Gubatan claimed that he was asked by Reyes to handle the latter's numerous personal cases. Since Atty. Gubatan only started his law practice in 2006, he claimed that Reyes graciously volunteered to give him several loans as evidenced by promissory notes and an acknowledgment/agreement. Moreover, he claimed that when these instruments of indebtedness were signed, he and Reyes agreed that the amounts stated therein would set off against the former's compensation and professional fees for services rendered to Reyes and the Corporation.[12]

Atty. Gubatan averred that there was no issue in the settlement of the loans as well as the handling of cases assigned to him. However, this all changed when he declined Reyes' request to prepare and execute an affidavit in support of the latter's complaint against the officials of Region I Medical Center (RIMC) and other officials of the Department of Health. The supposed affidavit would accuse the Director of the RIMC and the members of the Bids and Awards Committee of demanding sums of money from Reyes in consideration of the contracts already awarded to the Corporation.[13]

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[10] Id. at 208.

[11] Id.

[12] Id.

[13] Id. at 209.

According to Atty. Gubatan, he declined the request because there was no factual basis for the alleged demand of money on the part of the RIMC officials. Because of his refusal, Reyes sent a demand letter for payment of the loans and eventually filed the instant complaint.[14]

Both parties attended the mandatory conference and submitted their respective position papers.[15]

Findings by the IBP-CBD

In his Report and Recommendation[16] dated October 25, 2011, Investigating Commissioner Oliver A. Cachapero recommended that Atty. Gubatan be censured for violating Rule 16.04 of the CPR which prohibits lawyers from borrowing money from their client unless the latter's interests are fully protected by the nature of the case or by independent advice.[17] Here, the Investigating Commissioner found that Atty. Gubatan's indebtedness to Reyes was duly proven by the promissory notes and Reyes' act of filing civil cases for sum of money against Atty. Gubatan.[18]

On February 13, 2013, the IBP Board of Governors issued a Resolution[19] which states in part:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED AND APPROVED the Report and Recommendation of the Investigating Commissioner in the above-entitled case x x x and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, the case is hereby ***DISMISSED***.[20]

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[14] Id.

[15] Id.

[16] Id. at 182-185.

[17] Id. at 184-185.

[18] Id. at 184.

[19] Id. at 181.

[20] Id.

Reyes moved to reconsider,[21] claiming that the IBP Board erred in dismissing the case after adopting and approving the Resolution of the Investigating Commissioner which imposed the penalty of censure.[22] Reyes also insisted that the IBP Board should have modified the penalty imposed by the Investigating Commissioner to disbarment.[23]

On March 22, 2014, the IBP Board granted Reyes' Motion for Reconsideration, to wit:

RESOLVED to GRANT Complainant's Motion for Reconsideration. Thus, considering Respondent's violation of Rule 16.04 of the Code of Professional Responsibility, [the] Resolution x x x dated February 13, 2013 is hereby ***SET ASIDE*** *and accordingly Atty. Gerald Z. Gubatan [is]* ***REPRIMANDED****.*[24]

On June 18, 2019, the IBP Board issued an Extended Resolution[25] to expound on its earlier Resolution granting Reyes' Motion. The IBP Board stated that there is no dispute that Atty. Gubatan obtained several loans from Reyes and the Corporation. However, he abused the trust and confidence reposed on him by the latter through his persistent refusal to settle his obligations despite demands.[26]

The IBP Board also emphasized that there is a lawyer-client relationship in this case as Atty. Gubatan was retained as a lawyer for the Corporation and as Reyes' counsel for his personal cases. Despite this, Atty. Gubatan still borrowed money from his clients whose interests, by the lack of any security on the loan, were not fully protected. Reyes and the Corporation relied solely on Atty. Gubatan's word that he would return the money plus interest.[27]

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[21] *Id.* at 186-191.

[22] *Id.* at 187.

[23] *Id.* at 188.

[24] *Id.* at 203.

[25] *Id.* at 205-215.

[26] *Id.* at 211.

[27] *Id.* at 212.

The IBP Board also found no sufficient evidence of any subsequent agreement to set-off the loans with Atty. Gubatan's compensation for professional services. Further, the very act of Reyes and the Corporation in filing cases for collection of sum of money with damages against Atty. Gubatan counters his allegation of offsetting of credit.[28]

Neither party filed a Motion for Reconsideration of the June 18, 2019 Resolution nor a Petition for Review before the Court.[29]

RULING

The Court affirms the IBP's finding of administrative liability against Atty. Gubatan, with modification as to the recommended penalty.

The relationship between lawyers and their clients is inherently imbued with trust and confidence — and as true as any natural tendency goes, this trust and confidence is susceptible to abuse.[30] The rule prohibiting lawyers from borrowing from their clients is intended to prevent the lawyer from taking advantage of his influence over the client as the rule presumes that the client is disadvantaged by the lawyer's ability to use all legal maneuverings to renege on his obligation.[31]

In this case, as correctly found by the IBP, there is no doubt that Atty. Gubatan obtained several loans from Reyes and the Corporation, which are evidenced by promissory notes and an acknowledgment/agreement. These loans appear to have been contracted during the existence of a lawyer-client relationship among the parties, when Atty. Gubatan was employed by the Corporation and retained as legal consultant and special assistant

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[28] Id. at 213.

[29] Id. at 221.

[30] *HDI Holdings Philippines, Inc. v. Cruz*, A.C. 11724, July 31, 2018, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64489>.

[31] Id.

to the president. Consequently, Atty. Gubatan clearly violated the following provisions of the CPR:

> CANON 16 — A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.
>
> x x x x
>
> RULE 16.04. **A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice**. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client. (Emphasis supplied)

Further, in unduly borrowing money from Reyes and the Corporation and refusing to pay the same, Atty. Gubatan abused the trust and confidence reposed in him by his clients. In doing so, he failed to uphold the integrity and dignity of the legal profession, in contravention of Canon 7 of the CPR,[32] which provides:

> CANON 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the integrated bar.

Atty. Gubatan himself does not deny the existence of these loans and the fact that they remain unpaid. In his defense, he claims that when the instruments of indebtedness were signed, he and Reyes agreed that the amounts stated therein would be set off against his compensation and professional fees for services rendered to Reyes and the Corporation. These contentions are unmeritorious. On this note, the Court agrees with the IBP Board's pronouncements:

> For his part, the Respondent claims that the Complainant volunteered to extend the period of payment and agreed to offset the loan against his professional fees. These assertions are, however, self-serving. Attention is hereby drawn to several Promissory Notes signed by

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[32] Id. See also *Spouses Concepcion v. Dela Rosa*, 752 Phil. 485, 496 (2015).

the Respondent. The last paragraphs thereof [state]: *"I will pay the above-mentioned amount including its interest immediately after the release of my loan from BANCO DE ORO."* The Respondent's assurance that the release of his loan with the bank is forthcoming and that the said amount will be paid to the Complainant, which was never fulfilled, manifested his intent to mislead the latter into giving a substantial amount. Such actuation did not speak well of him as a member of the Bar.

Moreover, no subsequent agreement was shown that the sums sought to be collected by the Complainant from the Respondent will be set-off with his acclaimed compensation for his professional services. Additionally, the very act of the Complainant in filing two (2) cases for Collection of a Sum of Money with Damages against the Respondent counters the allegations of extension and off-setting of credit.[33]

In this regard, the Court notes that when he testified in the collection case before the MTC, Reyes admitted that he did not pay Atty. Gubatan for legal services rendered to him and the Company. He claimed that Atty. Gubatan volunteered his legal services without payment in view of the many favors he extended to the latter.[34] This is belied by Atty. Gubatan, who claims that he should be paid for the services he had rendered to Reyes and the Corporation.[35]

Indeed, a lawyer is entitled to protection against any attempt on the part of a client to escape payment for legal services.[36] However, any disagreement as regards professional fees is not a matter that a lawyer could simply take into his own hands, for there are proper legal steps to be followed in order to recover his just due.[37] Lawyers are not entitled to unilaterally appropriate

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[33] *Rollo*, pp. 212-213.

[34] Id. at 126-130.

[35] Id. at 101-102.

[36] *Vda. De Fajardo v. Bugaring*, 483 Phil. 170, 184 (2004).

[37] See *J.K. Mercado and Sons Agricultural Enterprises, Inc. v. De Vera*, 375 Phil. 766 (1999).

their clients' money for themselves by the mere fact that the clients owe them attorney's fees.[38] Hence, regardless of the veracity of his claim of non-payment of professional fees, Atty. Gubatan is not justified in refusing to pay his debts to Reyes and the Corporation. In any event, the disposition of the instant administrative case is without prejudice to any action that Atty. Gubatan may institute to collect his professional fees.

As for the penalty, the IBP Board recommended that Atty. Gubatan be reprimanded. The Court disagrees. Jurisprudence holds that the deliberate failure to pay just debts constitutes gross misconduct for which a lawyer may be sanctioned with suspension from the practice of law.[39] Lawyers are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured.[40] They must, at all times, faithfully perform their duties to society, to the bar, the courts, and their clients, which include prompt payment of financial obligations.[41]

In *Junio v. Grupo*,[42] the errant lawyer was found guilty of violating Rule 16.04 of the CPR and was suspended from the practice of law for a period of one (1) month. In *Spouses San Pedro v. Mendoza*,[43] the respondent therein refused to return the money of his clients despite his failure to facilitate the transfer of title to property, claiming that the retention of money was justified owing to his receivables from complainants for services he rendered in various cases. The Court suspended him from the practice of law for three (3) months. In *Spouses Anaya v. Alvarez*,[44] the respondent was suspended for one (1) year for

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[38] *Luna v. Galarrita*, 763 Phil. 175, 194 (2015).

[39] *Foster v. Agtang*, 749 Phil. 576, 592 (2014).

[40] Id. at 592-593.

[41] Id. at 593.

[42] 423 Phil. 808 (2001).

[43] 749 Phil. 540 (2014).

[44] 792 Phil. 1 (2016).

his deliberate failure to pay his debts and for issuing worthless checks. In the more recent case of *Delloro v. Atty. Tagueg*,[45] the respondent therein was suspended from the practice of law for a period of three (3) months for violating Rule 16.04 of the CPR.

In the instant case, the Court finds it proper to impose on Atty. Gubatan the penalty of suspension from the practice of law for three (3) months.

As a final point, the Court notes that the IBP Board was correct in not including an order for the return of the money borrowed by Atty. Gubatan from Reyes and the Corporation since these loans were contracted in his private capacity. In *Tria-Samonte v. Obias*,[46] the Court held that the "findings during administrative-disciplinary proceedings have no bearing on the liabilities of the parties involved which are purely civil in nature — meaning, those liabilities which have no intrinsic link to the lawyer's professional engagement — as the same should be threshed out in a proper proceeding of such nature."[47] In any case, the return of the money herein is already the subject of two complaints filed by Reyes and the Corporation against Atty. Gubatan for collection of sum of money with damages.

WHEREFORE, premises considered, Atty. Gerald Z. Gubatan is hereby **SUSPENDED** for three (3) months from the practice of law, effective upon the receipt of this Resolution. He is **WARNED** that a repetition of the same or a similar act will be dealt with more severely.

Let a copy of this Resolution be furnished the Office of the Bar Confidant, to be appended to the personal record of Atty. Gubatan as a member of the 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 in the country for their information and guidance.

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[45] A.C. 12422, July 17, 2019.

[46] 719 Phil. 70 (2013).

[47] Id. at 81-82.

SO ORDERED.

Peralta, C.J., Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

EN BANC

[A.M. No. P-20-4067. November 3, 2020]
(Formerly OCA I.P.I. No. 19-4968-P)

JUDGE LILIBETH O. LADAGA, *Complainant, v.* **ATTY. ARNAN AMOR P. SALILIN, Clerk of Court, and ELGIE G. BONGOSIA, Utility Worker I, both of Branch 28, Regional Trial Court (RTC), Surigao del Sur,** *Respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DUTIES OF CLERKS OF COURT; CLERKS OF COURT ARE MANDATED TO ENSURE PROPER SAFEKEEPING OF THE COURT'S FUNDS, PROPERTIES, RECORDS, AND EVIDENCE SUBMITTED IN COURT. — The clerk of court is mandated with safekeeping [of] all submitted pieces of evidence. . . .

. . .

Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes, and concerns. They perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they generally are also the treasurer, accountant, guard and physical plant manager of the trial courts.

Given the fundamental role of evidence in court proceedings, the clerk of court's duties is crucial, having control and management of all court records, exhibits, documents, properties, and supplies. As record and evidence keeper, it is respondent's duty to conduct periodic inventory of dockets, records, and exhibits, as well as to ensure that the records and exhibits of each case are accounted for. Being the custodian, the clerk of court is liable for any loss, shortage, destruction, or impairment to these items.

2. ID.; ID.; ID.; GROSS NEGLECT OF DUTY; LOSS OF DRUG SACHETS TO BE INTRODUCED AS EVIDENCE IN

PENDING CASES CONSTITUTES GROSS NEGLECT OF DUTY.— [I]t is apparent that Atty. Salilin did not properly manage the evidence under his custody. That the loss of the drug sachets was discovered during trial, while the witness was about to identify the same, highlighted Atty. Salilin's failure to conduct the necessary inventory. It also brought undue embarrassment to the court. Had he been performing his duties faithfully, he would have definitely noticed the loss of such a considerable number of evidence.

. . .

. . . [T]his Court does not share the OCA's view that Atty. Salilin should be held liable for simple neglect of duty. It is true that in the past, loss of exhibits resulted to the clerk of court's liability for simple neglect of duty and a penalty of suspension and/or fine.

. . .

More recently however, this Court imposed a graver penalty for the loss of drug evidence in *Office of the Court Administrator v. Toledo*. In that case, the Court held the clerk of court liable for gross neglect of duty. The court found that the loss of the *corpus delicti* adversely affected the integrity of two (2) criminal cases decided within close proximity to the discovery of the loss.

In the case at bar, this Court finds that Atty. Salilin should be similarly held liable for **gross neglect of duty**, and not merely simple neglect of duty since the loss of the drug sachets will undoubtedly affect the nine (9) pending cases for which these were to be introduced as evidence.

3. ID.; ID.; ID.; CLERKS OF COURT SHOULD DEVELOP RELIABLE SAFETY MEASURES TO SECURE THE SAFETY OF EVIDENCE VITAL IN DETERMINING THE GUILT OF THE ACCUSED.— Atty. Salilin did not have a system for guarding the evidence vault's key, and was unsure whether he left the keys in his drawer or his bag at the time of the theft. If he truly believed that the lock of the evidence vault is old and faulty, or that there were difficulties in maintaining it, he should have requested for a new one, or at least raised the concern to Judge Ladaga. A simple exercise of diligence would have prompted him to inform the judge of the necessary repair and device reliable safety measures to ensure the safety of the contents of the vault.

A clerk of court's office is the hub of activities, and he or she is expected to be assiduous in performing official duties and in supervising and managing the court's dockets, records, and exhibits. Court evidence cannot and should not be treated like any ordinary court supply, as they are indispensable to the court's adjudicative functions. Atty. Salilin should have been more circumspect in securing the contents of the evidence vault. This, considering that the evidence vault contained vital pieces of evidence necessary in determining the guilt of the accused with pending cases before their Court.

4. ID.; ID.; ID.; CONSIDERING THAT DRUG SACHETS ARE INDISPENSABLE IN THE ADJUDICATION OF DRUG-RELATED OFFENSES, LOSS OF SUCH EXHIBITS ULTIMATELY RESULT IN THE FAILURE OF DISPENSATION OF JUSTICE.— As officer of the Court, Atty. Salilin was expected to discharge his duty of safekeeping court records, exhibits, properties with diligence. . . .

Verily, the consequences of irresponsible safekeeping of court exhibits ultimately result in the failure of dispensation of justice. Prosecution and adjudication of guilt are adversely affected, if not halted, by the loss of relevant pieces of evidence caused by fault or neglect of court custodians.

In this case, the sensitive nature, as well as indispensability of the drug sachets in the adjudication of RA 9165 offenses in their court, should have impelled Atty. Salilin to be more watchful and cautious in safeguarding the evidence vault. After all, the success of any litigation is almost always dependent on the evidence presented by the parties. In drug related offenses, the dangerous drug itself constitutes the very *corpus delicti* of the offense, and the fact of its existence is vital to a judgment of conviction. It is vital in these cases that the identity of the prohibited drug be established beyond doubt. However, instead of being vigilant, Atty. Salilin became overconfident and lax since there were no prior incidents of theft or loss of evidence in their court.

5. ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY DISTINGUISHED FROM GROSS NEGLECT OF DUTY.— Simple neglect of duty is defined as the failure of an employee to give one's attention to a task expected of him or her. Gross neglect of duty is such neglect which, from the gravity of the

case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare. It refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected.

6. ID.; ID.; ID.; CLERKS OF COURT SHOULD OBSERVE GREATER VIGILANCE AND CARE IN THE CUSTODY AND HANDLING OF SMALL PIECES OF EVIDENCE.— Determination of neglect or negligence largely depends on the circumstances of every given case. It is not determined by reference to the personal judgment of the actor in the situation before him but on the supposed conduct of a prudent man in a given situation in the light of human experience and in view of the facts involved in the particular case. Applying the said principle to the clerk of court's duties, greater vigilance and care should be observed in the custody and handling of small pieces of evidence, like sachets containing miniscule amounts of prohibited drugs and/or drug paraphernalia, given the relative ease by which they can be taken. Sufficient safeguards should be undertaken to ensure security of the aforesaid items such as the use of secure vaults, cabinets and locks. Further, it may not be amiss to point out that periodic inventory of the court's respective properties and exhibits is indispensable in minimizing and discouraging loss of various court items.

7. ID.; ID.; ID.; GRAVE MISCONDUCT, DEFINED.— Grave misconduct is defined as a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that tends to threaten the very existence of the system of administration of justice an official or employee serves. It may manifest itself in corruption, or in other similar acts, done with the clear intent to violate the law or in flagrant disregard of established rules.

8. ID.; ID.; ID.; GRAVE MISCONDUCT; DISHONESTY; THEFT OF DRUG EXHIBITS AND USE OF THE SAME AMOUNT TO GRAVE MISCONDUCT, DISHONESTY, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.— In *Zarate-Fernandez v.*

Lovendino, this Court held respondent court aide liable for grave misconduct because of the theft of the exhibits in the court's vault and the illegal sale of the pilfered firearm. It concluded that the element of corruption had also been established from the respondent's use of his position to procure some benefit for himself and to the detriment of the Judiciary. This Court also found therein respondent guilty of dishonesty because his misappropriation of the court's evidence demonstrates his disposition to lie, cheat, deceive, defraud, or betray. Finally, respondent was also found guilty of conduct prejudicial to the best interest of the service because he violated the norm of public accountability which subsequently diminished the people's faith in the Judiciary.

Bongosia is no different. He deceived the guard on duty to gain access to the vault. He also admitted to using the drugs contained in one of the sachets, which was essentially confirmed by the results of his drug test. More importantly, his theft of the drug sachets would unduly and adversely affect the conduct and integrity of pending court cases.

. . . Bongosia is held liable for grave misconduct, dishonesty, and conduct prejudicial to the best interest of service.

9. ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; CONSPIRACY; MERE PRESENCE IN THE CRIME SCENE AND INACTION TO PREVENT THE COMMISSION OF THE CRIME DO NOT MAKE ONE A CO-CONSPIRATOR.— Atty. Salilin's negligence notwithstanding, the Court agrees with the OCA that there is no proof that he conspired with Bongosia to steal the drugs from the vault. There is nothing that directly shows he consented to, or even knew that, Bongosia took the drug sachets from the vault. The finding of conspiracy entails that the alleged conspirator performed at least an overt act that showed his concurrence in the criminal design. His mere presence in the crime scene, as well as the showing of his inaction to prevent the commission of the crime, will not make him a co-conspirator because such is not of the nature of overt acts essential to incurring criminal liability under the umbrella of a conspiracy.

10. ID.; ID.; ID.; IN VIEW OF THE NATURE OF A PUBLIC OFFICE, IT IS IMPERATIVE FOR COURT PERSONNEL TO PERFORM THEIR TASKS EFFICIENTLY AND

> **COMPETENTLY. —** [C]ourt employees must always be mindful of the relevance and delicate nature of their tasks. Administrative tasks are inseparable and complement the courts' adjudicative functions. Hence, it is imperative that they are performed efficiently and competently. Public office is a public trust. No less than the fundamental law of the land requires that "public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." Nothing short of faithful adherence is expected from those involved in the administration of justice. Public servants are mandated to uphold public interest over personal needs. Everyone, from the highest official to the lowest rank employee, must live up to the strictest norms of probity and integrity in the public service.

D E C I S I O N

***PER CURIAM*:**

The instant administrative case stemmed from a 30 August 2019 Letter[1] (Letter) from Judge Lilibeth Ladaga (Judge Ladaga), Presiding Judge, Branch 28, Regional Trial Court (RTC), Lianga, Surigao del Sur to the Office of the Court Administrator (OCA) charging Atty. Aman Amor P. Salilin (Atty. Salilin), Clerk of Court, and Elgie G. Bongosia (Bongosia), Utility Worker I, both from Branch 28, RTC, Lianga, Surigao del Sur with grave misconduct.

Factual Antecedents

On 16 July 2019, during the hearing of Criminal Case Nos. 18-3322, 18-3323 and 18-3324, entitled *People v. Quilaton, et al.*, before Judge Ladaga's sala, it was discovered that two (2) sachets of "shabu" the subject of the prosecution witness' testimony that day, were missing from the evidence container.[2] Two weeks later, or on 30 July 2019, at the hearing of Criminal

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[1] *Rollo*, pp. 2-7.

[2] *Id.* at 2.

Case Nos. 2216 to 18-3320, entitled, *People v. Dormitorio, et al.*,[3] the court discovered another sachet of "shabu" had gone missing.

Judge Lagada requested the National Bureau of Investigation (NBI) District Office in Prosperidad, Agusan del Sur to conduct an investigation on the missing drug evidence. She also requested the Philippine National Police (PNP) Provincial Laboratory to conduct drug testing on all court personnel, including herself and her spouse, the security guards, and the staff assigned to the court on a job order status.[4]

All the court personnel tested negative for drugs,[5] except for Bongosia,[6] which did not preclude the possibility that he used illegal drugs at least four (4) days prior to testing. On 02 August 2019, the NBI agents interviewed all the court personnel of Branch 28, RTC, Lianga, Surigao del Sur. During his interview, Bongosia confessed that he took the sachets of shabu from the evidence vault.[7]

Judge Ladaga called the court personnel to a meeting after the NBI agents left, with court stenographer Mercedita Tolentino recording the proceedings.[8] Bongosia repeated his confession. He admitted that he took the sachets of drugs out of the evidence vault one Saturday in June 2019. He claimed an unknown person threatened to inflict dreadful consequences upon him if he will not destroy the records and evidence in the drug cases pending in Branch 28.[9] When Atty. Salilin started looking for the missing drug evidence, Bongasia admitted having kept some and surrendered the same in a crumpled bond paper. Upon instruction

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[3] *Id.* at 3.

[4] *Id.*

[5] *Id.* at 20.

[6] *Id.* at 4.

[7] *Id.*

[8] *Id.*

[9] *Id.*

of Judge Ladaga, the sachets were placed inside a zip lock pouch, sealed and signed by Atty. Salilin.[10] Afterwards, Bongosia committed to reduce his confession to writing.[11]

In his affidavit, Bongosia recounted that sometime in mid-June 2019, while he was out for some office errands, someone placed an arm on his shoulder, and told him, "Do not look back, and just keep on walking. We have a request to you. Burn the records of the drug cases and the evidence. So that nothing will happen to all of you. Don't tell anyone. Don't look back, just proceed and keep on walking."[12] He was confused by the conversation, but continued walking. He claimed that he was overcome with anxiety and confusion by what happened.[13]

One Saturday in June 2019, Bongasia went to the court and told the guard on duty to buy food for their lunch. He immediately went to Atty. Salilin's table, opened his drawer, took the keys to the vault, and opened the same.[14] He took the evidence box from inside the vault and randomly pulled out sachets of drugs which he placed inside different cellophanes. He returned the evidence box, closed the vault, and placed the key back to Atty. Salilin's drawer.

Bongasia further declared that he took his lunch from the guard and went home, in a rented room above Atty. Salilin's house, and kept the drugs inside his cabinet. During nightfall, he went to the vacant area behind Atty. Salilin's house and burned the drugs with dried leaves and cellophane. He poured diesel on the drugs to hide the smell. He also admitted taking two (2) sachets and using one of them.[15] Finally, he claimed

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[10] *Id.* at 23.

[11] *Id.* at 5.

[12] *Id.* at 26-27.

[13] *Id.* at 27.

[14] *Id.*

[15] *Id.* at 28.

that he acted alone and was ready to face the consequences of his transgression.[16]

Meanwhile, the sachets recovered from Bongosia were confirmed to contain methamphetamine hydrochloride.[17] Thereafter, Judge Ladaga issued a memorandum prohibiting Bongosia from entering the premises[18] and directing Atty. Salilin to explain how Bongosia had access to the drug evidence vault.[19]

Atty. Salilin submitted his explanation, which and emphasized that for more than seven (7) years of service, he has never encountered problems regarding missing drug evidence, lost court property, or even misappropriate a single centavo.[20] He admitted Bongosia had been living in the second floor of his rented house for a year. He acknowledged the possibility that Bongosia might have taken the keys of the evidence vault either from his bag[21] or from his office drawer. He surmised that the vault's locking mechanism might have failed to engage, or Bongosia might have tinkered with the same.[22] As to the combination lock of the evidence vault, Atty. Salilin claimed that nobody knew how to change the number combination, since it was merely inherited from the former clerk of court. He asserted that he was also a victim of Bongosia's acts, since the latter took the key from his drawer, in violation of his right to privacy. He denied being negligent because he never left his drawer open.[23]

After an inventory, it was found that Bongosia took a total of thirty-six (36) sachets of drugs from sixteen (16) cases, viz.:

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[16] *Id.* at 29.

[17] *Id.* at 25.

[18] *Id.* at 61.

[19] *Id.* at 62.

[20] *Id.* at 63.

[21] *Id.* at 66.

[22] *Id.*

[23] *Id.* at 67.

1) twenty-two (22) sachets from nine (9) active/pending cases;[24] 2) nine (9) sachets from four (4) cases subject of plea bargaining;[25] 3) three (3) sachets from two (2) decided cases;[26] and 4) two (2) sachets from one (1) case subject of a demurrer, with a total net weight of 16.0766 grams.[27]

In a 09 September 2019 letter,[28] Atty. Salilin reported the theft of drug exhibits from the court's evidence vault, and the subsequent filing of criminal action for qualified theft against Bongosia. Atty. Salilin alleged that Judge Ladaga called a meeting of all court personnel where she announced that she had forwarded the investigation report to the Supreme Court, and that criminal and administrative cases were filed against him and Bongosia.[29] He claimed that during the meeting and in the presence of all the staff, Judge Ladaga asked him to resign from his post to avoid the pain of being terminated. Moreover, the court could look for an OIC-Clerk of Court in the meantime as preventive suspension for ninety (90) days was expected claiming that Judge Ladaga already prejudged him. Atty. Salilin requested to be transferred to another station, particularly to the RTC of Dapa, Surigao del Norte.[30]

In a 10 September 2019 Supplemental Letter Complaint,[31] Judge Ladaga informed the Court that the NBI had already charged Atty. Salilin and Bongosia with violation of Section 27[32]

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[24] *Id.* at 176-180.

[25] *Id.* at 181 and 183.

[26] *Id.* at 182.

[27] *Id.* at 6.

[28] *Id.* at 173-175.

[29] *Id.* at 174.

[30] *Id.*

[31] *Id.* at 148-149.

[32] Section 27. *Criminal Liability of a Public Officer or Employee for Misappropriation, Misapplication or Failure to Account for the Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous*

of Republic Act (RA) No. 9165 before the Office of the Provincial Prosecutor of Surigao del Sur City. She also submitted the 05 September 2019 NBI Investigation Report [33] (NBI Report) and claimed that Atty. Salilin filed a case for qualified theft against Bongosia.

The NBI recommended that Atty. Salilin and Bongosia be charged for violation of Sec. 27 of RA 9165.[34] While Bongosia admitted the theft of the evidence, the NBI found his story bore holes and lapses which defied logic.[35] First, the NBI found it suspicious that the missing sachets were taken from pending cases, while some from already terminated cases. Second, he failed to confide the threats of the unknown person to Judge Ladaga and Atty. Salilin.[36] On the other hand, the NBI also found Atty. Salilin's conduct highly unusual in that he failed to notice and report the substantial loss of evidence — a total

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Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment Including the Proceeds or Properties Obtained from the Unlawful Act Committed. — The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00), in addition to absolute perpetual disqualification from any public office, shall be imposed upon any public officer or employee who misappropriates, misapplies or fails to account for confiscated, seized or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment including the proceeds or properties obtained from the unlawful acts as provided for in this Act.

Any elective local or national official found to have benefited from the proceeds of the trafficking of dangerous drugs as prescribed in this Act, or have received any financial or material contributions or donations from natural or juridical persons found guilty of trafficking dangerous drugs as prescribed in this Act, shall be removed from office and perpetually disqualified from holding any elective or appointive positions in the government, its divisions, subdivisions, and intermediaries, including government-owned or -controlled corporations.

[33] *Rollo*, pp. 151-163.

[34] *Id.* at 163.

[35] *Id.* at 159.

[36] *Id.*

of thirty-six (36) sachets — in a single occasion.[37] He did not take any action, and instead, waited for Judge Ladaga to initiate an investigation. The NBI found it suspicious that Atty. Salilin was nonchalant and unperturbed, instead of being the first person to charge Bongosia.[38]

Report and Recommendation of the OCA

In its 08 June 2020 Report and Recommendation,[39] the OCA submitted the following:

> The instant administrative complaint against Atty. Salilin and Bongosia be re-docketed as a regular administrative matter;
>
> Bongosia be held liable for grave misconduct and be dismissed from service, with forfeiture of his retirement and other benefits, except accrued leave credits, and be perpetually disqualified from re-employment in the government service;
>
> Atty. Salilin be found guilty of simple neglect of duty and suspended for three (3) months without pay, with a stern warning that a repetition of the same will be dealt more severely; and
>
> The complaint against Atty. Salilin for grave misconduct be dismissed for insufficiency of evidence.[40]

The OCA agreed with Judge Ladaga that Bongosia was guilty of grave misconduct when he took the drug evidence from the vault and used one of the sachets.[41] However, the OCA disagreed that Atty. Salilin is liable for grave misconduct, finding no evidence that he actually conspired with Bongosia in taking the drug evidence from the vault.[42] Instead, it recommended

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[37] *Id.* at 161.

[38] *Id.*

[39] *Id.* at 230-236.

[40] *Id.* at 235-236.

[41] *Id.* at 34.

[42] *Id.*

holding Atty. Salilin liable for simple neglect of duty, particularly in the safekeeping of drug evidence.[43]

Issue

The sole issue for the Court's resolution is whether Atty. Salilin and Bongosia are administratively liable for the loss of drug evidence in the court's custody.

Ruling of the Court

The Court adopts the OCA's findings but modifies the designation of the offense and the penalty to be imposed in accordance with recent jurisprudence.

The clerk of court is mandated with safekeeping all submitted pieces of evidence. Section E (2), paragraph 2.2.3, Chapter VI of the 2002 Revised Manual for Clerks of Court reads:

> All exhibits used as evidence and turned over to the court and before the case/s involving such evidence shall have been terminated shall be under the custody and safekeeping of the Clerk of Court.

Meanwhile, Section 7 of Rule 136 of the Rules of Court also provides:

> SEC. 7. *Safekeeping of property*. — The clerk shall safely keep all records, papers, files, exhibits and public property committed to his charge, including the library of the court, and the seals and furniture belonging to his office.

Clerks of court are officers of the law who perform vital functions in the prompt and sound administration of justice. Their office is the hub of adjudicative and administrative orders, processes, and concerns.[44] They perform a delicate function as designated custodians of the court's funds, revenues, records, properties and premises. As such, they generally are also the

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[43] *Id.* at 235.

[44] *Office of the Court Administrator v. Nicolas*, A.M. No. P-10-2840, 23 June 2015, 761 Phil. 582 (2015); 760 SCRA 273, 285.

treasurer, accountant, guard and physical plant manager of the trial courts.[45]

Given the fundamental role of evidence in court proceedings, the clerk of court's duties is crucial, having control and management of all court records, exhibits, documents, properties, and supplies.[46] As record and evidence keeper, it is respondent's duty to conduct periodic inventory of dockets, records, and exhibits, as well as to ensure that the records and exhibits of each case are accounted for.[47] Being the custodian, the clerk of court is liable for any loss, shortage, destruction, or impairment to these items.[48]

In this case, it is apparent that Atty. Salilin did not properly manage the evidence under his custody. That the loss of the drug sachets was discovered during trial, while the witness was about to identify the same, highlighted Atty. Salilin's failure to conduct the necessary inventory. It also brought undue embarrassment to the court. Had he been performing his duties faithfully, he would have definitely noticed the loss of such a considerable number of evidence.

His assertion that he was also a victim of Bongosia's thievery, is a lousy attempt to downplay his negligence. Atty. Salilin did not have a system for guarding the evidence vault's key, and was unsure whether he left the keys in his drawer or his bag at the time of the theft. If he truly believed that the lock of the evidence vault is old and faulty, or that there were difficulties in maintaining it, he should have requested for a new one, or at least raised the concern to Judge Ladaga.[49] A

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[45] *Id.*

[46] *Botigan-Santos v. Gener*, A.M. No. P-16-3521, 04 September 2017, 817 Phil. 655 (2017); 838 SCRA 466, 472.

47 *Id.*

[48] *Financial Audit on the Books of Accounts of Ms. Adelina R. Garrovillas*, A.M. No. P-04-1894, 09 August 2005, 503 Phil. 678 (2005); 466 SCRA 59, 65.

[49] *See Office of the Court Administrator v. Rañoco*, A.M. No. P-03-1717, 06 March 2008, 571 Phil. 386 (2008); 547 SCRA 670.

simple exercise of diligence would have prompted him to inform the judge of the necessary repair and device reliable safety measures to ensure the safety of the contents of the vault.[50]

A clerk of court's office is the hub of activities, and he or she is expected to be assiduous in performing official duties and in supervising and managing the court's dockets, records, and exhibits.[51] Court evidence cannot and should not be treated like any ordinary court supply, as they are indispensable to the court's adjudicative functions. Atty. Salilin should have been more circumspect in securing the contents of the evidence vault. This, considering that the evidence vault contained vital pieces of evidence necessary in determining the guilt of the accused with pending cases before their Court.

Atty. Salilin's negligence notwithstanding, the Court agrees with the OCA that there is no proof that he conspired with Bongosia to steal the drugs from the vault. There is nothing that directly shows he consented to, or even knew that, Bongosia took the drug sachets from the vault. The finding of conspiracy entails that the alleged conspirator performed at least an overt act that showed his concurrence in the criminal design. His mere presence in the crime scene, as well as the showing of his inaction to prevent the commission of the crime, will not make him a co-conspirator because such is not of the nature of overt acts essential to incurring criminal liability under the umbrella of a conspiracy.[52]

Nonetheless, this Court does not share the OCA's view that Atty. Salilin should be held liable for simple neglect of duty. It is true that in the past, loss of exhibits resulted to the clerk of court's liability for simple neglect of duty and a penalty of suspension and/or fine.

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[50] *Office of the Court Administrator v. Ramirez*, A.M. No. MTJ-03-1508, 17 January 2005, 489 Phil. 262 (2005).

[51] *Supra* at note 44.

[52] *People v. Raguro*, G.R. No. 224301, 30 July 2019.

In *Office of the Court Administrator v. Ramirez*,[53] the Court found the respondent clerk of court liable for simple neglect of duty and suspended one (1) month and one (1) day for the loss of various court exhibits consisting of firearms and ammunition. Meanwhile, the respondent clerk of court in *Office of the Court Administrator v. Rañoco*[54] was held liable for simple neglect of duty, and suspended from office for three (3) months without pay for the loss of exhibits and transcript of stenographic notes.

On the other hand, in *Botigan-Santos v. Gener*,[55] the Court found the clerk of court guilty of simple neglect of duty for the loss of firearms which were subject of cases that were dismissed fifteen (15) years ago. This Court explained that the loss could have been prevented if the clerk turned the firearms over to the Firearms and Explosives Unit of the PNP, pursuant to the directive in the Manual for Clerks of Court. The Court imposed a fine equivalent to three (3) months' salary, instead of suspension, since the latter penalty could hamper the operation of the trial court.

More recently, however, this Court imposed a graver penalty for the loss of drug evidence in *Office of the Court Administrator v. Toledo*.[56] In that case, the Court held the clerk of court liable for gross neglect of duty. The court found that the loss of the *corpus delicti* adversely affected the integrity of two (2) criminal cases decided within close proximity to the discovery of the loss.

In the case at bar, this Court finds that Atty. Salilin should be similarly held liable for **gross neglect of duty**, and not merely simple neglect of duty since the loss of the drug sachets will undoubtedly affect the nine (9) pending cases for which these were to be introduced as evidence. Simple neglect of duty is defined as the failure of an employee to give one's attention to a task expected of him or her. Gross neglect of duty is such

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[53] A.M. No. MTJ-03-1508, 17 January 2005, 489 Phil. 262 (2005).

[54] *Supra* at note 47.

[55] *Supra* at note 44.

[56] A.M. No. P-13-3124, 04 February 2020.

neglect which, from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare.[57] It refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected.[58]

Determination of neglect or negligence largely depends on the circumstances of every given case. It is not determined by reference to the personal judgment of the actor in the situation before him but on the supposed conduct of a prudent man in a given situation in the light of human experience and in view of the facts involved in the particular case.[59] Applying the said principle to the clerk of court's duties, greater vigilance and care should be observed in the custody and handling of small pieces of evidence, like sachets containing miniscule amounts of prohibited drugs and/or drug paraphernalia, given the relative ease by which they can be taken.[60] Sufficient safeguards should be undertaken to ensure security of the aforesaid items such as the use of secure vaults, cabinets and locks. Further, it may not be amiss to point out that periodic inventory of the court's respective properties and exhibits is indispensable in minimizing and discouraging loss of various court items.

As officer of the Court, Atty. Salilin was expected to discharge his duty of safekeeping court records, exhibits, properties with diligence.[61] In *Cañete v. Rabosa, Sr.*,[62] this Court had already

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[57] *Nuezca v. Verceles*, A.M. No. P-19-3989, 25 June 2019, citing *Rapsing v. Walse-Lutero*, 808 Phil. 389 (2017).

[58] *Id.*

[59] *See Cacho v. Manahan*, G.R. No. 203081, 17 January 2018, citing *Picart v. Smith*, 37 Phil. 809 (1918). *See* also *OCA v. Toledo, supra* at note 55.

[60] *See People v. Lung Wai Tang*, G.R. No. 238517, 27 November 2019.

[61] *See Cruz v. Tantay*, A.M. No. P-99-1296, 25 March 1999, 364 Phil. 602 (1999).

[62] A.M. No. MTJ-96-1111, 05 September 1997, 344 Phil. 9 (1997).

succinctly reminded clerks of courts to take necessary precautions in the handling of all court properties, *viz.*:

> We take this opportunity to remind all Clerks of Court to be more vigilant in the custody and safekeeping of court exhibits, particularly firearms and other weapons, as well as dangerous and prohibited drugs. The Court has been receiving reports that these are now the favorite objects of thievery and robbery all over the country, resulting in the failure of the prosecutors to successfully bring the criminals to justice. Worse, the perpetrators go scot-free only to pursue further their nefarious activities with the use of these exhibits.

Verily, the consequences of irresponsible safekeeping of court exhibits ultimately result in the failure of dispensation of justice. Prosecution and adjudication of guilt are adversely affected, if not halted, by the loss of relevant pieces of evidence caused by fault or neglect of court custodians.

In this case, the sensitive nature, as well as indispensability of the drug sachets in the adjudication of RA 9165 offenses in their court, should have impelled Atty. Salilin to be more watchful and cautious in safeguarding the evidence vault. After all, the success of any litigation is almost always dependent on the evidence presented by the parties. In drug related offenses, the dangerous drug itself constitutes the very *corpus delicti* of the offense, and the fact of its existence is vital to a judgment of conviction. It is vital in these cases that the identity of the prohibited drug be established beyond doubt.[63] However, instead of being vigilant, Atty. Salilin became overconfident and lax since there were no prior incidents of theft or loss of evidence in their court.

Anent Bongosia's administrative liability the Court fully agrees with the OCA that he should be held liable for grave misconduct, dishonesty and conduct prejudicial to the best interest of the service.

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[63] *People v. Hilario*, G.R. No. 210610, 11 January 2018, 851 SCRA 1, 13, citing *Mallillin v. People*, G.R. No. 172953, 30 April 2008, 576 Phil. 576 (2008); 553 SCRA 619, 632.

Grave misconduct is defined as a serious transgression of some established and definite rule of action (such as unlawful behavior or gross negligence by the public officer or employee) that tends to threaten the very existence of the system of administration of justice an official or employee serves. It may manifest itself in corruption, or in other similar acts, done with the clear intent to violate the law or in flagrant disregard of established rules.[64]

In *Zarate-Fernandez v. Lovendino*,[65] this Court held respondent court aide liable for grave misconduct because of the theft of the exhibits in the court's vault and the illegal sale of the pilfered firearm. It concluded that the element of corruption had also been established from the respondent's use of his position to procure some benefit for himself and to the detriment of the Judiciary. This Court also found therein respondent guilty of dishonesty because his misappropriation of the court's evidence demonstrates his disposition to lie, cheat, deceive, defraud, or betray. Finally, respondent was also found guilty of conduct prejudicial to the best interest of the service because he violated the norm of public accountability which subsequently diminished the people's faith in the Judiciary.

Bongosia is no different. He deceived the guard on duty to gain access to the vault. He also admitted to using the drugs contained in one of the sachets, which was essentially confirmed by the results of his drug test. More importantly, his theft of the drug sachets would unduly and adversely affect the conduct and integrity of pending court cases.

In sum, this Court finds Atty. Salilin liable for gross neglect of duty, while Bongosia is held liable for grave misconduct, dishonesty, and conduct prejudicial to the best interest of service. Their conduct caused great prejudice to the judiciary and plainly speaks of their unfitness to hold their positions in these august

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[64] *Cabauatan v. Uvero*, A.M. No. P-15-3329, 06 November 2017, 844 SCRA 7, 15.

[65] A.M. No. P-16-3530, 06 March 2018.

halls. For this, they must be dismissed from the service, and suffer the concomitant administrative penalties.[66]

Indeed, crucial in the review of convictions involving drug offenses is the identity and integrity of the seized items, and this Court, in various instances, has not hesitated in overturning convictions if any of the links in the chain of custody of prohibited or regulated drugs has been established to be compromised. Further, this Court has been insistent in eliciting vigilance from the various sectors of the criminal justice system in complying with legal and jurisprudential standards in the custody and prosecution of illegal drugs offenses. And court employees are not exempted from this delicate duty. They are expected to be as discerning in ensuring litigants that files, records, exhibits and other court submissions are safe and unadulterated when presented in court.

In this light, court employees must always be mindful of the relevance and delicate nature of their tasks. Administrative tasks are inseparable and complement the courts' adjudicative functions. Hence, it is imperative that they are performed efficiently and competently. Public office is a public trust. No less than the fundamental law of the land requires that "public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."[67] Nothing short of faithful adherence is expected from those involved in the administration of justice.[68] Public servants are mandated to uphold public interest over personal needs.

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[66] *See Re*: *Ricky R. Regala*, A.M. No. CA-18-35-P, 27 November 2018, 887, SCRA 134, 143; *Re: Report on the Arrest of Mr. Oliver B. Maxino*, A.M. No. 16-01-3-MCTC, 09 June 2020; *In Re Alcantara*, A.M. No. P-15-3296, 17 February 2015, 754 Phil. 20 (2015); 750 SCRA 603, 611; *Judaya v. Balbona*, A.M. No. P-06-2279, 06 June 2017, 810 Phil. 375 (2017); 826 SCRA 81, 90.

[67] *Efondo v. Favorito*, OCA IPI No. 10-3423-P & A.M. No. P-11-2889, 22 August 2017, 816 Phil. 962 (2015).

[68] *Id.*

Everyone, from the highest official to the lowest rank employee, must live up to the strictest norms of probity and integrity in the public service.[69]

WHEREFORE, the foregoing premises considered, the Court hereby finds:

1. Respondent Atty. Arnan Amor P. Salilin, then Branch Clerk of Court of the Regional Trial Court, Branch 28, Lianga, Surigao del Sur **GUILTY** of Gross Neglect of Duty; and

2. Respondent Elgie G. Bongosia **GUILTY** of Grave Misconduct, Dishonesty, and Conduct Prejudicial to the Best Interest of Service.

Both respondents are **DISMISSED** from the service. Accordingly, their respective civil service eligibilities are **CANCELLED**, and their retirement and other benefits, except accrued leave credits, are **FORFEITED**. Likewise, they are **PERPETUALLY DISQUALIFIED** from reemployment in any government agency or instrumentality, including any government-owned and -controlled corporation or government financial institution.

SO ORDERED.

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

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[69] *Id.*

EN BANC

[G.R. No. 197422. November 03, 2020]

REP. EDCEL C. LAGMAN, *Petitioner, v.* **EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR. and DEPARTMENT OF BUDGET AND MANAGEMENT SECRETARY FLORENCIO B. ABAD,** *Respondents.*

[G.R. No. 197950. November 03, 2020]

PROSPERO A. PICHAY, JR., *Petitioner, vs.* **GOVERNANCE COMMISSION FOR GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., and DEPARTMENT OF BUDGET AND MANAGEMENT SECRETARY FLORENCIO B. ABAD,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; JURISDICTION; JUSTICIABILITY; ISSUES OF JURISDICTION ARE ENTIRELY DIFFERENT FROM ISSUES OF JUSTICIABILITY.— There is an apparent confusion between this Court's jurisdiction over the procedural vehicle employed by petitioners and the justiciability of their claims. As discussed in *GIOS-SAMAR, Inc. v. Department of Transportation and Communications*, issues of jurisdiction are entirely different from issues of justiciability:

> Related to *jurisdiction* is our application of the *doctrine of granting the primary administrative jurisdiction*, when statutorily warranted, to the executive department. *This is different from the rule on exhaustion of administrative remedies or the doctrine of respect for the hierarchy of courts, which are matters of justiciability*, not jurisdiction.

Jurisdiction is a court's competence "to hear, try and decide a case." It is granted by law and requires courts to examine the remedies sought and issues raised by the parties, the subject matter of the controversy, and the processes employed by the parties in relation to laws granting competence. Once this Court

determines that the procedural vehicle employed by the parties raises issues on matters within its legal competence, it may then decide whether to adjudicate the constitutional issues brought before it.

2. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; CONSTITUTIONALITY OF A STATUTE; THE COURT PASSES UPON THE CONSTITUTIONALITY OF A STATUTE ONLY IF IT IS DIRECTLY AND NECESSARILY INVOLVED IN A JUSTICIABLE CONTROVERSY AND IS ESSENTIAL TO THE PROTECTION OF THE RIGHTS OF THE PARTIES CONCERNED.— Jurisdiction alone will not require this Court to pass upon the constitutionality of a statute. As held in *Angara v. Electoral Commission*, the power of judicial review remains subject to this Court's discretion in resolving actual controversies:

. . .

Thus, as a rule, this Court only passes upon the constitutionality of a statute if it is "directly and necessarily involved in [a] justiciable controversy and is essential to the protection of the rights of the parties concerned."

3. ID.; ID.; ID.;ID.; ID.; JUSTICIABILITY; REQUISITES THEREOF.— Courts decide the constitutionality of a law or executive act only when the following essential requisites are present: first, there must be an actual case or controversy; second, petitioners must possess *locus standi*; third, the question of constitutionality must be raised at the earliest opportunity; and fourth, the resolution of the question is unavoidably necessary to the decision of the case itself. These requisites all relate to the justiciability of the issues raised by the parties. If no justiciable controversy is found, this Court may deny the petition as a matter of discretion.

This justiciability requirement is "intertwined with the principle of separation of powers." It cautions the judiciary against unnecessary intrusion on matters committed to the other branches of the government.

4. ID.; ID.; ID.; ID.; ID.; ID.; JURISDICTION OR INVOCATIONS OF TRANSCENDENTAL IMPORTANCE WILL NOT AUTOMATICALLY MERIT A REVIEW OF CONSTITUTIONAL ISSUES.— [T]he presumption that the legislature and the executive have passed laws and executive

acts within the bounds of the Constitution imposes a restraint on the judiciary in rashly resolving questions of constitutionality.
. . .

Again, jurisdiction in itself will not automatically merit a ruling on the constitutionality of the assailed provisions. Invocations of "transcendental importance" will not affect this Court's competence to decide the issues before it, and raising this Court's competence to decide issues of constitutionality will not necessarily require it to do so. Rather, this Court's exercise of its power of judicial review depend on whether the requirements for invoking such power have been adequately met.

5. ID.; ID.; ID.; ID.; ID.; ID.; ACTUAL CASE OR CONTROVERSY; TO UPHOLD A CONSTITUTIONAL CHALLENGE, THERE MUST BE REAL CONFLICT OF LEGAL RIGHTS AND DUTIES BASED ON ACTUAL FACTS, AND NOT MERELY HYPOTHETICAL OR ANTICIPATED THREATS.— The requirement of justiciability, or the existence of an actual case or controversy, for constitutional adjudication is explicit in the second paragraph of Article VIII, Section 1 of the Constitution:

. . .

An actual case or controversy exists when there is "a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution." It requires the existence of actual facts where there is real conflict of rights and duties.

Hypothetical or anticipated threats are insufficient to uphold a constitutional challenge. It is not this Court's function to render advisory opinions. Even its expanded jurisdiction in Article VIII, Section 1—to determine whether any government branch or instrumentality committed grave abuse of discretion — requires that an actual case exists. Otherwise, any resolution would merely constitute an "attempt at abstraction [that] could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities."

6. ID.; ID.; ID.; ID.; ID.; ID.; "RIPENESS" FOR ADJUDICATION; A CONSTITUTIONAL QUESTION IS RIPE FOR ADJUDICATION WHEN THE GOVERNMENTAL ACT BEING CHALLENGED HAS A DIRECT ADVERSE EFFECT ON THE PARTY

CHALLENGING IT.— Closely related to the "actual case or controversy" requirement is the requirement of "ripeness" for adjudication. A constitutional question is ripe for adjudication when the governmental act being challenged has had a direct adverse effect on the individual challenging it. . . .

. . .

"In cases where the constitutionality of a law is being questioned, it is not enough that the law has been passed or is in effect," the party challenging the law must assert a specific and concrete legal claim or show the law's direct adverse effect on them.

7. ID.; ID.; ID.; ID.; ID.; ID.; *LOCUS STANDI*; FOR PARTIES TO HAVE STANDING, THEY MUST HAVE A MATERIAL INTEREST AFFECTED BY THE CHALLENGED GOVERNMENTAL ACTION, AND NOT A MERE INCIDENTAL INTEREST OR GENERALIZED GRIEVANCE.— The requirement of *locus standi* then pertains to a party's personal and substantial interest in the case arising from the direct injury they sustained, or will sustain, as a result of the challenged governmental action. . . .

. . .

Generalized grievance is not enough. The party must have a "material interest" affected by the official action taken, as distinguished from mere incidental interest. Unless one's constitutional rights are affected by the operation of a statute or governmental act, they have no standing.

Here, petitioners claim that Republic Act No. 10149 limits the tenure of affected officials to June 30, 2011, notwithstanding their fixed terms in GOCC charters. However, this seeming conflict does not present any direct adverse effect to either petitioner.

8. ID.; ID.; ID.; ID.; ID.; ID.; ID.; A LEGISLATOR HAS NO STANDING TO QUESTION THE CONSTITUTIONALITY OF A LAW WHERE NO LEGISLATIVE RIGHTS, PRIVILEGES, OR PREROGATIVES ARE SHOWN TO HAVE BEEN INFRINGED UPON BY THE SAID LAW.— Petitioner Lagman anchored his Petition on the theory that Republic Act No. 10149 abdicates the legislative power of Congress, of which he is a member. Indeed, this Court has

taken cognizance of cases where governmental action is assailed for infringing on a legislator's prerogatives, powers, and privileges.

. . .

In all those cases, however, the legislators questioned executive acts that allegedly usurped congressional authority or legislative prerogatives. Here, petitioner Lagman did not specify which prerogatives, powers, or privileges were or would be infringed upon by the law.

. . .

Since petitioner Lagman failed to raise any clear right or legislative prerogative supposedly violated by Republic Act No. 10149, he has no standing to question the constitutionality of its provisions.

9. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THERE IS NO ENCROACHMENT OF LEGISLATIVE POWER WHEN WHAT IS ASSAILED IS ITSELF AN ENACTMENT OF CONGRESS.— Indeed, there is no encroachment of legislative power here because what is assailed is itself an enactment of Congress. This contradicts any *prima facie* notion of usurpation of legislative powers, since it was the legislature itself that made the questioned delegation of powers to the executive.

. . .

Therefore, a member of Congress who merely invokes his or her status as a legislator cannot be granted standing in a petition that does not involve any impairment of the powers or prerogatives of Congress.

10. ID.; ID.; ID.; ID.; ID.; ID.; ID.; ONE WHO HAS BEEN SEPARATED FROM THE ENTITY WITHIN THE SCOPE OF THE CHALLENGED LAW HAS NO STANDING TO QUESTION THE CONSTITUTIONALITY OF THE SAID LAW.— Neither does petitioner Pichay have standing to question Republic Act No. 10149's constitutionality.

Section 17, paragraph 3 of the law limits the tenure of affected officials to June 30, 2011, notwithstanding their fixed terms in their GOCC charters. This would have had a direct bearing on incumbent public officials, including petitioner Pichay, had he remained the chairperson of the Local Water Utilities Administration. Yet, as he has revealed in his Petition,

he was separated from the Local Water Utilities Administration during the pendency of this case. This renders his contentions moot.

11. ID.; ID.; ID.; ID.; ID.; DOCTRINE OF HIERARCHY OF COURTS; DIRECT RESORT TO THE SUPREME COURT WILL NOT BE ENTERTAINED IF THE RELIEF SOUGHT MAY BE OBTAINED FROM THE LOWER COURTS.— As regards the rule on hierarchy of courts, Article VIII, Section 5(1) of the Constitution provides for this Court's "original jurisdiction over . . . petitions for certiorari, prohibition, mandamus, *quo warranto*, and *habeas corpus*." This original jurisdiction is concurrent with the regional trial courts and the Court of Appeals in certain cases.

Under the rule on hierarchy of courts, this Court will not entertain a direct resort to it when relief may be obtained in the lower courts. . . .

. . .

The rule on hierarchy of courts "ensures that this Court remains *a court of last resort* so that it is able to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition."

12. ID.; ID.; ID.; ID.; ID.; ID.;THE RULE ON HIERARCHY OF COURTS RELATES TO QUESTIONS OF JUSTICIABILITY, WHICH IN TURN REQUIRES A NUANCED EXERCISE OF THE COURT'S DISCRETION.— While *GIOS-SAMAR* attempted to streamline this rule by discussing that all Rule 65 petitions raising questions of fact will automatically be dismissed, this Court's discretion in exercising judicial review requires a more deliberate approach. The rule on hierarchy of courts relates to questions of justiciability, which in turn requires a nuanced exercise of this Court's discretion. Even a claim of "transcendental importance," without due substantiation, will not immediately merit a decision on the constitutionality of an assailed law.

13. ID.; ID.; ID.; ID.; ID.; ID.; EXCEPTIONS TO THE RULE ON HIERARCHY OF COURTS.— [E]ven the rule on hierarchy of courts is not absolute. Direct recourse to this Court may be allowed when there are special and important reasons

clearly set forth in the petition. *The Diocese of Bacolod* enumerates the following exceptions:

> (1) "there are genuine issues of constitutionality that must be addressed at the most immediate time";
> . . .
>
> (8) when the petition includes questions that are"dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."

These cases fall under the first and eighth exceptions.

14. ID.; ID.; RIGHT TO SECURITY OF TENURE; ADMINISTRATIVE LAW; GOVERNMENT-OWNED OR –CONTROLLED CORPORATIONS (GOCCs); GOCC GOVERNANCE ACT OF 2011 (REPUBLIC ACT NO. 10149); EXCEPTIONS TO THE DOCTRINE OF MOOTNESS; THE COURT MAY RESOLVE THE CONSTITUTIONALITY OF R.A. NO. 10149 DUE TO ITS EFFECT ON THE RIGHT TO SECURITY OF TENURE OF THE PUBLIC OFFICERS WITHIN THE SCOPE OF THE PROVISION OF THE SAID LAW.— [The] recognized exceptions to the mootness doctrine include:

> (1)Grave constitutional violations;
>
> (2)Exceptional character of the case;
>
> (3)Paramount public interest;
>
> (4)The case presents an opportunity to guide the bench, the bar, and the public; or
>
> (5)The case is capable of repetition yet evading review.

While petitioner Pichay is not the proper party to bring these issues before this Court, Republic Act No. 10149's effects on the entities and public officers within the scope of its provisions remain a possible subject of subsequent suits. Likewise, whether the law would affect a public official's constitutionally guaranteed right to security of tenure is not a hypothetical question, but places the constitutionality of its provisions squarely in issue. Once implemented, its provisions

would affect the terms of office of the public officers despite them not being parties to these cases.

15. ID.; ID.; ID.; ID.; ID.; ID.; GOCC PERSONNEL CANNOT BE REMOVED FROM SERVICE WITHOUT LEGAL CAUSE AND DUE PROCESS.— Article IX-B, Section 2(3) of the Constitution provides the guarantee of security of tenure for all officers or employees in the civil service:

. . .

GOCCs with original charters are embraced under the civil service. Their officers and employees are covered by Article IX-B, Section 2(3) of the Constitution and Book V, Title I-A, Chapter 6, Section 46 of the Administrative Code on security of tenure. The Administrative Code further classifies the positions in the civil service into career service and non-career service, with corresponding aspects of security of tenure inherent in each classification[.]

. . .

Thus, while GOCC personnel are generally classified under the career service, provided that they do not fall under the non-career service, both classifications enjoy security of tenure in that they cannot be removed without legal cause and due process.

16. ID.; ID.; ID.;ID.; ID.; ID.; SHORTENING THE TERM OF OFFICE DISTINGUISHED FROM REMOVAL FROM SERVICE; BOARD MEMBERS OF GOCCs APPOINTED FOR A FIXED TERM MAY BE REMOVED FROM SERVICE BEFORE THEIR TERMS EXPIRE, BUT ONLY FOR CAUSES PROVIDED BY LAW.— Board members of GOCCs occupy non-career service positions and are appointed for a definite term fixed in the GOCC charter. They may be removed before their terms expire only for causes as may be provided in the GOCC's charter, the Administrative Code, and other relevant laws. It is in this sense that directors and trustees enjoy security of tenure.

Shortening the term of office is not the same as removing the officer from service, even though both result in the termination of official relations. When an officer's term is shortened, one is separated from service when the term expires. Unless an officer is authorized by law to hold over in their position, their rights, duties, and authority as a public officer

must *ipso facto* cease upon expiration of their term. Removal, on the other hand, entails the separation of the incumbent before their term expires. The Constitution allows this only for causes provided by law.

17. ID.; ID.; ID.; ID.; ID.; ID.; CONGRESS MAY, IN GOOD FAITH, CHANGE THE QUALIFICATIONS FOR, OR SHORTEN THE TERM OF, EXISTING STATUTORY OFFICES EVEN IF THESE CHANGES WOULD REMOVE, OR SHORTEN THE TERM OF, AN INCUMBENT.— The legislature may, in good faith, "change the qualifications for and shorten the term of existing statutory offices" even if these changes would remove, or shorten the term of, an incumbent.

. . .

Here, Section 17 of Republic Act No. 10149 provides two changes: (1) each appointive director's term of office shall be for one year, unless sooner removed for cause; and (2) all incumbent CEOs and appointive board members of GOCCs shall have a term of office until June 30, 2011, unless sooner replaced by the president.

These changes are constitutional.

Jurisprudence affirms Congress's power to create public offices, including the power to abolish them and to modify their nature, qualifications, and terms. As discussed in *Provincial Government of Camarines Norte*, these acts do not violate the security of tenure when done in good faith:

. . .

Since the creation of a chartered GOCC is purely legislative, Congress has the power to modify or abolish it, as well as to enact whatever restrictions it may deem fit for the public good[.]

18. ID.; ID.; ID.; ID.; ID.; ID.; SHORTENING THE TERMS OF OFFICE OF INCUMBENT GOCC OFFICERS DOES NOT ADVERSELY AFFECT THEIR TENURE.— "Good faith is presumed while bad faith must be proved." Here, petitioners failed to substantiate their allegations that the shortening of terms was done to circumvent the affected officials' security of tenure.

> On the contrary, Section 17 of Republic Act No. 10149 is consistent with the objective of the legislative and executive departments to "restructure the GOCCs to enable them to respond to the exigencies of the service through fiscal discipline[.]"
>
> . . .
>
> Republic Act No. 10149 was enacted to address . . . reported abuses in the remuneration scheme and inefficiencies in the operations of the GOCCs. . . .
>
> . . .
>
> Public interest warrants the term reduction. Shortening the term of directors to one year allows for a yearly evaluation of their performance and promotes accountability for public funds. . . .
>
> Enacting Republic Act No. 10149, including the shortening of terms of appointive directors to one year, fulfills what Congress had considered a great public need. It does not adversely affect the tenure of any particular board member or public officer.
>
> . . .
>
> The same reasoning applies to Section 17, paragraph 3 of Republic Act No. 10149, which limits the tenure of incumbent CEOs and appointive directors until June 30, 2011.

19. ID.; ID.; ID.; ID.; ID.; ID.; A PUBLIC OFFICER'S RIGHT TO SECURITY OF TENURE CANNOT BE INVOKED AGAINST A VALID LEGISLATIVE ACT RESULTING IN SEPARATION FROM OFFICE.— Public office is a public trust. The security of tenure guaranteed to public officers must be viewed against the need to assure efficiency and independence in the performance of their functions, "undeterred by any fear of reprisal or untoward consequence" or "free from the corrupting influence of base or unworthy motives." Strictly speaking, a public officer has no vested or absolute right to hold public office. A public officer's right to security of tenure cannot be invoked against a valid legislative act resulting in separation from office.

20. ID.; ID.; ID.; ID.; ID.; ID.; SHORTENING THE TERMS OF OFFICERS OF GOCCs WITH INDEPENDENT CHARTERS IS NOT REMOVAL FROM SERVICE AND IS, THUS, NOT VIOLATIVE OF THE PROHIBITION ON UNJUSTIFIED DECLARATIONS OF VACANCY OR TERMINATIONS OF PUBLIC SERVICE WITHOUT JUST

CAUSE.— Congress can, for legitimate purpose, reduce the terms of officers of GOCCs with independent charters. Even the vested right to security of tenure is qualified by the law that creates the office and provides for its appurtenances. While neither Congress nor the president may simply declare a position vacant, Congress acted well within its powers when it legislated a new term. Section 17 of Republic Act No. 10149 merely shortened the terms of incumbent GOCC officers and did not, as petitioners alleged, remove them from service without cause.

Thus, Section 17 does not violate the constitutional prohibition on unjustified declarations of vacancy or terminations of public service without just cause. Again, it merely modified the terms of incumbent GOCC officers and by providing for a new, albeit shortened, term for these existing offices moving forward. This is consistent with Congress's legislative prerogative to modify, through laws, the terms of public office.

21. ID.; ID.; LEGISLATIVE DEPARTMENT; LEGISLATIVE POWER; NON-DELEGATION OF LEGISLATIVE POWER; ANY UNDUE DELEGATION OF LEGISLATIVE POWER IS CONTRARY TO THE PRINCIPLE OF SEPARATION OF POWERS.— The rule on non-delegation of legislative power flows from the ethical principle that such power, which the sovereign people have delegated through the Constitution, "constitutes not only a right but a duty to be performed by [Congress] through the instrumentality of [its] own judgment and not through the intervening mind of another." Any undue delegation of legislative power is contrary to the principle of separation of powers.

22. ID.; ID.; ID.; ID.; PERMISSIBLE DELEGATION OF LEGISLATIVE POWER: CONTINGENT LEGISLATION AND SUBORDINATE LEGISLATION, DISTINGUISHED.— [T]his Court has recognized two types of permissible delegation of legislative power: contingent legislation and subordinate legislation.

Congress undertakes contingent legislation when it delegates to another body the power to ascertain facts necessary to bring the law into actual operation. . . .

Meanwhile, subordinate legislation entails delegating to administrative bodies the power to "fill in" the details of a statute. Enacting subordinate legislation has become necessary amid

the "proliferation of specialized activities and their attendant peculiar problems, which the legislature may not be able to competently address.

23.ID.;ID.;ID.;ID.;REQUISITES TO AVOID UNDUE DELEGATION OF LEGISLATIVE POWER.— To avoid the taint of unlawful delegation, the statute delegating legislative power must:

> (a) be complete in itself — it must set forth therein the policy to be executed, carried out or implemented by the delegate — and (b) fix a standard — the limits of which are sufficiently determinate or determinable — to which the delegate must conform in the performance of his functions. Indeed, which a statutory declaration of policy, the delegate would, in effect, make or formulate such policy, which is the essence of every law; and, without the aforementioned standard, there would be no means to determine, with reasonable certainty, whether the delegate has acted within or beyond the scope of his authority. Hence, he could thereby arrogate upon himself the power, not only to make the law, but, also — and this is worse — to unmake it, by adopting measures inconsistent with the end sought to be attained by the Act of Congress[.]

24. ID.; ID.; ID.; ID.; CREATION OF THE GOVERNANCE COMMISSION FOR GOCCs; DELEGATING TO THE GOVERNANCE COMMISSION THE POWER TO ASCERTAIN THE DETERMINANTS FOR ABOLISHING OR REORGANIZING GOCCs IS A VALID DELEGATION OF LEGISLATIVE POWER.— Section 5 of Republic Act No. 10149 creates the Governance Commission and grants it certain powers and functions. . . .

. . .

> Republic Act No. 10149 complied with the completeness and sufficient standard tests. The abolition or reorganization was already determined in the assailed law. The Governance Commission will only determine whether it will take effect in accordance with the policy and standards provided in the law. . . .

. . .

> Moreover, delegating the power to ascertain facts-in order to determine the propriety of the reorganization, abolition,

merger, streamlining or privatization of GOCCs - is not an undue delegation of legislative powers. The standards were set; the policy, fixed. The Governance Commission only needs to carry out the mandate. In ascertaining the determinants for abolishing or reorganizing GOCCs, the Governance Commission only acts as an investigative body on behalf of Congress.

25. ID.; ID.; ID.; ID.; AUTHORIZING THE GOVERNANCE COMMISSION TO ESTABLISH A COMPENSATION SYSTEM FOR GOCCs BASED ON THE STANDARDS PROVIDED IN R.A. NO. 10149 AND ON THE POLICY FRAMEWORK IN OTHER EXISTING COMPENSATION AND POSITION CLASSIFICATION LAWS, AND SUBJECT TO THE PRESIDENT'S APPROVAL, IS CONSTITUTIONAL.— [T]he delegation of the power to establish a Compensation and Position Classification System, subject to the president's approval, is constitutional. Republic Act No. 10149 amends the provisions in the GOCC charters empowering their board of directors or trustees to determine their own compensation system, in favor of the grant of authority to the president to perform this act.

. . .

Republic Act No. 10149 is but a clear expression of the legislative intent to regulate and rationalize the compensation frameworks of GOCCs by authorizing the president, upon the recommendation of the Governance Commission, to establish a unified Compensation and Position Classification System for GOCCs. The law is consistent with the compensation standardization clause in the Constitution and the intended salary standardization for GOCCs expressed in previous laws.

. . .

The standards provided in Republic Act No. 10149, and the policy framework embodied in other existing compensation and position classification laws, including Joint Resolution No. 4, series of 2009, are sufficient to map out the boundaries of the Governance Commission's authority in establishing the compensation system for GOCCs.

26. ID.; ID.; ID.; ID.; AUTHORIZING THE GOVERNANCE COMMISSION TO ESTABLISH A FIT AND PROPER RULE IN THE SELECTION AND NOMINATION OF

GOCC DIRECTORS OR TRUSTEES IS NOT A DUPLICATION OR A REMOVAL OF THE CIVIL SERVICE COMMISSION'S AUTHORITY TO ACT ON APPOINTMENTS.— Contrary to petitioner Lagman's claims, the powers and functions of the Governance Commission have neither duplicated nor supplanted the Civil Service Commission's mandate.

. . .

A closer look at the functions of the Governance Commission and the Civil Service Commission reveals significant differences[.]

. . .

Apart from these differences, the Civil Service Commission remains empowered to take appropriate action on all appointments and other personnel actions, regardless of Republic Act No. 10149's enactment. While appointments to the civil service must generally be approved by the Civil Service Commission, directors or trustees of GOCCs are not subject to this requirement. Rather, their appointments are generally governed by the GOCC charters or by-laws, as the case may be. Sections 15, 16, 17, and 18 merely authorize the Governance Commission to establish a fit and proper rule and screen candidates for directors or trustees to ensure that those appointed by the President are competent to take on the position.

. . .

Nothing in Republic Act No. 10149 would indicate the removal of the Civil Service Commission's authority to act on appointments. Rather, it would be consistent with the State policy of ensuring that "[t]he governing boards of every GOCC and its subsidiaries are competent to carry out its functions, fully accountable to the State as its fiduciary, and acts in the best interest of the State[.]" Republic Act No. 10149 merely added an initial screening and selection process for GOCCs' directors and trustees. The Governance Commission is tasked to "oversee the selection and nomination of *directors or trustees* and maintain the quality of Board Governance."

27. ID.; ID.; ID.; ID.; THE CIVIL SERVICE COMMISSION'S AUTHORITY OVER THE CIVIL SERVICE DOES NOT DIVEST THE LEGISLATURE OF THE POWER TO ENACT LAWS PROVIDING FOR EXEMPTIONS FROM THE CIVIL SERVICE RULES.— "[T]he [Civil Service

Commission's] constitutional authority over the civil service [did not] divest the Legislature of the power to enact laws providing exemptions to civil service rules." In*Trade and Investment Development Corporation v. Civil Service Commission*:

> *The CSC's rule-making power, albeit constitutionally granted, is still limited to the implementation and interpretation of the laws it is tasked to enforce.*
>
> . . .
>
> *But while the grant of the CSC's rule-making power is untouchable by Congress, the laws that the CSC interprets and enforces fall within the prerogative of Congress.*

28. ID.; ID.; ID.; ID.; DOCTRINE OF SEPARATION OF POWERS; A LEGISLATIVE ACT, APPROVED BY THE EXECUTIVE, IS PRESUMED TO BE WITHIN CONSTITUTIONAL LIMITATIONS. —All reasonable doubts should be resolved in favour of the constitutionality of a statute. A legislative act, approved by the executive, is presumed to be within constitutional limitations. To justify the nullification of a law, there must be a clear breach of the Constitution:

> A law that advances a legitimate governmental interest will be sustained, even if it "*works to the disadvantage of a particular group, or . . . the rationale for it seems tenuous.*" . . .
>
> . . .
>
> Under the doctrine of separation of powers and the concomitant respect for coequal and coordinate branches of government, the exercise of prudent restraint by this Court would still be best *under the present circumstances.*

29. ID.; ID.; ID.; ID.; LEGISLATIVE CLASSIFICATION; BILL OF RIGHTS; EQUAL PROTECTION CLAUSE; THE EQUAL PROTECTION CLAUSE DOES NOT BAR A REASONABLE CLASSIFICATION OF THE SUBJECT OF LEGISLATION.— The equal protection clause in the Constitution is not a guarantee of absolute equality in the operation of laws. It applies only to persons or things that are identically situated. It does not bar a reasonable classification of the subject of legislation:

. . .

The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, *under like circumstances and conditions* both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.

30. ID.; ID.; ID.; ID.; ID.; ID.; ID.; REASONABLENESS OF LEGISLATIVE CLASSIFICATION; REQUIREMENTS THEREOF.— A classification is reasonable where: (1) it is based on substantial distinctions which make for real differences; (2) it is germane to the purpose of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to each member of the same class. This Court has held:

. . . This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.

In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. *Neither is it necessary that the classification be made with mathematical nicety. Hence legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear.*

31. ID.; ID.; ID.; ID.; ID.; ID.; ID.; STANDARDS TO DETERMINE THE REASONABLENESS OF LEGISLATIVE CLASSIFICATION. — There are three types of standards to determine the reasonableness of legislative classification:

The *strict scrutiny test* applies when a classification either (i) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (ii) burdens suspect classes. The *intermediate scrutiny test* applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. Lastly, the *rational basis test* applies to all other subjects not covered by the first two tests.

32. ID.; ID.; ID.; ID.; ID.; ID.; ID.; RATIONAL BASIS TEST; EXCLUDING CERTAIN ENTITIES FROM THE COVERAGE OF R.A. NO. 10149 DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE WHEN THERE IS REASONABLE BASIS TO DO SO. — Employing the rational basis test, this Court finds that Republic Act No. 10149 made reasonable exclusions of certain entities from its coverage.

. . .

Republic Act No. 10149 aims to make GOCCs more accountable for their operations and to enhance the State's objectives of public service. However, these objectives must be harmonized with the independence required by certain entities to efficiently and adequately perform their mandated functions, and should be read together with the inherent functions of the other excluded entities. The enabling statutes of the excluded entities, together with the State policy in the Constitution, make it clear that there is reasonable basis for their exclusion.

Since Republic Act No. 10149's distinctions are based on good law, and cover "all GOCCs, GICPs/GCEs, and government financial institutions, including their subsidiaries," except those subject to reasonable distinctions, the exclusions are not limited to existing conditions and may be deemed to apply equally to all members of the same class.

. . .

. . . [E]xcluding certain entities—the Bangko Sentral ng Pilipinas, state universities and colleges, local water utility districts, cooperatives, economic zone authorities, and research institutions—from the law's coverage does not violate the equal protection clause, because there is reasonable basis to do so.

Without a showing that the exclusions under Section 4 of Republic Act No. 10149 created unreasonable distinctions between classes of entities, this Court finds that the exclusions were valid.

33. ID.; ADMINISTRATIVE LAW; GOCCs; GOCC GOVERNANCE ACT OF 2011 (R.A. NO. 10149); STATUTORY CONSTRUCTION; STATUTES; R.A. NO. 10149 IS NOT A GENERAL LAW, AND IS EXPRESSLY INTENDED TO SUPERSEDE ALL CORRESPONDING CHARTERS OF AFFECTED GOCCs.— As a rule, a general law does not repeal a prior special law on the same subject, *unless the legislative intent to modify or repeal the earlier special law through the general law is manifest.*

. . .

In Republic Act No. 10149, Congress's intent to modify relevant portions of the GOCC charters is clear. Section 32 expresses the law's intent to supersede all corresponding charters of affected GOCCs: . . .

Furthermore, specific provisions in Republic Act No. 10149 are explicitly mandated to govern despite the GOCC charters. These are: (a) qualifications required for appointive directors; (b) duties, obligations, responsibilities and standards of care required of the members of the Board of Directors/ Trustees and Officers of GOCCs; (c) term of office; and (d) limits to compensation, per diems, allowances, and incentives.

Section 30 also states that GOCC charters shall suppletorily apply insofar as they are not inconsistent with Republic Act No. 10149: . . .

Thus, there is no merit to petitioners' contentions regarding Republic Act No. 10149's status as a general law.

APPEARANCES OF COUNSEL

Lagman Lagman and *Mones Law Firm* for petitioner in G.R. No. 197422.

Miranda Anastacio & Loterte Law Offices for petitioner in G.R. No. 197950.

The Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

Congress may legislate changes to aspects of public offices which exist by virtue of the same exercise of legislative power. These changes are valid when done in good faith and pursuant to clear policy objectives.

This Court resolves the consolidated Petitions in G.R. No. 197422[1] and G.R. No. 197950,[2] which both assail Republic Act No. 10149 as unconstitutional. G.R. No. 197422 is a Petition for Certiorari and Prohibition under Rule 65 filed by Representative Edcel C. Lagman on July 15, 2011. G.R. No. 197950 is a Petition for Certiorari and Prohibition with prayer for temporary restraining order and preliminary injunction, filed by Prospero A. Pichay, Jr. on August 22, 2011.

Petitioners allege, among others, that the statute violates the affected officials' right to security of tenure, unduly delegates legislative powers, arrogates a constitutional commission's jurisdiction, and breaches the equal protection clause.

Congressional inquiries into the activities of some government-owned or controlled corporations (GOCCs) revealed several excesses and inefficiencies that drained government finances. Some of the uncovered excesses and inefficiencies involved the "obscene bonuses" received by the board of directors of some GOCCs, despite the GOCCs poor financial condition.[3] Certain GOCCs were also found to be implementing "excessively generous retirement schemes,"[4] most notably in the Manila Economic and Cultural Office, where directors could retire after only two years of service, at the rate ₱600,000.00 per year of service.[5]

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[1] *Rollo* (G.R. No. 197422), pp. 3-58.

[2] *Rollo* (G.R. No. 197950), pp. 3-29.

[3] Id. at 162, OSG Consolidated Memorandum.

[4] Id.

[5] Id.

Inquiries in 2009 alone highlighted the GOCCs' mounting debt despite accounting for 28% of national expenditures. Moreover, GOCCs' assets were valued at ₱5.557 trillion, exceeding the national government's assets of ₱2.879 trillion.[6] Of the ₱475.296-billion inter-agency receivables, 91% or ₱433.383 billion were due from GOCCs.[7] Despite these inefficiencies, GOCCs still declared approximately ₱14.6 billion in dividends, and received subsidies worth around ₱7.6 billion, or greater than their tax liability of around ₱6.7 billion.[8]

To address these abuses, Republic Act No. 10149,[9] or the GOCC Governance Act, was signed into law on June 6, 2011.[10]

The law is primarily geared towards optimizing the State's "ownership rights in GOCCs and to promote growth by ensuring that operations are consistent with national development policies and programs."[11]

As such, the law created the Governance Commission for GOCCs (Governance Commission), an agency attached to the Office of the President. It is empowered, among others, to evaluate the performance and determine the relevance of GOCCs, and to ascertain whether these GOCCs should be reorganized, merged, streamlined, abolished, or privatized, in consultation with the department or agency to which they are attached.[12]

On July 15 and August 22, 2011, Representative Edcel C. Lagman (Lagman) and Prospero A. Pichay, Jr. (Pichay) filed

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[6] Id. at 162.

[7] Id. at 163.

[8] Id. at 163.

[9] An Act to Promote Financial Viability and Fiscal Discipline in Government-Owned or Controlled Corporations and to Strengthen the Role of the State in its Governance and Management to Make Them More Responsive to the Needs of Public Interest and for Other Purposes

[10] *Rollo* (G.R. No. 197950), p. 260, Pichay Memorandum.

[11] Republic Act No. 10149 (2011), sec. 2.

[12] Republic Act No. 10149 (2011), sec. 5.

their respective Petitions for Certiorari and Prohibition assailing the constitutionality of Republic Act No. 10149. The Lagman Petition[13] was docketed as G.R. No. 197422, while the Pichay Petition[14] was docketed as G.R. No. 197950.

Impleaded as respondents for both petitions were the following: the Governance Commission; former Executive Secretary Paquito N. Ochoa, Jr., who was directed to execute Republic Act No. 10149; and former Finance Secretary Cesar V. Purisima and former Budget and Management Secretary Florencio B. Abad, as *ex-officio* members tasked with the release of funding and support for the initial operations of the Governance Commission.

Respondents filed their separate Comments.[15] Petitioner Lagman filed his Reply.[16]

On February 7, 2012, the cases were consolidated. Each petitioner filed his Memorandum;[17] and respondents, in turn, filed their Consolidated Memorandum.[18]

In G.R. No. 197422, petitioner Lagman submits that he has presented an actual case and has legal standing to invoke judicial review.[19]

As to an actual case, he notes that the patent violations of the Constitution—violation of the security of tenure of public officials, undue delegation of legislative powers, and derogation

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[13] *Rollo* (G.R. No. 197422), pp. 3-58.

[14] *Rollo* (G.R. No. 197950), pp. 3-29.

[15] *Rollo* (G.R. No. 197422), pp. 79-130; and *rollo* (G.R. No. 197950), pp. 75-127.

[16] *Rollo* (G.R. No. 197422), p. 131.

[17] *Rollo* (G.R. No. 197422), pp. 482-534, Lagman's Memorandum; and *rollo* (G.R. No. 197950), pp. 259-284, Pichay's Memorandum.

[18] *Rollo* (G.R. No. 197422), pp. 178-266; and *rollo* (G.R. No. 197950), pp. 161-248.

[19] *Rollo* (G.R. No. 197422), p. 490.

of the Civil Service Commission's powers[20] are actual controversies,[21] and not anticipatory, since the assailed law is already being implemented.[22]

As for legal standing, petitioner Lagman submits that he has substantial interest as a legislator.[23] Just the same, he contends that the Petition should be exempt from the rule on hierarchy of courts, "in the interest of justice" and the case raising issues of paramount public interest and transcendental importance.[24]

He adds that there is "no plain, speedy and adequate remedy available" to assail Republic Act No. 10149.[25] He claims that he filed the Petition out of urgency, due to the impending removal of the GOCC officers.[26]

On substantive matters, petitioner Lagman assails Republic Act No. 10149 as unconstitutional for violating the security of tenure[27] of officials, trustees, and directors of GOCCs with original charters. The law shortens the directors' terms to one year, and provides in Section 17,[28] paragraph 3 that the terms

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[20] Id. at 492-493.

[21] Id. at 491.

[22] Id. at 493.

[23] Id.

[24] Id. at 487.

[25] Id. at 490-491.

[26] Id. at 494.

[27] CONST., art. IX-B, sec. 2(1) and (3) provides:

SECTION 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, *including government-owned or controlled corporations with original charters*.

. . .

(3) No officer or employee of the civil service shall be removed or suspended except for cause provided by law. (Emphasis supplied)

[28] SECTION 17. *Term of Office. — Any provision in the charters of each GOCC to the contrary notwithstanding, the term of office of each Appointive Director shall be for one (1) year*, unless sooner removed for cause: *Provided, however*, That the Appointive Director shall continue to

of incumbent chief executive officers (CEOs) and appointive board members shall only be up to June 30, 2011.[29] This pre-termination or shortening of term allegedly infringes on the security of tenure of those with fixed terms under the GOCCs' special charters,[30] and is "an outright removal" of the affected incumbents "without cause and without due process."[31]

Petitioner Lagman also assails Section 5[32] of Republic Act No. 10149[33] as an undue delegation of legislative powers.[34] The

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hold office until the successor is appointed. An Appointive Director may be nominated by the GCG for reappointment by the President only if one obtains a performance score of above average or its equivalent or higher in the immediately preceding year of tenure as Appointive Director based on the performance criteria for Appointive Directors for the GOCC. Appointment to any vacancy shall be only for the unexpired term of the predecessor. The appointment of a director to fill such vacancy shall be in accordance with the manner provided in Section 15 of this Act. *Any provision of law to the contrary notwithstanding, all incumbent CEOs and appointive members of the Board of GOCCs shall, upon approval of this Act, have a term of office until June 30, 2011, unless sooner replaced by the President: Provided, however, That the incumbent CEOs and appointive members of the Board shall continue in office until the successors have been appointed by the President*. (Emphasis supplied)

[29] *Rollo* (G.R. No. 197422), pp. 497-498.

[30] Id. at 496.

[31] Id. at 498-500.

[32] SECTION 5. *Creation of the Governance Commission for Government-Owned or -Controlled Corporations*. — There is hereby created a central advisory, monitoring, and oversight body with authority to formulate, implement and coordinate policies to be known as the ***Governance*** *Commission for Government-Owned or -Controlled Corporations, hereinafter referred to as the GCG, which shall be attached to the Office of the President*. The GCG shall have the following powers and functions:

(a) *Evaluate the performance and determine the relevance of the GOCC, to ascertain whether such GOCC should be reorganized, merged, streamlined, abolished or privatized*, in consultation with the department or agency to which a GOCC is attached. For this purpose, the GCG shall be guided by any of the following standards:

(1) The functions or purposes for which the GOCC was created are no longer relevant to the State or no longer consistent with the national development policy of the State;

law delegates to the Governance Commission the power to "create, reorganize, streamline, merge, abolish and privatize"[35] GOCCs with original charters,[36] and allows it "to recommend, for the President's sole approval, the abolition and privatization

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(2) The GOCC's functions or purposes duplicate or unnecessarily overlap with functions, programs, activities or projects already provided by a Government Agency;

(3) The GOCC is not producing the desired outcomes, or no longer achieving the objectives and purposes for which it was originally designed and implemented, and/or not cost efficient and does not generate the level of social, physical and economic returns *vis-à-vis* the resource inputs;

(4) The GOCC is in fact dormant or nonoperational;

(5) The GOCC is involved in an activity best carried out by the private sector; and

(6) The functions, purpose or nature of operations of any group of GOCCs require consolidation under a holding company.

Upon determination by the GCG that it is to the best interest of the Slate that a GOCC should be reorganized, merged, streamlined, abolished or privatized, it shall:

(i) Implement the reorganization, merger or streamlining of the GOCC, unless otherwise directed by the President; or

(ii) *Recommend to the President the abolition or privatization of the GOCC, ancl upon the approval of the President, implement such abolition or privatization*, unless the President designates another agency to implement such abolition or privatization.

. . . .

(1) Review the functions of each of the GOCC and, upon determination that there is a conflict between the regulatory and commercial functions of a GOCC, *recommend to the President in consultation with the Government Agency to which such GOCC is attached, the privatization of the GOCCs commercial operations, or the transfer of the regulatory functions to the appropriate government agency, or such other plan of action to ensure that the commercial functions of the GOCC do not conflict with such regulatory functions*. (Emphasis supplied)

[33] *Rollo* (G.R. No. 197422), p. 509.

[34] Id. at 505-506.

[35] Id. at 506.

[36] Id. at 507 and 513.

of GOCCs chartered under special law."[37] These powers, he argues, transgress on exclusively legislative powers.[38]

Even if such power could be validly delegated, petitioner Lagman argues that Section 5 fails to provide sufficient guidelines or definitive standards. Thus, it is still an undue delegation of legislative power.[39]

Petitioner Lagman further argues that other provisions of the law also form undue delegation of legislative powers. Sections 5(h),[40] 8,[41] 9,[42] and 23[43] of Republic Act No. 10149

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[37] Id. at 508-509.

[38] Id. at 509 and 513.

[39] Id. at 519 and 521.

[40] SECTION 5. *Creation of the Governance Commission for Government-Owned or -Controlled Corporations*.

. . . .

(h) *Conduct compensation studies, develop and recommend to the President a competitive compensation and remuneration system* which shall attract and retain talent, at the same time allowing the GOCC to be financially sound and sustainable[.] (Emphasis supplied)

[41] SECTION 8. *Coverage of the Compensation and Position Classification System*. — The GCG, after conducting a compensation study, shall develop a *Compensation and Position Classification System which shall apply to all officers and employees of the GOCCs whether under the Salary Standardization Law or exempt therefrom* and shall consist of classes of positions grouped into such categories as the GCG may determine, subject to the approval of the President. (Emphasis supplied)

[42] SECTION 9. *Position Titles and Salary Grades*. — All positions in the Position Classification System, as determined by the GCG and as approved by the President, shall be allocated to their proper position titles and salary grades in accordance with an Index of Occupational Services, Position Titles and Salary Grades of the Compensation and Position Classification System, which shall be prepared by the GCG and approved by the President.... Any law to the contrary notwithstanding, no GOCC shall be exempt from the coverage of the Compensation and Position Classification System developed by the GCG under this Act.

[43] SECTION 23. *Limits to Compensation, Per Diems, Allowances and Incentives*. — The charters of each of the GOCCs to the contrary

give to the Governance Commission and the President Congress's power[44] to fix the salaries, emoluments, and allowances of officials of the GOCCs with original charters,[45] through the Compensation and Position Classification System that the Governance Commission is authorized to develop.[46]

Petitioner Lagman insists that the Governance Commission diminishes,[47] if not supplants, the constitutional[48] jurisdiction of the Civil Service Commission[49] over GOCCs with original charters.[50] He points out that the law makes final the qualifications

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notwithstanding, the compensation, *per diems*, allowances and incentives of the members of the Board of Directors/Trustees of the GOCCs shall be determined by the GCG using as a reference, among others, Executive Order No. 24 dated February 10, 2011: *Provided, however,* That Directors/Trustees shall not be entitled to retirement benefits as such directors/trustees.

In case of GOCCs organized solely for the promotion of social welfare and the common good without regard to profit, the total yearly *per diems* and incentives in the aggregate which the members of the Board of such GOCCs may receive shall be determined by the President upon the recommendation of the GCG based on the achievement by such GOCC of its performance targets.

[44] CONST., art. IX-B, sec. 5.

[45] Id. at 523.

[46] Id. at 524.

[47] Id. at 531.

[48] CONST., Art. IX-B, Secs. 2 and 3 provide:

SECTION 2. (1) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

. . . .

SECTION 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.

[49] *Rollo* (G.R. No. 197422), p. 528.

[50] Id. at 531.

and appointments in GOCCs, set by the Governance Commission, without the approval of the Civil Service Commission.[51]

In G.R. No. 197950, petitioner Pichay seeks to declare Republic Act No. 10149 unconstitutional for being an undue delegation of legislative power, violating the separation of powers, and going against the equal protection clause.[52] Pichay is the former chairperson of the Local Water Utilities Administration, a GOCC created under Presidential Decree No. 198, as amended.[53]

Petitioner Pichay contends that Section 5 of Republic Act No. 10149 in validly delegates legislative power by empowering the Governance Commission to abolish GOCCs.[54] He contends that the phrase "the best interest of the State" is not a *sufficient* standard for the Governance Commission to abolish, reorganize, merge, streamline or privatize GOCCs.[55] This delegation, moreover, allegedly violates the principle of separation of powers.[56]

Petitioner Pichay further alleges that there is no reasonable basis for excluding some GOCCs from Republic Act No. 10149.[57]

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[51] Id. at 532.

[52] *Rollo* (G.R. No. 197950), p. 260.

[53] Id. at 7-8. Petitioner Pichay was dismissed on July 4, 2011 pursuant to *Rustico Tutol v. Prospero A. Pichay, Jr.*, docketed as OMB-C-A-10-0426-I with the Office of the Ombudsman. This has not yet attained finality allegedly due to a motion for reconsideration.

[54] Id. at 261-265.

[55] Id. at 267-268.

[56] Id. at 270, Pichay Memorandum.

[57] Id. at 272.

Republic Act No. 10149 (2010), Sec. 4 provides:

SECTION 4. *Coverage*. — This Act shall be applicable to all GOCCs, GICPs/GCEs, and government financial institutions, including their subsidiaries, but ***excluding*** the Bangko Sentral ng Pilipinas, state universities and colleges, cooperatives, local water districts, economic zone authorities and research institutions: *Provided*, That in economic zone authorities and research institutions, the President shall appoint one-third (1/3) of the board members from the list submitted by the GCG. (Emphasis supplied)

He states that the law exempted a total of 13,968 GOCCs from its coverage.[58] Among these, he notes the arbitrary exclusion of local water districts and economic zones, saying that[59] this does not rest on substantial distinctions[60] and is not germane to the purpose of the law.[61] Hence, he claims that the law violates the equal protection clause.[62]

Petitioner Pichay further contends that Republic Act No. 10149, as a general law, cannot amend GOCC charters, which are special laws.[63]

Finally, petitioner Pichay submits that the issue is of transcendental importance, meriting the *locus standi* requirement to be relaxed.[64] Moreover, he claims that he may sue as taxpayer, as the assailed law provides for appropriation of public funds, found in Section 29.[65]

Respondents, through the Office of the Solicitor General, claim that the Petitions do not show any actual case that calls for judicial review. They point out that the Petitions were brought after Republic Act No. 10149's enactment and before any governmental action prejudicial to the affected parties. They submit that this Court should refrain from passing upon the constitutionality of Republic Act No. 10149 until an actual case arises.[66]

Respondents further contend that the requisite of legal standing is lacking, as petitioners were neither CEOs nor members of

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[58] *Rollo* (G.R. No. 197950), p. 272.

[59] Id. at 277.

[60] Id. at 276.

[61] Id. at 277.

[62] Id. at 279.

[63] Id.

[64] Id. at 282-283.

[65] Id. at 283.

[66] Id. at 185, Consolidated Memorandum.

any GOCC board who have the legal standing of an aggrieved party.[67]

They note that petitioner Lagman did not specify which powers of Congress were or would be infringed upon;[68] and contend that it is Lagman, rather, who undermines the collective will and wisdom of Congress in enacting Republic Act No. 10149.[69] Likewise, petitioner Pichay supposedly failed to show direct injury, as he was no longer holding any position in the Local Water Utilities Administration when he filed his Petition. In any case, even without Republic Act No. 10149, the Local Water Utilities Administration is an attached agency of the Office of the President, always subject to the President's power to reorganize under the Administrative Code.[70]

Respondents also fault petitioners for failing to show that the cases raise issues of transcendental importance.[71] At any rate, they maintain that the assailed law is presumed constitutional until a clear breach of the Constitution is shown.[72]

Respondents further argue that petitioners failed to show that there was no appeal or any "plain, speedy, and adequate remedy" if Republic Act No. 10149 were to be implemented.[73] They also assert that the Petitions do not impute grave abuse of discretion, even while seeking to declare the law unconstitutional, thus, making them actions for declaratory relief, over which this Court has no original jurisdiction.[74] Further, the petitions filed directly before the Court violate the rule on judicial hierarchy.[75]

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[67] Id. at 189.

[68] Id. at 176.

[69] Id. at 179.

[70] Id. at 180.

[71] Id. at 182.

[72] Id. at 185.

[73] Id. at 186.

[74] Id. at 193.

[75] Id. at 189.

Respondents submit that considering the "laudable purpose"[76] of the law and the government's good faith to restructure the GOCCs, Republic Act No. 10149 must prevail over the unwarranted fear that the affected officials' security of tenure were violated.[77]

Respondents aver that Article IX-B, Section 2(3) of the Constitution and Book V, Title I-A, Chapter 6, Section 46 of the Administrative Code give protection from removal, dismissal, or suspension without lawful cause only to an "employee" or "officer"[78] — which appointive members of the Board of GOCCs are not.[79] Hence, they are not covered by the law.[80]

Furthermore, respondents contend that the right to security of tenure is unavailing for incumbent CEOs and appointive members of the Board of GOCCs whose terms of office are fixed by law.[81] They contend that Congress's power to create a public office includes the power to abolish it and limit the terms of its officials.[82] According to respondents, by reducing the terms of office of all incumbent CEOs and appointive members of the Board of GOCCs to June 30, 2011,[83] Congress merely expressed its will to supersede the GOCC charters which provide different terms.[84] Incidentally, respondents argue that "term" is different from "tenure," and the affected officials would not be "removed" as they would hold their office until their new terms expire on June 30, 2011.[85]

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[76] Id. at 204.

[77] Id. at 195-196.

[78] Id. at 197-198.

[79] Id. at 198.

[80] Id. at 197.

[81] Id. at 199.

[82] Id. at 199-200.

[83] Id. at 201-202.

[84] Id. at 202.

[85] *Id.* at 202.

Even assuming that they were "removed," as argued by petitioner Lagman,[86] respondents submit that Republic Act No. 10149 constitutes "good cause," which justifies the alleged removal of affected GOCC officers.[87] Respondents dismiss as unfounded[88] the concern that the law "lumped together both the errant and blameless officials[.]"[89] They point out that under the law, incumbent officials who have satisfactory performance may be reappointed, or allowed to hold over until their successors have been appointed.[90] At any rate, respondents argue that the affected officials have no vested right to their offices.[91]

Respondents contend that Section 5 of Republic Act No. 10149 merely delegated to the Governance Commission the power to ascertain facts to determine if the reorganization, abolition, merger, streamlining, or privatization of GOCCs would be proper. In other words, they explain, the abolition or reorganization was already determined by Congress, and the Governance Commission merely implements this decision based on certain standards set in Section 5 and the legislative policy in Section 2.[92]

Similarly, respondents submit that the delegation to the Governance Commission of the establishment of a Compensation and Position Classification System is valid. They argue that sufficient guidelines and standards are provided in Section 9, and in other existing compensation and position classification laws including Joint Resolution No. 4,[93] series of 2009.

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[86] Id. at 203.

[87] Id. at 206.

[88] Id. at 204.

[89] Id. at 202.

[90] Id. at 204.

[91] Id. at 205.

[92] Id. at 219-220 citing *Abakada Guro Party-List v. Ermita*, 506 Phil. 1 (2005) [Per J. Austria-Martinez, En Banc].

[93] Joint Resolution Authorizing the President of the Philippines to Modify the Compensation and Position Classification System of Civilian Personnel

Furthermore, the Governance Commission is not tasked to classify GOCC personnel as regards their ranks and privileges, but merely to determine the positions or emoluments to which they are entitled considering the nature of their work vis-à-vis that of the employees in the private sector and other government personnel covered by the Salary Standardization Law.[94]

As such, respondents submit that any act of the Governance Commission or the president under Republic Act No. 10149 that leads to the reorganization or abolition of GOCCs would not violate the separation of powers between the executive and legislative branches.[95]

At any rate, respondents submit that the delegation to the president of the power to reorganize GOCCs is consistent with the president's continuing authority to reorganize or abolish all units of the national government, including all GOCCs, pursuant to Presidential Decree No. 1416, as amended by Presidential Decree No. 1772.[96]

Respondents argue that the Governance Commission has a separate mandate and authority from the Civil Service Commission.[97] For one, it was primarily tasked to evaluate the performance and relevance of the GOCC as an institution, while the Civil Service Commission, as the government's central personnel agency, determines questions of qualifications of merit and fitness of those appointed to the civil service.[98] The Governance Commission's policy is to rationalize GOCCs' operations and monitor them to ensure the efficient use of government assets and resources.[99] On the other hand, the Civil

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and the Base Pay Schedule of Military and Uniformed Personnel in the Government, and for Other Purposes.

[94] *Rollo*, p. 224.

[95] Id.

[96] Id. at 227-228.

[97] Rollo (G.R. No. 197950), p. 228.

[98] Id. at 237-238.

[99] Id. at 238.

Service Commission establishes rules and regulations to promote efficiency and professionalism in the civil service. Hence, the Governance Commission neither duplicates nor supplants the Civil Service Commission.[100]

Disputing petitioner Pichay's argument, respondents aver that "equal protection is not dictated by the number of subjects that would be governed by the law but by the existence of a substantial distinction" between the covered subjects and those not covered.[101] Respondents then discuss the special circumstances of the exempted GOCCs, which differentiate them from those covered by Republic Act No. 10149:

1. The Bangko Sentral ng Pilipinas was excluded to ensure its independence as required by the 1987 Constitution. Its functions cover national economic priorities such as money, banking, credit, and supervision over operations of banks, which should not be hampered by the operation of Republic Act No. 10149;[102]
2. State universities and colleges are best regulated by the Commission on Higher Education, given the constitutional right of all citizens to quality education, and the sheer number of schools to be regulated;[103]
3. Cooperatives are meant to be "autonomous, self-help organizations controlled by their members,"[104] and were excluded in light of Republic Act No. 6938, which specifically governs their registration and organization. Likewise, these institutions are already regulated by the Cooperative Development Authority under Republic Act No. 6939;[105]

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[100] Id.

[101] Id. at 239.

[102] Id. at 240.

[103] Id. at 240-241.

[104] Id. at 241.

[105] Id.

4. Presidential Decree No. 198 lays down the administrative and organizational requirements of local water districts, which are regulated by the Local Water Utilities Administration, an agency attached to the Office of the President, pursuant to the State policy that "local water utilities be locally-controlled and managed";[106]

5. Special economic zones are administered and developed by the Philippine Economic Zone Authority to create "decentralized, self-reliant and self-sustaining industrial, commercial/trading, agro-industrial, tourist, banking, financial and investment centers with minimum government intervention."[107] The technical aspects of their regulation, as well as the social and economic impact of their creation, are governed by Republic Act No. 7916;[108] and

6. Finally, research institutions were created to assist the government in the pursuit of national and economic development. These goals are of paramount importance, and cannot be subjected to the "central monitoring and oversight" of the Governance Commission.[109]

Respondents also fault petitioner Pichay's argument that Republic Act No. 10149, being a general law, cannot supplant the special purposes in GOCC charters. They invoke a settled rule in statutory construction that a subsequent general law does not repeal a prior special law on the same subject matter unless there is a clear legislative intent to do so. In this regard, they point out that Section 32 of Republic Act No. 10149 categorically declares GOCC charters inconsistent with the law shall be revoked, repealed, or modified;[110] Section 30 expressly provides

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[106] Id.

[107] Id. at 241-242.

[108] Id. at 242.

[109] Id.

[110] Id. at 245 citing Republic Act No. 10149 (2010), sec. 32.

for suppletory application only of the GOCCs charters; and Sections 5(e), 12, 17 and 23 are explicitly made to govern GOCCs notwithstanding the provisions in their charters.[111]

Finally, respondents contend that Republic Act No. 10149 can be considered more specific inasmuch as it directly relates to the organizational aspect of the GOCCs.[112]

The issues for this Court's resolution are:

First, whether or not the Petitions raise justiciable issues that call for the Court's power of judicial review;

Second, whether or not the filing of the Petitions directly with the Court violates the rule on hierarchy of courts;

Third, whether or not Republic Act No. 10149 amounts to an undue delegation of legislative power in view of the principal functions vested in the Governance Commission;

Fourth, whether or not Republic Act No. 10149 violates the security of tenure of officials, trustees, and directors of GOCCs;

Fifth, whether or not the Governance Commission duplicates and supplants the constitutional authority and jurisdiction of the Civil Service Commission;

Sixth, whether or not the Republic Act No. 10149 violates the equal protection clause; and

Finally, whether or not the repeal by Republic Act No. 10149, which is alleged to be a general law, of the individual charters of the affected GOCCs is valid.

The Petitions are dismissed. The assailed provisions of Republic Act No. 10149 are constitutional.

I

Petitioners invoke this Court's original jurisdiction over petitions for certiorari under Article VIII, Section 5 of the

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[111] Id. at 243-245.

[112] Id. at 246.

Constitution. Petitioner Lagman alleged that his Petition is exempted from the rule on hierarchy of courts for raising matters of transcendental importance. Likewise, petitioner Pichay prayed that this Court take primary jurisdiction over the case given the transcendental importance of the issues raised.

There is an apparent confusion between this Court's jurisdiction over the procedural vehicle employed by petitioners and the justiciability of their claims. As discussed in *GIOS-SAMAR, Inc. v. Department of Transportation and Communications*,[113] issues of jurisdiction are entirely different from issues of justiciability:

> Related to *jurisdiction* is our application of the *doctrine of granting the primary administrative jurisdiction*, when statutorily warranted, to the executive department. *This is different from the rule on exhaustion of administrative remedies or the doctrine of respect for the hierarchy of courts*, which are *matters of justiciability*, not jurisdiction.[114] (Emphasis supplied, citations omitted)

Jurisdiction is a court's competence "to hear, try and decide a case."[115] It is granted by law and requires courts to examine the remedies sought[116] and issues raised by the parties,[117] the subject matter of the controversy,[118] and the processes employed by the parties in relation to laws granting competence.[119] Once this Court determines that the procedural vehicle employed by

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[113] GR. No. 217158, March 12, 2019, < https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970 > [Per J. Jardeleza, En Banc].

[114] Id.

[115] *Land Bank of the Philippines v. Dalauta*, 815 Phil. 740, 768 (2017) [Per J. Mendoza, En Banc].

[116] *The City of Lapu-Lapu v. Philippine Economic Zone Authority*, 748 Phil. 473, 517 (2014) [Per J. Leonen, Second Division].

[117] *Dy v. Yu*, 763 Phil. 491, 518 (2015) [Per J. Perlas-Bernabe, First Division].

[118] *The City of Lapu-Lapu v. Philippine Economic Zone Authority*, 748 Phil. 473, 515 (2014) [Per J. Leonen, Second Division].

[119] Id. at 516.

the parties raises issues on matters within its legal competence, it may then decide whether to adjudicate the constitutional issues brought before it.

Jurisdiction alone will not require this Court to pass upon the constitutionality of a statute. As held in *Angara v. Electoral Commission*,[120] the power of judicial review remains subject to this Court's discretion in resolving actual controversies:

> [W]hen the judiciary mediates to allocate constitutional boundaries, it does not assert any superiority over the other departments; it does not in reality nullify or invalidate an act of the legislature, but only asserts the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority under the Constitution and to establish for the parties in an *actual controversy* the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial review under the Constitution. *Even then, this power of judicial review is limited to actual cases and controversies to be exercised after fall opportunity of argument by the parties, and limited further to the constitutional question raised or the very lis mota presented.* Any attempt at abstraction could only lead to dialectics and barren legal questions and to sterile conclusions of wisdom, justice or expediency of legislation.[121] (Emphasis supplied)

Thus, as a rule, this Court only passes upon the constitutionality of a statute if it is "directly and necessarily involved in [a] justiciable controversy and is essential to the protection of the rights of the parties concerned."[122]

Courts decide the constitutionality of a law or executive act only when the following essential requisites are present: first, there must be an actual case or controversy; second, petitioners must possess *locus standi*; third, the question of constitutionality

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[120] 63 Phil. 139 (1936) [Per J. Laurel, En Banc].

[121] Id. at 158.

[122] *National Economic Protectionism Association v. Ongpin*, 253 Phil. 643, 650 (1989) [Per J. Paras, En Banc]; *Philippine Association of Colleges and Universities v. Secretary of Education*, 97 Phil 806, 809 (1955) [Per J. Bengzon, First Division].

must be raised at the earliest opportunity;[123] and fourth, the resolution of the question is unavoidably necessary to the decision of the case itself.[124] These requisites all relate to the justiciability of the issues raised by the parties. If no justiciable controversy is found, this Court may deny the petition as a matter of discretion.

This justiciability requirement is "intertwined with the principle of separation of powers."[125] It cautions the judiciary against unnecessary intrusion on matters committed to the other branches of the government.[126]

Furthermore, the presumption that the legislature and the executive have passed laws and executive acts within the bounds of the Constitution imposes a restraint on the judiciary in rashly resolving questions of constitutionality. In *People v. Vera*:[127]

> This court is not unmindful of the fundamental criteria in cases of this nature that all reasonable doubts should be resolved in favor of the constitutionality of a statute. *An act of the legislature approved by the executive, is presumed to be within constitutional limitations*. The responsibility of upholding the Constitution rests not on the courts alone but on the legislature as well. "The question of the validity of every statute is first determined by the legislative department of the government itself." And a statute finally comes before the courts sustained by the sanction of the executive. *The members of the Legislature and the Chief Executive have taken an oath to support the Constitution and it must be presumed that they have been true to this oath and that in enacting and sanctioning a particular law they did not intend to violate the Constitution. The courts cannot*

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[123] *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010 [Per J. Carpio Morales, En Banc].

[124] *Luz Farms v. Secretary of the Department of Agrarian Reform*, 270 Phil. 151 (1990) [Per J. Paras, En Banc]; *Macasiano v. National Housing Authority*, 296 Phil. 56 (1993) [Per J. Davide, Jr., *En Banc*].

[125] J. Corona, Concurring Opinion in *Galicto v. Aquino III*, 683 Phil. 141, 182 (2012) [Per J. Brion, En Banc].

[126] *Francisco, Jr. v. Toll Regulatory Board*, 648 Phil. 54 (2010) [Per J. Velasco, Jr., En Banc].

[127] 65 Phil. 56 (1937) [Per J. Laurel, First Division].

but cautiously exercise its power to overturn the solemn declarations of two of the three grand departments of the government. Then, *there is that peculiar political philosophy which bids the judiciary to reflect the wisdom of the people as expressed through an elective Legislature and an elective Chief Executive. It follows, therefore, that the courts will not set aside a law as violative of the Constitution except in a clear case*. This is a proposition too plain to require a citation of authorities.[128] (Emphasis supplied, citations omitted)

Again, jurisdiction in itself will not automatically merit a ruling on the constitutionality of the assailed provisions. Invocations of "transcendental importance" will not affect this Court's competence to decide the issues before it, and raising this Court's competence to decide issues of constitutionality will not necessarily require it to do so. Rather, this Court's exercise of its power of judicial review will depend on whether the requirements for invoking such power have been adequately met.

I(A)

The requirement of justiciability, or the existence of an actual case or controversy, for constitutional adjudication is explicit in the second paragraph of Article VIII, Section 1 of the Constitution:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

An actual case or controversy exists when there is "a conflict of legal rights, an assertion of opposite legal claims susceptible

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[128] Id. at 95.

of judicial resolution."[129] It requires the existence of actual facts where there is real conflict of rights and duties.[130]

Hypothetical or anticipated threats are insufficient to uphold a constitutional challenge. It is not this Court's function to render advisory opinions.[131] Even its expanded jurisdiction in Article VIII, Section 1—to determine whether any government branch or instrumentality committed grave abuse of discretion—requires that an actual case exists.[132] Otherwise, any resolution would merely constitute an "attempt at abstraction [that] could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities."[133]

Closely related to the "actual case or controversy" requirement is the requirement of "ripeness" for adjudication. A constitutional question is ripe for adjudication when the governmental act being challenged has had a direct adverse effect on the individual challenging it. These concepts were discussed in *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain*:[134]

An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted

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[129] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50, 98 [Per J. Leonen, En Banc].

[130] *J.* Leonen, Dissenting Opinion in *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1 (2014) [Per J. Mendoza, En Banc].

[131] *Guingona, Jr. v. Court of Appeals*, 354 Phil. 415 (1998) [Per J. Panganiban, En Banc].

[132] *See Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50 [Per J. Leonen, En Banc].

[133] *Angara v. Electoral Commission*, 63 Phil. 139, 158 (1936) [Per J. Laurel, En Banc].

[134] 589 Phil. 387 (2008) [Per J. Carpio Morales, En Banc].

and enforced on the basis of existing law and jurisprudence. The Court can decide the constitutionality of an act or treaty only when a proper case between opposing parties is submitted for judicial determination.

Related to the requirement of an actual case or controversy is the requirement of ripeness. *A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.*[135] (Emphasis supplied, citations omitted)

In *Atty. Lozano v. Speaker Nograles*,[136] this Court explained:

An aspect of the "case-or-controversy" requirement is the requisite of "ripeness." In the United States, courts are centrally concerned with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all. Another approach is the evaluation of the *twofold* aspect of ripeness: first, the fitness of the issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration. *In our jurisdiction, the issue of ripeness is generally treated in terms of actual injury to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. An alternative road to review similarly taken would be to determine whether an action has already been accomplished or performed by a branch of government before the courts may step in.*[137] (Emphasis supplied, citations omitted)

"In cases where the constitutionality of a law is being questioned, it is not enough that the law has been passed or is

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[135] Id. at 481.

[136] 607 Phil. 334 (2009) [Per C.J. Puno, En Banc].

[137] Id. at 341.

in effect,"[138] the party challenging the law must assert a specific and concrete legal claim or show the law's direct adverse effect on them.[139]

The requirement of *locus standi* then pertains to a party's personal and substantial interest in the case arising from the direct injury they sustained, or will sustain, as a result of the challenged governmental action. In *Anak Mindanao Party-List Group v. The Executive Secretary*:[140]

> *Locus standi* or legal standing has been defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. *The gist of the question on standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions*.
>
> It has been held that a party who assails the constitutionality of a statute must have *a direct and personal interest*. It must show not only that the law or any governmental act is invalid, but also that *it sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement*, and not merely that it suffers thereby in some indefinite way. It must show that it has been or is about to be denied some right or privilege to which it is lawfully entitled or that it is about to be subjected to some burdens or penalties by reason of the statute or act complained of.
>
> For a concerned party to be allowed to raise a constitutional question, it must show that (1) it has *personally suffered some actual or threatened injury* as a result of the allegedly illegal conduct of the government, (2) the injury is fairly traceable to the challenged action,

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[138] *J.* Leonen, Concurring Opinion in *Private Hospitals Association of the Philippines, Inc. v. Medialdea*, G.R. No. 234448, November 6, 2018, < https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64748 > [Per J. Tijam, En Banc].

[139] See *Abakada Guro Party List v. Purisima*, 584 Phil. 246 (2008) [Per *J.* Corona, En Banc].

[140] 558 Phil. 338 (2007) [Per J. Carpio Morales, En Banc].

and (3) the injury is likely to be redressed by a favorable action.[141] (Emphasis supplied, citations omitted)

Generalized grievance is not enough. The party must have a "material interest" affected by the official action taken, as distinguished from mere incidental interest.[142] Unless one's constitutional rights are affected by the operation of a statute or governmental act, they have no standing.[143]

Here, petitioners claim that Republic Act No. 10149 limits the tenure of affected officials to June 30, 2011, notwithstanding their fixed terms in GOCC charters. However, this seeming conflict does not present any direct adverse effect to either petitioner.

Petitioner Lagman anchored his Petition on the theory that Republic Act No. 10149 abdicates the legislative power of Congress, of which he is a member. Indeed, this Court has taken cognizance of cases where governmental action is assailed for infringing on a legislator's prerogatives, powers, and privileges.

In *PHILCONSA v. Enriquez*,[144] this Court upheld a senator's legal standing to question the validity of a presidential veto or a condition imposed on an item in an appropriation bill. It ruled:

> Where the veto is claimed to have been made without or in excess of the authority vested on the President by the Constitution, the issue of an impermissible intrusion of the Executive into the domain of the Legislature arises[.]
>
> To the extent the power of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution[.]

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[141] Id. at 350-351.

[142] *Pimentel, Jr. v. Office of the Executive Secretary*, 501 Phil. 303 (2005) [Per J. Puno, En Banc].

[143] *Chamber of Real Estate and Builders' Association, Inc. v. Energy Regulatory Commission*, 638 Phil. 542 (2010) [Per J. Brion, En Banc].

[144] 305 Phil. 546 (1994) [Per J. Quiason, En Banc].

An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury, which can be questioned by a member of Congress.... In such a case, any member of Congress can have a resort to the courts.[145] (Citations omitted)

Similarly, in *Pimentel, Jr. v. Office of the Executive Secretary*,[146] this Court held that "legislators have the standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in their office and are allowed to sue to question the validity of any official action which they claim infringes their prerogatives as legislators."[147] Senator Aquilino Pimentel, Jr. was held to possess the requisite legal standing in a petition that invoked the Senate's power to grant or withhold its concurrence to a treaty entered into by the executive branch. The petition sought to order the executive branch to transmit the copy of the treaty to the Senate to allow it to exercise such authority.

In *Biraogo v. The Philippine Truth Commission of 2010*,[148] which involved the president's creation of the Philippine Truth Commission, this Court upheld the petitioners' legal standing in a suit directed at the executive department:

Evidently, their petition primarily invokes usurpation of the power of the Congress as a body to which they belong as members. This certainly justifies their resolve to take the cudgels for Congress as an institution and present the complaints on the usurpation of their power and rights as members of the legislature before the Court. As held in *Philippine Constitution Association v. Enriquez*,

> To the extent the powers of Congress are impaired, so is the power of each member thereof, since his office confers a right to participate in the exercise of the powers of that institution.
>
> An act of the Executive which injures the institution of Congress causes a derivative but nonetheless substantial injury,

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[145] Id. at 563.

[146] 501 Phil. 303 (2005) [Per J. Puno, En Banc].

[147] Id. at 312-313.

[148] 651 Phil. 374 (2010) [Per J. Mendoza, En Banc].

> which can be questioned by a member of Congress. In such a case, any member of Congress can have a resort to the courts.
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> Indeed, legislators have a legal standing to see to it that the prerogative, powers and privileges vested by the Constitution in their office remain inviolate. Thus, they are allowed to question the validity of any official action which, to their mind, infringes on their prerogatives as legislators.[149] (Citation omitted)

In all those cases, however, the legislators questioned executive acts that allegedly usurped congressional authority or legislative prerogatives. Here, petitioner Lagman did not specify which prerogatives, powers, or privileges were or would be infringed upon by the law.

Indeed, there is no encroachment of legislative power here because what is assailed is itself an enactment of Congress. This contradicts any *prima facie* notion of usurpation of legislative powers, since it was the legislature itself that made the questioned delegation of powers to the executive.

Justice Conchita Carpio Morales' observations in her dissent in *Biraogo* are instructive:

> No doubt, *legislators are allowed to sue to question the validity of any official action upon a claim of usurpation of legislative power*. That is why, not every time that a Senator or a Representative invokes the power of judicial review, the Court automatically clothes them with *locus standi*. *The Court examines first, as the ponencia did, if the petitioner raises an issue pertaining to an injury to Congress as an institution or a derivative injury to members thereof before proceeding to resolve that particular issue.*
>
> The peculiarity of the *locus standi* of legislators necessarily confines the adjudication of their petition *only on matters that tend to impair the exercise of their official functions*.[150] (Emphasis supplied, citations omitted)

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[149] Id. at 438-439.

[150] J. Carpio Morales, Dissenting Opinion in *Biraogo v. Philippine Truth Commission of 2010*, 651 Phil. 374, 695 (2010) [Per J. Mendoza, En Banc].

Therefore, a member of Congress who merely invokes his or her status as a legislator cannot be granted standing in a petition that does not involve any impairment of the powers or prerogatives of Congress. *Provincial Bus Operators Association of the Philippines v. The Department of Labor and Employment*[151] warns against this Court overstepping its role among its co-equal branches of government:

> This Court is not a forum to appeal political and policy choices made by the Executive, Legislative, and other constitutional agencies and organs. This Court dilutes its role in a democracy if it is asked to substitute its political wisdom for the wisdom of accountable and representative bodies where there is no unmistakable democratic deficit. It cannot lose this place in the constitutional order. Petitioners' invocation of our jurisdiction and the justiciability of their claims must be presented with rigor. Transcendental interest is not a talisman to blur the lines of authority drawn by our most fundamental law.[152]

Since petitioner Lagman failed to raise any clear right or legislative prerogative supposedly violated by Republic Act No. 10149, he has no standing to question the constitutionality of its provisions.

Neither does petitioner Pichay have standing to question Republic Act No. 10149's constitutionality.

Section 17, paragraph 3 of the law limits the tenure of affected officials to June 30, 2011, notwithstanding their fixed terms in their GOCC charters. This would have had a direct bearing on incumbent public officials, including petitioner Pichay, had he remained the chairperson of the Local Water Utilities Administration. Yet, as he has revealed in his Petition, he was separated from the Local Water Utilities Administration during the pendency of this case. This renders his contentions moot.

However, recognized exceptions to the mootness doctrine include:

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[151] G.R. No. 202275, July 17, 2018, 872 SCRA 50 [Per J. Leonen, En Banc].

[152] Id. at 112.

(1) Grave constitutional violations;

(2) Exceptional character of the case;

(3) Paramount public interest;

(4) The case presents an opportunity to guide the bench, the bar, and the public; or

(5) The case is capable of repetition yet evading review.[153] (Citations omitted)

While petitioner Pichay is not the proper party to bring these issues before this Court, Republic Act No. 10149's effects on the entities and public officers within the scope of its provisions remain a possible subject of subsequent suits. Likewise, whether the law would affect a public official's constitutionally guaranteed right to security of tenure is not a hypothetical question, but places the constitutionality of its provisions squarely in issue. Once implemented, its provisions would affect the terms of office of the public officers despite them not being parties to these cases. Thus, for the sake of resolving this issue, this Court will proceed to a discussion on the merits. For expediency and considering the similarities in the arguments raised by both petitioners, petitioner Lagman's arguments may also be considered despite his lack of standing.

I (B)

As regards the rule on hierarchy of courts, Article VIII, Section 5(1) of the Constitution provides for this Court's "original jurisdiction over ... petitions for certiorari, prohibition, mandamus, *quo warranto*, and *habeas corpus*." This original jurisdiction is concurrent with the regional trial courts and the Court of Appeals in certain cases.[154]

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[153] *Republic v. Moldex Realty, Inc.*, 780 Phil. 553, 561 (2016) [Per J. Leonen, Second Division].

[154] *De Castro v. Carlos*, 709 Phil. 389 (2013) [Per C.J. Sereno, En Banc]; Review Center Association of the Philippines v. Ermita, 602 Phil. 342 (2009) [Per J. Carpio, En Banc]; Gerochi v. Department of Energy, 554 Phil. 563 (2007) [Per J. Nachura, En Banc]; and People v. Cuaresma, 254 Phil. 418 (1989) [Per J. Narvasa, First Division].

Under the rule on hierarchy of courts, this Court will not entertain a direct resort to it when relief may be obtained in the lower courts.[155] *The Diocese of Bacolod v. Commission on Elections*[156] explained that the purpose of the rule is "to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner":

> The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
>
> The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.
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> This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or

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[155] *Santiago v. Vasquez*, 282 Phil. 171 (1993) [Per J. Regalado, En Banc].

[156] 751 Phil. 301 (2015) [Per J. Leonen, En Banc].

in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[157] (Citations omitted)

The rule on hierarchy of courts "ensures that this Court remains *a court of last resort* so that it is able to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition."[158]

While *GIOS-SAMAR* attempted to streamline this rule by discussing that all Rule 65 petitions raising questions of fact will automatically be dismissed, this Court's discretion in exercising judicial review requires a more deliberate approach. The rule on hierarchy of courts relates to questions of justiciability, which in turn requires a nuanced exercise of this Court's discretion. Even a claim of "transcendental importance," without due substantiation, will not immediately merit a decision on the constitutionality of an assailed law:

The elements supported by the facts of an actual case, and the imperatives of our role as the Supreme Court within a specific cultural or historic context, must be made clear. They should be properly pleaded by the petitioner so that whether there is any transcendental importance to a case is made an issue. *That a case has transcendental importance, as applied, may have been too ambiguous and subjective that it undermines the structural relationship that this Court has with the sovereign people and other departments under the Constitution. Our rules on jurisdiction and our interpretation of what is justiciable, refined with relevant cases, may be enough.*[159] (Emphasis supplied, citation omitted)

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[157] Id. at 329-330.

[158] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50, 91-92 [Per J. Leonen, En Banc].

[159] J. Leonen, Separate Opinion in *GIOS-SAMAR, Inc. v. Department of Transportation and Communication*, G.R. No. 217158, March 12, 2019, < https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64970 > [Per J. Jardeleza, En Banc].

However, even the rule on hierarchy of courts is not absolute. Direct recourse to this Court may be allowed when there are special and important reasons clearly set forth in the petition.[160] *The Diocese of Bacolod* enumerates the following exceptions:

(1) "there are genuine issues of constitutionality that must be addressed at the most immediate time";[161]

(2) "the issues involved are of transcendental importance, [such that] the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence";[162]

(3) in "cases of first impression";[163]

(4) "the constitutional issues raised are better decided by the Court";[164]

(5) "the time element presented in the case cannot be ignored";[165]

(6) when the subject of review is an "act of a constitutional organ";[166]

(7) when petitioners rightly claim that they "had no other plain, speedy, and adequate remedy in the ordinary course of law";[167] and

(8) when the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders

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[160] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 50 [Per J. Leonen, En Banc].

[161] *The Diocese of Bacolod v. Commission on Elections*, 751 Phil. 301, 331 (2015) [Per J. Leonen, En Banc].

[162] Id. at 332.

[163] Id

[164] Id. 133.

[165] Id.

[166] Id. at 334.

[167] Id.

> complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."[168]

These cases fall under the first and eighth exceptions.

In *Buklod ng Kawaning EIIB v. Zamora*,[169] this Court disregarded the procedural flaws in the petition and proceeded to resolve the issue on the constitutionality of an executive order that reorganized the Economic Intelligence and Investigation Bureau, holding that "[i]t is in the interest of the State that questions relating to the status and existence of a public office be settled without delay."[170]

Dario v. Mison,[171] the case cited in *Buklod ng Kawaning EIIB*, involved several petitions filed by the officials and employees of the Bureau of Customs who had been separated from service as a result of the reorganization under Proclamation No. 3. On the procedural issues raised by the parties, this Court held:

> The Court disregards the questions raised as to procedure, failure to exhaust administrative remedies, the standing of certain parties to sue, for two reasons, *"[b]ecause of the demands of public interest, including the need for stability in the public service,"* and because of the serious implications of these cases on the administration of the Philippine civil service and the rights of public servants.[172] (Citations omitted)

These cases involve questions of similar import. Thus, this Court may exercise its full discretionary powers and allow a direct resort to it.

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[168] Id. at 334-335.

[169] 413 Phil. 281 (2001) [Per J. Sandoval-Gutierrez, En Banc].

[170] Id. at 289-290.

[171] 257 Phil. 84 (1989) [Per J. Sarmiento, En Banc].

[172] Id. at 111.

II

Petitioner Lagman contends that Section 17 of Republic Act No. 10149, which shortens the fixed terms of incumbent CEOs and appointive directors of GOCCs with original charters, violates their constitutionally guaranteed right to security of tenure. Section 17 provides:

> SECTION 17. *Term of Office. — Any provision in the charters of each GOCC to the contrary notwithstanding, the term of office of each Appointive Director shall be for one (1) year, unless sooner removed for cause: Provided, however,* That the Appointive Director shall continue to hold office until the successor is appointed. An Appointive Director may be nominated by the GCG for reappointment by the President only if one obtains a performance score of above average or its equivalent or higher in the immediately preceding year of tenure as Appointive Director based on the performance criteria for Appointive Directors for the GOCC.
>
> Appointment to any vacancy shall be only for the unexpired term of the predecessor. The appointment of a director to fill such vacancy shall be in accordance with the manner provided in Section 15 of this Act.
>
> *Any provision of law to the contrary notwithstanding, all incumbent CEOs and appointive members of the Board of GOCCs shall, upon approval of this Act, have a term of office until June 30, 2011, unless sooner replaced by the President: Provided, however,* That the incumbent CEOs and appointive members of the Board shall continue in office until the successors have been appointed by the President. (Emphasis supplied)

We disagree. The legislature may, in good faith, "change the qualifications for and shorten the term of existing statutory offices"[173] even if these changes would remove, or shorten the term of, an incumbent.

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[173] *Provincial Government of Camarines Norte v. Gonzalez*, 714 Phil. 468, 486 (2013) [Per J. Brion, En Banc].

Article IX-B, Section 2(3) of the Constitution provides the guarantee of security of tenure for all officers or employees in the civil service:

> (3) No officer or employee of the civil service shall be removed or suspended except for cause provided by law.

This Court expounded on this security of tenure provision in *Jocom v. Judge Regalado*:[174]

> *Regardless of the classification of the position held by a government employee covered by civil service rules, be it a career or non-career position, such employee may not be removed without just cause*. An employee who belongs to the non-career service is protected from removal or suspension without just cause and non-observance of due process.
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> . . . .
>
> The constitutional and statutory guarantee of security of tenure is extended to both those in the career and non-career service positions, and the cause under which an employee may be removed or suspended must naturally have some relation to the character or fitness of the officer or employee, for the discharge of the functions of his office, or expiration of the project for which employment was extended.[175] (Emphasis supplied, citation omitted)

GOCCs with original charters are embraced under the civil service.[176] Their officers and employees are covered by Article IX-B, Section 2(3) of the Constitution and Book V, Title I-A, Chapter 6, Section 46 of the Administrative Code on security of tenure. The Administrative Code[177] further classifies the

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[174] 278 Phil. 83 (1991) [Per J. Padilla, Second Division].

[175] Id. at 94.

[176] CONST., art. IX-B, sec. 2(1).

[177] ADM. CODE, Book V, Title I, Subtitle A, Ch. 2, sec. 6(1) provides: SECTION 6. *Scope of the Civil Service*. — (1) The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

positions in the civil service into career service and non-career service, with corresponding aspects of security of tenure inherent in each classification:

SECTION 7. *Career Service*. — The Career Service shall be characterized by *(1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.*

The Career Service shall include:

(1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;

(2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;

(3) Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;

(4) Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Department of Foreign Affairs;

(5) Commissioned officers and enlisted men of the Armed Forces which shall maintain a separate merit system;

(6) *Personnel of government-owned or controlled corporations, whether performing governmental or proprietary functions, who do not fall under the non-career service*; and

(7) Permanent laborers, whether skilled, semi-skilled, or unskilled.

SECTION 8. *Classes of Positions in the Career Service*. — (1) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:

(a) The first level shall include clerical, trades, crafts, and custodial service positions which involve non-professional or subprofessional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;

(b) The second level shall include professional, technical, and scientific positions which involve professional, technical, or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level; and

(c) The third level shall cover positions in the Career Executive Service.

(2) Except as herein otherwise provided, entrance to the first two levels shall be through competitive examinations, which shall be open to those inside and outside the service who meet the minimum qualification requirements. Entrance to a higher level does not require previous qualification in the lower level. Entrance to the third level shall be prescribed by the Career Executive Service Board.

(3) Within the same level, no civil service examination shall be required for promotion to a higher position in one or more related occupational groups. A candidate for promotion should, however, have previously passed the examination for that level.

SECTION 9. The Non-Career Service shall be characterized by (1) *entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) tenure which is limited to a period specified by law*, or which is coterminous with that of the appointing authority or subject to his pleasure, or which is limited to the duration of a particular project for which purpose employment was made.

The Non-Career Service shall include:

1. Elective officials and their personal or confidential staff;

2. Secretaries and other officials of Cabinet rank who hold their positions at the pleasure of the President and their personal confidential staff(s);

3. Chairman and members of Commissions and boards with fixed terms of office and their personal or confidential staff;

4. Contractual personnel or those whose employment in the government is in accordance with a special contract to undertake a specific work or job requiring special or technical skills not available in the employing agency, to be accomplished within a specific period, which in no case shall exceed one year and performs or accomplishes the specific work or job, under his own responsibility with a minimum of direction and supervision from the hiring agency;

5. Emergency and seasonal personnel. (Emphasis supplied)

Thus, while GOCC personnel are generally classified under the career service, provided that they do not fall under the non-career service, both classifications enjoy security of tenure in that they cannot be removed without legal cause and due process. This requirement of legal cause was explained in *Canonizado v. Aguirre*:[178]

> The phrase "except for cause provided by law" refers to "... *reasons which the law and sound public policy recognize as sufficient warrant for removal*, that is, legal cause, and not merely causes which the appointing power in the exercise of discretion may deem sufficient."[179] (Citation omitted)

In *The Provincial Government of Camarines Norte v. Gonzales*,[180] this Court further clarified:

> ***[B]oth career and non-career service employees have a right to security of tenure.*** All permanent officers and employees in the civil service, regardless of whether they belong to the career or non-career service category, are entitled to this guaranty; *they cannot be removed from office except for cause provided by law and after procedural due process*. The concept of security of tenure, however, labors under a variation for primarily confidential employees due to the basic concept of a "primarily confidential" position. Serving at the confidence of the appointing authority, the primarily confidential employee's term of office expires when the appointing authority loses trust in the

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[178] 380 Phil. 280 (2000) [Per J. Gonzaga-Reyes, En Banc].

[179] Id. at 285.

[180] 714 Phil. 468 (2013) [Per J. Brion, En Banc].

employee. When this happens, the confidential employee is not "removed" or "dismissed" from office; his term merely "expires" and the loss of trust and confidence is the "just cause" provided by law that results in the termination of employment. In the present case where the trust and confidence has been irretrievably eroded, we cannot fault Governor Pimentel's exercise of discretion when he decided that he could no longer entrust his confidence in Gonzales.

Security of tenure *in public office simply means that a public officer or employee shall not be suspended or dismissed except for cause, as provided by law and after due process. It cannot be expanded to grant a right to public office despite a change in the nature of the office held.* In other words, the CSC might have been legally correct when it ruled that the petitioner violated Gonzales' right to security of tenure when she was removed without sufficient just cause from her position, but the situation had since then been changed. In fact, Gonzales was reinstated as ordered, but her services were subsequently terminated under the law prevailing at the time of the termination of her service; *i.e.*, she was then already occupying a position that was primarily confidential and had to be dismissed because she no longer enjoyed the trust and confidence of the appointing authority. Thus, Gonzales' termination for lack of confidence was lawful. She could no longer be reinstated as provincial administrator of Camarines Norte or to any other comparable position. This conclusion, however, is without prejudice to Gonzales' entitlement to retirement benefits, leave credits, and future employment in government service.[181] (Emphasis in the original, citations omitted)

Board members of GOCCs occupy non-career service positions and are appointed for a definite term fixed in the GOCC charter. They may be removed before their terms expire only for causes as may be provided in the GOCCs charter, the Administrative Code, and other relevant laws. It is in this sense that directors and trustees enjoy security of tenure.

Shortening the term of office is not the same as removing the officer from service, even though both result in the termination of official relations. When an officer's term is shortened, one

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[181] Id. at 494-495.

is separated from service when the term expires.[182] Unless an officer is authorized by law to hold over in their position, their rights, duties, and authority as a public officer must *ipso facto* cease upon expiration of their term. Removal, on the other hand, entails the separation of the incumbent before their term expires. The Constitution allows this only for causes provided by law.[183]

Here, Section 17 of Republic Act No. 10149 provides two changes: (1) each appointive director's term of office shall be for one year, unless sooner removed for cause; and (2) all incumbent CEOs and appointive board members of GOCCs shall have a term of office until June 30, 2011, unless sooner replaced by the president.

These changes are constitutional.

Jurisprudence affirms Congress's power to create public offices, including the power to abolish them and to modify their nature, qualifications, and terms. As discussed in *Provincial Government of Camarines Norte*, these acts do not violate the security of tenure when done in good faith:

> The arguments presented by the parties and ruled upon by the CA reflect a conceptual entanglement between the *nature of the position* and an employee's *right to hold a position*. These two concepts are different. The nature of a position may change by law according to the dictates of Congress. The right to hold a position, on the other hand, is a right that enjoys constitutional and statutory guarantee, but may itself change according to the nature of the position.
>
> Congress has the power and prerogative to introduce substantial changes in the provincial administrator position and to reclassify it as a primarily confidential, non-career service position. *Flowing from the legislative power to create public offices is the power to abolish and modify them to meet the demands of society; Congress can change the qualifications for and shorten the term of existing statutory offices. When done in good faith, these acts would not violate a public officer's*

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[182] *Achacoso v. Macaraig*, 272-A Phil. 200 (1991) [Per J. Cruz, En Banc].

[183] Id; See also *Ocampo v. Secretary of Justice*, G.R. No. L-7910, January 18, 1955 [Per C.J. Paras, En Banc].

security of tenure, even if they result in his removal from office or the shortening of his term. Modifications in public office, such as changes in qualifications or shortening of its tenure, are made in good faith so long as they are aimed at the office and not at the incumbent.

In *Salcedo and Ignacio v. Carpio and Carreon*, for instance, Congress enacted a law modifying the offices in the Board of Dental Examiners. The new law, RA 546, raised the qualifications for the board members, and provided for a different appointment process. Dr. Alfonso C. Salcedo and Dr. Pascual Ignacio, who were incumbent board members at the time RA 546 took effect, filed a special civil action for *quo warranto* against their replacements, arguing that their term of office under the old law had not yet expired, and neither had they abandoned or been removed from office for cause. We dismissed their petition, and held that *Congress may, by law, terminate the term of a public office at any time and even while it is occupied by the incumbent*. Thus, whether Dr. Salcedo and Dr. Ignacio were removed for cause or had abandoned their office is immaterial.

. . . .

In the current case, Congress, through RA 7160, did not abolish the provincial administrator position but significantly modified many of its aspects. It is now a primarily confidential position under the non-career service tranche of the civil service.[184] (Emphasis supplied, citations omitted)

Since the creation of a chartered GOCC is purely legislative, Congress has the power to modify or abolish it, as well as to enact whatever restrictions it may deem fit for the public good:

Since the creation of public offices involves an inherently legislative power, it necessarily follows that the particular characteristics of the public office, including eligibility requirements and the nature and length of the term in office, are also for legislative determination. Hence, laws creating public offices generally prescribe the necessary qualifications for appointment to the public office and the length of their terms. The wisdom of such matters is left up to the legislative branch. At the same time, the power of appointment is executive in

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[184] *Provincial Government of Camarines Norte v. Gonzales*, 714 Phil. 468, 485-487 (2013) [Per J. Brion, En Banc].

character, and the choice of whom to appoint is within the discretion of the executive branch of government. This setup aligns with traditional notions of checks and balances — the choice whom to appoint resting with the executive branch, but proscribed by the standards enacted by the legislative. Persons to be appointed to a public office should possess the prescribed qualifications as may be mandated by Congress.

The same setup governs the removal of officers from public office. The power to remove a public officer is again executive in nature, but also subject to limitations as may be provided by law. Ordinarily, where an office is created by statute, it is wholly within the power of Congress, its legislative power extends to the subject of regulating removals from the office.[185] (Emphasis supplied, citation omitted)

As to good faith in the abolition of offices, *Kapisanan ng mga Kawani ng Energy Regulatory Board v. Barin*[186] teaches that:

[a]*n abolition is made in good faith when* ***it is not made for political or personal reasons****, or when it does not circumvent the constitutional security of tenure of civil service employees*. Abolition of an office may be brought about by reasons of economy, or to remove redundancy of functions, or a clear and explicit constitutional mandate for such termination of employment. Where one office is abolished and replaced with another office vested with similar functions, the abolition is a legal nullity. When there is a void abolition, the incumbent is deemed to have never ceased holding office.[187] (Emphasis supplied, citations omitted)

Likewise, *"making the bureaucracy more efficient is also indicative of the exercise of good faith in, and a valid purpose for, the abolition of an office."*[188] In *Dario v. Mison*,[189] this Court clarified:

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[185] J. Tinga, Dissenting Opinion in *Rufino v. Endriga*, 528 Phil. 473, 540 (2006) [Per J. Carpio, En Banc].

[186] 553 Phil. 1 (2007) [Per J. Carpio, Second Division].

[187] Id. at 8.

[188] *CAAP-Employees' Union v. Civil Aviation Authority of the Phil.*, 746 Phil. 503, 526 (2014) [Per J. Villarama, Jr., En Banc].

[189] 257 Phil. 84 (1989) [Per J. Sarmiento, En Banc].

Reorganizations in this jurisdiction have been regarded as valid provided they are pursued in good faith. *As a general rule, a reorganization is carried out in "good faith" if it is for the purpose of economy or to make bureaucracy more efficient.* In that event, no dismissal (in case of a dismissal) or separation actually occurs because the position itself ceases to exist. And in that case, security of tenure would not be a Chinese wall. Be that as it may, if the "abolition," which is nothing else but a separation or removal, is done for political reasons or purposely to defeat security of tenure, or otherwise not in good faith, no valid "abolition" takes place and whatever "abolition' is done, is void ab initio. There is an invalid "abolition" as where there is merely a change of nomenclature of positions, or where claims of economy are belied by the existence of ample funds.[190] (Emphasis supplied, citations omitted)

"Good faith is presumed while bad faith must be proved."[191] Here, petitioners failed to substantiate their allegations that the shortening of terms was done to circumvent the affected officials' security of tenure.

On the contrary, Section 17 of Republic Act No. 10149 is consistent with the objective of the legislative and executive departments to "restructure the GOCCs to enable them to respond to the exigencies of the service through fiscal discipline[.]"[192]

News leading up to Republic Act No. 10149's passage revealed the state of public corporate governance in the country. In his first State of the Nation Address,[193] President Benigno Aquino III zeroed in on the lavish remuneration and benefit packages of officers and employees in the Metropolitan Water and Sewerage Authority, while people would line up for water and retirees' pensions would remain unpaid.[194]

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[190] Id. at 130.

[191] C.J. Fernan, Concurring and Dissenting Opinion in *Mendoza v. Quisumbing*, 264 Phil. 471, 526 (1990) [Per J. Gutierrez, Jr., En Banc].

[192] *Rollo* (G.R. No. 197950), p. 196.

[193] Delivered on July 26, 2010.

[194] President Benigno S. Aquino 111, *State of the Nation Address*, July 26, 2010, < https://www.officialgazette.gov.ph/2010/07/26/state-of-the-nation-address-2010-en/ > (last accessed on March 13, 2019).

Senate inquiries also revealed that officials and board members of GOCCs and government financial institutions (GFIs) were "granting themselves unwarranted allowances, bonuses, incentives, stock options, and other benefits [as well as other] irregular and abusive practices."[195]

In a September 9, 2010 press release regarding the possible purging of inefficient GOCCs, Senator Ralph Recto indicated that while missionary GOCCs which were established to deliver basic services are worth saving despite their underperforming financials, "'fat cats' in these missionary GOCCs must shed their indecent bonuses and perks 'to reduce the national guilt of exempting them from the purge.'" He cited the National Food Authority, the National Electrification Administration, the Local Water Utilities Administration, and the Philippine Postal Corporation as some of these missionary GOCCs.[196]

Republic Act No. 10149 was enacted to address these reported abuses in the remuneration scheme and inefficiencies in the operations of the GOCCs. It operates under the principle that GOCCs have potential "as significant tools for economic development." It was declared a State policy to promote the growth of GOCCs "by ensuring that their operations are consistent with national development policies and programs."[197] Toward this end, the State set out to ensure that:

(a) *The corporate form* of organization through which government carries out activities *is utilized judiciously*;

(b) *The operations of GOCCs are rationalized and monitored centrally in order that government assets and resources are used efficiently* and *the government exposure to all forms of liabilities* including subsidies *is warranted and incurred through prudent means*;

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[195] *Galicto v. Aquino III*, 683 Phil. 141, 161 (2012) [Per J. Brion, En Banc].

[196] Id.

[197] Republic Act No. 10149 (2010), sec. 2.

(c) GOCCs governance is carried out in a transparent, responsible and accountable manner and with the utmost degree of professionalism and effectiveness;

(d) A reporting system, which will require the periodic disclosure and examination of the operations and management of the GOCCs, their assets and finances, revenues and expenditures, is enforced;

(e) The *governing board of every GOCC and its subsidiaries* are competent to carry out its functions, fully accountable to the State as its fiduciary, and *acts in the best interest of the State*;

(f) Reasonable, justifiable and appropriate remuneration schemes are adopted for the officers and employees of GOCCs to *prevent or deter the granting of unconscionable and excessive remuneration packages*; and

(g) A clear separation between the regulatory and proprietary activities of GOCCs, in order to achieve a level playing field with corporations in the private sector performing similar commercial activities for the public.[198] (Emphasis supplied)

Public interest warrants the term reduction. Shortening the term of directors to one year allows for a yearly evaluation of their performance and promotes accountability for public funds. In this regard, the separate concurring and dissenting opinion of Chief Justice Marcelo Fernan in *Mendoza v. Hon. Quisumbing*[199] deserves a closer examination. He wrote:

The security-of-tenure argument accorded merit by the majority would hold water under ordinary circumstances, but not under the exceptional factual milieu obtaining in the cases at bar. The removal from office of petitioners, respondents in some cases, was the result of the reorganization of the various executive departments undertaken immediately after the installation of the Aquino government, at which time, the people's clamor to promote efficiency and effectiveness in the delivery of public service, rebuild confidence in the entire

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[198] Republic Act No, 10149 (2010), sec. 2.

[199] 264 Phil. 471 (1990) [Per Gutierrez, Jr., En Banc].

governmental system and eradicate graft and corruption therein was at its highest. The need was so grave and serious, so basic and urgent, that nothing less than extra-ordinary measures were called for. *In the balancing of interests, as between the very essence of a government as a machinery for the common good and the security of tenure guaranteed by the Constitution to those in government service, one must prevail. Since in our form of government, public offices are public trusts, and the officers are servants of the people and not their rulers, the choice is evident*.[200] (Emphasis supplied)

Enacting Republic Act No. 10149, including the shortening of terms of appointive directors to one year, fulfills what Congress had considered a great public need. It does not adversely affect the tenure of any particular board member or public officer.

Public office is a public trust.[201] The security of tenure guaranteed to public officers must be viewed against the need to assure efficiency and independence in the performance of their functions, "undeterred by any fear of reprisal or untoward consequence" or "free from the corrupting influence of base or unworthy motives."[202] Strictly speaking, a public officer has no vested or absolute right to hold public office.[203] A public officer's right to security of tenure cannot be invoked against a valid legislative act resulting in separation from office:[204]

> The greater good of the greatest number and the right of the citizenry to a good government, ... provide the justification for the said injury to the individual. In terms of values, the interest of an employee to security of tenure must yield to the interest of the entire populace and to an efficient and honest government.[205]

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[200] Id. at 526-527.

[201] CONST., art. XI, sec. 1.

[202] *De La Llana v. Alba*, 198 Phil. 1, 64 (1982) [Per *C.J.* Fernando, En Banc].

[203] *Aparri v. Court of Appeals*, 212 Phil. 215 (1984) [Per J. Makasiar, Second Division].

[204] *CAAP-Employees' Union v. Civil Aviation Authority of the Phil.*, 746 Phil. 503, 526 (2014) [Per J. Villarama, Jr., En Banc].

[205] J. Melencio-Herrera, Dissenting Opinion in *Dario v. Mison*, 257 Phil. 84, 161 (1989) [Per J. Sarmiento, En Banc].

In Justice Juvenal K. Guerrero's concurring opinion in *De La Llana v. Alba*:[206]

> [Public office] is created for the purpose of effecting the ends for which government has been instituted, which are for the common good, and not the profit, honor or private interest of any one man, family or class of men. In our form of government, it is fundamental that public offices are public trust, and that the person to be appointed should be selected solely with a view to the public welfare. In the last analysis, a public office is a privilege in the gift of the State.
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> *There is no such thing as a vested interest or an estate in an office, or even an absolute right to hold office.* Excepting constitutional offices, which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office or its salary. *When an office is created by the Constitution, it cannot be abolished by the legislature, but when created by the State under the authority of the Constitution, it may be abolished by statute and the incumbent deprived of his office....*
>
> The removal from office of the incumbent then is merely incidental to the valid act of abolition of the office as demanded by the superior and paramount interest of the people[.][207] (Citations omitted; emphasis supplied)

The same reasoning applies to Section 17, paragraph 3 of Republic Act No. 10149, which limits the tenure of incumbent CEOs and appointive directors until June 30, 2011.

In any event, the provision shortens the terms of incumbent GOCC officers, consistent with the exercise of legislative prerogatives in good faith as discussed in *Provincial Government of Camarines Norte*:

> Congress has the power and prerogative to introduce substantial changes in the provincial administrator position and to reclassify it as a primarily confidential, non-career service position. *Flowing from the legislative power to create public offices is the power to abolish and modify them to meet the demands of society; Congress can change*

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[206] 198 Phil. 1 (1982) [Per C.J. Fernando, En Banc].

[207] Id. at 85-86.

the qualifications for and shorten the term of existing statutory offices. When done in good faith, these acts would not violate a public officers security of tenure, even if they result in his removal from office or the shortening of his term. Modifications in public office, such as changes in qualifications or shortening of its tenure, are made in good faith so long as they are aimed at the office and not at the incumbent.

In *Salcedo and Ignacio v. Carpio and Carreon*, for instance, Congress enacted a law modifying the offices in the Board of Dental Examiners. The new law, RA 546, raised the qualifications for the board members, and provided for a different appointment process. Dr. Alfonso C. Salcedo and Dr. Pascual Ignacio, who were incumbent board members at the time RA 546 took effect, filed a special civil action for *quo warranto* against their replacements, arguing that their term of office under the old law had not yet expired, and neither had they abandoned or been removed from office for cause. *We dismissed their petition, and held that Congress may, by law, terminate the term of a public office at any time and even while it is occupied by the incumbent*. Thus, whether Dr. Salcedo and Dr. Ignacio were removed for cause or had abandoned their office is immaterial.[208] (Emphasis supplied, citation omitted)

Clearly, Congress can, for legitimate purposes, reduce the terms of officers of GOCCs with independent charters. Even the vested right to security of tenure is qualified by the law that creates the office and provides for its appurtenances. While neither Congress nor the president may simply declare a position vacant, Congress acted well within its powers when it legislated a new term. Section 17 of Republic Act No. 10149 merely shortened the terms of incumbent GOCC officers and did not, as petitioners alleged, remove them from service without cause.

Thus, Section 17 does not violate the constitutional prohibition on unjustified declarations of vacancy or terminations of public service without just cause. Again, it merely modified the terms of incumbent GOCC officers and by providing for a new, albeit shortened, term for these existing offices moving forward. This

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[208] *Provincial Government of Camarines Norte v. Gonzalez*, 714 Phil. 468, 485-486 (2013) [Per J. Brion, En Banc].

is consistent with Congress's legislative prerogative to modify, through laws, the terms of public office.

III

Section 5 of Republic Act No. 10149 creates the Governance Commission and grants it certain powers and functions. It states in part:

> SECTION 5. *Creation of the Governance Commission for Government-Owned or -Controlled Corporations*. — There is hereby created a central advisory, monitoring, and oversight body *with authority to formulate, implement and coordinate policies* to be known as the Governance Commission for Government-Owned or -Controlled Corporations, hereinafter referred to as the GCG, which shall be attached to the Office of the President. The GCG shall have the following powers and functions:
>
> (a) Evaluate the performance and determine the relevance of the GOCC, to ascertain whether such GOCC should be reorganized, merged, streamlined, abolished or privatized, in consultation with the department or agency to which a GOCC is attached. For this purpose, the GCG shall be guided by any of the following standards:
>
> (1) The functions or purposes for which the GOCC was created are no longer relevant to the State or no longer consistent with the national development policy of the State;
>
> (2) The GOCC's functions or purposes duplicate or unnecessarily overlap with functions, programs, activities or projects already provided by a Government Agency;
>
> (3) The GOCC is not producing the desired outcomes, or no longer achieving the objectives and purposes for which it was originally designed and implemented, and/or not cost efficient and does not generate the level of social, physical and economic returns vis-a-vis the resource inputs;
>
> (4) The GOCC is in fact dormant or nonoperational;
>
> (5) The GOCC is involved in an activity best carried out by the private sector; and

(6) The functions, purpose or nature of operations of any group of GOCCs require consolidation under a holding company.

Upon determination by the GCG that it is to the best interest of the State that a GOCC should be reorganized, merged, streamlined, abolished or privatized, it shall:

(i) Implement the reorganization, merger or streamlining of the GOCC, unless otherwise directed by the President; or

(ii) Recommend to the President the abolition or privatization of the GOCC, and upon the approval of the President, implement such abolition or privatization, unless the President designates another agency to implement such abolition or privatization.

. . . .

(h) Conduct compensation studies, develop and recommend to the President a competitive compensation and remuneration system which shall attract and retain talent, at the same time allowing the GOCC to be financially sound and sustainable;

. . . .

(l) Review the functions of each of the GOCC and, upon determination that there is a conflict between the regulatory and commercial functions of a GOCC, recommend to the President in consultation with the Government Agency to which such GOCC is attached, the privatization of the GOCCs commercial operations, or the transfer of the regulatory functions to the appropriate government agency, or such other plan of action to ensure that the commercial functions of the GOCC do not conflict with such regulatory functions.

Petitioners contend that Republic Act No. 10149 invalidly delegates to the Governance Commission the exclusive power of Congress to reorganize and abolish public offices. They similarly claim that such power cannot be delegated, and even if it were so, the law places no sufficient standard to guide the Governance Commission in exercising this power. Petitioner Lagman further contends that the law unduly delegates legislative

power to fix GOCC officials' salaries, emoluments, and allowances. Petitioner Pichay adds that the undue delegation violates the separation of powers.[209]

The rule on non-delegation of legislative power flows from the ethical principle that such power, which the sovereign people have delegated through the Constitution, "constitutes not only a right but a duty to be performed by [Congress] through the instrumentality of [its] own judgment and not through the intervening mind of another."[210] Any undue delegation of legislative power is contrary to the principle of separation of powers.

However, this Court has recognized two types of permissible delegation of legislative power: contingent legislation and subordinate legislation.

Congress undertakes contingent legislation when it delegates to another body the power to ascertain facts necessary to bring the law into actual operation.[211] In *Vera*:

> "The true distinction" . . . "is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made."
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> . . . .
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> It is contended, however, that a legislative act may be made to the effect as law after it leaves the hands of the legislature. It is true that laws may be made effective on certain contingencies, as by proclamation of the executive or the adoption by the people of a

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[209] See *rollo* (G.R. No. 197422), pp. 505-506, 524, and *rollo* (G.R. No. 197950), pp. 261-268.

[210] *Gerochi v. Department of Energy*, 554 Phil. 563, 584 (2007) [Per J. Nachura, En Banc]. See also *People v. Vera*, 65 Phil. 56 (1937) [Per J. Laurel, First Division].

[211] See *Calalang v. Williams*, 70 Phil. 726 (1940) [Per J. Laurel, First Division].

particular community. In Wayman vs. Southard, the Supreme Court of the United States ruled that the legislature may delegate a power not legislative which it may itself rightfully exercise. *The power to ascertain facts is such a power which may he delegated. There is nothing essentially legislative in ascertaining the existence of facts or conditions as the basis of the taking into effect of a law. That is a mental process common to all branches of the government. . . . "The principle which permits the legislature to provide that the administrative agent may determine when the circumstances are such as require the application of a law is defended upon the ground that at the time this authority is granted, the rule of public policy, which is the essence of the legislative act, is determined by the legislature. In other words, the legislature, as it is its duty to do, determines that, under given circumstances, certain executive or administrative action is to be taken, and that, under other circumstances, different or no action at all is to be taken. What is thus left to the administrative official is not the legislative determination of what public policy demands, but simply the ascertainment of what the facts of the case require to be done according to the terms of the law by which he is governed."*... "The efficiency of an Act as a declaration of legislative will must, of course, come from Congress, but the ascertainment of the contingency upon which the Act shall take effect may be left to such agencies as it may designate." ... *The legislature, then, may provide that a law shall take effect upon the happening of future specified contingencies leaving to some other person or body the power to determine when the specified contingency has arisen*.[212] (Emphasis supplied, citations omitted)

Meanwhile, subordinate legislation entails delegating to administrative bodies the power to "fill in" the details of a statute. Enacting subordinate legislation has become necessary amid the "proliferation of specialized activities and their attendant peculiar problems," which the legislature may not be able to competently address. In *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Administration*:[213]

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[212] *People v. Vera*, 65 Phil. 56, 117-120 (1937) [Per J. Laurel, First Division].

[213] 248 Phil. 762 (1988) [Per J. Cruz, First Division].

The principle of non-delegation of powers is applicable to all the three major powers of the Government but is especially important in the case of the legislative power because of the many instances when its delegation is permitted. The occasions are rare when executive or judicial powers have to be delegated by the authorities to which they legally pertain. In the case of the legislative power, however, such occasions have become more and more frequent, if not necessary. This had led to the observation that the delegation of legislative power has become the rule and its non-delegation the exception.

The reason is the increasing complexity of the task of government and the growing inability of the legislature to cope directly with the myriad problems demanding its attention. The growth of society has ramified its activities and created peculiar and sophisticated problems that the legislature cannot be expected reasonably to comprehend. Specialization even in legislation has become necessary. To many of the problems attendant upon present-day undertakings, the legislature may not have the competence to provide the required direct and efficacious, not to say, specific solutions. These solutions may, however, be expected from its delegates, who are supposed to be experts in the particular fields assigned to them.

The reasons given above for the delegation of legislative powers in general are particularly applicable to administrative bodies. With the proliferation of specialized activities and their attendant peculiar problems, the national legislature has found it more and more necessary to entrust to administrative agencies the authority to issue rules to carry out the general provisions of the statute. This is called the "power of subordinate legislation."

With this power, administrative bodies may implement the broad policies laid down in a statute by "filling in" the details which the Congress may not have the opportunity or competence to provide. This is effected by their promulgation of what are known as supplementary regulations, such as the implementing rules issued by the Department of Labor on the new Labor Code. These regulations have the force and effect of law.[214]

To avoid the taint of unlawful delegation, the statute delegating legislative power must:

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[214] Id. at 772-773.

(a) be complete in itself — it must set forth therein the policy to be executed, carried out or implemented by the delegate — and (b) fix a standard — the limits of which are sufficiently determinate or determinable — to which the delegate must conform in the performance of his functions. Indeed, without a statutory declaration of policy, the delegate would, in effect, make or formulate such policy, which is the essence of every law; and, without the aforementioned standard, there would be no means to determine, with reasonable certainty, whether the delegate has acted within or beyond the scope of his authority. Hence, he could thereby arrogate upon himself the power, not only to make the law, but, also — and this is worse — to unmake it, by adopting measures inconsistent with the end sought to be attained by the Act of Congress[.][215] (Citations omitted)

In *Abakada Guro Party List v. Purisima*:[216]

Two tests determine the validity of delegation of legislative power: (1) the completeness test and (2) the sufficient standard test. A law is complete when it sets forth therein the policy to be executed, carried out or implemented by the delegate. It lays down a sufficient standard when it provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and prevent the delegation from running riot. To be sufficient, the standard must specify the limits of the delegate's authority, announce the legislative policy and identify the conditions under which it is to be implemented.[217] (Citations omitted)

Republic Act No. 10149 complied with the completeness and sufficient standard tests. The abolition or reorganization was already determined in the assailed law. The Governance Commission will only determine whether it will take effect in accordance with the policy and standards provided in the law. Section 5(a) mandates the abolition or reorganization of GOCCs only when the following standards are met:

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[215] *Pelaez v. Auditor General*, 122 Phil. 965, 974-975 (1965) [Per J. Concepcion, En Banc].

[216] 584 Phil. 246 (2008) [Per J. Corona, En Banc].

[217] Id. at 272.

(1) The functions or purposes for which the GOCC was created are no longer relevant to the State or no longer consistent with the national development policy of the State;

(2) The GOCC's functions or purposes duplicate or unnecessarily overlap with functions, programs, activities or projects already provided by a Government Agency;

(3) The GOCC is not producing the desired outcomes, or no longer achieving the objectives and purposes for which it was originally designed and implemented, and/or not cost efficient and does not generate the level of social, physical and economic returns *vis-à-vis* the resource inputs;

(4) The GOCC is in fact dormant or nonoperational;

(5) The GOCC is involved in an activity best carried out by the private sector; and

(6) The functions, purpose or nature of operations of any group of GOCCs require consolidation under a holding company.[218]

In authorizing the Governance Commission to make reforms in the GOCCs, Section 2 lays down the following policies:

SECTION 2. *Declaration of Policy*. — The State recognizes the potential of government-owned or -controlled corporations (GOCCs) as significant tools for economic development. It is thus the policy of the State to actively exercise its ownership rights in GOCCs and to promote growth by ensuring that operations are consistent with national development policies and programs.

Towards this end, the State shall ensure that:

(a) The corporate form of organization through which government carries out activities is utilized judiciously;

(b) The operations of GOCCs are rationalized and monitored centrally in order that government assets and resources are used efficiently and the government exposure to all forms of liabilities including subsidies is warranted and incurred through prudent means[.]

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[218] Republic Act No. 10149 (2010), sec. 5(a).

Moreover, delegating the power to ascertain facts—in order to determine the propriety of the reorganization, abolition, merger, streamlining or privatization of GOCCs—is not an undue delegation of legislative powers. The standards were set; the policy, fixed. The Governance Commission only needs to carry out the mandate. In ascertaining the determinants for abolishing or reorganizing GOCCs, the Governance Commission only acts as an investigative body on behalf of Congress.

In *Cervantes v. Auditor General*,[219] the Control Committee disapproved the board resolution of the National Abaca and Other Fibers Corporation granting quarters allowance to the general manager. On appeal to this Court, it was argued that Executive Order No. 93, which created the Control Committee, was invalid because it was based on a law that is unconstitutional as an illegal delegation of legislative power to the executive. The law referred to is Republic Act No. 51, which authorized the president, among others, to make reforms in GOCCs in "promoting simplicity, economy and efficiency in their operation."[220]

Upholding the constitutionality of Republic Act No. 51, this Court said:

> [T]he rule is that so long as the Legislature "lays down a policy and a standard is established by the statute" there is no undue delegation. Republic Act No. 51 in authorizing the President of the Philippines, among others, to make reforms and changes in government-controlled corporations, lays down a standard and policy that the purpose shall be to meet the exigencies attendant upon the establishment of the free and independent Government of the Philippines and to promote simplicity, economy and efficiency in their operations. The standard was set and the policy fixed. The President had to carry the mandate. This he did by promulgating the executive order in question which, tested by the rule above cited, does not constitute an undue delegation of legislative power.[221] (Citation omitted)

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[219] 91 Phil. 359 (1952) [Per J. Reyes, En Banc].

[220] Id. at 362.

[221] *Cervantes v. Auditor General*, 91 Phil. 359, 364 (1952) [Per J. Reyes, En Banc].

Similarly, the delegation of the power to establish a Compensation and Position Classification System, subject to the president's approval, is constitutional. Republic Act No. 10149 amends the provisions in the GOCC charters empowering their board of directors or trustees to determine their own compensation system, in favor of the grant of authority to the president to perform this act.

Article IX-B, Section 5 of the 1987 Constitution mandates that "Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions."

In line with this, Republic Act No. 6758,[222] or the Compensation and Position Classification Act of 1989, prescribes a revised compensation and position classification system in government. Its coverage is comprehensive and applies to the entire government without qualification.[223]

Republic Act No. 6758 provided, among others, a salary schedule for all government positions, appointive or elective, including positions in GOCCs and other government financial institutions (GFIs). It also recognized the continuing applicability of Presidential Decree No. 985, as amended by Presidential Decree No. 1597.[224] Section 6 of Presidential Decree No. 1597 states:

SECTION 6. *Exemptions from OCPC Rules and Regulations*. — Agencies positions, or groups of officials and employees of the national government, including government owned or controlled corporations,

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[222] An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes, August 21, 1989.

[223] *Mendoza v. Commission on Audit*, 717 Phil. 491 (2013) [Per J. Leonen, En Banc].

[224] Rationalizing the System of Compensation and Position Classification in the National Government, dated June 11, 1978.

who are hereafter exempted by law from [Office of Compensation and Position Classification] OCPC coverage, shall *observe such guidelines and policies as may be issued by the President governing position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. Exemptions notwithstanding, agencies shall report to the President, through the Budget Commission* [now Department of Budget and Management (DBM)], *on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President*. (Emphasis supplied)

The thrust of Presidential Decree No. 1597 was to limit exceptions from the National Compensation and Position Classification System established under Presidential Decree No. 985. It was observed that "the proliferation of special salary laws [was] inimical to sound public administration and complicates the process of salary adjustment due to disparities and inflexibility in salary rates, pay ranges and/or other forms of compensation[.]"[225]

Still, laws have subsequently been passed carving out exceptions to Republic Act No. 6758, as amended, particularly on chartered GOCCs and GFIs. These laws provided not only the power to create the agency's or corporation's own compensation and position classification systems, usually through its board of directors, but also exempted the agency or corporation from the Salary Standardization Law.[226]

This notwithstanding, the president's authority to prescribe policies, parameters, and guidelines to govern how exempt GOCCs and GFIs will determine their respective compensation and position classification systems subsist.[227]

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[225] Presidential Decree No. 1597 (1978), third whereas clause.

[226] *Mendoza v. Commission on Audit*, 717 Phil. 491 (2013) [Per J. Leonen, En Banc].

[227] J. Corona, Concurring Opinion in *Galicto v. Aquino III*, 683 Phil. 141 (2012) [Per J. Brion, En Banc].

In 2009, the Senate and the House of Representatives issued Joint Resolution No. 4, authorizing the president to modify the existing Compensation and Position Classification System of civilian personnel in the government. It states:

> (9) Exempt Entities — Government agencies which by specific provision/s of laws are authorized to have their own compensation and position classification system shall not be entitled to the salary adjustments provided herein. Exempt entities shall be governed by their respective Compensation and Position Classification Systems: *Provided, That such entities shall observe the policies, parameters and guidelines governing position classification, salary rates, categories and rates of allowances, benefits and incentives, prescribed by the President: Provided, further, That any increase in the existing salary rates as well as the grant of new allowances, benefits and incentives, or an increase in the rates thereof shall be subject to the approval by the President, upon recommendation of the DBM: Provided, finally,* That exempt entities which still follow the salary rates for positions covered by Republic Act No. 6758, as amended, are entitled to the salary adjustments due to the implementation of this Joint Resolution, until such time that they have implemented their own compensation and position classification system. (Emphasis supplied)

In *Intia, Jr. v. Commission on Audit*,[228] while this Court affirmed the Philippine Postal Corporation's exemption from the Salary Standardization Law, it also held that the corporation should report the details of its salary and compensation system to the Department of Budget and Management.

In *Philippine Retirement Authority v. Bunag*,[229] this Court held that while the Philippine Retirement Authority could, under its charter, fix the compensation of its employees, it "is still required to 1) *observe the policies and guidelines issued by the President* with respect to position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits and 2)

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[228] 366 Phil. 273 (1999) [Per J. Romero, En Banc].

[229] 444 Phil. 859 (2003) [Per J. Puno, Third Division].

report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President."[230] It was held:

> *Even prior to R.A. No. 6758, the declared policy of the national government is to provide "equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions."* To implement this policy, P.D. No. 985 provided for the standardized compensation of government employees and officials, including those in government-owned and controlled corporations. Subsequently, P.D. No. 1597 was enacted prescribing the duties to be followed by agencies and offices exempt from coverage of the rules and regulations of the Office of Compensation and Position Classification. The intention, therefore, was to provide a compensation standardization scheme such that notwithstanding any exemptions from the coverage of the Office of Compensation and Position Classification, *the exempt government entity or office is still required to observe the policies and guidelines issued by the President and to submit a report to the Budget Commission on matters concerning position classification and compensation plans, policies, rates and other related details*.[231] (Emphasis supplied, citation omitted)

Such restriction on exempt government entities was held to indicate Congress's recognition of the president's power of control over all executive departments, bureaus, and offices.[232] This precept is embodied in Article VII, Section 17 of the Constitution, which provides:

> SECTION 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

Republic Act No. 10149 is but a clear expression of the legislative intent to regulate and rationalize the compensation

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[230] Id. at 869.

[231] Id. at 870.

[232] *Philippine Economic Zone Authority v. Commission on Audit*, 797 Phil. 117 (2016) [Per J. Peralta, En Banc].

frameworks of GOCCs by authorizing the president, upon the recommendation of the Governance Commission, to establish a unified Compensation and Position Classification System for GOCCs. The law is consistent with the compensation standardization clause in the Constitution and the intended salary standardization for GOCCs expressed in previous laws.

The Governance Commission was created to act as the central advisory, monitoring, and oversight body attached to the Office of the President. Among its powers and functions is to conduct compensation studies, develop, and recommend a competitive compensation and remuneration system, which shall attract and retain talent but allow the GOCC to be financially sound and sustainable.[233] After conducting a compensation study, it is tasked to develop a Compensation and Position Classification System, which will apply to all GOCC officers.[234] For this, the Governance Commission must comply with certain governing principles and limitations:

> SECTION 9. *Position Titles and. Salary Grades*. — All positions in the Position Classification System, as determined by the GCG and as approved by the President, shall be allocated to their proper position titles and salary grades in accordance with an Index of Occupational Services, Position Titles and Salary Grades of the Compensation and Position Classification System, which shall be prepared by the GCG and approved by the President.
>
> The following principles shall govern the Compensation and Position Classification System:

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[233] Republic Act No. 10149 (2010), sec. 5(h).

[234] Republic Act No. 10149 (2010), sec. 8 provides:

> SECTION 8. *Coverage of the Compensation and Position Classification System*. — The GCG, after conducting a compensation study, shall develop a Compensation and Position Classification System which shall apply to all officers and employees of the GOCCs whether under the Salary Standardization Law or exempt therefrom and shall consist of classes of positions grouped into such categories as the GCG may determine, subject to the approval of the President.

(a) All GOCC personnel shall be paid just and equitable wages in accordance with the principle of equal pay for work of equal value. Differences in pay shall be based on verifiable Compensation and Position Classification factors in due regard to the financial capabality of the GOCC;

(b) Basic compensation for all personnel in the GOCC shall generally be comparable with those in the private sector doing comparable work, and must be in accordance with prevailing laws on minimum wages. The total compensation provided for GOCC personnel shall be maintained at a reasonable level with due regard to the provisions of existing compensation and position classification laws including Joint Resolution No. 4, Series of 2009, and the GOCCs operating budget; and

(c) A review of the GOCC compensation rates, taking into account the performance of GOCC, its overall contribution to the national economy and the possible erosion in purchasing power due to inflation and other factors, shall be conducted periodically.

Any law to the contrary notwithstanding, no GOCC shall be exempt from the coverage of the Compensation and Position Classification System developed by the GCG under this Act.

. . . .

SECTION 11. *Non-Diminution of Salaries*. — The Compensation and Position Classification System to be developed and recommended by the GCG and as approved by the President shall apply to all positions, on full or part-time basis, now existing or hereafter created in the GOCC:

Provided, That in no case shall there be any diminution in the authorized salaries as of December 31, 2010 of incumbent employees of GOCCs, including those exempt under Republic Act No. 6758, as amended, upon the implementation of the Compensation and Position Classification System for GOCCs.

. . . .

SECTION 23. *Limits to Compensation, Per Diems, Allowances and Incentives*. — The charters of each of the GOCCs to the contrary notwithstanding, the compensation, *per diems*, allowances and incentives of the members of the Board of Directors/Trustees of the GOCCs shall be determined by the GCG using as a reference, among others, Executive Order No. 245 dated February 10, 2011: *Provided, however*, That Directors/Trustees shall not be entitled to retirement benefits as such d irectors/trustees.

In case of GOCCs organized solely for the promotion of social welfare and the common good without regard to profit, the total yearly *per diems* and incentives in the aggregate which the members of the Board of such GOCCs may receive shall be determined by the President upon the recommendation of the GCG based on the achievement by such GOCC of its performance targets.[235]

The Compensation and Position Classification System must also be aligned with the State policy to ensure that "[r]easonable, justifiable and appropriate remuneration schemes are adopted for the directors/trustees, officers and employees of GOCCs and their subsidiaries to prevent or deter the granting of unconscionable and excessive remuneration packages[.]"[236]

In *De La Llana*, this Court accepted the clause "along the guidelines set forth in letter of Implementation No. 93 pursuant to Presidential Decree No. 985, as amended by Presidential Decree No. 1597"[237] as sufficient standard in granting the president the power to fix the compensation and allowances of the justices and judges appointed under Batas Pambansa Blg. 129. This Court stated:

. . . There are other objections raised but they pose no difficulty. Petitioners would characterize as an undue delegation of legislative power to the President the grant of authority to fix the compensation and the allowances of the Justices and judges thereafter appointed.

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[235] Republic Act No. 10149 (2012), secs. 9, 11, and 23.

[236] Republic Act No. 10149 (2012), sec. 2(f).

[237] *De La Llana v. Alba*, 198 Phil. 1, 59 (1982) [Per C.J. Fernando, En Banc].

A more careful reading of the challenged Batas Pambansa Blg. 129 ought to have cautioned them against raising such an issue. The language of the statute is quite clear. The questioned provision reads as follows: "Intermediate Appellate Justices, Regional Trial Judges, and Municipal Circuit Trial Judges shall receive such compensation and allowances as may be authorized by the President along the guidelines set forth in letter of Implementation No. 93 pursuant to Presidential Decree No. 985, as amended by Presidential Decree No. 1597." The existence of a standard is thus clear. The basic postulate that underlies the doctrine of non-delegation is that it is the legislative body which is entrusted with the competence to make laws and to alter and repeal them, the test being the completeness of the statute in all its terms and provisions when enacted. As pointed out in *Edu v. Ericta*: "To avoid the taint of unlawful delegation, there must be a standard, which implies at the very least that the legislature itself determines matters of principle and lays down fundamental policy. Otherwise, the charge of complete abdication may be hard to repel. A standard thus defines legislative policy, marks its limits, maps out its boundaries and specifies the public agency to apply it. It indicates the circumstances under which the legislative command is to be effected. It is the criterion by which legislative purpose may be carried out. Thereafter, the executive or administrative office designated may in pursuance of the above guidelines promulgate supplemental rules and regulations. The standard may be either express or implied. If the former, the non-delegation objection is easily met. The standard though does not have to be spelled out specifically. It could be implied from the policy and purpose of the act considered as a whole."[238] (Citations omitted)

Similarly, the standards provided in Republic Act No. 10149, and the policy framework embodied in other existing compensation and position classification laws, including Joint Resolution No. 4, series of 2009, are sufficient to map out the boundaries of the Governance Commission's authority in establishing the compensation system for GOCCs.

All told, we uphold the assailed powers and functions of the Governance Commission considering that the completeness and

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[238] Id. at 59-60.

sufficient standard tests were satisfied in the law. We find no undue delegation of legislative power.

IV

Petitioner Lagman contends that the Governance Commission has supplanted the constitutional mandate of the Civil Service Commission by removing the chartered GOCCs from jurisdiction of the Civil Service Commission and placing them under the Governance Commission.[239] Furthermore, he claims that the Civil Service Commission's constitutional powers over GOCCs were allegedly arrogated by the Governance Commission, specifically:

> [T]he prescription of qualifications by the Governance Commission is final without submitting the same for the review and approval of the Civil Service Commission... Moreover, appointments in GOCCs under the assailed law are not anymore submitted to the Civil Service Commission for approval.[240]

This Court disagrees.

Contrary to petitioner Lagman's claims, the powers and functions of the Governance Commission have neither duplicated nor supplanted the Civil Service Commission's mandate.

The Governance Commission is the "central policy-making and regulatory body mandated to safeguard the State's ownership rights and ensure that the operations of GOCCs are transparent and responsive to the needs of the public."[241] Its main thrust is to assess GOCCs' performance as public institutions. Toward this end, it is empowered to:

(a) Properly classify GOCCs into:

- Development/Social Corporations;

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[239] *Rollo* (G.R. No. 197422), p. 531.

[240] Id. at 532.

[241] Governance Commission, About us, < https://gcg.gov.ph/about-us > (last accessed on November 2, 2020).

- Proprietary Commercial Corporations;
- Government Financial, Investment and Trusts Institutions;
- Corporations with Regulatory Functions; and
- Other as may be determined by GCG;

(b) Adopt within 180 days from its constitution (20 October 2011) an Ownership and Operations Manual and the Government Corporate Standards governing GOCCs, with shall be consistent with the Medium-Term Philippine Development Plan of the NEDA;

(c) Establish the performance evaluation systems including performance scorecards which shall apply to all GOCCs in general and to the various GOCC classifications;

(d) Evaluate the performance and determination of the relevan[ce] of GOCCs, to ascertain whether any of them should be reorganized, merged, streamlined, abolished or privatized;

(e) Conduct periodic study, examination, evaluation and assessment of the performance of the GOCCs, receive, and in appropriate cases, require reports on the operations and management of GOCCs including, but not limited to, the management of the assets and finances of the GOCCs;

(f) Coordinate and monitor the operations of GOCCs, ensuring alignment and consistency with the national development policies and programs, and meeting quarterly to review strategy maps and performance scorecards of all GOCCs; review and assess existing performance-related policies, prepare performance reports of the GOCCs for submission to the President;

(h) Review the functions of each of the GOCC and, upon determination that there is a conflict between the regulatory and commercial functions of a GOCC, recommend to the President in consultation with the government agency to which the GOCC is attached, the privatization of the GOCCs commercial operations, or the transfer of the regulatory functions to the appropriate government agency, or such other plan of action to ensure that the commercial functions of the GOCC do not conflict with such regulatory functions;

(i) Provide technical advice and assistance to the government agencies to which the GOCCs are attached in setting performance objectives and targets for the GOCCs and in monitoring GOCCs performance vis-á-vis established objectives and targets; and

(j) Coordinate and monitor the operations of GOCCs, ensuring alignment and consistency with the national development policies and program, and shall meet at least quarterly to:

- Review strategy maps and performance scorecards of all GOCCs;
- Review and assess existing performance-related policies inclu[di]ng the compensation/remuneration of Board of Directors/Trustees and Officers and recommend appropriate revisions and actions;
- Prepare performance reports of the GOCCs for submission to the President;

(k) Prepare a semi-annual progress report to be submitted to the President and the Congress, providing therein its performance assessment of the GOCCs and recommend clear and specific actions; and [within] one- hundred-twenty (120) days from the close of the year, shall prepare an annual report on the performance of the GOCCs and submit it to the President and the Congress.[242]

On the other hand, the Civil Service Commission, as the government's central personnel agency, is tasked under Article IX-B, Section 3 of the Constitution to do the following:

a. Establish a career service;

b. Adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service;

c. Strengthen the merit and rewards system,

d. Integrate all human resources development programs for all levels and ranks; and

e. Institutionalize a management climate conducive to public accountability.[243]

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[242] Id.

[243] See *City Government of Makati City v. Civil Service Commission*, 426 Phil. 631, 644 (2002) [Per J. Bellosillo, En Banc].

Book V, Title I-A, Chapter 3, Section 12 of the Administrative Code provides the Civil Service Commission's powers and functions:

SECTION 12. *Powers and Functions*. — The Commission shall have the following powers and functions:

1. Administer and enforce the constitutional and statutory provisions on the merit system for all levels and ranks in the Civil Service;
2. Prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws;
3. Promulgate policies, standards and guidelines for the Civil Service and adopt plans and programs to promote economical, efficient and effective personnel administration in the government;
4. Formulate policies and regulations for the administration, maintenance and implementation of position classification and compensation and set standards for the establishment, allocation and reallocation of pay scales, classes and positions;
5. Render opinion and rulings on all personnel and other Civil Service matters which shall be binding on all heads of departments, offices and agencies and which may be brought to the Supreme Court on certiorari;
6. Appoint and discipline its officials and employees in accordance with law and exercise control and supervision over the activities of the Commission;
7. Control, supervise and coordinate Civil Service examinations. Any entity or official in government may be called upon by the Commission to assist in the preparation and conduct of said examinations including security, use of buildings and facilities as well as personnel and transportation of examination materials which shall be exempt from inspection regulations;
8. Prescribe all forms for Civil Service examinations, appointments, reports and such other forms as may be required by law, rules and regulations;

9. Declare positions in the Civil Service as may properly be primarily confidential, highly technical or policy determining;

10. Formulate, administer and evaluate programs relative to the development and retention of qualified and competent work force in the public service;

11. Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. Officials and employees who fail to comply with such decisions, orders, or rulings shall be liable for contempt of the Commission. Its decisions, orders, or rulings shall be final and executory. Such decisions, orders, or rulings may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof;

12. Issue *subpoena* and *subpoena duces tecum* for the production of documents and records pertinent to investigations and inquiries conducted by it in accordance with its authority conferred by the Constitution and pertinent laws;

13. Advise the President on all matters involving personnel management in the government service and submit to the President an annual report on the personnel programs;

14. Take appropriate action on all appointments and other personnel matters in the Civil Service including extension of Service beyond retirement age;

15. Inspect and audit the personnel actions and programs of the departments, agencies, bureaus, offices, local government units and other instrumentalities of the government including government-owned or controlled corporations; conduct periodic review of the decisions and actions of offices or officials to whom authority has been delegated by the Commission as well as the conduct of the officials and the employees in these offices and apply appropriate sanctions whenever necessary;

16. Delegate authority for the performance of any function to departments, agencies and offices where such function may be effectively performed;

17. Administer the retirement program for government officials and employees, and accredit government services and evaluate qualifications for retirement;

18. Keep and maintain personnel records of all officials and employees in the Civil Service; and

19. Perform all functions properly belonging to a central personnel agency and such other functions as may be provided by law.

A closer look at the functions of the Governance Commission and the Civil Service Commission reveals significant differences:

First, the Governance Commission is focused on GOCCs as public institutions. The Civil Service Commission, on the other hand, is focused on the management of government personnel.

Second, the Governance Commission's powers are limited to GOCCs and their boards of directors and trustees. The Civil Service Commission is given the comprehensive mandate to administer the civil service and to render opinions and rulings on all personnel and other civil service matters.[244]

Third, the Governance Commission was created to act as a central advisory, monitoring, and oversight body that formulates, implements, and coordinates policies to evaluate the performance and determine the relevance of GOCCs. On the other hand, the Civil Service Commission is the government's central personnel agency that determines qualifications of merit and fitness of those appointed to the civil service.[245]

Fourth, the Governance Commission classifies GOCCs into categories and institutionalizes transparency, accountability, financial viability, and responsiveness in corporate performance by monitoring and evaluating GOCCs' performance. The Civil Service Commission promulgates policies, standards, and

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[244] *Career Executive Service Board v. Civil Service Commission*, 806 Phil. 967 (2017) [Per C.J. Sereno, En Banc].

[245] *Civil Service Commission v. Gentallan*, 497 Phil. 594 (2005) [Per J. Quisumbing, En Banc].

guidelines for the civil service; and supervises and disciplines, if needed, all government employees, including those employed in GOCCs with original charters.[246]

Fifth, the Governance Commission's mandate is to ensure that government assets and resources are used efficiently and the government exposure to all forms of liabilities is warranted and incurred through prudent means. The Civil Service Commission's mandate is to promote efficiency and professionalism in the civil service.

Apart from these differences, the Civil Service Commission remains empowered to take appropriate action on all appointments and other personnel actions,[247] regardless of Republic Act No. 10149's enactment. While appointments to the civil service must generally be approved by the Civil Service Commission, directors or trustees of GOCCs are not subject to this requirement. Rather, their appointments are generally governed by the GOCC charters or by-laws, as the case may be. Sections 15, 16, 17, and 18 merely authorize the Governance Commission to establish a fit and proper rule and screen candidates for directors or trustees to ensure that those appointed by the President are competent to take on the position.[248]

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[246] *Civil Service Commission v. Alfonso*, 607 Phil. 60 (2009) [Per J. Nachura, En Banc].

[247] ADM. CODE, Book V, Title 1-A, Ch. 3, sec. 12.

[248] *Re: Eden Candelaria*, 627 Phil. 473 (2010) [Per J. Abad, En Banc]. Presidential Decree No. 807 (1975), Sec. 9, Civil Service Law of 1975 provides:

SECTION 9. *Powers and Functions of the Commission.* – The Commission shall administer the Civil Service and shall have the following powers and functions:

. . .

Approve all appointments, whether original or promotional to positions in the civil service, except those of presidential appointtees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications. An appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes

In any event, the Civil Service Commission's authority to approve appointments is limited to determining whether the appointee is eligible and legally qualified.[249] Specifically, its task is to verify "whether or not the appointee possesses the appropriate civil service eligibility or the required qualifications"[250] and "whether or not the appointing authority complied with the requirements of the law."[251] In *Civil Service Commission v. Tinaya*:[252]

> *To make it fully effective, an appointment to a civil service position must comply with all legal requirements. Thus, the law requires the appointment to be submitted to the CSC, which will ascertain, in the main, whether the proposed appointee is qualified to hold the position and whether the rules pertinent to the process of appointment were observed.*

The appointing officer and the CSC acting together, though not concurrently but consecutively, make an appointment complete. *In acting on the appointment, the CSC determines whether the appointee possesses the appropriate civil service eligibility or the required qualifications.* If the appointee is qualified, the appointment must be approved; if not, it should be disapproved.[253] (Emphasis supplied, citations omitted)

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his duties immediately and shall remain effective until it is disapproved by the Commission, if this should take place, without prejudice to the liability of the appointing authority for appointments issued in violation of existing laws or rules: *Provided, finally*, That the Commission shall keep a record of appointments of all officers and employees in the civil service. All appointments requiring the approval of the Commission as herein provided, shall be submitted to it by the appointing authority within thirty days from issuance, otherwise, the appointment becomes ineffective thirty days thereafter. (Emphasis supplied)

[249] *Lopez v. Civil Service Commission*, 272 Phil. 97 (1991) [Per J. Gutierrez, Jr., En Banc]; *Central Bank of the Philippines v. Civil Service Commission*, 253 Phil. 717, 725 (1989) [Per J. Gancayco, En Banc].

[250] *Luego v. Civil Service Commission*, 227 Phil. 303, 308 (1986) [Per J. Cruz, En Banc].

[251] *Central Bank of the Philippines v. Civil Service Commission*, 253 Phil. 717, 726 (1989) [Per J. Gancayco, En Banc].

[252] 491 Phil. 729 (2005) [Per J. Sandoval-Gutierrez, En Banc].

[253] Id. at 736-737.

If the Civil Service Commission finds that the appointee is eligible, its attestation becomes a ministerial duty.[254] It has no authority to direct the appointment of its own choice.[255] Neither is it authorized to curtail the discretion of the appointing official on the nature or kind of appointment to be extended.

Nothing in Republic Act No. 10149 would indicate the removal of the Civil Service Commission's authority to act on appointments. Rather, it would be consistent with the State policy of ensuring that "[t]he governing boards of every GOCC and its subsidiaries are competent to carry out its functions, fully accountable to the State as its fiduciary, and acts in the best interest of the State[.]"[256] Republic Act No. 10149 merely added an initial screening and selection process for GOCCs' directors and trustees. The Governance Commission is tasked to "oversee the selection and nomination of *directors or trustees* and maintain the quality of Board Governance."[257] It is specifically mandated to perform the following functions:

> SECTION 5. *Creation of the Governance Commission for Government-Owned or -Controlled Corporations*. — ... The GCG shall have the following powers and functions:
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> . . . .
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> (d) Without prejudice to the filing of administrative and criminal charges, recommend to the Board of Directors or Trustees the suspension of any member of the Board of Directors or Trustees who participated by commission or omission in the approval of the act giving rise to the violation or noncompliance with the ownership manual for a period depending on the nature and extent of damage caused, during which period the director or trustee shall not be entitled to any emolument;

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[254] *Buena, Jr. v. Benito*, 745 Phil. 399 (2014) [Per J. Leonen, En Banc].

[255] *Lapinid v. Civil Service Commission*, 274 Phil. 381 (1991) [Per J. Cruz, En Banc].

[256] Republic Act No. 10149 (2010), sec. 2(e).

[257] Governance Commission, About us, < https://gcg.gov.ph/about-us> (Last accessed on March 29, 2019).

(e) In addition to the qualifications required under the individual charter of the GOCCs and in the bylaws of GOCCs without original charters, the GCG shall identify necessary skills and qualifications required for Appointive Directors and recommend to the President a shortlist of suitable and qualified candidates for Appointive Directors[.]

Pertinent provisions on the appointment of GOCCs' directors or trustees state:

SECTION 15. *Appointment of the Board of Directors/Trustees of GOCCs.* — An Appointive Director shall be appointed by the President of the Philippines from a shortlist prepared by the GCG.

The GCG shall formulate its rules and criteria in the selection and nomination of prospective appointees and shall cause the creation of search committees to achieve the same. *All nominees included in the list submitted by the GCG to the President shall meet the Fit and Proper Rule as defined under this Act and such other qualifications which the GCG may determine taking into consideration the unique requirements of each GOCC*. The GCG shall ensure that the shortlist shall exceed by at least fifty percent (50%) of the number of directors/ trustees to be appointed. In the event that the President does not see fit to appoint any of the nominees included in the shortlist, the President shall ask the GCG to submit additional nominees.

SECTION 16. *Fit and Proper. — All members of the Board, the CEO and other officers of the GOCCs including appointive directors in subsidiaries and affiliate corporations shall be qualified by the Fit and Proper Rule to be determined by the GCG in consultation and coordination with the relevant government agencies to which the GOCC is attached and approved by the President.*

To maintain the quality of management of the GOCCs, the GCG, in coordination with the relevant government agencies shall, subject to the approval of the President, *prescribe, pass upon and review the qualifications and disqualifications of individuals appointed as officers, directors or elected CEO of the GOCC and shall disqualify those found unfit.*

In determining whether an individual is fit and proper to hold the position of an officer, director or CEO of the GOCC, *due regard shall be given to one's integrity, experience, education, training and competence*.

SECTION 17. *Term of Office*. — Any provision in the charters of each GOCC to the contrary notwithstanding, the term of office of each Appointive Director shall be for one (1) year, unless sooner removed for cause. *Provided, however*, That the Appointive Director shall continue to hold office until the successor is appointed. *An Appointive Director may be nominated by the GCG for reappointment by the President only if one obtains a performance score of above average or its equivalent or higher in the immediately preceding year of tenure as Appointive Director based on the performance criteria for Appointive Directors for the GOCC.*

Appointment to any vacancy shall be only for the unexpired term of the predecessor. The appointment of a director to fill such vacancy shall be in accordance with the manner provided in Section 15 of this Act.

. . . .

SECTION 18. *The Chief Executive Officer of the GOCC*. — The CEO or the highest-ranking officer provided in the charters of the GOCCs, shall *be elected annually by the members of the Board from among its ranks*. The CEO shall be subject to the disciplinary powers of the Board and may be removed by the Board for cause.[258] (Emphasis supplied)

At any rate, "the [Civil Service Commission's] constitutional authority over the civil service [did not] divest the Legislature of the power to enact laws providing exemptions to civil service rules."[259] In *Trade and Investment Development Corporation v. Civil Service Commission*:[260]

The CSC's rule-making power, albeit constitutionally granted, is still limited to the implementation and interpretation of the laws it is tasked to enforce.

The 1987 Constitution created the CSC as the central personnel agency of the government mandated to establish a career service

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[258] Republic Act No. 10149 (2010), secs. 15-18.

[259] *Trade and Investment Development Corp. v. Civil Service Commission*, 705 Phil. 357 (2013) [Per J. Brion, *En Banc*].

[260] 705 Phil. 357, 369 (2013) [Per J. Brion, En Banc].

and promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It is a constitutionally created administrative agency that possesses executive, quasi-judicial and quasi-legislative or rule-making powers.

While not explicitly stated, the CSC's rule-making power is subsumed under its designation as the government's "central personnel agency" in Section 3, Article IX-B of the 1987 Constitution....

. . . .

The 1987 Administrative Code then spelled out the CSC's rule--making power in concrete terms in Section 12, Book V, Title I-A, which empowered the CSC *to implement the civil service law and other pertinent laws*, and to promulgate policies, standards and guidelines for the civil service.

The CSC's rule-making power as a constitutional grant is an aspect of its independence as a constitutional commission. It places the grant of this power outside the reach of Congress, which cannot withdraw the power at any time....

. . . .

But while the grant of the CSC's rule-making power is untouchable by Congress, the laws that the CSC interprets and enforces fall within the prerogative of Congress. As an administrative agency, the CSC's quasi-legislative power is subject to the same limitations applicable to other administrative bodies. The rules that the CSC formulates must not override, but must be in harmony with, the law it seeks to apply and implement.[261] (Emphasis supplied, citations omitted)

All reasonable doubts should be resolved in favor of the constitutionality of a statute. A legislative act, approved by the executive, is presumed to be within constitutional limitations.[262]

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[261] *Id*. at 369-372.

[262] *Garcia v. Executive Secretary*, 281 Phil. 572, 579-580 (1991) [Per J. Cruz, En Banc]. ". . . We find that the constitutional challenge must be rejected for failure to show that there is an indubitable ground for it, not to say even a necessity to resolve it. The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the

To justify the nullification of a law, there must be a clear breach of the Constitution:[263]

> A law that advances a legitimate governmental interest will be sustained, even if it *"works to the disadvantage of a particular group, or ... the rationale for it seems tenuous." ...*
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> . . . .
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> *We cannot second-guess the mind of the legislature as the repository of the sovereign will. For all we know, amidst the fiscal crisis and financial morass we are experiencing, Congress may altogether remove the blanket exemption, put a salary cap on the highest echelons, lower the salary grade scales subject to SSL exemption, adopt performance-based compensation structures, or even amend or repeal the SSL itself but within the constitutional mandate that "**at the earliest possible time, the Government shall increase the salary scales of . . . officials and employees of the National Government."** Legislative reforms of whatever nature or scope may be taken one step at a time, addressing phases of problems that seem to the legislative mind most acute. Rightly so, our legislators must have **"flexibility and freedom from judicial oversight in shaping and limiting their remedial efforts."** Where there are plausible reasons for their action, the Court's **"inquiry is at an end."***

Under the doctrine of separation of powers and the concomitant respect for coequal and coordinate branches of government, the exercise of prudent restraint by this Court would still be best *under the present circumstances*.[264] (Emphasis in the original, citations omitted)

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doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress and the President of the Philippines, a law has been carefully studied and determined to be in accordance with the fundamental law before it was finally enacted."

[263] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004) [Per J. Puno, En Banc].

[264] J. Panganiban, Dissenting Opinion in *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 624-626 (2004) [Per J. Puno, En Banc].

V

Republic Act No. 10149 applies to all GOCCs, GFIs, as well as government instrumentalities with corporate powers and government corporate entities. The law defines these as follows:

Government-Owned or -Controlled Corporation (GOCC) refers to any agency organized as a stock or nonstock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock: *Provided, however*, That for purposes of this Act, the term "GOCC" shall include GICP/GCE and GFI as defined herein.[265]

Government Financial Institutions (GFIs) refer to financial institutions or corporations in which the government directly or indirectly owns majority of the capital stock and which are either: (1) registered with or directly supervised by the Bangko Sentral ng Pilipinas; or (2) collecting or transacting funds or contributions from the public and places them in financial instruments or assets such as deposits, loans, bonds and equity including, but not limited to, the Government Service Insurance System and the Social Security System.[266]

Government Instrumentalities with Corporate Powers (GICP)/ Government Corporate Entities (GCE) refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter including, but not limited to, the following: the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the Metropolitan Waterworks and Sewerage System (MWSS), the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu

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[265] Republic Act No. 10149 (2010), sec. 3(o).

[266] Republic Act No. 10149 (2010), sec. 3(m).

Port Authority (CPA), the Cagayan de Oro Port Authority, the San Fernando Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO).[267]

Specifically excluded from the coverage of the law are the following: (a) the Bangko Sentral ng Pilipinas; (b) state universities and colleges; (c) cooperatives; (d) local water districts; and (e) economic zone authorities and research institutions, provided that a third of their board members shall be appointed from the list submitted by Governance Commission.[268]

Petitioner Pichay contends that the law violates the equal protection clause as it had no reasonable basis for excluding some GOCCs from Republic Act No. 10149.[269]

The equal protection clause in the Constitution is not a guarantee of absolute equality in the operation of laws.[270] It applies only to persons or things that are identically situated. It does not bar a reasonable classification of the subject of legislation:

> The equal protection of the law clause in the Constitution is not absolute, but is subject to reasonable classification. If the groupings are characterized by substantial distinctions that make real differences,

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[267] Republic Act No. 10149 (2010), sec. 3(n).

[268] Republic Act No. 10149 (2010), sec. 4.

[269] *Rollo* (G.R. No. 197950), pp. 272 and 279.

Republic Act No. 10149 (2010), sec. 4 provides:

> SECTION 4. Coverage. — This Act shall be applicable to all GOCCs, GICPs/GCEs, and government financial institutions, including their subsidiaries, but ***excluding*** the Bangko Sentral ng Pilipinas, state universities and colleges, cooperatives, local water districts, economic zone authorities and research institutions: *Provided*, That in economic zone authorities and research institutions, the President shall appoint one-third (1/3) of the board members from the list submitted by the GCG. (Emphasis supplied)

[270] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531 (2004) [Per J. Puno, En Banc] citing *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60 (1974) [Per J. Zaldivar, En Banc].

one class may be treated and regulated differently from the other. The Court has explained the nature of the equal protection guarantee in this manner:

> The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, *under like circumstances and conditions* both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not.[271] (Emphasis in the original, citations omitted)

A classification is reasonable where: (1) it is based on substantial distinctions which make for real differences; (2) it is germane to the purpose of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to each member of the same class.[272] This Court has held:

> The equal protection of the laws clause of the Constitution allows classification. Classification in law, as in the other departments of knowledge or practice, is the grouping of things in speculation or practice because they agree with one another in certain particulars. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. *All that is required of a valid classification is that it be reasonable, which means that the classification should be based*

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[271] *Fariñas v. Executive Secretary*, 463 Phil. 179, 206 (2003) [Per J. Callejo, Sr., En Banc].

[272] This rational basis test was first summarized in *People v. Cayat*, 68 Phil. 12 (1939) [Per J. Moran, First Division], See also *Philippine Rural Electric Cooperatives Association v. Secretary of Interior and Local Government*, 451 Phil. 683 (2003) [Per J. Puno, En Banc].

on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.

In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. It is not necessary that the classification be based on scientific or marked differences of things or in their relation. *Neither is it necessary that the classification be made with mathematical nicety. Hence legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear*.[273] (Emphasis supplied, citations omitted)

There are three types of standards to determine the reasonableness of legislative classification:

The *strict scrutiny test* applies when a classification either (i) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (ii) burdens suspect classes. The *intermediate scrutiny test* applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny, such as in classifications based on gender and legitimacy. Lastly, the *rational basis test* applies to all other subjects not covered by the first two tests.[274] (Emphasis supplied)

Since petitioners do not claim that Republic Act No. 10149's exclusion of certain entities interfered with fundamental rights and liberties, nor is there any indication of a need for heightened scrutiny, the rational basis test applies. This test requires only

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[273] *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60, 87-88 (1974) [Per J. Zaldivar, En Banc].

[274] *Zomer Development Co., Inc. v. Special Twentieth Division of the Court of Appeals*, G.R. No. 194461, January 7, 2020, < https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66131 > [Per J. Leonen, En Banc], citing *Samahan ng mga Progresibong Kabataan v. Quezon City*, 815 Phil. 1067, 1113-1114 (2017) [Per J. Perlas-Bernabe, En Banc].

a reasonable connection between a legitimate government interest and the classification made.[275]

Employing the rational basis test, this Court finds that Republic Act No. 10149 made reasonable exclusions of certain entities from its coverage.

First, Bangko Sentral ng Pilipina[276] was created as an independent central monetary authority pursuant to Article XII, Section 20 of the Constitution.[277] It is both a GFI and a regulatory agency exercising sovereign functions. For its unique functions concerning money, banking, and credit, it enjoys fiscal and administrative autonomy.[278]

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[275] Id.

[276] Republic Act No, 7653 (1993), secs. 1 and 2, par. 1 provide: SECTION 1. *Declaration of Policy*. — The State shall maintain a central monetary authority that shall function and operate as an independent and accountable body corporate in the discharge of its mandated responsibilities concerning money, banking and credit. In line with this policy, and considering its unique functions and responsibilities, the central monetary authority established under this Act, while being a government-owned corporation, *shall enjoy fiscal and administrative autonomy*.

SECTION 2. *Creation of the Bangko Sentral*. — There is hereby established an independent central monetary authority, which shall be a body corporate known as the *Bangko Sentral ng Pilipinas*, hereafter referred to as the *Bangko Sentral*.

[277] CONST., art. XII, sec. 20 provides:

SECTION 20. The Congress shall establish an independent central monetary authority, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. The authority shall provide policy direction in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions. Until the Congress otherwise provides, the Central Bank of the Philippines, operating under existing laws, shall function as the central monetary authority.

[278] Republic Act No. 7653 (1993), sec. 1.

Second, state universities and colleges are supervised and regulated by the Commission on Higher Education, a specialized body created under Republic Act No. 7722.[279] The Commission on Higher Education has, among others, the following powers and functions:

SECTION 8. *Powers and Functions of the Commission*. — The Commission shall have the following powers and functions:

a) formulate and recommend development plans, policies, priorities, and programs on higher education and research;

. . . .

d) set minimum standards for programs and institutions of higher learning recommended by panels of experts in the field and subject to public hearing, and enforce the same;

e) monitor and evaluate the performance of programs and institutions of higher learning for appropriate incentives as well as the imposition of sanctions such as, but not limited to, diminution or withdrawal of subsidy, recommendation on the downgrading or withdrawal of accreditation, program termination or school closure;

. . . .

g) recommend to the Department of Budget and Management the budgets of public institutions of higher learning as well as general guidelines for the use of their income;

h) rationalize programs and institutions of higher learning and set standards, policies and guidelines for the creation of new ones as well as the conversion or elevation of schools to institutions of higher learning, subject to budgetary limitations and the number of institutions of higher learning in the province or region where creation, conversion or elevation is sought to be made;

i) develop criteria for allocating additional resources such as research and program development grants, scholarships, and other similar programs: *Provided*, That these shall not detract

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[279] Republic Act No. 7722 (1994), Higher Education Act of 1994.

> from the fiscal autonomy already enjoyed by colleges and universities;
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> . . . .
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> k) devise and implement resource development schemes;
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> . . . .
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> m) review the charters of institutions of higher learning and state universities and colleges including the chairmanship and membership of their governing bodies and recommend appropriate measures as basis for necessary action[.][280]

The Commission on Higher Education also takes the helm of governing boards of chartered state universities and colleges.[281] The governing boards, in turn, can appoint vice presidents, deans, directors, department heads, professors, instructors, and personnel; approve the curricula, school programs, and rules of discipline; set admission and graduation policies; establish research and extension centers; fix tuition fees and other school charges; fix salaries of faculty and administrative personnel; and acquire equipment and real estate, among others.[282] Governing boards must promulgate and implement policies in accordance with the law's State policy, constitutional provisions on education, science and technology, arts, culture, and sports, and Republic Act No. 7722.[283]

Educational institutions are not businesses for profit; they provide formal instruction.[284] Under the principle of academic freedom, "institutions of higher learning have the freedom to decide for themselves the best methods to achieve their aims

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[280] Republic Act No. 7722 (1994), sec. 8.

[281] Republic Act No. 8292 (1997), sec. 3.

[282] Republic Act No. 8292 (1997), sec. 4.

[283] Republic Act No. 8292 (1997), sec. 5.

[284] See *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas*, 776 Phil. 401 (2016) [Per J. Leonen, Second Division].

and objectives, free from outside coercion, except when the welfare of the general public requires."[285]

Given the specific mandate of educational institutions, as well as the high priority given by the Constitution to education, governmental regulation over state universities and colleges are best undertaken by the Commission on Higher Education.

Third, cooperatives are "self-sufficient and independent"[286] democratic organizations, whose affairs are administered by persons elected or appointed by their members.[287] Their regulation and governing principles, including the registration and organization, are governed by Republic Act No. 6938[288] and Republic Act No. 6939.[289]

The internal affairs of cooperatives—such as their members' rights and privileges; the rules and procedures for meetings of the general assembly, board of directors and committees and for the election and qualifications of officers, directors, and committee members; capitalization and investment of capital; allocation and distribution of surpluses; dissolution and liquidation; and all other internal matters—are governed by the Cooperative Code and the by-laws of the cooperative.

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[285] *Camacho v. Coresis, Jr.*, 436 Phil. 449 (2002) [Per J. Quisumbing, Second Division].

[286] *Philippine Rural Electric Cooperatives Association v. Secretary of Interior and Local Government*, 451 Phil. 683, 696 (2003) [Per J. Puno, En Banc].

[287] *Barrameda v. Atienza*, 421 Phil. 197 (2001) [Per J. Pardo, First Division].

[288] Cooperative Code of the Philippines (1990).

[289] An Act Creating the Cooperative Development Authority to Promote the Viability and Growth of Cooperatives as Instruments of Equity, Social Justice and Economic Development, Defining its Powers, Functions and Responsibilities, Rationalizing Government Policies and Agencies with Cooperative Functions, Supporting Cooperative Development, Transferring the Registration and Regulation Functions of Existing Government Agencies on Cooperatives as such and Consolidating the Same with the Authority, Appropriating Funds Therefor, and for Other Purposes (1990).

Special provisions in the Cooperative Code pertain to agrarian reform cooperatives,[290] public service cooperatives,[291] cooperative banks,[292] credit cooperatives,[293] and cooperative insurance societies.[294] The operations of public cooperatives, cooperative banks, and cooperative insurance societies are subject to the supervision of appropriate government agencies, the Bangko Sentral ng Pilipinas, and the Insurance Commission, respectively.

Republic Act No. 6939, the law creating the Cooperative Development Authority—the primary government agency promoting and regulating the institutional development of cooperatives[295]— provides the State's policy that:

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[290] Republic Act No 6938 (1990), Ch. XI.

[291] Republic Act No. 6938 (1990), Ch. XII.

[292] Republic Act No. 6938 (1990), Ch. XIII.

[293] Republic Act No. 6938 (1990), Ch. XIV.

[294] Republic Act No. 6938 (1990), Ch. XV.

[295] Republic Act No. 6939 (1990), sec. 3 provides the powers and functions of the Cooperative Development Authority.

SECTION 3. *Powers, Functions and Responsibilities*. — The Authority shall have the following powers, functions and responsibilities:

(a) *Formulate, adopt and implement integrated and comprehensive plans and programs on cooperative development* consistent with the national policy on cooperatives and the overall socioeconomic development plans of the Government;

(b) Develop and conduct management and training programs upon request of cooperatives that will provide members of cooperatives with the entrepreneurial capabilities, managerial expertise, and technical skills required for the efficient operation of their cooperatives and inculcate in them the true spirit of cooperativism and provide, when necessary, technical and professional assistance to ensure the viability and growth of cooperatives with special concern for agrarian reform, fishery and economically depressed sectors;

(c) Support the voluntary organization and consensual development of activities that promote cooperative movements and provide assistance towards upgrading managerial and technical expertise upon request of the cooperatives concerned;

(d) Coordinate the efforts of the local government units and the private sector in promotion, organization, and development of cooperatives;

Government assistance to cooperatives shall be free from any restriction and conditionality that may in any manner infringe upon the objectives and character of cooperatives as provided in this Act. *The State shall, except as provided in this Act, maintain the policy*

(e) *Register all cooperatives and their federations and unions, including their division, merger, consolidation, dissolution or liquidation. It shall also register the transfer of all or substantially all of their assets and liabilities and such other matters as may be required by the Authority*;

(f) *Require all cooperatives, their federations and unions to submit their annual financial statements, duly audited by certified public accountants, and general information sheets*;

(g) Order the cancellation after due notice and hearing of the cooperative's certificate of registration for non-compliance with administrative requirements and in cases of voluntary dissolution;

(h) Assist cooperatives in arranging for financial and other forms of assistance under such terms and conditions as are calculated to strengthen their viability and autonomy;

(i) Establish extension offices as may be necessary and financially viable to implement this Act. Initially, there shall be extension offices in the Cities of Dagupan, Manila, Naga, Iloilo, Cebu, Cagayan de Oro and Davao;

(j) Impose and collect reasonable fees and charges in connection with the registration of cooperatives;

(k) Administer all grants and donations coursed through the Government for cooperative development, without prejudice to the right of cooperatives to directly receive and administer such grants and donations upon agreement with the grantors and donors thereof;

(l) *Formulate and adopt continuing policy initiatives consultationwith the cooperative sector through public hearing*;

(m) Adopt rules and regulations for the conduct of its internal operations;

(n) *Submit an annual report to the President and Congress on the state of the cooperative movement*; and

(o) Exercise such other functions as may be necessary to implement the provisions of cooperative laws and, in the performance thereof, the Authority may summarily punish for direct contempt any person guilty of misconduct in the presence of the Authority which seriously interrupts any hearing or inquiry with a fine of not more than Five hundred pesos (₱500.00) or imprisonment of not more than ten (10) days, or both. Acts constituting indirect contempt as defined under Rule 71 of the Rules of Court shall be punished in accordance with the said Rule. (Emphasis supplied)

of non-interference in the management and operation of cooperatives.[296] (Emphasis supplied)

Thus, that cooperatives are "envisioned to be self-sufficient and independent organizations with minimal government intervention or regulation[,]" provides reasonable basis for their exclusion.[297]

Fourth, local water districts are regulated under Presidential Decree No. 198,[298] which declares that "local water utilities should be locally-controlled and managed, as well as have support on the national level in the area of technical advisory services and financing[.]"[299] Local water districts are formed by the legislative body of any province, city, or municipality.[300] They are meant to provide and operate water supply and distribution systems, as well as operate water collection, treatment, and disposal facilities; other purposes.[301] A board of directors, to be appointed by the mayor of the city or municipality with a majority of water service connections in the area,[302] creates the policies to be implemented by the local water district.

Presidential Decree No. 198 created the Local Water Utilities Administration for these purposes:

. . . (1) to establish minimum standards and regulations in order to assure acceptable standards of construction materials and supplies, maintenance, operation, personnel, training, accounting and fiscal

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[296] Republic Act No. 6939 (2010), sec. 1(4).

[297] *Philippine Rural Electric Cooperatives Association v. Secretary of Interior and Local Government*, 451 Phil. 683, 696 (2003) [Per J. Puno, En Banc].

[298] Provincial Water Utilities Act of 1973.

[299] Presidential Decree No. 198 (1973), 5th whereas clause.

[300] Presidential Decree No. 198 (1973), Title II.

[301] Presidential Decree No. 198 (1973), sec. 5.

[302] Presidential Decree No. 198 (1973), sec. 9 in relation to sec. 3(b) was declared unconstitutional in *Rama v. Moises*, 802 Phil. 29 (2016) [Per J. Bersamin, En Banc].

practices for local water utilities; (2) to furnish technical assistance and personnel training programs for local water utilities; (3) to monitor and evaluate local water standards; (4) to effect system integration, joint investment and operations district annexation and deannexation whenever economically warranted; and (5) to provide a specialized lending institution with peculiar expertise in the financing of local water utilities.[303]

The Local Water Utility Administration establishes standards for local water utilities in terms of water quality, design, and construction of water facilities, equipment, materials and supplies, operations and maintenance, and personnel, among others. It also provides technical assistance and financing to local water utilities.

This, as well as the constitutional policy for local autonomy,[304] provides reasonable basis for excluding local water districts from the coverage of Republic Act No. 10149.

Fifth, an "economic zone authority"[305] has the power to develop and operate special economic zones as "decentralized, self-reliant

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[303] Presidential Decree No. 198 (1973), sec. 49.

[304] CONST., art. II, sec. 25 provides:

Section 25. The State shall ensure the autonomy of local governments.

[305] GCG Memorandum Circular No. 2012-04 (October 26, 2015), par. 2.1.4 clarifies that:

... The term "Economic Zone Authorities" ... shall cover only those having a charter which provides the primary purpose of which is to act as an economic zone authority, such as the Philippine Economic Zone Authority (PEZA), Aurora Pacific Economic Zone and Freeport Authority (APECO), Authority of the Freeport Area of Bataan (AFAB), Cagayan Economic Zone Authority (CEZA), Subic Bay Metropolitan Authority (SBMA) and Zamboanga City Special Economic Zone Authority (ZAMBOECOZONE).

All other chartered GOCCs where regulation of zone authorities is just an additional function, such as the Bases Conversion and Development Authority (BCDA), or nonchartered GOCCs organized and registered with the Securities and Exchange Commission (SEC), which under their articles of incorporation, are to engage in the regulation of economic zones, such as the Clark Development Corporation (CDC), John Hay Management Corporation (JHMC). and Poro Point Management Corporation (PPMC), *are within the*

and self-sustaining industrial, commercial/trading, agro-industrial, tourist, banking, financial and investment center[s.]"[306] Special economic zones "may contain any or all of the following: industrial estates[,] export processing zones[,] free trade zones, and tourist/recreational centers."[307]

The Philippine Economic Zone Authority (PEZA) is one of the excluded entities under Section 4 of Republic Act No. 10149. As the governing body for special economic zones, PEZA is given the following powers and functions under Republic Act No. 7916:[308]

SECTION 13. *General Powers and Functions of the Authority*. — The PEZA shall have the following powers and functions:

(a) To operate, administer, manage and develop the ECOZONE according to the principles and provisions set forth in this Act;

(a) To register, regulate and supervise the enterprises in the ECOZONE in an efficient and decentralized manner;

(b) To coordinate with local government units and exercise general supervision over the development, plans, activities and operations of the ECOZONES, industrial estates, export processing zones, free trade zones, and the like;

(c) In coordination with local government units concerned and appropriate agencies, to construct, acquire, own, lease, operate and maintain on its own or through contract, franchise, license,

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full coverage of R.A. No. 10149, not falling within the technical term of authorities. (Emphasis supplied)

[306] See Republic Act No. 7916 (1995), sec. 7, Special Economic Zone Act of 1995; Republic Act No. 9728 (2009), sec. 4, Freeport Area of Bataan (FAB) Act of 2009; Republic Act No. 10083 (2010), sec. 3, Aurora Pacific Economic Zone and Freeport Act of 2010.

[307] Republic Act No. 7916 (1995), sec. 4.

[308] An Act Providing for the Legai Framework and Mechanisms for the Creation, Operation, Administration, and Coordination of Special Economic Zones in the Philippines, Creating for this Purpose, the Philippine Economic Zone Authority (PEZA), and for Other Purposes.

bulk purchase from the private sector and build-operate-transfer scheme or joint venture, adequate facilities and infrastructure, such as light and power systems, water supply and distribution systems, telecommunications and transportation, buildings, structures, warehouses, roads, bridges, ports and other facilities for the operation and development of the ECOZONE;

(d) To create, operate and/or contract to operate such agencies and functional units or offices of the authority as it may deem necessary;

(e) To adopt, alter and use a corporate seal; make contracts, lease, own or otherwise dispose of personal or real property; sue and be sued; and otherwise carry out its duties and functions as provided for in this Act;

(f) To coordinate the formulation and preparation of the development plans of the different entities mentioned above;

(g) To coordinate with the National Economic and Development Authority (NEDA), the Department of Trade and Industry (DTI), the Department of Science and Technology (DOST), and the local government units and appropriate government agencies for policy and program formulation and implementation; and

(h) To monitor and evaluate the development and requirements of entities in subsection (a) and recommend to the local government units or other appropriate authorities the location, incentives, basic services, utilities and infrastructure required or to be made available for said entities.

Under Republic Act No. 7916, the PEZA Board is authorized to "[s]et the general policies on the establishment and operations of the [special economic zones], industrial estates, export processing zones, free trade zones, and the like[.]"[309] It reviews proposals to establish special economic zones; facilitates and assists in organizing these entities; and regulates the establishment, operation, and maintenance of utilities, other services, and infrastructures in the economic zone

[309] Republic Act No. 7916, (1995), sec. 12.

These functions are vested in economic zone authorities to decentralize governmental functions and authority, promoting an efficient and effective working relationship among the special economic zone, the national government, and the local government units.[310] Further, Section 7 of Republic Act No. 7916 provides for the intended self-reliance and independence of the special economic zones. It states in part:

> SECTION 7. *ECOZONE to be a Decentralized Agro-Industrial, Industrial, Commercial/Trading, Tourist, Investment and Financial Community*. — Within the framework of the Constitution, the interest of national sovereignty and territorial integrity of the Republic, *the ECOZONE shall be developed, as much as possible, into a decentralized, self-reliant and self-sustaining industrial, commercial/trading, agro-industrial, tourist, banking, financial and investment center with minimum government intervention*. Each ECOZONE shall be provided with transportation, telecommunications, and other facilities needed to generate linkage with industries and employment opportunities for its own inhabitants and those of nearby towns and cities.
>
> *The ECOZONE shall administer itself* on economic, financial, industrial, tourism development and such other matters within the exclusive competence of the national government. (Emphasis supplied)

Petitioner Pichay cites the Authority of the Freeport Area of Bataan, the Aurora Pacific Economic Zone and Freeport Authority, the Clark Development Corporation, the Cagayan Economic Zone Authority, the Philippine Economic Zone Authority, the Philippine Retirement Authority, the Phividec Industrial Authority, the Subic Bay Metropolitan Authority, and the Zamboanga City Special Economic Zone Authority as economic zone authorities unreasonably excluded from Republic Act No. 10149's coverage. However, the enabling statutes of these cited entities[311] all similarly indicate their establishment as "decentralized," "self-reliant," or "self-sustaining" areas.[312]

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[310] Republic Act No. 7916, (1995), sec. 53.

[311] *Rollo* (G.R. No. 197950), pp. 274-275.

[312] Republic Act No. 9728 (2009), sec. 4; Republic Act No. 10083 (2010), sec. 3(a); Republic Act No 7227 (1992), sec. 12(a); Republic Act No. 7922 (1995), Sec. 4(a); and Republic Act No. 7903 (1995), sec. 4(a).

In any event, petitioner Pichay's contention regarding the Clark Development Corporation has been rendered moot by GCG Memorandum Circular No. 2014-01, which explicitly included the corporation in the law's scope.[313] Further, the enabling statutes of the Philippine Retirement Authority and the PHIVIDEC Industrial Authority, which petitioner Pichay also deems unreasonably excluded from the law's coverage, do not indicate their primary purpose as economic zone authorities. His contentions regarding these agencies are, thus, immaterial.

Sixth, research institutions,[314] such as state universities and colleges, are not organized for business or regulation, but primarily for scientific and educational purposes to assist the government in the pursuit of economic and national development.

For instance, the Philippine Institute for Development Studies was created to "perform policy-oriented research on all aspects of the Philippine economy and assist the government in formulating plans and policies for national development[.]"[315] The Philippine Rice Research Institute was created to "develop . . . a national rice research program . . . and ultimately promote the general welfare of the people through self-sufficiency in rice production."[316]

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[313] GCG Memorandum Circular No. 2014-01 (2014), par. 2.2.

[314] GCG Memorandum Circular No. 2012-04 (2015), par. 2.1.5 clarifies that:

> The term *"Research Institutions" referred to in Section 4 of R.A. No. 10149 as being excluded from the coverage of the Act, shall cover only those having a charter which provides the primary purpose of which is to act as a research institution, such as Philippine Rice Research Institute (PRRI) and the Philippine Institute for Development Studies (PIDS).* All other chartered GOCCs where engaging in research constitutes merely an additional function of the GOCC, such as the Development Academy of the Philippines (DAP), or nonchartered GOCCs organized under their articles of incorporation to engage into institutional research, are within the full coverage of R.A. No. 10149. (Emphasis supplied)

[315] Presidential Decree No. 1201 (1977), 4th whereas clause.

[316] Executive Order No. 1061 (1985), sec. 2, Establishing the Philippine Rice Research Institute (PRRI).

Republic Act No. 10149 aims to make GOCCs more accountable for their operations and to enhance the State's objectives of public service. However, these objectives must be harmonized with the independence required by certain entities to efficiently and adequately perform their mandated functions, and should be read together with the inherent functions of the other excluded entities. The enabling statutes of the excluded entities, together with the State policy in the Constitution, make it clear that there is reasonable basis for their exclusion.

Since Republic Act No. 10149's distinctions are based on good law, and cover "all GOCCs, GICPs/GCEs, and government financial institutions, including their subsidiaries,"[317] except those subject to reasonable distinctions, the exclusions are not limited to existing conditions and may be deemed to apply equally to all members of the same class.

In any event, "Congress is allowed a wide leeway in providing for a valid classification."[318] This power is a matter of legislative discretion, which this Court upholds barring any clear showing of arbitrariness.[319] In *Tolentino v. Board of Accountancy*,[320] this Court discussed more on permissible legislative classification:

> The general rule is well settled that legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects all persons similarly situated, is not within the prohibition of the 14th Amendment. The mere fact that legislation is based on a classification and is made to apply only to a certain limited group of persons, and not to others, does not affect its validity, if it is so made that all persons subject to its terms are treated alike under similar circumstances and conditions.

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[317] Republic Act No. 10149 (2010), sec. 4.

[318] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 560 (2004) [Per J. Puno, En Banc].

[319] *Ichong v. Hernandez*, 101 Phil. 1155 (1957) [Per J. Labrador, En Banc].

[320] 90 Phil. 83 (1951) [Per J. Bautista Angelo, En Banc].

> The legislature may classify professions, occupations, and business, according to natural and reasonable lines of distinction, and if a statute affects alike all persons of the same class it is not invalid as class legislation; ...
>
> Classification of businesses, occupations, and callings may be made according to natural, reasonable, and well-recognized lines of distinction, and the mere fact that a statute or ordinance applies only to a particular position or profession, or to a particular trade occupation, or business, or discriminates between persons in different classes of occupations or lines or business, does not render it unconstitutional as class legislation, and such statutes are valid whenever the partial application or discrimination is based on real and reasonable distinctions existing in the subject matter, and affects alike all persons of the same class or pursuing the same business under the same conditions[.][321] (Citations omitted)

Further, *Victoriano v. Elizalde Rope Worker's Union*[322] provides guidance on the extent of Congress's discretion in making valid legal classifications:

> *In the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion.* It is not necessary that the classification be based on scientific or marked differences of things or in their relation. Neither is it necessary that the classification be made with mathematical nicety. *Hence legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear*.[323] (Emphasis supplied, citations omitted)

In sum, excluding certain entities—the Bangko Sentral ng Pilipinas, state universities and colleges, local water utility

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[321] Id. at 89-90.

[322] 158 Phil. 60 (1974) [Per J. Zaldivar, En Banc].

[323] Id. at 87-88.

districts, cooperatives, economic zone authorities, and research institutions—from the law's coverage does not violate the equal protection clause, because there is reasonable basis to do so. Without a showing that the exclusions under Section 4 of Republic Act No. 10149 created unreasonable distinctions between classes of entities, this Court finds that the exclusions were valid.

VI

Finally, petitioners claim that Republic Act No. 10149 is a general law, and thus, cannot supersede particular GOCC charters, which are specific laws.

As a rule, a general law does not repeal a prior special law on the same subject, *unless the legislative intent to modify or repeal the earlier special law through the general law is manifest*.[324]

Hospicio de San Jose de Barili Cebu City v. Department of Agrarian Reform[325] provides the standard for when a general law may be deemed to have manifested legislative intent to repeal a specific law:

> The crafters of P.D. No. 27 and the CARL were presumably aware of the radical scale of the intended legislation, and the massive effects on property relations nationwide. Considering the magnitude of the changes ordained in these laws, it would be foolhardy to require or expect the legislature to denominate each and every law that would be consequently or logically amended or repealed by the new laws. Hence, the viability of general repealing clauses, which are existent in both P.D. No. 27 and the CARL, as a means of repealing all previous enactments inconsistent with revolutionary new laws. *The presence of such general repealing clause in a later statute clearly indicates the legislative intent to repeal all prior inconsistent laws on the subject*

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[324] See *Hospicio de San Jose de Barili Cebu City v. Department of Agrarian Reform*, 507 Phil. 586 (2005) [Per J. Tinga, Second Division]; *Fabella v. Court of Appeals*, 346 Phil. 940 (1997) [Per J. Panganiban, Third Division]; and *Villegas v. Subido*, 148-B Phil. 668 (1971) [Per J. Fernando, En Banc].

[325] 507 Phil. 586 (2005) [Per J. Tinga, Second Division].

matter, whether the prior law is a general law or a special law, or as in this case, a special private law. Without such clause, a later general law will ordinarily not repeal a prior special law on the same subject. But *with such clause contained in the subsequent general law, the prior special law will be deemed repealed, as the clause is a clear legislative intent to bring about that result*.[326] (Emphasis supplied, citations omitted)

In Republic Act No. 10149, Congress's intent to modify relevant portions of the GOCC charters is clear. Section 32 expresses the law's intent to supersede all corresponding charters of affected GOCCs:

SECTION 32. *Repealing Clause*. — The charters of the GOCCs under existing laws and all other laws, executive orders including Executive Order No. 323, Series of 2000, administrative orders, rules, regulations, decrees and other issuances or parts thereof which are inconsistent with the provisions of this Act are hereby revoked, repealed or modified accordingly.

Furthermore, specific provisions in Republic Act No. 10149 are explicitly mandated to govern despite the GOCC charters. These are: (a) qualifications required for appointive directors;[327] (b) duties, obligations, responsibilities and standards of care required of the members of the Board of Directors/Trustees and Officers of GOCCs;[328] (c) term of office;[329] and (d) limits to compensation, per diems, allowances, and incentives.[330]

Section 30 also states that GOCC charters shall suppletorily apply insofar as they are not inconsistent with Republic Act No. 10149:

SECTION 30. *Suppletory Application of The Corporation Code and Charters of the GOCCs*. — The provisions of "The Corporation

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[326] *Id*. at 602.

[327] Republic Act No. 10149 (2010), sec. 5(e).

[328] Republic Act No. 10149 (2010), sec. 12.

[329] Republic Act No. 10149 (2010), sec. 17.

[330] Republic Act No. 10149 (2010), sec. 17.

Code of the Philippines" and the provisions of the charters of the relevant GOCC, insofar as they are not inconsistent with the provisions of this Act, shall apply suppletorily to GOCCs.

Thus, there is no merit to petitioners' contentions regarding Republic Act No. 10149's status as a general law.

Petitioners' lack of standing aside, this Court holds that Republic Act No. 10149 introduces valid changes to the terms and conditions for service in GOCCs. Congress acted within its discretion when it modified, in good faith and in accordance with the objectives and policies contained in valid laws, the aspects of public offices which exist by virtue of the same exercise of legislative power.

Congress enacted Republic Act No. 10149 to address the reported abuses, poor performance, and inefficiencies in the operations of GOCCs. The law, among others, reduced the terms of incumbent GOCC officers and created a central policy-making and regulatory body for GOCCs, tasked with reforming and developing a standardized compensation and position classification system for GOCCs.

These actions were geared toward achieving what Congress perceived to be a great public need. It is not for this Court to address questions of legislative policy or wisdom lest it act as a third Congress and in excess of its duty as a co-equal branch of government. Absent any clear showing of unconstitutionality, these provisions, duly deliberated upon and approved by the legislature, are upheld.

WHEREFORE, the Petitions are **DENIED**.

SO ORDERED.

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

EN BANC

[G.R. No. 203754. November 3, 2020]

FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, *Petitioner*, *v.* **COLON HERITAGE REALTY CORPORATION, operator of Oriente Group of Theaters, represented by ISIDORO A. CANIZARES,** *Respondent*.

[G.R. No. 204418. November 3, 2020]

FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, *Petitioner*, *v.* **CITY OF CEBU and SM PRIME HOLDINGS, INC.,** *Respondents*.

SYLLABUS

POLITICAL LAW; STATUTES; OPERATIVE FACT DOCTRINE; THE COURT'S RULING IN *FDCP V. CHRC*, CLARIFIED.— In fine, the Court hereby clarifies that pursuant to the operative fact doctrine, FDCP's right to claim **all taxes withheld by proprietors, operators or lessees of theatres or cinemas, which may otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of RA 7160 during the period the graded film is exhibited**, is only recognized from **the date of effectivity of RA 9167 up until October 15, 2019 (finality of this case)**. x x x In this regard, it is fitting to elucidate that per the explicit wordings of Section 14 of RA 9167, the right of FDCP to the amusement taxes is only with respect to the amusement taxes withheld **during the period the graded film is exhibited** x x x This means that if the graded film is not exhibited, FDCP has no right to claim the withheld taxes.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Tequillo Suson Manuales & Associates for respondent Colon Heritage Realty Corp. in G.R. No. 203754.

Josefina Wan-Remollo for respondent.

City Legal Office for respondent City of Cebu.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is the Urgent Motion for Clarification (Urgent Motion)[1] dated January 8, 2020 filed by respondent SM Prime Holdings, Inc. (SMPHI) with respect to the Court's **Resolution**[2] **dated October 15, 2019** (October 15, 2019 Resolution) which **denied with finality** the motion for reconsideration[3] filed by petitioner Film Development Council of the Philippines (FDCP) and the motion for partial reconsideration[4] filed by respondent City of Cebu, while partially granting the manifestation[5] filed by respondent Colon Heritage Realty Corporation (CHRC), all relative to the Court's Decision dated June 16, 2015[6] (June 16, 2015 Decision) on the main.

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[1] *Rollo* (G.R. No. 204418), pp. 612-615.

[2] Id. at 600-611.

[3] *Rollo* (G.R. No. 203754), pp. 287-299.

[4] Captioned as "Motion for Partial Reconsideration (To the Decision of this Honorable Court promulgated on June 16, 2015) for Respondent City of Cebu" dated September 16, 2015; id. at 314-334.

[5] ([W]ith a Motion for Partial Reconsideration or Motion to Remand Trial Proceedings to determine Respondent's Full Payment and Compliance with the Decision); id. at 300-306.

[6] *Rollo* (G.R. No. 204418), p. 610. See also *FDCP v. CHRC*, 760 Phil. 519, 541-548 (2015).

The Facts

To recount, on June 7, 2002, Congress passed Republic Act No. (RA) 9167,[7] creating the FDCP. Sections 13 and 14 thereof provide that the **amusement tax on certain graded films which would otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of RA 7160**[8] **(or the Local Government Code [LGC]) during the period the graded film is exhibited**, should be deducted and withheld by the proprietors, operators or lessees of theaters or cinemas and remitted to the FDCP, which shall reward the same to the producers of the graded films.[9]

In the June 16, 2015 Decision, the Court struck down as invalid and unconstitutional Sections 13 and 14 of RA 9167, essentially holding that these provisions violated the principle of local fiscal autonomy because they authorized FDCP to earmark, and hence, effectively confiscate the amusement taxes which should have otherwise inured to the benefit of the local government units (LGUs).[10] However, recognizing the existence of these statutory provisions and the reliance of the public thereto prior to their being declared unconstitutional, the Court applied the doctrine of operative fact and held, among others, that: **(1)** FDCP and the producers of graded films need not return the amounts already received from the LGUs because they merely complied with the provisions of RA 9167 which were in effect at that time; and **(2)** any amounts retained by cinema proprietors and operators due to FDCP at that time should be remitted to

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[7] Entitled "AN ACT CREATING THE FILM DEVELOPMENT COUNCIL OF THE PHILIPPINES, DEFINING ITS POWERS AND FUNCTIONS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES, REPUBLIC ACT NO. 9167," approved on June 7, 2002.

[8] Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991" (January 1, 1992).

[9] See *FDCP v. CHRC*, G.R. Nos. 203754 and 204418 (Resolution), October 15, 2019.

[10] See id. See also *FDCP v. CHRC* (2015), supra note 6.

the latter since Sections 13 and 14 of RA 9167 produced legal effects prior to their being declared unconstitutional.[11]

In the October 15, 2019 Resolution, the Court **denied with finality** the motion for reconsideration of FDCP,[12] which hence, rendered the issue anent the unconstitutionality of Sections 13 and 14 of RA 9167 final and executory. In fact, FDCP has not further contested this issue.

This notwithstanding, SMPHI, in the present Urgent Motion, has drawn the Court's attention to the fact that it received a Memorandum dated December 11, 2019 (Memorandum), wherein FDCP's Chairperson and CEO, Mary Liza B. Dino, directed all theater owners to process all amusement tax remittances accorded to films graded before **December 10, 2019**, *i.e.*, the date it received the Court's October 15, 2019 Resolution,[13] with a further warning that non-compliance therewith will result in legal action.[14] Notably, FDCP, in its Comment to SMPHI's Urgent Motion, stated that "**[f]or FDCP, the reckoning point of the finality of [the Court's June 16, 2015 Decision and October 15, 2019 Resolution] is December 10, 2019**,"[15] since it received the latter resolution on said date.

In the foregoing regard, SMPHI, in its Urgent Motion, avers that the amusement taxes collected from the exhibition of the graded films during the Metro Manila Film Festival were not yet due to FDCP. **It claims that the screening of the films started on December 25, 2019 and most of them stopped on January 7, 2020**. Thus, the amusement taxes would have been due for remittance to FDCP thirty (30) days after or on February 6, 2020 by virtue of Section 14 of RA 9167.[16]

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[11] See id.

[12] Id.

[13] *Rollo* (G.R. No. 204418), p. 621.

[14] Id. at 614.

[15] Id.; emphasis supplied.

[16] Id. at 614.

Accordingly, SMPHI seeks clarification from the Court as follows:

> WHEREFORE, it is respectfully prayed of the Honorable Court to clarify its Decision dated June 16, 2015 and the Resolution dated October 15, 2019 with regard to the effectivity of the application of the Operative Fact Doctrine to films graded before December 10, 2019 where the amusement taxes withheld are or were due for remittance to Petitioner FDCP after December 10, 2019, specifically those graded films, exhibited during the Metro Manila Film Festival, which were graded prior to [the] Finality of the Honorable Court's Decision dated June 16, but were exhibited after the Finality of the Honorable court's Decision.[17]

Commenting[18] to the Urgent Motion, FDCP avers that the amusement taxes based on the sales completed prior to the finality of the Court's Decision (which it claims to be on December 10, 2019, or the date of its receipt of the October 15, 2019 Resolution) already accrued to FDCP. According to FDCP, the accrual of the amusement tax is distinct from the obligation to pay the same. Citing Section 140 of RA 7160, the tax is on the gross receipt or the amount paid by the film patron to the theater owner. The time, manner, and terms and conditions for the payment of tax is different from the accrual of tax upon point of sale generating a gross receipt. Thus, at the point of sale, the theater owner is duty bound to collect this tax and hold it for the government, and pursuant to Section 14 of RA 9167, concomitantly bound to remit to FDCP.[19]

The Issue Before the Court

The issue for clarification is whether or not SMPHI should remit to FDCP amusement taxes withheld or which were due for remittance after December 10, 2019, specifically for the graded films exhibited during the Metro Manila Film Festival.

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[17] Id.

[18] Dated August 28, 2020. Id. at 619-625.

[19] Id. at 622-623.

The Court's Ruling

At the onset, it is apt to note that the propriety to clarify the Court's own decision or resolution in a given case rests on its sole prerogative, in line with its inherent power to "amend and control its process and orders so as to make them conformable to law and justice."[20] As held in one case, "[t]he inherent power of the court carries with it the right to determine every question of fact and law which may be involved in the execution."[21]

While the Court observes that its resolution in this case had already attained finality on October 15, 2019, the Court deems it apt to entertain SMPHI's motion for clarification concerning the above issue due to the misguided interpretation of the FDCP in the higher interest of justice.

Primarily, it should be borne in mind that per the Court's procedure, when motion for reconsideration of a decision/ resolution on the main is denied with finality, it means that there is no more recourse by the losing party to contest the same. Unless the Court grants leave upon further motion of a party, a denial with finality necessarily signifies that no further pleadings, motions, or papers concerning the issue disposed of shall be entertained. This therefore signifies that, regardless of the date of receipt of the judgment, this Court's disposition contained in the decision or resolution should already be deemed effective. Since there is no further recourse by the losing party, the date of its receipt thereof would be of no practical consequence.

In this case, the Court, in the October 15, 2019 Resolution, had already denied with finality, among others, FDCP's motion for reconsideration of the June 16, 2015 Decision on the main:

WHEREFORE, the motion for reconsideration dated August 5, 2015 of petitioner Film Development Council of the Philippines and the motion for partial reconsideration dated September 16, 2015 of

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[20] Section 5 (g), Rule 135, RULES OF COURT.

[21] *Mejia v. Gabayan*, 495 Phil. 459, 471-472 (2005).

respondent City of Cebu are **DENIED with FINALITY** for lack of merit.

On the other hand, the Manifestation (with a Motion for Partial Reconsideration or Motion to Remand Trial Proceedings to determine Respondent's Full Payment and Compliance with the Decision) dated August 24, 2015 of respondent Colon Heritage Realty Corporation (CHRC) is **PARTLY GRANTED**. Accordingly, Civil Case No. CEB-35601 is hereby **REMANDED** to the Regional Trial Court of Cebu City, Branch 5 to determine whether the amusement taxes for the covered period have been paid by CHRC in accordance with this Resolution.

SO ORDERED.[22]

The Court's denial with finality of FDCP's motion for reconsideration had already put to rest any issue anent the constitutionality of Sections 13 and 14 of RA 9167. As abovementioned, the Court held that these provisions violated the principle of local fiscal autonomy because they authorized FDCP to earmark, and hence, effectively confiscate the amusement taxes which should have otherwise inured to the benefit of the LGUs. For reference, these provisions read:

Section 13. *Privileges of Graded Films*. — Films which have obtained an "A" or "B" grading from the Council pursuant to Sections 11 and 12 of this Act shall be entitled to the following privileges:

a. Amusement tax reward. — A grade "A" or "B" film shall entitle its producer to an incentive equivalent to the amusement tax imposed and collected on the graded films by cities and municipalities in Metro Manila and other highly urbanized and independent component cities in the Philippines pursuant to Sections 140 and 151 of Republic Act No. 7160 at the following rates:

    1. For grade "A" films — 100% of the amusement tax collected on such films; and

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[22] *FDCP v. CHRC*, G.R. Nos. 203754 and 204418 (Resolution), October 15, 2019, supra note 9.

> 2. For grade "B" films — 65% of the amusement tax collected on such films. The remaining thirty-five (35%) shall accrue to the funds of the Council.
>
> Section 14. *Amusement Tax Deduction and Remittances*. — All revenue from the amusement tax on the graded film which may otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of Republic Act No. 7160 during the period the graded film is exhibited, shall be deducted and withheld by the proprietors, operators or lessees of theatres or cinemas and remitted within thirty (30) days from the termination of the exhibition to the Council which shall reward the corresponding amusement tax to the producers of the graded film within fifteen (15) days from receipt thereof.
>
> Proprietors, operators and lessees of theaters or cinemas who fail to remit the amusement tax proceeds within the prescribed period shall be liable to a surcharge equivalent to five percent (5%) of the amount due for each month of delinquency which shall be paid to the Council. (Emphases and underscoring supplied)

With the unconstitutionality of these provisions, proprietors, operators or lessees of theatres or cinemas are no longer under any obligation to remit to FDCP the amusement taxes on graded films, which should have accrued to the LGUs. Conversely, FDCP no longer had any legal right to receive or demand the same.

However, in light of the operative fact doctrine, the Court gave these provisions limited application in that FDCP was authorized to retain the aforesaid amusement taxes already received from proprietors, operators or lessees of theatres or cinemas during the provisions' effectivity. With the Court's final denial of FDCP's motion for reconsideration on October 15, 2019, FDCP had lost its right to retain, nay, collect or demand, any amusement tax from proprietors, operators or lessees of theatres or cinemas pursuant to the stricken down Sections 13 and 14 of RA 9167. The limited recognition of FDCP's right to these taxes, although coming from unconstitutional and hence, void provisions, is only based on the operative fact doctrine, which is in turn, premised on the public reliance thereto at the

time of their existence. Thus, since Sections 13 and 14 of RA 9167 had already been declared unconstitutional with finality on October 15, 2019, no one can validly claim reliance on these provisions anymore from that point on, much less be a source of any right or entitlement in favor of FDCP.

To reiterate, the fact that FDCP received the October 15, 2019 Resolution on December 10, 2019 is of no moment. While the finality of decisions or resolutions of this Court is, per the Internal Rules of the Supreme Court,[23] counted fifteen (15) days from the party's receipt,[24] this reglementary period pertains to decisions or resolutions on the main. FDCP had already received the main decision in this case declaring Sections 13 and 14 as unconstitutional and had in fact, duly filed a motion for reconsideration within the fifteen (15)-day period. At the risk of belaboring the point, FDCP's motion for reconsideration had already been denied with finality, which therefore means that it had no further recourse under the Rules. In fact, from

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[23] A.M. No. 10-4-20-SC, August 29, 2017, as amended.

[24] RULE 15
FINALITY OF DECISION AND RESOLUTIONS

Section 1. *Finality of decisions and resolutions*. — A decision or resolution of the Court may be deemed final after the lapse of fifteen days from receipt by the parties of a copy of the same subject to the following:

(a) the date of receipt indicated on the registry return card signed by the party — or, in case he or she is represented by counsel, by such counselor his or her representative — shall be the reckoning date for counting the fifteen-day period; and

(b) if the Judgement Division is unable to retrieve the registry return card within thirty (30) days from mailing, it shall immediately inquire from the receiving post office on (i) the date when the addressee received the mailed decision or resolution; and (ii) who received the same, with the information provided by authorized personnel of the said post office serving as the basis for the computation of the fifteen-day period. [As amended on August 3, 2010]

Section 2. Motion for reconsideration. — A motion for reconsideration filed within the fifteen-day period from receipt of a copy of the decision or resolution shall stay the execution of such decision or resolution unless, for good reasons shown, the Court directs otherwise.

that time on, FDCP did not any more contest the Court's disposition through any subsequent motion. This notwithstanding, FDCP, through the alleged Memorandum dated December 11, 2019, still sought all theater owners to process all amusement tax remittances accorded to films graded before December 10, 2019. This FDCP can no longer do. Notwithstanding FDCP's receipt of the Court's October 15, 2019 Resolution on December 10, 2019, it has simply no more right, under the law or equity, to the amusement taxes accruing in favor of the LGUs. Beginning October 15, 2019, its limited refuge under the operative fact doctrine had already ended.

In fine, the Court hereby clarifies that pursuant to the operative fact doctrine, FDCP's right to claim **all taxes withheld by proprietors, operators or lessees of theatres or cinemas, which may otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of RA 7160 during the period the graded film is exhibited**, is only recognized from **the date of effectivity of RA 9167 up until October 15, 2019 (finality of this case)**.

Hence, in response to the query in the Urgent Motion, SMPHI should no longer remit to FDCP amusement taxes withheld or which were due for remittance after December 10, 2019, specifically for the graded films exhibited during the Metro Manila Film Festival.

In this regard, it is fitting to elucidate that per the explicit wordings of Section 14 of RA 9167, the right of FDCP to the amusement taxes is only with respect to the amusement taxes withheld **during the period the graded film is exhibited**:

> Section 14. *Amusement Tax Deduction and Remittances.* — All revenue from the amusement tax on the graded film which may otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of Republic Act No. 7160 **during the period the graded film is exhibited**, shall be deducted and withheld by the proprietors, operators or lessees of theatres or cinemas and remitted within thirty (30) days from the termination of the

exhibition to the Council which shall reward the corresponding amusement tax to the producers of the graded film within fifteen (15) days from receipt thereof.

x x x x

This means that if the graded film is not exhibited, FDCP has no right to claim the withheld taxes.

To be sure, Section 14 should be read in conjunction with the other provisions of RA 9167 pursuant to the rule that "[e]very part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment."[25] While amusement taxes under Section 140 of the LGC, from a taxation law perspective, accrues from the point of sale where gross receipts are generated,[26] the authority of FDCP under Section 14 of RA 9167 is not exactly a taxing authority similar to what has been conferred by Congress to the LGUs. As explained in the June 16, 2015 Decision on the main:

RA 9167, Sec. 14 states:

Section 14. *Amusement Tax Deduction and Remittance*. — All revenue from the amusement tax on the graded film which may otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of Republic Act No. 7160 during the period the graded film is exhibited, shall be deducted and withheld by the proprietors, operators or lessees of theaters or cinemas and remitted within thirty (30) days from the termination of the exhibition

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[25] *Tan v. Crisologo*, G.R. No. 193993, November 8, 2017, 844 SCRA 365, 383.

[26] Section 140. *Amusement Tax*. — (a) The province may levy an amusement tax to be collected from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement at a rate of not more than thirty percent (30%) of **the gross receipts from admission fees**.

x x x x (Emphasis supplied)

to the Council which shall reward the corresponding amusement tax to the producers of the graded film within fifteen (15) days from receipt thereof.

A reading of the challenged provision reveals that the power to impose amusement taxes was NOT removed from the covered LGUs, unlike what Congress did for the taxes enumerated in Sec. 133, Article X of the LGC, which lays down the common limitations on the taxing powers of LGUs. x x x

x x x x x x x x x

From the above, the difference between Sec. 133 and the questioned amendment of Sec. 140 of the LGC by RA 9167 is readily revealed. In Sec. 133, what Congress did was to prohibit the levy by LGUs of the enumerated taxes. **For RA 9167, however, the covered LGUs were deprived of the income which they will otherwise be collecting should they impose amusement taxes**, or, in petitioner's own words, "Section 14 of [RA 9167] can be viewed as an express and real intention on the part of Congress to remove from the LGU's delegated taxing power, all revenues from the amusement taxes on graded films which would otherwise accrue to [them] pursuant to Section 140 of the [LGC]."

In other words, per RA 9167, covered LGUs still have the power to levy amusement taxes, albeit at the end of the day, they will derive no revenue therefrom. The same, however, cannot be said for FDCP and the producers of graded films since the amounts thus levied by the LGUs which should rightfully accrue to them, they being the taxing authority—will be going to their coffers. As a matter of fact, it is only through the exercise by the LGU of said power that the funds to be used for the amusement tax reward can be raised. **Without said imposition, the producers of graded films will receive nothing from the owners, proprietors and lessees of cinemas operating within the territory of the covered LGU.**

Taking the resulting scheme into consideration, it is apparent that what Congress did in this instance was not to exclude the authority to levy amusement taxes from the taxing power of the covered LGUs, but to earmark, if not altogether confiscate, the income to be received by the LGU from the taxpayers in favor of and for transmittal to FDCP, instead of the taxing authority. This, to Our mind, is in clear contravention of the constitutional command that taxes levied by LGUs shall accrue exclusively to said LGU and is repugnant to the

power of LGUs to apportion their resources in line with their priorities.[27] (Emphases supplied)

Section 14 of RA 9167 is a peculiar provision which merely diverts or channels the revenue from the amusement tax on the graded film to a different recipient-beneficiary, FDCP. FDCP is not conferred with taxing authority but is only entitled to the remittances which should have accrued in favor of the LGUs pursuant to Section 140 of the LGC. FDCP's right to remittances is, however, capped by the phrase all revenue "**during the period the graded film is exhibited**." This right of FDCP to receive amusement tax remittances during the period the graded film is exhibited aligns with its statutory mandate "[t]o develop and implement an incentive and reward system for the producers based on merit to encourage the production of quality films" and "[t]o develop and promote programs to enhance the skills and expertise of Filipino talents necessary for quality film production"[28] and in relation thereto, gives amusement tax rewards as an incentive and privilege to graded films of superior quality. Section 13 of RA 9167 reads:

> Section 13. *Privileges of Graded Films*. — Films which have obtained an "A" or "B" grading from the Council pursuant to Sections 11 and 12 of this Act shall be entitled to the following privileges:
>
> a. Amusement tax reward. — A grade "A" or "B" film shall entitle its producer to an incentive equivalent to the amusement tax imposed and collected on the graded films by cities and municipalities in Metro Manila and other highly urbanized and independent component cities in the Philippines pursuant to Sections 140 and 151 of Republic Act No. 7160 at the following rates:
>
> 1. For grade "A" films — 100% of the amusement tax collected on such films; and

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[27] Supra note 6.

[28] Section 3 (2) and (5) of RA 9167.

> 2. For grade "B" films — 65% of the amusement tax collected on such films. The remaining thirty-five (35%) shall accrue to the funds of the Council.

As expressed in Section 14 of RA 9167, it is the remitted revenue coming from the amusement tax on the graded film which serves as the reward to the producers of the graded film contemplated under Section 13. Therefore, if the film is not graded and later exhibited, no reward entitlement exists. Accordingly, this is the reason why Section 14 limits the FDCP's right only to "[a]ll revenue from the amusement tax on the graded film which may otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of [the LGC] **during the period the graded film is exhibited**."[29] If the graded film for which the revenue to be realized is yet to be exhibited, the taxes deducted/withheld should go to the LGUs. Conversely, once the graded film is exhibited, all revenue from the amusement tax derived during its exhibition should be remitted to FDCP. To opine otherwise would suppose that FDCP was conferred with taxing authority when it was not. FDCP has a dedicated function to develop the film industry by giving rewards to graded films which are intended to be exhibited. This function is not subserved when the graded film is not at all exhibited to the viewing public. In this sense, FDCP's right to receive the revenue from amusement taxes (meant as an incentive to graded film makers) is therefore contingent on the exhibition of the graded film.

Thus:

1. FDCP is not required to return to the LGUs all remittances already received by it from proprietors, operators or lessees of theatres or cinemas pursuant to its implementation of Sections 13 and 14 of RA 9167 from the effectivity of RA 9167 up until October 15, 2019 (finality of this case);

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[29] Emphasis and underscoring supplied.

2. Proprietors, operators or lessees of theatres or cinemas are obliged to remit to FDCP all revenue from the amusement tax on the graded film which may otherwise accrue to the cities and municipalities in Metropolitan Manila and highly urbanized and independent component cities in the Philippines pursuant to Section 140 of the LGC during the period the graded film is exhibited, *provided* that, revenue to be remitted to FDCP arises only from graded films already exhibited during the period of the effectivity of RA 9167 up until October 15, 2019 (finality of this case).

As a final point, it must be reiterated that Sections 13 and 14's limited recognition is only premised on the application of the operative fact doctrine. Sections 13 and 14 are void statutory provisions which should not have produced legal effects were it not for the operative fact doctrine. Indeed, to allow FDCP to claim revenue from amusement taxes at the point of sale although the film is to be exhibited post-October 15, 2019 would not only defy the express language of Section 14 which caps FDCP's right to revenues from amusement taxes "during the period the graded film is exhibited," it would also deprive the LGUs of revenue that should have, beginning October 15, 2019, rightfully redounded to their benefit.

With the foregoing clarifications made, the Court will not entertain anymore pleadings, motions, and papers in this case. All further actual and justiciable matters/issues springing from its June 16, 2015 Decision and October 15, 2019 Resolution must be duly brought before the Court in the separate case for the purpose, lest it be bombarded with unlimited queries beyond the auspices of this case.

WHEREFORE, the Court hereby **CLARIFIES** its Decision dated June 16, 2015 and Resolution dated October 15, 2019 in accordance with this Resolution. No further pleadings, motions, and papers will be entertained.

Let entry of judgment[30] be **IMMEDIATELY ISSUED** reflecting the finality date of this case on **October 15, 2019**.

SO ORDERED.

Peralta, C.J., Leonen, Caguioa, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

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[30] Section 1, Rule 16 of the INTERNAL RULES OF THE SUPREME COURT reads:

> RULE 16
> ENTRY OF JUDGMENT
>
> Section 1. *Entry of judgment*. — The entry of judgment covering the final decisions and resolutions of the Court shall be made in accordance with the Rules of Court. The date of entry of judgment shall be the date such decision or resolution becomes executory, unless the Court directs its immediate execution.

In turn, Section 2, Rule 36 of the 1997 RULES OF CIVIL PROCEDURE states:

> Section 2. *Entry of Judgments and Final Orders*. — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. **The date of finality of the judgment or final order shall be deemed to be the date of its entry**. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory. (Emphasis supplied)

FIRST DIVISION

[G.R. No. 208776. November 3, 2020]

THE HEIRS OF LOPE MALAQUE, namely: LOTY LATONIO MALAQUE, ET AL., *Petitioners*, *v.* **HEIRS OF SALOMON MALAQUE, namely: SABINA MALAQUE PANO, MARCELINA MALAQUE SAQUIN, CATALINA MALAQUE PEPITO, AGRIPINO MALAQUE, AND HILARIO MALAQUE,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE RULE THAT A PETITION FOR REVIEW UNDER RULE 45 IS LIMITED TO QUESTIONS OF LAW ADMITS OF EXCEPTIONS.— Well settled is the rule that a petition for review under Rule 45 is limited only to questions of law. Factual questions are not the proper subject of an appeal by *certiorari*. This Court will not review facts, as it is not the function of the Court to analyze or weigh all over again evidence already considered in the proceedings below.

This rule, however, admits of exceptions, such as when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record and when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Finding a confluence of certain exceptions in this case, the general rule that only legal issues may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court does not apply, and the Court retains the authority to pass upon the evidence presented and draw conclusions therefrom.

2. ID.; EVIDENCE; BURDEN OF PROOF; FORGERY; FORGERY MUST BE PROVED BY A PREPONDERANCE OF EVIDENCE.— A reading of respondents' Complaint shows that their main cause of action centers on the alleged **forgery** of the [subject] Deed of Quitclaim and Adjudication. . . .

As a rule, forgery cannot be presumed and must be proved by clear, positive, and convincing evidence, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. In this case, respondents have the burden to prove forgery.

3. ID.; ID.; DOCUMENTARY EVIDENCE; A DULY NOTARIZED DOCUMENT ENJOYS THE *PRIMA FACIE* PRESUMPTION OF AUTHENTICITY AND DUE EXECUTION.— It is a well-settled principle that a duly notarized document enjoys the *prima facie* presumption of authenticity and due execution, as well as the full faith and credence attached to a public instrument. To overturn this legal presumption, evidence must be clear, convincing, and more than merely preponderant to establish that there was forgery that gave rise to a spurious contract.

4. ID.; CIVIL PROCEDURE; HOW TO CONTEST A DOCUMENT; SPECIFIC DENIAL UNDER OATH; FAILURE TO SPECIFICALLY DENY UNDER OATH THE DUE EXECUTION AND GENUINENESS OF THE DOCUMENT AMOUNTS TO AN IMPLIED ADMISSION THEREOF.— Respondents did not file a *Reply* specifically denying under oath the genuineness and due execution of the Deed of Absolute Sale of Rights, as required under Section 8, Rule 8 of the Rules of Court. Thus, with their failure to comply with the "specific denial under oath," respondents had impliedly admitted the due execution and genuineness of said deed evidencing sale of the subject property to Lope. Moreover, respondent failed to adequately prove at the trial that there was fraud and misrepresentation in the execution of said Deed of Sale. Catalina made no denial as to the execution of the Deed of Sale.

5. CIVIL LAW; SPECIAL CONTRACTS; SALES; AN UNNOTARIZED DEED OF ABSOLUTE SALE IS VALID AND BINDING AMONG THE PARTIES.— While the Deed of Absolute Sale of Rights is not notarized, its validity is not affected. 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 of the Civil Code 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.

6. ID.; PROPERTY; OWNERSHIP; REMEDIAL LAW; EVIDENCE; TAX DECLARATIONS AND REALTY TAX PAYMENT ARE GOOD INDICIA OF THE POSSESSION IN THE CONCEPT OF OWNER. — It is a settled rule that tax declarations and realty tax payment of property are not conclusive evidence of ownership, they are nonetheless good indicia of the possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. Thus, petitioners' voluntary declaration of the subject property for taxation purposes and payment of such tax strengthens their bona fide claim of ownership over the subject property.

7. REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE PREVAILS OVER TESTIMONIAL EVIDENCE. — As between the testimonies of respondents, which failed to prove clearly, positively, and convincingly the presence of forgery, and the documentary evidence of petitioners, . . . the latter evidence prevails. Testimonial evidence is easy of fabrication and there is very little room for choice between testimonial evidence and documentary evidence. Thus, in the weighing of evidence, documentary evidence prevails over testimonial evidence.

APPEARANCES OF COUNSEL

Public Attorney's Office and Charles B. Rasonable for respondents.

D E C I S I O N

CARANDANG, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated January 22, 2013 and the Resolution[3] dated July 24, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 01048-MIN, which dismissed petitioners' appeal for lack of merit and denied petitioners' motion for reconsideration, respectively.

Facts of the Case

This case stemmed from a Complaint[4] for partition, annulment of quitclaim and adjudication, accounting of proceeds, with prayer for writ of preliminary injunction and restraining order and damages filed by respondents Heirs of Salomon Malaque against petitioners Heirs of Lope Malaque before the Regional Trial Court (RTC) of Oroquieta City, Branch 12.

Salomon Malaque (Salomon), married to Marciana Malaque (Marciana), owned a parcel of land known as Lot No. 3974, Pls-646, located at Taboo, Jimenez, Misamis Oriental covering an area of 10,042 square meters. They have six children, namely: respondents Sabina, Marcelina, Catalina, Agripino, Hilario and the late Lope, all surnamed Malaque. When Salomon and Marciana died in 1945 and 1950, only Lope occupied and cultivated the property. When Lope later died, herein petitioners — his surviving spouse, Loty Malaque (Loty) and his children — continued the cultivation of the property without giving any share to respondents. Respondents claimed that they tolerated

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[1] *Rollo*, pp. 13-32.

[2] Penned by Associate Justice Marie Christine Azcarraga-Jacob, with the concurrence of Associate Justices Romulo V. Borja and Ma. Luisa C. Quijano-Padilla; id. at 39-56.

[3] Id. at 63-65.

[4] Id. at 66-71.

the possession of Lope and at that time, they did not insist on asking for their shares.[5]

Subsequently, respondents were surprised to discover that Tax Declaration No. 3619[6] covering Lot 3974-P had been issued in the name of Lope. When they confronted Loty about it and suggested that the property be now partitioned, she refused and claimed ownership over the property allegedly by virtue of a Deed of Quitclaim and Adjudication[7] dated December 31, 1976 in favor of Lope and Loty, and signed by Sabina, Catalina, and Hilario, who represented themselves to be the only surviving heirs of Salomon. In said Deed, Sabina, Catalina, and Hilario allegedly waived and adjudicated the remaining portion of Lot 3974, now designated as Lot No. 3974-B, to Lope and Loty.[8] In an Affidavit of Denial dated January 12, 2005, however, Sabina, Catalina, and Hilario denied the due execution of said Quitclaim.[9]

Claiming that their signatures in said Deed of Quitclaim and Adjudication were forged; that the same is spurious and void for they did not participate nor execute the said Deed; and that they are not the only heirs of the late Salomon, respondents filed the instant complaint on October 5, 2004. Earnest efforts between the parties and settlement in the barangay proved futile.[10]

Considering that a portion of 2,010 square meters, which is the share of Anatalio Malaque, Salomon's brother, had already been sold to a certain Eusebia Calope, respondents sought to partition only the remaining area of 8,032 square meters designated as Lot 3974-B. Respondents, likewise, sought to declare the Deed of Quitclaim and Adjudication void ab initio,

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[5] Id. at 85.

[6] Id. at 77.

[7] Id. at 78.

[8] Id.

[9] Id. at 41.

[10] Id.

to account for the proceeds of the land and/or their share, and that in the meantime, petitioners refrain from further cultivating the land.[11]

Petitioners countered in their Answer[12] that the Quitclaim, being a public document, should be presumed valid. They further pointed out that prior to the Quitclaim, Catalina, Agripino, Marcelina, and Hilario executed an nonnotarized Deed of Absolute Sale of Rights[13] before Barrio Captain Eleuterio Cabisada selling the subject property in favor of Lope for a consideration of ₱700.00.[14]

In her testimony, Sabina stated that: Lope took possession of the land after their parents' death as he was in possession of the title and the tax declaration; she has three brothers and four sisters; she and her siblings were prompted to file this action when they were informed sometime in 2004 that the land has been mortgaged to and is being cultivated by a certain Jaime Cabisada; it is not true that they sold the land to Lope; she had built a house within the property; and the reason that they have not complained all these years was because they trusted Lope as their brother.[15]

Loty, on her part, testified that she owns the land because she had paid Sabina, Hilario, Catalina, Agripino, Salud, and Marcelina one by one but Loty did not sign as a witness to the sale. Hilario only thumb marked the Deed of Sale because he cannot write while Sabina did not sign the same as she was not there. Agripino later asked for additional payment for his share of the land. Loty paid the realty taxes for the property.[16]

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[11] Id. at 71.

[12] Id. at 81-82.

[13] Id. at 137.

[14] Id. at 81-82.

[15] Id. at 85-87.

[16] Id. at 85-86.

On rebuttal, respondents presented Catalina and Hilario who denied executing the Quitclaim, although Catalina stated that the signature therein appears similar to her signature when she was single. Hilario admitted having affixed his thumb mark because he was made to believe that it was needed to prevent confiscation of the property. Agripino also admitted signing the Deed of Sale with the understanding that it was a mortgage, not a sale; and that he did not redeem the property as he only returned in 1993.[17]

Ruling of the RTC

On October 5, 2006, the RTC rendered a Decision[18] granting respondents' complaint, the dispositive portion reads:

> WHEREFORE, by preponderance of evidence, judgment is hereby rendered by this Court: a) declaring that the Deed of Quitclaim and Adjudication of Cadastral Lot No. 3974-P with an area of 8,032 square meters in favor of Lope Malaque as void ab initio and non-existent for being simulated and the documents being obtained by fraud and misrepresentation; b) ordering that a Project of Partition shall cause to be prepared by the plaintiffs over the 8,032 square meters with the expenses to be borne from the income of the property of the 18 years that it has been in possession by the defendants; and c) ordering defendant Loty Malaque, to give the respective shares of the income of the land to the plaintiffs; pay the sum of ₱10,000.00 to counsel for plaintiffs as attorney's fees; and the sum of ₱5,000.00 for costs. Counterclaim is hereby dismissed.
>
> SO ORDERED.[19]

The RTC ruled that the Deed of Absolute Sale of Rights dated March 2, 1970, signed by four of the six children of the late Salomon and Marciana, is not a public document as required by law; hence, it cannot be registered. The property subject matter of the Deed cannot validly pass on to petitioners. The RTC observed that the actuations of petitioners are highly

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[17] Id. at 86.

[18] Penned by Judge Bernadette S. Paredes-Encinareal; id. at 85-89.

[19] Id. at 89.

suspicious. *First*, they had been in possession of the Deed of Sale but the signatories therein denied having executed the same. *Second*, the execution of the Deed of Quitclaim and Adjudication in 1976 by only three heirs was also denied by the latter. *Third*, Agripino testified that although there is another document executed by him in 1972 stating therein that he received an advance payment of ₱120.00 for the sale of his share, he had no intention to sell but only mortgaged his share. These documents are fictitious having been obtained by fraud and misrepresentation.[20]

The RTC further observed that the property is the only land left by their parents to the parties and this fact has been well-established. Respondents, already aged, are entitled to legal protection of right to their property as against fraud, misrepresentation, chicanery, and abuse of trust and confidence.[21]

Petitioners moved for reconsideration but it was denied in the Order[22] dated November 16, 2006.

Petitioners appealed the ruling to the CA.[23]

Ruling of the Court of Appeals

In the Decision[24] dated January 22, 2013, the CA dismissed the appeal and affirmed the RTC Decision. The CA observed that OCT No. 20658[25] was not registered in the name of Salomon but it was actually in the name of the "Heirs of Salomon Malaque." It was granted through a free patent[26] on June 22, 1966 to the Heirs of Salomon, represented by Sabina. The application must have been commenced by Salomon but the

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[20] Id. at 87-88.

[21] Id.

[22] Id. at 93.

[23] Id. at 94.

[24] Supra note 2.

[25] *Rollo*, pp. 74-75.

[26] Free Patent No. 307792.

free patent was granted only after his death; hence, it was issued in the name of his heirs. The CA ruled that acquisitive prescription has not set in. The property was under co-ownership and a co-owner could not acquire the whole property as against the other co-owners, and such right is imprescriptible so long as the co-ownership is expressly or impliedly recognized. The portion of the property pertaining to respondents would be deemed held by Lope under an implied trust for their benefit for which they could demand partition at any time. Further, acquisitive prescription may only set in where there exists a clear repudiation of the co-ownership, and the co-owners are apprised of the claim of adverse and exclusive ownership. In this case, Lope and his heirs have not made a clear, express, and positive repudiation of the co-ownership; hence, prescription has not set in even with the lapse of a considerable length of time (58 years).[27]

Also, the CA affirmed the nullity of the Deed of Absolute Sale of Rights dated March 2, 1970 stating that not all the co-owners have signed therein and those who have signed did not understand the import of what they executed. As for the Deed of Quitclaim and Adjudication, the CA found no consideration stated for the relinquishment of the shares of the co-heirs named therein. The Deed, which is actually a donation, did not comply with the requirements under Article 749 of the Civil Code and there was no categorical acceptance of Lope of the donation from his sibling. Hence, the deed is null and void.[28]

Petitioners moved for reconsideration,[29] but it was denied in the Resolution[30] dated July 24, 2013.

Hence, this Petition for Review on *Certiorari* filed by petitioners.

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[27] *Rollo*, pp. 48-52.

[28] Id. at 52-56.

[29] Id. at 57-61.

[30] Supra note 3.

Issue

Whether respondents had established by clear, positive, and convincing evidence that the documents — Deed of Quitclaim and Adjudication and Deed of Absolute Sale of Rights — are null and void.

Petitioners' Arguments

Petitioners argue that they have clearly established their ownership over the property by virtue of the execution of both the Deed of Quitclaim and Adjudication and Deed of Absolute Sale of Rights. Foremost of this is their undisturbed possession for more than 50 years prior to the complaint. The Deed of Absolute Sale, although not made in a public instrument, is valid and binding among the parties. The Deed of Quitclaim was executed to bolster the Deed of Absolute Sale previously executed by respondents. Petitioners claim that it is highly questionable that respondents did not bother to question the waiver of the 2,010 square meters in favor of Eusebia Calape, despite the fact that the same was embodied in the same documents and said area is well within the area of Lot 3974 owned by the heirs of Salomon.[31] Further, petitioners exercised rights of ownership over the property without objection from respondents. They declared the property for taxation purposes and paid the yearly real property taxes. The lapse of more than 50 years of uninterrupted possession and cultivation by the petitioners of the subject property could only be attributed to the fact that they are cultivating the land under the concept of ownership and said right was respected by respondents until the time that they questioned the same in 2004. Petitioners contend that they are the bona fide owners of the subject property by virtue of the Quitclaim and Adjudication coupled with the due execution of the Deed of Absolute Sale of Rights.[32]

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[31] *Rollo*, pp. 21-26.

[32] Id. at 26-30.

Respondents' Comment

Respondents aver that petitioners seek review of findings of fact made by the RTC and the CA. It is not the function of this Court to re-examine the oral and documentary evidence submitted by the parties all over again. They maintain that the deeds are invalid, since the respondents did not know the import of their signatures therein.[33]

Ruling of the Court

The petition is meritorious.

Well settled is the rule that a petition for review under Rule 45 is limited only to questions of law. Factual questions are not the proper subject of an appeal by *certiorari*. This Court will not review facts, as it is not the function of the Court to analyze or weigh all over again evidence already considered in the proceedings below.[34]

This rule, however, admits of exceptions, such as when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record and when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Finding a confluence of certain exceptions in this case, the general rule that only legal issues may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court does not apply, and the Court retains the authority to pass upon the evidence presented and draw conclusions therefrom.[35]

After a judicious study of the case, the Court holds that the CA erred in declaring the Deed of Absolute Sale of Rights and the Deed of Quitclaim and Adjudication null and void. As regards the Deed of Absolute Sale of Rights, the CA stated that not all

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[33] Id. at 177-179.

[34] *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 416 (2014).

[35] *Heirs of Donton v. Stier*, 817 Phil. 165, 175-176 (2017).

the co-owners have signed therein and those who have signed did not understand the import of what they executed.[36] Anent the Deed of Quitclaim and Adjudication, the CA found no consideration for the relinquishment of the shares of the co-heirs named therein, and that said Deed failed to comply with the requirements of the donation under Article 749 of the Civil Code.[37] Contrary to the CA, this Court rules that the nullity of these Deeds has not been established by respondents with the required quantum of evidence to declare these Deeds as null and void.

A reading of respondents' Complaint[38] shows that their main cause of action centers on the alleged **forgery** of the Deed of Quitclaim and Adjudication dated December 31, 1976 wherein Sabina, Catalina, and Hilario, allegedly representing themselves to be the only surviving heirs of Salomon, waived and adjudicated the remaining portion of Lot 3974, now designated as Lot No. 3974-B, to Lope and Loty. Specifically, paragraph eight of the complaint reads:

> 8. That the said Deed of Quitclaim and Adjudication dated December 31, 1976, is precisely spurious and void ad initio and has no force and effect, firstly, Sabina Malaque, Catalina Malaque and Hilario Malaque, did not participate or did not sign nor executed *(sic)* the said Deed of Quitclaim and therefore, the signature of Sabina Malaque, Catalina Malaque and the alleged thumbmarked *(sic)* of Hilario Malaque in the said Deed of Quitclaim and Adjudication are being forged; second, Sabina Malaque, Catalina Malaque and Hilario Malaque has *(sic)* no right whatsoever to waive and adjudicate the remaining portion of lot 3974 and/or lot 3974-B in favor of Lope Malaque and to Loty Latonio Malaque, because there *(sic)* not the only heirs of the late Salomon Malaque, the fact that Salomon Malaque is survived by six (6) heirs namely, MARCELINA MALAQUE SAQUIN, CATALINA MALAQUE PEPITO, AGRIPINO MALAQUE, HILARIO MALAQUE AND SABINA MALAQUE

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[36] Id. at 53.

[37] Id. at 53-54.

[38] Id. at 66-71.

PANO, and clearly, in the said Deed of Quitclaim and Adjudication, MARCELINA MALAQUE and AGRIPINO MALAQUE, did not participate nor have executed the said questioned Deed of Quitclaim and Adjudication.[39]

As a rule, forgery cannot be presumed and must be proved by clear, positive, and convincing evidence, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it.[40] In this case, respondents have the burden to prove forgery.

As opposed to their allegation that their signatures are forged because they did not participate and sign in the Deed of Quitclaim and Adjudication, respondents, in the course of the trial, **admitted** that they affixed their signatures/thumbmark in said Deed only that they did not understand the import of what they executed. Catalina testified on rebuttal that the signature in the Deed appears like her signature when she was single. Hilario admitted having affixed his thumbmark therein because he was made to believe that it was needed to prevent confiscation of the property. On the other hand, Sabina did not make a categorical denial of the execution of said Deed. Marcelina was not presented in court.

It should be noted, however, that the Deed of Quitclaim and Adjudication dated December 31, 1976 is a duly notarized document. It is a well-settled principle that a duly notarized document enjoys the *prima facie* presumption of authenticity and due execution, as well as the full faith and credence attached to a public instrument. To overturn this legal presumption, evidence must be clear, convincing, and more than merely preponderant to establish that there was forgery that gave rise to a spurious contract.[41] This respondents failed to do.

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[39] Id. at 69.

[40] *Gepulle-Garbo v. Sps. Garabato*, 750 Phil. 846, 855-856 (2015).

[41] *Gatan v. Vinarao*, 820 Phil. 257, 267 (2017).

On the other hand, petitioners were able to establish that they had been in undisturbed possession of the property for a long period of time, cultivating the same, and religiously paying the real property taxes. Petitioners claim that they have established their ownership over the subject property by virtue of the execution of the Deed of Quitclaim and Adjudication, and the Deed of Absolute Sale of Rights[42] dated March 2, 1970 which they attached to their Answer.[43] This Deed of Absolute Sale of Rights was executed before Barrio Captain Eleuterio Cabisada signed by Catalina, Agripino, and Marcelina and thumbmarked by Hilario, selling the subject property in favor of Lope for a consideration of ₱700.00.

Respondents did not file a *Reply* specifically denying under oath the genuineness and due execution of the Deed of Absolute Sale of Rights, as required under Section 8,[44] Rule 8 of the Rules of Court. Thus, with their failure to comply with the "specific denial under oath," respondents had impliedly admitted the due execution and genuineness of said deed evidencing sale of the subject property to Lope. Moreover, respondent failed to adequately prove at the trial that there was fraud and misrepresentation in the execution of said Deed of Sale. Catalina made no denial as to the execution of the Deed of Sale. Agripino testified that there is another document executed by him in 1972 stating therein that he received an advance payment of ₱120.00 for the sale of his share. However, Agripino claimed that he had no intention to sell but only mortgaged his share. He never

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[42] *Rollo*, p. 137.

[43] Id. at 81-82.

[44] Section. 8. *How to contest such documents*. — When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding Section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

attempted though to redeem the alleged mortgage because he is single and is not interested in working on it.[45]

While the Deed of Absolute Sale of Rights is not notarized, its validity is not affected. 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.[46] Stated differently, although a conveyance of land is not made in a public document, it does not affect the validity of such conveyance.[47] Article 1358[48] of the Civil Code 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.[49]

Hence, the Deed of Absolute Sale of Rights is valid and binding between Catalina, Agripino, Marcelina and Hilario, and Lope. More so, it was written in Cebuana, their own language, so it is but logical to conclude that respondents knew the import of what they executed. Further, it was executed in the presence of their Barangay Captain Eleuterio Cabisada. Indeed, above-named respondents failed to discharge their burden to prove with clear and convincing evidence that fraud or misrepresentation attended the execution of said Deed.

Petitioners, likewise, submitted tax declarations in the name of Lope Malaque starting in the year 1978[50] and real property

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[45] *Rollo*, p. 86.

[46] *Estate of Gonzales v. Heirs of Perez*, 620 Phil. 47, 61 (2009).

[47] Id. at 61-62.

[48] Article 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2 and 1405;

x x x x x x x x x

[49] Supra note 46 at 62.

[50] *Rollo*, p. 76.

tax receipts[51] for the years 1978 to 1982, 1984, 1988, 1991 to 1993, 1996, 1999 and 2004. It can be seen at the dorsal portion of Tax Declaration No. 91190 in the name of Lope that it is a transfer by virtue of the Deed of Quitclaim and Adjudication executed by the Heirs of Salomon in favor of Lope. It is a settled rule that tax declarations and realty tax payment of property are not conclusive evidence of ownership, they are nonetheless good indicia of the possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession.[52] Thus, petitioners voluntary declaration of the subject property for taxation purposes and payment of such tax strengthens their bona fide claim of ownership over the subject property.

Further, it baffles this Court that while respondents sought to declare void ab initio the Deed of Quitclaim and Adjudication claiming that they neither participated nor signed in said Deed, respondents, however, wanted to retain the validity of the first part of the document wherein they waived/quitclaimed the 2,010-square meter portion of the property in favor of Eusebia Calape. Hence, their prayer in the complaint was to partition only the remaining 8,032-square meter portion of Lot 3974. Respondents cannot ask that a portion of said Deed be valid and the rest as null and void. This cannot be done.

As between the testimonies of respondents, which failed to prove clearly, positively, and convincingly the presence of forgery, and the documentary evidence of petitioners, *i.e.*, the notarized Deed of Quitclaim and Adjudication, the Deed of Absolute Sale of Rights, tax declaration, and tax receipts, the latter evidence prevails. Testimonial evidence is easy of fabrication and there is very little room for choice between testimonial evidence and documentary evidence. Thus, in the weighing of evidence, documentary evidence prevails over testimonial evidence.[53] The two documents taken together and

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[51] Id. at 140-154.

[52] *Tolentino v. Sps. Latagan*, 761 Phil. 108, 137-138 (2015).

[53] *GSIS v. Court of Appeals*, 294 Phil. 699, 710 (1993).

which are complementary to each other establish the rights of Lope as owner of the property subject matter of this litigation.

Section 1, Rule 131 of the Rules of Court provides that the burden of proof is the duty of a party to prove the truth of his claim or defense, or any fact in issue by the amount of evidence required by law. For having failed to discharge their burden to prove forgery and/or fraud and misrepresentation by clear, positive, and convincing evidence, respondents failed to prove their cause of action. Inevitably, their complaint should be dismissed.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Decision dated January 22, 2013 and the Resolution dated July 24, 2013 of the Court of Appeals in CA-G.R. CV No. 01048-MIN are hereby **REVERSED** and **SET ASIDE**. Respondents' complaint for partition, annulment of quitclaim and adjudication, accounting of proceeds, with prayer for writ of preliminary injunction/restraining order and damages is hereby **DISMISSED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Zalameda, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 214526. November 3, 2020]

THE HEIRS OF INOCENTES MAMPO and RAYMUNDO A. MAMPO, represented by AZUCENA C. MAMPO, Jra., *Petitioners*, *v.* **JOSEFINA MORADA,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; ELEMENTS THEREOF; TEST FOR DETERMINING FORUM SHOPPING.— Forum shopping is committed by a party who institutes two or more suits involving the same parties for the same cause of action, either simultaneously or successively, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action. It is an act of malpractice that is prohibited and condemned because it trifles with the courts, abuses their processes, degrades the administration of justice, and adds to the already congested court dockets.

. . .

. . . [T]he test for determining the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in another. Thus, there is forum shopping when the following elements are present: (a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. Said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens*.

2. ID.; ID.; ID.; WAYS OF COMMITTING FORUM SHOPPING. — Hence, forum shopping can be committed in several ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved

yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).

3. ID.; ID.; ID.; FORUM SHOPPING IS A GROUND FOR THE SUMMARY DISMISSAL OF BOTH INITIATORY PLEADINGS.— Forum shopping is a ground for summary dismissal of both initiatory pleadings without prejudice to the taking of appropriate action against the counsel or party concerned. This is a punitive measure to those who trifle with the orderly administration of justice.

4. ID.; ID.; ID.; JUDGMENT; *RES JUDICATA*.— *Res judicata* embraces two aspects – "bar by prior judgment" or the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action and "conclusiveness of judgment" which ordains that issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action.

5. ID.; ID.; ID.; ID.; CONCLUSIVENESS OF JUDGMENT PROSCRIBES THE RE-LITIGATION IN A SECOND CASE OF A FACT OR QUESTION ALREADY SETTLED IN A PREVIOUS CASE.— Conclusiveness of judgment proscribes the re-litigation in a second case of a fact or question already settled in a previous case. The second case, however, may still proceed provided that it will no longer touch on the same fact or question adjudged in the first case. Conclusiveness of judgment requires only the identity of issues and parties, but not of causes of action.

6. ID.; ID.; ID.; THE FILING OF TWO SUBSTANTIALLY DIFFERENT REMEDIES, LIKE A PETITION FOR *CERTIORARI* AND AN APPEAL, CONSTITUTES FORUM SHOPPING WHEN THE RIGHTS ASSERTED AND THE RELIEFS PRAYED FOR ARE IDENTICAL.— [W]hile the remedies of petition for *certiorari* and appeal are substantially different in that the former's purpose is to correct errors of jurisdiction or grave abuse of discretion amounting to lack or

excess of jurisdiction and the latter to correct a mistake of judgment or errors of law or fact, a plain reading and comparison of Morada's prayers in the two petitions she filed reveal that they involve the same rights asserted and reliefs asked for:

. . .

. . . [T]he reliefs she prayed for in said cases were identical: to have the DARAB Resolution dated September 19, 2011 reversed and set aside in order to prevent the execution of the PARAD Decision dated January 16, 2008 which awarded possession over the subject lots to the Heirs of Mampos.

Therefore, Morada's claim that the actions involve different remedies and parties are specious. At any rate, as has been repeatedly held by the Court, what is truly important to consider in determining the existence of forum shopping is the vexation caused the courts and parties-litigant by the party who instituted different actions seeking the same reliefs in different fora, thereby creating the possibility of conflicting decisions on the same issue.

7. ID.; ID.; WHERE THERE IS FORUM SHOPPING, THE PENALTY IS DISMISSAL OF BOTH ACTIONS AS A PUNITIVE MEASURE TO THOSE WHO TRIFLE WITH THE ORDERLY ADMINISTRATION OF JUSTICE. — Stated differently, she seems to be under the impression that in multiple cases constituting forum shopping, only one of such cases is dismissible and that the litigant may choose which legal remedy to maintain.

She is mistaken. **Where there is forum shopping, the penalty is dismissal of <u>both</u> actions.** This is so because twin dismissal is a punitive measure to those who trifle with the orderly administration of justice.

. . .

The dismissal of all cases involved in forum shopping is a **punitive measure** against the deplorable practice of litigants of resorting to different fora to seek similar reliefs, so that their chances of obtaining a favorable judgment is increased. This results in the possibility of different competent tribunals arriving at separate and contradictory decisions. Moreover, it adds to the congestion of the heavily burdened dockets of the courts. To avoid this grave evil, the Court has held that the rules on forum shopping must be strictly adhered to.

APPEARANCES OF COUNSEL

Benito B. Nate for petitioners.
Guzman & Associates for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court (Rules) assailing the Decision[2] dated December 20, 2013 (Assailed Decision) and Resolution[3] dated September 1, 2014 (Assailed Resolution) of the Court of Appeals[4] (CA), in CA-G.R. SP No. 123523.

Facts

Petitioners are the surviving wives and children of deceased Inocentes Mampo (Inocentes) and Raymundo Mampo (Raymundo) (collectively, Heirs of Mampos). Inocentes and Raymundo instituted a Complaint[5] dated August 28, 2000 before the office of the Provincial Agrarian Reform Adjudicator (PARAD) against Nelida and Alex Severo for Recovery of Possession of five parcels of land in Baras, Canaman, Camarines Sur (subject lots) which were covered by Emancipation Patents (EPs).[6] The complaint was dismissed and appealed to the Department of Agrarian Reform Adjudication Board (DARAB) Central Office.

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[1] *Rollo*, pp. 12-25.

[2] *Id.* at 29-39. Penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Socorro B. Inting and Melchor Quirino C. Sadang.

[3] *Id.* at 41.

[4] Special Eleventh Division and Former Special Eleventh Division, respectively.

[5] *Rollo*, pp. 92-95.

[6] *Id.* at 92-94.

In its Decision[7] dated January 16, 2008, the DARAB set aside the PARAD's Decision and ruled in favor of the Heirs of Mampos, thus:

WHEREFORE, premises considered, the appealed decision is hereby **SET ASIDE** and a **NEW JUDGMENT** is the (*sic*) thus rendered as follows:

1. Ordering the respondents-appellees, and all persons acting for, and in their behalf, to immediately vacate the subject landholdings;
2. Ordering the respondents-appellees to restore the possession of the subject landholdings to the complainants-appellants; and
3. Ordering the respondents-appellees to thereafter, respect and maintain the peaceful possession and cultivation of the complainants-appellants of the subject landholdings.

SO ORDERED.[8]

Said decision became final and executory on August 9, 2008. On November 14, 2008, upon motion of the Heirs of Mampos, a Writ of Execution[9] was issued by the PARAD.

On May 7, 2009, herein respondent Josefina Mampo Morada (Morada) filed a Third-Party Claim[10] dated May 7, 2009, which was granted by the PARAD in its Order dated February 26, 2010.[11] Consequently, the PARAD ordered the parties to respect Morada's possession and the recall of the Writ of Execution dated November 14, 2008,[12] to wit:

WHEREFORE, premises considered, finding merit to the instant third party claim, the same is hereby GRANTED. Parties are hereby

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[7] *Id.* at 96-101.

[8] *Id.* at 100.

[9] *Id.* at 102-104.

[10] *Id.* at 105-108.

[11] *Id.* at 109-111.

[12] *Id.* at 31.

ordered to respect third party claimant Josefina Mampo Morada in her peaceful possession and cultivation of the subject premises. The prayer to stay the enforcement of the decision rendered in the above-entitled case is GRANTED, the Writ of Execution dated November 14, 2008 is hereby ordered RECALLED.

SO ORDERED.[13]

The PARAD gave credence to the claim of Morada that she was the actual tiller. Moreover, she is preferred to be awarded the same as against Inocentes who, at one time, voluntarily relinquished, for a fee, his tenancy over a landholding.

The Heirs of Mampos filed a Motion for Reconsideration, but the same was denied by the PARAD.[14] Thereafter, they filed with the DARAB a Manifestation with Motion for the Implementation of the Decision Dated January 16, 2008.[15] This was dismissed by the DARAB for lack of jurisdiction, as the same was, in essence, a special civil action under Rule 65 of the Rules.

However, in its Resolution[16] dated September 19, 2011, the DARAB later granted the Heirs of Mampos' Motion for Reconsideration, ordered the revival of the Writ of Execution dated November 14, 2008 and directed the immediate implementation thereof. It ruled, among others, that Morada's Third-Party Claim was, in reality, a protest against the identification and qualification of the Heirs of Mampos as beneficiaries of the awarded landholdings; hence, it should have been dismissed for lack of jurisdiction inasmuch as the determination of such questions belongs to the exclusive jurisdiction of the Department of Agrarian Reform (DAR) Secretary under the DARAB Rules of Procedure.[17] Morada moved for reconsideration but the same was denied.[18]

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[13] *Id.* at 110-111.

[14] *Id.* at 31.

[15] *Id.* at 112-120.

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

[17] *Id.* at 46-48.

[18] *Id.* at 34.

On January 6, 2012, Morada filed the first subject action — a Petition for *Certiorari*[19] under Rule 65 of the Rules with the CA, docketed as CA-G.R. SP No. 123033 (Rule 65 action), and was assigned to the CA Sixth Division. Therein, she sought to annul the DARAB Decision dated September 19, 2011 for allegedly having been issued with grave abuse of discretion, and to affirm the DARAB Decision dated February 11, 2011.[20]

Thereafter, on February 9, 2012, Morada instituted the second subject action — a Petition for Review[21] under Rule 43, likewise before the CA, which was docketed as CA-G.R. SP No. 123523 (Rule 43 action) and raffled to the CA 12th Division.[22] Here, she prayed that the DARAB Decision dated September 19, 2011 be reversed and that the Decision of the PARAD dated February 26, 2010 be affirmed.[23]

On August 12, 2012, petitioners filed, in the Rule 65 action, a Manifestation and Motion to Dismiss for Violation Against the Rule on Forum Shopping[24] dated August 12, 2012. They prayed therein that both the Rules 65 and 43 actions be dismissed for being violative of the rule against forum shopping.[25] Morada filed a Comment[26] dated August 17, 2012, asserting that she has not violated forum shopping rules as the two cases have

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[19] *Id.* at 49-59; entitled "*Josefina Mampo v. DARAB Board, namely MARIE FRANCES PESAYCO AQUINO, JIM G. CULETO, MA. PATRICIA RUALO-BELLO & ARNOLD C. ARRISTA, in their capacity as DARAB MEMBERS and Inocentes Mampo and Raymundo Mampo.*"

[20] *Id.* at 58.

[21] *Id.* at 60-79; entitled "*Inocentes Mampo and Raymundo Mampo v. Nelida Severo and Alex Severo and Josefina Morada (as third party claimant).*"

[22] *Id.* at 81; as mentioned by the CA Sixth Division in its Resolution dated September 28, 2012.

[23] *Id.* at 78.

[24] *Id.* at 127-130.

[25] *Id.* at 129.

[26] *Id.* at 165-166.

different issues — one, being a Rule 65 case, involving the question of whether the DARAB committed grave abuse of discretion, and the other, being a Rule 43 case, involving questions of both facts and law.[27]

The CA Sixth Division, in its Resolution[28] dated September 28, 2012, granted the motion and dismissed the Rule 65 action. The relevant portion of the Resolution reads:

> It bears stressing that forum shopping exists when two or more actions involve the same transactions, essential facts and circumstances, and raise identical causes of action, subject matter, and issues. Another test of forum shopping is when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another.
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> The records show that G.R. SP No. 123523 and CA-G.R. SP No. 123033, present the same set of facts and issues and the remedies sought in both cases are also the same. In both petitions, petitioner questioned not only the merits of the decision but also the order of public respondent DARAB in granting execution pending appeal. It is clear therefore that a ruling of this Court in CA-G.R. SP No. 123523 would undoubtedly constitute *res judicata* on the identical issue raised in G.R. SP No. 123033. Petitioner cannot avoid violation of the rule against forum shopping by varying the forms of the action or adopting a different mode of presenting one's case. For being violative of the rule against forum shopping, the instant petition for [*certiorari*] docketed as G.R. SP No. 123033 should therefore be dismissed.
>
> **WHEREFORE**, the Motion to Dismiss is **GRANTED** and the petition, **DISMISSED**, for violation against the rule on forum shopping.
>
> **SO ORDERED**.[29]

The same became final and executory on November 15, 2012.

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[27] *Id.* at 165.

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

[29] *Id.* at 82.

Meanwhile, Morada, in the Rule 43 action, filed a Manifestation[30] dated October 31, 2012, notifying the CA 12th Division of the Resolution dated September 28, 2012 of the CA Sixth Division which dismissed the Rule 65 action for forum shopping. Morada likewise manifested that "[s]he is not appealing said decision and, [instead], pursues her legal remedies with this Honorable Court in CA-G.R. SP No. 123523."[31]

On March 9, 2013, petitioners also filed a Manifestation in the Rule 43 action, praying that the same be dismissed to pave the way for the implementation of the DARAB Decision dated January 8, 2008.[32]

On December 20, 2013, the CA, in the Rule 43 action, issued the assailed Decision, granting Morada's petition, thus:

> **WHEREFORE**, premises considered, the instant petition for review is **GRANTED**. The assailed September 19, 2011 Resolution is hereby **NULLIFIED** and the February 26, 2010 Order of the PARAD **STANDS**.
>
> **SO ORDERED.**[33]

According to the CA, Morada's third-party claim was valid pursuant to Rule 39, Section 16 of the Rules which allows third-party claims as a remedy for third parties having claims on a property levied during the execution stage. Moreover, the CA ruled that the Order dated February 26, 2010 of the PARAD which granted Morada's third-party claim was not appealed by petitioners. Instead, they filed a Manifestation with Motion for the Implementation of the Decision dated January 16, 2008 with the DARAB. Hence, said PARAD Order became final and executory.[34] The Assailed Decision is silent as to the matter of forum shopping manifested in the case by both parties.

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[30] *Id.* at 163-164.

[31] *Id.* at 163.

[32] *Id.* at 18.

[33] *Id.* at 39.

[34] *Id.* at 36-39.

Petitioners filed a motion for reconsideration but the same was denied in the Assailed Resolution.

Hence, the present recourse, wherein the merits of the Assailed Decision are no longer challenged. Instead, petitioners submit that since Morada committed forum shopping as ruled in the CA's Resolution dated September 28, 2012 in the Rule 65 action, which Resolution later became final and executory, Morada's Rule 43 action should have likewise been dismissed.[35]

Morada filed her Comment[36] dated March 9, 2015, wherein she asserts that she has not violated the rules on forum shopping because the two petitions she filed with the CA involved different issues and that she has manifested the dismissal of the Rule 65 action to the CA 12th Division in the Rule 43 action, as well as her intention to pursue the latter case as a legal remedy.

Petitioners filed their Reply to Respondent's Comment[37] dated October 12, 2015.

Issue

Petitioners raise the lone issue: whether or not the CA is correct in nullifying the resolution of the DARAB dated September 19, 2011 and reinstating the Order of the PARAD dated February 26, 2010 despite the violation against the rule on forum shopping.[38] Stated differently, they ask the Court if the CA erred in failing to likewise dismiss the Rule 43 action for forum shopping.

Ruling

There is merit in the petition.

Forum shopping is committed by a party who institutes two or more suits involving the same parties for the same cause of

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[35] *Id.* at 21.

[36] *Id.* at 146-150.

[37] *Id.* at 171-176.

[38] *Id.* at 19.

action, either simultaneously or successively, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.[39] It is an act of malpractice that is prohibited and condemned because it trifles with the courts, abuses their processes, degrades the administration of justice, and adds to the already congested court dockets.[40]

At present, the rule against forum shopping is embodied in Rule 7, Section 5 of the Rules, thus:

SEC. 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (n)

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[39] See *Zamora v. Quinan, Jr.*, G.R. No. 216139, November 29, 2017, 847 SCRA 251, 257; *Yap v. Chua*, G.R. No. 186730, June 13, 2012, 672 SCRA 419, 427-428.

[40] *Heirs of Sotto v. Palicte*, G.R. No. 159691, February 17, 2014, 716 SCRA 175, 178.

There are two rules on forum shopping, separate and independent from each other, provided in Rule 7, Section 5: 1) compliance with the certificate of forum shopping and 2) avoidance of the act of forum shopping itself.[41]

To determine whether a party violated the rule against forum shopping, the most important factor is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another. Otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.[42]

Hence, forum shopping can be committed in several ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[43]

These tests notwithstanding, what is pivotal is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and, in the process, creates the possibility of conflicting decisions being rendered by the different fora upon the same issues.[44]

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[41] See *Korea Exchange Bank v. Gonzales*, G.R. Nos. 142286-87, April 15, 2005, 456 SCRA 224, 243; *City of Taguig v. City of Makati*, G.R. No. 208393, June 15, 2016, 793 SCRA 527, 549.

[42] *Yap v. Chua*, *supra* note 39.

[43] *Zamora v. Quinan, Jr.*, *supra* note 39 at 260, citing *City of Taguig v. City of Makati*, *supra* note 41 at 550.

[44] *Yap v. Chua*, *supra* note 39 at 428.

Forum shopping is a ground for summary dismissal of both initiatory pleadings without prejudice to the taking of appropriate action against the counsel or party concerned.[45] This is a punitive measure to those who trifle with the orderly administration of justice.[46]

Guided by the foregoing settled doctrines, the Court rules that the CA erred in failing to dismiss the Rule 43 action for forum shopping.

Morada is guilty of forum shopping by committing two distinct acts thereof: (1) she willfully and deliberately instituted two actions in two different divisions of the CA to avail of remedies founded on similar facts; and (2) she submitted false certifications of non-forum shopping and did not observe the undertakings therein mandated by Rule 7, Section 5.

a. Morada filed multiple suits seeking identical reliefs.

To recall, in its Resolution dated September 28, 2012, the CA dismissed the Rule 65 action upon the finding that Morada committed forum shopping in instituting the same and the Rule 43 action, thus:

> The records show that G.R. SP No. 123523 and CA-G.R. SP No. 123033, present the same set of facts and issues and the remedies sought in both cases are also the same. In both petitions, petitioner questioned not only the merits of the decision but also the order of public respondent DARAB in granting execution pending appeal. It is clear therefore that a ruling of this Court in CA-G.R. SP No. 123523 would undoubtedly constitute *res judicata* on the identical issue raised

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[45] See *Korea Exchange Bank v. Gonzales*, *supra* note 41 at 243.

[46] See *Ley Construction & Development Corporation v. Philippine Commercial & International Bank*, G.R. No. 160841, June 23, 2010, 621 SCRA 526, 537.

in G.R. SP No. 123033. Petitioner cannot avoid violation of the rule against forum shopping by varying the forms of the action or adopting a different mode of presenting one's case. **For being violative of the rule against forum shopping, the instant petition for *[certiorari]* docketed as G.R. SP No. 123033 should therefore be dismissed.**[47]

It is not disputed that the foregoing Resolution of the CA was purposely not appealed by Morada, and thus became final and executory on November 15, 2012. Hence, it is conclusive as to the issue of whether or not Morada committed forum shopping in connection with her filing of the Rules 65 and 43 actions. As to this issue, *res judicata*[48] — the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit[49] — has set in.

Res judicata embraces two aspects — "bar by prior judgment" or the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action and "conclusiveness of judgment" which ordains that issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action.[50] As to the latter, which is relevant to the issue of commission of forum shopping in the present case, the Court has held:

Conclusiveness of judgment finds application when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. **The fact or question settled by final judgment or order binds the parties**

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[47] *Rollo*, p. 82. Emphasis supplied.

[48] The aspect of *res judicata* relevant to the present case is set forth in Section 47, Rule 39 of the Rules.

[49] See *Degayo v. Magbanua-Dinglasan*, G.R. No. 173148, April 6, 2015, 755 SCRA 1, 8-9.

[50] See *Ley Construction & Development Corporation v. Philippine Commercial and International Bank*, *supra* note 46 at 535.

to that action (and persons in priority with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; **the conclusively settled fact or question furthermore cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action.** Thus, only the identities of *parties* and *issues* are required for the operation of the principle of conclusiveness of judgement.[51]

Conclusiveness of judgment proscribes the re-litigation in a second case of a fact or question already settled in a previous case. The second case, however, may still proceed provided that it will no longer touch on the same fact or question adjudged in the first case. Conclusiveness of judgment requires only the identity of issues and parties, but not of causes of action.[52]

Hence, as the parties to the present case and the Rule 65 action are the same, the issue of whether forum shopping was committed by Morada, which was already decided with finality in the latter case, may no longer be re-litigated herein.

Nevertheless, even if the Court passes upon this issue, it will arrive at the same conclusion as the CA did in the Rule 65 action — that Morada committed forum shopping. Worse, the same was willful and deliberate.

In denying that she had violated the rule, Morada claims that the Rules 65 and 43 actions involve different issues — that the Rule 65 action is a petition for *certiorari* while the Rule 43 action is a petition for review. Hence, the former involves the question of whether the DARAB committed grave abuse of discretion and the latter raises questions of facts and law.

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[51] *Degayo v. Magbanua-Dinglasan*, *supra* note 49 at 12. Emphasis supplied; citations omitted.

[52] *Ley Construction & Development Corporation v. Philippine Commercial & International Bank*, *supra* note 46 at 536.

Moreover, the two cases allegedly involve different parties — in the Rule 65 action, the respondent is the DARAB while in the Rule 43 action, the respondents are the petitioners herein.

These contentions do not hold water.

As mentioned, the test for determining the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in another. Thus, there is forum shopping when the following elements are present: (a) identity of parties, or at least such parties as representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. Said requisites are also constitutive of the requisites for *auter action pendant* or *lis pendens*.[53]

In the case before the Court, the first element is present — the parties were the same in both the Rules 65 and 43 actions, albeit in the former, the DARAB was added as a public respondent. The Court has held that absolute identity of parties is not required, it being enough that there is substantial identity of the parties or at least such parties represent the same interests in both actions.[54]

As to the second element, while the remedies of petition for *certiorari* and appeal are substantially different in that the former's purpose is to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction and the latter to correct a mistake of judgement or errors of

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[53] *Dy v. Mandy Commodities Co., Inc.*, G.R. No. 171842, July 22, 2009, 593 SCRA 440, 451.

[54] *Brown-Araneta v. Araneta*, G.R. No. 190814, October 9, 2013, 707 SCRA 440, 451.

law or fact,[55] a plain reading and comparison of Morada's prayers in the two petitions she filed reveal that they involve the same rights asserted and reliefs asked for:

CA-G.R. SP NO. 123023 (Rule 65 petition for *certiorari*)	CA-G.R. SP NO. 123523 (Rule 43 petition for review)
WHEREFORE, it is most respectfully prayed of this Honorable Court to issue the writ of [*certiorari*] **ANNULLING and SETTING ASIDE its decision dated September 19, 2011 rendered by the Public Respondent in DARAB** CASE NO. 12176 for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction and affirming en *(sic)* toto public respondents' decision dated February 11, 2011.[56]	WHEREFORE, it is most respectfully prayed of this Honorable Court **that *(sic)* decision of the Appellate Board (DARAB) dated September 19, 2011 be reversed** and affirming *(sic)* en *(sic)* toto the decision of the Lower Board (PARAD) dated February 26, 2010.[57]

Clearly, both petitions challenged and prayed for the reversal of the DARAB Resolution dated September 19, 2011, ultimately, to prevent the execution of the PARAD Decision dated January 16, 2008 which awarded possession of the subject lots to the Heirs of Mampos.[58] Thus, there exists between the two actions, identity as to parties, rights asserted and reliefs sought, to a degree that a judgment in either action will amount to *res judicata* in the other.

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[55] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation, et al.*, G.R. No. 156067, August 11, 2004, 436 SCRA 123, 134.

[56] *Rollo*, p. 58. Emphasis supplied.

[57] *Id.* at 78. Emphasis supplied.

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

Similar to this case, *Ley Construction and Development Corporation v. Hyatt Industrial Manufacturing Corporation*[59] *(Ley Construction)* involved a special civil action for *certiorari* and an appeal which practically sought the same reliefs. The case stemmed from a civil action for specific performance filed by Ley Construction against Hyatt Industrial. The trial court ordered the cancellation of all the depositions set for hearing, prompting Ley Construction to file before the CA a petition for *certiorari* assailing said order. Pending the Rule 65 petition, the trial court dismissed Ley Construction's action for specific performance which was then appealed to the CA. Later, the CA likewise dismissed the Rule 65 petition, which dismissal was taken on appeal to the Court. In denying the appeal, the Court ruled:

> *Third*, petitioner's submission that the Petition for *Certiorari* has a practical legal effect is in fact an admission that the two actions are one and the same. Thus, in arguing that the reversal of the two interlocutory Orders "would likely result in the setting aside of the dismissal of petitioner's amended complaint," petitioner effectively contends that its Petition for *Certiorari*, like the appeal, seeks to set aside the *Resolution and the Orders*.
>
> Such argument unwittingly discloses a recourse to forum shopping, which has been held "as the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition." Clearly, by its own submission, petitioner seeks to accomplish the same thing in its Petition for *Certiorari* and in its appeal: both assail the two interlocutory Orders and both seek to set aside the RTC Resolution.
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> Hence, even assuming that the Petition for *Certiorari* has a practical legal effect because it would lead to the reversal of the Resolution dismissing the Complaint, it would still be denied on the ground of forum shopping.[60]

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[59] G.R. No. 133145, August 29, 2000, 339 SCRA 223.

[60] *Id.* at 229-230. Underscoring supplied.

Moreover, the Court denied Ley Construction's allegation that the two actions are distinct, thus:

> x x x The tortuous explanation of petitioner cannot refute the clear fact that the relief sought in the Petition for *Certiorari* is also prayed for in the appeal. In the latter, it questioned not only the propriety of the Resolution dismissing the Complaint, *but also the two interlocutory Orders denying its recourse to the discovery procedure*.[61]

Hence, guided by *Ley Construction*, that the two cases filed by Morada before the CA involved two separate remedies — one a petition for *certiorari* and the other, an appeal — does not refute the fact that the reliefs she prayed for in said cases were identical: to have the DARAB Resolution dated September 19, 2011 reversed and set aside in order to prevent the execution of the PARAD Decision dated January 16, 2008 which awarded possession over the subject lots to the Heirs of Mampos.

Therefore, Morada's claim that the actions involve different remedies and parties are specious. At any rate, as has been repeatedly held by the Court, what is truly important to consider in determining the existence of forum shopping is the vexation caused the courts and parties-litigant by the party who instituted different actions seeking the same reliefs in different fora, thereby creating the possibility of conflicting decisions on the same issue.[62]

b. Morada submitted false certifications of non-forum shopping and did not observe the undertakings therein mandated by Rule 7, Section 5.

Aside from seeking identical reliefs from different divisions of the CA, Morada made false representations in her Certifications

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[61] *Id.* at 31. Underscoring supplied.

[62] *See City of Taguig v. City of Makati*, *supra* note 41 at 553.

of Non-forum Shopping and did not observe the mandatory undertakings therein. *First*, in her Certification in the Rule 43 action, she falsely certified that she has not previously commenced a similar action in another court. *Second*, in the same Rule 43 Certification, she did not disclose the pendency of the Rule 65 action — a prior action which involved the same issues then pending with the CA Sixth Division. *Third*, in connection with her Certification in her Rule 65 action, she did not report to the court her filing of the Rule 43 action with the CA 12th Division within five days therefrom.

These acts violate the rule on forum shopping under Rule 7, Section 5, which provides for the following undertakings:

> **SEC. 5.** *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
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> x x x x (Underscoring supplied)

The CA erred in failing to likewise dismiss the Rule 43 action.

The Rules 65 and 43 actions, having been commenced in violation of the rules on forum shopping, were both dismissible.

Morada insists that she was pursuing her legal remedies in the Rule 43 action, and continuously here in the present appeal of such action, in light of the dismissal with finality of her Rule 65 action for forum shopping. Stated differently, she seems to be under the impression that in multiple cases constituting

forum shopping, only one of such cases is dismissible and that the litigant may choose which legal remedy to maintain.

She is mistaken. **Where there is forum shopping, the penalty is dismissal of both actions.**[63] This is so because twin dismissal is a punitive measure to those who trifle with the orderly administration of justice.[64]

As discussed, there exists, in forum shopping, the elements of *litis pendentia* or a final judgement in one case being *res judicata* in the other. Consequently, where there is forum shopping, the defense of *litis pendentia* in one case is a bar to the other; and a final judgment in one would constitute *res judicata* and thus would cause the dismissal of the rest. **In either case, forum shopping could be cited by the other party as a ground to ask for summary dismissal of the two (or more) complaints or petitions**.[65]

In an abundance of cases, the Court has adhered to the multiple dismissal rule.

In *Buan v. Lopez*,[66] finding that forum shopping was committed by petitioners when they instituted before the Court a special civil action for prohibition while another special civil action for "prohibition with preliminary injunction" was pending before the Regional Trial Court (RTC) of Manila,[67] the Court dismissed both actions, to wit:

Indeed, the petitioners in both actions, described in their petitions as vendors of religious articles, herbs and plants, and sundry

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[63] *See Dy v. Mandy Commodities Co, Inc.*, *supra* note 52 at 453; *City of Taguig v. City of Makati*, *supra* note 40 at 549; *Korea Exchange Bank v. Gonzales*, *supra* note 40 at 243.

[64] *Dy v. Mandy Commodities Co, Inc.*, *supra* note 52 at 453.

[65] *See First Philippine International Bank v. Court of Appeals*, G.R. No. 115849, January 24, 1996, 252 SCRA 259, 284.

[66] G.R. No. 75349, October 13, 1986, 145 SCRA 34.

[67] *Id.* at 73.

merchandise around the Quiapo Church or its "periphery," **have incurred not only the sanction of dismissal of their case before this Court in accordance with Rule 16 of the Rules of Court but also the punitive measure of dismissal of both their actions, that in this Court and that in the Regional Trial Court as well.**[68]

In *Zamora v. Quinan, Jr.*,[69] the CA dismissed an action for Annulment of Judgment of the RTC on the ground of forum shopping in relation to a complaint for Reconveyance of Title filed with the RTC Cebu. Prior to this, the RTC has likewise dismissed the reconveyance suit before it for forum shopping. On petition for review, the Court sustained the CA's dismissal, ruling that "once there is finding of forum shopping, the penalty is summary dismissal not only of the petition pending before [this Court], but also of the other case that is pending in a lower court."[70]

In *First Philippine International Bank v. Court of Appeals*,[71] an action for specific performance was brought to the Court on petition for review. While the same was pending, another action denominated as a derivative suit was filed before the RTC Makati. The Court dismissed both the action before it and the one pending in the RTC, ruling that as there was forum shopping, the only sanction was the dismissal of both cases with prejudice.

Dy v. Mandy Commodities Co., Inc.[72] involves an action for Forcible Entry filed by respondent against petitioner that was eventually appealed by the latter to the CA. Pending the same, petitioner filed an Unlawful Detainer case against respondent before the Metropolitan Trial Court (MeTC) Manila. The CA dismissed petitioner's appeal then pending before it as well as her Unlawful Detainer case which was then pending on appeal

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[68] *Id.* at 38. Emphasis supplied and underscoring supplied.

[69] *Supra* note 39.

[70] *Id.* at 265.

[71] *Supra* note 65.

[72] *Supra* note 53.

with the RTC Manila. The Court sustained the twin dismissal ordered by the CA and rejected petitioner's claim that assuming she was guilty of forum shopping, the CA should have dismissed only the Forcible Entry case and allowed her unlawful Detainer case to be first decided by the lower court. The Court pronounced:

> The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, **this Court adheres strictly to the rules against forum shopping and any violation of these rules results in the dismissal of a case**. x x x
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> x x x x
>
> Petitioner insist that, assuming *arguendo* he (*sic*) is guilty of forum shopping, the Court of Appeals should have dismissed CA-G.R. SP No. 86478 (Respondent's Forcible Entry Case) and allowed Petitioner Unlawful Detainer Case be decided first by the MeTC.
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> Petitioner's argument is inaccurate.
>
> **Once there is a finding of forum shopping, the penalty is summary dismissal not only of the petition pending before this Court, but also of the other case that is pending in a lower court. This is so because twin dismissal is a punitive measure to those who trifle with the orderly administration of justice.**
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> x x x x
>
> Taking our cue from these cases, the Court of Appeals' action of dismissing petitioner's appeal relative to Respondent's Forcible Entry Case and Petitioner's Unlawful Detainer Case is, therefore, warranted.[73]

Likewise, the earlier rules on forum shopping explicitly provide for multiple dismissals. The Interim Rules and Guidelines of the Court dated January 11, 1983 — where the rule on forum shopping was first written in the Philippine jurisdiction — provided that a violation of said rules "shall constitute contempt

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[73] *Id.* at 450-454. Emphasis and underscoring supplied; citations omitted.

of court and shall be a cause for the summary dismissal of both petitions, without prejudice to the taking of appropriate action against counsel or party concerned."[74] Thereafter, Revised Circular No. 28-91 and Administrative Circular No. 04-94 provided that a violation thereof "shall be a cause for the summary dismissal of the multiple petitions or complaints."

The dismissal of all cases involved in forum shopping is a **punitive measure** against the deplorable practice of litigants of resorting to different fora to seek similar reliefs, so that their chances of obtaining a favorable judgment is increased. This results in the possibility of different competent tribunals arriving at separate and contradictory decisions. Moreover, it adds to the congestion of the heavily burdened dockets of the courts.[75] To avoid this grave evil, the Court has held that the rules on forum shopping must be strictly adhered to.[76]

Notably, in a number of cases, the Court has distinguished between forum shopping that is not willful and deliberate and those which are.[77] In the former, the subsequent cases shall be dismissed without prejudice on the ground of either *litis pendentia* or *res judicata*, while in the latter, all actions shall be dismissed.[78] Upon the other hand, there is likewise *Daswani v. Banco de Oro Universal Bank*,[79] where the Court observed that from the nature of forum shopping, it appears to be *always* willful and deliberate, thus:

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[74] See *Prubankers Association v. Prudential Bank and Trust Company*, G.R. No. 131247, January 25, 1999, 302 SCRA 74, 83.

[75] See *Dy v. Mandy Commodities Co., Inc.*, *supra* note 53; *Solid Homes, Inc. v. CA*, G.R. No. 108452, April 11, 1997, 271 SCRA 157, 163.

[76] See *Dy v. Mandy Commodities Co., Inc.*, *id.* at 450.

[77] See *Heirs of Sotto v. Palicte*, *supra* note 40 at 188; *Rev. Ao-As v. Court of Appeals*, 524 Phil. 645 (2006).

[78] *Id.* at 188.

[79] G.R. No. 190983, July 29, 2015, 764 SCRA 160.

In *Yap v. Chua*, the Court elaborately explained the nature of forum shopping, to wit:

> Forum shopping is the institution of two or more actions or proceedings involving the same parties for the same cause of action, either simultaneously or successively, **on the supposition that one or the other court would make a favorable disposition**. Forum shopping [is] resorted to by any party against whom an adverse judgment or order has been issued in one forum, **in an attempt to seek a favorable opinion in another, other than by appeal or a special civil action for [*certiorari*]**.
>
> Following this line of reasoning, one can conclude that forum shopping is always **willful and deliberate on the part of the litigant**. To secure a higher percentage of winning, a party resorts to the filing of the same suits in various fora, without any regard for the resulting abuse to the courts, to the other party, and to our justice system. This malicious ulterior motive compels a party to violate the rules against forum shopping notwithstanding its pernicious effects.[80]

In the present case, applying either doctrine would still lead the Court to rule against Morada, as it finds that she engaged in willful and deliberate forum shopping.

While the CA resolution finding forum shopping in the Rule 65 action was silent as to the willfulness and deliberateness of the act, the circumstances of this case overwhelmingly suggest that it was. As exhaustively discussed above, the identity in the reliefs sought by Morada in the Rules 65 and 43 actions is so glaring that any reasonably prudent person may readily see the similarity, thus negating any claim of good faith in their filing. Both petitions literally prayed for the reversal of the DARAB Decision dated September 19, 2011, such that the possibility of different decisions rendered by the concerned CA divisions would readily be apparent, if not intentionally sought.

Hence, both the Rule 65 and Rule 43 actions were dismissible. The CA 12th Division that was hearing the Rule 43 Petition erred in failing to dismiss the action before it, even as its attention

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[80] *Id.* at 168. Emphasis and underscoring supplied; citations omitted.

was repeatedly called to the existence of the Rule 65 action and its subsequent dismissal, with finality, on the ground of forum shopping, not just by petitioners[81] but also by Morada herself.[82]

The predecessors to the present rules on forum shopping, Revised Circular No. 28-91 and Administrative Circular No. 04-94, enlighten on the intent of the Court to cover multiple dismissals of cases pending before same-level courts, tribunals or agencies, such as different divisions of the CA as in the instant case, thus:

> 1. To avoid the foregoing, in every petition filed with the Supreme Court or the Court of Appeals, the petitioner, aside from complying with pertinent provisions of the Rules of Court and existing circulars, must certify under oath all of the following facts or undertakings: (a) he has not theretofore commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agencies; (b) to the best of his knowledge, no such action or proceeding is pending in the Supreme Court, **the Court of Appeals, or different Divisions thereof**, or any other tribunal or agency; (c) if there is such other action or proceeding pending, he must state the status of the same, and (d) if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, **the Court of Appeals, or different Divisions thereof**, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and such other tribunal or agency of that fact within five (5) days therefrom.
>
> 2. Any violation of this revised Circular will entail the following sanctions: (a) it shall be a cause for the summary dismissal of the multiple petitions or complaints; x x x. (Emphasis and underscoring supplied)

Considering that the grave evil sought to be avoided by the proscription against forum shopping — the risk of conflicting decisions from different courts and the unnecessary clogging of their dockets — is present even when the cases concerned

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[81] *Via* "Manifestation" with prayer to dismiss dated March 9, 2013; *rollo*, pp. 18-19.

[82] *Via* Manifestation dated October 31, 2012; *id.* at 163-164.

are pending in equal-level courts, there is no reason why such courts should not be empowered to exact the full measure of penalty against this unscrupulous practice by dismissal of all such cases pending before them. Otherwise, the forum shopping rules may easily be circumvented as litigants may avoid dismissal of their multiple identical actions by simply filing them in same-level courts or in different divisions of the same court.

In sum, the Court finds that the CA erred in failing to dismiss the Rule 43 action or CA-G.R. SP No. 123523 for forum shopping.

A final word: Rule 7, Section 5 provides that, apart from being a ground for summary dismissal with prejudice, willful and deliberate forum shopping shall constitute direct contempt and is a cause for administrative sanctions.[83]

Here, Morada's counsel, Guzman and Associates represented by Atty. Godofredo B. Guzman (Atty. Guzman), appears to be guilty of forum shopping as much as their client was. The records show that Atty. Guzman was the same counsel who filed the subject Rules 65 and 43 petitions. In fact, Atty. Guzman, being a lawyer and hence familiar with court processes and the Rules of Court, is expected to be much more circumspect than his client. In the interest of due process, the Court will allow Atty. Guzman to explain his role in this pernicious practice of forum shopping before imposing upon him any sanctions.[84]

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated December 20, 2013 and Resolution dated September 1, 2014 of the Court of Appeals in CA-G.R. SP No. 123523 are **REVERSED** and **SET ASIDE**. The September 19, 2011 Resolution of the Department of Agrarian Reform Adjudication Board is **REINSTATED**.

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[83] Also see *City of Taguig v. City of Makati*, *supra* note 41 at 567.

[84] See *Heirs of Sotto v. Palicte*, *supra* note 39 at 180-181 where the Court, despite finding that petitioners were guilty of "unmitigated forum shopping," still directed their counsel to explain why he should not be sanctioned.

The Court **DIRECTS** Atty. Godofredo B. Guzman and respondent to show cause in writing within ten (10) days from notice why they should not be cited for direct contempt for committing willful and deliberate forum shopping in the filing of multiple suits asserting the same claims.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.,* concur.

EN BANC

[G.R. No. 223972. November 3, 2020]

ALMA CAMORO PAHKIAT, MAHALITO BUNAYOG LAPINID and FE MANAYAGA LOPEZ, *Petitioners, v.* **OFFICE OF THE OMBUDSMAN-MINDANAO and COMMISSION ON AUDIT-XII,** *Respondents*.

SYLLABUS

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; THE OMBUDSMAN HAS WIDE LATITUDE TO ACT ON CRIMINAL COMPLAINTS AGAINST PUBLIC OFFICIALS AND GOVERNMENT EMPLOYEES; THE COURT HAS MAINTAINED A POLICY OF NON-INTERFERENCE IN THE DETERMINATION BY THE OMBUDSMAN OF THE EXISTENCE OF PROBABLE CAUSE; EXCEPTION.— The general rule is that the Court defers to the sound judgment of the Ombudsman. The Court's consistent policy has been to maintain non-interference in the determination by the Ombudsman of the existence of probable cause. This is on account of the recognition that both the Constitution and R.A. 6770, otherwise known as *The Ombudsman Act of 1989*, give the Ombudsman wide latitude to act on criminal complaints against public official and government employees. Since it is armed with the power to investigate, coupled with the principle that the Court is not a trier of facts, the Ombudsman is in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. The foregoing general rule, however, is subject to an exception — where there is an allegation of grave abuse of discretion. In such case, the Ombudsman's act cannot escape judicial scrutiny under the Court's own constitutional power and duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, DEFINED; CASE AT BAR.— Grave abuse of discretion is defined as "an act too patent and gross as to amount to an evasion

of a duty, or to a virtual refusal to perform the duty enjoined or act in contemplation of law" or that the tribunal, board or officer with judicial or quasi-judicial powers "exercised its power in an arbitrary and despotic manner by reason of passion or personal hostility." Petitioners here have convincingly shown the presence of grave abuse of discretion on the part of the Office of the Ombudsman-Mindanao in this case.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE REMEDIES; REMEDIES AVAILABLE AGAINST A PUBLIC OFFICER FOR IMPROPRIETY IN THE PERFORMANCE OF HIS POWERS AND THE DISCHARGE OF HIS DUTIES, DISCUSSED. — To digress, there are three kinds of remedies available against a public officer for impropriety in the performance of his powers and the discharge of his duties: (1) civil, (2) criminal, and (3) administrative. These remedies may be invoked separately, alternately, simultaneously or successively. Sometimes, the same offense may be the subject of all three kinds of remedies. The rule that the three kinds of remedies, which flow from the three-fold liability of a public officer, may proceed independently, is hinged on the differences in the quantum of evidence required in each case. In criminal cases, proof beyond reasonable doubt is needed, whereas a mere preponderance of evidence will suffice in civil case. In administrative cases, only substantial evidence is required. As such, defeat of any of the three remedies will not *necessarily* preclude resort to other remedies or affect decisions reached thereat.

4. ID.; ID.; WHERE BOTH AN ADMINISTRATIVE CASE AND A CRIMINAL CASE ARE FILED AGAINST A PUBLIC OFFICER FOR THE SAME ACT OR OMISSION, AN ABSOLUTION FROM AN ADMINISTRATIVE CASE DOES NOT NECESSARILY BAR A CRIMINAL CASE FROM PROCEEDING, AND VICE VERSA. — Specifically, in cases where both an administrative case and a criminal case are filed against a public officer *for the same act or omission*, the Court has consistently held that an absolution from an administrative case does not necessarily bar a criminal case from proceeding, and vice versa. An offense, for instance, may have been committed but the evidence adduced to prove liability failed to obtain the threshold required by law in one case – substantial evidence in administrative cases or proof beyond

> reasonable doubt in criminal cases — which could have established that the actor is either administratively or criminally liable. For this reason, the parallel case should not be dismissed *ipso facto* without a showing that its own threshold of evidence has not been reached as well. It is significant to note, however, that the starting point in these cases is an **act or omission which gives rise to an offense** – that single act or omission that offends against two or more distinct and related provisions of law or gives rise to criminal as well as administrative liability.

APPEARANCES OF COUNSEL

Abellera and Calica Law Offices for petitioners.
The Solicitor General for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for *Certiorari*[2] under Rule 65 of the Rules of Court, with prayer for the issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction (WPI), filed by Fe Lopez (Lopez), Alma Pahkiat (Pahkiat), and Mahalito Lapinid (Lapinid), seeking to annul the Resolution[3] dated February 28, 2011 (assailed Resolution) and Order[4] dated November 6, 2015 (assailed Order) of the Office of the Ombudsman-Mindanao.

In the assailed Resolution, the Office of the Ombudsman-Mindanao found probable cause to indict petitioners, who each held the position of Administrative Aide I with Salary Grade (SG) 1 at the City Accounting Office (CAO) of Kidapawan, for 107 counts of Malversation of Public Funds through Falsification of Public and Commercial Documents under the Revised Penal Code (RPC), and for one count of violation of

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[2] *Rollo*, Vol. I, pp. 3-75.

[3] *Id.* at 76-116. Signed by Aileen Lourdes A. Lizada, Graft Investigation and Prosecution Officer I.

[4] *Id.* at 117-122.

Section 3(e)[5] of Republic Act (R.A.) No. 3019,[6] as amended. Petitioners were indicted with 12 other persons, namely: Virginia Tamayo (Tamayo), City Accountant (SG-25); Joseph Biongan (Biongan), Barangay Chairman (SG-14); Susan Joguilon (Joguilon), Barangay Treasurer; Jane Isla (Isla), Senior Bookkeeper (SG-9); Lily Sambuang (Sambuang), Administrative Aide VI (SG-6); Adelaida Abracia (Abracia), Owner-Operator of Imiljic Marketing; John Doe, Proprietor of FBP Marketing; John Doe, Proprietor of Zaide Mini Trading; and John Doe, Proprietor of Chyrra Enterprises.[7]

In the assailed Order, on the other hand, the Office of the Ombudsman-Mindanao summarily denied the motion for reconsideration of the assailed Resolution filed by petitioners for being filed out of time.

The Office of the Ombudsman-Mindanao found probable cause on the ground that petitioners and their co-accused did not faithfully comply with Commission on Audit (COA) Circular No. 93-396, also known as the Barangay Accounting Manual (BAM), particularly with regard to Section 06.02[8] thereof on the disbursement procedure.

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

x x x x x x x x x

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

x x x x x x x x x

[6] ANTI-GRAFT AND CORRUPT PRACTICES ACT, August 17, 1960.

[7] Joguilon was reported as missing before the special audit (*rollo*, Vol. I, pp. 79, 165). Isla resigned after the special audit (*id.* at 167).

[8] *Section 06.02. Certification and approval of vouchers/payrolls. — All disbursements of barangay funds shall be made under the following procedure duly complied with:*

Facts

On May 4, 2006, Kidapawan City State Auditor IV and Audit Team Leader, Marlene B. Aspilla issued CAO Office Order No. 2006-07 to constitute a team to conduct a 10-day audit on the cash, accounts and financial transactions of Barangay Poblacion after receiving information on the alleged falsification of disbursement vouchers (DV), missing DVs, unrecorded check issuances and other irregularities in the financial transactions of Barangay Poblacion.[9]

On May 9, 2006, the team proceeded to the Office of the Barangay Treasurer, but Joguilon failed to appear and was later reported missing to the police.[10] Nevertheless, the team proceeded with the audit and submitted its 14-page Special Audit Report[11] for the period of January 1, 2005 to May 10, 2006 to the COA Cluster Director, Cluster V-LGS-Mindanao on May 29, 2006. Excerpts of the Special Audit Report read:

PART II — OBSERVATIONS AND RECOMMENDATIONS

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a. *The chairman of the Committee on Appropriations of the sangguniang barangay certifies to the existence of appropriation [therefor].*

b. *The city/municipal concerned certifies that the necessary amount has been obligated for the purpose.*

c. *The barangay treasurer certifies to the availability of funds for the purpose.*

d. *The barangay treasurer certifies and approves the voucher or payroll as to validity, propriety, and legality of the claim involved.*

e. *The punong barangay approves the disbursement voucher/payroll.*

x x x

The city/municipal accountant shall also certify on the disbursement voucher that the disbursement is supported by documents evidencing completeness of requirements as well as other certifications that may be required by auditing and accounting rules and regulations. (Emphasis omitted). See *rollo*, Vol. II, p. 705.

[9] See *rollo*, pp. 78-79, 165.

[10] *Id.* at 79.

[11] *Id.* at 165-177. Signed by Marlene B. Aspilla (SA IV-ATL), Isabelito M. Tongco (SA III-ATM), and Nick E. Zamoras (SA II-ATM).

Alarmed by the disappearance of Susan R. Joguilon, Barangay Treasurer, Barangay Poblacion, Kidawapan City, the audit team proceeded with the audit and review of the cash and accounts of Barangay Poblacion, Kidapawan City, more particularly the verification of the bank reconciliation statements prepared and submitted by the city accountant as of the periods ending January 2005 to April, 2006 and as of May 10, 2006. x x x

1. <u>Disbursements were not recorded in the Journal of Barangay Transactions (JBT). This was deliberately done to conceal unauthorized disbursements and tampered records and checks in violation of law, rules and regulations.</u>

The JBT is the official book of accounts (book of final entry) for Barangays. The Bank Reconciliation Statement is an accounting report showing the results of the process of bringing into agreement the cash balance per JBT and cashbook balance per bank statement of the bank. The Audit team matched the entries of the cash in bank account in the JBT against the bank statement, and finally in the bank reconciliation statement to establish all checks issued but were not recorded in the JBT.

As a rule, claims against government funds shall be supported by complete documentation. Disbursements or all money claims of the government shall be covered by Disbursement Voucher (DVs) (Section 37a, a Vol. 1, Sec. 32, Vol. II, NGAS)

x x x x

As a matter of emphasis, eighty[-]six (86) checks with amounts that aggregated ₱2,387,648.87 were not recorded in the [JBT] nor reported in the financial statements of Barangay Poblacion as of certain periods from January 1, 2005 to May 8, 2006. x x x

Of these Disbursement Vouchers (DVs), if any, purportedly for disbursements amounting to ₱1,891,383.13, involving 72 checks which were actually negotiated and cleared with the local depository bank of Barangay Poblacion, Kidapawan City, were missing, not presented in audit or were actually inexistent. In her statement in writing, the city accountant declared there were really no disbursement vouchers that support the checks issued and paid by the local depository bank. These disbursement vouchers, x x x were not recorded in the JBT.

Still, of the 86 checks mentioned above, 14 checks with amounts that aggregated ₱496,265.74 were issued based on tampered

disbursement vouchers (DVs) as alleged by Ms. Virginia E. Tamayo, City Accountant, City of Kidapawan. These falsified transactions were not recorded in the JBT. x x x

x x x x

2. <u>Disbursements Vouchers were apparently altered to conceal unauthorized disbursements in violation of law, rules and regulations. These tampered DVs were recorded in the JBT</u>.

As a matter of accounting procedure, the Accounting Office of the City Government of Kidapawan keeps certain accounting records. A budget and appropriation logbook is a record used to ensure that the disbursements of barangays is (*sic*) in pursuance of an appropriation law. Likewise, a logbook of duly approved DVs is used for physical control of perfected DVs.

The audit team was not able to verify availability of budget and appropriation of the barangay disbursements in view of the fact that the budget and appropriation control logbook of Barangay Poblacion is gone including the control logbook of barangay approved DVs. Ms. Jane C. Isla, Senior Bookkeeper and charged with the keeping of barangay accounts immediately tendered her resignation from office and cannot be reached for comment on the disappearance of the two logbooks.

The audit team took particular note of the alterations in the approved disbursement vouchers using white correction fluid.

Affected DVs numbering to fifteen (15) aggregated ₱951,096.93 which were allegedly tampered though recorded in the JBT.

These DVs and checks issued therefor, brings the total irregular disbursement transactions of Barangay Poblacion to 111 checks with a total amount of ₱3,338,745.80.

DV forms used and eventually tampered were all first copy of computer generated forms. Approved and paid vouchers were not marked "PAID" by Susan Joguilon. In her statement, the City Accountant said that as approved, it was different payee, particular and amount (*sic*). In the falsified/altered DVs, the computation for the applicable withholding tax covered with correction fluid came out legibly which proved the original approved base amount.

3. <u>False statements and false claims occurred following the tampering of records through the *conspiracy* of some third</u>

parties who provided set of blank forms used as supporting documents in the disbursement scheme in violation of law, rules and regulations.

Of the total number and amount of checks subject of falsification, two or more suppliers provided official receipts (O[R]s), charge invoices, and delivery receipts. x x x

x x x x

Some checks paid to Zaide Mini Trading were encashed and some were deposited to DBP Bank Account No. 5-20846-930-5. Checks paid to FBP Marketing & Gen. Merchandise were deposited to DBP Bank Account No. 5-12388-925-1 with few encashed checks. Confirmation requests were sent to DBP Kidapawan Branch and other local banks on the identity of endorsers of the checks. Our initial inquiry with the DBP Kidapawan Branch revealed that Account No. 5-12388-925-1 x x x was reported "CLOSED" on May 5, 2006, a day after the special audit team was constituted x x x. Furthermore, we gathered that deposits made in both DBP Bank Accounts 5-20846-930-5 and 5-12388-925-1 were accompanied by withdrawal slips which indicated the name of Susan R. Joguilon, as authorized representative. These facts are indicators that the said bank accounts were but "ARRANGED ACCOUNTS." The withdrawals done simultaneous with deposits prompted the audit team to reach a certain conclusion on the presence of a scheme to defraud the government.

Of the tampered DVs, the supporting documents such as ORs, Charge Invoices and Delivery Receipts attached to the DVs occurred in chronological order which created unusual patters (*sic*) of these documents coming from one or two booklets allegedly entrusted to Ms. Jane C. Isla, Senior Bookkeeper and charged with ensuring that supporting documents are complete, as follows:

x x x x

Some of the falsified checks were made to appear as deposited in a certain bank account as can be gleaned from the bank rubber stamps or markings at the back of the check. However, verification with the bank concerned disclosed that such check did not enter the said bank account as in the case of check no. x x x.

4. Government resources was (*sic*) not adequately safeguarded against loss. The presence of sixteen (16) pre-signed checks made every opportunity open to misuse of barangay funds

which (*sic*) tantamount to consenting the barangay treasurer to take funds in her custody.

Sixteen (16) blank checks pre-signed/pre-approved by Joseph Q. Biongan, Barangay Chairman, Barangay Poblacion, Kidapawan City were forwarded to the audit team by Mr. Joseph Biongan x x x. These checks were reportedly found by Mr. Joseph Biongan in the steel filing cabinet of Susan R. Joguilon.

The Barangay Chairman, Mr. Joseph Q. Biongan, who exercises authority over the financial affairs, transactions and operations of the Barangay Poblacion, Kidapawan City and ensure the proper management and utilization of government resources in accordance with law and regulations and that said resources are safeguarded against loss or wastage, caused the pre-signed checks. x x x

x x x x

x x x This indicated that the barangay buys and holds more and several booklets that gave the barangay treasurer opportunity to draw checks from different booklets and in no chronological order according to the control/serial number of the checks.

5. Fifty-four (54) checks ought to be in the possession of the barangay treasurer were missing. This is circumstantial to the alleged irregularities committed in the financial transactions of Barangay Poblacion, Kidapawan City.

x x x x

6. High incidence of cancellation of checks indicated improper handling of government funds in the possession of the Barangay Treasurer as custodian.

Fourteen (14) cancelled checks were noted from the files of checks issued, paid, returned by bank and basis of the bank reconciliation statement issued by the City accounting office. Of these, six ([6]) checks were made payable to Zaide Mini Trading. Of the six ([6]) checks payable to Zaide Mini Trading, two (2) checks were presented to the bank and subsequently dishonored by the bank due to "SPURIOUS CHECK" before they were cancelled and filed in the records by the Barangay Treasurer. These two checks were as follows:

x x x x

The prevalence of cancelled checks is an indicator of irregularities or mishandling of funds by the Barangay Treasurer. x x x

7. <u>Checks issued, cleared and paid by the bank which were similar to those reported as altered or falsified raised the misappropriated amount by P1,490,426.77</u>.

Forty-five (45) checks were similar to those reported as altered or falsified. These checks were payable to same suppliers mentioned in this report. x x x Fact such as perfected DV No. 200509290 in the amount of P24,802.05 was established that it was originally made "to payment of traveling expenses" of Joseph Q. Biongan but later altered "to payment of various supplies" to FBP Marketing as among the forty[-]five (45) checks which were not included in the initial list of altered of falsified checks. Of the 45 checks only 18 have DVs, 27 checks have none. x x x

8. <u>The fact of blatant disregard of the rules and standards of RA 9184 was committed by the barangay Bids and Awards Committee (BAC) incident to the falsification of barangay procurement and disbursement transactions</u>.

x x x x

Recommendation:

Based on the aforementioned audit observations, we now give our summary recommendation.

File appropriate charges on employees and suppliers involved who may be found culpable by the appropriate office of defrauding the government under the facts and circumstances herein enumerated and reported, as follows:

1. Susan R. Joguilon Barangay Treasurer, Barangay Poblacion, Kidapawan City	➢ As barangay treasurer of Barangay Poblacion, Kidapawan City — Accountable Officer entrusted with the [possession or] custody of funds and property under Joseph Q. Biongan, Barangay Chairman, Barangay Poblacion, and accountable thereof in accordance with law. ➢ As authorized representative in various withdrawals of deposit from DBP Bank Account Nos.

	x x x in the name of FBP Marketing & Gen. Merchandise and ZAIDE Mini Trading, respectively. ➢ For expenditures of government funds or uses of government property which could be in violation of law or regulations. ➢ Caused the approval of DVs with all the supporting documents, issuance and negotiation of checks. ➢ Responsible for the proper keeping and maintenance of cash records. ➢ Responsible for all other accountability of an accountable officer as Barangay Treasurer of Barangay Poblacion, Kidapawan City[.]
2. Joseph Q. Biongan Barangay Chairman Barangay Poblacion, Kidapawan City	➢ Immediately and primarily responsible for all funds and property pertaining to Barangay Poblacion, Kidapawan City. ➢ Countersigned checks issued and negotiated[.] ➢ Approved Disbursement Vouchers[.]
3. Jane C. Isla Senior Bookkeeper City Accountant's Office City of Kidapawan	➢ Point person, designated barangay bookkeeper primarily involved in the tampering of DVs and checks. ➢ Charged with the pre-audit and control of DVs and barangay payrolls, ensures the propriety and validity of supporting documents.

	➢ Responsible for all other accounting activities pertaining to Barangay Poblacion, Kidapawan City.
	➢ Immediately tendered resignation from office but did not render an account of her office. The budget and appropriation control logbook and the logbook of approved disbursement vouchers under her care disappeared.
4. Fe Lopez	➢ *Charged with the PRs and POs upon whom the disbursements of barangay are initially processed.*
5. Alma Pahkiat Administrative Aide I City Accountant's Office City of Kidapawan	➢ *Responsible for the posting of barangay transactions from source documents/DVs to the JBT.*
6. Lily P. Sambuang Administrative Aide VI City Accountant's Office	➢ Handles the segregation and recording of vouchers and payrolls.
7. Mahalito B. Lapinid Administrative Aide I City Accountant's Office City of Kidapawan	➢ *Charged with the preparation of bank reconciliation statements of 40 barangays of the [C]ity of [K]idapawan.*
	➢ *Posts barangay transactions, including vouchers and payrolls, in the JBT[.]*
8. Virginia Tamayo City Accountant['s] Office City of Kidapawan	➢ Signs in the appropriate box of the DV certification as to adequacy/ availability of funds/budgetary allotment and amount of expenditures and that expenditures properly certified, supported by documents using the checklist of required supporting documents.

	➢ Exercises authority over the affairs of the accounting unit.
SUPPLIERS:	
9. FBP Marketing and Gen. Mdse Lanang, Davao City Frances B. Pajarillo-Prop	➢ Enabled the alleged falsification by providing stubs of ORs, charge invoices and delivery receipt[s] and invoices to employees of Barangay Poblacion Kidapawan City which were eventually used for payment. ➢ Enabled the encashment/ deposit of checks and simultaneous withdrawal of deposits by Susan Joguilon as authorized representative.
10. Zaide Mini Trading	➢ Name was only used. Few official receipts, charge invoices and delivery receipt[s] were found in the batch of supporting documents. ➢ Enabled the encashment/ deposit of checks and simultaneous withdrawal of deposits by Susan Joguilon as authorized representative.
11. CYHRRA Enterprises Kidapawan City Clara B. Peguit-Prop	➢ Enabled the alleged falsification by providing stubs of ORs, charge invoices and delivery receipt[s] and invoices to employees of Barangay Poblacion Kidapawan City which were eventually used for payment. ➢ Enabled the encashment/ deposit of checks.

12. IMILGIC Marketing	➢ Name was only used. No ORs, charge invoices and delivery receipt[s] and invoices were found in the batch of supporting documents[.]
13. **Others** — (involving fewer number of falsified checks)	➢ Enabled the alleged falsification by providing stubs of ORs, charge invoices and delivery receipt[s] and invoices to employees of Barangay Poblacion Kidapawan City which were eventually used for payment. ➢ Name was only used. No ORs, charge invoices and delivery receipt[s] and invoices were found in the batch of supporting documents[.] ➢ Enabled the encashment/ deposit of checks[.]
14. Barangay Bids & Awards Committee	➢ For failure to adhere to the rules and standards of RA 9184[.]

Other observations and recommendations of the audit team that may arise in the future in connection with the written replies of banks, and especially on the books, records and documents that may be recovered from Ms. Susan Joguilon and Ms. Jane C. Isla, will be incorporated in this report through a separate Audit Observation Memorandum in the official COA format.[12] (Emphasis and underscoring in the original; italics and notations supplied)

On June 30, 2006, Special Investigator IV (Officer-In-Charge) Efren R. Rapacon of COA-XII indorsed the Special Audit Report to the Office of the Ombudsman-Mindanao, recommending that criminal and administrative proceedings be instituted against

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[12] *Id.* at 166-177.

the persons named therein. Thus, the said Special Audit Report was adopted as the complaint of COA-XII for the Complex Crime of Malversation of Public Funds through Falsification of Public or Commercial Documents and Violation of Section 3(e) of R.A. No. 3019 docketed as Case No. OMB-M-C-07-0212-F. The criminal complaint was instituted together with the administrative complaint for Dishonesty, Misconduct and Conduct Prejudicial to the Best Interest of the Service docketed as Case No. OMB-M-A-07-128-F.

In a Joint Order[13] dated June 26, 2007, the Office of the Ombudsman-Mindanao ordered the respondents in Case No. OMB-M-C-07-0212-F and Case No. OMB-M-A-07-128-F to submit their counter-affidavits. Tamayo, Sambuang, and petitioners submitted their Joint Counter-Affidavit[14] dated July 20, 2007 for both cases, wherein they alleged that the complaint against them should be dismissed outright for failure to specifically allege the acts or omissions constituting the crime charged.[15] They cited Section 14, Article III of the 1987 Constitution which provides that no person shall be held to answer for a criminal offense without due process of law and that the accused shall be informed of the nature and cause of accusation against him or her.[16] They posited that the complaint failed to specifically establish their participation and that it merely concluded that they conspired with barangay officials.[17] They pointed out that COA-XII failed to establish the elements of conspiracy against them.[18]

In an Order dated May 21, 2008, the Office of the Ombudsman-Mindanao directed the parties to file their respective Verified

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[13] *Rollo*, Vol. II, pp. 641-644.

[14] *Id.* at 646-657.

[15] *Id.* at 649.

[16] *Id.* at 648.

[17] *Id.* at 649.

[18] *Id.* at 650.

Position Papers. Tamayo, Sambuang, and petitioners submitted their Joint Verified Position Paper on June 20, 2008.

Thereafter, the Office of the Ombudsman-Mindanao issued the assailed Resolution dated February 28, 2011 for the criminal charges. On even date, it also issued a Decision[19] for the administrative charges. The assailed Resolution and Decision are almost identical in their narration of facts and ratiocination, extensively citing the Special Audit Report.

In the said Decision dated February 28, 2011 for the administrative case, the Office of the Ombudsman-Mindanao found substantial evidence establishing the charges of Dishonesty, Misconduct, and Conduct Prejudicial to the Best Interest of the Service and ordered CAO-Kidapawan personnel, including petitioners, dismissed from the service. Thus:

> **WITH THE FOREGOING PREMISES,** this Office, finding substantial evidence and pursuant to Sections 52, 54 and 55 of Civil Service Resolution No. 991936 hereby orders respondents Virginia Evangelista Tamayo, Lily Paña Sambuang, Fe Manayaga Lopez, Alma Camoro Pahkiat, Mahalito Bunayog Lapinid and Susan R. Joguilon **DISMISSED** from service together with all its accessory penalties. The Mayor of Kidapawan City is hereby directed to implement this Office' Decision and to submit a compliance report within five (5) days from the implementation of this Decision. As for respondents Isla and Joguilon the implementation of the subject Decision is rendered moot and academic, however, the accessory penalties remains. As for the case against respondents Melvin Embrado Lamata, Jr., Jeoffrey Pedregosa Angeles, Inocencio Vinson Hernando II, Ramon Lonzon Manon-og, Ranulfo Bagotlo Galinato, and Cesar Alenio Lapez, the same is hereby ordered **DISMISSED** for insufficiency of evidence. As for respondents Joseph Quiachon Biongan and Roderick Dennis Franco Itutud, the case is hereby ordered **DISMISSED** by virtue of the Doctrine of Condonation.
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> **SO DECIDED**.[20]

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[19] *Id.* at 675-714. Penned by Aileen Lourdes A. Lizada, Graft Investigation and Prosecution Officer I.

[20] *Id.* at 712.

Ruling on the separate motions for reconsideration of petitioners, however, the Office of the Ombudsman-Mindanao **reversed its earlier Decision insofar as petitioners were concerned and absolved them from liability**. The Office of the Ombudsman-Mindanao found that petitioners **had no direct participation in the anomalies**. Its Order[21] dated October 31, 2013 reads:

> **WITH THE FOREGOING PREMISES,** finding substantial evidence and pursuant to Administrative Order No. 17, this Office hereby reiterates the Decision dated 28 February 2011 dismissing from the public service respondents Virginia Evangelista Tamayo and Lily Paña Sambuang, together with all its accessory penalties.
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> **With regard to respondents Fe Manayaga Lopez, Alma Camoro Pahkiat, Mahalito Bunayog Lapinid, their Motions for Reconsideration are hereby GRANTED and they are hereby reinstated to their respective former positions and are entitled to full back wages as the case against them is hereby ordered DISMISSED.**
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> The Chief of the Human Resource and Management Office of Kidapawan City, is hereby directed to enter a copy of this Decision to form part of respondents 201 files.
>
> The Honorable Mayor of Kidapawan City is hereby directed to implement this Office' Decision and to submit a compliance report within five (5) days from the implementation thereof. As for respondents Jane Cagas Isla and Susan R. Joguilon, the 28 February 2011 Decision stands as regards the imposition of the accessory penalties.
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> **SO ORDERED.**[22] (Emphasis supplied)

As regards the Resolution on the criminal charges was concerned, petitioners filed a Motion for Reconsideration dated August 5, 2014. In an Order[23] dated November 6, 2015, the Office of the

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[21] *Id.* at 775-781. Penned by Aileen Lourdes A. Lizada, Graft Investigation and Prosecution Officer I.

[22] *Id.* at 779-780.

[23] *Supra* note 4.

Ombudsman-Mindanao summarily denied their motion only because it had been filed beyond the five (5)-day reglementary period under Section 7,[24] Rule II of Ombudsman Administrative Order (A.O.) No. 7, as amended by A.O. No. 15-01 (Rules of Procedure of the Office of the Ombudsman).

Hence, this Petition where petitioners argue that the Resolution and Order were rendered by the Office of the Ombudsman-Mindanao with grave abuse of discretion amounting to lack or excess of jurisdiction in finding probable cause to indict them.

In a Resolution[25] dated May 31, 2016, the Court required the respondents to comment within ten (10) days on the Petition, and issued a TRO, enjoining the filing of an Information and the conduct of further criminal proceedings against petitioners.

On behalf of respondents, the Office of the Solicitor General (OSG) filed its Comment[26] dated September 22, 2016, alleging that: (a) the Office of the Ombudsman correctly dismissed petitioners' motion for reconsideration in the criminal complaint for being filed out of time; (b) the determination of probable cause is a function bestowed by the Constitution on the Office of the Ombudsman which compels the courts to observe the rule of non-interference; and (c) petitioners, together with City Accountant Tamayo, *et al.*, acted in conspiracy with one another to commit the crime of Malversation of Public Funds Through Falsification of Public and Commercial Documents.[27]

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[24] Section 7. *Motion for Reconsideration*. — a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where the information had already been filed in court;

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[25] *Rollo*, Vol. II, pp. 782-783.

[26] *Id.* at 830-856.

[27] *Id.* at 837-838.

In their Reply[28] dated January 6, 2017, petitioners reiterated their arguments and alleged that, in spite of the Court's issuance of TRO on May 31, 2016, 108 Informations were filed against them on November 21, 2016.

Meanwhile, in a Resolution[29] dated March 10, 2017, the Sandiganbayan granted the prosecution's motion to withdraw the 108 Informations against herein petitioners and their co-accused. The Office of the Special Prosecutor under the Office of the Ombudsman manifested before the Sandiganbayan that it had not been informed of the issuance of the TRO before it filed the said Informations.

Issue

The sole issue to be resolved in this case is whether the Office of the Ombudsman-Mindanao committed grave abuse of discretion in finding probable cause to charge herein petitioners with 107 counts of Malversation of Public Funds through Falsification of Public and Commercial Documents under Articles 217 and 171 of the RPC, and one (1) count of violation of Section 3 (e) of R.A. No. 3019, as amended.

The Court's Ruling

The Petition is meritorious.

The general rule is that the Court defers to the sound judgment of the Ombudsman. The Court's consistent policy has been to maintain non-interference in the determination by the Ombudsman of the existence of probable cause. This is on account of the recognition that both the Constitution and R.A. No. 6770, otherwise known as *The Ombudsman Act of 1989*, give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. Since it is

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[28] *Id.* at 869-906.

[29] Penned by Associate Justice Alexander G. Gesmundo (now a Member of the Court), with Associate Justices Ma. Theresa Dolores C. Gomez-Estoesta and Zaldy V. Trespeses concurring, Sandiganbayan Seventh Division.

armed with the power to investigate, coupled with the principle that the Court is not a trier of facts, the Ombudsman is in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause.[30]

The foregoing general rule, however, is subject to an exception — where there is an allegation of grave abuse of discretion. In such case, the Ombudsman's act cannot escape judicial scrutiny under the Court's own constitutional power and duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[31]

Grave abuse of discretion is defined as "an act too patent and gross as to amount to an evasion of a duty, or to a virtual refusal to perform the duty enjoined or act in contemplation of law" or that the tribunal, board or officer with judicial or quasi-judicial powers "exercised its power in an arbitrary and despotic manner by reason of passion or personal hostility."[32] Petitioners here have convincingly shown the presence of grave abuse of discretion on the part of the Office of the Ombudsman-Mindanao in this case.

Firstly, the Court finds the Office of the Ombudsman-Mindanao to have hastily and arbitrarily denied the motion for reconsideration of petitioners. While procedural rules are important since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice, such rules may be relaxed for the most persuasive of reasons

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[30] *Jabinal v. Overall Deputy Ombudsman*, G.R. No. 232094, July 24, 2019; see *Reyes v. Office of the Ombudsman*, G.R. No. 208243, June 5, 2017, 825 SCRA 435, 446-447, citing *Dichaves v. Office of the Ombudsman*, G.R. Nos. 206310-11, December 7, 2016, 813 SCRA 273, 297-299.

[31] *Casing v. Ombudsman*, G.R. No. 192334, June 13, 2012, 672 SCRA 500, 507-508; see also *De Lima v. Reyes*, G.R. No. 209330, January 11, 2016, 779 SCRA 1 and *Reyes v. Office of the Ombudsman*, *id*.

[32] *Philippine National Bank v. Gregorio*, G.R. No. 194944, September 18, 2017, 840 SCRA 37, 54.

in order to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed.[33] What should guide judicial action is the principle that party-litigants should be given the fullest opportunity to establish the merits of their complaint or defense rather than for them to lose life, liberty, honor, or property on technicalities. The rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, when they result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.[34]

Thus, if only the Office of the Ombudsman-Mindanao had entertained the motion for reconsideration instead of denying it cursorily and only on the basis of it being late, it would have realized that there was a compelling reason to overturn its earlier Resolution finding probable cause against petitioners.

The factual antecedents of the case are worth re-stating.

On February 28, 2011, the Office of the Ombudsman-Mindanao came out with two separate rulings on the administrative and criminal cases arising out of the same alleged acts and omissions against petitioners. These rulings were prepared and reviewed by, and signed for approval by the same set of officers.[35]

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[33] See *Curammeng v. People*, G.R. No. 219510, November 14, 2016, 808 SCRA 613, 620 and 622.

[34] *Delos Santos v. Court of Appeals*, G.R. No. 169498, December 11, 2008, 573 SCRA 690, 703, citing *Alberto v. Court of Appeals*, G.R. No. 119088, June 20, 334 SCRA 756, 774.

[35] The Decision and Resolution both dated February 28, 2011 were prepared by Graft Investigation and Prosecution Officer I Aileen Lourdes A. Lizada and reviewed by Acting Director Maria Iluminada Lapid-Viva. Assistant Ombudsman Rodolfo M. Elman, CESO III signed the Decision recommending approval thereof, while he signed as reviewer of the Resolution. Deputy Ombudsman for Luzon Humphrey T. Montesoro approved the Decision, while he signed the Resolution recommending approval thereof. Former Ombudsman Conchita Carpio-Morales signed the Resolution with approval.

In October 2013, this same set of officers reconsidered the Decision in the administrative case and exonerated petitioners **on a categorical finding that they "had no direct participation in the anomalies."** Precisely because this same set of officers had already found petitioners not to have had any direct participation in the anomalies, petitioners accordingly moved for reconsideration of the Resolution in the criminal case against them. Incredibly, this same set of officers from the Office of the Ombudsman-Mindanao who exonerated petitioners of any administrative wrongdoing — to repeat, on a finding by them that petitioners had no direct participation in the anomalies — nevertheless sustained the Resolution in the criminal case finding probable cause against petitioners on sheer technicality, that is, the reglementary period in filing a motion for reconsideration had already lapsed.

It is certainly astonishing how the same set of officers who determined that petitioners had no participation in the anomalies — a determination, in so many words, that petitioners were completely innocent of any wrongdoing — essentially allowed, in the same breath, the continuance of the criminal prosecution against them based on the same factual circumstances and subject matter. This denial of the motion for reconsideration on a pure technicality in the face of their own unqualified exoneration of petitioners in the administrative case is nothing but grave abuse of discretion — for certainly, if petitioners were already found not to have had any participation in the anomalies, then this finding merits their exoneration as well from the criminal case. It falls well within the exception to the general rule that administrative and criminal cases based on the same operative facts may proceed independently.

To digress, there are three kinds of remedies available against a public officer for impropriety in the performance of his powers and the discharge of his duties: (1) civil, (2) criminal, and (3) administrative. These remedies may be invoked separately,

alternately, simultaneously or successively. Sometimes, the same offense may be the subject of all three kinds of remedies.[36]

The rule that the three kinds of remedies, which flow from the three-fold liability of a public officer, may proceed independently, is hinged on the differences in the quantum of evidence required in each case. In criminal cases, proof beyond reasonable doubt is needed, whereas a mere preponderance of evidence will suffice in civil cases. In administrative cases, only substantial evidence is required. As such, defeat of any of the three remedies will not *necessarily* preclude resort to other remedies or affect decisions reached thereat.[37]

Specifically, in cases where both an administrative case and a criminal case are filed against a public officer *for the same act or omission,* the Court has consistently held that an absolution from an administrative case does not necessarily bar a criminal case from proceeding, and vice versa.[38] An offense, for instance, may have been committed but the evidence adduced to prove liability failed to obtain the threshold required by law in one case — substantial evidence in administrative cases or proof beyond reasonable doubt in criminal cases — which would have established that the actor is either administratively or criminally liable. For this reason, the parallel case should not be dismissed *ipso facto* without a showing that its own threshold of evidence has not been reached as well.

It is significant to note, however, that the starting point in these cases is an **act or omission which gives rise to an offense** — that single act or omission that offends against two or more distinct and related provisions of law or gives rise to criminal as well as administrative liability.[39]

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[36] *Villaseñor v. Sandiganbayan (5th Division)*, G.R. No. 180700, March 4, 2008, 547 SCRA 658, 665.

[37] *Id.* at 665-666.

[38] See *Paredes v. Court of Appeals*, G.R. No. 169534, July 30, 2007, 528 SCRA 577, 587.

[39] See *id*.

Verily, in *Paredes v. Court of Appeals*,[40] the administrative case against the petitioner therein was dismissed by the Court of Appeals (CA) on the ground of insufficiency of evidence. The CA held that "substantial evidence was wanting to establish petitioner's participation in the alleged fraudulent encashment of the subject checks."[41] On the contrary, the CA went on to say that "petitioner adequately explained why his signatures were affixed on the subject checks."[42] In ruling, however, that this dismissal by the CA of the administrative case does not warrant the concomitant dismissal of the criminal case against the petitioner therein, the Court explained in this wise:

> Thus, considering the difference in the quantum of evidence, as well as the procedure followed and the sanctions imposed in criminal and administrative proceedings, the findings and conclusions in one should not necessarily be binding on the other. Notably, the evidence presented in the administrative case may not necessarily be the same evidence to be presented in the criminal cases. The prosecution is certainly not precluded from adducing additional evidence to discharge the burden of proof required in the criminal cases. Significantly, the prosecution had manifested that it would present testimonial evidence which was not presented in the administrative case.[43]

In another earlier case, *Paredes, Jr. v. Sandiganbayan, Second Division*,[44] the administrative case against one of the petitioners was also dismissed on insufficiency of evidence. When the petitioners prayed for the dismissal of the parallel criminal case on account of the decision in the administrative case, the Court denied the relief, holding thus:

> Petitioners call attention to the fact that the administrative complaint against petitioner Honrada was dismissed. They invoke our ruling in *Maceda v. Vasquez* that only this Court has the power to oversee

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[40] *Supra* note 38.

[41] *Id.* at 583.

[42] *Id.*

[43] *Id.* at 588-589.

[44] G.R. No. 108251, January 31, 1996, 252 SCRA 641.

court personnel's compliance with laws and take the appropriate administrative action against them for their failure to do so and that no other branch of the government may exercise this power without running afoul of the principle of separation of powers.

But one thing is administrative liability. Quite another thing is the criminal liability for the same act. Our determination of the administrative liability for falsification of public documents is in no way conclusive of his lack of criminal liability. As we have held in *Tan v. COMELEC*, the dismissal of an administrative case does not necessarily bar the filing of a criminal prosecution for the same or similar acts which were the subject of the administrative complaint.

> Petitioner's assertion that private respondent Alterado has resorted to forum-shopping is unacceptable. The investigation then being conducted by the Ombudsman on the criminal case for falsification and violation of the Anti-Graft and Corrupt Practices Act, on the one hand, and the inquiry into the administrative charges by the COMELEC, on the other hand, are entirely independent proceedings. *Neither would the results in one conclude the other. Thus an absolution from a criminal charge is not a bar to an administrative prosecution (Office of the Court Administrator v. Enriquez, 218 SCRA 1) or vice versa.*[45] (Italics in the original)

Along the same vein, the Court in *Ocampo v. Ombudsman*[46] also refused to dismiss the administrative case filed against the petitioner therein on the sole ground that the criminal case filed against him on the same set of facts had already been dismissed. The Court ruled that the dismissal of the criminal case will not foreclose administrative action filed against the petitioner or give him a clean bill of health in all respects. The Court elaborated:

> x x x The Regional Trial Court, in dismissing the criminal complaint, was simply saying that the prosecution was unable to prove the guilt of petitioner beyond reasonable doubt, a condition *sine qua non* for conviction. The lack or absence of proof beyond reasonable doubt does not mean an absence of any evidence whatsoever for there is

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[45] *Id.* at 657-658.

[46] G.R. No. 114683, January 18, 2000, 322 SCRA 17.

another class of evidence which, though insufficient to establish guilt beyond reasonable doubt, is adequate in civil cases; this is preponderance of evidence. Then too, there is the "substantial evidence" rule in administrative proceedings which merely requires such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Thus, considering the difference in the quantum of evidence, as well as the procedure followed and the sanctions imposed in criminal and administrative proceedings, the findings and conclusions in one should not necessarily be binding on the other.[47]

The foregoing sampling of jurisprudence illustrates how a dismissal of one case in situations where more than one had been instituted based on the same operative facts would affect one another. If the dismissal is only because the quantum of evidence had not been met, the defendant or respondent is not completely absolved in all remaining proceedings. That said, in *People v. Sandiganbayan (First Division)*[48] *(People)*, while the Court acknowledged the distinct and independent nature of an administrative case from a criminal case, it nonetheless gave weight on how the administrative case was dismissed, to wit:

Although the dismissal of the criminal case cannot be pleaded to abate the administrative proceedings primarily on the ground that the quantum of proof required to sustain administrative charges is significantly lower than that necessary for criminal actions, the same does not hold true if it were the other way around, that is, the dismissal of the administrative case is being invoked to abate the criminal case. The reason is that the evidence presented in the administrative case may not necessarily be the same evidence to be presented in the criminal case. The prosecution is certainly not precluded from adducing additional evidence to discharge the burden of proof required in the criminal cases. **However, if the criminal case will be prosecuted based on the *same* facts *and* evidence as that in the administrative case, and the court trying the latter already squarely ruled on the absence of facts and/or circumstances sufficient to negate the basis of the criminal indictment, then to still burden the accused**

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

[48] G.R. No. 164577, July 5, 2010, 623 SCRA 147.

to present controverting evidence despite the failure of the prosecution to present sufficient and competent evidence, will be a futile and useless exercise.[49] (Emphasis and underscoring supplied)

Notably, in *People*, the Court was upholding a resolution of the Sandiganbayan which granted the demurrer to evidence of the accused. The anti-graft court took into account the decision of the CA in the administrative case, which upheld the legality and validity of the contracts subject of the proceedings, as a "persuasive ruling," considering that it involved the same issues, subject matter and parties. It reasoned out that since the bases for the two (2) separate and distinct proceedings pertain to the same evidence, then the principle that the dismissal of an administrative case does not necessarily bar the filing of a criminal prosecution for the same or similar acts subject of the administrative complaint, on which its previous resolution was anchored, no longer applies. The conclusion then was that there being want of substantial evidence to support an administrative charge, there could be no sufficient evidence to warrant a conclusion that there is probable cause for a violation of Section 3(e) of R.A. No. 3019.**[50]**

Moreover, in a previous case[51] which *People* cited, the Court likewise noted how the administrative case was dismissed and how it should henceforth affect the fate of the criminal case:

In the case of Nicolas, he was exonerated of administrative liability in G.R. No. 154668 by this Court. In said case, the Court noted that while he requested the release of the cargo, he did so in good faith as he relied on the records before him and the recommendation of Arriola. And it noted that there was nothing to indicate that he had foreknowledge of any irregularity about the cargo. Thus Nicolas was absolved of having acted with gross neglect of duty, *viz*.:

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[49] *Id.* at 161-162.

[50] *Id.* at 154-155.

[51] *Nicolas v. Sandiganbayan*, G.R. Nos. 175930-31, February 11, 2008, 544 SCRA 324.

> *Arias v. Sandiganbayan* [G.R. Nos. 81563 & 82512, December 19, 1989, 180 SCRA 309] ruled that heads of office could rely to a reasonable extent on their subordinates. x x x
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> x x x x
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> Without proof that the head of office was negligent, no administrative liability may attach. Indeed, the negligence of subordinates cannot always be ascribed to their superior in the absence of evidence of the latter's own negligence. While Arriola might have been negligent in accepting the spurious documents, such fact does not automatically imply that Nicolas was also. As a matter of course, the latter relied on the former's recommendation. Petitioner [Nicolas] is not mandated or even expected to verify personally from the Bureau of Customs — or from wherever else it originated — each receipt or document that appears on its face to have been regularly issued or executed.

This Court is not unmindful of its rulings that the dismissal of an administrative case does not bar the filing of a criminal prosecution for the same or similar acts subject of the administrative complaint and that the disposition in one case does not inevitably govern the resolution of the other case/s and vice versa. The applicability of these rulings, however, must be distinguished in the present cases.

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x x x Unlike in the cases cited by the prosecution, this Court's Decision in the administrative case against Nicolas ***ruled squarely that he was not guilty of bad faith and gross neglect of duty***, which constitute an *essential element* of the crime under Section 3(e) of R.A. No. 3019. Under the doctrine of *stare decisis*, such ruling should be applied to the criminal case for violation of Section 3(e), R.A. No. 3019, the facts and evidence being substantially the same.

In fine, absent the element of evident bad faith and gross neglect of duty, not to mention want of proof of manifest partiality on the part of Nicolas, the graft case against him cannot prosper.[52] (Underscoring supplied; italics in the original)

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[52] *Id.* at 344-347.

Also, *Constantino v. Sandiganbayan*[53] (*Constantino*) is instructive. In that case, the Court held that the dismissal of the administrative case based on the same subject matter and after examining the same crucial evidence **operates to dismiss the criminal case** because of the **precise finding that the act from which liability is anchored does not exist**.[54] The Court went on to say:

> Although the instant case involves a criminal charge whereas *Constantino* involved an administrative charge, still the findings in the latter case are binding herein because the same set of facts are (*sic*) the subject of both cases. What is decisive is that the issues already litigated in a final and executory judgment preclude — by the principle of bar by prior judgment, an aspect of the doctrine of *res judicata*, and even under the doctrine of "law of the case," — the re-litigation of the same issue in another action. It is well established that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, it should be conclusive upon the parties and those in privity with them. The dictum therein laid down became the law of the case and what was once irrevocably established as the controlling legal rule or decision continues to be binding between the same parties as long as the facts on which the decision was predicated continue to be the facts of the case before the court. Hence, the binding effect and enforceability of that dictum can no longer be resurrected anew since such issue had already been resolved and finally laid to rest, if not by the principle of *res judicata*, at least by conclusiveness of judgment.
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> It may be true that the basis of administrative liability differs from criminal liability as the purpose of administrative proceedings on the one hand is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of the criminal prosecution is the punishment of crime. **However, the dismissal by the Court of the administrative case against Constantino based on the same subject matter and after examining the same crucial evidence operates to dismiss the criminal case because of the precise finding that the act from which liability is anchored does not exist.**

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[53] G.R. Nos. 140656 & 154482, September 13, 2007, 533 SCRA 205.

[54] *Id.* at 229.

It is likewise clear from the decision of the Court in *Constantino* that the level of proof required in administrative cases which is substantial evidence was not mustered therein. The same evidence is again before the Court in connection with the appeal in the criminal case. Ineluctably, the same evidence cannot with greater reason satisfy the higher standard in criminal cases such as the present case which is evidence beyond reasonable doubt.[55] (Emphasis and underscoring supplied)

Thus, the rulings of the Court in *People, Nicolas v. Sandiganbayan,* and *Constantino* find application here.

The Office of the Ombudsman-Mindanao itself had already determined, in no uncertain terms, that petitioners had no participation in the alleged anomalies. In arriving at this conclusion, the Office of the Ombudsman-Mindanao noted the comments of the COA and the Operations/Process Chart governing the disbursement of barangay funds, which showed that the responsibilities of petitioners entailed performing acts that transpired before and after the alleged anomalies occurred. Thus:

This Office in its Orders dated 18 July 2011 and 01 August 2011 directed the Commission on Audit (COA) thru Regional Director Evangeline K. Pingoy, COA-XII, Cotabato City to file its Comments to the subject Motions.

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On 16 July 2013 Director-in-Charge Alexander B. Juliano, of the Special Services Sector, Fraud Audit Office, COA stated, among others:

> *"As to respondent Tamayo, she could be absolved of liability if all the circumstances fall squarely with the Arias case, however, based on available documents there are indicators of negligence on her part.* ***For respondent Lopez, being in-charge of the PRs and POs only, she may be absolved as the anomalies did not happen in the initial processes that she handled.*** *For respondent Sambuang, being in-charge of segregating and*

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[55] *Id.* at 228-230.

recording of vouchers and payrolls, she had the opportunity to be instrumental in the early detection of the anomaly on the altered documents that she recorded."

As regards respondents Pahkiat and Lapinid, this Office takes note of the Operations/Process Chart wherein it can be gleaned that respondent Pahkiat's responsibilities of posting to the journal the barangay transactions with the corresponding checks issued and respondent's Lapinid duty of assisting in posting the journal of the barangay transactions to properly monitor the check issuance, were acts that transpired after the anomalies occurred.

Hence, respondents Lopez, Pahkiat and Lapinid had no direct participation in the anomalies.[56] (Emphasis and underscoring supplied)

The ruling of the Office of the Ombudsman-Mindanao, therefore, is much more than a finding that there was "insufficient evidence" to hold petitioners administratively liable, but rather, that petitioners did not commit anything at all which can potentially incriminate them administratively or criminally.

To be sure, the treatment of the different proceedings here with regard to their capacity to survive after the dismissal of the other is akin to cases where, despite the acquittal of an accused in a criminal case based on reasonable doubt, he or she remains civilly liable. Well-settled is the rule that a person acquitted of a criminal charge is not necessarily civilly free because the quantum of proof required in criminal prosecution (proof beyond reasonable doubt) is greater than that required for civil liability (mere preponderance of evidence). In order to be completely free from civil liability, a person's acquittal must be based on the fact that he did not commit the offense. If the acquittal is based merely on reasonable doubt, the accused may still be held civilly liable since this does not mean he did not commit the act complained of. It may only be that the facts proved did not constitute the offense charged.[57]

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[56] *Rollo*, Vol. II, pp. 776-778.

[57] *Nissan-Gallery Ortigas v. Felipe*, G.R. No. 199067, November 11, 2013, 709 SCRA 214, 223-224.

All told, while the Court has always been cognizant of and generally deferential to the exclusive function of the Ombudsman in the determination of probable cause, it has also always been firm and unhesitant in impressing upon the need to step in where the Ombudsman's exercise of the latter's power has been indubitably tainted with grave abuse of discretion. While the Court has in the past been wary about quashing an Information or overturning a finding of the Ombudsman on the sole basis that the administrative case against the accused has been dismissed,[58] it has also balanced this respect with the right of an individual not to be subjected to the expense and rigors of a trial that has, by all accounts, no leg to stand on. Certainly, the rights of the people from what could sometimes be an "oppressive" exercise of government prosecutorial powers do need to be protected when circumstances so require.[59]

WHEREFORE, premises considered, the Petition for *Certiorari* is hereby **GRANTED**. The Resolution dated February 28, 2011 and Order dated November 6, 2015 issued by the Office of the Ombudsman-Mindanao in Case No. OMB-M-C-07-0212-F are **REVERSED** and **SET ASIDE** insofar as petitioners Fe Manayaga Lopez, Alma Camoro Pahkiat, and Mahalito Bunayog Lapinid are concerned.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, Gaerlan and *Rosario, JJ.*, concur.

Gesmundo,[1] *J.*, no part.

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[58] *Ferrer, Jr. v. Sandiganbayan*, G.R. No. 161067, March 14, 2008, 548 SCRA 460.

[59] See *Mendoza v. People*, G.R. No. 197293, April 21, 2014, 722 SCRA 647, 657.

[1] No part. Then Sandiganbayan Seventh Division Chairperson, Associate Justice Alexander G. Gesmundo penned the Resolution dated March 10, 2017, which granted the prosecution's motion to withdraw the 108 Informations against herein petitioners and the 12 other persons (with Associate Justices Ma. Theresa Dolores C. Gomez-Estoesta and Zaldy V. Trespeses concurring).

EN BANC

[G.R. No. 227715. November 3, 2020]

FR. RANHILIO CALLANGAN AQUINO, DR. PABLO F. NARAG, in representation of PERMANENT EMPLOYEES OF THE CAGAYAN STATE UNIVERSITY, *Petitioners, v.* **COMMISSION ON AUDIT,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; REPRESENTATIVES AS PARTIES; ELEMENTS THAT MUST CONCUR FOR A REPRESENTATIVE SUIT TO BE ALLOWED.— [R]epresentatives may bring a suit on behalf of a real party in interest: . . .

Two elements must be established to bring a representative suit: "(a) the suit is brought on behalf of an identified party whose right has been violated, resulting in some form of damage, and (b) the representative [is] authorized by law or the Rules of Court to represent the victim."

2. ID.; ID.; ID.; ID.; AN UNINCORPORATED ASSOCIATION HAS NO LEGAL PERSONALITY TO FILE A CASE IN ITS NAME OR TO REPRESENT ITS MEMBERS.— While petitioners identified the Permanent Employees of the Cagayan State University as their beneficiary, they failed to allege their capacity to sue on its behalf. They also failed to allege the legal existence of the Permanent Employees of the Cagayan State University, in violation of Rule 8, Section 4 of the Rules of Court. Here, there was no showing that the Permanent Employees of the Cagayan State possesses juridical entity. Petitioners failed to refute respondent's allegation that the association does not exist.

Association of Flood Victims v. COMELEC ruled that an unincorporated association may not sue in its own name and may not be designated as a beneficiary in a representative suit. Hence, a representative who files a suit on behalf of an unincorporated association lacks legal standing: . . .

Similarly, the Permanent Employees of the Cagayan State University has no separate juridical personality. It can neither file a case under its name nor can it sue on behalf of its members. Hence, its members, who are the real parties in interest, should have been impleaded in the petition. Since the beneficiary of this representative suit is an unincorporated association, petitioners are likewise devoid of legal personality to represent it. While it is true that petitioners are real parties-in-interest in their own right, their legal standing is personal to them and cannot cure Permanent Employees of the Cagayan State University's lack of juridical capacity.

3. ID.; ID.; ID.; ID.; THE IDENTITY AND EXISTENCE OF THE ASSOCIATION THAT ONE SEEKS TO REPRESENT, AS WELL AS ITS AUTHORITY, MUST BE ESTABLISHED.— As to the second requisite of a representative suit, petitioners also failed to establish their authority to represent the Permanent Employees of the Cagayan State University.

In their Reply, petitioners attached Resolution No. 03 series of 2016 dated September 20, 2016, claiming that it is the same resolution attached to this Petition. However, a reading of the contents of the almost identical resolutions reveals that the documents refer to different associations in Cagayan State University.

The resolution attached in the Reply was purportedly issued by the Cagayan State University *Admin* Association as stated in the title. It bears noting that "ADMIN" was handwritten over a deleted text. However, the body of this resolution refers to the University Administrative Personnel Association and not Cagayan State University Admin Association. This is significantly different from the resolution attached to this Petition, which is also entitled Resolution No. 03 series of 2016 dated September 20, 2016 but issued by the Cagayan State *Faculty* Association.

It appears that the University Administrative Personnel Association adopted a resolution of the Cagayan State Faculty Association to file a petition before this Court assailing respondent's disallowance. In both resolutions, the purported association with the name "Permanent Employees of the Cagayan State University" does not appear.

Assuming that petitioners actually intended to represent Cagayan State University Faculty Association and the University Administrative Personnel Association, they should have been designated as the beneficiaries of these associations in the caption of their Petition. The requirement of designation in Rule 3, Section 3 of the Rules of Court is not an empty procedural rule. Its purpose is to remove confusion and doubt from the court's mind as to the party entitled to the reliefs prayed for.

In this case, petitioners are at fault for not complying with this basic procedural requirement. They proved their personal legal standing, but neglected to establish the identity and existence of the association they seek to represent.

4. POLITICAL LAW; CONSTITUTIONAL LAW; COMMISSION ON AUDIT (COA); 2009 COA RULES OF PROCEDURE; NOTICE OF DISALLOWANCE; AN APPEAL WITH THE COA DIRECTOR IS THE PROPER REMEDY TO ASSAIL A NOTICE OF DISALLOWANCE.— Under the 2009 Rules of Procedure of the Commission on Audit, a Notice of Disallowance attains finality if no appeal has been filed within six months from receipt of the Notice. An appeal is taken by filing an Appeal Memorandum with the director of the Commission on Audit within six months from receipt of the Notice of Disallowance. The director may reverse, modify, or affirm a Notice of Disallowance, but in case of reversal or modification, the director's decision is automatically reviewed.

5. ID.; ID.; ID.; ID.; ID.; A NOTICE OF DISALLOWANCE MUST BE SERVED TO EACH PERSON HELD LIABLE UNLESS THERE ARE SEVERAL PAYEES, IN WHICH CASE, SERVICE TO THE ACCOUNTANT IS CONSTRUCTIVE SERVICE TO ALL PAYEES AND SUFFICIENT COMPLIANCE WITH THE DUE PROCESS REQUIREMENT.— A notice of disallowance must be served to each and every person that . . . [The Commission on Audit] holds liable. However, when there are several payees, service to the accountant is constructive service to all payees held liable: . . .

Development Bank of the Philippines v. Commission on Audit explained that the essence of due process in proceedings before respondent is not the service of notice *per se*, but the

opportunity to be heard, or to seek reconsideration of the Notice of Disallowance[.]

6. ID.; ID.; ID.; ID.; ID.; UNCONFIRMED NEWS ON THE DISALLOWANCE DOES NOT AMOUNT TO CONSTRUCTIVE NOTICE.— Records show that COA did not properly serve the notice of disallowance. Ms. Monaliza Guzman (Guzman), the University Accountant, was not served a copy, contrary to Section 7, Rule IV of the 2009 Revised Rules of Procedure.

Instead, it was received by the Chief Administrative Office through Ms. Norlie Maa on June 3, 2015. While Ms. Guzman was addressed in the letter, there was no showing that the Notice was served to her. Moreover, the proofs of service in the notice of disallowance and notice of finality do not bear the signatures of the persons required to be served. There was no proof that the notices were properly served. While petitioners admitted to hearing "rumors and unconfirmed conjectures" on the disallowance, this does not amount to constructive notice prescribed under the 2009 Revised Rules of Procedure of the Commission on Audit.

7. ID.; ID.; ID.; ID.; ID.; LACK OF PROPER NOTICE OF DISALLOWANCE THAT PREVENTED A PARTY FROM APPEALING OR SEEKING RECONSIDERATION MAY JUSTIFY A DIRECT RESORT TO THE SUPREME COURT.— The lack of proper service of the notice of disallowance prevented petitioners from appealing or seeking reconsideration before its finality. This Court agrees with petitioners that they only had constructive notice of the disallowance when the Office of the President issued Memorandum OP-5004-MEMO-2016-08-175 directing them to return the disallowed incentives. Thus, we do not find that petitioners opted not to file an appeal or reconsideration before respondent, as they were not properly informed of the notices' issuance.

As petitioners did not have adequate remedies when the disallowance lapsed into finality, they were constrained to file this petition for certiorari consistent with Rule 12, Section 1 of the 2009 Revised Rules of Procedure of the Commission on Audit: . . .

However, even as we excuse petitioners' direct resort to this Court and give due course to their Petition, We still deny it because COA did not commit grave abuse of discretion in disallowing the year-end incentives.

8. ID.; ADMINISTRATIVE LAW; HIGHER EDUCATION MODERNIZATION ACT OF 1997 (R.A. NO. 8292); THE DISBURSEMENT POWER OF THE GOVERNING BOARD OF STATE UNIVERSITIES AND COLLEGES IS LIMITED TO FUND ACADEMIC PROGRAM OR FOR EXPENSES NECESSARY FOR INSTRUCTION, RESEARCH, EXTENSION, OR OTHER SIMILAR PROGRAMS OR PROJECTS.— Under Republic Act No. 8292, any income generated from tuition fees, charges, and all other generated income shall form part of the special trust fund of a state university or college. The disbursement power of the governing board of a state university or college is limited to funding instruction, research, extension, or other similar programs and projects.

In *Chozas v. Commission on Audit*, accomplishment incentive awards disbursed from the special trust fund and given to the Board of Regents, employees, and faculty members of Bulacan State University were disallowed. This Court upheld the disallowance because the award of incentives was not related to any academic program nor was it an expense necessary for instruction, research, and extension[.]

9. ID.; ID.; ID.; ID.; PAYMENT OF INCENTIVES FOR PERSONNEL OF STATE COLLEGES AND UNIVERSITIES SOURCED FROM SAVINGS OR THE UNEXPENDED AMOUNT OF THEIR BUDGET IS NOT ALLOWED.— Here, the year-end incentives were sourced from the "unused appropriated income for [fiscal year] 2014." In other words, it was sourced from the unexpended amount of the budget which forms part of the savings of the university. This Court holds that the savings of a special trust fund must also be utilized for the limited purpose of instruction, research, extension, and other similar projects. . . .

Section 3 (w) of CMO No. 020-11 permitting the disbursement of unexpended amounts for incentives should not be interpreted as a wholesale authority for the state university to issue any kind of incentives without regard to its purpose.

"[A] rule or regulation must conform to and be consistent with the provisions of the enabling statute." . . .

While payment of additional incentives is expressly stated in CMO No. 020-11, it should be construed in accordance with Republic Act No. 8292. Thus, the governing board of a state university or college may only utilize the unexpended balance or income for the purpose of instruction, research, extension, and other similar projects. To allow a state university to disburse the savings of its special trust fund regardless of the purpose, in effect, allows it to circumvent the rules.

10. ID.; ID.; ID.; ID.; ID.; CERTAIN PROCEDURAL REQUIREMENTS MUST BE COMPLIED WITH BEFORE PAYMENT OF PERSONNEL INCENTIVES MAY BE TAKEN FROM THE ACCUMULATED SAVINGS OF THE SPECIAL TRUST FUND.— Article VI of CMO No. 020-11 provides the procedure in using the accumulated savings of a state university:

ARTICLE VI Accumulated Savings/The CROU

SECTION 31. *Use of STF Accumulated Savings or Cumulative Results of Operations-Unappropriated (CROU).* — The disposition of the STF Accumulated Savings or Cumulative Results of Operations-Unappropriated arising from tuition fees, service and other income shall be approved by the BOR/T upon the recommendation of President in consultation with the Administrative Council (ADCO). . . .

Under the guidelines, payment of incentives may be disbursed from the accumulated savings of the special trust fund, otherwise called as Cumulative Results of Operations-Unappropriated (CROU). Prior to its payment, there must be consultation with the Administrative Council of the State University. Thereafter, the President recommends the payment of incentives for approval to the Board of Regents.

11. ID.; ID.; ID.; ID.; ID.; ID.; PAYMENT OF PERSONNEL INCENTIVES WITHOUT THE REQUIRED BOARD OF REGENTS' APPROVAL IS AN ILLEGAL AND IRREGULAR DISBURSEMENT. — An examination of the Special Order OP-2005-SO-2014-736 shows that it lacks the required approval from the Board of Regents. It was only the

President, through the Campus Executive Officers who authorized the payment of incentives: . . .

Petitioners failed to show that the Campus Executive Officers are the same officials who sit on the Board of Regents. CMO No. 020-11 is specific that only the Board of Regents can approve payment of incentives.

Under Republic Act No. 8292 and CMO No. 020-11, the Board of Regents may delegate the disbursement of accumulated savings to the University President, whose action is still subject to the approval of the Board of Regents. The PRAISE Committee and the Administrative Council must also agree to it, before the University President can endorse additional incentives from the accumulated savings for the Board of Regents' approval. . . .

In this case however, it does not appear that the Board of Regents of Cagayan State University delegated its power to Dr. Quilang, the University President. While petitioners rely on CMO No. 020-11, they did not allege whether the disbursement of the savings was done with the required Board of Regents' approval. The Special Order granting the incentives states that only the President, in coordination with the Campus Executive Officers, agreed to its issuance.

Therefore, the grant of year-end incentives is an illegal and irregular disbursement. Aside from being contrary to the allowable purpose for disbursement under Republic Act No. 8292, there was no showing that the procedure for disbursement of savings was complied with.

12. ID.; ID.; ID.; ID.; ID.; PRINCIPLES OF *SOLUTIO INDEBITI* AND UNJUST ENRICHMENT; PAYEES MUST RETURN DISALLOWED OR ERRONEOUSLY RECEIVED INCENTIVES REGARDLESS OF THEIR GOOD FAITH.— Applying the *Madera* guidelines, We hold that the payees are not excused from returning the disallowed year-end incentives. Regardless of the manner of receipt, petitioners benefited when the amounts were transferred to their bank accounts. As in *Madera*, the personal liabilities of the payees to return the amount is a civil obligation. There being no basis for their entitlement to the year-end incentives in 2014, they must return the amounts they erroneously received based on

the principle of *solutio indebiti*. Allowing petitioners to keep the disallowed incentives will result in unjust enrichment to the prejudice of the government.

13. ID.; ID.; ID.; ID.; ID.; CERTAIN FACTORS MAY BE CONSIDERED IN DETERMINING THE LIABILITY OF THE PAYEES AND THE APPROVING AND CERTIFYING OFFICIALS.— The kind and nature of disallowance must first be established since certain presumptions in determining the liability of payees attach to each type of disallowance. Thereafter, the relevant circumstances should be considered to determine whether the approving and certifying officers exercised the diligence of a good father of a family:

. . .

> *. . . [T]he determination of liability will begin with identifying the reason behind the disallowance. Depending on the nature of the disallowance, various presumptions and liabilities for the responsible officers and employees will attach. . . .*

14. ID.; ID.; ID.; ID.; ID.; FAILURE OF THE CERTIFYING AND APPROVING OFFICERS TO EXERCISE THE DILIGENCE OF A GOOD FATHER OF A FAMILY RENDERS THEM SOLIDARILY LIABLE TO RETURN THE ILLEGALLY DISBURSED FUNDS TO THE EXTENT OF THE NET DISALLOWED AMOUNT.— It is implied that the failure of the approving and certifying officers to perform their duties with the required diligence of a good father of a family will make them solidary liable in returning the illegally disbursed funds. In her separate opinion in *Madera*, Senior Associate Justice Estela M. Perlas-Bernabe expounded on this implication after a finding of bad faith, malice, or gross negligence in the approving and certifying officers' performance of duties:

. . .

> Notably, with respect to "every official or employee authorizing or making such payment" in bad faith, with malice, or gross negligence, the law justifies holding them solidarily liable for the amounts they may or may not have received, considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties.

> ***Since the law characterizes their liability as solidary in nature, it means that once this provision is triggered, the State can go after each and every person determined to be liable for the full amount of the obligation***; this holds true irrespective of the actual amounts individually received by each co-obligor, without prejudice to claims for reimbursement from one another. . . .
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> However, We stress that the solidary liability of the approving and certifying officers is limited only to the extent of the net disallowed amount:
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> . . . In this regard, Justice Bernabe coins the term ***"net disallowed amount" to refer to the total disallowed amount minus the amounts excused to be returned by the payees***. . . .

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

D E C I S I ON

LEONEN, *J.*:

Year-end incentives given to state university officials and employees are not allowable disbursements from the savings of its special trust fund. The recipients of illegally and irregularly disbursed funds are generally required to return the amounts they erroneously received regardless of good faith and lack of participation.

This resolves the Petition for Certiorari[1] filed by Fr. Ranhilio Callangan Aquino and Dr. Pablo F. Narag (petitioners), for themselves and on behalf of the Permanent Employees of the Cagayan State University. The Petition questions the disallowance of the Commission on Audit[2] of year-end incentives given to

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[1] *Rollo*, pp. 3-11.

[2] Id. at 3. *See* pp. 18-23, the May 18, 2015 Notice of Disallowance in N.D. No. 15-001-164-(14) was issued by Audit Group 1-State Universities

officers and employees of Cagayan State University for not being in accord with Republic Act No. 8292.[3]

On December 19, 2014, Dr. Romeo Quilang (Quilang), as president of Cagayan State University, issued Special Order No. OP-2005-SO-2014-736 (Special Order) granting the payment of incentives not exceeding ₱40,000.00 to all its officials and employees.[4] The incentives were sourced from the unused appropriated income for 2014:

> In the spirit of the Yuletide Season, authority is hereby granted to pay incentives to all officials, regular and casual employees of the University with an amount not exceeding ₱40,000.00 subject to existing guidelines on payment of incentives pursuant to CHED CMO No. 20, s. 2011.
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> The incentive shall be sourced from the unused appropriated income for FY 2014 as agreed by the Campus Executive Officers during the Academic and Administrative Council meeting held on December 16, 2014 at the Andrews Gymnasium.
>
> The receipt of the incentive is without prejudice to the refund by the employees concerned if the incentive is found not in order in the post audit by the Commission on Audit. A waiver shall be executed by individual employees stating therein their willingness to refund the full amount in case of disallowance.
>
> Issued in the best interest of public service. All orders and other issuances contrary are hereby rescinded or modified accordingly.[5]

The year-end incentives were deposited in the respective United Coconut Planters Bank accounts of the officials and employees of Cagayan State University.[6]

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and Colleges, Team 2, headed by Irene P. Salvanera and supervised by Jovito T. Ilagan.

[3] Id. at 3-4. See p. 12, the August 1, 2016 Notice of Finality of Decision was issued by Audit Group 1-State Universities and Colleges, Team 2, headed by Irene P. Salvanera and supervised by Corazon A. Bassig.

4 Id. at 4.

[5] Id. at 4 and 24.

[6] Id. at 5.

On May 18, 2015, the Commission on Audit issued a Notice of Disallowance for the incentives stating that:[7]

The amount of ₱7,688,000.00 was disallowed in audit since the bases of payment of the year-end incentive to all CSU officials and employees has legal infirmity as it is not in accord with the provision of R.A. 8292 otherwise known as the Education Modernization Act.

. . . .

Please direct the aforementioned persons liable to settle immediately the said disallowance. Audit disallowance not appealed within six (6) months from receipt hereof shall become final and executory as prescribed under Sections 48 and 51 of P.D. 1445.[8]

The following persons were held liable for the disallowance:[9]

Name	Position/ Designation	Nature of Participation in the Transaction
Dr. Romeo R. Quilang	University President	Issued Special Order OP-2005-SO-2014-736 re: Granting Authority to Pay Incentives to all Officials, Regular, and Casual employees of the University chargeable from Unused Appropriations of Internally Generated Income for FY 2014. Issued Memorandum OP-5005-MEMO-2014-12-167 re: Guidelines on the Payment of Incentives from the Unused Appropriated Funds from Internally Generated Income for FY 2014.
Atty. Honorato M. Carag	Chief Administrative Officer	Approved the payment

[7] Id.

[8] Id. at 22-23.

[9] Id. at 22.

Ms. Monaliza V. Guzman	University Accountant	Certified the availability of funds/supporting documents complete and proper
All the payees listed above[10]		

On June 6, 2015, the Office of the President of the university received the notice of disallowance.[11] The payees were allegedly not informed of the disallowance, which prevented them from appealing the notice of disallowance before it attained finality.[12]

On August 31, 2016, the Commission on Audit issued a notice of finality of decision which was received by the Office of the Vice-President for Academic Affairs.[13]

Petitioners allegedly discovered the disallowance when Dr. Mariden V. Cauilan, the OIC President of Cagayan State University, issued Memorandum OP-5004-MEMO-2016-08-175 directing all employees to return the disallowed year-end incentive by virtue of the notice of finality.[14]

Hence, petitioners instituted this action for themselves and in representation of the Permanent Employees of the Cagayan State University.[15]

They allege that the Commission on Audit committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that the grant of the 2014 year-end incentives was in violation of Republic Act No. 8292, or the Higher Education Modernization Act of 1997, and in ordering that the employees return the amounts they received.[16]

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[10] Id.

[11] Id. at 5.

[12] Id.

[13] Id. at 5 and 12.

[14] Id. at 5.

[15] Id. at 3.

[16] Id. at 5-6.

Petitioners argue that Section 4 of Republic Act No. 8292 gives the governing board of the Cagayan State University the discretion to receive and appropriate funds in support of the purposes of the university.[17] They allege that "'incentivizing' efficiency in teaching and rewarding loyalty to the state or university or college"[18] is a purpose and function of a university for which sums may be appropriated. They urge this Court to take judicial notice of the fact that providing incentives to instructors and professors ameliorates the condition of instructional corps and keeps them faithful to the institution.[19] Finally, they claim that the grant of year-end incentives is expressly authorized under CHED Memorandum Order No. 20, series of 2011 (CMO No. 20-2011).[20] Supposedly, CMO No. 20-2011 is an executive construction of Republic Act No. 8292, and must be accorded respect.[21]

Further, petitioners argue that they are not required to return the incentives because they received it in good faith, having relied on the validity of the Special Order.[22] They also claim

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[17] Id. at 6, Petition. Republic Act No. 8292 (1997), sec. 4 (b) states:

To receive and appropriate all sums as may be provided, for the support of the university or college in the manner it may determine, in its discretion, to carry out the purposes and functions of the university or college;

. . .

(d) Any provision of existing laws, rules and regulations to the contrary notwithstanding, any income generated by the university or college from tuition fees and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of regents/trustees for instruction, research, extension, or other programs/projects of the university or college: *Provided*, That all fiduciary fees shall be disbursed for the specific purposes for which they are collected[.]

[18] Id.

[19] Id. at 7.

[20] Id.

[21] Id.

[22] Id. at 9.

that they received similar incentives in the past which were not disallowed.[23] They assert that they neither participated in the issuance of the incentives nor did they personally receive the same since these were deposited in their respective bank accounts.[24]

In its Comment,[25] respondent argues that the Petition should be dismissed for its failure to comply with various procedural requirements.

First, it points out that the Permanent Employees of the Cagayan State University has no existing juridical personality. The Certification authorizing petitioners to file the Petition was issued by the Cagayan State University Faculty Association and not the Permanent Employees of the Cagayan State University.[26]

Second, petitioners failed to attach in their Petition certified true copies of the assailed judgment, order, or resolution, in violation of Section 1, Rule 65 of the Rules of Court.[27]

Finally, respondent argues that certiorari is not the proper remedy for petitioners' lost appeal. Petitioners had adequate recourse by appealing the Notice of Disallowance to it but failed to do so.[28]

Respondent further alleges that it did not commit grave abuse of discretion in disallowing the year-end incentives. It states that under Republic Act No. 8292, the power to disburse a state university's funds belongs to the board of regents and not the university president.[29] Here, there was no showing that the

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[23] Id. at 8.

[24] Id.

[25] Id. at 63-73.

[26] Id. at 65-66.

[27] Id. at 66-67.

[28] Id. at 67-68.

[29] Id. at 69.

president was authorized by the board of regents to disburse the unappropriated funds as year-end incentives to its officials and employees.[30]

However, respondent agrees with petitioners that they should not be required to refund the incentives they received in good faith.[31]

In their Reply,[32] petitioners allege that the administration of Cagayan State University prevented them from appealing the notice of disallowance by not informing them of the disallowance before it attained finality.[33] They also allege that petitioners' authority to file the case on behalf of the Permanent Employees of the Cagayan State University is stated in Resolution No. 3, series of 2016 of the University Faculty Association which they attached in their Petition and in their Reply.[34] They assert that when the incentives were deposited in their bank accounts, they gained every right to assume that its issuance was authorized and had basis in law.[35]

The issues in this case are as follows:

First, whether or not petitioners have the legal personality to file the Petition;

Second, whether or not petitioners' direct recourse to this Court is proper;

Third, whether or not respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in disallowing the year-end incentives; and

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[30] *Id.*

[31] *Id.* at 70-71.

[32] *Id.* at 86-88.

[33] *Id.* at 86-87.

[34] *Id.* at 87.

[35] *Id.*

Lastly, whether or not petitioners are required to return the amount.

We deny the petition.

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Only natural, juridical, and authorized entities may become parties to a civil action.[36] A party's legal capacity to sue or be sued must be alleged in its initiatory or responsive pleading:

> SECTION 4. *Capacity*. — Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred. A party desiring to raise an issue as to the legal existence of any party or the capacity, of any party to sue or be sued in a representative capacity, shall do so by specific denial, which shall include such supporting particulars as are peculiarly within the pleader's knowledge[.][37]

The action shall be prosecuted and defended in the name of the real party in interest.[38] However, representatives may bring a suit on behalf of a real party in interest:

> SECTION 3. *Representatives as Parties*. — Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, *the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest.* A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal[.][39] (Emphasis supplied)

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[36] RULES OF COURT, Rule 3, sec. 1.

[37] RULES OF COURT, Rule 8, sec. 4.

[38] RULES OF COURT, Rule 3, sec. 2.

[39] RULES OF COURT, Rule 3, sec. 3.

Two elements must be established to bring a representative suit: "(a) the suit is brought on behalf of an identified party whose right has been violated, resulting in some form of damage, and (b) the representative authorized by law or the Rules of Court to represent the victim."[40]

In this case, petitioners filed this case on their own behalf and in representation of "all employees of the Cagayan State University adversely affected."[41] The caption of the Petition states that the petitioners are "Fr. Ranhilio Callangan Aquino and Dr. Pablo F. Narag, in representation of Permanent Employees of the Cagayan State University."[42] They assert their authority to file the instant case under the Resolution No. 03, series of 2016 attached to their Petition.[43]

Respondent alleges that petitioners do not have legal personality because there is no juridical entity registered under the name of Permanent Employees of the Cagayan State University.[44]

We agree with respondent.

While petitioners identified the Permanent Employees of the Cagayan State University as their beneficiary, they failed to allege their capacity to sue on its behalf. They also failed to allege the legal existence of the Permanent Employees of the Cagayan State University, in violation of Rule 8, Section 4 of the Rules of Court. Here, there was no showing that the Permanent Employees of the Cagayan State possesses juridical entity.

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[40] J. Leonen, Concurring and Dissenting Opinion in *Paje v. Casino*, 752 Phil. 498, 686 (2015) [Per J. Del Castillo, En Banc], citing J. Leonen, Concurring Opinion in *Arigo v. Swift*, 743 Phil. 8 (2014) [Per J. Villarama, Jr., En Banc].

[41] *Rollo*, p. 3.

[42] Id.

[43] Id. at 87.

[44] Id. at 65.

Petitioners failed to refute respondent's allegation that the association does not exist.[45]

Association of Flood Victims v. COMELEC[46] ruled that an unincorporated association may not sue in its own name and may not be designated as a beneficiary in a representative suit. Hence, a representative who files a suit on behalf of an unincorporated association lacks legal standing:

> Under Sections 1 and 2 of Rule 3, only natural or juridical persons, or entities authorized by law may be parties in a civil action, which must be prosecuted or defended in the name of the real party in interest. Article 44 of the Civil Code lists the juridical persons with capacity to sue, thus:
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> Art. 44. The following are juridical persons:
>
> (1) The State and its political subdivisions;
>
> (2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;
>
> (3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.
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> Section 4, Rule 8 of the Rules of Court mandates that "[f]acts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred."
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> In their petition, it is stated that petitioner Association of Flood Victims "is a non-profit and non-partisan organization *in the process of formal incorporation*, the primary purpose of which is for the benefit of the common or general interest of many flood victims who are so numerous that it is impracticable to join all as parties," and that petitioner Hernandez "is a Tax Payer and the Lead Convenor of the Association of Flood Victims." Clearly, petitioner Association

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[45] Id.

[46] 740 Phil. 472 (2014) [Per J. Carpio, En Banc].

of Flood Victims, which is still in the process of incorporation, cannot be considered a juridical person or an entity authorized by law, which can be a party to a civil action.

Petitioner Association of Flood Victims is an unincorporated association not endowed with a distinct personality of its own. ***An unincorporated association, in the absence of an enabling law, has no juridical personality and thus, cannot sue in the name of the association.*** Such unincorporated association is not a legal entity distinct from its members. ***If an association, like petitioner Association of Flood Victims, has no juridical personality, then all members of the association must be made parties in the civil action.*** In this case, other than his bare allegation that he is the lead convenor of the Association of Flood Victims, petitioner Hernandez showed no proof that he was authorized by said association. Aside from petitioner Hernandez, no other member was made signatory to the petition. Only petitioner Hernandez signed the Verification and Sworn Certification against Forum Shopping, stating that he caused the preparation of the petition. There was no accompanying document showing that the other members of the Association of Flood Victims authorized petitioner Hernandez to represent them and the association in the petition.

In *Dueñas v. Santos Subdivision Homeowners Association*, the Court held that the Santos Subdivision Homeowners Association (SSHA), which was *an unincorporated association, lacks capacity to sue in its own name*, and that the members of the association cannot represent the association without valid authority, thus:

> There is merit in petitioner's contention. Under Section 1, Rule 3 of the Revised Rules of Court, only natural or juridical persons or entities authorized by law may be parties in a civil action. Article 44 of the Civil Code enumerates the various classes of juridical persons. Under said Article, an association is considered a juridical person if the law grants it a personality separate and distinct from that of its members. The records of the present case are bare of any showing by SSHA that it is an association duly organized under Philippine law. It was thus error for the HLURB-NCR Office to give due course to the complaint in HLURB Case No. REM-070297-9821, given SSHA's lack of capacity to sue in its own name. Nor was it proper for said agency to treat the complaint as a suit by all the parties who signed and verified the complaint. The members

> cannot represent their association in any suit without valid and legal authority. Neither can their signatures confer on the association any legal capacity to sue. Nor will the fact that SSHA belongs to the Federation of Valenzuela Homeowners Association, Inc., suffice to endow SSHA with the personality and capacity to sue. Mere allegations of membership in a federation are insufficient and inconsequential. The federation itself has a separate juridical personality and was not impleaded as a party in HLURB Case No. REM-070297-9821 nor in this case. Neither was it shown that the federation was authorized to represent SSHA. Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred. Hence, for failing to show that it is a juridical entity, endowed by law with capacity to bring suits in its own name, SSHA is devoid of any legal capacity, whatsoever, to institute any action.

More so in this case where there is no showing that petitioner Hernandez is validly authorized to represent petitioner Association of Flood Victims.

Since ***petitioner Association of Flood Victims has no legal capacity to sue, petitioner Hernandez, who is filing this petition as a representative of the Association of Flood Victims, is likewise devoid of legal personality to bring an action in court***[.][47] (Citations omitted, emphasis supplied)

Similarly, the Permanent Employees of the Cagayan State University has no separate juridical personality. It can neither file a case under its name nor can it sue on behalf of its members. Hence, its members, who are the real parties in interest, should have been impleaded in the petition. Since the beneficiary of this representative suit is an unincorporated association, petitioners are likewise devoid of legal personality to represent it. While it is true that petitioners are real parties-in-interest in their own right,[48] their legal standing is personal to them and

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[47] Id. at 478-481.

[48] *Rollo*, p. 3.

cannot cure Permanent Employees of the Cagayan State University's lack of juridical capacity.

As to the second requisite of a representative suit, petitioners also failed to establish their authority to represent the Permanent Employees of the Cagayan State University.

In their Reply, petitioners attached Resolution No. 03, series of 2016 dated September 20, 2016, claiming that it is the same resolution attached to this Petition. However, a reading of the contents of the almost identical resolutions reveals that the documents refer to different associations in Cagayan State University.[49]

The resolution attached in the Reply was purportedly issued by the Cagayan State University *Admin* Association as stated in the title. It bears noting that "ADMIN" was handwritten over a deleted text. However, the body of this resolution refers to the University Administrative Personnel Association and not Cagayan State University Admin Association.[50] This is significantly different from the resolution attached to this Petition, which is also entitled Resolution No. 03, series of 2016 dated September 20, 2016 but issued by the Cagayan State *Faculty* Association.[51]

It appears that the University Administrative Personnel Association adopted a resolution of the Cagayan State Faculty Association to file a petition before this Court assailing respondent's disallowance.[52] In both resolutions, the purported association with the name "Permanent Employees of the Cagayan State University" does not appear.

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[49] Id. at 87.

[50] Id. at 89. Annex "A" of the Reply.

[51] Id. at 25.

[52] Id. at 89. The Resolution issued by the University Administrative Personnel Association in its perambulatory clauses states:

WHEREAS, Ms. Jane Umengan informed the University Administrative Personnel Association President, CSU APA Ms. Rachel G. Miguel of the planned action of the UFA and encouraged the CSU APA to adopt the resolution they have formulated, to which Ms. Miguel gratefully agreed[.]

Assuming that petitioners actually intended to represent Cagayan State University Faculty Association and the University Administrative Personnel Association, they should have been designated as the beneficiaries of these associations in the caption of their Petition. The requirement of designation in Rule 3, Section 3 of the Rules of Court is not an empty procedural rule. Its purpose is to remove confusion and doubt from the court's mind as to the party entitled to the reliefs prayed for.[53]

In this case, petitioners are at fault for not complying with this basic procedural requirement. They proved their personal legal standing, but neglected to establish the identity and existence of the association they seek to represent.

Petitioners' negligence in impleading the proper parties prejudiced their intended beneficiaries who now lost their only remedy to assail the notice of disallowance before this Court. Petitioners' negligence effectively allowed the Notice of Disallowance to attain finality as regards the other payees whom respondent held liable. These payees, excluding petitioners, are then bound to return the year-end incentives they received pursuant to the Notice of Disallowance and the Notice of Finality which respondent issued.

II

Under the 2009 Rules of Procedure of the Commission on Audit, a Notice of Disallowance attains finality if no appeal has been filed within six months from receipt of the Notice.[54] An appeal is taken by filing an Appeal Memorandum with the director of the Commission on Audit within six months from

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[53] *Alliance of Quezon City Homeowners' Association, Inc. v. Quezon City Government*, G.R. No. 230651, September 18, 2018 <https://elibrary.judiciary. gov.ph/thebookshelf/showdocs/1/64552> [Per *J.* Perlas-Bernabe, En Banc].

[54] 2009 Rules of Procedure of the Commission on Audit, Rule IV, sec. 8 states:

SECTION 8. *Finality of the Auditor's Decision*. — Unless an appeal to the Director is taken, the decision of the Auditor shall become final upon the expiration of six (6) months from the date of receipt thereof.

receipt of the Notice of Disallowance.[55] The director may reverse, modify, or affirm a Notice of Disallowance, but in case of reversal or modification, the director's decision is automatically reviewed.[56]

Respondent alleges that petitioners had a "plain, speedy, and adequate remedy" before it but they opted not to move for any reconsideration or appeal the disallowance.[57]

Petitioners allege that they were not informed by the administration of the Notice of Disallowance until it became final, and that they only learned of it through a Memorandum directing them to return the disallowed year-end incentives.[58] They claim that the university administration concealed the disallowance from the permanent employees of the Cagayan State University.[59]

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[55] 2009 Rules of Procedure of the Commission on Audit, Rule V, secs. 2 and 4 state:

SECTION 2. *How Appeal Taken*. — The appeal to the Director shall be taken by filing an Appeal Memorandum with the Director, copy furnished the Auditor. Proof of service of a copy to the Auditor shall be attached to the Appeal Memorandum. Proof of payment of the filing fee prescribed under these Rules shall likewise be attached to the Appeal Memorandum.

. . . .

SECTION 4. *When Appeal Taken*. — An Appeal must be filed within six (6) months after receipt of the decision appealed from.

[56] 2009 Rules of Procedure of the Commission on Audit, Rule V, sec. 7 states:

SECTION 7. *Power of Director on Appeal*. — The Director may affirm, reverse, modify or alter the decision of the Auditor. If the Director reverses, modifies or alters the decision of the Auditor, the case shall be elevated directly to the Commission Proper for automatic review of the Directors' decision. The dispositive portion of the Director's decision shall categorically state that the decision is not final and is subject to automatic review by the CP.

[57] *Rollo*, p. 67.

[58] Id. at 5.

[59] Id. at 86.

On this issue, We rule for the petitioners.

A notice of disallowance must be served to each and every person that respondent holds liable. However, when there are several payees, service to the accountant is constructive service to all payees held liable:

> SECTION 7. *Service of Copies of ND/NC/NS, Order or Decision*. — The ND, NC, NS, order, or decision shall be served to each of the persons liable/responsible by the Auditor, through personal service, or if not practicable through registered mail. In case there are several payees, as in the case of a disallowed payroll, service to the accountant who shall be responsible for informing all payees concerned, shall constitute constructive service to all payees listed in the payroll.[60]

Development Bank of the Philippines v. Commission on Audit[61] explained that the essence of due process in proceedings before respondent is not the service of notice *per se*, but the opportunity to be heard, or to seek reconsideration of the Notice of Disallowance:

> Under Section 7, Rule IV of the 2009 Revised Rules of Procedure of the COA, DBP has the duty to serve the copies of the Notice of Disallowance, orders and/or decisions of the COA on the individuals to be held liable especially when there were several payees. . .
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> . . . .
>
> The COA received the petitioners' joint motion for reconsideration vis-à-vis the assailed Decision No. 2012-269 dated December 28, 2012 following the submission of the petitioners' individual letters seeking the reconsideration of the questioned issuances. Their joint motion and their letters for reconsideration were considered by the COA in reaching the Resolution dated December 4, 2014. As such, the petitioners had no factual and legal bases to complain. We remind that the essence of due process is simply the opportunity to be heard or, as applied to administrative proceedings, the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. In the application of the guarantee of due

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[60] 2009 Rules of Procedure of the Commission on Audit, Rule IV, sec. 7.

[61] 808 Phil. 1001 (2017) [Per J. Bersamin, En Banc].

process, indeed, what is sought to be safeguarded is not the lack of previous notice but the denial of the opportunity to be heard. As long as the party was afforded the opportunity to defend his interests in due course, he was not denied due process.[62] (Citations omitted)

In *Development Bank of the Philippines*, respondent disallowed petitioner's subsidy program for the motor vehicle lease purchase plan of its board of directors. There, petitioners submitted individual letters of reconsideration to the Commission on Audit Commission Proper En Banc after it denied Development Bank of the Philippines' petition for review. These letters were treated as supplemental motions for reconsideration. Petitioners therein claimed that their due process rights were violated because they did not receive issuances from respondent. This Court held that there was no denial of due process because they were given the chance to be heard on their motions for reconsideration.[63]

This case is different. Records show that respondent did not properly serve the notice of disallowance. Ms. Monaliza Guzman (Guzman), the University Accountant, was not served a copy, contrary to Section 7, Rule IV of the 2009 Revised Rules of Procedure.[64]

Instead, it was received by the Chief Administrative Office through Ms. Norlie Maa on June 3, 2015.[65] While Ms. Guzman was addressed in the letter, there was no showing that the Notice was served to her.[66] Moreover, the proofs of service in the notice of disallowance and notice of finality do not bear the signatures of the persons required to be served.[67] There was no proof that the notices were properly served. While petitioners admitted to hearing "rumors and unconfirmed conjectures" on the

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[62] Id. at 1014-1015.

[63] Id. at 1015.

[64] *Rollo*, p. 23.

[65] Id. at 64.

[66] Id. at 13.

[67] Id. at 23.

disallowance,[68] this does not amount to constructive notice prescribed under the 2009 Revised Rules of Procedure of the Commission on Audit.

The lack of proper service of the notice of disallowance prevented petitioners from appealing or seeking reconsideration before its finality. This Court agrees with petitioners that they only had constructive notice of the disallowance when the Office of the President issued Memorandum OP-5004-MEMO-2016-08-175 directing them to return the disallowed incentives.[69] Thus, we do not find that petitioners opted not to file an appeal or reconsideration before respondent, as they were not properly informed of the notices' issuance.

As petitioners did not have adequate remedies when the disallowance lapsed into finality, they were constrained to file this petition for certiorari consistent with Rule 12, Section 1 of the 2009 Revised Rules of Procedure of the Commission on Audit:

> RULE XII
>
> JUDICIAL REVIEW
>
> SECTION 1. *Petition for Certiorari*. — Any decision, order or resolution of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law and the Rules of Court.
>
> When the decision, order or resolution adversely affects the interest of any government agency, the appeal may be taken by the proper head of that agency.

However, even as we excuse petitioners' direct resort to this Court and give due course to their Petition, We still deny it because respondent did not commit grave abuse of discretion in disallowing the year-end incentives.

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[68] Id. at 5.

[69] Id.

III

Petitioners assert that the Board of Regents of Cagayan State University has "fiscal autonomy" to appropriate funds to carry out the purpose of the university. They claim that providing incentives to the instructors and professors is consistent with its purpose to instruct for which its income may be utilized.[70]

In addition, they allege that the grant of year-end incentives is expressly provided under Section 3 (w) of CHED Memorandum Order No. 020-11 (CMO 020-11):[71]

> SECTION 3. *Definition of Terms*. — The following terms are hereby defined in accordance with its operational meaning, as follows:
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> . . . .
>
> w) *Unexpended Amount* — refers to the unobligated balance of the budget. At the end of a given period, the unexpended amount may be declared as savings. At the end of the calendar year, it may be considered as Surplus. This is usually the amount which is included in the cumulative results of operations unappropriated or the acronym popularly known as "CROU", or simply stated, Accumulated Savings. The BOR/T, through the initiative of the finance division, *may use the amount for the payment of additional incentives* or reprogrammed as funding for projects proposed for the next calendar year. (Emphasis supplied)

According to petitioners, CMO 020-11 is an executive construction of the powers of the Board of Regents which must be accorded due respect.[72]

These are erroneous contentions.

Section 4 of Republic Act No. 8292 defines the powers and duties of governing boards of state universities and colleges that include appropriation and disbursement of their funds:

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[70] Id. at 7.

[71] Id. CHED Memorandum Order No. 020-11 is entitled "Policies and Guidelines for the Use of Income, Special Trust Fund and Programs of Receipts and Expenditures of the State Universities and Colleges."

[72] Id.

SECTION 4. *Powers and Duties of Governing Boards*. — The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines:

. . . .

b) to receive and appropriate all sums as may be provided, for the support of the university or college in the manner it may determine, in its discretion, to carry out the purposes and functions of the university or college;

. . . .

d) to fix the tuition fees and other necessary school charges, such as but not limited to matriculation fees, graduation fees and laboratory fees, as their respective boards may deem proper to impose after due consultations with the involved sectors.

Such fees and charges, including government subsidies and other income generated by the university or college, shall constitute special trust funds and shall be deposited in any authorized government depository bank, and all interests shall accrue therefrom shall part of the same fund for the use of the university or college: Provided, That income derived from university hospitals shall be exclusively earmarked for the operating expenses of the hospitals.

Any provision of existing laws, rules and regulations to the contrary notwithstanding, *any income generated by the university or college from tuition fees and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of Regents/Trustees for instruction, research, extension, or other programs/projects of the university or college*: Provided, That all fiduciary fees shall be disbursed for the specific purposes for which they are collected.

If, for reasons beyond its control, the university or college, shall not be able to pursue any project for which funds have been appropriated and, allocated under its approved program of expenditures, the Board of Regents/Trustees may authorize the use of said funds for any reasonable purpose which, in its discretion, may be necessary and urgent for the attainment of the objectives and goals of the universities or college[.] (Emphasis supplied)

Benguet State University v. COA[73] held that the authority granted to governing boards of state universities and colleges is subject to limitations under Republic Act No. 8292:

> Furthermore, a reading of the entire provision supports the COA's interpretation that the authority given to the Governing Board of state universities and colleges is not plenary and absolute. It is clear in Section 4 that the powers of the Governing Board are subject to limitations. This belies BSU's claim of plenary and absolute authority.
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> Neither can BSU find solace in the academic freedom clause of the Constitution. Academic freedom as adverted to in the Constitution and in R.A. No. 8292 only encompasses the freedom of the institution of higher learning to determine for itself, on academic grounds, who may teach, what may be taught, how it shall be taught, and who may be admitted to study. The guaranteed academic freedom does not grant an institution of higher learning unbridled authority to disburse its funds and grant additional benefits sans statutory basis. Unfortunately for BSU, it failed to present any sound legal basis that would justify the grant of these additional benefits to its employees.[74] (Citation omitted)

Under Republic Act No. 8292, any income generated from tuition fees, charges, and all other generated income shall form part of the special trust fund of a state university or college. The disbursement power of the governing board of a state university or college is limited to funding instruction, research, extension, or other similar programs and projects.[75]

In *Chozas v. Commission on Audit*,[76] accomplishment incentive awards disbursed from the special trust fund and given to the Board of Regents, employees, and faculty members of Bulacan State University were disallowed. This Court upheld the disallowance because the award of incentives was not related

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[73] 551 Phil. 878 (2007) [Per J. Nachura, En Banc].

[74] Id. at 887.

[75] Id.

[76] G.R. No. 226319, October 8, 2019 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65794> [Per J. A. Reyes, En Banc].

to any academic program nor was it an expense necessary for instruction, research, and extension:

Concededly, R.A. No. 8292 grants the governing boards of state universities and colleges the power to use the STF for any charges or expenses necessary for instruction, research, extension and other programs or projects of the university or college.

It must be stressed, however, that the authority given to the governing boards of state universities and colleges is not plenary and absolute, but is subject to limitations. In *Benguet State University v. COA*, the Court warned against the state university's unbridled exercise of powers, and tempered its right to indiscriminately grant allowances to its employees under the guise of academic freedom. The Court stressed that academic freedom shall not serve as a warrant for any untrammeled authority to disburse funds and grant additional benefits sans statutory basis.

Besides, the law clearly states that the STF may only be used for expenses necessary for instruction, research and extension. The incentive granted by the BulSU does not in any way relate to any particular academic program or project pertaining to instruction, research, or extension. In fact, all that the BulSU officers latch on to is the broad and vague excuse that the recipients aided in the university's goal of achieving excellence. An automatic grant of incentives on shallow and unsubstantiated grounds will certainly lead to the hemorrhaging of government funds, which the Court shall not countenance.

Neither may the award be regarded as part of the catch-all phrase "other programs/projects" of the BulSU. Notably, the basic statutory construction principle of *ejusdem generis* states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase must be construed to include, or to be restricted to things akin to, resembling, or of the same kind or class as those specifically mentioned. Thus, the phrase "other programs/projects" must be interpreted to pertain to those relating to instruction, research and extension.

In fact, in the seminal cases of *Benguet State University, and Ricardo E. Rotoras, President, Philippine Association of State Universities and Colleges v. Commission on Audit*, the Court clarified that the rice subsidy and health care allowance, as well as the honoraria of

the members of the Board, respectively, do not form part of the state universities' STF.

Finally, the petitioners cannot seek refuge in COA Circular No. 2000-002, which, as petitioners claim allows the use of the STF for "pay[ing] authorized allowances and fringe benefits to teachers and students who render services to the school." Even a simple perusal of the afore-quoted phrase from COA Circular No. 2000-002 clearly shows that the STF shall only be used for "authorized" allowances.

Given the foregoing, it is all too clear that the petitioners-officials had no authority to grant the Accomplishment Incentive Award. Thus, such move is undoubtedly an *ultra vires* act that renders the distribution of said Award unlawful.[77]

Here, the year-end incentives were sourced from the "unused appropriated income for [fiscal year] 2014."[78] In other words, it was sourced from the unexpended amount of the budget which forms part of the savings of the university. This Court holds that the savings of a special trust fund must also be utilized for the limited purpose of instruction, research, extension, and other similar projects. Savings of a state university is defined as:

Savings — refer to such portion or balance of the SUC's released allotment for the year, free of any obligation or encumbrance and which are no longer intended for specific purpose/s such as but not limited to 1) Unexpended balance after completion of the work/activity/project for which the appropriation is authorized; or 2) unexpended funds resulting from implementation of improved systems and procedures, cost saving measures and efficiency where the agency was able to meet and deliver the required or planned targets, programs and services approved in the annual budget at a lesser cost, targets, programs and services approved in the annual budget.[79]

Section 3 (w) of CMO No. 020-11 permitting the disbursement of unexpended amounts for incentives should not be interpreted as a wholesale authority for the state university to issue any

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[77] Id.

[78] *Rollo*, p. 24.

[79] CHED Memorandum Order No. 020-11, art. 1, sec. 3(s).

kind of incentives without regard to its purpose. "[A] rule or regulation must conform to and be consistent with the provisions of the enabling statute."[80] In *Pilipinas Kao, Inc. v. Court of Appeals*:[81]

> As we have consistently ruled, it the statutory purpose is clear, the provisions of the law should be construed so as not to defeat but to carry out such end and purpose. For a statute derives its vitality from the purpose for which it is enacted and to construe it in a manner that disregards or defeats such purpose is to nullify or destroy the law.
>
> An administrative agency may not enlarge, alter or restrict the provisions of the statute being administered. It may not engraft additional non-contradictory requirements on the statute which were not contemplated by the legislature.[82]

While payment of additional incentives is expressly stated in CMO No. 020-11, it should be construed in accordance with Republic Act No. 8292. Thus, the governing board of a state university or college may only utilize the unexpended balance or income for the purpose of instruction, research, extension, and other similar projects. To allow a state university to disburse the savings of its special trust fund regardless of the purpose, in effect, allows it to circumvent the rules.

Assuming CMO No. 020-11 may be construed to allow the grant of year-end incentives, Cagayan State University still failed to show compliance with procedural requirements to disburse the funds.

Article VI of CMO No. 020-11 provides the procedure in using the accumulated savings of a state university:

> ARTICLE VI Accumulated Savings/The CROU

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[80] *Perez v. Philippine Telegraph and Telephone Company*, 602 Phil. 522, 537 (2009) [Per J. Corona, En Banc].

[81] 423 Phil. 834 (2001) [Per J. Kapunan, First Division].

[82] Id. at 858.

SECTION 31. *Use of STF Accumulated Savings or Cumulative Results of Operations-Unappropriated (CROU).* — The disposition of the STF Accumulated Savings or Cumulative Results of Operations-Unappropriated arising from tuition fees, service and other income shall be approved by the BOR/T upon the recommendation of President in consultation with the Administrative Council (ADCO). The BOR/T approval may include proposed major project or to use it in payment of a loan incurred by the SUC from a bank, or other financial institution, or for the *payment of incentives* or any other project or expenditure that would benefit the SUC.

SECTION 32. *Maintenance of Subsidiary Accounts.* — A subsidiary ledger shall be maintained by the Financial Management Services Division to monitor the accumulation of unexpended amount. This shall serve as the common fund account of the whole SUC, regardless of where the unexpended fund was taken. In the case of the budget for Production, and the funds pertaining to fiduciary fund, self-liquidating units, income generating units, and regular funds, a running balance shall be retained. Its inclusion in the CROU shall be expressly approved by the BOR/T by virtue of a board resolution, after due deliberation.

Under the guidelines, payment of incentives may be disbursed from the accumulated savings of the special trust fund, otherwise called as Cumulative Results of Operations-Unappropriated (CROU). Prior to its payment, there must be a consultation with the Administrative Council of the State University. Thereafter, the President recommends the payment of incentives for approval to the Board of Regents.

Respondent argues that the disallowance is valid as there was no showing that the Board of Regents approved the grant of incentives.[83]

We agree. An examination of the Special Order OP-2005-SO-2014-736 shows that it lacks the required approval from the Board of Regents. It was only the President, through the Campus Executive Officers who authorized the payment of incentives:

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[83] *Rollo*, pp. 69-70.

The incentive shall be sourced from the unused appropriated income for FY 2014 as agreed by the Campus Executive Officers during the Academic and Administrative Council meeting held on December 16, 2014 at the Andrews Gymnasium.[84]

Petitioners failed to show that the Campus Executive Officers are the same officials who sit on the Board of Regents. CMO No. 020-11 is specific that only the Board of Regents can approve payment of incentives.

Under Republic Act No. 8292[85] and CMO No. 020-11, the Board of Regents may delegate the disbursement of accumulated savings to the University President, whose action is still subject to the approval of the Board of Regents. The PRAISE Committee and the Administrative Council must also agree to it, before the University President can endorse additional incentives from the accumulated savings for the Board of Regents' approval. As stated in Article VI, Section 33 of CHED Memorandum Order No. 020-11:

SECTION 33. *Discretion of the BOR/T.* — The power vested in the BOR/T to delegate to the SUC President to administer or manage the accumulated savings of the SUC is justified by his accountability as head of agency, as long as it is in furtherance of the goals and objectives of the SUC as a whole. The respective fund administrators have already been given the authority to execute their respective budget using their respective allocations upon the approval of the BOR/T. Their failure to do so may cause the increase of accumulated savings to the SUC, but is not a credit to their performance.

In case decision is to use the accumulated savings for personal services, such as additional incentive, the PRAISE committee and

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[84] Id. at 24.

[85] Republic Act No. 8292 (1997), sec. 4(o) states:

SECTION 4. *Powers and Duties of Governing Boards.* —

. . . .

o) to delegate any of its powers and duties provided for hereinabove to the president and/or other officials of the university or college as it may deem appropriate so as to expedite the administration of the affairs of the university or college.

the ADCO shall agree on it, and the same shall undergo the usual BOR/T approval upon favorable endorsement by the SUC President. (Emphasis supplied)

In this case however, it does not appear that the Board of Regents of Cagayan State University delegated its power to Dr. Quilang, the University President. While petitioners rely on CMO No. 020-11, they did not allege whether the disbursement of the savings was done with the required Board of Regents' approval. The Special Order granting the incentives states that only the President, in coordination with the Campus Executive Officers, agreed to its issuance.[86]

Therefore, the grant of year-end incentives is an illegal and irregular disbursement. Aside from being contrary to the allowable purpose for disbursement under Republic Act No. 8292, there was no showing that the procedure for disbursement of savings was complied with. Thus, the Court of Appeals did not commit grave abuse of discretion in upholding the disallowance of the year-end incentives.

IV

Relying on *Casal v. Commission on Audit*,[87] petitioners contend that they are not liable to return the year-end incentives they received in good faith.[88] Respondent agrees, citing *Philippine Ports Authority v. Commission on Audit*[89] and *Benguet State University v. Commission on Audit*.[90]

However, this Court holds that petitioners, as recipients of the year-end incentives, are required to return the amounts they erroneously received.

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[86] *Rollo*, p. 24.

[87] 538 Phil. 634 (2006) [Per J. Carpio Morales, En Banc].

[88] *Rollo*, p. 8.

[89] 517 Phil. 677 (2006) [Per J. Azcuna, En Banc].

[90] *Rollo*, pp. 70-71, *citing* 551 Phil. 878 (2007) [Per J. Nachura, En Banc].

In *Madera v. Commission on Audit*,[91] this Court harmonized the conflicting pronouncements regarding the liability of payees as well as approving and certifying officers in returning amounts erroneously received. It outlined the following guidelines in determining liability of payees:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

> a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
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> b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.
>
> c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.
>
> d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case to case basis.

Undoubtedly, consistent with the statements made by Justice Inting, the ultimate analysis of each case would still depend on the facts presented, and these rules are meant only to harmonize the previous conflicting rulings by the Court as regards the return of disallowed

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[91] G.R. No. 244128, September 8, 2020 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66435> [Per J. Caguioa, En Banc].

amounts — after the determination of the good faith of the parties based on the unique facts obtaining in a specific case has been made.

To reiterate, the assessment of the presumptions of good faith and regularity in the performance of official functions and proof thereof will be done by the Court on a case-to-case basis. Moreover, the additional guidelines eloquently presented by Justice Leonen will greatly aid the Court in determining the good faith of officers and resultantly, whether or not they should be held solidarily liable in disallowed transactions.[92]

This Court reasoned that the personal liabilities of recipients in returning the amounts that they erroneously received is civil in nature:

D. Nature of payee participation

Verily, excusing payees from return on the basis of good faith has been previously recognized as an exception to the laws on liability for unlawful expenditures. However, being civil in nature, the liability of officers and payees for unlawful expenditures provided in the Administrative Code of 1987 will have to be consistent with civil law principles such as *solutio indebiti* and unjust enrichment. These civil law principles support the propositions that (1) the good faith — of payees is not determinative of their liability to return, and (2) when the Court excuses payees on the basis of good faith or lack of participation, it amounts to a remission of an obligation at the expense of the government.

To be sure, the application of the principles of unjust enrichment and *solutio indebiti* in disallowed benefits cases does not contravene the law on the general liability for unlawful expenditures. In fact, these principles are consistently applied in government infrastructure or procurement cases which recognize that a payee contractor or approving and/or certifying officers cannot be made to shoulder the cost of a correctly disallowed transaction when it will unjustly enrich the government and the public who accepted the benefits of the project.

These principles are also applied by the Court with respect to disallowed benefits given to government employees. In characterizing

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[92] Id.

the obligation of retirees — payees who received benefits properly disallowed by the COA, the Resolution in the 2004 case of *Government Service Insurance System v. Commission on Audit* stated:

> Anent the benefits which were improperly disallowed, the same rightfully belong to respondents without qualification. As for benefits which were justifiably disallowed by the COA, the same were erroneously granted to and received by respondents who now have the obligation to return the same to the System.
>
> It cannot be denied that respondents were recipients of benefits that were properly disallowed by the COA. These COA disallowances would otherwise have been deducted from their salaries, were it not for the fact that respondents retired before such deductions could be effected. The GSIS can no longer recover these amounts by any administrative means due to the specific exemption of retirement benefits from COA disallowances. Respondents resultantly retained benefits to which they were not legally entitled which, in turn gave rise to an obligation on their part to return the amounts under the principle of *solutio indebiti*.
>
> Under Article 2154 of the Civil Code, if something is received and unduly delivered through mistake when there is no right to demand it, the obligation to return the thing arises. Payment by reason of mistake in the construction or application of a doubtful or difficult question of law also comes within the scope of *solutio indebiti*.
>
> x x x x
>
> While the GSIS cannot directly proceed against respondents' retirement benefits, it can nonetheless seek restoration of the amounts by means of a proper court action for its recovery. Respondents themselves submit that this should be the case, although any judgment rendered therein cannot be enforced against retirement benefits due to the exemption provided in Section 39 of RA 8291. However, there is no prohibition against enforcing a final monetary judgment against respondents' other assets and properties. This is only fair and consistent with basic principles of due process.

The COA similarly applies the principle of *solutio indebiti* to require the return from payees regardless of good faith. The COA Decisions in the cases of *Jalbuena v. COA*, *DBP v. COA*, and *Montejo v. COA*,

are examples to that effect. In the instant case, the COA Decision expressly articulated this predicament of exempting recipients who are in good faith and expressed that the same is not consistent with the concept of *solutio indebiti* and the principle of unjust enrichment:

> Clearly, the approving officer and each employee who received the disallowed benefit are obligated, jointly and severally, to refund the amount so received. The Supreme Court has ruled that by way of exception, however, passive recipients or payees of disallowed salaries, emoluments, benefits and other allowances need not refund such disallowed amounts if they received the same in good faith. Stated otherwise, government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith.
>
> **The result of exempting recipients who are in good faith from refunding the amount received is that the approving officers are made to shoulder the entire amount paid to the employees. This is perhaps an inequitable burden on the approving officers, considering that they are or remain exposed to administrative and even criminal liability for their act in approving such benefits, and is not consistent with the concept of *solutio indebiti* and the principle of unjust enrichment.**
>
> **Nevertheless, in deference "to the Supreme Court** ruling in *Silang v. COA*, the Commission rules that government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith. Public official who are directly responsible for or participated in making illegal expenditures shall be solidarily liable for their reimbursement."

With the liability for unlawful expenditures properly understood, payees who receive undue payment, regardless of good faith, are liable for the return of the amounts they received. Notably, in situations where officers are covered by Section 38 of the Administrative Code of 1987 either by presumption or by proof of having acted in good faith, in the regular performance of their official duties, and with the diligence of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return. For the same reason, any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad

faith, malice, and gross negligence. In this regard, Justice Bernabe coins the term "net disallowed amount" to refer to the total disallowed amount minus the amounts excused to be returned by the payees. Likewise, Justice Leonen is of the same view that the officers held liable have a solidary obligation only to the extent of what should be refunded and this does not include the amounts received by those absolved of liability. In short, the net disallowed amount shall be solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.

Consistent with the foregoing, the Court shares the keen observation of Associate Justice Henri Jean Paul B. Inting (Justice Inting) that payees generally have no participation in the grant and disbursement of employee benefits, but their liability to return is based on *solutio indebiti* as a result of the mistake in payment. Save for collective negotiation agreement incentives carved out in the sense that the employees are not considered passive recipients on account of their participation in the negotiated incentives as in *Dubongco v. COA* (Dubongco), payees are generally held in good faith for lack of participation, with their participation limited to "accept[ing] the same with gratitude, confident that they richly deserve such benefits."

On the other hand, the RRSA provides:

> **SECTION 16. DETERMINATION OF PERSONS RESPONSIBLE/LIABLE.**
>
> 16.1 The liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:
>
> x x x x
>
> 16.1.5 The **payee** of an expenditure shall be personally liable for a disallowance where the ground thereof is his failure to submit the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact.
>
> 16.3 The liability of persons determined to be liable under

> an ND/NC shall be **solidary** and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable.

To recount, as noted from the cases earlier mentioned, retention by passive payees of disallowed amounts received in good faith has been justified on said payee's "lack of participation in the disbursement." However, this justification is unwarranted because a payee's mere receipt of funds not being part of the performance of his official functions still equates to him unduly benefiting from the disallowed transaction; this gives rise to his liability to return.

As may be gleaned from Section 16 of the RRSA, "the extent of their participation [or involvement] in the disallowed/charged transaction" is one of the determinants for liability. The Court has, in the past, taken this to mean that payees should be absolved from liability for lack of participation in the approval and disbursement process. However, under the MCSB and the RRSA, a "transaction" is defined as "[a]n event or condition the recognition of which gives rise to an entry in the accounting records." To a certain extent, therefore, payees always do have an indirect "involvement" and "participation" in the transaction where the benefits they received are disallowed because the accounting recognition of the release of funds and their mere receipt thereof results in the debit against government funds in the agency's account and a credit in the payees' favor. Notably, when the COA includes payees as persons liable in an ND, the nature of their participation is stated as "received payment."

Consistent with this, "the amount of damage or loss [suffered by] the government [in the disallowed transaction]," another determinant of liability, is also indirectly attributable to payees by their mere receipt of the disallowed funds. This is because the loss incurred by the government stated in the ND as the disallowed amount corresponds to the amounts received by the payees. Thus, cogent with the application of civil law principles on unjust enrichment and *solutio indebiti*, the return by payees primarily rests upon this conception of a payee's undue receipt of amounts as recognized **within the government auditing framework**. In this regard, it bears repeating that the extent of liability of a payee who is a passive recipient is only with respect to the transaction where he participated or was involved in, i.e., only to the extent of the amount that he unduly received. This limitation on the scope of a payee's participation as only corresponding to the amount he received therefore forecloses the possibility that a passive

recipient may be held solidarily liable with approving/certifying officers beyond the amount that individually received.

The exception to payee liability is when he shows that he is, as a matter of fact or law, actually entitled to what he received, thus removing his situation from Section 16.1.5 of the RRSA above and the application of the principle of *solutio indebiti*. This includes payees who can show that the amounts received were granted in consideration for services actually rendered. In such situations, it cannot be said that any undue payment was made. Thus, the government incurs no loss in making the payment that would warrant the issuance of a disallowance. Neither payees nor approving and certifying officers can be held civilly liable for the amounts so paid, despite any irregularity or procedural mistakes that may have attended the grant and disbursement.

Returning to the earlier cases of *Blaquera, Lumayna, and Querubin*, the good faith of all parties was basis to excuse the return of the entire obligation from any of the debtors in the case. Thus, either the COA or the Court through their respective decisions exercised an act of liberality by renouncing the enforcement of the obligation as against payees — persons who received the moneys corresponding to the disallowance, a determinate "respective share" in the resulting solidary obligation. This redounds to the benefit of officers.

Clearly, therefore, cases which result in a clear transfer of economic burden cannot have been the intention of the law in exacting civil liability from payees in disallowance cases. Where the ultimate beneficiaries are excused, what can only be assumed as the legislative policy of achieving the highest possibility of recovery for the government unwittingly sanctions unjust enrichment.

In *Dubongco*, the Court affirmed the disallowance of CNA incentives sourced out of CARP funds. Even as it recognized that the payees therein committed no fraud, the Court ordered the return, thus:

> Finally, the payees received the disallowed benefits with the mistaken belief that they were entitled to the same. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. A constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property,

> which has been acquired by fraud, or where, although acquired originally without fraud, it is against equity that it should be retained by the person holding it. In fine, payees are considered trustees of the disallowed amounts, as although they committed no fraud in obtaining these benefits, it is against equity and good conscience for them to continue holding on to them.

Similarly, in *DPWH v. COA*, the disallowance of CNA incentives sourced out of the Engineering Administrative Overhead (EAO) was upheld, and the recipients of the disallowed benefits were held liable to return. In finding that the payees are obliged to return the amounts they received, the Court stated:

> Jurisprudence holds that there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The statutory basis for the principle of unjust enrichment is Article 22 of the Civil Code which provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."
>
> The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage. There is no unjust enrichment when the person who will benefit has a valid claim to such benefit.

The conditions set forth under Article 22 of the Civil Code are present in this case.

It is settled that the subject CNA Incentive was invalidly released by the DPWH IV-A to its employees as a consequence of the erroneous application by its certifying and approving officers of the provisions of DBM Budget Circular No. 2006-1. As such, it only follows that the DPWH IV-A employees received the CNA Incentive without valid basis or justification; and that the DPWH IV-A employees have no valid claim to the benefit. Moreover, it is clear that the DPWH IV-A employees received the subject benefit at the expense of another, specifically, the government. Thus, applying the principle of unjust

enrichment, the DPWH IV-A employees must return the benefit they unduly received.

That the incentives were negotiated and approved by the employees was only one of several reasons for the return in the said case. The excerpt cited above sufficiently signals that the elements of unjust enrichment are completed as soon as a payee receives public funds without valid basis or justification — without necessarily requiring participation in the grant and disbursement.

For other incentives not negotiated by the recipients, the Court promulgated its decision in *Chozas v. COA* which dealt with the accomplishment incentive sourced out of Bulacan State University Special Trust Fund. Notably, this case relied upon the Court's ratiocination in Dubongco on the question of liability to return, without any showing of participation on the part of the payees as to the grant and disbursement. This is jurisprudential recognition that that the judge made rule of absolving good faith payees is the exception, and not the rule.

In *Rotoras v. COA*, the Court held that it will be unjust enrichment to allow the members of the governing boards to retain additional honoraria that they themselves approved and received. Here, the Court ruled that the nature of the obligation of approving officials to return "depends on the circumstances," with the officers' obligation to return expressly determined to not be solidary. This case illustrates how approving officers may still be held liable to return in their capacity as payees, notwithstanding their good faith or bad faith.

In the ultimate analysis, the Court, through these new precedents, has returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and *solutio indebiti* apply regardless of the good faith of passive recipients. **This, as well, is the foundation of the rules of return that the Court now promulgates**.

Moreover, *solutio indebiti* is an equitable principle applicable to cases involving disallowed benefits which prevents undue fiscal leakage that may take place if the government is unable to recover from passive recipient amounts corresponding to a properly disallowed transaction.

Nevertheless, while the principle of *solutio indebiti* is henceforth to be consistently applied in determining the liability of payees to return, the Court, as earlier intimated, is not foreclosing the possibility

of situations which may constitute *bonafide* exceptions to the application of *solutio indebiti*. As Justice Bernabe proposes, and which the Court herein accepts, the jurisprudential standard for the exception to apply is that the amounts received by the payees constitute disallowed benefits that were genuinely given in consideration of services rendered (or to be rendered) negating the application of unjust enrichment and the *solutio indebiti* principle. As examples, Justice Bernabe explains that these disallowed benefits may be in the nature of performance incentives, productivity pay, or merit increases that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries. In addition to this proposed exception standard, Justice Bernabe states that the Court may also determine in the proper case bona fide exceptions, depending on the purpose and nature of the amount disallowed. These proposals are well-taken.

Moreover, the Court may also determine in a proper case other circumstances that warrant excusing the return despite the application of *solutio indebiti*, such as when undue prejudice will result from requiring payees to return or where social justice or humanitarian considerations are attendant. Verily, the Court has applied the principles of social justice in COA disallowances. Specifically, in the 2000 case of *Uy v. Commission on Audit* (Uy), the Court made the following pronouncements in overturning the COA's decision:

> x x x *Under the policy of social justice, the law bends over backward to accommodate the interests of the working-class on the humane justification that those with less privilege in life should have more in law:*
>
> *Rightly, we have stressed that social justice legislation, to be truly meaningful and rewarding to our workers, must not be hampered in its application by long-winded arbitration and litigation. Rights must be asserted and benefits received with the least inconvenience. And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality. Social justice would be a meaningless term if an element of rigidity would be affixed to the procedural precepts. Flexibility should not be ruled out. Precisely, what is sought to be accomplished by such a fundamental principle expressly so declared by the Constitution is the effectiveness of the community's effort to assist the economically underprivileged.*

> *For under existing conditions, without such succor and support, they might not, unaided, be able to secure justice for themselves. To make them suffer, even inadvertently, from the effect of a judicial ruling, which perhaps they could not have anticipated when such deplorable result could be avoided, would be to disregard what the social justice concept stands for.*

The pronouncements in *Uy* illustrate the Court's willingness to consider social justice in disallowance cases. These considerations may be utilized in assessing whether there may be an exception to the rule on *solutio indebiti* so that the return may be excused altogether. As Justice Inting correctly pointed out, "each disallowance case is unique, inasmuch as the facts behind, nature of the amounts involved, and *individuals* so charged in one notice of disallowance are hardly ever the same with any other."[93] (Emphasis in the original)

Petitioners allege that they are not required to return the year-end incentives because they neither participated in its issuance nor received it personally as it was merely deposited in their respective bank accounts. Moreover, they claim to have received the same benefit for several years which were not disallowed.[94]

Applying the *Madera* guidelines, We hold that the payees are not excused from returning the disallowed year-end incentives. Regardless of the manner of receipt, petitioners benefited when the amounts were transferred to their bank accounts. As in *Madera*, the personal liabilities of the payees to return the amount is a civil obligation. There being no basis for their entitlement to the year-end incentives in 2014, they must return the amounts they erroneously received based on the principle of *solutio indebiti*. Allowing petitioners to keep the disallowed incentives will result in unjust enrichment to the prejudice of the government.

V

While the officers of Cagayan State University who approved and certified the disbursement of the year-end incentives are

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[93] Id.

[94] *Rollo*, p. 8.

not parties to this case, We find it opportune to discuss their liability for illegal and irregular expenditures of their special trust fund to guide governing boards of state universities and colleges.

Madera v. Commission on Audit,[95] chronicled the bases of imposing liability for illegal expenditures:

A. *Bases for Responsibility/Liability*

The Budget Reform Decree of 1977 (PD 1177) provides:

> SEC. 49. *Liability for Illegal Expenditures*. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Decree or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.
>
> Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.

Parenthetically, the Government Auditing Code of the Philippines (PD 1445), promulgated a year after PD 1177, provides:

> SECTION 102. *Primary and secondary responsibility*. — (1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency. (2) Persons entrusted with the possession or custody of the funds or property under the agency head shall

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[95] G.R. No. 244128, September 8, 2020 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66435> [Per J. Caguioa, En Banc].

be immediately responsible to him, without prejudice to the liability of either party to the government.

SECTION 103. *General liability for unlawful expenditures*. — Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

SECTION 104. *Records and reports required by primarily responsible officers*. — The head of any agency or instrumentality of the national government or any government-owned or controlled corporation and any other self-governing board or commission of the government shall exercise the diligence of a good father of a family in supervising accountable officers under his control to prevent the incurrence of loss of government funds or property, otherwise he shall be jointly and solidarily liable with the person primarily accountable therefore. The treasurer of the local government unit shall likewise exercise the same degree of supervision over accountable officers under his supervision otherwise, he shall be jointly and solidarily liable with them for the loss of government funds or property under their control.

SECTION 105. *Measure of liability of accountable officers*. — (1) Every officer accountable for government property shall be liable for its money value in case of improper or unauthorized use or misapplication thereof, by himself or any person for whose acts he may be responsible. He shall likewise be liable for all losses, damages, or deterioration occasioned by negligence in the keeping or use of the property whether or not it be at the time in his actual custody.

(2) Every officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses attributable to negligence in the keeping of the funds.

These provisions of PD 1177 and PD 1445 are substantially reiterated in the Administrative Code of 1987, thus:

SECTION 51. *Primary and Secondary Responsibility*. — (1) The head of any agency of the Government is immediately and primarily responsible for all government funds and property pertaining to his agency;

(2) Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the Government.

SECTION 52. *General Liability for Unlawful Expenditures.* — Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

x x x x

SECTION 40. *Certification of Availability of Funds.* — No funds shall be disbursed, and no expenditures or obligations chargeable against any authorized allotment shall be incurred or authorized in any department, office or agency without first securing the certification of its Chief Accountant or head of accounting unit as to the availability of funds and the allotment to which the expenditure or obligation may be properly charged.

No obligation shall be certified to accounts payable unless the obligation is founded on a valid claim that is properly supported by sufficient evidence and unless there is proper authority for its incurrence. Any certification for a non-existent or fictitious obligation and/or creditor shall be considered void. The certifying official shall be dismissed from the service, without prejudice to criminal prosecution under the provisions of the Revised Penal Code. Any payment made under such certification shall be illegal and every official authorizing or making such payment, or taking part therein or receiving such payment, shall be jointly and severally liable to the government for the full amount so paid or received.

x x x x

SECTION 43. Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be

> jointly and severally liable to the Government for the full amount so paid or received.
>
> Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.

It is well-settled that administrative, civil, or even criminal liability, as the case may be, may attach to persons responsible for unlawful expenditures, as a wrongful act or omission of a public officer. It is in recognition of these possible results that the Court is keenly mindful of the importance of approaching the question of personal liability of officers and payees to return the disallowed amounts through the lens of these different types of liability.

Correspondingly, personal liability to return the disallowed amounts must be understood as civil liability based on the loss incurred by the government because of the transaction, while administrative or criminal liability may arise from irregular or unlawful acts attending the transaction. This should be the starting point of determining who must return. The existence and amount of the loss and the nature of the transaction must dictate upon whom the liability to return is imposed.

Sections 38 and 39, Chapter 9, Book I of the Administrative Code of 1987 cover the civil liability of officers for acts done in performance of official duties:

> SECTION 38. Liability of Superior Officers. — (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.
>
> x x x x
>
> (3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

> SECTION 39. Liability of Subordinate Officers. — No subordinate officer or employee shall be **civilly liable** for acts done by him in **good faith** in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.

By the very language of these provisions, the liability for unlawful expenditures is civil. Nonetheless, since these provisions are situated in Chapter 9, Book I of the Administrative Code of 1987 entitled "General Principles Governing Public Officers," the liability is inextricably linked with the administrative law sphere. Thus, the civil liability provided under these provisions is hinged on the fact that the public officers performed his official duties with bad faith, malice, or gross negligence.

The participation of these public officers, such as those who approve or certify unlawful expenditures, *vis-a-vis* the incurrence of civil liability is recognized by the COA in its issuances, beginning from COA Circular No. 81-15654 dated January 19, 1981 (Old CSB Manual):

> C. Liability of Head of Agency, Accountable Officer and Other Officials and Employees
>
> The liability of an official or employee for disallowances or discrepancies in accounts audited shall depend upon his participation in the transaction involved. **The accountability and responsibility of officials and employees for government funds and property** as provided in Sections 101 and 102 of P.D. 1445 **do not necessarily give rise to liability for loss or government funds or damage to property**.
>
> x x x x
>
> III. GENERAL INSTRUCTIONS:
>
> x x x x
>
> 5. The Head of Agency, who is immediately and primarily responsible for all government funds and property pertaining to his agency, shall see that the audit suspensions/disallowances are immediately settled. (Emphasis and underscoring supplied)

Subsequent to the Old CSB Manual, COA Circular No. 94-001. 55 dated January 20, 1994 (MCSB) distinguished liability from responsibility and accountability, and provided the parameters for enforcing the civil liability to refund disallowed amounts:

SECTION 3. DEFINITION OF TERMS. —

The following terms shall be understood in the sense herein defined, unless the context otherwise indicates:

x x x x

3.10 **LIABILITY.** — A **personal obligation arising from an audit disallowance/charge which may be satisfied through payment or restitution** as determined by competent authority and in accordance with law.

x x x

3.12 **PECUNIARY LIABILITY.** — The amount of **consequential loss or damage** arising from an act or omission and for which restitution, reparation, or indemnification is required.

x x x x

SECTION 18. SETTLEMENT OF DISALLOWANCES AND CHARGES.

Disallowances and charges shall be settled through submission of the required explanation/justification and/or documentations by the person or persons determined by the auditor to be liable therefor, or **by payment of the amount disallowed in audit; or by such other applicable modes of extinguishment of obligation** as provided by law.

x x x x

SECTION 34. **ENFORCEMENT OF CIVIL LIABILITY.**

To enforce civil liability, the auditor shall submit a report on the disallowances and charges to the COA Chairman (Thru: The Director concerned), requesting that the matter be referred to the Office of the Solicitor General (National Government agencies), or to the Office of the Government Corporate Counsel (for government-owned or controlled corporations) or to the

appropriate Provincial or City Attorney (in the case of local government units). The report shall be duly supported with certified copies of the subsidiary records, the CSB, and the payrolls/vouchers/collections disallowed and charged together with all necessary documents, official receipts for the filing of the appropriate civil suit. (Emphasis and underscoring supplied)

These provisions are also substantially reproduced in COA Circular No. 2009-00656 dated September 15, 2009 (RRSA) and the 2009 Revised Rules of Procedure of the Commission on Audit (RRPCOA). Under Section 4 of the RRSA:

4.17 **Liability** — a **personal obligation** arising from an audit disallowance or charge which may be **satisfied through payment or restitution** as determined by competent authority or by other modes of extinguishment of obligation as provided by law.

x x x x

4.24 **Settlement** — refers to the **payment/restitution or other act of extinguishing an obligation as provided by law** in satisfaction of the liability under an ND/NC, or in compliance with the requirements of an NS, as defined in these Rules. (Emphasis and underscoring supplied)

The procedure for the enforcement of civil liability through the withholding of payment of money due to persons liable and through referral to the OSG is found in Rule XIII of the RRPCOA, particularly, Section 3 and Section 6.[96]

In *Madera*, it was suggested that the first layer of determination should focus on the kind and nature of disallowance as defined in Commission on Audit Circular No. 2012-003:

"IRREGULAR" EXPENDITURES

The term "irregular expenditure" signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in laws. Irregular expenditures are incurred if funds are disbursed without conforming with prescribed usages and rules of discipline.

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[96] *J.* Leonen, Concurring Opinion in *Madera v. Commission on Audit*, G.R. No. 244128, September 8, 2020 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66435> [Per J. Caguioa, En Banc].

There is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an irregular expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set is deemed irregular. A transaction which fails to follow or violates appropriate rules of procedure is, likewise, irregular.

"UNNECESSARY" EXPENDITURES

The term pertains to expenditures which could not pass the test of prudence or the diligence of a good father of a family, thereby denoting non-responsiveness to the exigencies of the service. Unnecessary expenditures are those not supportive of the implementation of the objectives and mission of the agency relative to the nature of its operation. This would also include incurrence of expenditure not dictated by the demands of good government, and those the utility of which cannot be ascertained at a specific time. An expenditure that is not essential or that which can be dispensed with without loss or damage to property is considered unnecessary. The mission and thrusts of the agency incurring the expenditures must be considered in determining whether or not an expenditure is necessary.

"EXCESSIVE" EXPENDITURES

The term "excessive expenditures" signifies unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price. It also includes expenses which exceed what is usual or proper, as well as expenses which are unreasonably high and beyond just measure or amount. They also include expenses in excess of reasonable limits.

"EXTRAVAGANT" EXPENDITURES

The term "extravagant expenditure" signifies those incurred without restraint, judiciousness and economy. Extravagant expenditures exceed the bound of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, grossly excessive, and injudicious.

"UNCONSCIONABLE" EXPENDITURES

The term "unconscionable expenditures" pertains to expenditures which are unreasonable and immoderate, and which no man in his right sense would make, nor a fair and honest man would accept as

reasonable, and those incurred in violation of ethical and moral standards.[97]

The kind and nature of disallowance must first be established since certain presumptions in determining the liability of payees attach to each type of disallowance. Thereafter, the relevant circumstances should be considered to determine whether the approving and certifying officers exercised the diligence of a good father of a family:

> While I ultimately agree with the *ponencia's* conclusion, I propose that the nature of the transaction or the reason behind its disallowance be the basis in determining the liability of authorizing officers and recipients, instead of whether or not they acted in good faith.
>
> Under Section 16.1 of Commission on Audit Circular No. 2009-006, the liability of public officers and other persons for audit disallowances shall be determined based on the following: (a) the nature of the disallowance; (b) the duties of officers/employees concerned; (c) the extent of their participation in the disallowed transaction; and (d) the amount of damage or loss to the government. *Thus, the determination of liability will begin with identifying the reason behind the disallowance. Depending on the nature of the disallowance, various presumptions and liabilities for the responsible officers and employees will attach.*
>
> For expenditures disallowed for being excessive, extravagant, or ostentatious, there is no question that the Commission on Audit may properly demand their refund. The authorizing officers are to pay the disallowed benefits, not only for their blatant disregard of laws and regulations, but for their gross excessiveness and unreasonableness. That said, they would have no justification to excuse them from liability. This is illustrated in *National Electrification Administration v. Commission on Audit*, where this Court found that the officers who had approved the advanced release of salary increases — which were later disallowed blatantly disregarded the President's directives and orders. Accordingly, all officers and employees who had received the compensation were directed to refund the amounts received.

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[97] Id.

This was similarly applied in *Casal v. Commission on Audit*, in which the incentive awards for employees, also released without authority from the President, were disallowed. This Court said:

> The failure of petitioners — approving officers to observe all these issuances cannot be deemed a mere lapse consistent with the presumption of good faith. Rather, even if the grant of the incentive award were not for a dishonest purpose as they claimed, the patent disregard of the issuances of the President and the directives of the COA amounts to gross negligence, making them liable for the refund thereof. The following ruling in *National Electrification Administration v. COA* bears repeating:
>
> . . . .
>
> > This case would not have arisen had NEA complied in good faith with the directives and orders of the President in implementation of the last phase of the Salary Standardization Law II. The directives and orders are clearly and manifestly in accordance with all relevant laws. The reasons advanced by NEA in disregarding the President's directives and orders are patently flimsy, even ill-conceived. This cannot be countenanced as it will result in chaos and disorder in the executive branch to the detriment of public service.

On the other hand, this Court has been more forgiving in disallowed expenditures that were unnecessary — those not supportive of the government agency's main objective, inessential, or dispensable. For these, the participants need not return the expenditures to allow the executives or implementers leeway in carrying out their functions. They are expected to create contingencies in light of circumstances that are fluid and susceptible to change. Given that the Commission on Audit merely reviews expenditures in hindsight, to make authorizing officers liable to return the disallowed amounts will hamper the decision-making of an executive and further constrain the implementation of government programs. Moreover, it may cause a chilling effect on government officials.

To avoid this, authorizing officers for unnecessary disallowances generally have no liability to return the expenditures. Nevertheless, liability may attach if it is proven that the officers purposely and knowingly issued the unnecessary funds.

As for disallowances of illegal or irregular expenditures, a more objective approach is taken. First, the authorizing officer's basis for issuing the benefit must be reviewed. For one to be absolved of liability, the following requisites must be present: (1) a certificate of availability of funds, pursuant to Section 4026 of the Administrative Code; (2) an in-house or a Department of Justice legal opinion; (3) lack of jurisprudence disallowing a similar case; (4) the issuance of the benefit is traditionally practiced within the agency and no prior disallowance has been issued; and (5) on the question of law, that there is a reasonable textual interpretation on the expenditure or benefit's legality.

If all of these requirements are met, the authorizing officer is absolved of liability for having shown that they exercised the diligence of a good father of the family in the performance of their duty.[98]

Certain badges of good faith should be considered in relation to other circumstances to determine whether the approving officers performed their official functions in good faith:

B. Badges of good faith in the determination of approving/certifying officers' liability

As mentioned, **the civil liability under Sections 38 and 39 of the Administrative Code of 1987, including the treatment of their liability as solidary under Section 43, arises only upon a showing that the approving or certifying officers performed their official duties with bad faith, malice or gross negligence. For errant approving and certifying officers, the law justifies holding them solidarily liable for amounts they may or may not have received considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties**, as further emphasized by Senior Associate Justice Estela M. Perlas-Bernabe (Justice Bernabe). This treatment contrasts with that of individual payees who, as will be discussed below, can only be liable to return the full amount they were paid, or they received pursuant to the principles of *solutio indebiti* and unjust enrichment.

Notably, the COA's regulations relating to the settlement of accounts and balances illustrate when different actors in an audit disallowance can be held liable either based on their having custody of the funds,

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[98] Id.

and having approved or certified the expenditure. The Court notes that officers referred to under Sections 19.1.1 and 19.1.3 of the MCSB, and Sections 16.1.1 and 16.1.3 of the RRSA, may nevertheless be held liable based on the extent of their certifications contained in the forms required by the COA under Section 19.1.2 of MCSB, and Section 16.1.2 of the RRSA. To ensure that public officers who have in their favor the unrebutted presumption of good faith and regularity in the performance of official duty, or those who can show that the circumstances of their case prove that they acted in good faith and with diligence, the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed circumstances or badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family:

> x x x For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.

Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable. **The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein**.[99] (Emphasis supplied)

It is implied that the failure of the approving and certifying officers to perform their duties with the required diligence of a good father of a family will make them solidary liable in returning the illegally disbursed funds. In her separate opinion in *Madera*, Senior Associate Justice Estela M. Perlas-Bernabe

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[99] Id.

expounded on this implication after a finding of bad faith, malice, or gross negligence in the approving and certifying officers' performance of duties:

> Once the existence of bad faith, malice, or gross negligence as contemplated under Section 38, Chapter 9, Book I of the Administrative Code is clearly established, the civil liability of approving/authorizing officers to return disallowed amounts based on an unlawful expenditure is solidary together with all other persons taking part therein, as well as every person receiving such payment. This solidary liability is found in Section 43, Chapter 5, Book VI of the Administrative Code, which states:
>
> > Section 43. *Liability for Illegal Expenditures*. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received. (Emphases and underscoring supplied)
>
> Notably, with respect to "every official or employee authorizing or making such payment" in bad faith, with malice, or gross negligence, the law justifies holding them solidarily liable for the amounts they may or may not have received, considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties.
>
> ***Since the law characterizes their liability as solidary in nature, it means that once this provision is triggered, the State can go after each and every person determined to be liable for the full amount of the obligation***; this holds true irrespective of the actual amounts individually received by each co-obligor, without prejudice to claims for reimbursement from one another. As defined, a "solidary obligation [is] one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors." However, "[h]e who made the payment may claim from his co-debtors only on the share which corresponds to each [co-debtor]." Of course, ***the decision as to who the State will go after and the extent of the amount to be***

claimed falls within the discretion and prerogative of the COA. As provided for in Section 16.3 of COA Circular 2009-006:

> 16.3 The liability of persons determined to be liable under an ND/NC shall be solidary and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable. (Emphasis supplied)

That being said, it must be observed that a disallowed amount under a Notice of Disallowance does not only comprise of amounts received by guilty public officials but also of amounts unwittingly received by passive recipients. . . ."[100] (Citations omitted, emphasis supplied)

However, We stress that the solidary liability of the approving and certifying officers is limited only to the extent of the net disallowed amount:

With the liability for unlawful expenditures properly understood, payees who receive undue payment, regardless of good faith, are liable for the return of the amounts they received. Notably, in situations where officers are covered by Section 38 of the Administrative Code of 1987 either by presumption or by proof of having acted in good faith, in the regular performance of their official duties, and with the diligence of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return. For the same reason, any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice, and gross negligence. In this regard, Justice Bernabe coins the term ***"net disallowed amount" to refer to the total disallowed amount minus the amounts excused to be returned by the payees***. Likewise, Justice Leonen is of the same view that the officers held liable have a solidary obligation only to the extent of what should be refunded and this does not include the amounts received by those absolved of liability. In short, the net disallowed amount shall be solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.[101] (Emphasis supplied, citations omitted)

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[100] Id.

[101] Id.

WHEREFORE, the Petition is **DENIED**. The May 18, 2015 Notice of Disallowance ND No. 15-001-164-(14), and the August 1, 2016 Notice of Finality of Decision of the Commission on Audit are **AFFIRMED**.

Petitioners Fr. Ranhilio Aquino and Dr. Pablo Narag are **DIRECTED** to return the year-end incentives they received with six percent (6%) legal interest from the finality of this Decision.[102] Since their representation of the other employees are not valid and there was no appeal filed by the other officers, no pronouncement is made in this case with respect to their liability.

SO ORDERED.

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

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

FIRST DIVISION

[G.R. No. 232769. November 3, 2020]

MARY BETH D. MARZAN, *Petitioner, v.* **CITY GOVERNMENT OF OLONGAPO, HON. ROLEN C. PAULINO, ANGIE SOCORRO S. BARROGA, and ARCHITECT TONY KAR BALDE III,** *Respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE CIVIL SERVICE COMMISSION (CSC); DISAPPROVAL OF CIVIL SERVICE APPOINTMENTS; APPEALS FROM THE DISAPPROVAL OF APPOINTMENTS SHOULD BE FILED BEFORE THE CSC REGIONAL OFFICE.— The Administrative Code of 1987 (Administrative Code) constitutes the [Civil Service Commission] [(]CSC[)] as the central personnel agency of the government. As such, the CSC is authorized to "[p]rescribe, amend and enforce rules and regulations [to carry] into effect the provisions of the Civil Service Law and other pertinent laws." The CSC is also empowered to "[h]ear and decide administrative cases instituted by or brought before it directly or on appeal x x x."

Prevailing at the time of the disapproval of Marzan's appointment as Department Head of the [City Budget Office] [(]CBO[)] and her consequent termination from service was CSC Memorandum Circular No. 40-98 (CSC MC No. 40-98) or the Revised Omnibus Rules on Appointments and Other Personnel Actions.

Rule VI of CSC MC No. 40-98 governs the submission, approval and disapproval of civil service appointments. . . .

In turn, the procedure on appeals involving personnel actions, *including* disapproval of appointments and termination of services, is set forth under Rule 23 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), the set of rules prevailing during the relevant period. . . .

Accordingly, Marzan should have questioned her termination by filing an appeal before the CSC Regional Office.

2. ID.; ID.; ID.; ID.; ID.; RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXCEPTIONS THERETO; WHILE THE FAILURE TO APPEAL BEFORE THE CSC REGIONAL OFFICE IS A VIOLATION OF THE SAID RULE, IT FALLS UNDER ONE OF THE EXCEPTIONS, AS THE ISSUE INVOLVED IS PURELY A LEGAL QUESTION.— By failing to perfect an appeal with the CSC Regional Office and observing the procedure set forth under the RRACCS, Marzan violated the well-established rule on exhaustion of administrative remedies: . . .

Nonetheless, the rule on exhaustion of administrative remedies admits of exceptions:

> x x x A party may directly resort to judicial remedies if any of the following is present:
>
> . . .
>
> 2. **when the issue involved is purely a legal question;** . . .

Here, Marzan does not assail the disapproval of her appointment as Department Head of the CBO. What Marzan questions is respondents' refusal to reinstate her to her former position as Department Head of the CPDO, claiming that such reinstatement is mandated by Section 13, Rule VI of the Omnibus Rules.

Clearly, Marzan seeks judicial intervention in order to determine whether Section 13, Rule VI of the Omnibus Rules applies. This question is one that is purely legal, and thus constitutes an exception to the rule on exhaustion of administrative remedies. In this light, the Court finds that Marzan's direct resort to the courts may be permitted.

3. ID.; ID.; ID.; ID.; ID.; REINSTATEMENT TO FORMER POSITION; REQUIREMENTS THEREOF; THE REINSTATEMENT TO FORMER POSITION PRESUPPOSES THAT THE DISAPPROVED APPOINTMENT WOULD HAVE CONSTITUTED A PROMOTION.— Marzan insists that her reinstatement as Department Head of the CPDO is mandatory under Section 13, Rule VI of the Omnibus Rules. The provision states:

> . . . The disapproval of the appointment of a person proposed to a higher position invalidates the promotion

> of those in lower positions and automatically restores them to their former positions. . . .

In *Divinagracia [Jr. v. Sto Tomas]*, the Court summarized the requirements for the application of Section 13, Rule VI, thus:

> x x x [B]efore a public official or employee can be automatically restored to her former position, there must first be a **series of promotions**; second, **all appointments are simultaneously submitted to the CSC for approval;** and third, **the CSC disapproves the appointment of a person proposed to a higher position.**

It is thus clear that Section 13, Rule VI presupposes that the appointment of the official or employee concerned constitutes a promotion.

4. ID.; ID.; ID.; ID.; ID.; ID.; PROMOTION DISTINGUISHED FROM TRANSFER; APPOINTMENT TO ANOTHER POSITION OF THE SAME RANK AND SALARY GRADE LEVEL IS NOT A PROMOTION.— CSC MC No. 40-98 defines promotion as "the advancement of an employee from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary." In contrast, a transfer contemplates "the movement of [an] employee from one position to another which is of equivalent rank, level or salary without break in the service involving the issuance of an appointment."

Keeping these distinctions in mind, the Court echoes the findings of the CA:

> x x x A comparison between the two (2) appointments issued to [Marzan] for the two (2) positions shows that these are of the same rank and salary grade level. Both positions even have the same appellation — City Government Department Head II — only that each belongs to different offices albeit under the same local government unit. x x x

Marzan does not dispute these findings. Moreover, as respondents correctly point out, Marzan herself conceded in

her Judicial Affidavit that her appointment to the CBO was not a promotion, but rather a "lateral transfer".

Assuming *arguendo* that Marzan's appointment qualifies as a promotion, all three requisites for the application of Section 13, Rule VI are still lacking, considering that said appointment was not part of a series of promotions simultaneously submitted to the CSC for approval.

Evidently, Section 13, Rule VI of the Omnibus Rules does not apply.

5. ID.; ID.; ID.; ID.; ID.; ID.; REMEDIAL LAW; SPECIAL CIVIL ACTIONS; MANDAMUS; REINSTATEMENT TO A FORMER OFFICE POSITION CONSTITUTES A DISCRETIONARY ACT, WHICH CANNOT BE COMPELLED THROUGH A WRIT OF *MANDAMUS*.— Section 3, Rule 65 of the Rules of Court sets forth the circumstances which warrant the issuance of a writ of mandamus: . . .

The writ of mandamus shall only issue to compel the performance of a ministerial act, or "one in which an officer or tribunal performs in a given state of facts, in a prescribed manner, *in obedience to a mandate of legal authority*, without regard to or the exercise of his own judgment upon the propriety or impropriety of an act done." Thus, mandamus will not lie to compel the performance of a discretionary act. . . .

Considering that Section 13, Rule VI of the Omnibus Rules does not apply, and that Marzan freely and knowingly vacated her former position as Department Head of the CPDO, Marzan's reinstatement thereto constitutes a discretionary act which cannot be compelled through a writ of *mandamus*. In this light, the Court finds no basis to grant Marzan's prayer for moral and exemplary damages, litigation expenses and costs of suit.

APPEARANCES OF COUNSEL

Prudencio B. Jalandoni for petitioner.
Ronila C. Roxas for respondents.

D E C I S I O N

CAGUIOA, *J.*:

The Case

This is a Petition for Review on *Certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court against the Decision[2] dated October 26, 2016 (assailed Decision) and Resolution[3] dated July 4, 2017 (assailed Resolution) in CA G.R. SP No. 139549 rendered by the Court of Appeals[4] (CA).

The assailed Decision and Resolution affirmed the following issuances of the Regional Trial Court (RTC) of Olongapo City, Branch 72 in Civil Case No. 113-0-2013:

1. Decision dated October 2, 2014 which dismissed the "Petition for *Mandamus* with Prayer for Writ of Preliminary Mandatory Injunction, Damages, and Attorney's Fees" (Petition for *Mandamus* or RTC Petition) filed by petitioner Marey Beth D. Marzan (Marzan); and
2. Order dated January 15, 2015 denying Marzan's motion for reconsideration.

The Facts

The facts, as narrated by the CA, are as follows:

On January 16, 2008, [Marzan] was appointed as City Government Department Head II [of] the City Planning and Development Office of Olongapo City [(CPDO)]. The appointment was issued by then

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[1] *Rollo*, pp. 6-29, excluding Annexes.

[2] *Id.* at 31-53. Penned by Associate Justice Maria Elisa Sempio Diy, with the concurrence of Associate Justices Ramon M. Bato, Jr. and Pedro B. Corales.

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

[4] Special Twelfth Division and Former Special Twelfth Division, respectively.

City Mayor James Gordon, Jr. [(Mayor Gordon)] and approved by the Civil Service Commission [(CSC)] on June 7, 2011.

On December 1, 2011, Mayor Gordon issued a Memorandum appointing [Marzan] as City Budget Officer (City Government Department Head II) of the City Budget Office [(CBO)]. [Marzan] was to discharge said functions concurrently with her functions as Zoning Administrator/Zoning Officer. According to [Marzan], Mayor Gordon directed [respondent Angie Socorro S. Barroga (Barroga), as Acting Chief Administrative Officer of the Human Resource Management Office of Olongapo City,][5] to facilitate [Marzan's] lateral transfer to her concurrent position as Budget Officer.

[On May 6, 2013, Rolen C. Paulino (Mayor Paulino) was elected as mayor of Olongapo City.[6] Upon assumption into office, Mayor Paulino appointed respondent Tony Kar Balde, III (Balde) to Marzan's former position as Department Head II of the CPDO.][7]

On August 16, 2013, however, the [CSC], through Director Carlos P. Rabang [(Director Rabang)], wrote [Mayor Paulino] informing the latter of the disapproval of [Marzan's] appointment as City Government Department Head II of the [CBO]. **The ground for the disapproval of [Marzan's] appointment was the discrepancy between the date the appointment was signed by Mayor Gordon [(November 16, 2012)][8] and [its] approval by the Sangguniang Panglungsod [(December 21, 2011)**[9]].

On August 29, 2013, [Barroga] wrote a letter [(City Termination Letter)] to [Marzan] informing [her] that the City Government of Olongapo would be terminating her services effective September 14, 2013 on the basis of the August 16, 2013 letter of [Director Rabang] [(August 2013 CSC Letter)]. The [City Termination Letter] was noted by Mayor Paulino.

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[5] *Rollo*, p. 8.

[6] Id. at 9.

[7] See Reply, id. at 109.

[8] Petition, id. at 22.

[9] Id.

On even date, [Marzan] wrote a letter to the [CSC] Regional Office III inquiring as to the effect of the disapproval of her appointment as City Government Department Head II of the [CBO]. [Marzan] sought clarification on the following matters:

1. Who is the accountable officer responsible in ensuring compliance [with] the CSC [r]ules on [a]ppointment relative to the documentary requirements of my appointment?

2. x x x x

    a. x x x

    b. Does the [d]isapproval of a [t]ransfer [a]ppointment of a permanent employee result [in] termination of services?

    c. What is my status following such disapproval? Am I deemed separated from service as alleged or shall I revert x x x to my [previous] CSC-approved position as per CSC [r]ules? x x x

x x x x

On September 4, 2013, [Marzan] wrote back to [Barroga stating that] nowhere in the [August 2013 CSC Letter] was it mentioned that her services were being terminated. [Marzan] further explained that [said letter] merely stated that while [Marzan] met the minimum qualifications for the position of City Government Department Head II for the [CBO], the reason for the disapproval of her appointment was the accountable officer's failure to perform the latter's ministerial duty of facilitating [her] appointment. [Marzan] thus inquired as to [which] specific [term of] service was being referred to in [the City Termination Letter] considering that prior to [the disapproval of her] appointment as City Government Head II for the [CBO], she was holding the permanent position of City Government Department Head II of the [CPDO]. [Marzan] further cited the provision in the Civil Service Law which allegedly provides that a disapproved permanent appointment results in automatic reversion [to] the previously approved appointment x x x. On September 6, 2013, [Barroga replied to [Marzan's letter, reiterating that her] service to the [C]ity [G]overnment of Olongapo would only be until September 14, 2013.

[Marzan], in the meantime, continued to report for work. On September 13, 2013, [Marzan] wrote a letter addressed to Mayor

Paulino and [Barroga] informing them of her letter to the [CSC] Regional Office x x x. [Marzan] also informed [them] that [CSC] Provincial Director Cristina Gonzales advised [her] to await the Regional Office's reply x x x. [Marzan] likewise informed [Mayor Paulino and Barroga] that status quo will have to be observed in the meantime while the [CSC] Regional Office resolves [her query]. Consequently, [Marzan] informed [Mayor Paulino and Barroga] that x x x she cannot heed [the latter's] directive for her to cease working for the [C]ity [G]overnment. x x x The records show that [Marzan's] letter was received by the Office of the City Mayor of Olongapo at 4:00 o'clock in the afternoon. x x x [T]he records likewise show that [Barroga] received a copy of said letter on the same date.

At about 5:00 o'clock in the afternoon of the same date, [Marzan] was shocked and surprised when upon opening the door of her office, she saw six (6) men from the Civil Security Service Unit and [Balde] in her office. x x x [Balde] x x x insisted that [Marzan] remove her things immediately [and] further instructed his men to forthwith evict [Marzan from her office]. x x x

On September 16, 2013, [Marzan] wanted to report for work. However, she received a text message x x x informing her that men were manning her work area with instruction[s] to prevent her from coming to work. x x x To avoid embarrassment, [Marzan] decided not to work on that day. x x x

On September 24, 2013, [Marzan] received a letter dated September 18, 2013 [(September 2013 CSC Letter)] from Director Rabang [informing her] that as a matter of policy, his office does not render opinions or give categorical answers to queries which may later be brought before it on appeal. However, Director Rabang answered [Marzan's] queries in accordance with the Civil Service laws, rules and regulations x x x[.][10]

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[10] Pertinent portions of the September 2013 CSC Letter read:

On the 1st issue, your agency Human Resource Management Office [(HRMO)] shall be responsible that all documentary requirements to support the appointments issued have been complied with and found to be in order as provided for under Section 1, Rule VII of the Omnibus Rules on Appointments and Other Personnel Actions. This is evidenced by the certification of the HRMO at the back of the appointment. x x x

On the 2nd issue, the services of a permanent employee in the government may be terminated only after the final disapproval of his/her appointment

On September 30, 2013, [Marzan], accompanied by her sister, met with Mayor Paulino to inquire if the latter was aware of the cessation order issued to [Marzan]. Mayor Paulino allegedly admitted that while the order was his own decision, [it] was based on [Barroga's recommendation].[11] (Emphasis and underscoring supplied)

RTC Proceedings

Aggrieved, Marzan filed with the RTC a Petition for *Mandamus* against the City Government of Olongapo, Mayor Paulino, Barroga and Balde (collectively, respondents).[12]

The RTC Petition prayed for the following reliefs:

1. The issuance of a writ of preliminary mandatory injunction directing respondents to immediately reinstate Marzan as Department Head of the CPDO;

2. The issuance of a writ of *mandamus* commanding respondents to respect Marzan's rights and allow her

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and/or upon the order of a competent court/authority that has become final and executory.

On the 3rd issue, Section 13, Rule V of the Omnibus Civil Service Rules and Regulations provides as follows:

> Section 13. All appointments involved in a chain of promotions must be submitted simultaneously for approval by the [CSC]. The disapproval of the appointment of a person proposed to a higher position invalidates the promotion of those in lower positions and automatically restores them to their former positions. x x x.

On the 4th issue, the appointing authority being the disciplining person is the authorized person to terminate your services in accordance with the Civil Service Law, rules and regulations.

x x x x x x x x x

On the last issue, your allegation that you were not allowed by your Office to be restored to your former position as City Government Department Head [CPDO] after the disapproval of your transfer appointment is a legal matter that may be brought to the [CSC] in the form of an appeal pursuant to Section 110, Rule 23 of the Revised Rules on Administrative Cases in the Civil Service. *Rollo*, pp. 36-37.

[11] *Rollo*, pp. 32-38.

[12] Id. at 38.

to perform her functions as Department Head of the CPDO;

3. Payment of: (i) moral damages amounting to ₱250,000.00; (ii) exemplary damages amounting to ₱100,000.00; (iii) attorney's fees and expenses of litigation amounting to ₱100,000.00; and (iv) costs of suit.[13]

Respondents filed their Joint Answer to the RTC Petition.

First, respondents alleged that when Marzan was appointed as Department Head of the CBO, she vacated her position as Department Head of the CPDO. Thus, Mayor Paulino acted within his authority as local chief executive when he appointed Balde to fill the vacant position. According to respondents, Marzan's reinstatement would effectively impair Mayor Paulino's power to appoint.[14]

In addition, respondents argued that Marzan's reliance on Section 13 of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws (Omnibus Rules) is misplaced. Respondents averred that in order for Section 13 to apply, there must be a series of promotions which are simultaneously submitted to the CSC for approval. Respondents stressed that these circumstances do not obtain in this case.[15]

Finally, respondents asserted that Marzan's resort to *mandamus* is premature. According to respondents, Marzan should have exhausted available administrative remedies by seeking reconsideration of her termination before the Office of the City Mayor, and subsequently, by filing an appeal with the CSC Regional Office.[16]

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[13] Id.

[14] Id. at 38-39.

[15] Id. at 39.

[16] See id.

On January 6, 2014, the RTC denied Marzan's prayer for injunctive relief. Marzan's subsequent motion for reconsideration was also denied.[17]

Thereafter, the RTC directed the parties to file their respective memoranda on the substantive issues.[18]

On October 2, 2014, the RTC issued a Decision dismissing the Petition for *Mandamus*.[19]

On the procedural aspect, the RTC held that Marzan failed to exhaust available administrative remedies.[20]

On the substantive issues, the RTC agreed with respondents' assertion that Marzan vacated her position as Department Head of the CPDO upon acceptance of her appointment as Department Head of the CBO. As basis, the RTC cited the Appropriations Act of Olongapo City[21] which tagged Marzan's old position as vacant. The RTC noted that Marzan must have been aware of such fact, as she was a member of the finance committee that was tasked to prepare the city's budget.[22]

Finally, the RTC ruled that *mandamus* cannot issue to compel Marzan's reinstatement, such act being discretionary on the part of Mayor Paulino as appointing authority.[23]

Marzan filed a motion for reconsideration which the RTC also denied in its Order dated January 15, 2015.[24]

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[17] Id. at 39-40.

[18] Id. at 39.

[19] Id. at 40.

[20] Id.

[21] Ordinance No. 27, series of 2012.

[22] *Rollo*, p. 40.

[23] Id. at 41.

[24] Id.

CA Proceedings

Unsatisfied, Marzan filed an appeal with the CA *via* Rule 42 of the Rules of Court. Therein, Marzan questioned the dismissal of the Petition for *Mandamus* without having undergone a full-blown trial. As well, she maintained that her immediate resort to *mandamus* was proper.

On October 26, 2016, the CA issued the assailed Decision, the dispositive portion of which reads:

> **WHEREFORE**, in view of the foregoing, the appeal is **DENIED**. The October 2, 2014 Decision and the January 15, 2015 Order of [the RTC] are **AFFIRMED**.
>
> **SO ORDERED.**[25]

Foremost, the CA held that under Rule 65, a full-blown hearing is not required prior to the resolution of a petition for *mandamus*.[26]

Further, the CA echoed the RTC's findings with respect to Marzan's failure to exhaust all available administrative remedies. However, the nature of the issues raised by Marzan precludes outright dismissal on procedural grounds, inasmuch as these issues relate to her right to security of tenure.[27]

Nonetheless, the CA held that Marzan's action fails on the merits.

Citing *Divinagracia, Jr. v. Sto. Tomas*[28] *(Divinagracia)*, the CA held that Section 13 of the Omnibus Rules does not apply, as Marzan's movement from the CPDO to the CBO was a lateral transfer, and not a promotion contemplated under the Omnibus Rules.[29] Thus, contrary to Marzan's claims, her reinstatement

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[25] Id. at 52.

[26] Id. at 43.

[27] See id. at 46-48.

[28] 314 Phil. 550 (1995).

[29] See *rollo*, pp. 48-49.

as Department Head of the CPDO is *not* automatic, but rather discretionary on the part of the appointing authority. For this reason, Marzan's prayer for issuance of a writ of *mandamus* cannot prosper.[30]

The CA also denied Marzan's subsequent motion for reconsideration through the assailed Resolution.[31]

Marzan, through counsel, received a copy of the assailed Resolution on July 18, 2017.[32]

On August 1, 2017, Marzan filed a Motion for Extension of Time to File Petition for Review,[33] praying for an additional period of thirty (30) days from August 1, 2017, or until August 31, 2017 to file her petition for review.

On August 31, 2017, Marzan filed this Petition.

In compliance with the Court's Resolution dated June 6, 2018, respondents filed their Joint Comment on the Petition,[34] to which Marzan filed her Reply.[35]

In this Petition, Marzan insists that she was unlawfully removed from a permanent government position in violation of "pertinent Civil Service Laws."[36] Hence, Marzan prays that she be reinstated to her former position as Department Head of the CPDO. As well, Marzan reiterates her claim for moral and exemplary damages, attorney's fees, litigation expenses, and costs of suit.[37]

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[30] Id. at 51-52.

[31] Id. at 55-56.

[32] Id. at 8.

[33] Id. at 3-4.

[34] Id. at 75-81.

[35] Id. at 107-114.

[36] See id. at 23.

[37] Id. at 110-111.

The Issues

The issues presented for the Court's resolution are:

1. Whether Marzan's immediate resort to judicial remedies was proper; and
2. Whether *mandamus* will lie to compel respondents to reinstate Marzan as Department Head of the CPDO.

The Court's Ruling

The Court rules in favor of respondents.

As an exception to the rule on exhaustion of administrative remedies, immediate resort to judicial remedies may be allowed if the issue involved presents a pure question of law.

The Administrative Code of 1987[38] (Administrative Code) constitutes the CSC as the central personnel agency of the government.[39] As such, the CSC is authorized to "[p]rescribe, amend and enforce rules and regulations [to carry] into effect the provisions of the Civil Service Law and other pertinent laws."[40] The CSC is also empowered to "[h]ear and decide administrative cases instituted by or brought before it directly or on appeal x x x."[41]

Prevailing at the time of the disapproval of Marzan's appointment as Department Head of the CBO and her consequent termination from service was CSC Memorandum Circular No. 40-98[42] (CSC MC No. 40-98) or the Revised Omnibus Rules on Appointments and Other Personnel Actions.

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[38] Executive Order No. 292, INSTITUTING THE "ADMINISTRATIVE CODE OF 1987," July 25, 1987.

[39] ADMINISTRATIVE CODE OF 1987, Book V, Title I, Subtitle A, Chapter 1, Sec. 1.

[40] Id., Chapter 3, Sec. 12 (2).

[41] Id., Chapter 3, Sec. 12 (11).

[42] Issued on December 14, 1998.

Rule VI of CSC MC No. 40-98 governs the submission, approval and disapproval of civil service appointments. Its relevant provisions state:

SEC. 1. An appointment shall be submitted to the [CSC] within thirty (30) calendar days from the date of issuance, which shall be the date indicated below the signature of the appointing authority. Otherwise it shall be made effective thirty (30) days prior to date of submission to CSC.

In case of appointments issued by accredited agencies, the Report of Personnel Actions (ROPA) together with photocopies of appointments issued during the month shall be submitted within [fifteen (15)] days of the succeeding month. Appointments not submitted within the prescribed period shall be made effective [thirty (30)] days prior to date of submission.

If the appointee does not assume office within thirty (30) calendar days from receipt of the approved appointment, the same may be cancelled by the appointing authority and reported to the [CSC] for record purposes. The position is automatically deemed vacant without the need for an approval or declaration by the [CSC].

If the appointee is not allowed to assume office by the appointing authority despite of the [CSC's] approval of the appointment, said official shall be held administratively liable therefor.

SEC. 2. Request for reconsideration of, or appeal from, the disapproval of an appointment may be made by the appointing authority and submitted to the Commission within fifteen (15) calendar days from receipt of the disapproved appointment.

SEC. 3. **When an appointment is disapproved, the services of the appointee shall be immediately terminated, unless a motion for reconsideration or appeal is seasonably filed**.

Services rendered by a person for the duration of his disapproved appointment shall not be credited as government service for whatever purpose.

If the appointment was disapproved on grounds which do not constitute a violation of civil service law, such as failure of the appointee to meet the Qualification Standards (QS) prescribed for the position, the same is considered effective until disapproved

by the [CSC] or any of its regional or field offices. The appointee is meanwhile entitled to payment of salaries from the government.

If a motion for reconsideration or an appeal from the disapproval is seasonably filed with the proper office, the appointment is still considered to be effective. The disapproval becomes final only after the same is affirmed by the [CSC]. (Emphasis and underscoring supplied)

In turn, the procedure on appeals involving personnel actions, *including* disapproval of appointments and termination of services, is set forth under Rule 23 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), the set of rules prevailing during the relevant period. Sections 110 to 114 thereof state:

Section 110. *Appeal from Decisions on Other Personnel Actions.* — Other personnel actions, such as, but not limited to, separation from the service due to unsatisfactory conduct or want of capacity during probationary period, dropping from the rolls due to Absence Without Official Leave (AWOL), physical and mental unfitness, and unsatisfactory poor performance, protest, **action on appointments**, reassignment, transfer, reappointment, detail, secondment, demotion, or **termination of services, may be brought to the [CSC Regional Office], by way of an appeal**.

Section 111. ***When and Where to File*. — A decision or ruling of an agency head may be appealed within fifteen (15) days from receipt thereof by the party adversely affected to the [CSC Regional Office] and finally, to the [CSC] within the same period**.

However, if the decision is made by the Department Secretary, the same shall be appealable to the [CSC] within fifteen (15) days from receipt thereof.

A motion for reconsideration may be filed with the same office which rendered the decision or ruling within fifteen (15) days from receipt thereof.

Section 112. ***When deemed filed***. — An appeal sent by registered mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case. In case of personal delivery, it is deemed filed on the date stamped thereon by the proper office.

Section 113. ***Appeal Fee***. — The appellant shall pay an appeal fee and a copy of the official receipt thereof shall be attached to the appeal.

Section 114. ***Perfection of an Appeal***. — To perfect an appeal, the appellant shall submit three (3) copies of the following documents:

a. Appeal memorandum containing the grounds relied upon for the appeal, together with the certified true copy of the decision, resolution or order appealed from, and certified copies of the documents or evidence. The appeal memorandum shall be filed with the appellate authority, copy furnished the appointing authority. The latter shall submit the records of the case, which shall be systematically and chronologically arranged, paged and securely bound to prevent loss, with its comment, within fifteen (15) days from receipt, to the appellate authority.

b. Proof of service of a copy of the appeal memorandum to the appointing authority;

c. Proof of payment of the appeal fee; and

d. A statement or certificate of non-forum shopping.

When an appellant fails to comply with any of the above requirements within the reglementary period, the [CSC] shall direct compliance within a period of ten (10) days from receipt thereof, with a warning that failure to comply shall be construed as failure to perfect an appeal and shall cause the dismissal of the appeal with prejudice to its refiling. (Emphasis and underscoring supplied)

Accordingly, Marzan should have questioned her termination by filing an appeal before the CSC Regional Office. However, instead of doing so, Marzan wrote a letter to Regional Director Rabang seeking an advisory opinion on matters relating to the disapproval of her appointment as Department Head of the CBO, and her consequent termination from service. Thus, in the September 2013 CSC Letter, the CSC Regional Office refrained from categorically responding to Marzan's queries, and advised Marzan to file an appeal in accordance with Section 110 of the RRACCS. The relevant portion of said letter reads:

On the last issue, your allegation that you were not allowed by your Office to be restored to your former position as City Government Department Head [(CPDO)] after the disapproval of your transfer appointment is a legal matter that may be brought to the [CSC] in the form of an appeal pursuant to Section 110, Rule 23 of the [RRACCS].[43]

By failing to perfect an appeal with the CSC Regional Office and observing the procedure set forth under the RRACCS, Marzan violated the well-established rule on exhaustion of administrative remedies:

x x x Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts — for reasons of law, comity, and convenience — will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.[44]

Nonetheless, the rule on exhaustion of administrative remedies admits of exceptions:

x x x A party may directly resort to judicial remedies if any of the following is present:

1. when there is a violation of due process;
2. **when the issue involved is purely a legal question;**
3. when the administrative action is patently illegal amounting to lack or excess of jurisdiction;
4. when there is estoppel on the part of the administrative agency concerned;
5. when there is irreparable injury;
6. when the respondent is a department secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter;

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[43] *Rollo*, p. 37.

[44] *Mohammad v. Belgado-Saqueton*, 789 Phil. 651, 658-659 (2016).

7. when to require exhaustion of administrative remedies would be unreasonable;
8. when it would amount to a nullification of a claim;
9. when the subject matter is a private land in land case proceedings;
10. when the rule does not provide a plain, speedy and adequate remedy; and
11. when there are circumstances indicating the urgency of judicial intervention.[45] (Emphasis supplied)

Here, Marzan does not assail the disapproval of her appointment as Department Head of the CBO. What Marzan questions is respondents' refusal to reinstate her to her former position as Department Head of the CPDO, claiming that such reinstatement is mandated by Section 13, Rule VI of the Omnibus Rules.

Clearly, Marzan seeks judicial intervention in order to determine whether Section 13, Rule VI of the Omnibus Rules applies. This question is one that is purely legal, and thus constitutes an exception to the rule on exhaustion of administrative remedies. In this light, the Court finds that Marzan's direct resort to the courts may be permitted.

Be that as it may, the Petition fails on the merits.

Section 13, Rule VI of the Omnibus Rules does not apply.

Foremost, Marzan insists that her reinstatement as Department Head of the CPDO is mandatory under Section 13, Rule VI of the Omnibus Rules. The provision states:

SECTION 13. All appointments involved in a chain of promotions must be submitted simultaneously for approval by the Commission. The disapproval of the appointment of a person proposed to a higher position invalidates the promotion of those in lower positions and

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[45] *Buena, Jr. v. Benito*, 745 Phil. 399, 416-417 (2014).

automatically restores them to their former positions. However, the affected persons are entitled to the payment of salaries for services actually rendered at a rate fixed in their promotional appointments.

In *Divinagracia,* the Court summarized the requirements for the application of Section 13, Rule VI, thus:

> x x x [B]efore a public official or employee can be automatically restored to her former position, there must first be a **series of promotions**; second, **all appointments are simultaneously submitted to the CSC for approval**; and third, the **CSC disapproves the appointment of a person proposed to a higher position**.[46] (Emphasis supplied)

It is thus clear that Section 13, Rule VI presupposes that the appointment of the official or employee concerned constitutes a promotion.

CSC MC No. 40-98 defines promotion as "the advancement of an employee from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary."[47] In contrast, a transfer contemplates "the movement of [an] employee from one position to another which is of equivalent rank, level or salary without break in the service involving the issuance of an appointment."[48]

Keeping these distinctions in mind, the Court echoes the findings of the CA:

> x x x A comparison between the two (2) appointments issued to [Marzan] for the two (2) positions shows that these are of the same rank and salary grade level. Both positions even have the same appellation — City Government Department Head II — only that each belongs to different offices albeit under the same local government unit. x x x[49]

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[46] *Divinagracia, Jr. v. Sto. Tomas,* supra note 28, at 563.

[47] CSC MC No. 40-98, Rule III, Sec. 4 (c).

[48] Id., Sec. 4 (d).

[49] *Rollo,* p. 49.

Marzan does not dispute these findings. Moreover, as respondents correctly point out, Marzan herself conceded in her Judicial Affidavit that her appointment to the CBO was not a promotion, but rather a "lateral transfer."[50]

Assuming *arguendo* that Marzan's appointment qualifies as a promotion, all three requisites for the application of Section 13, Rule VI are still lacking, considering that said appointment was not part of a series of promotions simultaneously submitted to the CSC for approval.

Evidently, Section 13, Rule VI of the Omnibus Rules does not apply.

The circumstances which impelled the Court to reinstate respondent in Divinagracia are not present in this case.

Further, Marzan claims that the Court's ruling in *Divinagracia* should be adopted in this case. Marzan stresses that in *Divinagracia*, the Court correctly directed the reinstatement of respondent therein on the basis of the latter's right to security of tenure.

However, a scrutiny of said ruling reveals that *Divinagracia* is not on all fours.

In *Divinagracia*, Filomena Mancita (Mancita) was appointed as Municipal Development Coordinator (MDC) of the Municipality of Pili (Pili) on August 1, 1980. Mancita was terminated on July 1, 1985 due to the reorganization of the municipal government of Pili.

Following said reorganization, private respondent Prescila Nacario (Nacario), who was then the Municipal Budget Officer (MBO) of Pili, was appointed to the position of Municipal Planning and Development Coordinator (MPDC) on June 10, 1985.

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[50] Id. at 78.

In 1988, the Local Government Officers Services was nationalized and placed under the supervision of the Department of Budget and Management (DBM). Under this nationalized regime, the power to appoint local budget officers was transferred to the DBM Secretary.

Accordingly, petitioner Alexis San Luis (San Luis) was temporarily appointed by the DBM Secretary as MBO of Pili, the position previously held by Nacario before she was appointed as MPDC. When control over the Local Government Officers Services was returned to the local government units by virtue of the Local Government Code of 1991, San Luis was reappointed to the same position by Mayor Delfin N. Divinagracia (Mayor Divinagracia) on June 22, 1992, this time, in a permanent capacity.

Meanwhile, Mancita assailed her termination before the Merit Systems and Protection Board (Merit Board). The Merit Board declared Mancita's termination illegal, inasmuch as she was qualified to hold the newly created position of MPDC, as it was equivalent to the position she held prior to the re-organization of the municipal government of Pili. Accordingly, the Merit Board directed Mayor Divinagracia to reinstate Mancita to the position of MPDC. On appeal, the CSC affirmed the Merit Board's findings through CSC Resolution No. 90-657.

Hence, on October 15, 1990, Mayor Divinagracia informed Nacario that she was being relieved of her position as MPDC effective November 16, 1990 in compliance with the Merit Board's directives.

Nacario eventually sent a query to the CSC, asking about her status as a permanent employee after she had accepted the position of MPDC. In a letter dated December 8, 1992 (December 1992 Opinion), the CSC opined that the reinstatement of Mancita to the position of MPDC was not a valid cause for Nacario's termination, and that Nacario had the right to return to the position of MBO, the position already occupied by San Luis.

Mayor Divinagracia sought reconsideration of the December 1992 Opinion. However, such reconsideration was denied through

CSC Resolution No. 93-1996. This prompted Mayor Divinagracia and San Luis to file a Petition for *Certiorari* before the Court, claiming that CSC Resolution No. 93-1996 had been issued with grave abuse of discretion. Mayor Divinagracia and San Luis raised, among others, that Nacario could no longer be reinstated to her former position as MBO as she was deemed to have vacated said position when she accepted her new appointment as MPDC.

The Court denied the Petition for *Certiorari*, and ordered the reinstatement of Nacario to her former position as MBO. What impelled the Court to rule as it did was its finding that Nacario's movement from the position of MBO to MPDC constituted an "unconsented lateral transfer" which was tantamount to removal without cause. Hence, the Court held:

> Let us now examine whether the lateral transfer of private respondent was validly made in accordance with Sec. 5, par. 3, Rule VII, Omnibus Rules Implementing Book V of E.O. 292. If not, then private respondent is entitled to be protected in her security of tenure.
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> Sec. 5, par. 3, of Rule VII provides that —
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> > Transfer shall not be considered disciplinary when made in the interest of public service, in which case, the employee concerned shall *be informed of the reasons therefor*. If the employee believes that there is no justification for the transfer, he may appeal his case to the [CSC]. x x x
>
> According to Nacario[,] she never applied or sought appointment by transfer to the position of MPDC since she even had no prior knowledge of her appointment. She assumed the new position *only* in order to comply with the move of Mayor Prila to supposedly "reorganize" the municipal government of Pili. Nacario did not question her transfer because she revered the mayor and did not in any way intend to displease him.
>
> The submissive attitude displayed by private respondent towards her transfer is understandable. Although Nacario was not informed of the reasons therefor she did not complain to the mayor or appeal her case to the CSC if in fact the same was not made in the interest of public service. For it is not common among local officials, even

those permanent appointees who are more secured and protected in their tenurial right, to oppose or question the incumbent local executive on his policies and decisions no matter how improper they may seem.

x x x x

Private respondent was the Budget Officer of Pili for almost eight (8) years from August 1980 until her transfer in July, 1988. Nacario appeared to be satisfied with her work and felt fulfilled as Budget Officer until Mayor Prila appointed her MPDC to fill up the position, which was not even vacant at that time. It was only seven (7) days after Nacario's appointment when Mayor Prila informed Mancita that her services were being terminated. Simply put, Mayor Prila was so determined in terminating Mancita that he conveniently pre-arranged her replacement by Nacario. Although Nacario continued to discharge her duties, this did not discourage her from trying to regain her former position. Undaunted, she applied with the Office of the Budget Secretary for the position of Budget Officer upon learning that it was placed under the Department of Budget and Management. She was not however successful.

In *Sta. Maria v. Lopez* we distinguished between a transfer and a promotion and laid down the prerequisites of a valid transfer thus —

> A transfer is a 'movement from one position to another which is of equivalent rank, level and salary, without break in service.' Promotion is the 'advancement from one position to another with an increase in duties and responsibilities as authorized by law, and is usually accompanied by an increase in salary' x x x. A transfer that results in promotion or demotion, advancement or reduction or a transfer that aims to '*lure the employee away from his permanent position,' cannot be done without the employees' consent. For that would constitute removal from office*. Indeed, no permanent transfer can take place unless the officer or employee is first removed from the position held, and then appointed to another position x x x

The rule that unconsented transfers amount to removal is not however without exception. As we further said in *Sta. Maria*,

> Concededly there are transfers which do not amount to removal. Some such transfers can be effected without the need for charges being proffered, without trial or hearing, and even

> without the consent of the employee x x x. The clue to such transfers may be found in the 'nature of the appointment.' Where the appointment does not indicate a specific station, an employee may be transferred or assigned provided the transfer affects no substantial change in title, rank and salary x x x. Such a rule does not proscribe a transfer carried out under a specific statute that empowers the head of an agency to periodically reassign the employees and officers in order to improve the service of the agency x x x. Neither does illegality attach to the transfer or reassignment of an officer pending the determination of an administrative charge against him; or to the transfer of an employee from his assigned alleged station to the main office, effected in good faith and in the interest of the service pursuant to Sec. 32 of the Civil Service Act.

Clearly then, the unconsented lateral transfer of Nacario from the Budget Office to the Office of MPDC was arbitrary for it amounted to removal without cause, hence, invalid as it is anathema to security of tenure. When Nacario was extended a permanent appointment on [August 1, 1980] and she assumed the position, she acquired a legal, not merely an equitable, right to the position. Such right to security of tenure is protected not only by statute, but also by the Constitution, and cannot be taken away from her either by removal, transfer or by revocation of appointment, except for cause, and after prior notice.

The guarantee of security of tenure is an important object of the civil service system because it affords a faithful employee permanence of employment, at least for the period prescribed by law, and frees the employee from the fear of political and personal prejudicial reprisal.

Consequently, it could not be said that Nacario vacated her former position as Budget Officer or abdicated her right to hold the office when she accepted the position of MPDC since, in contemplation of law, she could not be deemed to have been separated from her former position or to have terminated her official relations therewith notwithstanding that she was actually discharging the functions and exercising the powers of MPDC. The principle of estoppel, unlike in *Manalo v. Gloria*, cannot bar her from returning to her former position because of the indubitable fact that private respondent reluctantly and hesitantly accepted the second office. **The element of involuntariness tainted her lateral transfer and invalidated her separation from her former position**.

For another thing, the appointment of San Luis as Budget Officer carried with it a condition. At the back of his appointment is inscribed the notation *Sa kondisyon nasa ayos ang pagkakatiwalag sa tungkulin ng dating nanunungkulan* which when translated means "Provided that the separation of the former incumbent is in order." Considering that the separation of Nacario who was the former incumbent was not in order, San Luis should relinquish his position in favor of private respondent Nacario. This is, of course, without prejudice to San Luis' right to be reinstated to his former position as Cashier II of the DENR, he being also a permanent appointee equally guaranteed security of tenure.[51] (Emphasis and underscoring supplied; citations omitted)

The factual circumstances in this case do not warrant a similar ruling.

To recall, Mayor Gordon appointed Marzan as Department Head of the CPDO on January 16, 2008. On June 7, 2011, the CSC approved said appointment and accorded Marzan permanent status. Subsequently, on December 1, 2011, Mayor Gordon appointed Marzan as Department Head of the CBO. Marzan never assailed the validity of her lateral transfer. As well, she never once claimed that such transfer was without her consent.

On the contrary, the records show that Marzan had been fully aware that her former position had been declared vacant following acceptance of her new appointment. As correctly observed by the lower courts, in the Appropriations Act of Olongapo City for 2012, which she, as member of the finance committee helped prepare, the position of Department Head of the CPDO was tagged vacant.

Moreover, unlike in *Divinagracia,* there are no circumstances which indicate that Marzan's lateral transfer from the CPDO to the CBO was part of a ploy to ease her out of her permanent position. It bears stressing that: (i) Marzan's appointment to the CBO was effected by Mayor Gordon, *not* Mayor Paulino; and (ii) Marzan vacated her former position as Department Head of the CPDO *before* Mayor Paulino assumed office. Thus, when

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[51] *Divinagracia, Jr. v. Sto. Tomas,* supra note 28, at 565-570.

Mayor Paulino assumed office following his victory in the May 2013 local elections, he merely appointed Balde to fill in a position that had become vacant prior to his term. Unlike San Luis' appointment in *Divinagracia*, Balde's appointment does not appear to be subject to the condition that the separation of the previous holder of the office be in order. Thus, Marzan's reinstatement at Balde's expense would effectively violate the very right which she now invokes.

Mandamus will not lie to compel Marzan's reinstatement.

Section 3, Rule 65 of the Rules of Court sets forth the circumstances which warrant the issuance of a writ of mandamus:

> SEC. 3. *Petition for mandamus*. — **When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled**, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. (Emphasis supplied)

The writ of mandamus shall only issue to compel the performance of a ministerial act, or "one in which an officer or tribunal performs in a given state of facts, in a prescribed manner, *in obedience to a mandate of legal authority*, without regard to or the exercise of his own judgment upon the propriety or impropriety of an act done."[52] Thus, mandamus will not lie to compel the performance of a discretionary act. To stress:

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[52] *I-Popefrancis v. Department of Budget and Management*, G.R. No. 206689, August 24, 2016 (Unsigned Resolution). Italics supplied.

Mandamus is never issued in doubtful cases. It cannot be availed against an official or government agency whose duty requires the exercise of discretion or judgment. For a writ to issue, petitioners should have a clear legal right to the thing demanded, and there should be an imperative duty on the part of respondents to perform the act sought to be mandated. In the absence of a clear and unmistakable provision of a law, a *mandamus* petition does not lie to require anyone to a specific course of conduct or to control or review the exercise of discretion; it will not issue to compel an official to do anything which is not his duty to do or which is his duty not to do or give to the applicant anything to which he is not entitled by law.[53]

Considering that Section 13, Rule VI of the Omnibus Rules does not apply, and that Marzan freely and knowingly vacated her former position as Department Head of the CPDO, Marzan's reinstatement thereto constitutes a discretionary act which cannot be compelled through a writ of *mandamus*. In this light, the Court finds no basis to grant Marzan's prayer for moral and exemplary damages, litigation expenses and costs of suit.

In closing, it must be emphasized that Balde's silence with respect to the alleged hostilities which took place on Marzan's last day in office does not escape the Court's attention. Moreover, the fact that the duty to review all requirements and supporting documents relating to personnel appointments of the City Government of Olongapo falls on respondent Barroga as Acting Chief Administrative Officer of the Human Resource Management Office is not lost on the Court.[54]

However, the Court necessarily limits the scope of this Decision to the resolution of the sole substantive issue raised

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[53] Id.

[54] CSC MC No. 40-98, Rule VII, Sec. 1 states:

SEC. 1. The Human Resource Management Officer (HRMO), Personnel Officer (PO) or the duly authorized personnel in charge of personnel matters shall:

a. Review thoroughly and check the completeness of all the requirements and supporting papers in connection with all cases of appointments before submission to the Commission.

therein, that is, whether or not *mandamus* will lie to compel the reinstatement of Marzan to her former position as Department Head of the CPDO. Nevertheless, the denial of the present Petition and the concomitant dismissal of Marzan's plea for *mandamus* shall be without prejudice to any administrative liability which may be determined in appropriate proceedings.

WHEREFORE, premises considered, the Petition is **DENIED.** The Decision and Resolution respectively dated October 26, 2016 and July 4, 2017 rendered by the Court of Appeals in CA G.R. SP No. 139549 are **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.,* concur.

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b. Sign the following certifications at the back of the appointment.

i. Certification as to the completeness of the requirements

ii. Certification that the vacant position to be filled has been duly published

c. Ensure that the Chairman of the Personnel Selection Board (PSB) has signed the certification at the back of the appointment, when applicable. The Human Resource Management Officer shall be a regular member of the PSB.

d. Ensure that all questions in the Personal Data Sheet (CS Form 212) of the appointee are answered properly and completely with his recent photograph attached, his right thumbmark affixed and his current Community Tax Certificate indicated therein.

e. Furnish appointee with a photocopy of his appointment for submission to the Commission. Ensure that appointee acknowledges receipt of a photocopy of said appointment by signing on the duplicate and other copies thereof.

f. Submit appointments with the prescribed transmittal form indicating the names of the appointees, their position and the corresponding date of issuance.

g. Officially transmit to the appointee original copy of his appointment acted upon by the Commission.

h. Submit a quarterly report of employee accession and separation to the Commission.

x x x x

EN BANC

[G.R. No. 235832. November 3, 2020]

PHILIPPINE HEALTH INSURANCE CORPORATION, *Petitioner, v.* **COMMISSION ON AUDIT, MICHAEL G. AGUINALDO, Chairperson, and ANGELINA B. VILLANUEVA, Director IV,** *Respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL COMMISSIONS; COMMISSION ON AUDIT (COA); AN APPEAL BEFORE THE DIRECTOR OF A CENTRAL OFFICE AUDIT CLUSTER OR OF A REGIONAL OFFICE OF THE COA MUST BE FILED WITHIN SIX MONTHS AFTER THE RECEIPT OF THE DECISION TO BE APPEALED; AN APPEAL WITH THE COA PROPER SHALL BE TAKEN WITHIN THE REMAINING PERIOD OF THE SIX MONTHS WITH DUE REGARD TO THE SUSPENSION OF THE RUNNING OF THE PERIOD; CASE AT BAR. — Pursuant to Section 4, Rule V of the 2009 COA Revised Rules of Procedure (COA Rules), an appeal before the Director of a Central Office Audit Cluster (National, Local or Corporate Sector) or of a Regional Office of the COA must be filed within six months after the receipt of the decision to be appealed. In addition, Section 3, Rule VII of the COA Rules provides that the appeal with the COA Proper shall be taken within the remaining period of the six months as specified under Section 4, Rule V, with due regard to the suspension of the running of the period as indicated under Section 5 of the same Rule. In this case, neither party disputes that PHIC failed to timely file its appeal with regard to ND Nos. 2008-056(07) to 2008-60(07) and HO 2009-001 to 2009-003. PHIC's only excuse for the belated submission of its petition for review with the COA Proper was that it filed a motion for extension of time to file petition. However, since the COA Proper did not act on the motion, PHIC cannot merely assume that the COA Proper granted it.

2. REMEDIAL LAW; RULES OF COURT; PROCEDURAL RULES SPECIFICALLY THOSE PRESCRIBING TIME WITHIN WHICH APPEALS MAY BE TAKEN HAVE

BEEN OFTEN DECREED AS ABSOLUTELY INDISPENSABLE TO PREVENT DELAY AND TO ASSIST IN THE SPEEDY AND ORDERLY ADMINISTRATION OF JUSTICE.— Indeed, procedural rules, specifically those prescribing time within which appeals may be taken have been often decreed as absolutely indispensable to prevent delay and to assist in the speedy and orderly administration of justice. It follows that PHIC's mere invocation of interest of substantial justice cannot be taken at face value. The assertion of "'the interest of substantial justice' is not a magic wand that will automatically compel this Court to suspend procedural rules." Rules are promulgated for the benefit of all and the Court is duty-bound to follow them and observe the noble purpose of their insurance.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; PHILIPPINE HEALTH INSURANCE CORPORATION (PHIC); IN GRANTING ANY ADDITIONAL PERSONNEL BENEFITS THE PHIC IS REQUIRED TO OBSERVE THE POLICIES AND GUIDELINES LAID DOWN BY THE OP RELATING TO POSITION CLASSIFICATION, ALLOWANCES, AND OTHER FORMS OF COMPENSATION.—** Thus, it is settled that in granting any additional personnel benefits, PHIC is required to observe the policies and guidelines laid down by the OP relating to position classification, allowances, among other forms of compensation, and to report to the OP, through the DBM, on its position classification and compensation plans, policies, rates and other necessary details following the guidelines as may be determined by the OP. x x x At the same time, PHIC's fiscal autonomy alone will not justify the questioned grants. Again, the benefits must either be explicitly indicated under applicable law or specifically authorized by a DBM issuance.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.

Philippine Health Insurance Corporation Legal Sector for petitioner.

The Solicitor General for respondents.

D E C I S I O N

INTING, *J.*:

Before the Court is a Petition for *Certiorari*[1] with Prayer for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction under Rule 64, in relation to Rule 65 of the Rules of Court assailing the Decision No. 2016-436[2] dated December 27, 2016 of the Commission on Audit (COA) – Commission Proper (COA Proper). The assailed Decision No. 2016-436 affirmed the Decision No. 2012-11 dated July 12, 2012 of the COA-Corporate Government Sector A (COA-CGS) that affirmed the Notices of Disallowance (NDs) issued by Philippine Health Insurance Corporation (PHIC) Resident Auditor Elena L. Agustin (Resident Auditor) against the PHIC. Likewise assailed is the COA Proper Resolution No. 2017-050[3] dated September 7, 2017 denying the Motion for Reconsideration.[4]

The Antecedents

PHIC is a government corporation created under Republic Act No. (RA) 7875,[5] as amended by RA 9241[6] and RA 10606.[7] Its functions include the administration of the country's national health insurance program as well as the formulation and promulgation of policies for the sound administration of the

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[1] *Rollo*, pp. 3-35.

[2] *Id.* at 41-48; signed by Chairperson Michael G. Aguinaldo, Commissioners Jose A. Fabia and Isabel D. Agito, and attested by Director IV and Commission Secretariat Nilda B. Planas.

[3] *Id.* at 50.

[4] *Id.* at 77-113.

[5] National Health Insurance Act of 1995, approved on February 14, 1995.

[6] Entitled "An Act Amending Republic Act No. 7875, Otherwise Known as "An Act Instituting a National Health Insurance Program for All Filipinos and Establishing the Philippine Health Insurance Corporation for the Purpose," approved on February 10, 2004.

[7] National Health Insurance Act of 2013, approved on June 19, 2013.

program. On the other hand, the COA is a constitutional commission vested with the power, authority and duty to examine, audit and settle all accounts concerning the revenues, receipts and expenditures or uses of government funds and properties pursuant to Section 1, Article IX-A, in relation to Section 2, Article IX-D of the Constitution.

In this case, the Resident Auditor issued the following NDs against certain benefits granted by the PHIC Board of Directors (BOD) to its personnel:

PHIC ND No.	Date of the ND	Benefits/ Allowances	Amount
1) 2008-056(07)	December 18, 2008	Birthday Gift (CY[8] 2007)	₱5,974,572.83
2) 2008-057(07)	December 18, 2008	Special Event Gift (CY 2007)	₱8,714,500.00
3) 2008-058(07)	December 18, 2008	Nominal Gift (CY 2007)	₱29,519,296.78
4) 2008-059(07)	December 18, 2008	Educational Assistance Allowance (CY 2007)	₱49,285,894.89
5) 2008-060(07)	December 18, 2008	Project Completion Benefit (CY 2007)	₱4,986,122.35
6) HO 2009-001	September 14, 2009	Payment of liability insurance premium for PHIC Board of Directors (BOD) and Officers (CY 2007)	₱638,000.00

[8] Calendar Year.

7) HO 2009-002	September 30, 2009	Corporate Transition and Achievement Premium (CY 2008)	₱81,059,403.54
8) HO 2009-003	September 30, 2009	Medical Mission Critical Allowance (CY 2008)	₱7,916,205.82
9) HO 2009-005-725(08)	November 20, 2009	Efficiency Gift	₱16,275,578.16[9]

Except for ND No. HO 2009-001 (on payment of liability insurance premium), the Resident Auditor issued all the NDs in question on the ground that their covered benefits were given to the officers and employees of PHIC without approval from the Office of the President (OP) as required under Memorandum Order No. 20[10] dated June 25, 2001 and Administrative Order No. 103[11] dated August 31, 2004.

Meanwhile, the Resident Auditor issued ND No. HO2009-001 because the payment of liability insurance premium for the BOD and Officers of PHIC violated Section 73[12] of RA 9184[13] and GPPB[14] Resolution No. 21-05.[15]

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[9] As stated in the petition for *certiorari*, *rollo*, pp. 6-7.

[10] Entitled "Directing Heads of Government-Owned and -Controlled Corporations (GOCCs), Government Financial Institutions (GFIs) and Subsidiaries Exempted From or Not Following the Salary Standardization Law (SSL) to Implement Pay Rationalization in all Senior Officer Positions."

[11] Entitled "Directing the Continued Adoption of Austerity Measures in the Government."

[12] Section 73 of Republic Act No. 9184 provides:

Section 73. *Indemnification of BAC Members*. — The [Government Procurement Policy Board] shall establish an equitable indemnification package for public officials providing services in the [Bids and Awards Committee], which may be in the form of free legal assistance, liability insurance, and other forms of protection and indemnification for all costs and expenses reasonably incurred by such persons in connection with any civil or criminal action, suit or proceeding to which they may be, or have

Consequently, the Resident Auditor held liable the concerned officers and employees of PHIC as well as the payees for the disallowed amounts.[16]

With the denial of its motion for reconsideration on ND Nos. 2008-056(07) to 2008-060(07), on December 18, 2009, PHIC filed its consolidated memorandum of appeal before the COA-CGS.

On January 29, 2010 and March 4, 2010, PHIC filed its respective Consolidated Memoranda of Appeal with respect to ND Nos. HO 2009-001 to HO 2009-003 and ND No. HO 2009-005-725(08).

Ruling of COA-CGS

On July 12, 2012, the COA-CGS denied the appeals interposed by PHIC and accordingly, affirmed the NDs in the total amount of ₱204,072,574.37.[17]

Aggrieved, PHIC filed its Petition for Review[18] with the COA Proper.

Ruling of the COA Proper

In the assailed Decision No. 2016-436 dated December 27, 2016, the COA Proper dismissed the petition for review as regards

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been made, a party by reason of the performance of their functions or duties, unless they are finally adjudged in such action or proceeding to be liable for gross negligence or misconduct or grave abuse of discretion.

[13] Government Procurement Reform Act, approved on January 10, 2003.

[14] Government Procurement Policy Board.

[15] Entitled "Approving the Guidelines for Legal Assistance and Indemnification of Bids and Awards Committee (BAC) Members and BAC Support Staff," approved on October 7, 2005.

[16] *Rollo*, p. 7; PHIC did not attach the Notices of Disallowance in question. The records did not also provide the extent of the liability of the PHIC officers and employees pursuant to the Notices of Disallowance.

[17] As culled from the Commission on Audit (COA) Decision No. 2016-436 dated December 27, 2016; *id.* at 41.

[18] *Id.* at 53-76.

ND No. 09-005-725(08) for lack of merit; and for late filing with respect to the remaining NDs. The dispositive portion of Decision No. 2016-436 reads:

> WHEREFORE, premises considered, the Petition for Review of Dr. Eduardo P. Banzon, President and Chief Executive Officer, Philippine Health Insurance Corporation, Pasig City, of Commission on Audit Corporate Government Sector A Decision No. 2012-11 dated July 12, 2012 insofar as Notice of Disallowance No. 09-005-725(08) dated November 20, 2009 with the total amount of ₱16,275,578.16 is concerned, is hereby DENIED for lack of merit.
>
> With respect to Notice of Disallowance Nos. PHIC 2008-056(07) to 2008-60(07), all dated December 18, 2008; HO 2009-001 dated September 14, 2009; and HO 2009-002 and HO 2009-003, both dated September 30, 2009, with the total amount of ₱187,796,996.21, the Petition for Review is DISMISSED for being filed out of time.[19]

According to the COA Proper, PHIC failed to file a petition for review relative to ND Nos. 2008-056(07) to 2008-60(07) and HO 2009-001 to 2009-003 within the reglementary period of 180 days or six months. Because of this, the decision sustaining the NDs already became final and executory. While PHIC filed a motion for extension of time to file petition, the COA Proper did not act on it and PHIC could not assume that the belated filing of the petition was justified.

Relative to ND No. 09-005-725, the COA Proper decreed that the amount of ₱16,275,578.16 representing payment of Efficiency Gift to PHIC employees for CY 2007 was disallowed for lack of approval from the OP.[20] It stressed that even if PHIC is exempt from the coverage of the Office of Compensation and Position Classification, it should report to the OP, through the Department of Budget and Management (DBM), its position classification and compensation plans. It underscored that the prior approval of the OP did not remove from the BOD of PHIC the power to fix compensation and allowances of its personnel,

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[19] *Id.* at 47.

[20] *Id.* at 43.

but requires it to submit its plans to the OP, through the DBM, to comply with the law.

The COA Proper also determined that the officials of PHIC who authorized, approved or certified the subject grants could not be deemed in good faith since the law requires the prior approval of the OP. It further ruled that in its earlier Decision Nos. 2014-332 and 2014-665 dated September 12, 2014, it affirmed the disallowance on similar benefits. Thus, it held that the PHIC officials were not in good faith due to such previous NDs on the same subject matter. Regarding the recipient-employees, the COA Proper decreed that they might be in good faith but under the principle of *solutio indebiti*, a person who receive something by mistake had the obligation to return it.[21]

Subsequently, the COA Proper denied the Motion for Reconsideration.[22]

Undeterred, PHIC filed this petition for *certiorari* raising the following grounds:

Grounds

A. RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE PETITION FOR REVIEW FILED BY [PHIC] ON THE BASIS OF PROCEDURAL TECHNICALITIES. THERE IS LEGAL BASIS FOR THE GRANT OF THE SUBJECT BENEFITS.

B. SECTION 16(n) OF R.A. NO. 7875, AS AMENDED, EXPLICITLY BESTOWED PHIC WITH "FISCAL AUTONOMY OR INDEPENDENCE" TO FIX THE COMPENSATION OF ITS PERSONNEL, AS CONFIRMED BY OGCC OPINIONS, THEN PRESIDENT GLORIA ARROYO LETTERS, AND LEGISLATIVE DELIBERATIONS ON SECTION 16(n).

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[21] *Id.* at 45-46.

[22] See Resolution No. 2017-050 dated September 7, 2017 of the COA Proper, *id.* at 50.

C. THE FISCAL AUTHORITY OF PHIC UNDER ARTICLE IV, SECTION 16 (N) OF R.A. NO. 7875, AS AMENDED, HAD BEEN CONFIRMED TWICE BY THEN PRESIDENT GLORIA M. ARROYO, IN 2006 AND IN 2008.

D. PHIC IS CLASSIFIED AS GOVERNMENT FINANCIAL INSTITUTION (GFI) AND MUST BE ACCORDED THE FISCAL AUTONOMY ENJOYED BY OTHER GFIs AS RECOGNIZED BY THIS COURT IN THE CASE OF *CENTRAL BANK EMPLOYEES ASSOCIATION, INC. vs. BANGKO SENTRAL NG PILIPINAS.*

E. THE DISALLOWED BENEFITS WERE GRANTED PURSUANT TO DULY-EXECUTED COLLECTIVE NEGOTIATION AGREEMENT (CNA) BETWEEN PHIC MANAGEMENT AND PHIC EMPLOYEES ASSOCIATION (PHICEA)[.]

F. THE VALIDITY OF THE LIABILITY INSURANCE COVERAGE OF PHIC BOARD MEMBERS AND OFFICERS HAD BEEN CONFIRMED BY THE GPPB THRU NPM NO. 24-2008[.]

G. THE PHIC OFFICIALS AND EMPLOYEES RECEIVED THE SUBJECT BENEFITS IN GOOD FAITH AND, THEREFORE, EVEN IF THE DISALLOWANCE IS SUSTAINED, THEY CANNOT BE REQUIRED TO REFUND THE SAME.[23]

Petitioner's Arguments

PHIC argued that the COA Proper should not have dismissed the petition for review on procedural grounds since it (PHIC) filed a prior motion for extension of time which was submitted within the 180-day reglementary period to file a petition. It added that even assuming that it belatedly filed the petition, in the interest of substantial justice, the petition must be decided on the merits.

Moreover, PHIC insisted that its Charter conferred upon the PHIC BOD fiscal autonomy to fix the compensation of its personnel. The fiscal independence is the very basis of the grant

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[23] *Id.* at 9.

of the disallowed benefits. In this regard, the payment of the benefits cannot be deemed to be without appropriate legal basis.

Respondents' Arguments

Respondents, through the Office of the Solicitor General, countered that the COA Proper correctly dismissed the petition for review because of late filing as regards ND Nos. 2008-056(07) to 2008-60(07) and HO2009-001 to 2009-003. They contended that the mere filing of a motion for extension did not translate to an automatic extension of time to file petition. They added that the perfection of an appeal within the period and in the manner prescribed by law is jurisdictional. Hence, the failure of PHIC to file within the reglementary period warranted the dismissal of its petition for review.[24]

Respondents likewise argued that even assuming that PHIC timely filed the petition for review, the petition must still fail for lack of merit. They contended that PHIC's reliance on its fiscal autonomy is misplaced because in the recent jurisprudence involving PHIC (*Phil. Health Insurance Corp. v. Commission on Audit, et al.*),[25] the Court already discussed that the power of the PHIC to fix the compensation and allowances of its officers and employees is subject to the standards laid down by applicable laws.[26] The Salary Standardization Law (SSL), in particular, provided that all allowances, other than those specified under Section 12 thereof, shall be deemed included in the standardized salary rates of the employees. Since the benefits involved in the subject NDs are not those expressly enumerated under Section 12 of the SSL, then they are already integrated in the standardized salary rates of the employees of PHIC.[27]

Respondents further argued that the officers and BOD of PHIC should have guided themselves with the abundant

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[24] See Comment on the Petition for *Certiorari*, *id.* at 162-164.

[25] 801 Phil. 427 (2016).

[26] *Rollo*, p. 167.

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

jurisprudence regarding the power of government-owned and controlled corporations (GOCCs) to fix salaries and allowances which long existed before the subject grants or benefits were given to PHIC personnel. They stressed that the officers and BOD of PHIC cannot claim good faith considering that their positions require them to be acquainted with the applicable laws, rules and regulations anent the grant of benefits to PHIC officers and employees.[28]

Meanwhile, on January 30, 2018, the Court issued a temporary restraining order restraining and enjoining respondents from executing the assailed COA Decision dated December 27, 2016 and Resolution dated September 7, 2017.[29]

Our Ruling

To begin with, let it be underscored that a petition under Rule 64, in relation to Rule 65 of the Rules of Court, involves the issue of whether the respondent committed grave abuse of discretion amounting to lack or excess of its jurisdiction. The Court's review is limited and is confined only to matters involving the jurisdiction of the respondent, in this case, the COA Proper, and determine whether it acted arbitrarily or whimsically in issuing the assailed Decision and Resolution.[30]

Here, the Court finds that the COA Proper did not commit any grave abuse of discretion in dismissing PHIC's appeal anent ND Nos. 2008-056(07) to 2008-60(07) and HO2009-001 to 2009-003 for late filing.

Pursuant to Section 4,[31] Rule V of the 2009 COA Revised Rules of Procedure (COA Rules), an appeal before the Director of a Central Office Audit Cluster (National, Local or Corporate

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[28] *Id.* at 176.

[29] See Court's Resolution dated January 30, 2018, *id.* at 139-140.

[30] See *Philippine Health Insurance Corporation v. Commission on Audit*, G.R. No. 222710, July 24, 2018, 874 SCRA 138.

[31] Section 4, Rule V of the 2009 COA Revised Rules of Procedure (COA Rules) provides:

Sector) or of a Regional Office of the COA must be filed within six months after the receipt of the decision to be appealed. In addition, Section 3,[32] Rule VII of the COA Rules provides that the appeal with the COA Proper shall be taken within the remaining period of the six months as specified under Section 4, Rule V, with due regard to the suspension of the running of the period as indicated under Section 5[33] of the same Rule.

In this case, neither party disputes that PHIC failed to timely file its appeal with regard to ND Nos. 2008-056(07) to 2008-60(07) and HO 2009-001 to 2009-003. PHIC's only excuse for the belated submission of its petition for review with the COA Proper was that it filed a motion for extension of time to file petition. However, since the COA Proper did not act on the motion, PHIC cannot merely assume that the COA Proper granted it.

In fact, in the recent case of *Philippine Health Insurance Corp. v. Commission on Audit*,[34] PHIC's appeal with the COA Proper was also dismissed because of the untimely filing of its petition for review. PHIC is in similar situation here. Definitely, because of the late filing of its appeal, the decision of the COA-CGS had already attained finality.

Section 4. *When Appeal Taken*. — An Appeal must be filed within six (6) months after receipt of the decision appealed from.

[32] Section 3, Rule VII of the COA Rules provides:

Section 3. *Period of Appeal*. — The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, or under Sections 9 and 10 of Rule VI in case of decision of the ASB.

[33] Section 5, Rule VII of the COA Rules provides:

Section 5. *Interruption of Time to Appeal*. — The receipt by the Director of the Appeal Memorandum shall stop the running of the period to appeal which shall resume to run upon receipt by the appellant of the Director's decision.

[34] G.R. No. 222838, September 4, 2018.

In another case, also involving PHIC — *Philippine Health Insurance Corp. v. Commission on Audit*,[35] the Court explained the rule surrounding perfection of appeal, to wit:

> As a general rule, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional, and the failure to perfect the appeal renders the judgment of the court final and executory.
>
> x x x x
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> But like any other rule, the doctrine of immutability of judgment has exceptions, namely: (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. x x x

In the aforesaid case, the Court ruled in favor of PHIC as its situation fell within one of the exceptions to the doctrine of immutability of judgment. However, none of the exceptions to the rule was established in the instant case. Verily, for the failure of PHIC to timely appeal the decision of the COA-CGS (upholding ND Nos. 2008-056(07) to 2008-60(07) and HO 2009-001 to 2009-003), the same already became final and executory and cannot anymore be disturbed by the Court.

Indeed, procedural rules, specifically those prescribing time within which appeals may be taken have been often decreed as absolutely indispensable to prevent delay and to assist in the speedy and orderly administration of justice. It follows that PHIC's mere invocation of interest of substantial justice cannot be taken at face value. The assertion of "'the interest of substantial justice' is not a magic wand that will automatically compel this Court to suspend procedural rules."[36] Rules are promulgated

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[35] G.R. No. 222710 (Resolution), September 10, 2019.

[36] *Cortal, et al. v. Inaki A. Larrazabal Enterprises, et al.*, 817 Phil. 464, 477 (2017), citing *Lazaro v. Court of Appeals*, 386 Phil. 412, 417 (2000).

for the benefit of all and the Court is duty-bound to follow them and observe the noble purpose for their issuance.[37]

At any rate, even if the Court sets aside the technical rules surrounding the perfection of its appeal, still, the case of PHIC will still fail.

In *Phil. Health Insurance Corp. v. Commission on Audit, et al.*,[38] the Court had aptly discussed that PHIC has no unrestricted discretion to issue any and all kinds of allowances. It has no unlimited power to adopt compensation and benefit schemes for its employees, *viz.*:

> The extent of the power of GOCCs to fix compensation and determine the reasonable allowances of its officers and employees had already been conclusively laid down in *Philippine Charity Sweepstakes Office (PCSO) v. COA*, to wit:
>
> > The PCSO stresses that it is a self-sustaining government instrumentality which generates its own fund to support its operations and does not depend on the national government for its budgetary support. Thus, it enjoys certain latitude to establish and grant allowances and incentives to its officers and employees.
> >
> > We do not agree. x x x
> >
> > Even if it is assumed that there is an explicit provision exempting the PCSO from the OCPC rules, the power of the Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives was still subject to the DBM review. In *Intia, Jr. v. COA*, the Court stressed that the discretion of the Board of Philippine Postal Corporation on the matter of personnel compensation is not absolute as the same must be exercised in accordance with the standard laid down by law, *i.e.*, its compensation system, including the allowances granted by the Board, must strictly conform with that provided for other government agencies under R.A. No. 6758 in relation to the

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[37] See *Philippine National Bank v. Deang Marketing Corp., et al.*, 593 Phil. 703, 717 (2008).

[38] *Phil. Health Insurance Corp. v. Commission on Audit, et al., supra* note 25.

> General Appropriations Act. To ensure such compliance, the resolutions of the Board affecting such matters should first be reviewed and approved by the DBM pursuant to Section 6 of P.D. No. 1597.

The Court, in the same case, further elaborated on the rule that notwithstanding any exemption granted under their charters, the power of GOCCs to fix salaries and allowances must still conform to compensation and position classification standards laid down by applicable law. Citing *Philippine Retirement Authority (PRA) v. Buñag*, We said:

> x x x **[N]otwithstanding exemptions from the authority of the Office of Compensation and Position Classification granted to PRA under its charter, PRA is still required to 1) observe the policies and guidelines issued by the President with respect to position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits and 2) report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President**.
>
> x x x x
>
> x x x As clearly expressed in *PCSO v. COA*, even if it is assumed that there is an explicit provision exempting a GOCC from the rules of the then Office of Compensation and Position Classification (*OCPC*) under the DBM, the power of its Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives was still subject to the standards laid down by applicable laws: P.D. No. 985, its 1978 amendment, P.D. No. 1597, the SSL, and at present, R.A. 10149. **To sustain petitioners' claim that it is the PHIC, and PHIC alone, that will ensure that its compensation system conforms with applicable law will result in an invalid delegation of legislative power, granting the PHIC unlimited authority to unilaterally fix its compensation structure. Certainly, such effect could not have been the intent of the legislature**.[39]

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[39] *Id.* at 449-453. Emphasis in the original and citations omitted; emphasis supplied.

The recent cases of *Philippine Health Insurance Corp. Regional Office-Caraga v. Commission on Audit*[40] and *Philippine Health Insurance Corp. v. Commission on Audit*[41] echoed the above-cited ruling.

Thus, it is settled that in granting any additional personnel benefits, PHIC is required to observe the policies and guidelines laid down by the OP relating to position classification, allowances, among other forms of compensation, and to report to the OP, through the DBM, on its position classification and compensation plans, policies, rates and other necessary details following the guidelines as may be determined by the OP.[42] Moreover, since PHIC failed to present any law or DBM issuance authorizing the grant of the benefits in question, the resulting disbursement and receipt are illegal and therefore, must be disallowed.[43]

At the same time, PHIC's fiscal autonomy alone will not justify the questioned grants. Again, the benefits must either be explicitly indicated under applicable law or specifically authorized by a DBM issuance. Considering that the ruling of the Court on the need for approval from the OP has long been existing, the Court cannot allow PHIC to feign ignorance to the pronouncement. The officers and the BOD of PHIC who approved these benefits are duty-bound to understand the significant rules they must implement.[44] In addition, the COA Proper had previously disallowed similar PHIC payment of 12, 2014.[45] That officers persisted in the payment despite knowledge

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[40] G.R. No. 230218, August 14, 2018.

[41] *Supra* note 30.

[42] *Philippine Health Insurance Corp. Regional Office-Caraga v. Commission on Audit, supra* note 40.

[43] *Phil. Health Insurance Corp. v. Commission on Audit, et al., supra* note 25 at 457.

[44] *Id.* at 470, citing *PCSO v. Chairperson Pulido-Tan, et al.*, 785 Phil. 266, 290 (2016).

[45] *Rollo*, p. 45.

of prior disallowances involving expenses of the same or similar nature only bolsters their lack of good faith.[46]

Given the foregoing, the Court is unconvinced that the officers of PHIC who approved the benefits in questioned acted in good faith when they approved and granted these benefits.

The Court, nevertheless, reiterates that the ruling of the COA Proper as regards ND Nos. 2008-056(07) to 2008-60(07) and HO2009-001 to 2009-003 had already attained finality. By reason of this, any discussion on the good faith of the PHIC approving and certifying officers as well as of its personnel who received benefits under these NDs is rendered irrelevant. Verily, following the doctrine of immutability of judgment, the Court can no longer reverse, modify or alter the ruling of the COA Proper which upheld these NDs.[47]

With respect to the Efficiency Gift disallowed under ND No. HO2009-005-725(08), and following the Court's pronouncement in *Madera v. Commission on Audit*,[48] the Court rules that the approving and certifying officers who, as above discussed, acted *not* in good faith shall be liable solidarily to return the net disallowed amount or "the total disallowed amount minus the amounts excused to be returned by the payees."[49]

On the other hand, the payees or recipients of the Efficiency Gift must return the amount they received since it was erroneously given to and received by them. To stress, while termed as "Efficiency Gift," there is no indication that the disallowed amount was *genuinely* intended as compensation for services rendered by the recipients. Moreover, pursuant to the principle

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[46] See *Madera v. Commission on Audit*, G.R. No. 244128, September 8, 2020.

[47] See *Philippine Health Insurance Corp. v. Commission on Audit, supra* note 30 at 179.

[48] *Madera v. Commission on Audit,* supra note 46.

[49] *Id.*, citing the Separate and Concurring Opinion of Associate Justice Estela M. Perlas-Bernabe, p. 13.

of *solutio indebiti* and as specified under Article 2154[50] of the Civil Code, whenever a person receives something by mistake, the recipient has the obligation to return or refund the benefit so given, otherwise unjust enrichment on the part of the payee will arise. In sum, since the recipients of the Efficiency Gift have received and retained benefits to which they are not entitled to, then they have now the duty to return the amount given them.[51]

WHEREFORE, the assailed Decision No. 2016-436 dated December 27, 2016 and Resolution No. 2017-050 dated September 7, 2017 of the Commission on Audit – Commission Proper are **AFFIRMED**. The approving and certifying officers of the Efficiency Gift disallowed under Notice of Disallowance No. HO 2009-005-725(08) dated November 20, 2009 are held solidarily liable to return the net disallowed amount. Meanwhile, the recipients of the Efficiency Gift disallowed under Notice of Disallowance No. HO 2009-005-725(08) dated November 20, 2009 are ordered to refund the amount they received in connection therewith.

The Temporary Restraining Order dated January 30, 2018 issued against the Commission on Audit – Commission Proper is hereby **LIFTED**.

SO ORDERED.

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

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[50] Article 2154 of the Civil Code of the Philippines provides:

Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. (1895)

[51] *Madera v. Commission on Audit,* supra note 46.

FIRST DIVISION

[G.R. No. 236301. November 3, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **WARREN IVERO y MABUTAS,** *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FACTUAL FINDINGS OF THE TRIAL COURT CARRY GREAT WEIGHT, ESPECIALLY WHEN SUSTAINED BY THE COURT OF APPEALS.— Factual findings of the trial court carry great weight and respect due to the unique opportunity afforded 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. Said rule finds an even more stringent application where the said findings are sustained by the CA, as in the instant case.

2. CRIMINAL LAW; MURDER, ELEMENTS THEREOF; CASE AT BAR.— Murder is defined and penalized under Article 248 of the Revised Penal Code (*RPC*), as amended by R.A. No. 7659. To successfully prosecute the crime, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.

In the present case, the prosecution was able to establish the first element of the offense by the testimony of Dr. Nitural, who conducted the post-mortem examination and who issued the medical certificate that stated the cause of death.

With regard the second element, the dying declaration of Cumahig is sufficient to prove the fact that it was Ivero who killed his live-in partner. . . .

. . .

As regards the third element, the trial court aptly appreciated the qualifying circumstance of treachery or *alevosia*. . . .

. . .

As to the fourth element, it was clearly established that Cumahig is not the lawful wife of Ivero even if the former referred to her as "*asawa*" in her dying declarations. So, the nomenclature used by the State of the crime committed was correct.

3. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY OF EVIDENCE; HEARSAY RULE, EXCEPTIONS THERETO; DYING DECLARATION, REQUISITES THEREOF.— While witnesses, in general, can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is "made under the consciousness of an impending death that is the subject of inquiry in the case." It is considered as "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation."

Four requisites must concur in order that a dying declaration may be admissible, thus: *First*, the declaration must concern the cause and surrounding circumstances of the declarant's death. This refers not only to the facts of the assault itself, but also to matters both before and after the assault having a direct causal connection with it. Statements involving the nature of the declarant's injury or the cause of death; those imparting deliberation and willfulness in the attack, indicating the reason or motive for the killing; justifying or accusing the accused; or indicating the absence of cause for the act are admissible. *Second*, at the time the declaration was made, the declarant must be under the consciousness of an impending death. The rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant. It is the belief in impending death and not the rapid succession of death in point of fact that renders the dying declaration admissible. It is not necessary that the approaching death be presaged by the persona feelings of the deceased. The test is whether the declarant has abandoned all hopes of survival and looked on death as certainly impending.

Third, the declarant is competent as a witness. The rule is that where the declarant would not have been a competent witness had he survived, the proffered declarations will not be admissible. Thus, in the absence of evidence showing that the declarant could not have been competent to be a witness had he survived, the presumption must be sustained that he would have been competent. *Fourth*, the declaration must be offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim.

In the present case, all the requisites of a dying declaration were met.

4. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; TREACHERY, ELEMENTS THEREOF; TREACHERY IS PRESENT WHEN THE ATTACK ON AN UNARMED VICTIM WAS SWIFT, UNEXPECTED, AND SUDDEN. In order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender.

The requisites for treachery are present in the killing of Cumahig. The prosecution was able to establish the fact that at the time of the attack Cumahig was unarmed and in the comforts of their home with their common children. In this case, the swift and sudden stabbing done by Ivero left Cumahig with no sufficient means to put up a defense as there were no items found in the scene of the crime other than the kitchen knife used by Ivero. Cumahig was rendered helpless by the situation and all she could do is muster the strength to seek succor from her neighbors after the stabbing incident. The suddenness of the attack may be inferred from the testimony of Sadic, the neighbor separated by a thin piece of plywood, who only heard the cry for help of the victim only after the stabbing. The absence of any verbal or physical squabble prior to the attack proves that Cumahig was not able to put up a fight and did not provoke the attack of the accused.

5. ID.; ID.; ID.; THE FACT THAT ALL THE STAB WOUNDS WERE FRONTAL DOES NOT NEGATE TREACHERY. — [T]he fact that all the five stab wounds were frontal does not negate treachery. Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it. In fact, treachery may still be appreciated even when the victim was forewarned of the danger to his or her person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or herself or to retaliate.

6. REMEDIAL LAW; EVIDENCE; DENIAL; DEMEANOR OF ACCUSED AFTER THE INCIDENT; FAILURE TO ASK FOR HELP AND TO BRING A COMMON-LAW SPOUSE VICTIM TO THE HOSPITAL NEGATE THE DEFENSES OF DENIAL AND FRAME-UP.— [W]e agree with the trial court in rejecting the defense of denial and frame-up. Ivero's testimony that it was a different person that stabbed her wife was uncorroborated and, thus, is self-serving. Likewise, his demeanor after the incident of not asking for help from his neighbor and not bringing her common-law spouse to the hospital negates his excuse as this is not the common reaction of a concerned innocent person.

APPEARNCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *C.J.*:

This is an appeal from the August 24, 2017 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 08564, which affirmed with modification the July 5, 2016 Decision[2] of the

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[1] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Edwin D. Sorongon and Maria Filomena D. Singh concurring, *rollo*, pp. 2-19.

[2] CA *rollo*, pp. 43-52.

Regional Trial Court *(RTC)*, Branch 207, Muntinlupa City, finding accused-appellant Warren M. Ivero *(Ivero)* guilty of Murder.

On January 25, 2013, Ivero was charged with the crime of Murder, as defined and penalized under Article 248 of the Revised Penal Code, as amended by Section 6 of Republic Act (*R.A.*) No. 7659. The accusatory portion of the Information reads:

> That on or about the 24th of January, 2013, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused who had a dating relationship with Sheila (sic) Cumahig y Clamor with whom he has two (2) children, armed with a kitchen knife, with intent to kill, with treachery, without risk from the victim to raise a defense, such that when accused WARREN IVERO y MABUTAS arrived at their house, the latter, did then and there, willfully, unlawfully and feloniously attack, assault, with abuse of superior strength repeatedly stab said Shiela Cumahig y Clamor, on the different parts of her body, thereby inflicting upon the latter mortal wounds which directly caused her death, all to the damage and prejudice of her surviving heirs.
>
> CONTRARY TO LAW.[3]

Version of the Prosecution

Afdal Sidic *(Sidic)*,a neighbor who lives next door to the house where victim Shiela Cumahig *(Cumahig)* was then staying, testified that at around 8:00 o'clock in the evening of January 24, 2013, while having dinner with his family, he heard the victim shout *"Tulungan niyo po ako, sinasaksak po ako ng asawa ko,"* three times. He went downstairs where he saw the victim crawling on the ground, crying and asking for help. At that point, the victim's body was already covered with blood. With the help of the neighbors, the victim was brought to the Alabang Medical Clinic. While the victim was being treated, he stayed beside her. When the doctor asked the victim, "*Sino po ang sumaksak sa iyo?*" the victim replied, *"Yung asawa ko po."* Those were the last words uttered by the victim before she passed away. While he admitted that he only came to know the name of the

[3] Records, p. 1.

victim's husband as Warren Ivero at the hospital, he was nevertheless very familiar with the latter's face.[4]

Rose Permites *(Permites)* testified that Ivero and her niece Cumahig were live-in partners with two children. Five days prior to the incident, Cumahig asked her, "*Tiya, pwede bang makitira muna ako sa inyo ng mga anak ko?*" She allowed Cumahig and the children to temporarily stay in her house at San Guillermo St., Bayanan, Muntinlupa City. At around 3:00 o'clock in the afternoon of January 24, 2013, she received a call from Cumahig telling her, *"Tiya, nandito po si Warren sa bahay"* in a trembling voice. She suddenly felt uneasy since Ivero had beaten Cumahig several times in the past and even made threats to kill her. At about 9:30 o'clock in the evening of the same day, Sidic told her over the phone, *"Rose, madali ka kasi si Cumahig sinaksak siya ng asawa niya."* She rushed to the hospital where she saw her niece profusely bleeding and no longer breathing. When she returned to their house, she found a knife stained in blood and contorted on the floor just behind the door. Blood stains scattered all over the place and Cumahig's two (2) children were crying. She then brought the knife to the Women's Desk of the police station in Muntinlupa City.[5]

Herbert Malate *(Malate)* narrated that at the time of the incident, he was outside his house, about to pee, when Ivero, who was in a hurry and acting suspiciously, suddenly bumped into him. He then heard a woman shout *"Tulungan niyo ako sinaksak ako ng asawa ko."* Curious, he proceeded to the area where Ivero came from and saw the victim lying on the ground with multiple stab wounds. He decided to go after Ivero with Billy Lee. They followed where Ivero was headed and eventually found him on-board a tricycle. They flagged down the tricycle, threatened to hit Ivero with a stone and told the latter, *"Huwag ka [nang] papalag baka kung ano lang mangyari sa'yo."* Ivero surrendered thereafter.[6]

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[4] *Rollo*, p. 4.

[5] *Id.*

[6] *Id.* at 5.

Billy Lee Dullavin *(Dullavin)* testified that while he was ferrying his tricycle, he was flagged down by his neighbor, Malate, who told him that he was running after a murder suspect. Upon boarding the tricycle, they searched the area and found Ivero. He immediately grabbed Ivero, who was then very anxious. Ivero readily admitted to them that he stabbed the victim because he was jealous. They then brought Ivero to the police station.[7]

Dr. Diana Nitural of the Alabang Medical Clinic testified that on January 24, 2013, she was on duty when the victim was brought to the emergency room with multiple stab wounds. The victim sustained five (5) fatal stab wounds in the trunk area. During the course of the treatment, she asked the victim who stabbed her to which the latter answered, *"Yung asawa ko."* On even date, Dr. Nitural issued a Medical Certificate stating that Cumahig's cause of death was cardio-pulmonary arrest, secondary to hypovolemic shock.[8]

Version of the Defense

Ivero proffered the defenses of denial and frame-up. He claimed that he and the victim were live-in partners for five (5) years with two (2) common children. On January 18, 2013, Permites forcibly took Cumahig and his children without his consent. At around 5:00 o'clock in the afternoon of January 24, 2013, he and his older daughter were at the public market in Rosario, Cavite when he received a text message from Cumahig asking him to buy food stuff for his young child. After buying grocery items, they proceeded to Muntinlupa City. Upon alighting from the tricycle, he saw Dullavin and Malate standing in front of Permites' house. He noticed that the door was blocked with something heavy then it opened. He saw Cumahig covered with blood and she told him, *"Sinaksak ako ni Jovy."* Cumahig gestured through her lips that someone was behind the door. When he looked towards that direction, Jovy suddenly hit him with an object then a fight ensued. Jovy fled the crime scene

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[7] *Id.*

[8] *Id.*

prompting him to run after the former while shouting *"Tulong, ang asawa ko sinaksak."* When they reached the tricycle terminal by the bridge, Malate poked him with a swiss knife, while Dullavin took his money and cellphone. He was, thereafter, beaten by several persons. On cross-examination, he admitted that he refers to Cumahig as his wife and Cumahig also acknowledges him as her husband. Further, he has no conflict with Malate and Dullavin. Neither does he know of any ill-motive on their part to falsely testify against him.[9]

On July 5, 2016, the RTC of Muntinlupa City, Branch 207, rendered its decision convicting Ivero of the crime of murder, the dispositive portion of which reads:

> WHEREFORE, the Court finds Warren Ivero y Mabutas guilty beyond reasonable doubt of the crime of murder and is hereby sentenced to *reclusion perpetua* without eligibility for parole. His full preventive imprisonment is credited in his favor. He is further ordered to pay the heirs of Shiela Cumahig y Clamor ₱75,000.00 as and for civil indemnity; ₱75,000.00 as and for moral damages, and ₱30,000.00 as and for temperate damages, all with 6% interest per annum from finality of this decision.
>
> The Jail Warden, Muntinlupa City is directed to transfer the custody of Warren Ivero y Mabutas to the New Bilibid Prison for the service of his sentence.
>
> SO ORDERED.[10]

This prompted Ivero to appeal before the CA. On August 24, 2017, the CA denied Ivero's appeal and affirmed the RTC Decision with modifications, thus:

> WHEREFORE, premises considered, the appeal is hereby DENIED. The Decision dated July 5, 2016 of the Regional Trial Court (RTC), Branch 207, Muntinlupa City is AFFIRMED with MODIFICATIONS as follows:
>
> 1) Accused-appellant Warren Ivero y Mabutas is hereby sentenced to suffer the penalty of *reclusion perpetua*;

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[9] *Id.* at 16.

[10] CA *rollo*, p. 52.

2) The award of temperate damages in the amount of Thirty Thousand Pesos (₱30,000.00) is increased to Fifty Thousand Pesos (₱50,000.00);

3) Accused-appellant Warren Ivero y Mabutas is further ordered to pay Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity; Seventy-Five Thousand Pesos (₱75,000.00) as moral damages; and Seventy-Five Thousand Pesos (₱75,000.00) as exemplary damages; and

4) All damages awarded shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED.[11]

Ivero filed his Notice of Appeal insisting that the Decision of the CA is contrary to facts, laws and applicable jurisprudence.

Ruling of the Court

The appeal has no merit.

Factual findings of the trial court carry great weight and respect due to the unique opportunity afforded 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.[12] Said rule finds an even more stringent application where the said findings are sustained by the CA, as in the instant case:

> Time and again, we have held that when it comes to the issue of credibility of the victim or the prosecution witnesses, the findings of the trial courts carry great weight and respect and, generally, the appellate courts will not overturn the said findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which will alter the assailed decision or affect the result of the case. This is so because trial courts

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[11] *Rollo*, pp. 18-19.

[12] *People v. Salvador Tulagan*, G.R. No. 227363, March 12, 2019.

are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, their demeanor and behavior in court. Trial judges enjoy the advantage of observing the witness' deportment and manner of testifying, her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" — all of which are useful aids for an accurate determination of a witness' honesty and sincerity. Trial judges, therefore, can better determine if such witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Again, unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected, for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[13]

Murder is defined and penalized under Article 248 of the Revised Penal Code *(RPC)*, as amended by R.A. No. 7659. To successfully prosecute the crime, the following elements must be established: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.[14]

In the present case, the prosecution was able to establish the first element of the offense by the testimony of Dr. Nitural, who conducted the post-mortem examination and who issued the medical certificate that stated the cause of death.

With regard the second element, the dying declaration of Cumahig is sufficient to prove the fact that it was Ivero who killed his live-in partner. While witnesses, in general, can only testify to facts derived from their own perception, a report in open court of a dying person's declaration is recognized as an exception to the rule against hearsay if it is "made under the consciousness of an impending death that is the subject of inquiry

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[13] *Id.*, citing *People v. Gahl*, 727 Phil. 642, 658 (2014).

[14] *People v. Racal*, 817 Phil. 665, 677 (2017).

in the case." It is considered as "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation."[15]

Four requisites must concur in order that a dying declaration may be admissible, thus: *First*, the declaration must concern the cause and surrounding circumstances of the declarant's death. This refers not only to the facts of the assault itself, but also to matters both before and after the assault having a direct causal connection with it. Statements involving the nature of the declarant's injury or the cause of death; those imparting deliberation and willfulness in the attack, indicating the reason or motive for the killing; justifying or accusing the accused; or indicating the absence of cause for the act are admissible. *Second*, at the time the declaration was made, the declarant must be under the consciousness of an impending death. The rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant. It is the belief in impending death and not the rapid succession of death in point of fact that renders the dying declaration admissible. It is not necessary that the approaching death be presaged by the personal feelings of the deceased. The test is whether the declarant has abandoned all hopes of survival and looked on death as certainly impending. *Third*, the declarant is competent as a witness. The rule is that where the declarant would not have been a competent witness had he survived, the proffered declarations will not be admissible. Thus, in the absence of evidence showing that the declarant could not have been competent to be a witness had he survived, the presumption must be sustained that he would have been competent. *Fourth*, the declaration must be offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim.[16]

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[15] *People v. Umapas*, 807 Phil. 975, 985 (2017).

[16] *Id.* at 985-986.

In the present case, all the requisites of a dying declaration were met. Cumahig was able to communicate her dying statements to both her neighbor Sidic and the attending physician Dr. Nitural as to the person who stabbed her. The declarations made by Cumahig were correctly assessed as uttered during moments where she felt an impending death due to the gravity of the wounds. She would have testified on the incident had she survived and would have been a competent witness. Lastly, the declarations were offered in a criminal indictment for murder against Ivero.

The testimonies of witnesses Sadic and Dr. Nitural clearly established all the requisites of a dying declaration, the testimonies are herein quoted:

Excerpts of the testimony of prosecution witness Afdal Sadic[17]

Q Nung araw at nung gabing yon, nung Enero 24, 2013, meron ka bang natatandaang kaibang pangyayari na tumawag sa iyong pansin?
A Meron na po. Bigla pong may narinig po akong sumigaw. Humingi po ng saklolo. **Tulungan niyo po ako, sinasaksak po ako ng asawa ko.**

Q Saan nanggaling yung sinasabi mong narinig mo na humihingi ng tulong sa iyo?
A Nanggaling po kay Shiela, yung biktima po.

Q Shiela nanggaling ang sigaw ng paghingi ng tulong na iyon?
A Sa kanya po talaga. Sinisigaw po, humihingi po siya ng saklolo. **Tulungan niyo po ako kasi sinasaksak po ako ng asawa ko.** Agad naman po akong bumaba. Nakita ko lang po si Shiela gumagapang po.

Q Bakit mo nasabing kay Shiela nanggaling ang sigaw ng paghingi ng tulong na iyon?
A Sa kanya po talaga. Sinisigaw po, humihingi po siya ng saklolo. Tulungan nyo po ako kasi sinasaksak po ako ng asawa ko. Agad naman po akong bumaba. Nakita ko lang po si Shiela gumagapang po.

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[17] Records, pp. 50-52.

Q So, nung sinasabi mong kumakain ka, bumaba ka para tignan kung sinong humihingi ng tulong si Shiela, ano ang nangyari pagkatapos mong bumaba, kung meron man?
A Nakita ko lang po siya, gumagapang lang po siya.

Q Saan siya gumagapang?
A Doon po sa baba ng bahay naming, sa may sahig po.

Q Sa sinasabi mong bahay mo, maari mo bang isalarawan sa hukumang ito kung anong parte ng bahay niyo nakita si Shiela na gumagapang at humihingi ng tulong?
A Kasi magkatabi lang po yong pintuan naming. Ngayon, pagbaba ko po, nakita ko po si Shiela gumagapang po siya, humihingi po ng tulong.

Q Ang ibig mo bang sabihin sa labas ng bahay niya, o sa loob?
A Sa labas po ng bahay niya.

Q Ngayon, nung nakita mo si Shiela na humihingi ng tulong, maaari mo bang isalarawan uli sa ating kagalang-galang na hukom kung ano ang itsura ni Shiela nung siya ay nakita mo?
A Nakita ko lang po siya parang napapaiyak siya at parang hindi maano, parang umiiyak po siya, humihingi po siya ng tulong.

Q Bukod sa pag-iyak at humihingi ng tulong, meron ka pa bang napansin sa kapaligiran?
A Yung katawan niya po duguan po siya. Naliligo po siya sa sariling dugo.

Q Bukod sa iyo, Mr. Witness, sino pa ang nasa lugar na yon habang nakita mo si Shiela na duguan at humihingi ng tulong?
A Yung mga kapitbahay po namin.

Q Kanina sabi mo narinig mong may humihingi ng tulong. Maari mo bang sabihin sa amin ngayon kung gaano kalakas ang kanyang boses? Nung humihingi siya ng tulong?
A Malakas po talaga. **Sabi niya tulungan niyo po ako kasi sinasaksak po ako ng asawa ko. Tatlong beses po niya nasabi yon.**

Q Ngayon, nung nakita mo ang kalagayan ni Shiela, anong sunod na ginawa mo kung meron man?
A Naghingi po ako ng tulong sa aking mga kapitbahay. Tulungan niyo po ako para dalhin si Shiela sa ospital.

x x x x x x x x x

Portions of the testimony of prosecution witness Dr. Diana Nitural[18]

x x x x x x x x x

Q Now, in your answer doctor and as a medical doctor, would you say that the patient is already conscious of an impending death?
A Yes. Actually, the patient was asking for her children, she was asking for people she knows and family. Because unfortunately, the only one is there were her neighbors and the bystanders who were just trying to help and she was surrounded by an aura of eminent doom.

Q Thank you doc. Now, my question to you in annex doctor is was there any conversation between you and the patient while you were treating her?
A Yes.

Q What was the conversation all about?
A Yes, the initial conversation we had was my first question was what happened to you?

Q What was her reply?
A She said, she was stabbed.

Q And after that, any other conversation?
A Yes, I asked, Who stabbed you?

Q What was her reply doctor?
A She said, Yung asawa ko.

Q Did you come to know the name of her husband?
A Unfortunately, not.

Q Was he there at the time you treated, the husband that the patient was referring to, was he there at the time you are treating the patient?
A No, the husband wasn't there.

Q The husband was not there. Now, after she told you that the circumstances surrounding the incident, what happened next?
A So, there, when I left there, I left the, she was at the ER bed already, so, I made sure after the conversation, I instructed the nurse several order so that we could start the fluids and vasopressors immediately cause at that time there was already signs that she could

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[18] *Id.* at 97-99.

go into an arrest anytime soon so that's why I told the nurse, you have to watch her closely because with the signs that she's having she could have a cardiopulmonary arrest anytime.

Q That risk of having a cardiopulmonary arrest doctor and your fear that she might be suffering a cardiopulmonary arrest, did it happen?
A Yes. Actually, she arrested, roughly before an hour, her heart rate stopped and her respiration, her spontaneous breathing stopped, so we did CPR on this patient, but, unfortunately, we're not able to revive the patient because of the massive shock that she obtained from the multiple stab wounds that she got, it was very hard for us to resuscitate already.

Q Now doctor, from your testimony, from your answers, from your explanation to this honorable court, can you kindly tell us what could be the reason of the untimely death of the victim Shiela Cumahig?
A Yes, that's very evident. The patient Shiela Cumahig died because of the multiple stab wounds that she got and then she bled out almost all her blood and this could have led to the hypovolemic shock that I was telling about, which led to her arrest and eventually her death.

As regards the third element, the trial court aptly appreciated the qualifying circumstance of treachery or *alevosia*. In order for the qualifying circumstance of treachery to be appreciated, the following requisites must be shown: (1) the employment of means, method, or manner of execution would ensure the safety of the malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender.[19]

The requisites for treachery are present in the killing of Cumahig. The prosecution was able to establish the fact that at the time of the attack Cumahig was unarmed and in the comforts of their home with their common children. In this case, the swift and sudden stabbing done by Ivero left Cumahig with no sufficient means to put up a defense as there were no items found in the scene of the crime other than the kitchen knife

[19] *People v. Bugarin*, 807 Phil. 588, 600 (2017).

used by Ivero. Cumahig was rendered helpless by the situation and all she could do is muster the strength to seek succor from her neighbors after the stabbing incident. The suddenness of the attack may be inferred from the testimony of Sadic, the neighbor separated by a thin piece of plywood, who only heard the cry for help of the victim only after the stabbing. The absence of any verbal or physical squabble prior to the attack proves that Cumahig was not able to put up a fight and did not provoke the attack of the accused. Further, the fact that there was no defense wound bolsters the fact that the attack was unexpected.

Also, the fact that all the five stab wounds were frontal does not negate treachery. Even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it.[20] In fact, treachery may still be appreciated even when the victim was forewarned of the danger to his or her person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or herself or to retaliate.[21]

As to the fourth element, it was clearly established that Cumahig is not the lawful wife of Ivero even if the former referred to her as "*asawa*" in her dying declarations. So, the nomenclature used by the State of the crime committed was correct.

Lastly, we agree with the trial court in rejecting the defense of denial and frame-up. Ivero's testimony that it was a different person that stabbed her wife was uncorroborated and, thus, is self-serving. Likewise, his demeanor after the incident of not asking for help from his neighbor and not bringing her common-law spouse to the hospital negates his excuse as this is not the common reaction of a concerned innocent person.

WHEREFORE, premises considered, the Court **AFFIRMS** the Decision dated August 24, 2017 of the Court of Appeals in

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[20] *Id.*

[21] *People v. Pulgo*, 813 Phil. 205, 217 (2017).

CA-G.R. CR-HC No. 08564 finding Warren Ivero y Mabutas guilty beyond reasonable doubt of the crime of murder under Article 248 of the Revised Penal Code, sentencing him to suffer the penalty of *reclusion perpetua*.

SO ORDERED.

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

EN BANC

[G.R. No. 237330. November 3, 2020]

ALDRIN MADREO, *Petitioner, v.* **LUCILO R. BAYRON,** *Respondent.*

[G.R. No. 237579. November 3, 2020]

OFFICE OF THE OMBUDSMAN, *Petitioner, v.* **LUCILO R. BAYRON,** *Respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF CONDONATION; RATIONALE THEREOF.— The doctrine of condonation . . . states that an elected public official cannot be removed for administrative misconduct committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor.

. . . [T]he Court stated that the condonation doctrine is not only founded on the theory that an official's re-election expresses the sovereign will of the electorate to forgive or condone any act or omission constituting a ground for administrative discipline which was committed during his previous term. The same is also justified by "sound public policy." The Court held that to rule otherwise would open the floodgates to exacerbating endless partisan contests between the re-elected official and his political enemies, who may not stop to hound the former during his new term with administrative cases for acts alleged to have been committed during his previous term. His second term may thus be devoted to defending himself in the said cases to the detriment of public service.

2. ID.; ID.; ID.; THE CONDONATION DOCTRINE DOES NOT COVER CRIMINAL ACTS COMMITTED DURING THE OFFICIAL'S PREVIOUS TERM AND DOES NOT APPLY TO APPOINTIVE OFFICIALS.— This doctrine of forgiveness or condonation cannot, however, apply to criminal

acts which the re-elected official may have committed during his previous term. The Court also clarified that the condonation doctrine would not apply to appointive officials since, as to them, there is no sovereign will to disenfranchise.

3. ID.; ID.; ID.; ABANDONMENT OF THE CONDONATION DOCTRINE; THE DOCTRINE OF CONDONATION WAS ABANDONED BECAUSE THERE WAS NO LEGAL AUTHORITY TO SUSTAIN IT AND THAT IT WAS CONTRARY TO THE CONSTITUTION'S MANDATE OF HOLDING ALL PUBLIC OFFICIAL ACCOUNTABLE TO THE PEOPLE AT ALL TIMES.— [T]he condonation doctrine was abandoned in *Carpio-Morales* primarily on the grounds that there was no legal authority to sustain the condonation doctrine in this jurisdiction, and for being contrary to the present Constitution's mandate of holding all public officials and employees accountable to the people at all times. However, *Carpio-Morales* was also clear that the abandonment of the condonation doctrine shall be "prospective in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines."

4. ID.; ID.; ID.; ID.; THE ABANDONMENT OF THE DOCTRINE OF CONDONATION IS PROSPECTIVE IN APPLICATION AND IS RECKONED FROM 12 APRIL 2016. — [T]he ruling promulgated in *Carpio-Morales* on the abandonment of the doctrine of condonation had become final only on 12 April 2016, thus, the abandonment should be reckoned from the said date. The Court explained that the prospective application of *Carpio-Morales* should be reckoned from 12 April 2016 because that was the date on which the Court had "acted upon and denied with finality" the motion for clarification/motion for partial reconsideration filed in the said case.

5. ID.; ID.; ID.; ID.; ID.; PUBLIC OFFICIALS WHO WERE RE-ELECTED BEFORE ABANDONMENT OF THE DOCTRINE OF CONDONATION HAVE EVERY RIGHT TO RELY ON THE DOCTRINE THAT THEIR RE-ELECTION HAD ALREADY SERVED AS CONDONATION OF THEIR PREVIOUS MISCONDUCT.— [W]hen the Court ruled in *Carpio-Morales* that the abandonment of the doctrine of condonation is applied prospectively, it meant that the said

doctrine *does not* anymore apply to public officials *re-elected after its abandonment*. Stated differently, the doctrine still *applies* to those officials who have been *re-elected prior to its abandonment*. That is because when a public official had already been re-elected prior to the promulgation and finality of *Carpio-Morales*, he or she has every right to rely on the old doctrine that his or her re-election had already served as a condonation of his previous misconduct, thereby cutting the right to remove him from office, and a new doctrine decreeing otherwise would not be applicable against him or her. More telling, once re-elected, the public official already had the *vested right* not to be removed from office by reason of the condonation doctrine, which cannot be divested or impaired by a new law or doctrine without violating the Constitution. These are the decisive reasons behind the prospective applicability of the abandonment of the doctrine of condonation. . . .

6. ID.; ID.; ID.; THE DOCTRINE OF CONDONATION AS A DEFENSE IS NO LONGER AVAILABLE IF THE PUBLIC OFFICIAL'S RE-ELECTION HAPPENS ON OR AFTER 12 APRIL 2016.— The defense of condonation doctrine is no longer available if the public official's re-election happens on or after 12 April 2016. With the abandonment of the condonation doctrine in *Carpio-Morales*, which became final on 12 April 2016, any re-elections of public officials on said date and onwards no longer have the effect of condoning their previous misconduct.

7. ID.; ID.; ID.; STATUTORY CONSTRUCTION; WHEN THE LAW DOES NOT DISTINGUISH, NEITHER SHOULD THE COURT DISTINGUISH; FOR THE DOCTRINE OF CONDONATION TO APPLY, THE MANNER OF RE-ELECTION, EITHER THROUGH A REGULAR OR RECALL ELECTION, IS BESIDE THE POINT.— It is noteworthy that the rationale behind the doctrine of condonation speaks of "re-election to public office" without specifying the type of elections conducted, thereby, signifying that the pivotal consideration in the application of the doctrine is the electorate's act of electing again an erring public official. Thus, the Court applies by analogy the well-established legal maxim "*ubi lex non distinguit, nec nos distinguere debemus*." When the law, a case law in this instance, does not distinguish, neither should we distinguish. Accordingly, that the manner of re-election was through a regular or recall elections is beside the point for the

doctrine of condonation to apply. There should be no distinction as to the manner of re-election in the application of the said doctrine where none is indicated.

8. ID.; ID.; ID.; ID.; IN THE APPLICATION OF THE DOCTRINE OF CONDONATION, THE TERM "RE-ELECTION" SHOULD BE GIVEN ITS ORDINARY AND GENERIC MEANING, AND SHOULD NOT BE INTERPRETED IN ITS RESTRICTIVE SENSE.— In view, therefore, of the paramount importance of the electorate's right to elect and of their willpower to forgive one's misconduct in the application of the doctrine of condonation, it is only fitting that the term "re-election," as referred to and contemplated in the aforesaid doctrine, should *not* be interpreted in its restrictive sense. Rather, the same must be given its ordinary and generic meaning of a public official having been elected again in a process where the electorate cast their votes in his or her favor during any elections.

9. ID.; ID.; ID.; WHEN AN INCUMBENT WINS IN A RECALL ELECTION, THE TELLING CONCLUSION IS THAT THE PEOPLE HAD DECIDED TO LOOK PAST THE MISCONDUCT AND REINSTATE THEIR TRUST AND CONFIDENCE IN HIM OR HER.— While recall election is defined as a mode of removal, the same could also operate as a re-election of the concerned incumbent public official since it resorts to the *democratic process of election* to achieve its end where the official sought to be recalled shall automatically be considered as duly registered candidate to the pertinent position and, like other candidates, shall be entitled to be voted upon. More importantly, like in regular elections, the electorate in a recall election cast their votes to elect among the candidates who shall serve or continue to serve them.

At this point, it might not be amiss to stress that the same considerations behind the doctrine of condonation exist in recall elections.

. . . When an incumbent public official wins in a recall election, the only telling conclusion is that the people had foregone of their prerogative to proceed against the erring public official, and decided to look past the misconduct and reinstate their trust and confidence in him. This blurs the line of distinction

between a regular and recall election in terms of the applicability of the condonation doctrine.

10. ID.; ID.; ID.; THE DOCTRINE OF CONDONATION IS APPLICABLE TO AN OFFICIAL'S ELECTION DURING THE RECALL ELECTION ON 8 MAY 2015, BUT NOT TO THE RE-ELECTION DURING THE MAY 2016 ELECTIONS.— [T]he Court rules that the doctrine of condonation is applicable to the case of Lucilo by reason of his re-election, as the term is understood in the application of the doctrine, during the recall election on 8 May 2015. It is undisputed that Lucilo's re-election took place prior to the finality of *Carpio-Morales*, which abandoned the condonation doctrine, on 12 April 2016. . . .

The doctrine of condonation, however, cannot be extended to Lucilo's re-election during the May 2016 elections. By then, the doctrine had already been abandoned, and his re-election no longer had the effect of condoning his previous misconduct.

APPEARANCES OF COUNSEL

Belgica Aranas Baldueza Dela Cruz and Associates for Aldrin Madreo.

Libra Law for Lucilo R. Bayron.

D E C I S I O N

DELOS SANTOS, *J.*:

Before the Court are two consolidated Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated 8 August 2017 and the Resolution[2] dated 25 January 2018 of the Court of Appeals (CA) in CA-G.R. SP

[1] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Amy C. Lazaro-Javier (now a Member of the Court) and Pedro B. Corales, concurring; *rollo* (G.R. No. 237579), pp. 60-77.

[2] Id. at 80-89.

No. 149375, which reversed and set aside the Decision[3] dated 18 November 2016 of the Office of the Ombudsman (OMB) in OMB-L-A-13-0564 and dismissed the administrative complaint against Lucilo Bayron (Lucilo),City Mayor of Puerto Princesa, Palawan, by reason of the application of the doctrine of condonation.

Antecedents

During the 2013 elections, Lucilo won as the Mayor of Puerto Princesa City, Palawan. He assumed office on 30 June 2013.

On 1 July 2013, the City Government of Puerto Princesa, represented by Lucilo as city mayor, entered into a Contract of Services[4] with Lucilo's son, Karl Bayron (Karl), engaging the latter as Project Manager for Bantay Puerto-VIP Security Task Force, with a monthly compensation of ₱16,000.00, from 1 July 2013 to 31 December 2013.

The Complaint

On 22 November 2013, Aldrin Madreo (Madreo) filed a Complaint-Affidavit[5] against Lucilo and Karl before the OMB, charging them with the following:

(1) Administrative offenses of Grave Misconduct, Serious Dishonesty; Conduct Unbecoming of a Public Officer and Conduct Prejudicial to the Best Interest of the Service, docketed as OMB-L-A-13-0564; and

(2) Criminal offenses of Nepotism, Perjury, Falsification of Public Documents, and Violation of Section 3(e) of Republic Act (RA) No. 3019, docketed as OMB-L-C-13-0500.[6]

In his Complaint-Affidavit, Madreo alleged that the Contract of Services between the Puerto Princesa City Government and

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[3] Id. at 92-102.

[4] Id. at 141-142.

[5] Id. at 126-139.

[6] Id. at 61.

Karl contained a declaration that Karl "is not related within the fourth degree of consanguinity/affinity with the Hiring Authority." Contrary to this declaration, however, Karl is the biological son of Lucilo as evidenced by an official copy of his Birth Certificate.[7] Madreo argued that such act of concealment was indicative of a clear intention to violate the law,[8] lack of integrity, and disposition to betray and defraud the public.[9] He added that they also violated Civil Service Commission Memorandum Circular No. 17-02[10] which prohibits a person covered by the rule against nepotism to be hired under a contract of service. Finally, Madreo claimed that Karl acted without authority when he issued Office Order No. 001, Series of 2013,[11] detailing a certain Rigor Cobarrubias, a regular employee, to the City Traffic Management Office.[12]

In his Consolidated Counter-Affidavit,[13] Lucilo alleged that the position for which Karl was engaged in a non-career position. He pointed out that the position is confidential in nature, and, as such, his engagement is allowed under the Civil Service Rules.[14] He added that the complaint should be dismissed outright on the basis of the following grounds: (1) failure to comply with Administrative Order No. 07,[15] as amended, which requires that a criminal and/or administrative complaint should be under oath; (2) lack of jurisdiction of the OMB since administrative complaints against local elective officials should be filed before the Office of the President; and (3) Madreo's lack of personal

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[7] Id. at 130, 145.

[8] Id. at 133.

[9] Id. at 134.

[10] Policy Guidelines for Contract of Services.

[11] *Rollo* (G.R. No. 237579), p. 144.

[12] Id. at 93.

[13] Id. at 148-169.

[14] Id. at 152-153.

[15] Rules of Procedure of the Office of the Ombudsman (April 10, 1990).

interest in the subject matter of the complaint as he was not a resident nor a taxpayer of Puerto Princesa City.[16]

Additionally, both Lucilo and Karl explained that the latter was not considered a public officer, therefore there was no legal obligation to disclose their relationship. As the position is confidential in nature, it is exempt from the rule against nepotism, and relationship between the parties is immaterial. Further, they claimed that there was no deliberate or willful intent to commit a falsehood as it was the city government, and not Lucilo, which entered into a contract with Karl.[17]

The 2015 Recall Election

On 8 May 2015 and during the pendency of the proceedings in OMB-L-A-13-0564 and OMB-L-C-13-0500, a recall election was held for the position of city mayor of Puerto Princesa. After the casting and counting of the votes, Lucilo was proclaimed as the winner and duly elected mayor of Puerto Princesa City.[18]

On 22 June 2015, Lucilo, through his counsel, filed an Entry of Appearance with Motion to Dismiss,[19] praying for the dismissal of the administrative complaint in light of his proclamation as the winner of the recall election. He asserted that re-election to office operates as a condonation of the officer's misconduct to the extent of cutting off the right to remove him therefrom.[20]

May 2016 Elections

During the May 2016 local elections, and while the proceedings in OMB-L-A-13-0564 and OMB-L-C-13-0500 were ongoing, Lucilo was re-elected as mayor of Puerto Princesa City.

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[16] Id. at 149-151.

[17] Id. at 94.

[18] Id. at 274.

[19] Id. at 271-273.

[20] Id. at 272.

Ruling of the OMB, Removal and Reinstatement of Lucilo as City Mayor

On 18 November 2016, the OMB, through Assistant Ombudsman Jennifer Jardin-Manalili, rendered a Decision[21] in OMB-L-A-13-0564, finding both Lucilo and Karl administratively liable, the dispositive portion of which reads:

> **WHEREFORE**, this Office finds substantial evidence to hold respondents **LUCILO R. BAYRON**, and **KARL M. BAYRON** administratively liable for **SERIOUS DISHONESTY** and **GRAVE MISCONDUCT**. Pursuant to Section 46 (A)(1) and Section 46 (A)(3) respondents are meted the penalty of **DISMISSAL FROM THE SERVICE**, together with the corresponding accessory penalties of forfeiture of retirement benefits, cancellation of eligibility, bar from taking the civil service examinations and perpetual disqualification from holding any public office.
>
> In the event the principal penalty of dismissal can no longer be enforced on respondents, it shall be converted into a **Fine** in the amount equivalent to their basic salary for one year, payable to the Office of the Ombudsman, which amount may be deducted from any receivable from the government. In the alternative, respondent[s] may opt to pay the fine directly to the Office of the Ombudsman.
>
> **SO ORDERED.**[22]

On the same date, a Resolution[23] was issued finding probable cause to indict both Lucilo and Karl for Falsification of Public Document.

Lucilo and Karl then filed their respective motions for reconsideration of the above Decision and Resolution.[24] Pending the resolution of his motion for reconsideration, Lucilo filed before the CA a Petition for Review[25] on 2 February 2017,

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[21] Id. at 92-102.

[22] Id. at 101.

[23] Not attached to the rollo.

[24] Id. at 103.

[25] *Rollo* (G.R. No. 237579), pp. 237-306.

alleging, among others, that with his re-elections during the 8 May 2015 recall election and May 2016 local elections, he can no longer be removed from office by reason of the condonation doctrine,[26] also known as Aguinaldo doctrine, which provides that a public official cannot be removed for administrative misconduct committed during a prior term since his re-election to office operates as a condonation of his past misconduct. Lucilo's petition, however, was simply noted without action by the CA for being premature in view of Lucilo's pending motion for reconsideration with the OMB.[27]

Meanwhile, the OMB Decision dated 18 November 2016 was implemented by way of several issuances and letters from various government agencies, including the Endorsement Letter[28] dated 10 January 2017 of the OMB to the Department of the Interior and Local Government (DILG) and the Memorandum[29] dated 15 February 2017 of the DILG-MIMAROPA Region advising Vice-Mayor Luis Marcaida III (Marcaida) to assume office. Marcaida later took his oath as the Mayor of Puerto Princesa City.[30]

On 20 February 2017, Lucilo filed an Urgent Verified Manifestation[31] with the OMB, stating that he is abandoning his motion for reconsideration so that he may already avail judicial relief on the justification that the OMB has already effectively denied his motion for reconsideration by causing the immediate implementation of the judgment of dismissal. Further, with the objective to prevent the immediate implementation of the judgment of dismissal, Lucilo filed a motion for the issuance of a temporary restraining order (TRO)

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[26] *Aguinaldo v. Santos*, 287 Phil. 851 (1992).

[27] *Rollo* (G.R. No. 237579), p. 67.

[28] Id. at 327.

[29] Id. at 336.

[30] Id. at 656.

[31] Id. at 313-314.

or a *status quo ante* Order before the CA, which was denied, however. Nonetheless, the CA declared the petition for review submitted for decision.[32]

Subsequently, in a Joint Order[33] dated 20 March 2017, the OMB modified its earlier ruling, setting aside the Resolution finding probable cause for Falsification of Public Document against Lucilo and Karl, and holding them administratively liable for Simple Dishonesty only. The dispositive portion of the Order reads:

> **WHEREFORE**, considering the foregoing, this Office **PARTIALLY GRANTS** the Consolidated Motion for Reconsideration of respondent Karl M. Bayron. The Motion for Reconsideration of respondent Lucilo R. Bayron in the criminal case, on the other hand, is **GRANTED**.
>
> The assailed Resolution is hereby **SET ASIDE** and all criminal charges against the respondents are **DISMISSED**. On the other hand, the assailed Decision is accordingly **MODIFIED**. Respondents Lucilo R. Bayron and Karl M. Bayron are administratively found guilty only of **SIMPLE DISHONESTY** and meted the penalty of **Three Months Suspension** from service.
>
> In the event the principal penalty of suspension can no longer be enforced on respondents, it shall be converted into a **Fine** in the amount equivalent to their basic salary for three months, payable to the Office of the Ombudsman, which amount may be deducted from any receivable from the government. In the alternative, respondent may opt to pay the fine directly to the Office of the Ombudsman.
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> **SO ORDERED.**[34]

Thereafter, Lucilo filed before the CA an Urgent Manifestation with Reiterative Plea (For Immediate Issuance of Status Quo Ante Order/Preliminary Injunction Pending Final Disposition of the Main Petition),[35] alleging that while the OMB had already

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[32] Id. at 68.

[33] Id. at 103-114.

[34] Id. at 112-113.

[35] Not attached to the *rollo*.

reduced his penalty, the finding of guilt for Simple Dishonesty against him was bereft of any factual or legal basis, hence, he should be totally exonerated.[36] On the other hand, Marcaida filed a Petition for Leave to Intervene,[37] praying that he be allowed to intervene in the CA case and that a *status quo ante* order be issued to preserve the status of the parties prior to the issuance of the Joint Order dated 20 March 2017.[38]

On 22 June 2017, the DILG re-installed Lucilo as mayor of Puerto Princesa City per OMB's directive to implement its Joint Order[39] dated 20 March 2017.

On 6 July 2017, the OMB modified its disposition once again by setting aside the Joint Order dated 20 March 2017 in so far as Lucilo is concerned. The dispositive portion of its latest Order reads:

> **WHEREFORE**, in view of the foregoing, this Office **GRANTS** complainant-movant Aldrin Madreo's Motion for Reconsideration and hereby **RECONSIDERS** and **SETS ASIDE** the assailed Joint Order dated 20 March 2017 modifying the Decision dated 18 November 2016 insofar as it affects respondent Lucilo Bayron.
>
> **SO ORDERED.**[40]

Lucilo notified the CA of the supervening order which, in effect, reinstated OMB's judgment of his dismissal from service, and accordingly filed an Urgent Motion to Expedite Decision of the Pending Petition for Review.[41]

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[36] *Rollo* (G.R. No. 237579), pp. 68-69.

[37] Not attached to the *rollo*.

[38] *Rollo* (G.R. No. 237579), p. 69.

[39] *Id.* at 69, 614.

[40] *Id.* at 124.

[41] *Id.* at 70.

Ruling of the Court of Appeals

On 8 August 2017, the CA rendered the now assailed Decision.[42] The CA discussed that Lucilo could not be held liable for the charges of Serious Dishonesty and Grave Misconduct based on the circumstances surrounding the execution of the Contract of Services and in view of Lucilo's acquittal in the criminal complaint for Falsification of Public Document. In the main, however, the CA reversed the Decision dated 18 November 2016 of the OMB and dismissed the administrative complaint against Lucilo on the ground that the Aguinaldo doctrine is applicable to his case. The CA ratiocinated:

> The cold hard fact is that after the purported misrepresentation, [Lucilo] was re-elected in a recall election held on 8 May 2015 when the *Aguinaldo Doctrine* was still in force. **It must be emphasized that it is the election which operates to condone any misconduct supposedly committed by the public official during a prior term.** In sooth, [Lucilo's] reelection on 8 May 2015 operates as a condonation of his alleged previous misconduct to the extent of cutting off the right to remove him therefrom.
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> x x x x
>
> **THE FOREGOING DISQUISITIONS CONSIDERED**, We hereby **GRANT** the *Petition for Review*. The *Decision* dated 18 November 2016 of the Office of the Ombudsman in OMB-L-A-13-0564 is **REVERSED and SET ASIDE**. Accordingly, the Complaint for Serious Dishonesty and Grave Misconduct against petitioner Lucilo Bayron is **DISMISSED**.
>
> The *Petition for Leave to Intervene* filed by Vice-Mayor Luis Marcaida is **DENIED**.
>
> **SO ORDERED.**[43]

Madreo, Marcaida, and the OMB filed their separate motions for reconsideration of the Decision of the CA. The OMB, in particular, questioned the applicability of the doctrine of

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[42] Id. at 60-77.

[43] Id. at 76.

condonation in Lucilo's case as the same had already been abandoned in *Ombudsman Carpio Morales v. Court of Appeals*[44] promulgated on 10 November 2015. While the abandonment of the said doctrine was declared to be applied prospectively, the OMB explained that there was no categorical statement from the Court as to what constitutes "prospective application." As such, the OMB is of the opinion that all administrative cases that remain open and pending as of 12 April 2016, the date of finality of *Carpio Morales*, can no longer avail of the defense of condonation. In any case, the OMB pointed out that Lucilo cannot avail the benefit of the condonation doctrine since he was not re-elected to a fresh term in the 2015 recall elections. Corollarily, there is no "prior term" to speak of for the doctrine to apply.[45]

In a Resolution[46] dated 25 January 2018, the CA denied the motions for reconsideration, disposing as follows:

> **WHEREFORE**, the *Motion for Reconsideration* and *Supplement* thereto of respondent Aldrin Madreo, and the respective *Motions for Reconsideration* of Luis Marcaida III and public respondent Office of the Ombudsman are hereby **DENIED**.
>
> **SO ORDERED.**[47]

The CA ruled that the *ratio decidendi* of the condonation doctrine, that an elective official's re-election serves as a condonation of previous misconduct which cuts the right to remove him therefor, applies to both regular and recall elections and that there is no plausible reason to make a distinction.[48]

The Petitions

Dissatisfied with ruling of the CA, Madreo and the OMB filed their respective petitions for review on *Certiorari*, docketed

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[44] 772 Phil. 672 (2015).

[45] *Rollo* (G.R. No. 237579), pp. 433-434.

[46] Id. at 80-89.

[47] Id. at 88.

[48] Id.

as G.R. Nos. 237330[49] and 237579,[50] respectively. Madreo and the OMB's arguments in their respective petitions may be summarized into three points. First, they contend that the doctrine of condonation should not be applied to obliterate Lucilo's administrative liability since the doctrine had already been abandoned in *Carpio Morales*. Second, assuming that the doctrine still prevails, the same cannot be applied in Lucilo's case since what was involved was a recall election and not a re-election for a fresh term of office. Third, they postulate that the CA gravely erred in absolving Lucilo from any administrative liability considering that he falsely attested to his non-relationship with his son, Karl, in the subject notarized Contract of Services.

Ruling

The petitions lack merit.

I

The doctrine of condonation first enunciated in the 1959 *En Banc* ruling in *Pascual v. Provincial Board of Nueva Ecija*[51] and reiterated in *Aguinaldo v. Santos*,[52] hence also known as Aguinaldo doctrine, states that an elected public official cannot be removed for administrative misconduct committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor.[53]

In another *En Banc* ruling in *Salalima v. Guingona, Jr.*,[54] the Court stated that the condonation doctrine is not only founded on the theory that an official's re-election expresses the sovereign will of the electorate to forgive or condone any act or omission

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[49] *Rollo* (G.R. No. 237330), pp. 14-31.

[50] *Rollo* (G.R. No. 237579), pp. 19-53.

[51] 106 Phil. 466 (1959).

[52] Supra note 26.

[53] Id. at 857-858.

[54] 326 Phil. 847 (1996).

constituting a ground for administrative discipline which was committed during his previous term. The same is also justified by "sound public policy." The Court held that to rule otherwise would open the floodgates to exacerbating endless partisan contests between the re-elected official and his political enemies, who may not stop to hound the former during his new term with administrative cases for acts alleged to have been committed during his previous term. His second term may thus be devoted to defending himself in the said cases to the detriment of public service.[55]

This doctrine of forgiveness or condonation cannot, however, apply to criminal acts which the re-elected official may have committed during his previous term.[56] The Court also clarified that the condonation doctrine would not apply to appointive officials since, as to them, there is no sovereign will to disenfranchise.[57]

II

It bears noting that the condonation doctrine was abandoned in *Carpio Morales* primarily on the grounds that there was no legal authority to sustain the condonation doctrine in this jurisdiction, and for being contrary to the present Constitution's mandate of holding all public officials and employees accountable to the people at all times. However, *Carpio Morales* was also clear that the abandonment of the condonation doctrine shall be "prospective in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines."[58]

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[55] Id. at 921.

[56] See *Ingco v. Sanchez*, 129 Phil. 553 and *Aguinaldo*, supra note 26.

[57] See *Salumbides, Jr. v. Office of the Ombudsman*, 633 Phil. 325 (2010), citing *Civil Service Commission v. Sojor*, 577 Phil. 52 (2008).

[58] *Carpio Morales*, supra note 44, at 775.

The Court further clarified in *Crebello v. Office of the Ombudsman*,[59] that the ruling promulgated in *Carpio Morales* on the abandonment of the doctrine of condonation had become final only on 12 April 2016, thus, the abandonment should be reckoned from the said date. The Court explained that the prospective application of *Carpio Morales* should be reckoned from 12 April 2016 because that was the date on which the Court had "acted upon and denied with finality" the motion for clarification/motion for partial reconsideration filed in the said case.

Notwithstanding that the Court had already declared that the abandonment of the condonation doctrine is to be applied prospectively from 12 April 2016, the OMB asserts that the doctrine still does not apply to Lucilo because the administrative case against him was already pending before its office prior to the finality of *Carpio Morales*. Pursuant to its Office Circular No. 17 dated 11 May 2016, the OMB maintains that it could still resolve the case and has in fact decided the same on 18 November 2016.

OMB Office Circular No. 17 reads:

> From the date of finality of the *Decision* on **12 April 2016** and onwards, the Office of the Ombudsman will no longer give credence to the condonation doctrine, regardless of when an administrative infraction was committed, when the disciplinary complaint was filed, or when the concerned public official was re-elected. In other words, **for [as] long as the administrative case remains *open and pending* as of 12 April 2016 and onwards, the Office of the Ombudsman shall no longer honor the defense of condonation**.[60]

The Court does not agree with the stance of the OMB.

The problem with the OMB's position is that it completely obliterated the doctrine as a defense for all cases, even those already pending resolution or appeal at the time of the finality

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[59] G.R. No. 232325, April 10, 2019.

[60] *Rollo* (G.R. No. 237579), p. 37.

of *Carpio Morales*. This is patently violative of the binding rule that "laws shall only have a prospective effect and must not be applied retroactively in such a way as to apply to pending disputes and cases."[61] In this regard, the Court finds it imperative to clarify as to what *Carpio Morales* meant when it ruled that the abandonment of the condonation doctrine is applied prospectively. To be precise, the Court shall resolve the issue as to what event should have transpired before 12 April 2016, the date *Carpio Morales* attained finality, for the doctrine of condonation to apply.

The preliminaries first. The re-election of the public official is the most important element for the application of the doctrine of condonation. Logically so as it is the event that triggers the application of the doctrine being the act that manifests the body politic's expressed or implied forgiveness of the public official's offense or misconduct. As emphasized in *Salumbides v. Office of the Ombudsman*,[62] it is the will of the populace that could extinguish an administrative liability. Needless to say, the *rationale* behind the condonation doctrine clearly instructs us that an elective official's *re-election* serves as a *condonation* of previous misconduct, thereby cutting the right to remove him; to do otherwise would be to deprive the people of their right to elect their officers, and it is not for the court, by reason of such faults or misconduct, to practically overrule the will of the people. It can be said then that it is the re-election which would ultimately give rise to the application of the condonation doctrine and the final act or event which vests upon the public official the right not to be removed from office.

Taking into account the above preliminary considerations, when the Court ruled in *Carpio Morales* that the abandonment of the doctrine of condonation is applied prospectively, it meant that the said doctrine *does not* anymore apply to public officials *re-elected after its abandonment*. Stated differently, the doctrine

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[61] *Philippine National Bank v. Tejano*, 619 Phil. 139, 151 (2009).

[62] Supra note 57.

still *applies* to those officials who have been *re-elected prior to its abandonment*. That is because when a public official had already been re-elected prior to the promulgation and finality of *Carpio Morales*, he or she has every right to rely on the old doctrine that his or her re-election had already served as a condonation of his previous misconduct, thereby cutting the right to remove him from office, and a new doctrine decreeing otherwise would not be applicable against him or her. More telling, once re-elected, the public official already had the *vested right* not to be removed from office by reason of the condonation doctrine, which cannot be divested or impaired by a new law or doctrine without violating the Constitution. These are the decisive reasons behind the prospective applicability of the abandonment of the doctrine of condonation, as can be gleaned from the case law pointed out in *Carpio Morales* to explain its ruling, to wit:

> Hence, while the future may ultimately uncover a doctrine's error, it should be, as a general rule, recognized as "good law" prior to its abandonment. Consequently, **the people's reliance thereupon should be respected**. The landmark case on this matter is *People v. Jabinal*, wherein it was ruled:
>
> [W]hen a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and **should not apply to parties who had relied on the old doctrine and acted on the faith thereof.**
>
> Later, in *Spouses Benzonan v. CA*, it was further elaborated:
>
> > [P]ursuant to Article 8 of the Civil Code "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that "laws shall have no retroactive effect unless the contrary is provided." This is expressed in the familiar legal maxim *lex prospicit, non respicit*, the law looks forward not backward. **The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and**

> **hence, is unconstitutional.**[63] (Emphasis in the original and citations omitted; new emphases supplied)

Thus, the Court now clarifies in simple and direct terms. The defense of condonation doctrine is no longer available if the public official's re-election happens on or after 12 April 2016. With the abandonment of the condonation doctrine in *Carpio Morales*, which became final on 12 April 2016, any re-elections of public officials on said date and onwards no longer have the effect of condoning their previous misconduct.

III

The condonation doctrine covers re-election through regular and recall elections.

It is noteworthy that the rationale behind the doctrine of condonation speaks of "re-election to public office" without specifying the type of elections conducted, thereby, signifying that the pivotal consideration in the application of the doctrine is the electorate's act of electing again an erring public official. Thus, the Court applies by analogy the well-established legal maxim "*ubi lex non distinguit, nec nos distinguere debemus*." When the law, a case law in this instance, does not distinguish, neither should we distinguish. Accordingly, that the manner of re-election was through a regular or recall elections is beside the point for the doctrine of condonation to apply. There should be no distinction as to the manner of re-election in the application of the said doctrine where none is indicated.

The OMB insists that the doctrine of condonation does not apply to a recall election because the same is a "mode of removal" of a public officer by the people before the end of his term of office. It submits that when an incumbent public official wins in a recall election, he will merely continue his term of office, hence, such election is not considered a "re-election" because it is not a regular election where a person is elected for a new term of office. The OMB adds that for the condonation doctrine

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[63] *Carpio Morales*, *supra* note 44, at 775-776.

to apply, the misconduct must be committed during the immediately preceding term for the re-election.

The Court disagrees.

Condonation doctrine is a jurisprudential creation that originated from the 1959 case of *Pascual*.[64] Relatedly, judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.[65] Thus, like any other laws or statutes, judicial decisions and doctrines declared therein must be construed or interpreted with reference to its full context, *i.e.*, that every part of the decision or doctrine must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.[66] It is also a rule in statutory construction that the statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole.[67] Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.[68] It is also well-established rule that a statute must be so construed as to harmonize and give effect to all its provisions whenever possible;[69] and that the spirit and reason

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[64] Id. at 755.

[65] Id. at 775, citing *De Castro v. Judicial Bar and Council*, 632 Phil. 657, 686 (2010).

[66] *Land Bank of the Philippines v. AMS Farming Corporation*, 590 Phil. 170, 203 (2008).

[67] *Mactan-Cebu International Airport Authority v. Urgello*, 549 Phil. 302, 322 (2007).

[68] *Smart Communications, Inc. v. The City of Davao*, 587 Phil. 20, 30 (2008).

[69] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 200 (2012), citing *Uy v. Sandiganbayan*, 407 Phil. 154, 180 (2001).

of the statute may be passed upon where a literal meaning would lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the lawmakers.[70]

The Court applies the foregoing principles to the case at bench.

It is worthy to note that when the Court, in *Pascual*, subscribed to the idea that a public official may not be removed in the present term of office, the same was *not* simply and solely premised on the underlying theory that "each term is separate from other terms" in that "the penalty in proceedings for removal shall not extend beyond the removal from office, and disqualification from holding office for the term for which the officer was elected or appointed." The condonation doctrine, as it was later known, was also predicated on the reasoning that *re-election* serves as a *condonation of previous misconduct* and that the courts may *not deprive the electorate*, who are assumed to have known the life and character of candidates, of their *right to elect officers* nor to *overrule* the *will of the people to disregard or forgive* his faults or misconduct, if he had been guilty of any, when they elected a man to office.

Thus, in *Carpio Morales*, the Court dissected *Pascual*'s *ratio decidendi* into three (3) parts, to wit:

***First,* the penalty of removal may not be extended beyond the term in which the public officer was elected for each term is separate and distinct:**

> Offenses committed, or acts done, during previous term are generally held not to furnish cause for removal and this is especially true where the constitution provides that the **penalty in proceedings for removal shall not extend beyond the removal from office, and disqualification from holding office for the term for which the officer was elected or appointed.** (67 C.J.S., p. 248, citing *Rice vs. State*,161 S.W. 2d. 401; *Montgomery vs. Nowell*, 40 S.W. 2d. 418; *People ex rel. Bagshaw vs. Thompson*,130 P. 2d. 237; *Board of Com'rs of Kingfisher County vs. Shutler*, 281 P. 222; *State vs. Blake*, 280 P. 388; *In re Fudula*,147 A. 67; *State vs. Ward*, 43 S.W. 2d. 217).

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[70] *Ursua v. Court of Appeals*, 326 Phil. 157, 163 (1996).

> The underlying theory is that **each term is separate from other terms**....

Second, an elective official's **re-election serves as a condonation of previous misconduct**, thereby cutting the right to remove him therefor; and

> [T]hat the **reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor.** (43 Am. Jur., p. 45, citing *Atty. Gen. vs. Hasty*,184 Ala. 121, 63 So. 559, 50 L.R.A. (NS) 553).

Third, courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers:

> As held in *Conant vs. Grogan* (1887) 6 N.Y.S.R. 322, cited in 17 A.I.R. 281, 63 So. 559, 50 LRA (NS) 553 —
>
> > The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. **When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct to practically overrule the will of the people.**[71] (Emphases in the original and citations omitted; new emphases supplied)

To the mind of the Court, the rationale behind the doctrine of condonation gives significant consideration to the right of the electorate to elect officers, who will serve them, and of their sovereign will to forgive a public official's alleged misconduct through election, hence, the term "condonation." Otherwise, the Court, in *Pascual*, could have just simply and solely relied on the underlying theory that "each term is separate from other terms" to support its ruling on why a public official elected to a new term may not be removed for misconduct

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[71] *Carpio Morales*, *supra* note 44, at 761-762.

committed in his previous term. The rationale behind the doctrine, however, as elucidated in *Pascual*, stresses and gives value to the right of the electorate to elect officers and of their sovereign will to forgive. To be sure, these justifications are not without meaning and effect to the ruling of the Court in *Pascual*. The Court notes that the said case was decided under the 1935 Constitution. Section 1, Article II thereof states that "[t]he Philippines is a democratic and republican State" and "[s]overeignty resides in the people and all government authority emanates from them." Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority.[72] Each time the enfranchised citizen goes to the polls to assert this *sovereign will*, that abiding credo of republicanism is translated into living reality.[73] Indeed, a truly-functioning democracy owes its existence to the People's collective sovereign will.

The Court's rulings subsequent to *Pascual* would indeed tell the compelling reasons behind the condonation doctrine — the right of the electorate to elect officers and their sovereign will to forgive.

In *Salalima*,[74] the Court explained that the condonation doctrine is founded on the theory that an "official's reelection expresses the sovereign will of the electorate to forgive or condone any act or omission constituting a ground for administrative discipline which was committed during his previous term"[75] and added that the doctrine is also reinforced by sound public policy to prevent the elective official from being hounded by administrative cases filed by his political enemies during a new term, for which he has to defend himself to the detriment of public service.[76]

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[72] *Moya v. Del Fierro*, 69 Phil. 199, 204 (1939).

[73] *People v. San Juan*, 130 Phil. 515, 522 (1968).

[74] Supra note 54.

[75] Id. at 921.

[76] Id.

In *Garcia v. Mojica*,[77] the Court held that the rationale of the condonation doctrine is that "when the electorate put [the re-elected official] back into 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 reelects him, then such reelection is considered a condonation of his past misdeeds."[78]

In *Salumbides*,[79] the Court ruled:

> More than 60 years ago, the Court in *Pascual v. Hon. Provincial Board of Nueva Ecija* issued the landmark ruling that prohibits the disciplining of an elective official for a wrongful act committed during his immediately preceding term of office. The Court explained that "[t]he underlying theory is that each term is separate from other terms, and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor."
>
> > The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people elect[e]d a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct[,] to practically overrule the will of the people.[80] (Underscoring in the original; citations omitted)

And in *Garcia, Jr. v. Court of Appeals*,[81] the Court remarked that it would have been prudent for the appellate court therein to have issued a TRO against the implementation of the preventive suspension order issued by the OMB in view of the condonation doctrine as "the suspension from office of an elective official,

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[77] 372 Phil. 892 (1999).

[78] Id. at 911-912.

[79] Supra note 57.

[80] Id. at 33.

[81] 604 Phil. 677 (2009).

whether as a preventive measure or as a penalty, will undeservedly deprive the electorate of the services of the person they have conscientiously chosen and voted into office."[82]

In view, therefore, of the paramount importance of the electorate's right to elect and of their willpower to forgive one's misconduct in the application of the doctrine of condonation, it is only fitting that the term "re-election," as referred to and contemplated in the aforesaid doctrine, should *not* be interpreted in its restrictive sense. Rather, the same must be given its ordinary and generic meaning of a public official having been elected again in a process where the electorate cast their votes in his or her favor during any elections. Corollarily, when the rationale of the doctrine mentioned of "commission of the act in the prior term," the same should mean to include "previous acts prior to the re-election" so as not to restrict the meaning of re-election to the extent of defeating or disenfranchising the right of the electorate to elect their officers and their sovereign will to forgive the latter's misconduct. Such approach would give life and meaning to, instead of rendering worthless and of no purpose, the declared rationale behind the doctrine of condonation on the protection of and respect for the sovereign will of the electorate to elect officers and to forgive the previous misconduct of their elected public servants. Only then could we give real sense of the term "condonation" which is defined as "a victim's express or implied forgiveness of an offense, [especially] by treating the offender as if there had been no offense."[83]

The foregoing considered, the doctrine of condonation, then, is applicable through a recall election.

In *Garcia v. Commission on Elections*,[84] recall was defined as a mode of removal of a public officer by the people before the end of his term of office. The people's prerogative to remove

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[82] Id. at 692.

[83] *Carpio Morales*, supra note 44, at 754, citing Black's Law Dictionary, 8th Ed., p. 315.

[84] 297 Phil. 1034 (1993).

a public officer is an incident of their sovereign power and in the absence of constitutional restraint, the power is implied in all government operations.[85]

While recall election is defined as a mode of removal, the same could also operate as a re-election of the concerned incumbent public official since it resorts to the *democratic process of election* to achieve its end where the official sought to be recalled shall automatically be considered as duly registered candidate to the pertinent position and, like other candidates, shall be entitled to be voted upon.[86] More importantly, like in regular elections, the electorate in a recall election cast their votes to elect among the candidates who shall serve or continue to serve them.

At this point, it might not be amiss to stress that the same considerations behind the doctrine of condonation exist in recall elections.

In recall elections, the electorate can simply cut short the term of an incumbent official by not voting for him and entrusting the reins of government to another candidate. If the incumbent, however, "receive[s] the highest number of votes, confidence in him is thereby affirmed, and he shall continue in office."[87] It is the outcome of the election that ultimately determines the reaffirmation of the people's faith in him or, otherwise, their expression of displeasure over his administration. In any case, the electorate's participation in recall elections underscores an exercise of their right to elect officers to serve them — a right, which under the doctrine of condonation, may not be disenfranchised by the courts. Likewise, the result of this exercise is presumed to be with the electorate's full awareness of the allegations of misconduct against the local official. By re-electing a public official, however, his constituents are deemed to have pardoned his alleged previous misconduct. When an incumbent

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[85] Id. at 1048.

[86] Section 71, Republic Act No. 7160.

[87] Section 72, id.

public official wins in a recall election, the only telling conclusion is that the people had foregone of their prerogative to proceed against the erring public official, and decided to look past the misconduct and reinstate their trust and confidence in him. This blurs the line of distinction between a regular and recall election in terms of the applicability of the condonation doctrine. Certainly, the will of the electorate to forgive or condone the incumbent of his act or omission constituting a ground for administrative discipline and the reaffirmation of the People's faith in him is well within the contemplation of the condonation doctrine.

Moreover, in the same way that, in construing a statute, the spirit of the law should never be divorced from its letter, a doctrine should always be interpreted according to its essence or philosophy that accompanied its adoption. In *Cometa v. Court of Appeals*,[88] the Court reiterated that:

> *[T]he spirit rather than the letter of the statute determines its construction, hence, a statute must be read according to its spirit or intent. For what is within the spirit is within the statute although it is not within the letter thereof, and that which is within the letter but not within the spirit is not within the statute.*[89] (Italics in the original)

Thus, a doctrine should be deemed to embrace instances that uphold the same philosophy. A recall elections presupposes the same collective resolution of the constituents to condone the alleged misconduct. This is no different from re-election by regular election. The idea is that "when the people elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any."[90] This is in deference to the superiority of the collective will of the People. Accordingly, there is no persuasive reason to distinguish between re-election by regular or recall elections

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[88] 404 Phil. 107 (2001).

[89] Id. at 117.

[90] *Pascual*, supra note 51, at 472.

when applying the condonation doctrine since the controlling elements, *i.e.*, the expression of the sovereign will of the people to elect their officer and to forgive a previous misconduct, are present in both cases. To say that condonation doctrine does not apply in recall elections when the compelling reasons and clear purpose of said doctrine are present therein would be a clear case of absurdity, and would tantamount to injustice to the electorate and to the public official concerned, in the context of applying the doctrine of condonation at the time when the same was not yet abandoned and still considered a good law.

IV

In view of the foregoing disquisitions, the Court rules that the doctrine of condonation is applicable to the case of Lucilo by reason of his re-election, as the term is understood in the application of the doctrine, during the recall election on 8 May 2015. It is undisputed that Lucilo's re-election took place prior to the finality of *Carpio Morales*, which abandoned the condonation doctrine, on 12 April 2016. Considering that the doctrine of condonation is still a good law at the time of his re-election in 2015, Lucilo can certainly use and rely on the said doctrine as a defense against the charges for prior administrative misconduct on the rationale that his re-election effectively obliterates all of his prior administrative misconduct, if any at all. Further, with his re-election on 8 May 2015, Lucilo already had the vested right, by reason of the doctrine of condonation, not to be removed from his office, which may not be deprived from him or be impaired by the subsequent abandonment in *Carpio Morales* of the aforesaid doctrine, or by any new law, doctrine or Court ruling. Accordingly, his re-election on 8 May 2015 rendered moot and academic the administrative complaint filed against him on 22 November 2013 for misconduct allegedly committed on 1 July 2013, hence, must be dismissed.

The doctrine of condonation, however, cannot be extended to Lucilo's re-election during the May 2016 elections. By then, the doctrine had already been abandoned, and his re-election no longer had the effect of condoning his previous misconduct.

Finally, with the dismissal of the administrative complaint against Lucilo, the Court deems it unnecessary to pass upon the issue on whether the OMB has correctly found him liable for Serious Dishonesty and Grave Misconduct.

WHEREFORE, premises considered, the instant consolidated petitions are hereby **DENIED**. The Decision dated 8 August 2017 and the Resolution dated 25 January 2018 of the Court of Appeals in CA-G.R. SP No. 149375 are **AFFIRMED**.

SO ORDERED.

Peralta, C.J., Gesmundo, Hernando, Carandang, Inting, Zalameda, Lopez, Gaerlan, and *Rosario, JJ.*, concur.

Caguioa, J., see concurring opinion.

Perlas-Bernabe, J., see concurring and dissenting opinion.

Leonen, J., dissents, see separate dissenting opinion.

Lazaro-Javier, J., no part.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur.

I share the *ponente*'s view that respondent Lucilo R. Bayron (Mayor Bayron) may still invoke the condonation doctrine as a defense in the administrative complaint subject of these consolidated petitions for review.

My concurrence is based on the following reasons: *first*, the condonation doctrine extends to re-election through both regular and recall elections; and *second*, the condonation doctrine can be invoked as a defense if the misconduct and subsequent re-election occurred prior to April 12, 2016, or the finality of the

Court's decision in *Carpio Morales v. Court of Appeals*[1] *(Carpio Morales)*.

The condonation doctrine applies to re-election through recall.

The condonation doctrine was incorporated into our body of jurisprudence in 1959, through the Court's ruling in *Pascual v. Honorable Provincial Board of Nueva Ecija*[2] *(Pascual)*. There, the Court held that "[t]he weight of authority [in American jurisprudence] x x x seems to incline to the rule denying the right to remove one from office because of misconduct during a prior term."[3]

Based on the language of the Court in *Pascual*, my esteemed colleague Justice Bernabe opines that the version of the condonation doctrine adopted in this jurisdiction envisions an election at the end of a term (*i.e.*, general election) and not an election within a term in office (*i.e.*, recall election) since a recall election is a method of removing a local official from office before the expiration of said official's original term due to loss of confidence. Hence, the condonation doctrine cannot be applied in the context of a recall election where there is no "prior term" to speak of.[4]

With utmost respect, I am constrained to disagree.

The system of recall of local elective officials was introduced in this jurisdiction through Presidential Decree No. 1577[5] issued on June 11, 1978, nearly two decades after *Pascual*. Thus, when the Court spoke of re-election in *Pascual*, it referred to re-election held at the end of an official's original elective term

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[1] 772 Phil. 672 (2015).

[2] 106 Phil. 466 (1959).

[3] Id. at 471.

[4] See Concurring and Dissenting Opinion of J. Bernabe, p. 9.

[5] PRESCRIBING THE MANNER OF CALLING A PLEBISCITE OR A REFERENDUM AND THE MANNER OF RECALL OF LOCAL ELECTIVE OFFICIALS, June 11, 1978.

simply by default, since there was no other method of re-election existing at the time.

In my view, this should not preclude the application of the condonation doctrine in cases of re-election through recall, since a contrary ruling effectively defeats the rationale of the condonation doctrine as declared in *Pascual* — to uphold the people's right to elect their officers. Thus:

> **The underlying theory is that each term is separate from other terms, and that the [re-election] to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor** x x x. As hell in *Conant vs. Brogan* x x x —
>
> > "The Court should never remove a public officer for acts done prior to his present term of office. **To do otherwise would be to deprive the people of their right to elect their officers.** When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. **It is not for the court, by reason of such faults or misconduct to practically overrule the will of the people**."[6] (Emphasis and underscoring supplied)

The operation of the condonation doctrine is triggered by the concerned officer's re-election, since re-election serves as the manifestation of the electorate's desire to condone the officer's previous acts of misconduct.

On this score, I submit that re-election through recall and regular elections should be treated similarly, since both have the effect of affirming the electorate's trust and confidence in the incumbent. This is confirmed by Section 72 of the Local Government, which states:

SECTION 72. *Effectivity of Recall*.— The recall of an elective local official shall be effective only upon the election and proclamation

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[6] *Pascual v. Honorable Provincial Board of Nueva Ecija*, supra note 2, at 471-472.

of a successor in the person of the candidate receiving the highest number of votes cast during the election on recall. **Should the official sought to be recalled receive the highest number of votes, confidence in him is thereby affirmed, and he shall continue in office.** (Emphasis supplied)

Hence, I submit that the scope of the condonation doctrine extends to both regular and recall elections.

Notwithstanding its abandonment in Carpio-Morales, the condonation doctrine may still be invoked if the misconduct and subsequent re-election occurred prior to April 12, 2016.

As the electorate's desire to condone past misconduct is manifested through the erring officer's re-election, the defense of condonation attaches only at the point of re-election, and not anytime sooner. Thus, to invoke the condonation doctrine, the concerned officer must establish that both the misconduct *and* re-election occurred prior to April 12, 2016, or the finality of the Court's decision in *Carpio Morales*.

Here, Mayor Bayron first assumed office as city mayor on June 30, 2013.[7] The assailed act was committed on July 1, 2013.[8]

On November 22, 2013, Aldrin Madreo (Madreo) filed his Complaint-Affidavit (Complaint) with the Office of the Ombudsman.[9] In response, Mayor Bayron filed his Consolidated Counter-Affidavit, praying for the outright dismissal of Madreo's Complaint.[10]

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[7] *Ponencia*, p. 2.

[8] Id.

[9] Id.

[10] The grounds relied upon in Mayor Bayron's Consolidated Counter-Affidavit are summarized by the *ponencia*, as follows: "(1) failure to comply with Administrative Order No. 07, as amended, which requires that a criminal and/or administrative complaint should be under oath; (2) lack of jurisdiction of the OMB since administrative complaints against local elective officials

On May 8, 2015, a recall election was held where Mayor Bayron won with a margin of 5,297 votes. **Thus, on June 22, 2015, Mayor Bayron filed a Motion to Dismiss, arguing that his re-election by way of recall operates as a condonation of the misconduct he allegedly committed in 2013.**[11]

Based on these established facts, the defense of condonation attached on May 8, 2015, when Mayor Bayron won in the recall elections. Clearly, Mayor Bayron may still invoke the doctrine to evade administrative liability in this case.

Proceeding from the foregoing, I vote to **DENY** the consolidated petitions for review.

CONCURRING AND DISSENTING OPINION

PERLAS-BERNABE, *J.*:

[W]hile the future may ultimately uncover a doctrine's error, it should be, as a general rule, recognized as "good law" prior to its abandonment. ***Consequently, the people's reliance thereupon should be respected****.*

> — excerpt from *Carpio Morales v. Court of Appeals*[1] explaining why the condonation's abandonment should be prospective.

While I agree with the *Ponencia*[2] that re-election is the determinative point to reckon condonation, which thus allows elective officials to still invoke the condonation doctrine for as long as they have been re-elected before its abandonment

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should be filed before the Office of the President; and (3) Madreo's lack of personal interest in the subject matter of the complaint as he was not a resident nor a taxpayer of Puerto Princesa City." See *Ponencia*, p. 3.

[11] See *Ponencia*, pp. 3-4.

[1] 772 Phil. 672, 775 (2015); emphasis supplied.

[2] *Ponencia*, pp. 11-12.

on April 12, 2016, **I dissent insofar as it extends the exculpatory effects of said doctrine to recall elections.**[3]

By creating jurisprudence that, for the first time, stretches the scope of the condonation doctrine to recall elections, the *ponencia* glosses over **the restrictive context in which said doctrine should be applied post-abandonment**. It should be remembered that condonation is a legally baseless, unconstitutional, and hence, void doctrine; nonetheless, it is still given limited recognition today if only to fairly account for the people's previous reliance thereupon at the time it was still subsisting. Therefore, **when applying condonation post-abandonment, the doctrine must be strictly limited and construed so that its present application does not go beyond what was previously relied upon by the public.**

As will be herein discussed, the condonation doctrine was *not only applied but was also intended to apply* to regular elections only. In contrast, **condonation was never applied to recall elections, whose concept and purpose are substantially different from regular elections**. Accordingly, those who won in a recall election had no right to rely on the condonation doctrine as a means to exculpate their previous administrative liability. Neither was the voting public ever led to believe that a recall election may completely exonerate an official's previous administrative liability. Thus, I disagree with the *ponencia*'s contrary position in this case.

I.

Understanding the limited and strict approach to applying condonation post-abandonment must fittingly begin with a recollection of why condonation was abandoned in the first place.

The condonation doctrine had previously gained notoriety as a legal vehicle for elective officials to escape public accountability by merely asserting the fact of their re-election. As it had been

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[3] Id. at 13, 17-19.

applied, the condonation doctrine completely cut off the Ombudsman's authority to determine the administrative liability of elective officials for infractions committed during a prior term, since ultimately, condonation through re-election rendered such issue moot and academic.

Tracing its doctrinal roots, the condonation doctrine was a purely jurisprudential creation introduced in the Philippines in the 1959 case of *Pascual v. Hon. Provincial Board of Nueva Ecija (Pascual)*.[4] Its effect was to foreclose the removal of an elective official due to an administrative infraction once he is re-elected after his term of office. Notably, *Pascual* was decided under the 1935 Constitution, whose dated provisions do not reflect the experience of the Filipino People under the 1973 and 1987 Constitutions.[5] Eventually, to instill public accountability in the government because of the past experiences of political abuse, an independent Ombudsman was created under the 1987 Constitution. This was further strengthened under Republic Act No. 7660[6] by giving the Ombudsman disciplinary authority over all elective officials, including those in the local government.

Despite these attempts to strengthen the Ombudsman as an institution, the condonation doctrine in our jurisprudence gravely weakened the Ombudsman's authority to discipline elective officials. **The sheer impact of the condonation doctrine on public accountability necessitated *Pascual's* judicious re-examination.**[7] This was the setting when the Court, in the pivotal case of *Carpio Morales v. Court of Appeals (Carpio Morales)*,[8]

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[4] 106 Phil. 466 (1959).

[5] *Carpio Morales v. Court of Appeals*, supra note 1.

[6] 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" approved on November 17, 1989.

[7] *Carpio Morales v. Court of Appeals*, supra note 1, at 760.

[8] Id.

categorically declared the **abandonment** of the condonation doctrine not only for **lacking constitutional and statutory basis** but also for being rendered obsolete **by the public accountability standard under the prevailing framework of the 1987 Constitution**.

However, the Court remained cognizant that its decisions, until reversed, are considered part of the law of the land, which people were bound to abide and hence, had a **right to rely** upon in good faith; thus, in *Carpio Morales*, the Court qualified that the **condonation doctrine's abandonment is only prospective in effect**.[9] The prospective abandonment of the condonation doctrine, despite its utter baselessness and unconstitutionality, was borne from fairness and practical considerations only; since the Court itself had led people to believe that an official's previous administrative liability could be condoned by voting for the same official to serve a new term of office, it could not simply undo the consequences of such reliance in the interim.

Notably, in *Crebello v. Office of the Ombudsman*,[10] the Court clarified that the prospective abandonment of condonation should be reckoned from April 12, 2016 when *Carpio Morales*'s ruling attained finality.[11] Hence, the limited application of condonation today subsists only to re-elections conducted prior to the April 12, 2016 cut-off date.

This case, however, presents a novel legal nuance to the application of the condonation doctrine which was never before encountered by the Court in any of its past cases. For the first time, the Court is currently confronted with the issue of whether or not it can apply condonation to recall elections, as opposed to its previous application only in regular election cases. Since condonation applies today only because of previous public reliance, this Court must necessarily determine *whether or not*

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[9] Id. at 775.

[10] See G.R. No. 232325, April 10, 2019.

[11] See id.

the public was led to believe by the Court that voting in favor of an official subjected to recall would result in the complete exoneration of his previous administrative liability. As will be herein discussed, I submit that no such reliance existed. The Court had applied the effects of condonation only by and through regular elections which, in contrast to a recall, ushers in a new term of office.

II.

Previous public reliance on condonation necessitates an examination of the doctrine's actual scope as envisioned in the Court's past precedents.

Prefatorily, a circumspect reading of *Carpio Morales* will show that: (1) condonation is not an original legal concept in our jurisdiction; and (2) there are various versions of condonation in the United States of America (US)." In fact, as pointed out during the oral arguments [in *Carpio Morales*], at least seventeen (17) states in the US have abandoned the condonation doctrine. The Ombudsman [in said case] aptly cite[d] several rulings of various US State courts, as well as literature published on the matter, to demonstrate the fact that **the doctrine is not uniformly applied across all state jurisdictions**."[12] Thus, as the Court, in *Carpio Morales*, observed, "**[i]ndeed, the treatment is nuanced**,"[13] *viz.*:

> **(1)** For one, it has been widely recognized that the propriety of removing a public officer from his current term or office for misconduct which he allegedly committed in a prior term of office is governed by the language of the statute or constitutional provision applicable to the facts of a particular case (see *In Re Removal of Member of Council Coppola*). As an example, a Texas statute, on the one hand, expressly allows removal only for an act committed during a present term: "no officer shall be prosecuted or removed from office for any act he may have committed prior to his election to office" (see *State ex rel. Rawlings v. Loomis*). On the other hand, the Supreme Court

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[12] See *Carpio Morales*, supra note 1, at 756; emphasis supplied.

[13] Id., emphasis supplied.

of Oklahoma allows removal from office for "acts of commission, omission, or neglect committed, done or omitted during a previous or preceding term of office" (see *State v. Bailey*). Meanwhile, in some states where the removal statute is silent or unclear, the case's resolution was contingent upon the interpretation of the phrase "in office." On one end, the Supreme Court of Ohio strictly construed a removal statute containing the phrase "misfeasance of malfeasance in office" and thereby declared that, in the absence of clear legislative language making, the word "office" must be limited to the single term during which the offense charged against the public officer occurred (see *State ex rel. Stokes v. Probate Court of Cuyahoga County*). Similarly, the Common Pleas Court of Allegheny County, Pennsylvania decided that the phrase "in office" in its state constitution was a time limitation with regard to the grounds of removal, so that an officer could not be removed for misbehavior which occurred prior to the taking of the office (*see Commonwealth v. Rudman*). The opposite was construed in the Supreme Court of Louisiana which took the view that an officer's inability to hold an office resulted from the commission of certain offenses, and at once rendered him unfit to continue in office, adding the fact that the officer had been re-elected did not condone or purge the offense (see *State ex rel. Billon v. Bourgeois*). Also, in the Supreme Court of New York, Appellate Division, Fourth Department, the court construed the words "in office" to refer not to a particular term of office but to an entire tenure; it stated that the whole purpose of the legislature in enacting the statute in question child easily be lost sight of, and the intent of the law-making body be thwarted, if an unworthy official could not be removed during one term for misconduct for a previous one (*Newman v. Strobel*).

(2) For another, condonation depended on whether or not the public officer was a successor in the same office for which he has been administratively charged. The "own-successor theory," which is recognized in numerous States as an exception to condonation doctrine, is premised on the idea that each term of a re-elected incumbent is not taken as separate and distinct, but rather, regarded as one continuous term of office. Thus, infractions committed in a previous term are grounds for removal because a re-elected incumbent has no prior term to speak of (see *Attorney-General v. Tufts*; *State v. Welsh*; *Hawkins v. Common Council of Grand Rapids*; *Territory v. Sanchez*; and *Tibbs v. City of Atlanta*).

(3) Furthermore, some State courts took into consideration the continuing nature of an offense in cases where the condonation doctrine was invoked. In *State ex rel. Douglas v. Megaarden*, the public officer charged with malversation of public funds was denied the defense of condonation by the Supreme Court of Minnesota, observing that "the large sums of money illegally collected during the previous years are still retained by him." In *State ex rel. Beck v. Harvey*, the Supreme Court of Kansas ruled that "there is no necessity" of applying the condonation doctrine since "the misconduct continued in the present term of office[;] [thus] there was a duty upon defendant to restore this money on demand of the county commissioners." Moreover, in *State ex rel. Londerholm v. Schroeder*, the Supreme Court of Kansas held that "insofar as non-delivery and excessive prices are concerned, ...there remains a continuing duty on the part of the defendant to make restitution to the country ..., this duty extends into the present term, and neglect to discharge it constitutes misconduct."[14]

While there were different variants of the condonation doctrine as may be gleaned from American cases,[15] the version adopted in our jurisprudence was the **prior-term variant**.[16] This iteration proceeds from the "underlying theory x x x that **each term is separate from other terms**";[17] hence, as only regular elections could contemplate the existence of separate terms, condonation has been applied to regular elections only.

The factoring-in of prior and new terms in effecting condonation is not merely trivial or inconsequential but is, in fact, substantive and deliberate. This is demonstrated by the Court's discussion in the case of *Pascual*, where the condonation

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[14] Id. at 756-759, citations omitted.

[15] See id.

[16] The variant adopted in *Pascual* contained three (3) interrelated parts: (1) "the penalty of removal may not be extended **beyond the term [for] which the public officer was elected, [as] each term is separate and distinct**"; (2) "an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor"; and (3) "courts may not deprive the electorate, who are assumed to have known of the life and character of candidates, of their right to elect officers." (See id.; emphasis and underscoring supplied.)

[17] See id. at 760-761; emphasis supplied.

doctrine in the Philippines finds genesis. As pointed out in *Carpio Morales*, *Pascual*'s *ratio decidendi*, which embodies the reasons behind adopting condonation, has three (3) parts, the first part of which pertains to the concept of separateness and distinctiveness of terms, to wit:

> ***First***, the penalty of removal may not be extended beyond the term [for] which the public officer was elected, [as] each term is separate and distinct:
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> **Offenses committed, or acts done, during previous term are generally held not to furnish cause for removal** and this is especially true where the constitution provides that the penalty in proceedings for removal shall **not extend beyond the removal from office, and disqualification from holding office for the term for which the officer was elected or appointed**. (67 C.J.S., p. 248, citing *Rice vs. State*, 161 S.W. 2d. 401; *Montgomery vs. Nowell*, 40 S.W. 2d. 418; *People ex rel. Bagshaw vs. Thompson*, 130 P. 2d. 237; *Board of Com'rs of Kingfisher County vs. Shutler*, 281 P. 222; *State vs. Blake*, 280 P. 388; *In re Fudula*,147 A. 67; *State vs. Ward*, 43 S.W. 2d. 217).
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> The underlying theory is that **each term is separate from other terms** x x x.
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> ***Second***, an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor; and
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> [T]hat the **reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor**. (43 Am. Jur., p. 45, citing *Atty. Gen. vs. Hasty*,184 Ala. 121, 63 So. 559, 50 L.R.A. (NS) 553. x x x.
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> ***Third***, courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers[.][18] (Emphases and underscoring in the original)

However, the *ponencia* conveniently ignores *Pascual*'s first consideration, and instead, confines condonation to the second and third considerations as above-quoted.[19] Thus, with its

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[18] Id.

[19] *Ponencia*, pp. 16-19.

disregard of the first consideration in *Pascual*, the *ponencia* removes the substantive barrier of applying condonation to recall elections and extends its scope thereto accordingly.

To my mind, this the Court cannot do in novel jurisprudence. **Not only will this course of action amount to a substantive modification of the condonation doctrine, this will also defy the public reliance rationale behind the condonation's prospective abandonment.** *Condonation has always been pronounced and hence, relied upon by the public relative to regular elections and its effect of ushering new terms that are separate and distinct.* As stated in *Carpio Morales*:

> With respect to its applicability to administrative cases, **the core premise of condonation** — that is, **an elective official's re-election cuts off the right to remove him for an administrative offense committed during a prior term** — was adopted hook, line, and sinker in our jurisprudence largely because the legality of that doctrine was never tested against existing legal norms.[20] (Emphases and underscoring supplied)

Further, in *Salalima v. Guingona, Jr.*,[21] the Court explained that the condonation doctrine prevented the danger of having an elective official devote the entire **subsequent or** "**second term**" "to defend x x x himself" "for acts alleged to have been committed during his **previous term**." Practically speaking, condonation prevented the official from being "hounded" by administrative cases filed by his "political enemies" during a new term, for which he has to defend himself "to the detriment of public service."[22]

In this regard, it is therefore no coincidence that, based on existing Philippine cases, the condonation doctrine has been applied only in the context of a regular election wherein the winning candidate serves a separate term of office. Conversely,

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[20] See supra note 1, at 764-765.

[21] 326 Phil. 847, 921 (1996).

[22] See *Carpio Morales*, supra note 1, at 762-763.

it was never applied in a situation involving a recall election where there is no new term of office.

On this score, it is immaterial that recall elections were formally established only during the passage of the Local Government Code (LGC) of 1991,[23] and hence, was not existing back when condonation was conceived in the *Pascual* case. The reasons for this immateriality are as follows:

First, it should be observed that jurisprudence is replete with condonation doctrine cases post-enactment of the LGC[24] including the famed *Aguinaldo v. Santos*[25] case. As such, it was not legally impossible for the Court to adjudicate on the inclusion of recall as a variant of condonation and make it part of our jurisprudence. In fact, the non-existence of a condonation-recall case — spanning the entire twenty-five (25)-year period, more or less, from the enactment of the LGC up until the condonation's abandonment in 2016 — is evidence to show that indeed, the public never relied on recall as a form of condoning administrative liability.

Second, and more importantly, the abandonment of condonation as an unconstitutional and legally baseless doctrine bars its further expansion to a novel application that was never relied upon by the public. At the risk of belaboring the point, the application of condonation post-abandonment is circumscribed by the public reliance element. Since the public was never led by the Court to believe that administrative liability can be condoned through a recall election, there is no right to invoke condonation as a defense in this novel sense.

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[23] See Associate Justice Alfredo Benjamin S. Caguioa's Concurring Opinion, pp. 2-3.

[24] See *Salalima v. Guingona, Jr.*, supra note 21, *Garcia v. Mojica*, 372 Phil. 892 (1999), *Civil Service Commission v. Sojor*, 577 Phil. 52 (2008), *Valencia v. Sandiganbayan*, 477 Phil. 103 (2004).

[25] G.R. No. 94115, August 21, 1992, 212 SCRA 768.

III.

In any event, contrary to the *ponencia*'s stance,[26] the "*same considerations*" behind the condonation doctrine being applied to a regular election do **not** exist in a recall election. Arguing for the inclusion of recall elections within the scope of condonation, the *ponencia* posits that: "once reelected, the public official already had the *vested right* not to be removed from office by reason of the condonation doctrine, which cannot be divested or impaired by a new law or a new doctrine without violating the Constitution."[27]

I disagree.

Historically, the recall mechanism was introduced in our legal system as an ***additional layer of exacting public accountability*** in the local government level. Its creation in the LGC[28] hearkens back to the need to provide a "responsive and **accountable local government structure**."[29] Section 3, Article X of the 1987 Constitution even mentions "recall" as distinct from "election." To my mind, it would be illogical if such innovation meant to advance public accountability will be used as a means to breathe new life to the unconstitutional condonation doctrine, which was already abandoned in *Carpio Morales*.

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[26] *Ponencia*, p. 17.

[27] Id. at 11.

[28] Republic Act No. 7160 entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991," otherwise known as the "LOCAL GOVERNMENT CODE OF 1991" (January 1, 1992).

[29] See Section 2, Chapter I, Title I, Book 1, Republic Act No. 7160; emphasis and underscoring supplied.

Section 2, Article XI of the 1973 Constitution states:

Section 2. The *Batasang Pambansa* shall enact a local government code which may not thereafter be amended except by a majority vote of all its Members, defining a more responsive and ***accountable*** local government structure **with an effective system of recall**, allocating among the different local government units their powers, responsibilities, and resources, and providing for the qualifications, **election** and removal x x x." (Emphases and underscoring supplied)

Moreover, by its nature, recall is a scrutiny on an incumbent official's fitness to **continue in office**.[30] Essentially, it is a check on the official's capability to continue leading his constituents for the same term in which he is originally elected. On the other hand, in a regular election, the voting public is given a slew of candidates to choose from, the purpose of which is not to administratively check an official already voted in, but rather, to purely express their sovereign mandate by deciding who will govern them for a new term of office. In this regard, **a recall election is therefore not the true expression of democratic will contemplated by the condonation doctrine**. In fact, as the Ombudsman expresses, the conduct of recall and regular elections is logistically different: as in this case, the recall is an isolated event which was conducted during a working day,[31] whereas a regular election is a traditionally expected and highly-anticipated event that is conducted on a non-working holiday, hence, allowing the voting public to fully participate.

Furthermore, to construe that recall may produce the same effects of a regular election in terms of condonation would practically allow the candidate, whose integrity to lead is being questioned, to benefit from his own questionable conduct or circumstance that subjected him to the recall process in the first place. Likewise, an official who is subjected to recall would actually be placed in a better position than one who is not because

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Section 3, Article X of the 1987 Constitution states:

Section 3. The Congress shall enact a local government code which shall provide for a more responsive and ***accountable*** local government structure instituted through a system of *decentralization* with **effective mechanisms of recall**, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal. x x x" (Emphases and underscoring supplied)

[30] While the petition for recall has to briefly indicate the "reasons and justifications" for the loss of confidence (see Section 70 of the Local Government Code), these do not necessarily relate to any administrative infraction subject to the discipline authority of the Ombudsman.

[31] *Rollo* (G.R. No. 237579), p. 732.

the former can be completely exonerated from any administrative liability by gaining enough votes to hurdle a recall challenge. In my opinion, the Court, even in the past, could not have intended this unfairness.

At this juncture, it must be reiterated that an important consideration underlying the condonation doctrine is the policy to afford the public official a full term to serve his constituents without being hounded "during his new term" with administrative cases for acts committed "during his previous term."[32] Clearly, this consideration does not apply in a recall election but only in a regular election where a winning candidate is given a full term of office. In contrast, **recall** is a mode of removal of elective local official by the people **before the end of one's term**.[33] The election happens **within a term**, and is conducted primarily to oust an incumbent; **there is no "prior term" to speak of** and the winning candidate therein serves only the unexpired portion of the present term. Hence, it **varies from the concept of re-election** as used in the context of the condonation doctrine. If anything, applying the condonation doctrine in a recall election only confers an unwarranted benefit to a local elective official whose original term of office should not have been even tainted by the recall process.

IV.

Applying the foregoing discussion in this case, it is therefore my view that the successful bid of then City Mayor Lucilo R. Bayron (Lucilo) in the 2015 recall election did not constitute as a condonation of his previous administrative misconduct. He had **no right to rely on the condonation doctrine** because in no instance did the Court pronounce, in any of its previous decisions, that winning a recall election amounts to condonation. The version of condonation doctrine that existed in our legal system never encompassed a recall election and Lucilo had no

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[32] See *Salalima v. Guingona, Jr.*, supra note 21.

[33] See *Garcia v. Commission on Elections*, G.R. No. 111511, October 5, 1993, 227 SCRA 100 (1993).

right to rely upon such doctrine, or assume that such doctrine applies to him. Hence, without any reliance therefor, he cannot invoke condonation as a defense to escape administrative liability.

Having stated that condonation does not apply to Lucilo's case, his administrative liability must now be determined.

To recapitulate, Lucilo and his son, Karl Bayron (Karl), were charged before the Ombudsman for executing a Contract of Services[34] with this provision: "the *SECOND PARTY hereby attests that: a. He/she is not related within the fourth degree of consanguinity/affinity with the Hiring Authority*."[35] In a Decision[36] dated November 18, 2016, the Ombudsman initially found Lucilo and Karl liable for Serious Dishonesty and Grave Misconduct, particularly for making an untruthful statement in the contract. Upon Lucilo and Karl's motion for reconsideration,[37] the Ombudsman issued **Joint Order**[38] **dated March 20, 2017 wherein the Ombudsman reduced their liability to Simple Dishonesty**.[39] However, in an Order[40] dated July 6, 2017, the Ombudsman overturned the latter ruling "insofar as it affects [Lucilo],"[41] explaining that it "had lost jurisdiction over the administrative case as against [L]ucilo upon the abandonment of his motion for reconsideration before the Ombudsman and the perfection on 2 February 2017 of his appeal with the Court of Appeals,"[42] both of which occurred before

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[34] *Rollo* (G.R. No. 237579), pp. 141-142.

[35] Id. at 141.

[36] *Rollo* (G.R. No. 237330), pp. 32-42 and *rollo* (G.R. No. 237579), pp. 92-102.

[37] Dated February 1, 2017. *Rollo* (G.R. No. 237579), pp. 188-203. See also *rollo* (G.R. No. 237330), p. 147 and *rollo* (G.R. No. 237579), p. 103.

[38] *Rollo* (G.R. No. 237330), pp. 147-158 and *rollo* (G.R. No. 237579), pp. 103-114.

[39] *Rollo* (G.R. No. 237330), p. 156 and *rollo* (G.R. No. 237579), p. 112.

[40] *Rollo* (G.R. No. 237330), pp. 168-178 and *rollo* (G.R. No. 237579), pp. 115-125.

[41] *Rollo* (G.R. No. 237330), p. 177 and *rollo* (G.R. No. 237579), p. 124.

[42] *Rollo* (G.R. No. 237330), p. 173 and *rollo* (G.R. No. 237579), p. 120.

the issuance of the Joint Order. Thereafter, the Court of Appeals no longer ruled on Lucilo's administrative liability believing that the latter's victory during the 2015 recall elections amounted to condonation.

Petitioners Ombudsman and Aldrin Madreo (petitioners) now come before the Court praying to declare the condonation doctrine inapplicable to Lucilo and to reinstate the Ombudsman's *initial ruling* (pronouncing Serious Dishonesty and Grave Misconduct) with respect to Lucilo's liability.

As exhaustively discussed above, the condonation doctrine is not available to Lucilo as a defense. This notwithstanding, petitioners' prayer to reinstate the Ombudsman's initial ruling finding Lucilo liable for Serious Dishonesty and Grave Misconduct should still not be granted.

Dishonesty has been defined as the "disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straight forwardness; disposition to defraud, deceive or betray."[43] Notably, in the Ombudsman's Joint Order wherein it lowered Lucilo's liability to **Simple Dishonesty**, it gave credence to Lucilo and Karl's explanations that: *(i)* there was no reason to conceal their relationship which was of common knowledge to the constituents of Puerto Princesa; *(ii)* the contract was prepared by the Office of the City Legal Officer on whom they relied in good faith to ensure that it did not bear any infirmity; and *(iii)* they signed the contract with the defective attestation

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[43] Dishonesty covers a broad spectrum of conduct ranging from serious, less serious, to simple. Criteria has been set to determine the severity of the act. The act is considered one of simple dishonesty if when it is attended by the presence of any of the following circumstances: (1) the dishonest act did not cause damage or prejudice to the government; (2) the dishonest act had no direct relation to or does not involve the duties and responsibilities of the respondent; (3) in falsification of any official document, where the information falsified is not related to his/her employment; (4) the dishonest act did not result in any gain or benefit to the offender; and (5) other analogous circumstances. (See Civil Service Commission Resolution No. 06-0538 and *Committee on Security and Safety v. Dianco*,760 Phil. 169, 188-190 [2015]).

only by sheer inadvertence. I echo the Ombudsman's finding therein that Lucilo should only be held liable for Simple Dishonesty, to wit:

> These explanations, to note, were likewise pleaded by respondent Lucilo in his previous pleadings. **The totality of these circumstances provides a basis to set aside the finding of Serious Dishonesty but does not totally absolve respondents Karl and Lucilo of administrative liability[,] considering that they, in fact, made a misrepresentation in the Contract of Service, for which they are found guilty only of Simple Dishonesty.**
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> x x x x
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> [Moreover,] the prohibition on persons covered under the rules on nepotism from being hired under a contract of services has been abandoned and the submission of the contract to the [Civil Service Commission] is no longer required. Such repeal leaves no more ground on which the charge of [falsification] can rest. It likewise renders the administrative charge for Gross Misconduct with no more leg to stand on.[44] (Emphasis and underscoring supplied)

On this score, I agree with the Ombudsman that Lucilo should be found liable only for Simple Dishonesty, for which a penalty of suspension without pay for three (3) months may be imposed.[45] Considering, however, that based on Section 66 (b) of the Local Government Code,[46] the penalty of suspension can no longer be imposed on Lucilo beyond his term in office, he may be imposed the penalty of fine in lieu of suspension[47] in the amount

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[44] *Rollo* (G.R. No. 237330), pp. 69-72.

[45] Rule 10, Section 46 (E) of the Revised Rules on Administrative Cases in the Civil Service (November 18, 2011) (RRACCS) states that: "Simple Dishonesty is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense x x x."

[46] The provision reads: "The penalty of suspension shall not exceed the unexpired term of the respondent or a period of six (6) months for every administrative offense, nor shall said penalty be a bar to the candidacy of the respondent so suspended as long as he meets the qualifications required for the office."

[47] See RRACCS, Rule 10, Section 47.

equivalent to his basic salary for three (3) months. To note, said penalty does not carry with it the accessory penalty of perpetual disqualification from holding public office. Hence, Lucilo is still qualified to hold public office, which he did after he won in the 2016 regular elections.

V.

A final word. Cognizant of the deep-seated reasons for the condonation doctrine's abandonment, I cannot, in good conscience, support the proposed expansion of the same unconstitutional doctrine to once again weaken the public accountability standard under our present legal regime. To overextend the interpretation of a now-abandoned doctrine is to effectively create a specter of that dead doctrine to loom in the present. Verily, by unduly expanding the scope of the condonation doctrine in this case, the Court would once again be weakening the Ombudsman's disciplinary authority — which is the same institutional error that *Carpio Morales* already sought to address. Since the condonation doctrine is only being applied today because of previous public reliance at the time that it was still subsisting, the Court should not conjure something from the old doctrine which was never there.

The unfairness and impracticality borne from the public's previous reliance in this Court's decisions constitute the true essence behind condonation's prospective abandonment; hence, without any public reliance that condonation may be applied to a recall election, it is neither unfair nor impractical to deny condonation as a defense to those who have hurdled a recall challenge. Indeed, in the Ombudsman's own strident words, "all doubts in the prospective application of the condonation doctrine's abandonment must be construed in favor of public trust and accountability, which must prevail over the x x x elective official's privilege to seek employment in government or perform a public service."[48]

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[48] *Rollo* (G.R. No. 237579), p. 38.

ACCORDINGLY, I vote to **PARTLY GRANT** the petitions. The condonation doctrine is not an available defense in Lucilo R. Bayron's case. Nevertheless, he should be held administratively liable only for Simple Dishonesty, which is meted with the appropriate penalty of fine equivalent to his basic salary for three (3) months.

DISSENTING OPINION

LEONEN, *J.*:

The pivotal question before this Court is whether the now abandoned doctrine of condonation would also apply to a reelection of a public official through recall elections. The majority has ruled that it does. I disagree.

In its ruling, the majority underscored that the abandonment of the condonation doctrine is reckoned from the finality of *Carpio Morales v. Court of Appeals*[1] on April 12, 2016.[2] As the majority noted, *Carpio Morales* applies prospectively, owing to the fact that the doctrine was still good law prior to its abandonment, and along with it, the rule that a public official's *reelection* "manifests the body politic's expressed or implied forgiveness of the public official's offense or misconduct."[3] It explained:

> [W]hen *Carpio Morales* ruled that the abandonment of the doctrine of condonation is applied *prospectively, it meant that the said doctrine does not apply to public officials reelected after its abandonment. Stated differently, the doctrine applies to those officials who have been reelected prior to its abandonment*.That is because when a public official has been reelected prior to the promulgation and finality of *Carpio-Morales*, he or she has every right to rely on the old doctrine that his [or her] [reelection] has already served as a condonation of

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[1] 772 Phil. 672 (2015) [Per J. Perlas-Bernabe, En Banc].

[2] Ponencia, p. 9 citing *Crebello v. Office of the Ombudsman*, G.R. No. 232325, April 10, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65037> [Per C.J. Bersamin, First Division].

[3] Id. at 10.

his [or her] previous misconduct, thereby cutting the right to remove him [or her] from office, and a new doctrine decreeing otherwise would not be applicable against him or her. More telling, once reelected, the public official already had the vested right not to be removed from office by reason of the condonation doctrine, which cannot be divested or impaired by a new law or a new doctrine without violating the Constitution. . . .

. . . .

Thus, the Court now clarifies in simple and direct terms. *The defense of condonation doctrine is no longer available if the public official's reelection happens on or after 12 April 2016. With the abandonment of the condonation doctrine in Carpio-Morales, any reelections of public officials on 12 April 2016, and thereafter, no longer have the effect of condoning their previous misconduct.*[4] (Emphasis supplied)

The majority then proceeds to declare that "reelection" under the condonation doctrine is unqualified. Hence, whether the reinstatement to public office was through regular or recall elections does not matter.[5]

As the majority underscored, the condonation doctrine gives premium to the "protection of and respect for the sovereign will of the electorate to elect officers and to forgive the previous misconduct of their elected public servants."[6] Therefore, it declares that "reelection" should not be construed strictly so as to exclude recall elections:

[R]ecall elections presupposes the same collective resolution of his [or her] constituents to condone his [or her] alleged misconduct. This is no different from reelection by regular election. The idea is that "when the people elected a [person] to office, it must be assumed that they did this with knowledge of his [or her] life and character, and that they disregarded or forgave his [or her] faults or misconduct, if he [or she] had been guilty of any." This is in deference to the superiority of the collective will of the people. *Accordingly, there is*

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[4] Id. at 10-11.

[5] Id. at 11-12.

[6] Id. at 16.

no persuasive reason to distinguish between reelection by regular or recall elections when applying the condonation doctrine since the controlling elements, i.e., the expression of sovereign will of the people to elect their officer and to forgive a previous misconduct, are present in both cases. To say that condonation doctrine does not apply in recall elections when the compelling reasons and clear purpose of said doctrine are present therein would be a clear case of absurdity, and would tantamount to injustice to the electorate and to the public official concerned, in the context of the application of the doctrine of condonation at the time when the same was not yet abandoned and still considered a good law. [7] (Emphasis supplied, citation omitted)

Here, Lucilo R. Bayron (Lucilo) was reinstated as mayor of Puerto Princesa, Palawan in the 2015 ***recall*** elections. The majority declared that the condonation doctrine still applied then, and as such, Lucilo may rely on it against administrative charges filed in his previous term. It, however, noted that the doctrine cannot extend to his succeeding reelection in May 2016.[8]

In brief, the majority held the view that the administrative charge against Lucilo for a prior transgression purportedly done in July 2013 was rendered moot by his reelection in the 2015 recall elections. Thus, it affirmed the Court of Appeals' dismissal of petitioner Aldrin Madreo's Complaint against Lucilo for serious dishonesty and grave misconduct.[9]

I dissent.

We have to be cautious in endowing the People with an intention that might not objectively be there. Sovereignty is exercised through election and is also manifested through a written Constitution, which allocates the powers of government. The Constitution creates a legislature, which enacts clearly formulated laws that, in turn, provide acts that may be administratively, civilly, and criminally punished. Laws also clearly provide mechanisms to limit or extinguish liability.

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[7] Id. at 17.

[8] Id. at 18.

[9] Id.

In *Carpio Morales*, a unanimous Court struck down the condonation doctrine after acknowledging that it was *not* based on any law. For this Court to now claim that the doctrine must apply to recall elections would be to craft legislation that simply does not exist.

I

This Court first resolved whether an elected public official may be disciplined for an administrative offense committed during a previous term in the 1959 case of *Pascual v. Provincial Board of Nueva Ecija*.[10] In that case, the petitioner was the mayor of San Jose, Nueva Ecija in 1951 and was eventually reelected to office in 1955. Sometime in 1956, during his second term, three administrative complaints were filed against him before the Provincial Board of Nueva Ecija.

Claiming that the third charge was based on a misconduct committed during his preceding term, the petitioner moved to dismiss the complaint.[11] In ruling for the petitioner, this Court resorted to American jurisprudence and explained that his reelection effectively condoned his previous administrative offense, cutting off the right to remove him from office:

> In the absence of any precedent in this jurisdiction, we have resorted to American authorities. We found that cases on the matter are conflicting due in part, probably, to differences in statutes and constitutional provisions, and also, in part, to a divergence of views with respect to the question of whether the subsequent election or appointment condones the prior misconduct. The weight of authority, however, seems to incline to the rule denying the right to remove one from office because of misconduct during a prior term, to which we fully subscribe.
>
> > Offenses committed, or acts done, during previous term are generally held not to furnish cause for removal and this is especially true where the constitution provides that the penalty in proceedings for removal shall not extend beyond the removal

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[10] 106 Phil. 466 (1959) [Per J. Gutierrez David, En Banc].

[11] Id. at 468.

> from office, and disqualification from holding office for the term for which the officer was elected or appointed. . . .
>
> *The underlying theory is that each term is separate from other terms, and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor —*
>
> > The Court should never remove a public officer for acts done prior to his [or her] present term of office. *To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man [or woman] to office, it must be assumed that they did this with knowledge of his [or her] life and character, and that they disregarded or forgave his [or her] faults or misconduct, if he [or she] had been guilty of any.* It is not for the court, by reason of such faults or misconduct to practically overrule the will of the people.[12] (Emphasis supplied, citations omitted)

Pascual was reiterated in the 1966 case of *Lizares v. Hechanova*.[13] This time, the petitioner was then the mayor of Talisay, Negros Occidental when he was administratively charged for corruption and maladministration in 1962. The Provincial Board acquitted him, but the Office of the President reversed this decision and imposed a suspension instead, prompting him to file a petition for certiorari. This Court later dismissed the case for being moot, after the petitioner's term in which he purportedly committed the misdeeds had expired, and after he was reelected in 1964. It held that he cannot be administratively sanctioned for acts made in his previous term.[14]

In 1967, this Court clarified in *Ingco v. Sanchez*[15] that *Pascual* does not extend to criminal cases. Unlike an administrative charge, a crime is a public offense more inherently appalling than a public officer's sheer malfeasance or misfeasance. A

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[12] Id. at 471-472.

[13] 123 Phil. 916 (1966) [Per J. J.B.L. Reyes, En Banc].

[14] Id. at 917-919.

[15] 129 Phil. 553 (1967) [Per J. Angeles, En Banc].

crime, after all, is detrimental not only to an individual or a group, but to the State itself.[16]

In 1992, *Aguinaldo v. Santos*[17] echoed the ruling in *Pascual*. The petitioner there was Cagayan's governor who served a four-year term from 1988. Acting on a complaint for disloyalty filed in 1989, the Secretary of Local Government adjudged him guilty and directed his removal from office. Amid his reelection in the May 1992 elections, however, this Court reversed the decision, reiterating that reelection meant condonation of any administrative misconduct committed in the previous term.[18]

In the 1996 case of *Salalima v. Guingona, Jr.*,[19] the petitioners who were reelected in the May 1992 elections also benefited from *Pascual* and *Aguinaldo*. Building on these cases, this Court explicitly referred to the doctrine of forgiveness or condonation. Said to have been prescribed by "sound public policy," the condonation doctrine averts a scenario of "exacerbating endless partisan contests between the reelected official and his [or her] political enemies, who may not stop to hound the former during his [or her] new term with administrative cases for acts alleged to have been committed during his [or her] previous term."[20]

In 1999, this Court clarified in *Garcia v. Mojica*[21] that there was no need to distinguish the exact point when the public official perpetrated the transgression, "except that it must be a prior date"[22] to the reelection. That the people reelected the official with presumed knowledge of the latter's character wipes out the need to determine such timeframe. Thus, in *Garcia*, even if the petitioner committed the misconduct only four days

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[16] Id. at 555-556.

[17] 287 Phil. 851 (1992) [Per J. Nocon, En Banc].

[18] Id. at 853-860.

[19] 326 Phil. 847 (1996) [Per J. Davide, Jr., En Banc].

[20] Id. at 921.

[21] 372 Phil. 892 (1999) [Per J. Quisumbing, Second Division].

[22] Id. at 912.

before his reelection, this Court still declared that he cannot be held administratively accountable for an act done in his previous term.[23]

In the 2009 case of *Garcia, Jr. v. Court of Appeals*,[24] the petitioners, whom the Office of the Ombudsman had preventively suspended, sought injunctive relief with the Court of Appeals. When the appellate court merely directed the filing of comment, the petitioners went to this Court, which then ruled that the appellate court should have considered, among others, the doctrine of condonation in promptly resolving the matter.

Finally, in the 2010 case of *Salumbides, Jr. v. Office of the Ombudsman*,[25] this Court made it clear that the condonation doctrine — which, at its core, upholds the popular will through the ballot — does not extend to appointed officials because "there is neither subversion of sovereign will nor disenfranchisement of the electorate" in their case.[26]

Then again, with the advent of *Carpio Morales* in 2015, this Court had the occasion to revisit the condonation doctrine and eventually found it to be a mere jurisprudential creation in the 1959 case of *Pascual*, and thus, bereft of any statutory basis.[27]

II

In ascertaining if there exists a legal basis to sustain the condonation doctrine, *Carpio Morales* found the rule to be in contravention with pertinent provisions relating to accountability of public officers enshrined in our 1987 Constitution and relevant laws. This Court held:

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[23] *Id.* at 912-913.

[24] 604 Phil. 677 (2009) [Per J. Nachura, Jr., Third Division].

[25] 633 Phil. 325 (2010) [Per J. Carpio Morales, En Banc].

[26] *Id.* at 337.

[27] *Carpio Morales v. Court of Appeals*, 772 Phil. 672, 755 (2015) [Per J. Perlas-Bernabe, En Banc].

The foundation of our entire legal system is the Constitution. It is the supreme law of the land; thus, the unbending rule is that every statute should be read in light of the Constitution. Likewise, the Constitution is a framework of a workable government; hence, its interpretation must take into account the complexities, realities, and politics attendant to the operation of the political branches of government.

As earlier intimated, Pascual was a decision promulgated in 1959. Therefore, it was decided within the context of the 1935 Constitution which was silent with respect to public accountability, or of the nature of public office being a public trust. The provision in the 1935 Constitution that comes closest in dealing with public office is Section 2, Article II which states that "[t]he defense of the State is a prime duty of government, and in the fulfillment of this duty all citizens may be required by law to render personal military or civil service." Perhaps owing to the 1935 Constitution's silence on public accountability, and considering the dearth of jurisprudential rulings on the matter, as well as the variance in the policy considerations, there was no glaring objection confronting the *Pascual* Court in adopting the condonation doctrine that originated from select US cases existing at that time.

With the advent of the 1973 Constitution, the approach in dealing with public officers underwent a significant change. The new charter introduced an entire article on accountability of public officers, found in Article XIII. Section 1 thereof positively recognized, acknowledged, and declared that "[p]ublic office is a public trust." Accordingly, "[p]ublic officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency, and shall remain accountable to the people."

After the turbulent decades of Martial Law rule, the Filipino People have framed and adopted the 1987 Constitution, which sets forth in the Declaration of Principles and State Policies in Article II that "[t]he State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption." Learning how unbridled power could corrupt public servants under the regime of a dictator, the Framers put primacy on the integrity of the public service by declaring it as a constitutional principle and a State policy. More significantly, the 1987 Constitution strengthened and solidified what has been first proclaimed in the

1973 Constitution by commanding public officers to be accountable to the people at all times:

> Section 1. Public office is a public trust. — Public officers and employees *must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency and act with patriotism and justice, and lead modest lives*.
>
> . . . .

The same mandate is found in the Revised Administrative Code under the section of the Civil Service Commission, and also, in the Code of Conduct and Ethical Standards for Public Officials and Employees.

For local elective officials . . ., the grounds to discipline, suspend or remove an elective local official from office are stated in Section 60 of Republic Act No. 7160, 292 otherwise known as the "Local Government Code of 1991" (LGC), which was approved on October 10, 1991, and took effect on January 1, 1992:

> Section 60. *Grounds for Disciplinary Action.* — An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:
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> 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.

Related to this provision is *Section 40 (b) of the LGC* which states that *those removed from office as a result of an administrative case* shall be *disqualified from running for any elective local position*:

. . . .

In the same sense, Section 52 (a) of the RRACCS provides that the *penalty of dismissal from service carries the accessory penalty of perpetual disqualification from holding public office*:

. . . .

In contrast, Section 66 (b) of the LGC states that the *penalty of suspension* shall not exceed the unexpired term of the elective local official nor constitute a bar to his candidacy for as long as he meets the qualifications required for the office. Note, however, that the provision only pertains to the duration of the penalty and its effect on the official's candidacy. *Nothing therein states that the administrative liability therefor is extinguished by the fact of re-election*:

. . . .

Reading the 1987 Constitution together with the above-cited legal provisions now leads this Court to the conclusion that the doctrine of condonation is actually bereft of legal bases.

To begin with, the concept of public office is a public trust and the corollary requirement of accountability to the people at all times, as mandated under the 1987 Constitution, is plainly inconsistent with the idea that an elective local official's administrative liability for a misconduct committed during a prior term can be wiped off by the fact that he was elected to a second term of office, or even another elective post. Election is not a mode of condoning an administrative offense, and there is simply no constitutional or statutory basis in our jurisdiction to support the notion that an official elected for a different term is fully absolved of any administrative liability arising from an offense done during a prior term. In this jurisdiction, liability arising from administrative offenses may be condoned by the President in light of Section 19, Article VII of the 1987 Constitution which

was interpreted in Llamas v. Orbos to apply to administrative offenses[.]

. . . .

Relatedly, it should be clarified that there is no truth in *Pascual*'s postulation that the courts would be depriving the electorate of their right to elect their officers if condonation were not to be sanctioned. In political law, election pertains to the process by which a particular constituency chooses an individual to hold a public office. In this jurisdiction, there is, again, no legal basis to conclude that election automatically implies condonation. Neither is there any legal basis to say that every democratic and republican state has an inherent regime of condonation. If condonation of an elective official's administrative liability would perhaps, be allowed in this jurisdiction, then the same should have been provided by law under our governing legal mechanisms. May it be at the time of *Pascual* or at present, by no means has it been shown that such a law, whether in a constitutional or statutory provision, exists. Therefore, inferring from this manifest absence, it cannot be said that the electorate's will has been abdicated.

. . . .

That being said, this Court simply finds no legal authority to sustain the condonation doctrine in this jurisdiction. As can be seen from this discourse, it was a doctrine adopted from one class of US rulings way back in 1959 and thus, out of touch from — and now rendered obsolete by — the current legal regime. ***In consequence, it is high time for this Court to abandon the condonation doctrine*** that originated from *Pascual*, and affirmed in the cases following the same, such as *Aguinaldo, Salalima, Mayor Garcia*,and *Governor Garcia, Jr.* which were all relied upon by the [Court of Appeals].[28] (Emphasis supplied, citations omitted)

Nonetheless, recognizing that there was prior reliance on the condonation doctrine, this Court in *Carpio Morales* moved to *abandon it prospectively*:

It should, however, be clarified that this Court's abandonment of the condonation doctrine should be prospective in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system

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[28] Id. at 765-775.

of the Philippines. Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation. As explained in *De Castro v. Judicial Bar and Council*:

> Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.

Hence, while the future may ultimately uncover a doctrine's error, it should be, as a general rule, recognized as "good law" prior to its abandonment. Consequently, the people's reliance thereupon should be respected. The landmark case on this matter is *People v. Jabinal*, wherein it was ruled:

> [W]hen a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.[29] (Emphasis supplied, citations omitted)

Yet, despite the above disquisitions in *Carpio Morales*, the majority still declared that the condonation doctrine also covers recall elections. Firm on its stance that the "compelling reason behind [it] [is] the right of the electorate to elect officers and their sovereign will to forgive[,]"[30] the majority believes that the term "reelection" should not be construed restrictively in order to give meaning to the rule's intent.[31]

For the majority, although a recall election is a manner of removal, it could work as a reelection in that it uses "the democratic process of election to achieve its end";[32] that "the same considerations behind the doctrine of condonation exist in recall elections."[33]

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[29] Id. at 775-776.

[30] Ponencia, p. 14.

[31] Id. at 16.

[32] Id.

[33] Id.

I beg to differ.

The majority effectively expanded the now abandoned rule's coverage when it declared that the condonation doctrine encompasses recall elections. As this doctrine now exists only as recognition of the prior reliance on it, the prospective application of *Carpio Morales* should be confined strictly to the rule's established parameters before its abandonment. Indeed, as the preceding survey of cases shows, this doctrine does *not* extend to a reinstallation to public office through recall elections.

In reality, candidates do not confess to their mistakes and transgressions when they run for office. For this reason, we cannot assume that when the people reelect an erring public officer, they already know of the candidate's previous misconduct and, by reelecting such officer, express their forgiveness or condonation. As reinforced in *Carpio Morales*, such ascribed knowledge has no basis in law, and is even contrary to ordinary human experience:

> Equally infirm is Pascual's proposition that the electorate, when re-electing a local official, are assumed to have done so with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. *Suffice it to state that* ***no*** such presumption exists in any statute or procedural rule. Besides, it is contrary to human experience that the electorate would have full knowledge of a public official's misdeeds. The Ombudsman correctly points out the reality that most corrupt acts by public officers are shrouded in secrecy, and concealed from the public. Misconduct committed by an elective official is easily covered up, and is almost always unknown to the electorate when they cast their votes. At a conceptual level, condonation presupposes that the condoner has actual knowledge of what is to be condoned. Thus, there could be no condonation of an act that is unknown. As observed in *Walsh v. City Council of Trenton* decided by the New Jersey Supreme Court:
>
> > Many of the cases holding that re-election of a public official prevents his removal for acts done in a preceding term of office are reasoned out on the theory of condonation. *We cannot subscribe to that theory because condonation, implying as it does forgiveness, connotes knowledge and in the absence of knowledge there can be no condonation. One cannot forgive*

something of which one has no knowledge.[34] (Emphasis supplied, citations omitted)

Besides, administrative infractions of public officers should not be taken lightly. As a public servant, Lucilo is expected to constantly present himself with the utmost sense of integrity and honesty. The Constitution is explicit that a public office is a public trust.[35] Erring public officials ought to face the consequences of their transgressions and should be dealt with accordingly based on pertinent rules.

The intent behind disciplining officers and employees is not simply punishment, "but the *improvement* of the public service and the preservation of the public's faith and confidence in the government."[36] To this end, the determination of administrative liability should be best left to the *courts*, and not to be simply disregarded on account of a doctrine that lacks any basis, both in law and in fact.

Lucilo's reinstatement as mayor in the 2015 recall elections is outside the confines of the now abandoned condonation doctrine. This doctrine cannot operate to condone his administrative liabilities made in 2013.

ACCORDINGLY, I vote that the consolidated Petitions be **GRANTED**, and that the assailed Court of Appeals rulings dismissing the Administrative Complaint against respondent Lucilo R. Bayron be **REVERSED and SET ASIDE**.

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[34] *Carpio Morales v. Court of Appeals*, 772 Phil. 672, 774 (2015) [Per J. Perlas-Bernabe, En Banc].

[35] *Civil Service Commission v. Cortez*, 474 Phil. 670, 689 (2004) [Per Curiam, En Banc].

[36] Id. at 690.

FIRST DIVISION

[G.R. No. 239518. November 3, 2020]

ALEMAR A. BANSILAN, *Petitioner, v.* **PEOPLE OF THE PHILIPPINES,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; WITHDRAWAL OF AN APPEAL; THE WITHDRAWAL OF AN APPEAL BEFORE THE CASE IS DEEMED SUBMITTED FOR DECISION OR RESOLUTION IS PERMISSIBLE AND RENDERS THE DECISION OF THE COURT *A QUO* FINAL AND EXECUTORY.— Section 1, Rule 13 of the Internal Rules of the Supreme Court provides that "[a] case shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum that the Court or its Rules require." Considering that Bansilan's October 21, 2018 letter was filed before the case is submitted for decision, the withdrawal of his petition is permissible. By withdrawing the appeal, petitioner is deemed to have accepted the decision of the CA. In *Southwestern University v. Hon. Salvador*, we ruled that "an appellant who withdraws his appeal x x x must face the consequence of his withdrawal, such as the decision of the court *a quo* becoming final and executory."

2. ID.; EVIDENCE; ADMISSIBILITY OF EVIDENCE; HEARSAY RULE; THE TESTIMONY OF WHAT ONE HEARD A PARTY SAY IS NOT NECESSARILY HEARSAY.— The testimonies of Malayo and SPO1 Arado cannot be considered as hearsay for three reasons. *First*, Malayo was indisputably present and has heard Bansilan when the latter made an admission of guilt. On the other hand, SPO1 Arado was also present and heard Maduay when she identified Bansilan as the one she transacted with concerning the missing laptop. Hence, these two prosecution witnesses testified to matters of fact that had been derived from their own perception. *Second*, what was sought to be admitted as evidence were the fact that the utterance was actually made by Bansilan to Malayo, and that Maduay actually identified said accused-petitioner as the one who pawned the subject laptop in the presence of SPO1

Arado, not necessarily that the matters stated were true. In *Bon v. People*, the Court wrote:

> Testimony of what one heard a party say is not necessarily hearsay. It is admissible in evidence, not to show that the statement was true, but that it was in fact made. If credible, it may form part of the circumstantial evidence necessary to convict the accused.

3. ID.; ID.; ID.; ID.; OBJECTIONS TO EVIDENCE; HEARSAY EVIDENCE IS ADMISSIBLE WHEN A PARTY FAILS TO OBJECT TO IT.— [E]ven assuming *arguendo* that the foregoing testimonies Malayo and SPO1 Arado were hearsay, Bansilan is barred from assailing the admission of the testimonies of Malayo and SPO1 Araga for failure to object to these testimonies at the time they were offered. It has been held that where a party failed to object to hearsay evidence, then the same is admissible.

In *Maunlad Savings & Loan Association, Inc. v. Court of Appeals*, the Court wrote:

> The rule is that objections to evidence must be made as soon as the grounds therefor become reasonably apparent. In the case of testimonial evidence, the objection must be made when the objectionable question is asked or after the answer is given if the objectionable features become apparent only by reason of such answer, otherwise the objection is waived and such evidence will form part of the records of the case as competent and complete evidence and all parties are thus amenable to any favorable or unfavorable effects resulting from the evidence.

4. ID.; ID.; ORAL ADMISSIONS OR CONFESSIONS; AN ORAL CONFESSION REPLETE WITH DETAILS MAY BE GIVEN IN EVIDENCE AGAINST THE PARTY MAKING IT.— [W]ith respect to Bansilan's oral admission, under Section 26 of Rule 130 of the Rules of Court, "the act, declaration or omission of a party as to a relevant fact may be given in evidence against him." Said rule is based upon the notion that no man would make any declaration against himself, unless it is true.The Court cannot overlook the fact that Bansilan's verbal confession to Malayo is replete with details which only the culprit of the crime could have supplied and which could not have been concocted by someone who did not take part in its commission.

5. ID.; ID.; ID.; POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; THE CONSTITUTIONAL PROCEDURE ON CUSTODIAL INVESTIGATION DOES NOT APPLY TO SPONTANEOUS STATEMENTS NOT ELICITED THROUGH QUESTIONING BY THE AUTHORITIES, BUT GIVEN IN AN ORDINARY MANNER WHEREBY THE ACCUSED ORALLY ADMITTED HAVING COMMITTED THE CRIME.— Anent Bansilan's alleged uncounseled admission, suffice it to state that the same was not given during a custodial investigation, and certainly, not to police authorities. His spontaneous and voluntary verbal confession given to an ordinary individual (Malayo) was correctly admitted in evidence because it is not covered by the requisites of Section 12 (1) and (3) of Article III of the Constitution. It has been held that the constitutional procedure on custodial investigation does not apply to spontaneous statement not elicited through questioning by the authorities, but given in an ordinary manner whereby the accused orally admitted having committed the crime.

6. CRIMINAL LAW; REPUBLIC ACT NO. 10951 (*AN ACT ADJUSTING THE AMOUNT OR VALUE OF THE PROPERTY AND DAMAGE ON WHICH A PENALTY IS BASED, AND THE FINES IMPOSED UNDER THE REVISED PENAL CODE*); THE PROVISIONS OF RA NO. 10951 RETROACTIVELY APPLY NOT ONLY TO PERSONS ACCUSED OF CRIMES AND HAVE YET TO BE METED THEIR FINAL SENTENCE, BUT ALSO TO THOSE ALREADY SERVING SENTENCE BY FINAL JUDGMENT; PROPER PENALTY IN CASE AT BAR.— Notwithstanding the withdrawal of the appeal and our concurrence with the findings of the RTC and the CA, we deemed it proper to modify the penalty meted upon Bansilan in accordance with Republic Act No. 10951(*R.A. No. 10951*). The retroactive application of the provisions of R.A. No. 10951 has already been settled in *Hernan v. Sandiganbayan*. Also, Section 100 thereof states that this retroactivity applies not only to persons accused of crimes but have yet to be meted their final sentence, but also to those already serving sentence by final judgment. . . .

There being no modifying circumstances in the commission of the Robbery in an Inhabited House, Bansilan should be meted

an indeterminate penalty, the maximum term of which shall be taken from the medium period of *prision mayor* in its minimum period, ranging from six (6) years, eight (8) months and one (1) day to seven (7) years and four (4) months. On the other hand, the minimum term, under Section 1 of the Indeterminate Sentence Law, shall be "within the range of the penalty next lower to that prescribed by the Code for the offense." The penalty next lower should be based on the penalty prescribed by the Code for the offense, without regard to any modifying circumstance attendant to the commission of the crime. The minimum penalty can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. Accordingly, the minimum term of the penalty in the case at bench shall be taken from the entirety of *prision correccional*, ranging from six (6) months and one (1) day to six (6) years, which is the penalty next lower in degree to the prescribed penalty of *prision mayor*.

. . .

In view of the recovery of the laptop and considering that the property stolen from private complainant Malayo is his cash of ₱500.00, the Court determines that the proper imposable penalty should be three (3) years and two (2) months of *prision correccional*, as minimum, to six (6) years and ten (10) months of *prision mayor* in its minimum period, as maximum.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

PERALTA, *C.J.*:

This resolves the Letter,[1] dated October 21, 2018, of petitioner Alemar[2] A. Bansilan *(Bansilan)* seeking to withdraw his appeal filed before the Court.

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[1] *Rollo*, p. 102.

[2] Also spelled as Alimar in some parts of the *rollo*.

The facts and procedural antecedents of the case are as follows:

Bansilan was indicted for Robbery in an Inhabited House, defined and penalized under Article 299 of the Revised Penal Code, in an Information, dated November 13, 2012, filed before the Regional Trial Court *(RTC)*, Branch 10, Davao City and docketed as Criminal Case No. 73,790-12.

Bansilan was arrested by virtue of a warrant of arrest issued on December 28, 2012 and was committed to the Ma-a City Jail pending the termination of his case. When arraigned, Bansilan pleaded not guilty to the charge.[3] After pre-trial was terminated, trial on the merits ensued.

To substantiate its charge against Bansilan, the prosecution presented private complainant Jayme Malayo *(Malayo)*, Senior Police Officer 1 Roland Arado *(SPO1 Arado)*, Police Officer 1 Jessy Perlado *(PO1 Perlado)* and SPO1 Nelio Tambis *(SPO1 Tambis)* as its witnesses.

Malayo narrated that on May 18, 2012, at around 1:30 o'clock in the morning, he was awakened by his wife over some noise coming from the living room of their house. They proceeded to the sala where they discovered that their jalousie window was broken, and his laptop and its charger, including the ₱500.00 he left on the divider, were missing. He reported the incident to the police on the following day. On June 30, 2012, he learned that a suspect for robbery and carnapping was apprehended by the Marilog police. He wasted no time in going to the Marilog Police Station to check. Said suspect turned out to be Bansilan. He sought permission from the police to see Bansilan. Upon questioning, Bansilan admitted that he was responsible for the robbery in Malayo's house and that he pawned the missing laptop to a woman along Sta. Cruz Crossing General Santos Highway. He and Bansilan were 20 meters away from the police officers when he made such inquiry. He relayed Bansilan's statement to the police through a text message which the Baguio Police Station's radio operator promptly sent to SPO1 Arado.[4]

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[3] *Id.* at 71.

[4] *Id.*

SPO1 Arado testified that armed with the information given by Malayo, he and some other police officers proceeded to Sta. Cruz Crossing, Purok 1, Barangay Binugao, Toril District. They brought Bansilan along with them, so the latter could guide them in finding the woman who owned a carinderia to whom said accused pawned Malayo's laptop. The woman turned out to be Lanie Maduay *(Maduay)*. Upon questioning, Maduay admitted that a laptop had indeed been pawned to her for ₱500.00 and when Bansilan was shown to her, she readily identified the latter as the person who transacted with her. Maduay turned over the laptop to the police and after a week, the said missing laptop was returned to Malayo.[5]

The testimony of PO1 Perlado was dispensed with after the prosecution and the defense entered into a stipulation that said witness entered the details of their operation into the police blotter. Likewise, SPO1 Tambis' testimony was dispensed with after the parties stipulated that said witness was the desk officer who made the entry in the police blotter regarding the recovery of the missing laptop.[6]

Thereafter, the defense presented Bansilan as its lone witness. Bansilan interposed the twin defenses of denial and alibi, claiming that he could not have committed the crime charged because he was at Barangay Sinuda, Bukidnon on May 18, 2012. He explained that he left Baguio District on May 17, 2012 at around 2:00 o'clock in the afternoon to visit his girlfriend's mother in Bukidnon where he stayed for one week. He denied any involvement in the robbery incident that took place at Malayo's house. He also denied that he was the one who pawned the subject laptop to a certain Lanie Maduay.[7]

On December 15, 2016, the RTC rendered a Decision[8] finding Bansilan guilty beyond reasonable doubt of the crime of Robbery

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

[6] *Id.*

[7] *Id.* at 72.

[8] Penned by Judge Retrina E. Fuentes; *id.* at 70-83.

in an Inhabited House. The RTC declared that the prosecution has convincingly established the criminal culpability of Bansilan through the credible and sufficient evidence it adduced, which led to the inescapable conclusion that said accused committed the offense charged to the exclusion of others. Accordingly, the RTC sentenced Bansilan to suffer the penalty of imprisonment of four (4) years, two (2) months and one (1) day of *prisión correccional* in its maximum period, as minimum, to eight (8) years and one (1) day of *prisión mayor* in its medium period, as maximum, and ordered him to pay Malayo the amount of ₱500.00.[9]

Not in conformity, Bansilan appealed the verdict of conviction to the Court of Appeals *(CA)*. Insisting on his innocence, Bansilan averred that the extrajudicial admission he allegedly made to Malayo, which became the basis for his conviction, is inadmissible in evidence for being hearsay and uncorroborated, and even if true, the same was done orally and without the presence of a counsel of his choice in violation of his rights under custodial investigation. Further, Bansilan maintained that SPO1 Arado's testimony that Maduay identified him as the person who pawned the missing laptop to her is also hearsay since Maduay was never presented during trial to confirm said police officer's claim.[10]

On April 20, 2018, the CA rendered the assailed Decision[11] in CA-G.R. CR No. 01519-MIN, affirming the judgment of the RTC. According to the CA, Bansilan's extrajudicial confession, coupled with the circumstantial evidence proffered by the prosecution, is sufficient to sustain his conviction. The CA ruled that the extrajudicial verbal confession of Bansilan to Malayo is admissible because such statement was freely and voluntarily made and not elicited through questioning by the

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[9] *Id.* at 83.

[10] Appellant's Brief; *id.* at 53-69.

[11] Penned by Associate Justice Oscar V. Badelles with Associate Justice Romulo V. Borja and Associate Justice Tita Marilyn Payoyo-Villordon, concurring; *id.* at 38-47.

authorities and thus, not covered by Section 12 (1) and (3) of Article III of the Constitution. The CA observed that such extrajudicial confession pointed where the missing laptop can be found, which detail only the perpetrator of the crime could have known. The CA found that the following circumstantial evidence adduced by the prosecution amply corroborated the extrajudicial confession: (1) Bansilan was positively identified by Maduay as the person who pawned the laptop to her; and (2) Bansilan actually lived near DOLE-Stanfilco compound, the scene of the crime. Lastly, the CA rejected Bansilan's twin defenses of denial and alibi for being self-serving and unsupported by any plausible proof.

Undaunted, Bansilan filed on July 5, 2018 a petition for review on *certiorari*[12] seeking to reverse and set aside the April 20, 2018 Decision of the CA. By way of an alternative relief, he prays that if the judgment be affirmed, this Court will order his release on account of his having been detained for a period equivalent to the minimum period of the penalty imposed against him.

On November 9, 2018, the Court received a hand-written Letter signed by petitioner Bansilan, dated October 21, 2018, requesting for the withdrawal of his appeal, and for the issuance of an entry of judgment, so that he can avail of the parole review for his release from prison. He claims that he already accepted the decision of the lower court and is about to fully serve the maximum period of the indeterminate sentence imposed against him. Attached to this letter is the Letter-Reply[13] of Nelsie Loja *(Loja)*, Records Officer II, JRS-Archives and Receiving Unit of the CA, Cagayan de Oro City, dated September 17, 2018, sent to Bansilan in response to the latter's September 8, 2018 letter expressing his intent to withdraw his appeal of the case. In the same letter, Loja informed Bansilan that his case is already appealed to the Supreme Court and advised him that all inquiries,

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[12] *Id.* at 15-32.

[13] *Id.* at 103.

requests, motions and/or pleadings should now be addressed to the Court.

On April 3, 2019, the Office of the Solicitor General *(OSG)* filed its Comment[14] on the petition.

The Court's Ruling

The Court resolves to treat the October 21, 2018 Letter of Bansilan as a Motion to Withdraw the Petition and hereby grants the same.

Section 1, Rule 13 of the Internal Rules of the Supreme Court[15] provides that "[a] case shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum that the Court or its Rules require." Considering that Bansilan's October 21, 2018 letter was filed before the case is submitted for decision, the withdrawal of his petition is permissible. By withdrawing the appeal, petitioner is deemed to have accepted the decision of the CA.[16] In *Southwestern University v. Hon. Salvador*,[17] we ruled that "an appellant who withdraws his appeal x x x must face the consequence of his withdrawal, such as the decision of the court *a quo* becoming final and executory."

At any rate, the Court finds no compelling reason to reverse the similar conclusions reached by the RTC and the CA insofar as Bansilan's guilt is concerned. The evidence submitted by the prosecution negates the innocence of the petitioner.

Bansilan contends that Malayo's testimony to the effect that he admitted to said private complainant the authorship of the robbery and that he pawned the missing laptop to a woman along Sta. Cruz Crossing General Santos Highway, and that

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[14] *Id.* at 121-137.

[15] A.M. No. 10-4-20-SC.

[16] *Central Luzon Drug Corp. v. Commissioner of Internal Revenue*, 659 Phil. 496, 502 (2011).

[17] 179 Phil. 252, 257 (1979).

SPO1 Arado's testimony that Maduay pointed to Bansilan as the person who pawned said laptop, are inadmissible being mere hearsay. The argument is bereft of merit.

The testimonies of Malayo and SPO1 Arado cannot be considered as hearsay for three reasons. *First*, Malayo was indisputably present and has heard Bansilan when the latter made an admission of guilt. On the other hand, SPO1 Arado was also present and heard Maduay when she identified Bansilan as the one she transacted with concerning the missing laptop. Hence, these two prosecution witnesses testified to matters of fact that had been derived from their own perception. *Second*, what was sought to be admitted as evidence were the fact that the utterance was actually made by Bansilan to Malayo, and that Maduay actually identified said accused-petitioner as the one who pawned the subject laptop in the presence of SPO1 Arado, not necessarily that the matters stated were true. In *Bon v. People*,[18] the Court wrote:

> Testimony of what one heard a party say is not necessarily hearsay. It is admissible in evidence, not to show that the statement was true, but that it was in fact made. If credible, it may form part of the circumstantial evidence necessary to convict the accused. (Underscoring Ours)

Third, even assuming *arguendo* that the foregoing testimonies Malayo and SPO1 Arado were hearsay, Bansilan is barred from assailing the admission of the testimonies of Malayo and SPO1 Araga for failure to object to these testimonies at the time they were offered. It has been held that where a party failed to object to hearsay evidence, then the same is admissible.[19]

In *Maunlad Savings & Loan Association, Inc. v. Court of Appeals*,[20] the Court wrote:

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[18] 464 Phil. 125, 130 (2004).

[19] *SCC Chemicals Corporation v. Court of Appeals*, 405 Phil. 514, 522 (2001).

[20] 399 Phil. 590 (2000).

The rule is that objections to evidence must be made as soon as the grounds therefor become reasonably apparent. In the case of testimonial evidence, the objection must be made when the objectionable question is asked or after the answer is given if the objectionable features become apparent only by reason of such answer, otherwise the objection is waived and such evidence will form part of the records of the case as competent and complete evidence and all parties are thus amenable to any favorable or unfavorable effects resulting from the evidence.[21] (Citations omitted; underscoring supplied)

Besides, with respect to Bansilan's oral admission, under Section 26 of Rule 130 of the Rules of Court, "the act, declaration or omission of a party as to a relevant fact may be given in evidence against him." Said rule is based upon the notion that no man would make any declaration against himself, unless it is true.[22] The Court cannot overlook the fact that Bansilan's verbal confession to Malayo is replete with details which only the culprit of the crime could have supplied and which could not have been concocted by someone who did not take part in its commission.

Anent Bansilan's alleged uncounseled admission, suffice it to state that the same was not given during a custodial investigation, and certainly, not to police authorities. His spontaneous and voluntary verbal confession given to an ordinary individual (Malayo) was correctly admitted in evidence because it is not covered by the requisites of Section 12 (1) and (3) of Article III of the Constitution. It has been held that the constitutional procedure on custodial investigation does not apply to spontaneous statement not elicited through questioning by the authorities, but given in an ordinary manner whereby the accused orally admitted having committed the crime.[23]

Notwithstanding the withdrawal of the appeal and our concurrence with the findings of the RTC and the CA, we deemed

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[21] *Id.* at 600.

[22] *People v. Lising*, 349 Phil. 530, 559 (1998).

[23] *People v. Licayan*, 428 Phil. 332, 347 (2002).

it proper to modify the penalty meted upon Bansilan in accordance with Republic Act No. 10951[24] *(R.A. No. 10951)*. The retroactive application of the provisions of R.A. No. 10951 has already been settled in *Hernan v. Sandiganbayan*.[25] Also, Section 100 thereof states that this retroactivity applies not only to persons accused of crimes but have yet to be meted their final sentence, but also to those already serving sentence by final judgment.[26] Section 79 of R.A. No. 10951 provides:

SEC. 79. Article 299 of the same Act, as amended by Republic Act No. 18, is hereby further amended to read as follows:

ART. 299. *Robbery in an inhabited house or public building or edifice devoted to worship*. — Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by *reclusion temporal*, if the value of the property taken shall exceed Fifty thousand pesos (₱50,000), and if —

(a) The malefactors shall enter the house or building in which the robbery was committed, by any of the following means:

x x x x

2. By breaking any wall, roof, or floor or breaking any door or window.

x x x x

When the offenders do not carry arms, and the value of the property taken exceeds Fifty thousand pesos (₱50,000) the penalty next lower in degree shall be imposed.

The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed Fifty thousand pesos (₱50,000).

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[24] An Act Adjusting the Amount or Value of Property and Damage on Which a Penalty is Based, and the Fines Imposed under the Revised Penal Code, Amending for the Purpose Act No. 3815, Otherwise Known as "The Revised Penal Code," as Amended.

[25] G.R. No. 217874, December 5, 2017, 847 SCRA 552.

[26] Republic Act No. 10951, Section 100.

When said offenders do not carry arms and the value of the property taken does not exceed Fifty thousand pesos (₱50,000), they shall suffer the penalty prescribed in the two (2) next preceding paragraphs, in its minimum period.

x x x x.

There being no modifying circumstances in the commission of the Robbery in an Inhabited House, Bansilan should be meted an indeterminate penalty, the maximum term of which shall be taken from the medium period[27] of *prisión mayor* in its minimum period, ranging from six (6) years, eight (8) months and one (1) day to seven (7) years and four (4) months. On the other hand, the minimum term, under Section 1 of the Indeterminate Sentence Law, shall be "within the range of the penalty next lower to that prescribed by the Code for the offense." The penalty next lower should be based on the penalty prescribed by the Code for the offense, without regard to any modifying circumstance attendant to the commission of the crime. The minimum penalty can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided.[28] Accordingly, the minimum term of the penalty in the case at bench shall be taken from the entirety of *prisión correccional*, ranging from six (6) months and one (1) day to six (6) years, which is the penalty next lower in degree to the prescribed penalty of *prisión mayor*.

It may be argued that the minimum term should be taken from *prisión correccional* in its maximum period, which ranges

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[27] Article 64 of the Revised Penal Code provides:

Art. 64. *Rules for the application of penalties which contain three periods.* — In cases in which the penalties prescribed by law contain three periods, x x x, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

x x x x

[28] *People v. Gabres*, 335 Phil. 242, 257 (1997).

from four (4) years, two (2) months and one (1) day to six (6) years, inasmuch as the same is one degree lower to *prisión mayor* in its minimum period. This proposition, however, is incorrect.

It must be emphasized that the deliberate design of the legislature in Section 79 of R.A. No. 10951 is to prescribe a lower penalty against unarmed robbers *vis-à-vis* robbers who are armed. To take then the minimum term from *prisión correccional* in its maximum period will possibly create an absurd situation wherein the minimum term of the penalty against the unarmed robbers is much higher than that against armed robbers considering that in case of the latter offenders, the minimum term is anywhere within the range of *prisión correccional* (6 months and 1 day to 6 years). Indeed, a ridiculous situation will arise if the courts impose the penalty of four (4) years, two (2) months and one (1) day, as minimum, against robbers who are not armed while imposing only the penalty of six (6) months and one (1) day, as minimum, against armed robbers. It is a general rule of statutory construction that a law should not be so construed as to produce an absurd result.[29] The law does not intend an absurdity or that an absurd consequence shall flow from the enactment. Statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion.[30]

In view of the recovery of the laptop and considering that the property stolen from private complainant Malayo is his cash of ₱500.00, the Court determines that the proper imposable penalty should be three (3) years and two (2) months of *prisión correccional*, as minimum, to six (6) years and ten (10) months of *prisión mayor* in its minimum period, as maximum.

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[29] *Paras v. Commission on Elections*, 332 Phil. 56, 64 (1996).

[30] *Cosico, Jr. v. National Labor Relations Commission*, 338 Phil. 1080, 1089 (1997).

WHEREFORE, the Letter to Withdraw Appeal is hereby **GRANTED**. The Petition for Review on *Certiorari* is hereby **DISMISSED** and the case is now considered **CLOSED** and **TERMINATED.**

The Court, however, **MODIFIES** the imposable penalty against petitioner Alemar A. Bansilan pursuant to Article 299 of the Revised Penal Code, as amended by Section 79 of Republic Act No. 10951, in that he is sentenced to suffer the penalty of Three (3) years and Two (2) months of *prisión correccional*, as minimum, to Six (6) years and Ten (10) months of *prisión mayor* in its minimum period, as maximum. He is also ordered to pay private complainant Jayme Malayo the amount of ₱500.00 as restitution for the cash taken during the Robbery in an Inhabited House.

No further pleadings or motions shall be entertained herein. Let an entry of judgment be issued.

SO ORDERED.

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

FIRST DIVISION

[G.R. Nos. 240378-84. November 3, 2020]

LABUALAS B. MAMANSUAL and FRANCIS B. NADAR, *Petitioners, v.* **HON. SANDIGANBAYAN (5TH DIVISION) and PEOPLE OF THE PHILIPPINES, represented by the OFFICE OF THE SPECIAL PROSECUTOR OF THE OFFICE OF THE OMBUDSMAN,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; PRELIMINARY INVESTIGATION BY THE OFFICE OF THE OMBUDSMAN (OMB); SUPPLETORY APPLICATION OF THE PERIODS OF PRELIMINARY INVESTIGATION IN THE REVISED RULES OF CRIMINAL PROCEDURE; THE INVESTIGATING OFFICER OF THE OMB HAS TEN (10) DAYS FROM SUBMISSION OF THE CASE FOR RESOLUTION WITHIN WHICH TO CONCLUDE THE PRELIMINARY INVESTIGATION AND TO SUBMIT A RESOLUTION TO THE OMB FOR APPROVAL.— While the OMB has not yet set periods within which preliminary investigation shall be completed, Rule 112 of the Revised Rules of Criminal Procedure may be applied suppletorily. . . .

In other words, the investigating prosecutor or officer of the OMB has 10 days from submission of the case for resolution, or upon submission of the last pleading required by the OMB or its rules within which to conclude the preliminary investigation and submit his resolution to the Ombudsman for approval. Upon receipt, the Ombudsman has, in turn, 10 days from receipt within which to act upon the investigating officer's resolution and to immediately inform the parties of its action.

2. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHTS OF THE ACCUSED; RIGHT TO SPEEDY DISPOSITION OF CASES; THE OMB'S PROTRACTED DELAY IN THE CONDUCT OF THE PRELIMINARY INVESTIGATION SHIFTS THE BURDEN TO THE PROSECUTION TO PROVE THAT THERE WAS NO VIOLATION OF THE

RIGHT TO SPEEDY DISPOSITION OF CASES.— [T]he OMB's investigating officer took one year, nine months, and eight days to come up with a resolution on petitioners' case, and it took former Ombudsman Morales another one month and 12 days to approve the same. This amounts to a total period of one year, 10 months, and 20 days, an inordinate amount of time in excess of that provided in Rule 112 of the Revised Rules of Criminal Procedure.

The OMB's protracted delay in the conduct of the preliminary investigation shifts the burden of proving that there was no violation of the right to speedy disposition of cases to the prosecution, consistent with the third and fourth principles in *Cagang*. Hence, the prosecution must be able to prove that the delay was justified because of the complexity of issues and volume of evidence, and that the accused suffered no prejudice as a result of the delay.

3. ID.; ID.; ID.; ID.; WHAT MILITATES AGAINST A CLAIM FOR VIOLATION OF THE RIGHT TO A SPEEDY DISPOSITION OF CASES IS NOT THE BELATED INVOCATION OF SUCH RIGHT, BUT THE ACTUATIONS SHOWING ACQUIESCENCE TO THE DELAY.— [P]etitioners herein raised the issue of violation of their right to speedy disposition of cases for the first time before the Sandiganbayan, Fifth Division in their Motion. . . .

. . . None of the[ ] explanations convince this Court that the belated invocation of their right to speedy dispositions of cases was justified, as none of the foregoing could have prevented petitioners from invoking such right.

. . . [I]t is not the belated invocation of the right to speedy disposition of cases that negates petitioners' claim of violation [of] such right. What strongly militates against the conclusion that petitioners were injured by the violation of their right are the remedies they sought instead of bewailing the OMB's delay.

. . .

In other words, petitioners were willing to prolong the proceedings by having the cases reinvestigated and referred to the COA for a special audit, and in the meantime, the proceedings before the Sandiganbayan, Fifth Division would be suspended. On another point, petitioners' admission likewise inspires the

conclusion that, strategy-wise, it was more beneficial to them to be arraigned and proceed with trial under an Information which the prosecution admitted they did not have enough evidence for. These actuations are not consistent with one whose right to speedy disposition of cases has been violated.

4. ID.; ID.; ID.; ID.; ACCUSED PERSONS CANNOT INVOKE A VIOLATION OF THEIR RIGHT TO A SPEEDY DISPOSITION OF CASES WHEN THEIR ACTS BELIE ANY PRESUMED PREJUDICE THAT THEY MAY HAVE SUFFERED OR WHEN THEY HAD ACQUIESCED TO THE DELAY.— But the very same individual's acts may belie any presumed prejudice he or she may have suffered and, as acknowledged by the Court in *Cagang*, may imply that he or she had acquiesced to the delay. In the same vein, not every delay results in a tactical disadvantage on the part of the defense.

In this case, the Court takes the fact that petitioners (a) filed an Omnibus Motion asking for, among others, reinvestigation and referral of the initial two cases to the COA for special audit and suspension of the proceedings before the Sandiganbayan; (b) filed an Urgent Omnibus Motion asking for the conduct of another preliminary investigation by the OMB and suspension of proceedings before the Sandiganbayan, Fifth Division; ***coupled with*** their omission to air their grievances against the OMB's delay for purposes of determining whether they were unduly prejudiced by the OMB's delay.

. . .

On balance and guided by the principles laid out in *Cagang*, while the Court acknowledges that there was unexplained delay on the part of the OMB, it is constrained to rule that, **in the peculiar circumstances of this case**, petitioners cannot invoke a violation of their right to speedy disposition of cases.

APPEARANCES OF COUNSEL

Avila Tamayo Law Office for petitioners.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for *Certiorari* and Prohibition[1] (Petition) filed under Rule 65 of the Rules of Court (Rules), assailing the Resolutions dated May 21, 2018[2] and June 7, 2018[3] of the Sandiganbayan, Fifth Division, in Case Nos. SB-17-CRM-0023 to 0029 denying petitioners' motion to quash Informations and to dismiss the above-entitled cases with prayer to cancel the April 28, 2018 scheduled arraignment and pre-trial and suspension of further proceedings and seeking the extraordinary remedy of Prohibitiion against the setting of their arraignment on July 28, 2018 and the conduct of further proceedings by the respondent Court.

Facts

On December 9, 2011, a Complaint-Affidavit was filed by Abubakar P. Maulana (Maulana), who was then the incumbent Mayor of the Municipality of Palimbang, Province of Sultan Kudarat, with the National Office of the Office of the Ombudsman (OMB).[4] The Complaint-Affidavit charged petitioners Labualas B. Mamansual (Mamansual) and Francis B. Nadar (Nadar), as well as Zaida D. Apil (Apil) and Pukog P. Makakua (Makakua), who were the former Mayor, Treasurer, Budget Officer, and Accountant, respectively, of Palimbang, with Malversation of Public Funds under Article 217 and Removal, Concealment, or Destruction of Documents under Article 226 of the Revised Penal Code (RPC).[5]

On the basis of the said Complaint-Affidavit, the OMB's Field Investigation Office (FIO) conducted a fact-finding

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[1] *Rollo*, pp. 3-50.

[2] Id. at 53-58.

[3] Id. at 77-79.

[4] Id. at 281.

[5] Id.

investigation, which resulted in the filing of a Complaint on May 14, 2012, against Mamansual, Nadar, Apil and Makakua — respondents before the OMB — for violation of Articles 217 and 226 of the RPC.[6] The Complaint alleged that the Municipal Government of Palimbang maintains a Current Account with the Land Bank of the Philippines (LBP) with Deposit No. 2802-1045-30.[7] From April 27, 2010 to June 29, 2010, before the term of office of Mamansual expired on June 30, 2010, seven LBP checks naming Nadar as payee were signed and drawn by Mamansual against the said account, amounting to a total of ₱13,003,776.71.[8] It was further alleged that the encashment of checks through the signatures of Mamansual and Nadar did not represent any project or appropriation; nor were there any liquidations made by them relative to the encashment of the checks.[9]

On November 8, 2013, the OMB issued a Joint Order directing Mamansual, Nadar, Apil, and Makakua to file their Counter-Affidavits.[10] Mamansual and Nadar filed their Counter-Affidavits with the OMB on December 5, 2013 and January 9, 2014, respectively.[11] Apil and Makakua filed their Counter-Affidavits on December 11, 2013.[12]

On October 12, 2015, the OMB prepared a Resolution finding probable cause to file Informations against the four respondents for violations of Articles 217 and 226 of the RPC.[13] This Resolution was approved by former Ombudsman Conchita Carpio Morales (Ombudsman Morales) on November 23, 2015.[14] Therein

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[6] Id.

[7] Id.

[8] Id.

[9] Id.

[10] Id. at 282.

[11] Id.

[12] Id.

[13] Id.

[14] Id.

respondents filed Motions for Reconsideration of the OMB Resolution on December 15 and 21, 2015.[15] These Motions were denied by Resolution dated January 15, 2016 and was approved by Ombudsman Morales on March 30, 2016.[16]

On August 3, 2016, two Informations were filed with the Sandiganbayan against Mamansual, Nadar, Apil, and Makakua for violations of Articles 217 and 226 of the RPC.[17] These were raffled to the Sandiganbayan, First Division, which issued a Resolution on August 5, 2016, ordering the issuance of warrants of arrest against the four accused.[18]

On October 6, 2016, Mamansual, Nadar, and Makakua filed an Omnibus Motion,[19] praying for (a) reinvestigation of the cases and referral to the Commission on Audit (COA) for the conduct of a special audit; (b) dismissal of the cases; (c) deferment of arraignment/cancellation of hearings; and (d) suspension of further proceedings. During the hearing for this Omnibus Motion on October 13, 2016, Mamansual and Nadar moved to withdraw the same and instead requested arraignment.[20] The Office of the Special Prosecutor (OSP) of the OMB opposed, saying that it had filed on October 12, 2016, a Motion to Withdraw Informations.[21]

The OSP's Motion to Withdraw Informations stated that, after a thorough review of the records of the case, the handling prosecutor prepared a Memorandum recommending that the two Informations for violation of Articles 217 and 226 of the RPC filed before the Sandiganbayan be withdrawn, and instead,

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[15] Id.

[16] Id.

[17] Id.

[18] Id.

[19] Id. at 108-119.

[20] Id. at 7.

[21] Id. at 120-123.

seven Informations be filed against Mamansual and Nadar for seven counts of violation of Article 217 only.[22] The prosecutor's Memorandum explained that there was nothing in the records which would support the existence of the documents subject of the charge for violation of Article 226 — *i.e.*, vouchers, certifications, documents, or papers in connection with the issuance of the subject seven checks; hence, it was proper that these charges be dropped.[23] By Resolution dated December 5, 2016, the Sandiganbayan, First Division granted the OSP's Motion.[24]

On January 13, 2017, seven new Informations against Mamansual and Nadar for seven counts of violation of Article 217 of the RPC were filed by the OSP before the Sandiganbayan, which were raffled to the latter Court's Fifth Division.[25] On January 23, 2017, Mamansual and Nadar filed an Urgent Omnibus Motion, praying that (a) the OMB be directed to conduct preliminary investigation, or, in the alternative, reinvestigation of these cases;[26] (b) the issuance of warrants of arrest be deferred and any further proceedings be suspended; and (c) that the cases be transferred to the Sandiganbayan, First Division.[27]

On May 9, 2017, the Sandiganbayan, Fifth Division[28] granted petitioners' Motions and directed the OSP to conduct preliminary investigation as regards the seven new Informations.[29] Pursuant thereto, the OSP directed petitioners to file their respective counter-affidavits.[30] Petitioners refused and instead filed a

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[22] Id. at 121.

[23] Id. at 130-131.

[24] Id. at 283.

[25] Id. at 13 and 283.

[26] Id. at 14 and 283.

[27] Id. at 14.

[28] Sandiganbayan Associate Justices Rafael R. Lagos, Maria Theresa V. Mendoza-Arcega, and Maryann E. Corpus-Mañalac.

[29] *Rollo*, p. 207.

[30] Id. at 283.

Manifestation with Motion for Inhibition,[31] claiming that the OSP is not the proper body to conduct the preliminary investigation because it cannot be objective and impartial.[32]

On December 1, 2017, the OSP denied petitioners' Motion for Inhibition and issued a Resolution finding probable cause for the filing of the seven Informations.[33] This Resolution was submitted to the Sandiganbayan, Fifth Division on December 18, 2017.[34] By Resolution dated December 19, 2017, the Sandiganbayan, Fifth Division found probable cause for issuance of warrants of arrest against petitioners.[35] Petitioners moved for reconsideration,[36] but the same was denied.[37]

On April 16, 2018, petitioners filed a Motion to Quash Informations and to Dismiss the Above-Entitled Cases with Prayer to Cancel the April 28, 2018 Schedule Arraignment and Pre-Trial and Suspension of Further Proceedings[38] (Motion). Petitioners claimed therein that there was inordinate delay in the conduct by the OMB of preliminary investigation and that the total delay is at six years and one month (five years and eight months, if excluding the fact-finding investigation).[39]

RULING OF THE SANDIGANBAYAN

In its assailed Resolutions, the Sandiganbayan, Fifth Division denied petitioners' Motion finding that petitioners merely enumerated material dates and were not able to establish the delay by the OMB. It also applied the balancing test in *Barker*

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[31] Id. at 225 and 283.

[32] Id. at 283.

[33] Id. at 227 and 283-284.

[34] Id. at 284.

[35] Id. at 253 and 284.

[36] Id. at 256.

[37] Id. at 264.

[38] Id. at 59.

[39] Id. at 73.

v. Wingo,[40] and found that (a) petitioners failed to point out where in the timeline the delay occurred; (b) petitioners could have raised the matter of delay when the earlier two Informations were filed, but they failed to do so; (c) petitioners could have raised the matter of delay when the new set of seven Informations were filed; instead, they requested that a new preliminary investigation be conducted and that proceedings before the Sandiganbayan, Fifth Division be suspended; and (d) petitioners failed to identify the prejudice caused to them by the supposed delay.

Hence, this Petition.

ISSUES

For resolution by this Court is the procedural issue of whether the Petition has become moot after the Sandiganbayan, Fifth Division found probable cause and issued warrants of arrest against petitioners, and the substantive issue of whether the Sandiganbayan, Fifth Division acted with grave abuse of discretion in finding that there was no inordinate delay in the conduct of the preliminary investigation by the OMB.

I

In its Comment, the OMB cited the case of *De Lima v. Reyes*[41] *(De Lima)* in arguing that, since the Sandiganbayan, Fifth Division already found probable cause for the purpose of issuing warrants of arrest against petitioners, the petition for *certiorari* assailing the regularity of preliminary investigation becomes moot and ceases to be the "plain, speedy, and adequate remedy" under the law.[42] The Court disagrees.

De Lima is not on all fours with this case. In *De Lima*, the violation of the right of the accused therein to speedy disposition of cases was not in issue, and the preliminary investigation

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[40] 407 U.S. 514 (1972).

[41] G.R. No. 209330, January 11, 2016, 779 SCRA 1.

[42] *Rollo*, p. 306.

therein was assailed on an entirely different and unrelated matter. A finding of probable cause for issuing warrants of arrest against petitioners will not resolve the primary issue raised by petitioners in this case — that of violation of their right to speedy disposition of cases. If indeed there has been inordinate delay and their right has been violated, proceeding to trial before the Sandiganbayan, Fifth Division is decidedly not a plain, speedy, and adequate remedy; on the contrary, it would further put petitioners' rights in jeopardy.

Where there is no other plain, speedy, and adequate remedy, and where allegations of grave abuse of discretion are made in the petition, the remedy of *certiorari* may lie. Thus, in *Galzote v. Briones*,[43] the Court said:

> Thus, a direct resort to a special civil action for *certiorari* is an exception rather than the general rule, and is a recourse that must be firmly grounded on compelling reasons. In past cases, we have cited the interest of a "more enlightened and substantial justice"; the promotion of public welfare and public policy; cases that "have attracted nationwide attention, making it essential to proceed with dispatch in the consideration thereof"; **or judgments on order attended by grave abuse of discretion, as compelling reasons to justify a petition for *certiorari***.
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> In grave abuse of discretion cases, *certiorari* is appropriate if the petitioner can establish that the lower court issued the judgment or order without or in excess of jurisdiction or with grave abuse of discretion, and the remedy of appeal would not afford adequate and expeditious relief. The petitioner carries the burden of showing that the attendant facts and circumstances fall within any of the cited instances.[44]

II

Petitioners assert that the OMB grossly delayed in the conduct of the first preliminary investigation. In the Petition, they claim:

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[43] G.R. No. 164682, September 14, 2011, 657 SCRA 535.

[44] Id. at 541. Emphasis and underscoring supplied; citations omitted.

x x x x

39. On January 13, 2017, the Office of the Ombudsman, through its Office of the Special Prosecutor, implementing the afore-mentioned recommendation contained in the Memorandum attached to the MOTION TO WITHDRAW INFORMATIONS, filed against the accused-movants, the attached **SEVEN (7) INFORMATIONS** for Malversation.

40. Reckoned from December 9, 2011 to January 13, 2017, there was already a TOTAL DELAY OF SIX (6) YEARS AND ONE MONTH. Clearly, there is here an INORDINATE DELAY in the investigation of the complaint against the Petitioners. And if the date to be reckoned is from May 14, 2012 to January 13, 2017, there was a DELAY OF FIVE (5) YEARS AND EIGHT MONTHS.[45]

In *Cagang v. Sandiganbayan*[46] *(Cagang)*, the Court laid down the following guidelines in resolving issues concerning the right to speedy disposition of cases:

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

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[45] *Rollo*, p. 34. Emphasis in the original.

[46] G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, 875 SCRA 374.

Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove, *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file

the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.[47]

The petitioners' claim of violation of their right to speedy disposition of cases shall be evaluated in light of the foregoing framework.

The OMB was in delay in the conduct of preliminary investigation in the first set of cases filed.

Consistent with the first principle above, petitioners are invoking their right to speedy disposition of cases against the OMB, which conducted preliminary investigation in both the first and second set of cases ultimately filed before the Sandiganbayan. While the OMB has not yet set periods within which preliminary investigation shall be completed, Rule 112 of the Revised Rules of Criminal Procedure may be applied suppletorily for purposes of the second principle above. Section 3(f) of Rule 112 provides:

SEC. 3. *Procedure*. — The preliminary investigation shall be conducted in the following manner:

x x x x

(f) Within ten (10) days after the investigation, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. (3a)

Furthermore, Section 4 of the same Rule provides:

SEC. 4. *Resolution of investigating prosecutor and its review*. — If the investigating prosecutor finds cause to hold the respondent for trial, he shall prepare the resolution and information. He shall certify under oath in the information that he, or as shown by the record, an authorized officer, has personally examined the complainant and his witnesses; that there is reasonable ground to believe that a crime has been committed and that the accused is probably guilty

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[47] Id. at 449-451.

thereof; that the accused was informed of the complaint and of the evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the Sandiganbayan in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

x x x x

In other words, the investigating prosecutor or officer of the OMB has 10 days from submission of the case for resolution, or upon submission of the last pleading required by the OMB or its rules within which to conclude the preliminary investigation and submit his resolution to the Ombudsman for approval. Upon receipt, the Ombudsman has, in turn, 10 days from receipt within which to act upon the investigating officer's resolution and to immediately inform the parties of its action.

The relevant dates in this case are as follows:

Submitted for Resolution (last pleading submitted)	January 9, 2014	**1 year, 9 months and 8 days**
OMB Resolution	Submitted to Ombudsman Morales on October 12, 2015	
	Approved by Ombudsman Morales on November 23, 2015	**1 month and 12 days**

As may be clearly seen from above, the OMB's investigating officer took one year, nine months, and eight days to come up with a resolution on petitioners' case, and it took former Ombudsman Morales another one month and 12 days to approve the same. This amounts to a total period of one year, 10 months, and 20 days, an inordinate amount of time in excess of that provided in Rule 112 of the Revised Rules of Criminal Procedure.

The OMB's protracted delay in the conduct of the preliminary investigation shifts the burden of proving that there was no violation of the right to speedy disposition of cases to the prosecution, consistent with the third and fourth principles in *Cagang*. Hence, the prosecution must be able to prove that the delay was justified because of the complexity of issues and volume of evidence, and that the accused suffered no prejudice as a result of the delay.

The OMB did not offer any explanation for its delay.

In its Comment,[48] the OMB asserted that petitioners failed to point out any delay whatsoever in the entire process of preliminary investigation; hence, there is no further need to discuss the reasons for the delay. The OMB claims that petitioners merely listed the material dates in this case, and even from their enumeration, no clear delay can be pointed out. This is an unacceptable argument.

As discussed above, the OMB took almost two years to resolve the preliminary investigation from the time that petitioners — and their co-respondents before the OMB — had filed all their counter-affidavits. In this instance, there was no longer any participation from petitioners which could have caused the almost two-year delay in deciding the case before the OMB.

Contrary to the assertions of the OMB as well as the findings of the respondent Sandiganbayan, Fifth Division, there is a need for the OMB to explain why such a delay has been incurred. Pursuant to this Court's ruling in *Cagang*, the OMB must be able to establish that the complexity of issues and volume of evidence necessitated the delay, and that the accused — herein petitioners — suffered no prejudice as a result of the delay. On this point, the OMB has failed to comply.

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[48] *Rollo*, pp. 280-309.

Petitioners did not timely raise their right to speedy disposition of cases and acted in acquiescence with the delay.

Notably, petitioners herein raised the issue of violation of their right to speedy disposition of cases for the first time before the Sandiganbayan, Fifth Division in their Motion. This is after the second set of seven Informations was already filed with the Sandiganbayan, raffled to the respondent said Court's Fifth Division, and after petitioners posted bail. At the outset, the Court emphasizes that this, in itself, does not conclusively establish acquiescence in the delay or failure of petitioners to timely raise the issue of speedy disposition of cases. The peculiar context of the case must be considered.

Petitioners claim that the issue of inordinate delay was raised only after the second set of Informations was filed because (a) the Sandiganbayan, First Division had already dismissed the first two cases when the OMB moved to withdraw the Informations; (b) at the time that the OMB moved to withdraw the Informations, it also admitted that it could not prove the case for violation of Article 226 of the RPC; hence, strategy-wise, petitioners believed the better choice would be to demand to be arraigned under the already existing two Informations; (c) when the second set of seven Informations was filed, petitioners believed that their priority should have been to ask for preliminary investigation because if they did not, their right to the same would have been waived.[49] None of these explanations convince this Court that the belated invocation of their right to speedy disposition of cases was justified, as none of the foregoing could have prevented petitioners from invoking such right.

Ultimately, however, it is not the belated invocation of the right to speedy disposition of cases that negates petitioners' claim of violation such right. What strongly militates against the conclusion that petitioners were injured by the violation of

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[49] Id. at 42-43.

their right are the remedies they sought instead of bewailing the OMB's delay.

First, when the initial set of Informations was filed against petitioners, they filed an **Omnibus Motion** praying for (a) **reinvestigation of the cases and referral to the COA for the conduct of a special audit**; (b) dismissal of the cases; (c) **deferment of arraignment/cancellation of hearings**; and (d) **suspension of further proceedings**.[50] These Informations were subsequently withdrawn by the OSP with leave of court, but not before petitioners withdrew their own Omnibus Motion in order to be arraigned under these two Informations. When the Sandiganbayan, Fifth Division in its assailed resolution, noted that petitioners had not raised the issue of inordinate delay at this point, petitioners explain as follows:

> 31. Continuing with what the [Sandiganbayan, Fifth Division] said in its assailed Resolution:
>
> "**Then, after the cases were withdrawn and these present seven (7) cases were filed, the accused could also have raised the issue of inordinate delay much earlier**. They instead asked for the conduct of a preliminary investigation, which has several implications.
>
> Seeking a new preliminary investigation seems incongruent with the notion that these cases have been delayed since such new preliminary investigation will inevitably prolong the cases. If they thought there was already an inordinate delay, their prayer for the preliminary investigation compounded such delay."
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> 32. COMMENT: With due respect, the [Sandiganbayan, Fifth Division] did not fully appreciate the factual antecedents of the seven (7) cases. When the first two cases were filed with the First Division, the Prosecution, realizing that it had no documentary evidence to prove SB-16-CRM-0464 For: Violation of Art. 226 of RPC, move[d] to withdraw the two cases at the same time attaching already the seven (7) informations for filing with the Court once the motion to withdraw is granted.
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> x x x x

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[50] *Supra* note 19.

34. **The opposition of the accused was directed at the motion to withdraw the two cases because they realized that the Prosecution made the admission that they could not prove the case for violation of Art. 226 of RPC, so *strategy-wise*, they demanded instead to be arraigned under the two informations filed in the two cases**. And by way of comment, they pointed out to the impropriety of filing the seven (7) informations against the accused without affording them a preliminary investigation. The Court First Division, noted the comment and objection of the accused but opined that it could not yet rule on it because the seven (7) informations were not yet filed in court and there is no assurance that the same cases, once filed, will be raffled to it.[51]

In other words, petitioners were willing to prolong the proceedings by having the cases reinvestigated and referred to the COA for a special audit, and in the meantime, the proceedings before the Sandiganbayan, Fifth Division would be suspended. On another point, petitioners' admission likewise inspires the conclusion that, strategy-wise, it was more beneficial to them to be arraigned and proceed with trial under an Information which the prosecution admitted they did not have enough evidence for. These actuations are not consistent with one whose right to speedy disposition of cases has been violated.

Second, despite the delay in the initial preliminary investigation, when the subsequent seven Informations were filed, **petitioners filed an Urgent Omnibus Motion asking for suspension of proceedings before the Sandiganbayan and the conduct of another preliminary investigation or reinvestigation**. In itself, this request is not erroneous. But there was nothing prohibiting petitioners from also invoking at that time whatever inordinate delay they had already suffered through during the preliminary investigation.

The Sandiganbayan, Fifth Division's observations on this matter are well-taken. In its assailed Resolution dated May 21, 2018, the Sandiganbayan, Fifth Division said:

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[51] Id. at 43. Emphasis and underscoring supplied.

Seeking a new preliminary investigation seems incongruent with the notion that these cases have been delayed since such new preliminary investigation will inevitably prolong the cases. If they thought there was already an inordinate delay, their prayer for the preliminary investigation compounded such delay.

This is not to say that the preliminary investigation was not warranted because, as previously ruled by the Court, a new preliminary investigation had to be conducted as a matter of due process. The point is that the timing of the current motion to dismiss affects its efficacy. Procedurally, the accused's arguments on inordinate delay could be considered barred under the omnibus motion rule.[52]

In *Cagang*, citing *Corpuz v. Sandiganbayan*,[53] the Court explained the precise nature of the right to speedy disposition of cases and the harm which it seeks to prevent:

x x x Prejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: **to prevent oppressive [pre-trial] incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired**. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.[54]

Likewise cited in *Cagang* was *Coscolluela v. Sandiganbayan*,[55] in which this Court said:

Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also **to prevent the oppression of**

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[52] Id. at 57.

[53] G.R. No. 162214, November 11, 2004, 442 SCRA 294.

[54] Id. at 313. Emphasis and underscoring supplied.

[55] G.R. Nos. 191411 & 191871, July 15, 2013, 701 SCRA 188.

the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. **This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual**. x x x[56]

Whether or not an individual subjected to criminal prosecution suffers from the oppression, anxiety, and concerns tied to being under such prosecution need not be proven by such individual — these may be presumed and even assumed, as these are inherent in the experience of being at the receiving end of any criminal accusation, especially when the finger pointed squarely at him or her is that of the state. But the very same individual's acts may belie any presumed prejudice he or she may have suffered and, as acknowledged by the Court in *Cagang*, may imply that he or she had acquiesced to the delay. In the same vein, not every delay results in a tactical disadvantage on the part of the defense.

In this case, the Court takes the fact that petitioners (a) filed an Omnibus Motion asking for, among others, reinvestigation and referral of the initial two cases to the COA for special audit and suspension of the proceedings before the Sandiganbayan; (b) filed an Urgent Omnibus Motion asking for the conduct of another preliminary investigation by the OMB and suspension of proceedings before the Sandiganbayan, Fifth Division; ***coupled with*** their omission to air their grievances against the OMB's delay for purposes of determining whether they were unduly prejudiced by the OMB's delay.

At any rate, nothing in the Petition nor in the records would indicate that petitioners lost a potential defense due to the delay, or that the OMB's delay caused them to no longer be able to

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[56] Id. at 199-200. Emphasis and underscoring supplied.

[57] *Rollo*, p. 235.

acquire relevant evidence or testimonies in their favor. In fact, the records would show that they were able to attach vouchers and other documents to their counter-affidavits during the first preliminary investigation showing proof of actual release of funds.[57]

On balance and guided by the principles laid out in *Cagang*, while the Court acknowledges that there was unexplained delay on the part of the OMB, it is constrained to rule that, **in the peculiar circumstances of this case**, petitioners cannot invoke a violation of their right to speedy disposition of cases.

WHEREFORE, premises considered, the Petition is **DISMISSED**. The Sandiganbayan is **DIRECTED** to resolve Case Nos. SB-17-CRM-0023 to 0029 with dispatch.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.,* concur.

FIRST DIVISION

[G.R. Nos. 241576 & 241623. November 3, 2020]

CECILIA Q. REJAS,[*] *Petitioner*, *v.* **OFFICE OF THE OMBUDSMAN, DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT and DIOSDADO N. DITONA, represented by EDWIN N. DITONA,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AS A RULE, THE COURT DOES NOT ENTERTAIN QUESTIONS OF FACTS IN A RULE 45 PETITION UNLESS THE LOWER TRIBUNAL'S FINDINGS OF FACTS ARE BASED ON A MISAPPREHENSION OF FACTS AND ARE NOT SUPPORTED BY EVIDENCE. — The Court, as a rule, does not entertain questions of facts in a Rule 45 petition. As a trier of laws, the Court is not duty-bound to analyze and weigh again the evidence already considered in the proceedings below. Furthermore, the "errors" which the Court may review in a petition for review on *certiorari* are those of the CA, and not directly those of the trial court or the quasi-judicial agency, tribunal, or officer which rendered the decision in the first instance.

There are, however, several well-recognized exceptions to the above-stated general rule and one of which is when the findings of fact of the lower tribunal, which . . . [were] upheld by the CA, . . . [were] based on a misapprehension of facts and . . . [were] clearly not supported by extant evidence. The Court in this case finds the occasion to apply this exception.

2. ID.; EVIDENCE; POLITICAL LAW; ADMINISTRATIVE LAW; QUANTUM OF PROOF NECESSARY IN AN ADMINISTRATIVE CASE; SUBSTANTIAL EVIDENCE, DEFINED. — The quantum of proof necessary to prove a charge in an administrative case is substantial evidence, which is defined

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[*] Also appears as "Cecilia Quiño-Rejas" in some parts of the *rollo*.

as relevant evidence that a reasonable mind might accept as adequate to support a conclusion. . . .

. . .

Indeed, while the quantum of evidence in administrative cases does not require that it be overwhelming or preponderant in order to be considered substantial, this does not sanction drawing a nexus that is tenuous or rests on shaky grounds. The Court has always lauded the Ombudsman in fulfilling its all too important role as "protector of the people," **but the Court has, at the same time, drawn the line when it becomes overzealous at the expense of public officers**. The Court once again puts its foot down in the shot-gun approach employed by the Ombudsman in this case.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; MISCONDUCT; TO CONSTITUTE MISCONDUCT, THE ACTS OR OMISSIONS MUST BE WILLFUL OR INTENTIONAL AND OF DIRECT RELATION TO, AND BE CONNECTED WITH, THE PERFORMANCE OF OFFICIAL DUTIES. — Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior. It is considered grave where the elements of corruption are present including a clear intent to violate the law, or a flagrant disregard of established rules. To constitute misconduct, however, it is likewise imperative that the act or omission complained of must have a direct relation to the public officer's duties and affect not only his character as a private individual, but also, and more importantly, the performance of his official duties as a public servant. The misfeasance or malfeasance must amount to either maladministration or willful, intentional neglect and failure to discharge the duties of the office.

Hence, to hold petitioner liable for misconduct, the acts or omissions for which she was charged must be of direct relation to and be connected with the performance of her official duties as the Municipal Budget Officer and the same must be willful or intentional.

. . .

In order to establish administrative liability for misconduct, there must be a nexus between the public official's acts and the functions of his or her office.

4. ID.; ID.; ID.; ID.; A LOCAL BUDGET OFFICER WHO HAS NO PARTICIPATION IN THE QUESTIONABLE ACT OF INCREASING A SALARY GRADE AND WHO IS NOT RESPONSIBLE IN THE PREPARATION OF THE APPOINTMENT PAPERS AND IS NOT REQUIRED TO ENSURE THE CORRECT SALARY GRADES OF APPOINTIVE EMPLOYEES OF A LOCAL GOVERNMENT UNIT CANNOT BE LIABLE FOR GRAVE MISCONDUCT. — [I]n this case, the *Sangguniang Bayan* enacted Ordinance Nos. 2000-151 and 2001-157 which fixed the salary grade of Mechanical Shop Foreman to 11. Parenthetically, this salary determination is compliant with DBM Local Budget Circular (LBC) No. 61, which provides that a Mechanical Shop Foreman is a salary grade 11 position. . . .

It is undisputed that when Antonio was re-appointed as a Mechanical Shop Foreman in a casual status beginning January 2009, his salary grade was 15. From the period of July 12, 2012 to October 11, 2012, his salary grade went up to 18. These salary adjustments, as correctly held by the Ombudsman and the CA, contravened Ordinance Nos. 2000-151 and 2001-157 and DBM LBC No. 61. . . .

. . .

. . . [T]he Court finds that petitioner had no participation in the questionable act of increasing the salary grade of Antonio. Consequently, the CA erred in affirming the finding of the Ombudsman that petitioner is guilty of grave misconduct.

. . .

It bears emphasis at this point that the case against petitioner revolved around her certifications appearing in the Plantilla of Casual Appointments of Antonio. It was alleged that in certifying the same, petitioner effectively "had a hand" in irregularly upgrading the salary of Antonio. However, a simple reading of the Plantilla of Casual Appointments plainly shows the extent of petitioner's acts to be only with respect to certifying that appropriations did exist for the position.

On the other hand, it is undisputed that the preparation of the Plantilla of Casual Appointments was done by the [Human Resource Management Office] [(]HRMO[)], as in fact, the signature of one Annie B. Francisco, HRMO IV appears in all of the documents under the phrase "Prepared by." It follows

therefore that it was also the HRMO which indicated the salary grades of the appointees in the documents, including Antonio's, and which, in fine, determined their correctness. It would be unfair to hold petitioner liable for the mistakes contained in the Plantilla of Casual Appointments considering that nothing in the enumerated duties of a local budget officer under Section 475 of the LGC, or even of the Local Finance Committee under Section 316 of the LGC of which a local budget officer is a member, provides that he or she is responsible in the preparation of the appointment papers of appointive employees of the local government unit. In the same manner, nothing in said sections explicitly requires that the local budget officer must ensure the correct salary grades of the positions to which local government employees are appointed by the local chief executive.

5. ID.; ID.; ID.; ID.; THE DUTY OF A LOCAL BUDGET OFFICER OF ASSISTING IN THE BUDGET PREPARATION, ANALYSIS, AND REVIEW IS LARGELY SUBORDINATE AND INVOLVES THE DUTY TO VERIFY THE BUDGET THAT CAN BE ALLOCATED FOR CERTAIN POSITIONS. — In holding that petitioner was guilty of grave misconduct, nonetheless, the CA ruled that as a local budget officer, petitioner knew or ought to know the budget that can only be allocated for Antonio's position. At this point, the Court emphasizes again the specific act for which petitioner is being called to account. It has nothing to do with budget preparations and any act related to it leading up to the enactment of an appropriation ordinance by the *sanggunian*. In this regard, the Court does agree with the observation of the CA about the responsibility of petitioner to know the budget allocation for Antonio's position. The Court completely differs, however, with the CA's finding that petitioner failed to carry out her responsibility. Petitioner, on the contrary, did perform her duty to verify the budget that can be allocated to Antonio. She has sufficiently explained that in certifying the existence of appropriations in the Plantilla of Casual Appointments issued to Antonio, she consulted the appropriations in the ordinances approving the annual budget for the relevant calendar years under the Economic Enterprises of the Municipality. The evidence she submitted support her claim that the appropriations in the ordinances for the salaries and wages of employees under Motorpool and Heavy Equipment Unit were not broken down

into each position. Rather, they were in lump-sum and gradually increased over the years. Glaringly, the Ombudsman and the CA failed to make any finding that the salaries and wages received by employees under Motorpool and Heavy Equipment Unit ever exceeded the appropriations during the relevant periods. It was also not disputed that the salaries paid passed the government audit.

The next best connection that the CA had as regards petitioner's duties with that of her purported offense concerns assisting the mayor in the preparation of the budget and the *sanggunian* in the analysis and review thereof. The CA appears to suggest that petitioner ought to know the correct salary grade of Antonio's position because she was involved in the budget preparations, analysis and review. Suffice it to state, however, the duties of petitioner merely speak of "assisting," and notably, with regard to Section 316(g) of the LGC, which the CA emphasized on, it bears stressing that petitioner was a mere member of the Local Finance Committee to which the function under Section 316(g) is vested. It is, in other words, a shared responsibility with the local planning and development officer and the local treasurer.

To be sure, the duty of budget preparation and its enactment are primarily lodged with the local chief executive and the *sanggunian*, respectively. Significantly, in this regard, there is nary an allegation that the appropriations ordinances which petitioner relied upon were irregular to begin with. There is neither, at the very least, any allegation against petitioner anent any negligence or misconduct on her part insofar as previous budget preparations were concerned. As such, the Court is not prepared to make any conclusion on the matter. As has been demonstrated, the duties of petitioner were largely subordinate.

APPEARANCES OF COUNSEL

John Aldrich D. Bonete for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the 1997 Rules of Civil Procedure assailing the: (1) Decision[2] dated February 15, 2018 of the Special Twenty-Third Division of the Court of Appeals (CA), Mindanao Station in the consolidated cases of CA-G.R. SP No. 07765-MIN and CA-G.R. SP No. 07826-MIN; and (2) Resolution[3] dated July 6, 2018 denying petitioner's motion for reconsideration.

The assailed Decision and Resolution affirmed with modification the Decision[4] dated September 7, 2016 of the Office of the Ombudsman (Ombudsman) and its Order[5] dated October 28, 2016 denying petitioner's motion for reconsideration, relative to OMB-M-A-12-0201 entitled "*Diosdado N. Ditona vs. Rogelio N. Quiño, et al.*" where petitioner was found administratively liable for grave misconduct and was meted the penalty of dismissal from service.

FACTS

In his Affidavit Complaint[6] dated June 13, 2012 filed before the Ombudsman, Diosdado Ditona (Ditona) alleged that Rogelio N. Quiño[7] (Rogelio), the former Municipal Mayor of Manolo Fortich, Bukidnon, approved several appointments of his brother, Antonio N. Quiño, Jr. (Antonio), as Mechanical Shop Foreman. Ditona alleged that these appointments violated the rule on

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[1] *Rollo*, pp. 11-34, excluding Annexes.

[2] Id. at 36-46. Penned by Associate Justice Ruben Reynaldo G. Roxas and concurred in by Associate Justices Edgardo A. Camello and Walter S. Ong.

[3] Id. at 49-57.

[4] Id. at 58-68.

[5] Id. at 69-73.

[6] Id. at 76-84.

[7] Also appears as "Quino" in some parts of the *rollo*.

nepotism. He further averred that petitioner, Rogelio's and Antonio's sister, certified the appointments in her capacity as the former Municipal Budget Officer of the Municipality of Manolo Fortich, Bukidnon.[8] The siblings purportedly conspired to make it appear that the position of Mechanical Shop Foreman is of a higher salary grade (SG 15) when in truth, the *Sangguniang Bayan* of Manolo Fortich, Bukidnon, through Ordinance Nos. 2000-151[9] and 2001-157,[10] fixed a lower salary grade of 11 to the position. Consequently, Antonio received a salary higher than what was provided by law, to the damage and prejudice of the government.[11] Ditona finally alleged that Antonio falsified his personal data sheet (PDS) by making it appear that he was not related to the appointing or recommending authority.[12]

In their Joint Counter-Affidavit,[13] the siblings denied that there was an intention to hide their relationship with Antonio, and that on the contrary, the fact was disclosed right from the beginning.[14] The position of Mechanical Shop Foreman was likewise contractual and of non-career service, and was thusly excluded from the scope of the prohibition on nepotism under Section 79 of the Local Government Code[15] (LGC).[16] The siblings

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[8] *Rollo*, pp. 59, 76.

[9] AN ORDINANCE CREATING SOME PLANTILLA POSITIONS FOR THE LOCAL GOVERNMENT UNIT OF THE MUNICIPALITY OF MANOLO FORTICH, BUKIDNON; *rollo*, pp. 94-96.

[10] AN ORDINANCE AMENDING ORDINANCE NO. 2000-151 OF THE SANGGUNIANG BAYAN FOR THE INSERTION OF SOME ADDITIONAL PLANTILLA POSITIONS DEEMED NECESSARY FOR A MORE EFFECTIVE AND EFFICIENT MUNICIPAL OPERATIONS; *id*. at 97-99.

[11] *Rollo*, pp. 59, 77.

[12] Id.

[13] Id. at 101-107.

[14] Id. at 102.

[15] Republic Act No. 7160, AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991, October 10, 1991.

[16] Section 79 of the LGC provides that "[n]o person shall be appointed in the career service of the local government if he is related within the

pointed out that the nature of the position involves functions that require the highest degree of trust and confidence between the appointing authority and the appointee.[17] These functions included:

> [1.] To see to it that the appropriate procedures in the utilization of heavy equipments *(sic)*, trucks and service vehicles by the officials and employees of the LGU are strictly observed;
>
> [2.] Continuously observe, study and implement appropriate measures and procedures to improve or streamline the heavy equipment and motor pool operations and instill the acceptable attitude and mindset of the personnel assigned in the said department;
>
> [3.] Evaluate the impact, effects and relevance of the adopted measures and improvements in the over-all performance of the said Economic Enterprise Department in relation to the standards set for its efficient and sustainable operation;
>
> [4.] Report personally and directly to the Chief Executive matters that need to be decided and acted upon by the Mayor including the submittal of his quarterly reports to the Mayor's office;
>
> [5.] Perform such other functions as may be directed by the Mayor including the monitoring of unscrupulous or corrupt practices that may be committed in the said department and recommend appropriate action thereof.[18] (Emphasis and underscoring omitted)

Petitioner and her brothers also denied that Antonio falsified his PDS, explaining that he answered "No" to the question on having a relative within the third degree of consanguinity or affinity in the national government, but answered "Yes" to the question on having a relative within the third degree of consanguinity or affinity in the local government.[19]

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fourth civil degree of consanguinity or affinity to the appointing or recommending authority."

[17] *Rollo*, pp. 103-104.

[18] Id.

[19] Id. at 104.

On the matter of the alleged falsity of the salary grade of Antonio's position, the siblings clarified that they merely relied on the Plantilla of Casual Appointment which was prepared by and originated from the Human Resource Management Office (HRMO). Moreover, the increases in the salary grade were based on the Annual Appropriation Budget submitted by the Executive Department and duly approved by the *Sangguniang Bayan*. As such, the salary increases were based on the Annual Budget Ordinances of the local government unit (LGU). The siblings pointed out that the actual disbursements of salaries and wages for the Heavy Equipment/Motorpool Division were well within the Annual Budget for calendar years 2007 to 2012. In fact, these salary increases passed the government audit.[20]

Petitioner and her brothers maintained that the hiring of Antonio did not cause undue injury to the government, but had even proved beneficial and advantageous to the government considering the 1,544% increase in the annual gross receipts of the heavy equipment operations from the calendar years 2006 to 2011.[21]

In its Decision[22] dated September 7, 2016, the Ombudsman found the charge of nepotism against Rogelio unmeritorious and also dismissed the charge of falsification against Antonio. However, the Ombudsman found Rogelio and petitioner liable for grave misconduct. The dispositive portion of the Ombudsman's Decision reads:

WHEREFORE, finding substantial evidence, respondents **ROGELIO N. QUIÑO**, Mayor (SG 27) and **CECILIA QUIÑO-REJAS**, Municipal Budget Officer (SG 24), both of the local government of Manolo Fortich, Bukidnon, are administratively liable for **GRAVE MISCONDUCT** and are meted the penalty of **DISMISSAL FROM THE SERVICE**, together with the corresponding accessory penalties of forfeiture of retirement benefits,

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[20] Id. at 104-105.

[21] Id. at 105.

[22] Supra note 4.

cancellation of eligibility, bar from taking civil service examinations and perpetual disqualification from holding any public office.

In the event that the **principal penalty of dismissal can no longer be enforced** due to respondents' separation from the service, retirement or any form of severance, it shall be converted into a **Fine** in the amount equivalent to their basic salary for **one (1) year**, payable to the Office of the Ombudsman, and may be deducted from terminal leave benefits or any receivable from the government, or respondents may opt to directly pay the fine.

The administrative complaint against respondent **ANTONIO QUIÑO, JR.**[,] Mechanical Shop Foreman (SG 11), also of the local government of Manolo Fortich, Bukidnon, is hereby **DISMISSED** for lack of substantial evidence.

SO ORDERED.[23]

In holding petitioner and Rogelio liable for grave misconduct, the Ombudsman found their act of signing and approving the Plantilla of Casual Appointments which upgraded Antonio's position as Mechanical Shop Foreman from salary grade 15 to 18, and of certifying the appointments and the existence of an appropriation legally made for the purpose, respectively, to have "transgressed some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[24] The acts were also considered grave because they were "committed with the element of corruption, a willful intent to violate the law, and disregard established rules, *i.e.*, the rules on compensation and position classification under [Republic Act (RA)] No. 6758 and [Department of Budget and Management (DBM) [C]irculars, and to favor their sibling Antonio."[25] The Ombudsman was unconvinced with their claim about relying on the HRMO which prepared the documents in light of the fact that it was only Antonio who benefited from the salary upgrading.[26]

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[23] Id. at 67-68.

[24] Id. at 63-64. Italics omitted.

[25] Id. at 64. Italics omitted.

[26] Id.

As for Antonio, the Ombudsman dismissed the charges against him because he merely benefited from the salary upgrade as the appointee. There was also no merit in the charge of falsification as he, in fact, answered "Yes" to the question on whether he was related to the appointing authority within the fourth civil degree of affinity or consanguinity.[27]

Petitioner and Rogelio moved for the reconsideration of the Decision but the same was denied in the Ombudsman's Order[28] dated October 28, 2016.

Thereafter, petitioner and Rogelio filed two petitions before the CA under Rule 65 and Rule 43 of the Rules of Court, which were consolidated by the appellate court. However, considering that the two petitions involved different modes of appeal which are mutually exclusive, the CA dismissed the petition filed under Rule 65 (CA-G.R. SP No. 07765-MIN) for being a superfluity.[29]

The CA ruled that petitioner and Rogelio were guilty of grave misconduct for granting unto themselves the determination of the salary increase of Antonio, in contravention of Sections 81 and 325 of the LGC and *Sangguniang Bayan* Ordinance Nos. 2000-151 and 2001-157. Petitioner cannot likewise evade liability as she, being the local budget officer, ought to know the budget that can only be allocated for Antonio's position.[30] These findings, notwithstanding, the CA held that the subsequent re-elections of Rogelio as Municipal Mayor in 2013 and as Vice-Governor in 2016 operated as a condonation to his offenses that happened in 2009 to 2012.[31] Thus, the CA was constrained to reverse the ruling of the Ombudsman insofar as he was concerned.[32] The dispositive portion of the CA Decision dated February 15, 2018 reads:

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[27] Id. at 67.

[28] Supra note 5.

[29] Id. at 41.

[30] Id. at 42-43.

[31] Id. at 44-45.

[32] Id. at 45.

WHEREFORE, foregoing circumstances, this Court **RESOLVES** to:

1. **DISMISS** the *Petition for Certiorari* in CA-G.R. SP No. 07765-MIN; and

2. **PARTLY GRANT** the *Petition for Review* in CA-G.R. SP No. 07826-MIN. Accordingly, the assailed *Decision* dated 07 September 2016 and *Order* dated 28 October 2016 issued by the Office of the Ombudsman in OMB-M-A-12-0201, insofar as it held petitioner Rogelio N. Quiño administratively liable for Grave Misconduct, in the light of jurisprudence, are **REVERSED and SET ASIDE**. All other dispositions in the assailed *Decision* and *Order* are hereby **AFFIRMED**.

SO ORDERED.[33]

Petitioner filed a motion for reconsideration of the CA Decision, but the same was denied in the assailed Resolution of the CA dated July 6, 2018.

PETITION BEFORE THE COURT

In her Petition, petitioner avers in the main that the CA erred in holding her liable as the former Municipal Budget Officer for grave misconduct. She insists that her mere certifications as to the availability of appropriations in the Plantilla for Casual Appointments of Antonio did not have anything to do directly with the gradual increase in his salary grades[34] and were duly supported by appropriation ordinances duly passed by the *Sangguniang Bayan*.[35] Petitioner also stresses that these included all the heads of the Economic Enterprise Division of the LGU and not just Antonio.[36] Hence, she asserts that the CA erred in holding her liable for grave misconduct absent any evidence of corruption, intent to violate the law or flagrant disregard of any established rule.[37]

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[33] Id. at 45-46.

[34] Id. at 19.

[35] Id. at 25.

[36] Id. at 26.

[37] Id. at 28.

Petitioner argues further that the CA erred in holding that the salary adjustments of Antonio were illegal *per se* without considering the actual work he performed as Division Head of the Motorpool and Heavy Equipment Operations. She contends that the designation of Antonio as Mechanical Shop Foreman was just an unfortunate inadvertence, and that since his appointment in 2008, he had always performed functions requiring supervisory skills and experience. Thus, petitioner defends that the salary adjustments were made to conform to Antonio's actual work, functions and duties.[38]

In its Comment,[39] the Ombudsman counters that as Municipal Budget Officer, petitioner was aware of Ordinance Nos. 2000-151 and 2001-157 setting the salary grade of a Mechanical Shop Foreman to 11 and she had the duty to comply with these. Instead, she repeatedly participated in increasing the salary grade of her brother to 15 or 18.[40] The Ombudsman is unconvinced about petitioner's defense that her participation was limited to certifying the existence of appropriations since her functions included being in charge of the Municipal Budget Office and being part of the Local Finance Committee. These functions meant reviewing the budget proposal for the Municipality's Economic Enterprise that included the component for salaries for the Motorpool and Heavy Equipment Unit, and assisting her brother Rogelio in preparing said proposed budget or the Annual Appropriation Budget submitted by the Executive Department.[41]

The Department of the Interior and Local Government (DILG) also filed its Consolidated Comment[42] which chiefly adopts the arguments of the Ombudsman in its Comment. It adds that petitioner continues to insist that the upgrading was actually an adjustment of Antonio's salary to conform to his actual

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[38] Id. at 30-31.

[39] Id. at 289-301.

[40] Id. at 292.

[41] Id. at 295.

[42] Id. at 310-325.

functions in accordance with "equal pay for equal work." However, a simple principle and policy is not executory on its own and must, nonetheless, work within the legal framework. Thus, considering that petitioner failed to procure the approval of the DBM on the salary increases of Antonio as required by law, the DILG agrees that the finding of grave misconduct against petitioner is justified.[43]

Petitioner filed her Consolidated Reply[44] which basically repleads her arguments in her Petition.

ISSUE

The sole issue to be resolved here is whether the CA erred in upholding the finding of the Ombudsman of grave misconduct against petitioner.

RULING OF THE COURT

The Petition is meritorious.

The Court, as a rule, does not entertain questions of facts in a Rule 45 petition. As a trier of laws, the Court is not duty-bound to analyze and weigh again the evidence already considered in the proceedings below.[45] Furthermore, the "errors" which the Court may review in a petition for review on *certiorari* are those of the CA, and not directly those of the trial court or the quasi-judicial agency, tribunal, or officer which rendered the decision in the first instance.[46]

There are, however, several well-recognized exceptions to the above-stated general rule and one of which is when the findings of fact of the lower tribunal, which was upheld by the CA, was based on a misapprehension of facts and was clearly

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[43] *Id.* at 319.

[44] Id. at 352-360.

[45] *PNP-CIDG v. Villafuerte*, G.R. Nos. 219771 & 219773, September 18, 2018, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64554>.

[46] *Miro v. Mendoza*, 721 Phil. 772, 786 (2013).

not supported by extant evidence.[47] The Court in this case finds the occasion to apply this exception. The quantum of proof necessary to prove a charge in an administrative case is substantial evidence, which is defined as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[48] Such quantum was not met here. While the Court rules at the outset that the adjustments to the salary grade of Antonio were made without legal basis, the facts on record show that petitioner's act or omission has no material connection thereto and does not constitute grave misconduct or any administrative offense for that matter.

Local government units are endowed with power to fix the compensation of their officials and employees. Under the LGC, the function of salary determination, which includes any increase or adjustment, is lodged in the *sanggunian* concerned. This is clear from Sections 81 and 447 of the LGC, to wit:

> SEC. 81. *Compensation of Local Officials and Employees*. — The compensation of local officials and personnel shall be determined by the sanggunian concerned: *Provided*, That the increase in compensation of elective local officials shall take effect only after the terms of office of those approving such increase shall have expired: *Provided, further*, That the increase in compensation of the appointive officials and employees shall take effect as provided in the ordinance authorizing such increase: *Provided, however*, That said increases shall not exceed the limitations on budgetary allocations for personal services provided under Title Five, Book II of this Code: *Provided, finally*, That such compensation may be based upon the pertinent provisions of Republic Act Numbered Sixty-Seven Fifty-Eight (R.A. No. 6758), otherwise known as the "Compensation and Position Classification Act of 1989."
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> x x x x
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> SEC. 447. *Powers, Duties, Functions and Compensation*. — (a) The sangguniang bayan, as the legislative body of the municipality,

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[47] See *Nicolas v. Desierto*, 488 Phil. 158, 168 (2004).

[48] Id. at 169, citing RULES OF COURT, Rule 133, Sec. 5 and *Ocampo v. Ombudsman*, 379 Phil. 21, 27 (2000).

shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code, and shall:

(1) Approve ordinances and pass resolutions necessary for an efficient and effective municipal government, and in this connection shall:

x x x x

(viii) Determine the positions and salaries, wages, allowances and other emoluments and benefits of officials and employees paid wholly or mainly from municipal funds and provide for expenditures necessary for the proper conduct of programs, projects, services, and activities of the municipal government;

x x x x

Verily, in this case, the *Sangguniang Bayan* enacted Ordinance Nos. 2000-151 and 2001-157 which fixed the salary grade of Mechanical Shop Foreman to 11. Parenthetically, this salary determination is compliant with DBM Local Budget Circular (LBC) No. 61, which provides that a Mechanical Shop Foreman is a salary grade 11 position. DBM LBC No. 61 was, in turn, prepared pursuant to Section 6 of RA No. 6758 which states that:

SECTION 6. *Index of Occupational Services, Position Titles and Salary Grades of the Compensation and Position Classification System.* — All positions in the government covered under Section 4 hereof shall be allocated to their proper position titles and salary grades in accordance with the Index of Occupational Services, Position Titles and Salary Grades of the Compensation and Position Classification System which shall be prepared by the DBM. (Underscoring supplied)

It is undisputed that when Antonio was re-appointed as a Mechanical Shop Foreman in a casual status beginning January 2009, his salary grade was 15. From the period of July 12, 2012 to October 11, 2012, his salary grade went up to 18. These

salary adjustments, as correctly held by the Ombudsman and the CA, contravened Ordinance Nos. 2000-151 and 2001-157 and DBM LBC No. 61. No countervailing evidence was presented to show that the ordinances were revoked or superseded by a later ordinance. Neither was there any proof that DBM LBC No. 61 had been revised during the relevant periods.

In their Joint Counter-Affidavit before the Ombudsman, petitioner and Rogelio tried instead to justify the salary grade adjustments of Antonio by claiming that his job title as Mechanical Shop Foreman was a misnomer and that the true nature of his work was supervisory and necessitated a higher pay. This, however, does not explain the unilateral upgrading of Antonio's salary grade without the participation of the *Sangguniang Bayan* as required by law.

Moreover, the highest-ranking position provided in DBM LBC No. 61 is a Mechanical Shop General Foreman with a salary grade of only 13, which is still lower than what was given to Antonio. So, too, despite characterizing the designation of Antonio as inadvertent, petitioner and Rogelio nonetheless failed to supply what Antonio's proper designation ought to be. If indeed the designation was erroneous, it was odd how the error was perpetuated in four years every time his appointment was renewed. If indeed the *designation* was erroneous and the adjustments to Antonio's salary grade were merely intended to give what was due him, the act was therefore a reclassification of the position and should bear the imprimatur of the DBM, pursuant to Section 4 of DBM LBC No. 53. Thus:

ON POSITION CLASSIFICATION

SECTION 4. Staffing Pattern. The staffing pattern as designed by the LGUs in accordance with the minimum standards and guidelines prescribed by the Civil Service Commission shall contain classes of positions that conform with the classes of positions established under R.A. No. 6758. Classes of positions not consistent thereof shall be subject to approval by the DBM through the Compensation and Position Classification Bureau.

x x x x

Section 4 (a) of DBM LBC No. 53 further enumerates the documents and information needed for submission to the DBM in seeking approval for the creation of a new class title. Section 4 (b) thereof, on the other hand, provides that reclassification or conversion of positions is subject to the approval of the *sanggunian* concerned. There was no showing that there was compliance, much less any attempt to comply, with Section 4 (a) and (b) of DBM LBC No. 53. Petitioner, as an alternative defense, simply denies that the adjustments amounted to reclassifying the position of Antonio. She maintains that the adjustments were simply made to correspond with the principle of providing equal pay for substantially equal work and of basing differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions.[49] It bears emphasis, however, that this policy of the State under Section 2 of RA No. 6758 is not a license to disregard all the other conditions set forth in the same law and in other issuances duly made in consonance with RA No. 6758.

The foregoing discussion, notwithstanding, the Court finds that petitioner had no participation in the questionable act of increasing the salary grade of Antonio. Consequently, the CA erred in affirming the finding of the Ombudsman that petitioner is guilty of grave misconduct.

Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior. It is considered grave where the elements of corruption are present including a clear intent to violate the law, or a flagrant disregard of established rules.[50] To constitute misconduct, however, it is likewise imperative that the act or omission complained of must have a direct relation to the public officer's duties and affect not only his character as a private individual, but also, and more importantly, the performance of his official

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[49] *Rollo*, p. 31, citing RA No. 6758, Sec. 2.

[50] *De Castro v. Field Investigation Office, Office of the Ombudsman*, 810 Phil. 31, 47-48 (2017).

duties as a public servant.[51] The misfeasance or malfeasance must amount to either maladministration or willful, intentional neglect and failure to discharge the duties of the office.[52]

Hence, to hold petitioner liable for misconduct, the acts or omissions for which she was charged must be of direct relation to and be connected with the performance of her official duties as the Municipal Budget Officer[53] and the same must be willful or intentional.

It bears emphasis at this point that the case against petitioner revolved around her certifications appearing in the Plantilla of Casual Appointments of Antonio. It was alleged that in certifying the same, petitioner effectively "had a hand" in irregularly upgrading the salary of Antonio. However, a simple reading of the Plantilla of Casual Appointments plainly shows the extent of petitioner's acts to be only with respect to certifying that appropriations did exist for the position.

On the other hand, it is undisputed that the preparation of the Plantilla of Casual Appointments was done by the HRMO, as in fact, the signature of one Annie B. Francisco, HRMO IV appears in all of the documents under the phrase "Prepared by." It follows therefore that it was also the HRMO which indicated the salary grades of the appointees in the documents, including Antonio's, and which, in fine, determined their correctness. It would be unfair to hold petitioner liable for the mistakes contained in the Plantilla of Casual Appointments considering that nothing in the enumerated duties of a local budget officer under Section 475 of the LGC, or even of the Local Finance Committee under Section 316 of the LGC of which a local budget officer is a member, provides that he or she is responsible in the preparation of the appointment papers

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[51] Id. at 48.

[52] See *Office of the Ombudsman v. Apolonio*, 683 Phil. 553, 575 (2012), citing *Manuel v. Judge Calimag, Jr.*, 367 Phil. 162, 166 (1999).

[53] See *Government Service Insurance System v. Mayordomo*, 665 Phil. 131, 149 (2011).

of appointive employees of the local government unit. In the same manner, nothing in said sections explicitly requires that the local budget officer must ensure the correct salary grades of the positions to which local government employees are appointed by the local chief executive. Thus:

ARTICLE V

The Budget Officer

SECTION 475. *Qualifications, Powers and Duties*. — x x x

x x x x

(b) The budget officer shall take charge of the budget office and shall:

(1) Prepare forms, orders, and circulars embodying instructions on budgetary and appropriation matters for the signature of the governor or mayor, as the case may be;

(2) Review and consolidate the budget proposals of different departments and offices of the local government unit;

(3) Assist the governor or mayor, as the case may be, in the preparation of the budget and during budget hearings;

(4) Study and evaluate budgetary implications of proposed legislation and submit comments and recommendations thereon;

(5) Submit periodic budgetary reports to the Department of Budget and Management;

(6) Coordinate with the treasurer, accountant, and the planning and development coordinator for the purpose of budgeting;

(7) Assist the sanggunian concerned in reviewing the approved budgets of component local government units;

(8) Coordinate with the planning and development coordinator in the formulation of the local government unit development plan; and

(c) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

x x x x

SECTION 316. *Local Finance Committee*. — There is hereby created in every province, city or municipality a local finance committee to be composed of the local planning and development officer, the local budget officer, and the local treasurer. It shall exercise the following functions:

(a) Determine the income reasonably projected as collectible for the ensuing fiscal year;

(b) Recommend the appropriate tax and other revenue measures or borrowings which may be appropriate to support the budget;

(c) Recommend to the local chief executive concerned the level of the annual expenditures and the ceilings of spending for economic, social, and general services based on the approved local development plans;

(d) Recommend to the local chief executive concerned the proper allocation of expenditures for each development activity between current operating expenditures and capital outlays;

(e) Recommend to the local chief executive concerned the amount to be allocated for capital outlay under each development activity or infrastructure project;

(f) Assist the sangguniang panlalawigan in the review and evaluation of budget of component cities and municipalities in the case of provincial finance committee, the barangay budgets in the case of city or municipal finance committee, and recommend the appropriate action thereon;

(g) Assist the sanggunian concerned in the analysis and review of annual regular and supplemental budgets of the respective local government unit to determine compliance with statutory and administrative requirements; and

(h) Conduct semi-annual review and general examination of cost and accomplishments against performance standards applied in undertaking development projects.

x x x x

In holding that petitioner was guilty of grave misconduct, nonetheless, the CA ruled that as a local budget officer, petitioner knew or ought to know the budget that can only be allocated for Antonio's position. At this point, the Court emphasizes again

the specific act for which petitioner is being called to account. It has nothing to do with budget preparations and any act related to it leading up to the enactment of an appropriation ordinance by the *sanggunian*. In this regard, the Court does agree with the observation of the CA about the responsibility of petitioner to know the budget allocation for Antonio's position. The Court completely differs, however, with the CA's finding that petitioner failed to carry out her responsibility. Petitioner, on the contrary, did perform her duty to verify the budget that can be allocated to Antonio. She has sufficiently explained that in certifying the existence of appropriations in the Plantilla of Casual Appointments issued to Antonio, she consulted the appropriations in the ordinances approving the annual budget for the relevant calendar years under the Economic Enterprises of the Municipality. The evidence she submitted support her claim that the appropriations in the ordinances for the salaries and wages of employees under Motorpool and Heavy Equipment Unit were not broken down into each position. Rather, they were in lump-sum and gradually increased over the years.[54] Glaringly, the Ombudsman and the CA failed to make any finding that the salaries and wages received by employees under Motorpool and Heavy Equipment Unit ever exceeded the appropriations during the relevant periods. It was also not disputed that the salaries paid passed the government audit.[55]

The next best connection that the CA had as regards petitioner's duties with that of her purported offense concerns assisting the mayor in the preparation of the budget and the *sanggunian* in the analysis and review thereof. The CA appears to suggest that petitioner ought to know the correct salary grade of Antonio's position because she was involved in the budget preparations, analysis and review. Suffice it to state, however, the duties of petitioner merely speak of "assisting," and notably, with regard to Section 316(g) of the LGC, which the CA

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[54] See *rollo*, pp. 177-204.

[55] Id. at 104-105.

emphasized on,[56] it bears stressing that petitioner was a mere member of the Local Finance Committee to which the function under Section 316(g) is vested. It is, in other words, a shared responsibility with the local planning and development officer and the local treasurer.

To be sure, the duty of budget preparation and its enactment are primarily lodged with the local chief executive and the *sanggunian*, respectively. Significantly, in this regard, there is nary an allegation that the appropriations ordinances which petitioner relied upon were irregular to begin with. There is neither, at the very least, any allegation against petitioner anent any negligence or misconduct on her part insofar as previous budget preparations were concerned. As such, the Court is not prepared to make any conclusion on the matter. As has been demonstrated, the duties of petitioner were largely subordinate. Allegations of irregularities surrounding budget preparation and enactment would, perforce, entail piecing together the actions or participation as well of other officials who were equally responsible or even more responsible than she.

All told, there is no substantial evidence to hold petitioner administratively liable in this case. To reiterate, the charge against her was only with respect to her certifications appearing in the Plantilla of Casual Appointments of Antonio. Each of the Plantilla of Casual Appointments evidently shows that the certifications made by petitioner were clearly and expressly limited to the existence of appropriations for the position.[57] Upon consulting the appropriations ordinances and verifying that the intended appropriations for the positions stated in the Plantilla of Casual Appointments were sufficiently covered, petitioner had dutifully performed what was incumbent upon her.

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[56] Id. at 43; Section 316 (g) of the LGC states: "Assist the sanggunian concerned in the analysis and review of annual regular and supplemental budgets of the respective local government unit to determine compliance with statutory and administrative requirements."

[57] *Rollo*, pp. 147-176.

In order to establish administrative liability for misconduct, there must be a nexus between the public official's acts and the functions of his or her office.[58] Misconduct being an intentional act, as well, the holding of the Court in *PNP-CIDG v. Villafuerte*,[59] although involving different charges, is illuminating. The Court in said case noted of a nexus that should also be established between the functions of the official and a scheme to defraud the Government. The Court cautioned that the Ombudsman cannot satisfy the threshold of substantial evidence using only conjectures and suppositions.

Indeed, while the quantum of evidence in administrative cases does not require that it be overwhelming or preponderant in order to be considered substantial, this does not sanction drawing a nexus that is tenuous or rests on shaky grounds. The Court has always lauded the Ombudsman in fulfilling its all too important role as "protector of the people," **but the Court has, at the same time, drawn the line when it becomes overzealous at the expense of public officers**.[60] The Court once again puts its foot down in the shot-gun approach employed by the Ombudsman in this case.

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals Decision dated February 15, 2018 and Resolution dated July 6, 2018 in CA-G.R. SP Nos. 07765-MIN and 07826-MIN, as well as the Office of the Ombudsman Decision dated September 7, 2016 and Order dated October 28, 2016 in OMB-M-A-12-0201 are **REVERSED** and **SET ASIDE**. Petitioner Cecilia Q. Rejas is hereby **ABSOLVED** from any administrative liability in connection with the instant case.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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[58] See *Ombudsman v. Apolonio,* supra note 52, at 575.

[59] Supra note 45.

[60] See *Lukban vs. Ombudsman,* G.R. No. 238563, February 12, 2020, p. 7.

EN BANC

[G.R. No. 243278. November 3, 2020]

SOCIAL SECURITY SYSTEM, *Petitioner*, *v.* **COMMISSION ON AUDIT,** *Respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT OWNED AND CONTROLLED CORPORATIONS (GOCCs); THE SOCIAL SECURITY SYSTEM (SSS) IS SUBJECT TO THE SUPERVISION AND CONTROL OF THE PRESIDENT AND MUST, THEREFORE, OBTAIN PRESIDENTIAL APPROVAL BEFORE GRANTING BENEFITS AND ALLOWANCES TO ITS PERSONNEL. — Government Owned and Controlled Corporations (GOCCs) like the Social Security System (SSS) are always subject to the supervision and control of the President. That it is granted authority to fix reasonable compensation for its personnel, as well as an exemption from the Salary Standardization Law (SSL), does not excuse the SSS from complying with the requirement to obtain Presidential approval before granting benefits and allowances to its personnel. This is a doctrine which has been affirmed time and again in jurisprudence. . . .

. . .

. . . [T]he COA did not err in finding that the SSS is subject to the requirement of Presidential approval through the DBM, and that as regards the Special Counsel Allowance, Overtime Pay, and Incentive Awards it paid out to its personnel in C.Y. 2010, this requirement was not complied with. Hence, the disallowance of these amounts was proper.

2. ID.; ID.; ID.; THE GRANT OF AUTHORITY TO FIX REASONABLE COMPENSATION, ALLOWANCES, AND OTHER BENEFITS IN THE SSS' CHARTER DOES NOT CONFLICT WITH THE EXERCISE BY THE PRESIDENT, THROUGH THE DBM, OF ITS POWER TO REVIEW HOW REASONABLE SUCH COMPENSATION IS AND WHETHER IT COMPLIES WITH THE LAW. — [C]ontrary to the SSS' contentions, the grant of authority to fix reasonable

compensation, allowances, and other benefits in the SSS' charter does not conflict with the exercise by the President, through the DBM, of its power to review precisely how reasonable such compensation is, and whether or not it complies with the relevant laws and rules. Neither is there any merit in the claim that the SSS' charter supersedes the provisions of P.D. 1597, Memorandum Order No. 20, s. 2001, Joint Resolution No. 4, s. 2009, and Executive Order No. 7, s. 2010 as far as their applicability to the SSS is concerned. Nothing in its charter explicitly repeals these laws and regulations, and there is no irreconcilable conflict between the provisions of these laws on the one hand, and the SSS' charter on the other. Hence, no implied repeal can be gleaned therefrom.

3. ID.; ID.; NOTICE OF DISALLOWANCE; ATTENDANT CIRCUMSTANCES WHICH MAY EXEMPT THE PAYEES FROM RETURNING DISALLOWED AMOUNTS. — [T]here are attendant circumstances which may exempt the SSS' officers and employees from returning the subject amounts.

First, at the time that the subject benefits and allowances were disbursed by the SSS, there was no prevailing ruling by this Court specifically on the exemption of the SSS from the SSL as well as its authority to determine the reasonable compensation for its personnel, *vis-à-vis* the requirement of approval by the President or the DBM prior to the grant of additional or increased benefits. In several cases, the Court has considered the lack of knowledge of a similar ruling prohibiting a particular disbursement as a badge of good faith. . . .

. . .

Second, the Court notes that the DBM responded to the SSS' proposed 2010 Corporate Operating Budget (COB) only on April 12, 2011, or more than a year after SSS' Board Resolution No. 185 dated March 9, 2010 was passed where the SSS proposed the amount of ₱5,384,737,000.00 for Personal Services (PS) in its 2010 COB. In an ideal situation, the DBM approval should have been obtained by the SSS prior to implementing its proposed operating budget. However, the SSS could not have been expected to do so in this instance. The DBM's action on the proposed COB came well beyond the calendar year during which the subject COB was supposed to be implemented. . . .

Third, the SSS asserts in its petition that it had pegged the amounts of the subject benefits and allowances at the level of its actual disbursements from its 2009 or the previous year's budget. Notably, the SSS' 2009 COB was also confirmed by the DBM *post facto* the following year, or on May 21, 2010 — without disallowance or adjustment. Taken together with its authority to set reasonable compensation for its officers and employees under Section 3(c) of its charter, this led the SSS to believe that its disbursements of the subject benefits and allowances in 2010 were in accordance with all applicable laws on the matter.

4. ID.; ID.; ID.; ID.; THE DBM'S SUBSEQUENT PARTIAL RECONSIDERATIONS OF ITS ORIGINAL DISALLOWANCE ON A LATER YEAR AND APPROVAL OF ADDITIONAL CONFIRMATION CEILINGS FOR THE GRANT OF OTHER BENEFITS SUGGEST THAT THE AMOUNTS DISBURSED WERE NOT UNREASONABLE AND NOT TAINTED BY ANY OTHER IRREGULARITIES. — [T]he record also shows that the DBM made subsequent partial reconsiderations of its original disallowance on April 16 and July 27, 2012, approving additional confirmation ceilings for the grant of rice subsidy, hazard pay, medical benefits, and bank certificates for employees. These were no longer included in the ND issued by the COA supervising auditor. These circumstances would suggest that the amounts disbursed to SSS officers and personnel were not unreasonable, and that aside from the procedural lapse of lacking prior DBM or Presidential approval, the SSS' disbursements were not tainted by any other irregularities or ill intent.

5. ID.; ID.; ID.; EXEMPTION FROM LIABILITY OF APPROVING AND CERTIFYING OFFICERS WHO ACTED IN GOOD FAITH FOR THE DISALLOWED AMOUNTS. — In *Madera v. Commission on Audit*, the Court discussed the liability of approving and certifying officers for disallowed amounts, where such officers acted in good faith, . . .

. . .

Hence, consistent with the foregoing rule, the SSS officers who certified or approved the disbursement of the subject benefits are excused from civil liability for the disallowed amount.

APPEARANCES OF COUNSEL

SSS Corporate Legal Services Division for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] filed under Rule 64 in relation to Rule 65 of the Rules of Court (Rules), assailing Decision No. 2018-379[2] of the Commission on Audit (COA) Commission Proper (COA-CP) dated November 21, 2018, which affirmed the Notice of Disallowance (ND) No. 2012-07 dated June 13, 2012[3] issued by the COA supervising auditor for petitioner Social Security System (SSS), disallowing the payment of allowances and benefits to the officers and employees of the SSS National Capital Region (NCR) Branches in the amount of ₱71,612,873.00 for being in excess of the approved SSS Corporate Operating Budget (COB) for Calendar Year (C.Y.) 2010.

FACTS

Pursuant to SSS Board Resolution No. 185[4] dated March 9, 2010, the SSS proposed the amount of ₱5,384,737,000.00 for Personal Services (PS) in its 2010 COB for approval of the Department of Budget and Management (DBM).[5] On April 12, 2011, the DBM approved the COB with modifications, reducing the amount of PS to ₱4,934,200,000.00.[6] The DBM also stressed that its approval of the COB should not be construed as

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[1] *Rollo*, pp. 2-19.

[2] Id. at 22-32.

[3] Id. at 45-49.

[4] Id. at 51.

[5] Id. at 6.

[6] Id. at 51-54.

authorization for the specific items of expenditure for PS, and that all allowances not in accordance with the Salary Standardization Law (SSL) are subject to the approval of the President of the Philippines upon recommendation of the DBM,[7] pursuant to Sections 5 and 6 of Presidential Decree No. (P.D.) 1597,[8] Sections 1 to 3 of Memorandum Order No. 20, s. 2001,[9]

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[7] Id. at 51.

[8] **Section 5.** *Allowances, Honoraria, and Other Fringe Benefits*. Allowances, honoraria and other fringe benefits which may be granted to government employees, whether payable by their respective offices or by other agencies of government, shall be subject to the approval of the President upon recommendation of the Commissioner of the Budget. For this purpose, the Budget Commission shall review on a continuing basis and shall prepare, for the consideration and approval of the President, policies and levels of allowances and other fringe benefits applicable to government personnel, including honoraria or other forms of compensation for participation in projects which are authorized to pay additional compensation.

Section 6. *Exemptions from OCPC Rules and Regulations*. Agencies positions, or groups of officials and employees of the national government, including government owned or controlled corporations, who are hereafter exempted by law from OCPC coverage, shall observe such guidelines and policies as may be issued by the President governing position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. Exemptions notwithstanding, agencies shall report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President.

[9] Sections 1 to 3 require Government Owned and Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs) to comply with the following:

Section 1. Immediately suspend the grant of any salary increases and new or increased benefits such as, but not limited to, allowances; incentives; reimbursement of expenses; intelligence, confidential or discretionary funds; extraordinary expenses, and such other benefits not in accordance with those granted under SSL. This suspension shall cover senior officer level positions, including Members of the Board of Directors or Trustees.

Section 2. Prepare a Pay Rationalization Plan for senior officer positions and Members of the Board of Directors/Trustees to reduce the actual pay package to not exceeding two (2) times the standardized rates for comparable national government positions as shown in attached table. The Rationalization

Section 9 of Joint Resolution No. 4, s. 2009,[10] and Sections 8 to 10 of Executive Order No. 7, s. 2010.[11]

Plans shall be submitted to the Office of the President through the Department of Budget and Management within one (1) month from the effectivity of this Order. The rationalization shall be implemented starting CY 2001.

Section 3. Any increase in salary or compensation of GOCCs/GFIs that are not in accordance with the SSL shall be subject to the approval of the President.

[10] Sec. 9 of Joint Resolution No. 4, s. 2009 provides:

(9) Exempt Entities. — Government agencies which by specific provision/s of laws are authorized to have their own compensation and position classification system shall not be entitled to the salary adjustments provided herein. Exempt entities shall be governed by their respective Compensation and Position Classification Systems: *Provided,* That such entities shall observe the policies, parameters and guidelines governing position classification, salary rates, categories and rates of allowances, benefits and incentives, prescribed by the President: *Provided, further,* That any increase in the existing salary rates as well as the grant of new allowances, benefits and incentives, or an increase in the rates thereof shall be subject to the approval by the President, upon recommendation of the DBM: *Provided, finally,* That exempt entities which still follow the salary rates for positions covered by Republic Act No. 6758, as amended, are entitled to the salary adjustments due to the implementation of this Joint Resolution, until such time that they have implemented their own compensation and position classification system.

[11] **Section 8.** Submission of Information on All Personnel Remuneration. — All GOCCs and GFIs shall submit to the TFCC, information on all salaries, allowances, incentives, and other benefits under both direct and indirect compensation, granted to members of the board of directors/trustees, officers and rank-and-file employees, as well as discretionary funds, in a format to be prescribed by the TFCC, certified correct by the Department Secretary who has supervision over the GOCC/GFI.

Section 9. Moratorium on Increases in Salaries, Allowances, Incentives and Other Benefits. — Moratorium on increases in the rates of salaries, and the grant of new increases in the rates of allowances, incentives and other benefits, except salary adjustments pursuant to Executive Order No. 811 dated June 17, 2009 and Executive Order No. 900 dated June 23, 2010, are hereby imposed until specifically authorized by the President.

Section 10. Suspension of All Allowances, Bonuses and Incentives for Members of the Board of Directors/Trustees. — The grant of allowances, bonuses, incentives, and other perks to members of the board of directors/ trustees of GOCCs and GFIs, except reasonable per diems, is hereby suspended

In the meantime, however, the SSS had already paid its employees benefits and allowances amounting to ₱554,109,362.03 for C.Y. 2010.[12] Upon audit, the amount of ₱335,594,362.03 out of these payments, were found to be in excess of the DBM-approved 2010 COB.[13] The amount found to be in excess represented expenditures in the following items:[14]

Benefit/Allowance	Approved Budget	Disbursement	Excess/Disallowed Amount
Special Counsel Allowance	0	₱ 6,784,050.00	₱ 6,784,050.00
Overtime pay	0	₱ 20,244,099.73	₱20,244,099.73
Incentive Awards:			
- Short-term variable pay	₱163,495,999.00	₱322,721,212.30	₱159,226,212.30
- Christmas bank/ gift certificate	₱ 54,020,000.00	₱203,360,000.00	₱149,340,000.00
TOTAL	₱217,515,000.00	₱553,109,362.03	₱335,594,362.03[15]

Pursuant to the audit finding, several NDs were issued to different branches of the SSS, one of which was ND No. 2012-07 pertaining only to SSS NCR branches in the total amount of ₱71,612,873.00.[16] ND No. 2012-07 found that the Social Security Commissioners who approved the grant and payment of the allowances, the approving and certifying officers in the payrolls, and the payees themselves for the SSS NCR Branches were all liable to return the subject amount.[17]

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for until December 31, 2010, pending the issuance of new policies and guidelines on the compensation of these board members.

[12] *Rollo*, pp. 51-54.

[13] Id. at 6.

[14] Id. at 6 and 28.

[15] Id. at 6.

[16] Id. at 45-49.

[17] Id. at 48.

Aggrieved, the SSS filed an appeal with the COA Corporate Government Sector Cluster 2 (COA CGS-2) which denied the petition in its Decision No. 2013-007.[18] The COA CGS-2 decision declared that despite the exemption of SSS from the SSL, it is still subject to the supervision of the President through the DBM, particularly as regards the grant of additional benefits to its officers and employees.

The SSS filed a Petition for Review before the COA-CP, which initially dismissed the petition for being filed out of time.[19] Upon Motion for Reconsideration, the COA-CP gave due course to the petition to "serve the broader interests of justice and substantial rights."[20] However, the COA-CP ultimately issued Decision No. 2018-379 affirming the decision of the COA CGS-2 with modification, excusing only the passive recipients of the subject benefits from return thereof on the ground of good faith.[21]

Hence, this Petition for Review, which essentially raises the issue of whether the COA-CP acted with grave abuse of discretion in affirming the COA CGS-2 Decision and holding the approving and certifying officers of the SSS liable for return of the disallowed amounts. Petitioner pray that a decision be rendered (a) reversing and setting aside COA-CP Decision No. 2018-379, (b) annulling ND No. 2012-07, and (c) declaring the Special Counsel Allowance, Overtime Pay, and Incentive Awards paid in favor of SSS' officials and employees as passed in audit.

The Court grants the Petition in part.

DISCUSSION

After a careful review of the records and the pleadings filed by the parties, the Court finds that the COA-CP did not act with grave abuse of discretion in its Decision No. 2018-379.

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[18] *Id*. at 37-44.

[19] *Id*. at 7.

[20] *Id*. at 23.

[21] *Id*. at 22-32.

SSS claims that the COA-CP erred in concluding that the SSS officials who authorized the grant and payment of the subject benefits acted in bad faith, given that they did so in contravention of the laws and rules requiring prior approval from the President. SSS further claims that the Social Security Commission (SSC) is authorized by Republic Act No. (R.A.) 8282 or the Social Security Law to fix the reasonable compensation, allowances or other benefits of its officials and employees,[22] and that the only qualification to the exercise of this power is that provided in Section 25 of the same law:

> **SEC. 25.** ***Deposit and Disbursements.*** — All money paid to or collected by the SSS every year under this Act, and all accruals thereto, shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as provided by law for other public special funds: ***Provided,*** **That not more than twelve (12%) percent of the total yearly contributions plus three (3%) percent of other revenues** shall be disbursed for administrative and operational expenses such as salaries and wages, supplies and materials, depreciation, and the maintenance of offices of the SSS. x x x (Emphasis supplied)

SSS likewise argues that there is nothing on the face of the Social Security Law which imposes the requirement of Presidential approval upon the exercise of its right to fix reasonable compensation of its personnel; hence, it must be

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[22] Section 3(c) of R.A. 8282 provides:

> The Commission, upon the recommendation of the SSS President, shall appoint an actuary, and such other personnel as may be deemed necessary, fix their reasonable compensation, allowances and other benefits, prescribe their duties and establish such methods and procedures as may be necessary to insure the efficient, honest and economical administration of the provisions and purposes of this Act: Provided, however, That the personnel of the SSS below the rank of Vice-President shall be appointed by the SSS President: Provided, further, That the personnel appointed by the SSS President, except those below the rank of assistant manager, shall be subject to the confirmation by the Commission: Provided, further, That the personnel of the SSS shall be selected only from civil service eligibles and be subject to civil service rules and regulations: Provided, finally, That the SSS shall be exempt from the provisions of Republic Act No. 6758 and Republic Act No. 7430.

concluded that neither Congress nor the President — who did not veto the law while it was still a bill pending his concurrence — intended that such approval should be sought.

The SSS' contentions lack merit. GOCCs like the SSS are always subject to the supervision and control of the President. That it is granted authority to fix reasonable compensation for its personnel, as well as an exemption from the SSL, does not excuse the SSS from complying with the requirement to obtain Presidential approval before granting benefits and allowances to its personnel. This is a doctrine which has been affirmed time and again in jurisprudence. For instance, in *Philippine Economic Zone Authority (PEZA) v. Commission on Audit (COA)*,[23] the Court said:

> Thus, the charters of those government entities exempt from the Salary Standardization Law is not without any form of restriction. They are still required to report to the Office of the President, through the DBM the details of their salary and compensation system and to endeavor to make the system to conform as closely as possible to the principles and modes provided in Republic Act No. 6758. Such restriction is the most apparent indication that the legislature did not divest the President, as Chief Executive of his power of control over the said government entities. In *National Electrification Administration v. COA*, this Court explained the nature of presidential power of control, and held that the constitutional vesture of this power in the President is self-executing and does not require statutory implementation, nor may its exercise be limited, much less withdrawn, by the legislature.
>
> **It must always be remembered that under our system of government all executive departments, bureaus and offices are under the control of the President of the Philippines. This precept is embodied in Section 17, Article VII of the Constitution which provides as follows:**
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> > Sec. 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

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[23] G.R. No. 210903, October 11, 2016, 805 SCRA 618.

Thus, respondent COA was correct in claiming that petitioner has to comply with Section 3 of M.O. No. 20 dated June 25, 2001 which provides that any increase in salary or compensation of GOCCs/GFIs that is not in accordance with the Salary Standardization Law shall be subject to the approval of the President. The said M.O. No. 20 is merely a reiteration of the President's power of control over the GOCCs/GFIs notwithstanding the power granted to the Board of Directors of the latter to establish and fix a compensation and benefits scheme for its employees.[24]

Similarly, in *Philippine Health Insurance Corporation v. Commission on Audit*,[25] this Court rightly said:

Accordingly, that Section 16(n) of R.A. 7875 granting PHIC's power to fix the compensation of its personnel does not explicitly provide that the same shall be subject to the approval of the DBM or the OP as in Section 19(d) thereof does not necessarily mean that the PHIC has unbridled discretion to issue any and all kinds of allowances, limited only by the provisions of its charter. As clearly expressed in *PCSO v. COA*, even if it is assumed that there is an explicit provision exempting a GOCC from the rules of the then Office of Compensation and Position Classification (OCPC) under the DBM, the power of its Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives was still subject to the standards laid down by applicable laws: P.D. No. 985, its 1978 amendment, P.D. No. 1597, the SSL, and at present, R.A. 10149. To sustain petitioners' claim that it is the PHIC, and PHIC alone, that will ensure that its compensation system conforms with applicable law will result in an invalid delegation of legislative power, granting the PHIC unlimited authority to unilaterally fix its compensation structure. Certainly, such effect could not have been the intent of the legislature.[26]

Verily, and contrary to the SSS' contentions, the grant of authority to fix reasonable compensation, allowances, and other benefits in the SSS' charter does not conflict with the exercise by the President, through the DBM, of its power to review

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[24] Id. at 639-640. Emphasis supplied.

[25] G.R. No. 213453, November 29, 2016, 811 SCRA 238.

[26] Id. at 261. Emphasis supplied.

precisely how reasonable such compensation is, and whether or not it complies with the relevant laws and rules. Neither is there any merit in the claim that the SSS' charter supersedes the provisions of P.D. 1597, Memorandum Order No. 20, s. 2001, Joint Resolution No. 4, s. 2009, and Executive Order No. 7, s. 2010 as far as their applicability to the SSS is concerned. Nothing in its charter explicitly repeals these laws and regulations, and there is no irreconcilable conflict between the provisions of these laws on the one hand, and the SSS' charter on the other. Hence, no implied repeal can be gleaned therefrom.

In a final effort to avoid the disallowance issued against it, the SSS further argues that P.D. 1597, Memorandum Order No. 20, s. 2001, Joint Resolution No. 4, s. 2009, and Executive Order No. 7, s. 2010 cannot apply to it because (a) these rules cover only the grant of new benefits, while the SSS employees and officers had been receiving the subject benefits and allowances even prior to C.Y. 2010; (b) as regards Memorandum Order No. 20, s. 2001, it is only applicable to senior officials; and (c) as regards P.D. 1597 and Memorandum Order No. 20, s. 2001, the provisions of these two issuances mention only "salary compensation," without mention of benefits and allowances. These arguments merit scant consideration.

Notably, neither the Petition nor the Reply filed by the SSS offer any proof to establish the first claim. While the Reply mentions SSC Resolution No. 523 dated July 17, 1997 as basis for the Short-term Variable Pay, no copy of the same Resolution had been attached to the Petition nor to the Reply. Basic is the rule that one who alleges a fact has the burden of proving it by means other than mere allegations.[27] As to the second and third claims, even if these were to be given credence, the SSS still cannot evade compliance with Section 5 of P.D. 1597 which categorically states:

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[27] *Republic v. Catubag*, G.R. No. 210580, April 18, 2018, 861 SCRA 687, 709.

Section 5. *Allowances, honoraria and other fringe benefits.* — **Allowances, honoraria, and other fringe benefits which may be granted to government employees, whether payable by their offices or by other agencies of government, shall be subject to the approval of the President upon recommendation of the Commissioner of the Budget.** For this purpose, the Budget Commission shall continuously review and shall prepare policies and levels of allowances and other fringe benefits applicable to government personnel, including honoraria or other forms of compensation for participation in projects which are authorized to pay additional compensation. (Emphasis supplied)

All told, the COA did not err in finding that the SSS is subject to the requirement of Presidential approval through the DBM, and that as regards the Special Counsel Allowance, Overtime Pay, and Incentive Awards it paid out to its personnel in C.Y. 2010, this requirement was not complied with. Hence, the disallowance of these amounts was proper.

However, there are attendant circumstances which may exempt the SSS' officers and employees from returning the subject amounts.

First, at the time that the subject benefits and allowances were disbursed by the SSS, there was no prevailing ruling by this Court specifically on the exemption of the SSS from the SSL as well as its authority to determine the reasonable compensation for its personnel, *vis-à-vis* the requirement of approval by the President or the DBM prior to the grant of additional or increased benefits. In several cases, the Court has considered the lack of knowledge of a similar ruling prohibiting a particular disbursement as a badge of good faith.[28] In the same vein, in the relatively recent case of *Philippine Economic Zone Authority (PEZA) v. Commission on Audit (COA),* [29] the Court found that the PEZA had acted in good faith in granting additional

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[28] See *Zamboanga City Water District v. Commission on Audit*, 779 Phil. 225 (2016); *Mendoza v. Commission on Audit*, 717 Phil. 491 (2013); *Social Security System v. Commission on Audit*, 794 Phil. 387 (2016).

[29] Supra note 24.

Christmas Bonus to its employees even without Presidential approval, as it relied on its exemption from the SSL provided in its charter. Said the Court:

> The affirmation of the disallowance of the payment of additional Christmas bonus/cash gifts to PEZA officers and employees for CY 2005 to 2008, however, does not automatically cast liability on the responsible officers.
>
> The question to be resolved is: To what extent may accountability and responsibility be ascribed to public officials who may have acted in good faith, and in accordance with their understanding of their authority which did not appear clearly to be in conflict with other laws? Otherwise put, should public officials be held financially accountable for the adoption of certain policies or programs which are found to be not in accordance with the understanding by the Commission on Audit several years after the fact, which understanding is only one of several ways of looking at the legal provisions?
>
> Good faith has always been a valid defense of public officials that has been considered by this Court in several cases. Good faith is a state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."
>
> It is the same good faith, therefore, that will absolve the responsible officers of PEZA from liability from refund.
>
> In conclusion, it is unfair to penalize public officials based on overly stretched and strained interpretations of rules which were not that readily capable of being understood at the time such functionaries acted in good faith. If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively. x x x[30]

Herein the SSS officers are in a similar position as the PEZA in the above-quoted case, as they were banking on similar provisions in the SSS' charter, on the matter of which no

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[30] Id. at 642-645.

categorical ruling had yet been made by this Court at the time the subject benefits were disbursed.

Second, the Court notes that the DBM responded to the SSS' proposed 2010 COB only on April 12, 2011, or more than a year after SSS' Board Resolution No. 185 dated March 9, 2010[31] was passed where the SSS proposed the amount of ₱5,384,737,000.00 for PS in its 2010 COB.[32] In an ideal situation, the DBM approval should have been obtained by the SSS prior to implementing its proposed operating budget. However, the SSS could not have been expected to do so in this instance. The DBM's action on the proposed COB came well beyond the calendar year during which the subject COB was supposed to be implemented. Relevantly, some of the disallowed amounts were in the nature of Special Counsel Allowance[33] and Overtime Pay, which are forms of direct compensation paid in consideration of services rendered by the personnel who received them. It would have been unreasonable for the SSS to put on hold the disbursement of these amounts, as well as virtually all expenditures and operations for C.Y. 2010, while it awaited the DBM's response. In the meantime, when the SSS paid the subject benefits and allowances to its personnel in 2010, the DBM's partial disallowance had not yet been issued.

Third, the SSS asserts in its petition that it had pegged the amounts of the subject benefits and allowances at the level of its actual disbursements from its 2009 or the previous year's budget.[34] Notably, the SSS' 2009 COB was also confirmed by the DBM *post facto* the following year, or on May 21, 2010 —

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[31] *Rollo*, p. 51.

[32] Id. at 6.

[33] Joint Resolution No. 4, item 4 (f) (viii) provides:

(viii) Special Counsel Allowance. — This is an allowance for lawyer personnel in the legal staff of departments, bureaus or offices of the national government deputized by the Office of the Solicitor General to appear in court as special counsel in collaboration with the Solicitor General or Prosecutors concerned[.]

[34] *Rollo*, p. 15.

without disallowance or adjustment.[35] Taken together with its authority to set reasonable compensation for its officers and employees under Section 3(c) of its charter, this led the SSS to believe that its disbursements of the subject benefits and allowances in 2010 were in accordance with all applicable laws on the matter.

Furthermore, the record also shows that the DBM made subsequent partial reconsiderations of its original disallowance on April 16 and July 27, 2012, approving additional confirmation ceilings for the grant of rice subsidy, hazard pay, medical benefits, and bank certificates for employees.[36] These were no longer included in the ND issued by the COA supervising auditor. These circumstances would suggest that the amounts disbursed to SSS officers and personnel were not unreasonable, and that aside from the procedural lapse of lacking prior DBM or Presidential approval, the SSS' disbursements were not tainted by any other irregularities or ill intent.

The foregoing circumstances do not paint a picture of malice and bad faith on the part of the SSS. On the contrary, these are badges of good faith which must be taken in its favor. There was clearly no deliberate intent to disregard the applicable rules on the grant of benefits nor to skirt the authority of the DBM to review the SSS' COB.

In *Madera v. Commission on Audit*,[37] the Court discussed the liability of approving and certifying officers for disallowed amounts, where such officers acted in good faith, thus:

> As mentioned, the civil liability under Sections 38 and 39 of the Administrative Code of 1987, including the treatment of their liability as solidary under Section 43, arises only upon a showing that the approving or certifying officers performed their official duties with bad faith, malice or gross negligence. For errant approving and certifying officers, the law justifies holding them solidarily liable for amounts they may or may not have received considering that the

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[35] Id. at 14-15 and 50.

[36] Id. at 14-15, 55-56 and 57-58.

[37] G.R. No. 244128, September 8, 2020.

payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties x x x.

x x x To ensure that public officers who have in their favor the unrebutted presumption of good faith and regularity in the performance of official duty, or those who can show that the circumstances of their case prove that they acted in good faith and with diligence, the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed circumstances or badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family:

> x x x For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard to the question of law, that there is a reasonable textual interpretation on its legality.

Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable. The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein.[38]

The foregoing was distilled in the same case into Part 2a of the Rules of Return which states:

a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.[39]

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[38] Id. at 21-22.

[39] Id. at 35.

Hence, consistent with the foregoing rule, the SSS officers who certified or approved the disbursement of the subject benefits are excused from civil liability for the disallowed amount.

COA-CP Decision No. 2018-379 also finds the Board of Trustees of the SSS — who were not included in the original ND — liable for the return of the disallowed amounts and ordered the Audit Team Leader and Supervising Auditor to issue a Supplemental ND for this purpose. In this regard, because the Board acted only as an approving authority acting in good faith, the members thereof are likewise excused from the return of the disallowed amounts.

As for the passive payees, the Court notes that the COA-CP had already excused them from returning the disallowed amounts because they had received these in good faith. Since the SSS no longer raised the matter as an issue in its Petition, the COA-CP's decision is considered final and immutable as far as this disposition is concerned.

WHEREFORE, premises considered, the Petition is **GRANTED IN PART**. Commission on Audit Commission Proper Decision No. 2018-379 is hereby **AFFIRMED WITH MODIFICATION**. The approving and certifying officers of the Social Security System, including the Board of Trustees, as well as the payees/recipients of the subject Incentive Awards are excused from returning the subject amounts.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

FIRST DIVISION

[G.R. No. 244232. November 3, 2020]

FELIPA BINASOY TAMAYAO AND THE HEIRS OF ROGELIO TAMAYAO REPRESENTED BY FELIPA BINASOY TAMAYAO, *Petitioners, v.* **FELIPA LACAMBRA, NATIVIDAD LACAMBRA, FRANCISCA LACAMBRA, SOTERO LACAMBRA, CIRILO LACAMBRA, CATALINO LACAMBRA AND BASILIO LACAMBRA,** *Respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; SALES; NO PARTICULAR FORM IS REQUIRED FOR THE VALIDITY OF A CONTRACT OF SALE, AND UPON PERFECTION THEREOF, THE PARTIES MAY RECIPROCALLY DEMAND PERFORMANCE. — [A] contract of sale is a consensual contract. No particular form is required for its validity. Upon perfection thereof, the parties may reciprocally demand performance, *i.e.*, the vendee may compel the transfer of ownership over the object of the sale, and the vendor may require the vendee to pay for the thing sold. . . .

Due to the consensual nature of a contract of sale, even a verbal sale of real property would be valid subject only to the requirements under Article 1403 of the Civil Code or the Statute of Frauds.When properly enforceable under said Statute, however, a sale may be proven through any evidence, even oral, of prior, subsequent, and contemporaneous acts of the parties indicating their intention to enter into a contract of sale. In fact, the Court has even gone so far as to say that "once consummated, [a sale of land] is valid regardless of the form it may have been entered into. For nowhere does law or jurisprudence prescribe that the contract of sale be put in writing before such contract can validly cede or transmit rights over a certain real property between the parties themselves."

2. ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; EFFECTS OF THE EXECUTION OF A CONTRACT OF SALE IN A PUBLIC INSTRUMENT.

— [W]hen executed in a public instrument, a deed of sale begins to enjoy the presumption of regularity and due execution, and operates as a mode of transferring ownership through the constructive delivery of the subject matter of the sale. Execution of a deed of sale in a public instrument is also necessary for registration with the Registry of Deeds to bind third parties to the transfer of ownership. For these reasons, contracting parties to a valid and enforceable sale are given the right under Articles 1357 and 1358 of the Civil Code, to compel each other to observe the proper form.

In sum, although the execution of a deed of sale is absolutely unnecessary for *validity*, it is nevertheless important for 1) the enforceability of executory contracts under Article 1403 of the Civil Code, 2) the convenience of the parties under Article 1358 of the same Code, and 3) the eventual registration of the sale with the land registration authority under Presidential Decree No. (P.D.) 1529.

3. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY OF A NOTARIZED DOCUMENT. — It is settled that "a notarized instrument is admissible in evidence without further proof of its due execution, is conclusive as to the truthfulness of its contents, and has in its favor the presumption of regularity." A public instrument enjoys the presumption of regularity and due execution. Absent evidence that is clear, convincing, and more than merely preponderant, the presumption must be upheld.

4. ID.; ID.; BEST EVIDENCE RULE; SECONDARY EVIDENCE; WHERE THE CONTENTS OF THE DOCUMENT ARE NOT AT ISSUE, THE BEST EVIDENCE RULE DOES NOT APPLY AND SECONDARY EVIDENCE MAY BE ADMITTED. — "The best evidence rule requires that the original document be produced whenever its contents are the subject of inquiry, except in certain limited cases laid down in Section 3 of Rule 130." . . .

In the present case, petitioners claim that no sale took place and that the Extrajudicial Settlement and Sale dated January 23, 1962 was forged, *i.e.*, they question the authenticity and due execution of the foregoing deed. Evidently, neither the contents of the document nor the terms of the writing are at issue. As such, the CA correctly held that the best evidence rule does not apply and secondary evidence, such as the instant

certified true copy, may be admitted even without accounting for the original.

5. CIVIL LAW; CONTRACTS; SALES; CONSTRUCTIVE DELIVERY; THE EXECUTION OF A DEED OF CONVEYANCE IN A PUBLIC INSTRUMENT RESULTS IN THE CONSTRUCTIVE DELIVERY OF THE OBJECT OF THE SALE.—[T]he execution of the Extrajudicial Settlement and Sale dated January 23, 1962 in a public instrument resulted in the constructive delivery of the object of the sale. . . .

. . .

Evidently, mere execution of the deed of conveyance in a public document is equivalent to the delivery of the property, unless the deed otherwise provides. In the present case, no reservation of ownership appears in the Extrajudicial Settlement and Sale dated January 23, 1962. On the contrary, the deed expressly provided that the "HEIRS-VENDOR do by these presents hereby SELL, TRANSFER, AND CONVEY unto the said Juan Lacambra, his heirs and assigns the above-described parcel land."As such, the acknowledgment of the deed before the notary public, Atty. Leticia P. Callangan-Aquino, transformed the deed into a public instrument and resulted in the constructive delivery of the ownership of Lot No. 2930.

6. ID.; ID.; ID.; ID.; THE PERFECTION AND CONSUMMATION OF A CONTRACT MAY BE GLEANED FROM THE CONTEMPORANEOUS AND SUBSEQUENT ACTS OF THE CONTRACTING PARTIES. — Although petitioners insist that Jose and Tomasa never sold the subject lot, the factual findings of the RTC and the CA regarding the contemporaneous and subsequent acts of the contracting parties confirm that the sale over the subject lot was not only validly perfected but also consummated. It bears emphasis that the nature of a contract is determined from the express terms of the written agreement and from the contemporaneous and subsequent acts of the contracting parties. The very essence of a contract of sale is the obligation to transfer ownership over a thing in exchange for a price certain in money or its equivalent.

As mentioned, the terms of the Extrajudicial Settlement and Sale dated January 23, 1962 prove that the parties entered into a contract of sale and the execution of the same in a public

instrument resulted in the constructive delivery of the subject lot. Although already sufficient to prove the existence of a sale and the performance of the obligations arising therefrom, respondents likewise proved that pursuant to the sale, Juan took actual possession of the subject property and exercised acts of ownership over the property.

. . .

Thereafter, respondent Cirilio testified that their family took actual possession and control of the property and planted fruit trees thereon in accordance with Article 1497 of the Civil Code. In fact, he stated that his brother, Catalino, built his house on the subject lot. Rosita confirmed that she resided in said property and that at some point, Spouses Tamayao lived next door.

The foregoing acts unequivocally confirm that Jose and Tomasa sold the subject lot to Juan, constructively delivered ownership over the subject lot when the contracting parties acknowledged the Extrajudicial Settlement and Sale dated January 23, 1962 in a public instrument, and actually delivered the same when they allowed Juan and his family to take control and possession of the same. In fact, upon Juan's death, his heirs exercised their ownership rights by selling portions of the same to Spouses Tamayao.

7. ID.; ID.; ID.; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529 (*PROPERTY REGISTRATION DECREE*); THE REGISTRATION OF A SALE IS NECESSARY TO GIVE DUE NOTICE TO THIRD PERSONS REGARDING THE CHANGE OF OWNERSHIP. — While registration is not essential for perfection or performance however, registration under the Property Registration Decree or P.D. 1529 would be prudent in order to give due notice to third persons regarding the change of ownership. Notably, while valid between the contracting parties, the non-registration of a sale will render the rights of a buyer/property owner vulnerable to an innocent purchaser for value.

8. ID.; ID.; ID.; ID.; A BUYER CAN ACQUIRE NO MORE THAN WHAT THE SELLER CAN LEGALLY TRANSFER. — As the ownership over the subject lot had been transferred to Juan in 1962, the heirs of Balubal could not transmit any rights over the property through the execution of the Extrajudicial

Settlement of a Parcel of Land with Sale dated December 24, 1981 in favor of Spouses Tamayao. "It is an established principle that no one can give what one does not have, *nemo dat quod non habet*." In other words, a buyer can acquire no more than what the seller can legally transfer. Since the heirs of Balubal no longer owned Lot No. 2930 at the time of the third sale in 1981, they could not legally transfer ownership and Spouses Tamayao could not acquire any right over the subject property.

9. ID.; ID.; ID.; ID.; INNOCENT PURCHASERS FOR VALUE; PERSONS CLAIMING TO BE INNOCENT PURCHASERS FOR VALUE MUST DEFINITIVELY PROVE SAID STATUS. — It is clear that while the law recognizes that innocent purchasers for value are protected in order to uphold a certificate of title's efficacy and conclusiveness under the Torrens system, persons claiming to be such must definitively prove said status.

The Court has repeatedly held that "a person who deliberately ignores a significant fact which would create suspicion in an otherwise reasonable man is not an innocent purchaser for value. A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor." Further, it is settled that "x xx where the land sold is in the possession of a person other than the vendor, the purchaser must go beyond the certificate of title and make inquiries concerning the actual possessor. A buyer of real property which is in possession of another must be wary and investigate the rights of the latter. Otherwise, without such inquiry, the buyer cannot be said to be in good faith and cannot have any right over the property x xx." A "buyer who could not have failed to know or discover that the land sold to him was in the adverse possession of another is a buyer in bad faith."

10. ID.; ID.; ID.; ID.; REGISTRATION UNDER THE TORRENS SYSTEM DOES NOT CREATE OR VEST TITLE, BUT IT ONLY CONFIRMS AND RECORDS TITLE ALREADY EXISTING AND VESTED. — In the case at bar, both the RTC and the CA found that the owner's duplicate copy of OCT No. 6106 was never lost but was in fact delivered by Tomasa and Jose to Juan in 1962. Evidently, the reissued OCT procured by Pedro and the TCT derived therefrom are void. Again, the

mere fact that the Spouses Tamayao "xxx were able to secure titles in their names did not operate to vest upon them ownership over the subject properties. That act has never been recognized as a mode of acquiring ownership. The Torrens system does not create or vest title. It only confirms and records title already existing and vested. It does not protect a usurper from the true owner. It cannot be a shield for the commission of fraud."

11. ID.; ID.; DOUBLE SALES; THE RULE ON DOUBLE SALE DOES NOT APPLY WHEN THE SECOND SALE WAS MADE BY A PERSON WHO WAS NO LONGER THE OWNER OF THE PROPERTY BECAUSE IT HAS BEEN ACQUIRED BY THE FIRST BUYER IN FULL DOMINION.— In *Consolidated Rural Bank (Cagayan Valley), Inc., v. Court of Appeals*, the Court explained that the rule on double sales does not apply when second sale was made when such person was no longer the owner of the property, because it had been acquired by the first purchaser in full dominion, . . .

. . .

. . . The first buyer is necessarily in good faith because at the time of the purchase, he or she was the only buyer. As such, he or she could not have been aware of any other sale as there was no such sale to speak of. As the first buyer was first in time, the law exacts a higher price, *i.e.*, prior registration or possession in good faith, on the second buyer to defeat the stronger right of the first buyer.

APPEARANCES OF COUNSEL

Santos M. Baculi for petitioners.

Eric John Calagui for respondents.

D E C I S I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated May 23, 2018 (Assailed Decision) and Resolution[3] dated January 14, 2019 (Assailed Resolution) of the Court of Appeals (CA), Tenth Division, in CA-G.R. CV No. 106279. The CA affirmed the October 8, 2015 Decision[4] of the Regional Trial Court, Branch 4, Tuguegarao City (RTC) in Civil Case No. 2986, which granted respondents' complaint, annulled the Extrajudicial Settlement of a Parcel of Land with Sale dated December 24, 1981 and ordered the cancellation of Transfer Certificate of Title (TCT) No. T-54668 in the name of Rogelio Tamayao (Rogelio) married to Felipa Binasoy (Felipa) (collectively, Spouses Tamayao).

The Facts and Antecedent Proceedings

The instant Petition revolves around three sales between three families affecting the same parcel of land, executed as follows: (1) an Extrajudicial Settlement and Sale dated January 23, 1962 (first sale) by Tomasa and Jose Balubal (Jose), children of Vicente Balubal (Vicente) (collectively, heirs of Vicente), of the entire Lot No. 2930 which was covered by Original Certificate of Title (OCT) No. 6106 to Juan Lacambra (Juan); 2) the sale made by some of the heirs of Juan of a 5/14 *pro indiviso* share of Lot No. 2930 to Spouses Tamayao in a Deed of an Undivided Share in a Registered Parcel of Land dated January 21, 1980 (second sale); and 3) the Extrajudicial Settlement of a Parcel of Land with Sale dated December 24, 1981 (third sale) executed

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[1] *Rollo*, pp. 14-29.

[2] Id. at 46-62. Penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Sesinando E. Villon and Edwin D. Sorongon.

[3] Id. at 70-77.

[4] Id. at 30-45. Penned by Judge Lyliha L. Abella-Aquino.

by the heirs of Vicente of the entire Lot No. 2930 in favor of Spouses Tamayao.[5] The CA summarized the facts as follows:

> During his lifetime, Vicente [ ] owned a parcel of land located in Libag, Tuguegarao City, covered by [OCT] No. 6106, with a total area of 922 square meters (Lot No. 2930). Upon his death sometime in 1944, Lot No. 2930 passed on to his only surviving heirs, Jose and Tomasa, both surnamed Balubal, by intestate succession.
>
> On 23 January 1962, Tomasa and Jose [ ] executed [ ] [the first sale], adjudicating unto themselves and subsequently transferring Lot No. 2930 to Juan [ ] for and in consideration of Three Hundred Twenty Five Pesos (₱325.00). Notably, the sale between Jose and Tomasa, on the one hand, and Juan, on the other, was [notarized[6] but was] not annotated on OCT No. 6106, and neither was it registered to cause the cancellation of OCT No. 6106. The property, thus, remained registered in Vicente's name.[7] Nevertheless, the owner's copy of OCT No. 6106 was turned over by Tomasa and Jose to Juan. Juan thereafter took possession of Lot No. 2930.
>
> When Juan died in 1979, Lot No. 2930 passed by intestacy to his heirs, Felipa, Natividad, Francisco, Sotero, Catalino, and Cirilio, all surnamed Lacambra, and Basillo Coballes (Basilio), (collectively referred to as [h]eirs of Lacambra), son of Matilde, the deceased daughter of Juan. The [h]eirs of Lacambra continued possession of the property and planted fruit trees thereon. Catalino, in particular, built his house on the western portion of Lot No. 2930.
>
> In a Deed of Sale of an Undivided Share in a Registered Parcel of Land dated January 21, 1980 [,the second sale], the [h]eirs of Lacambra, except for Cirilio and Catalino, sold their portions — equivalent to 5/14 *pro indiviso*, or 329 square meters — in Lot No. 2930 to Rogelio[ ]. On the same day, Rogelio executed an Affidavit registering his adverse claim over the 5/14 portion of Lot No. 2930, and annotated it on OCT No. 6106.
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> Thereafter, although no formal partition took place, Rogelio and his wife, Felipa[ ], constructed their house on the eastern part of Lot

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[5] Id. at 56.

[6] Id. at 576-577.

[7] Id.

No. 2930, after Sotero, Cirilio and Catalino pointed to them the portion where they may do so.

When Rogelio finished constructing his house, Pedro Balubal (Pedro), the son of Jose, and Leandro Andal (Leandro), son of Jose's deceased daughter, Enrica, paid the Spouses Tamayao a visit and asked them why they bought part of the property from the [h]eirs of Lacambra when Lot No. 2930 clearly belonged to their predecessors. Pedro and Leandro further claimed that Tomasa and Jose never sold Lot No. 2930 to the Lacambras. In her Answer with Counterclaim, Tomasa denied that she and her brother, Jose, sold the property to Juan.

Fearful that they might lose not only the land on which their house stood, but also the very house they constructed on it, the Spouses Tamayao readily agreed to purchase from Pedro, Tomasa, and Leandro (collectively referred to as [h]eirs of Balubal) the *entire* Lot No. 2930. Thus, on 24 December 1981, the [h]eirs of Balubal executed [the third sale] in favor of [Spouses Tamayao].

Meanwhile, on 2 December 1981, Pedro filed a verified petition for the issuance of a new owner's copy of OCT No. 6106, alleging that their copy had been lost. Subsequently, a new owner's duplicate of OCT No. 6106 was issued by the Register of Deeds of Cagayan in favor of Pedro. By reason of the sale between the Heirs of Balubal and Rogelio, OCT No. 6106 was cancelled and [TCT] No. T-54668 was issued in the name of Rogelio [married to Felipa].

On 21 March 1982, a Complaint for the Annulment of Sale and Title with Damages was filed by the heirs of Lacambra against the Spouses Tamayao and the [h]eirs of Balubal, docketed as Civil Case No. 2986 of the RTC. [Further, d]ue to the refusal of the Spouses Tamayao to agree to the demand for legal redemption by Cirilio and Catalino as regards the 5/14 portion sold by their co-owners, Cirilio and Catalino, on 7 April 1982, filed a Complaint for Legal Redemption and Removal of Improvements against the Spouses Tamayao, docketed as Civil Case No. 2989 of the RTC.

[For their part, the Heirs of Balubal argued that they are the original owners of the subject property and that the same was never sold to Juan. They claimed that Tomasa was illiterate while Jose was already bedridden on the day of the execution first sale and could thus not have appeared before a notary public.][8]

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[8] Id. at 34.

Upon agreement of the parties, the RTC, by Order dated 1 March 1983, decreed the joint trial of Civil Cases Nos. 2986 and 2989.[9]

The Ruling of the RTC

In its Decision[10] dated October 8, 2015, the RTC rendered judgment as follows:

WHEREFORE, premises considered, the Court hereby renders judgment:

1. Declaring the annulment of the Extrajudicial Settlement of a Parcel of Land with Sale dated December 24, 1981 executed by Tomasa Balubal, Pedro Balubal and Leandro Andal in favor of Rogelio Tamayao and cancellation of Transfer Certificate of Title No. T-54668 issued in the name of Rogelio Tamayao married to Felipa Binasoy for being NULL and VOID.

2. Declaring the "Extrajudicial Settlement and Sale" dated January 23, 1962 executed by Tomasa and Jose Balubal in favor of Juan Lacambra as valid and binding [on] their successors-in-interest.

3. Declaring [petitioner] Rogelio Tamayao to be the owner of the 5/14 portion of PCT No. 6106 covered under the "Deed of Sale of an Undivided Share in Registered Parcel of Land" dated January 21, 1980.

4. Declaring the herein [respondents], Heirs of Juan Lacambra as owner of the 9/14 portion of OCT No. 6106.

5. Denying the right of redemption of Cirilio and Catalino Lacambra on the 5/14 portion of the property sold to Rogelio Tamayao covered under the "Deed of Sale of an Undivided Share in Registered Parcel of Land" dated January 21, 1980.

6. DISMISSING Civil Case No. 2989 filed by Cirilio and Catalino Tamayao against Rogelio Tamayao and Felipa Binasoy.[11]

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[9] *Id.* at 47-49. Emphasis omitted.

[10] *Id.* at 21-45. Penned by Judge Lyliha L. Abella-Aquino.

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

In affirming the validity of the first sale between Jose and Tomasa and Juan, the RTC observed that the Extrajudicial Settlement and Sale dated January 23, 1962 was a public document and was thus presumed to have been duly executed.[12] Although Tomasa and the other heirs of Balubal subsequently claimed that the said deed was forged and that Jose and Tomasa never sold the same, the RTC held that they failed to substantiate their claims with clear and convincing evidence.[13]

The RTC likewise upheld the validity of the second sale over the 5/14 *pro indiviso* share of some of the heirs of Lacambra in favor of Rogelio as evidenced by the Deed of Sale of an Undivided Share in a Registered Parcel of Land dated January 21, 1980[14] and noted that the heirs of Lacambra readily admitted and confirmed that they sold 5/14 *pro indiviso* share of their Lot No. 2930 to Spouses Tamayao.

As regards the third sale, the RTC applied Article 1544 of the Civil Code[15] or the rule on double sales and invalidated the Extrajudicial Settlement of a Parcel of Land with Sale dated December 24, 1981 and the TCT No. T-54668 issued in the name of the Spouses Tamayao. The RTC held that the Spouses Tamayao cannot be considered purchasers in good faith as they already knew that the heirs of Lacambra were the owners and possessors of Lot No. 2930 when they again purchased the entire parcel from the heirs of Balubal.[16] As such, the RTC held that the registration of said sale could not defeat the rights of the heirs of Lacambra.

Thus, Spouses Tamayao appealed to the CA, alleging that the RTC erred 1) in giving evidentiary weight to the Extrajudicial Settlement and Sale dated January 23, 1962, considering that

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[12] Id. at 41.

[13] Id. at 40-41.

[14] Id. at 41.

[15] Id. at 42.

[16] Id.

the original was never presented in court, 2) in declaring the third sale void, 3) in ordering the cancellation of TCT No. 54668 in their names, and 4) in pronouncing that the sale of the whole property by the heirs of Balubal to the Spouses Tamayao was attended with bad faith.[17]

The Ruling of the CA

In the Assailed Decision, The CA affirmed the decision of the RTC.

On the evidentiary issue, the CA held that it was not necessary to present the original Extrajudicial Settlement and Sale dated January 23, 1962 under the best evidence rule as the issue did not involve the contents of the document, but rather, the authenticity and due execution of the sale.[18]

On the substantive issues, the CA affirmed the findings of the RTC and upheld the validity of the Extrajudicial Settlement and Sale dated January 23, 1962 given that the same was duly notarized and that the allegation of forgery was never substantiated.[19]

The CA likewise affirmed that the third sale and the resulting TCT No. T-54668 should be invalidated. The CA reasoned that since respondents established that the first sale in favor of Juan was valid, the subsequent sale by the heirs of Balubal was wholly inexistent as they had no right to dispose of the property.[20] As said sale was void, the CA held that the rules on double sales under Article 1544 of the Civil Code cannot apply as the same contemplates the existence of two valid sales.[21]

Even assuming, however, that Article 1544 of the Civil Code applied, the CA held that the petition would still fail as the

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[17] Id. at 51.

[18] Id. at 52-55.

[19] Id. at 55-56.

[20] Id. at 56.

[21] Id. at 57-58.

evidence unequivocally showed that Spouses Tamayao were buyers in bad faith. It observed that when Spouses Tamayao registered the third sale in their names, they were aware that the property had been transferred to the heirs of Lacambra. Indeed, they recognized the latter's right over said property when they purchased 5/14 *pro indiviso* share of said lot in 1980.[22]

The Spouses Tamayao, *et al.*, thus filed the instant Petition, alleging, among others, that the CA erred in upholding the first sale in favor of the heirs of Lacambra and in giving evidentiary weight to the Extrajudicial Settlement and Sale dated January 23, 1962 even though the original was not presented.[23] They again argue that the CA erred in annulling the third sale and in ruling that they acted in bad faith.[24]

Issues

Whether the CA erred 1) in upholding the first sale in favor of Juan and affirming their right to own and possess Lot No. 2930 and 2) in invalidating the subsequent sale between the heirs of Balubal and Spouses Tamayao and the TCT issued pursuant thereto.

The Court's Ruling

The petition lacks merit. As will be discussed hereunder, respondent heirs of Lacambra sufficiently proved that Jose and Tomasa had sold the subject property to their predecessor, Juan, in 1962 and that ownership thereof was actually and constructively delivered pursuant to said sale. As such, the heirs of Balubal had no right over the subject property that they could transfer to Spouses Tamayao in 1981. It was of no moment that Spouses Tamayao were able to record the sale with the Register of Deeds as registration has never been recognized as a mode of acquiring ownership.

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[22] Id. at 57-61.

[23] Id. at 19.

[24] Id. at 21-23.

Preliminarily, it bears emphasis that a contract of sale is a consensual contract. No particular form is required for its validity. Upon perfection thereof, the parties may reciprocally demand performance,[25] *i.e.*, the vendee may compel the transfer of ownership over the object of the sale, and the vendor may require the vendee to pay for the thing sold.[26] In *Beltran v. Cangayda, Jr.*,[27] the Court explained:

A contract of sale is consensual in nature, and is perfected upon the concurrence of its essential requisites, thus:

> The essential requisites of a contract under Article 1318 of the New Civil Code are: (1) consent of the contracting parties; (2) object certain which is the subject matter of the contract; and (3) cause of the obligation which is established. Thus, contracts, other than real contracts are perfected by mere consent which is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. Once perfected, they bind other contracting parties and the obligations arising therefrom have the force of law between the parties and should be complied with in good faith. The parties are bound not only to the fulfillment of what has been expressly stipulated but also to the consequences which, according to their nature, may be in keeping with good faith, usage and law.
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> Being a consensual contract, sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. From that moment, the parties may reciprocally demand performance, subject to the provisions

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[25] CIVIL CODE, Art. 1475 provides:

Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

[26] See *Dalion v. Court of Appeals*, G.R. No. 78903, February 28, 1990, 182 SCRA 872, 877.

[27] G.R. No. 225033, August 15, 2018, 877 SCRA 582. See CIVIL CODE, Art. 1458.

> of the law governing the form of contracts. A perfected contract of sale imposes reciprocal obligations on the parties whereby the vendor obligates himself to transfer the ownership of and to deliver a determinate thing to the buyer who, in turn, is obligated to pay a price certain in money or its equivalent. Failure of either party to comply with his obligation entitles the other to rescission as the power to rescind is implied in reciprocal obligations.[28]

Due to the consensual nature of a contract of sale, even a verbal sale of real property would be valid subject only to the requirements under Article 1403[29] of the Civil Code or the Statute

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[28] Id. at 594-595. Emphasis omitted.

[29] CIVIL CODE, Art. 1403 states:

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

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

(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:

(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;

of Frauds.[30] When properly enforceable under said Statute, however, a sale may be proven through any evidence, even oral,[31] of prior, subsequent, and contemporaneous acts of the parties indicating their intention to enter into a contract of sale.[32] In fact, the Court has even gone so far as to say that "once consummated, [a sale of land] is valid regardless of the form it may have been entered into. For nowhere does law or jurisprudence prescribe that the contract of sale be put in writing before such contract can validly cede or transmit rights over a certain real property between the parties themselves."[33]

Nevertheless, for practical purposes, the execution of a deed of sale is always desirable. Indeed, the instrument or deed of sale may be used as evidence of the existence, validity, and terms of a contract of sale and may serve as proof of ownership.[34]

More importantly, when executed in a public instrument, a deed of sale begins to enjoy the presumption of regularity and due execution,[35] and operates as a mode of transferring

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(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 as to the credit of a third person.

(3) Those where both parties are incapable of giving consent to a contract. (Underscoring supplied.)

[30] *Beltran v. Cangayda Jr.*, supra note 27 at 594; *Alfredo v. Borras*, G.R. No. 144225, June 17, 2003, 404 SCRA 145, 158. See also *Claudel v. Court of Appeals*, G.R. No. 85240, July 12, 1991, 199 SCRA 113.

[31] *Ortega v. Leonardo*, 103 Phil. 870, 873 (1991).

[32] *Peñalosa v. Santos*, G.R. No. 133749, August 23, 2001, 363 SCRA 545, 556; see CIVIL CODE, Art. 1371 which provides:

Art. 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. (1282)

[33] *Claudel v. Court of Appeals*, supra note 30 at 119.

[34] Cesar L. Villanueva and Teresa V. Tiansay, LAW ON SALES (2016 ed.), pp. 166-168.

[35] *Bravo-Guerrero v. Bravo*, G.R. No. 152658, July 29, 2005, 465 SCRA 244, 264.

ownership[36] through the constructive delivery of the subject matter of the sale.[37] Execution of a deed of sale in a public instrument is also necessary for registration with the Registry of Deeds to bind third parties to the transfer of ownership.[38] For these reasons, contracting parties to a valid and enforceable sale are given the right under Articles 1357 and 1358 of the Civil Code, to compel each other to observe the proper form.[39]

In sum, although the execution of a deed of sale is absolutely unnecessary for *validity*, it is nevertheless important for 1) the enforceability of executory contracts under Article 1403 of the Civil Code, 2) the convenience of the parties under Article 1358 of the same Code,[40] and 3) the eventual registration of the sale with the land registration authority under Presidential Decree

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[36] CIVIL CODE, Art. 1477 states:

Art. 1477. The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof. (n)

[37] CIVIL CODE, Art. 1498:

Art. 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

With regard to movable property, its delivery may also be made by the (1463a) delivery of the keys of the place or depository where it is stored or kept.

[38] *Chua v. Court of Appeals*, G.R. No. 119255, April 9, 2003, 401 SCRA 54, 73-74.

[39] CIVIL CODE, Art. 1357 provides:

Art. 1357. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract. (1279a)

[40] Civil Code, Art. 1358 states:

Art. 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by articles 1403, No. 2, and 1405;

No. (P.D.) 1529.[41] It is also, as will be discussed below, equivalent to the delivery of the ownership of the thing, if from the deed the contrary does not appear.[42]

These principles are discussed further below.

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(2) The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains;

(3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person;

(4) The cession of actions or rights proceeding from an act appearing in a public document.

All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by articles, 1403, No. 2 and 1405. (1280a)

[41] PROPERTY REGISTRATION DECREE, P.D. No. 1529, June 11, 1978 which provides:

Section 112. *Forms in conveyancing*. — The Commissioner of Land Registration shall prepare convenient blank forms as may be necessary to help facilitate the proceedings in land registration and shall take charge of the printing of land title forms.

Deeds, conveyances, encumbrances, discharges, powers of attorney and other voluntary instruments, whether affecting registered or unregistered land, executed in accordance with law in the form of public instruments shall be registerable: Provided, that, every such instrument shall be signed by the person or persons executing the same in the presence of at least two witnesses who shall likewise sign thereon, and shall acknowledged to be the free act and deed of the person or persons executing the same before a notary public or other public officer authorized by law to take acknowledgment. Where the instrument so acknowledged consists of two or more pages including the page whereon acknowledgment is written, each page of the copy which is to be registered in the office of the Register of Deeds, or if registration is not contemplated, each page of the copy to be kept by the notary public, except the page where the signatures already appear at the foot of the instrument, shall be signed on the left margin thereof by the person or persons executing the instrument and their witnesses, and all the ages sealed with the notarial seal, and this fact as well as the number of pages shall be stated in the acknowledgment. Where the instrument acknowledged relates to a sale, transfer, mortgage or encumbrance of two or more parcels of land, the number thereof shall likewise be set forth in said acknowledgment.

[42] CIVIL CODE, Art. 1498.

Lot No. 2930 was sold and delivered to Juan in 1962 by virtue of the Extrajudicial Settlement and Sale dated January 23, 1962

The RTC and the CA both found that respondents had sufficiently proved that Jose and Tomasa sold the subject property to Juan in 1962. The factual findings of the lower courts are given great weight and are generally binding on the Court.

i. The duly acknowledged Extrajudicial Settlement and Sale dated January 23, 1962 enjoys the presumption of regularity

Petitioners insist that the CA erred in upholding the sale in favor of Juan and in giving evidentiary weight to the Extrajudicial Settlement and Sale dated January 23, 1962, considering that the original deed was not presented.[43] The arguments lack merit.

The sale between Jose and Tomasa and Juan is evidenced by a true copy of the notarized Extrajudicial Settlement and Sale dated January 23, 1962 as certified by the Clerk of Court of the First Judicial District of Cagayan.[44] The original Certification dated March 4, 1982 from the Clerk of Court of the First Judicial District of Cagayan, submitted as evidence by the respondents, unequivocally stated:

xxx xxx xxx

I, Victoriano Rodriguez, Clerk of this Court, do hereby certify that I have examined the attached document, to wit: Certified xerox and reproduction copy of a carbon copy of EXTRAJUDICIAL SETTLEMENT AND SALE executed by Jose Balubal and Tomasa Balubal dated January 23, 1962, ratified by Atty. Leticia P. Callangan-Aquino, notary public in the province of Cagayan, numbered as Doc. No. 1, Page 22, Book No. II, Series of 1962 of her notarial register consisting of Five Hundred One (501) words.

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[43] *Rollo*, pp. 20-23.

[44] Id. at 576-577.

And that I have compared the same with the original on file in my office, and that the same is a true and correct copy thereof.

In witness whereof, I have hereunto signed my [name] and affixed the seal of this Court this 4th day of March, 1982.[45]

The fact that the original Extrajudicial Settlement and Sale dated January 23, 1962 is on file with the Clerk of Court[46]

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[45] Id. Emphasis omitted; underscoring supplied.

[46] See NOTARIAL LAW, Revised Administrative Code of 1917, Act No. 2711, March 10, 1917, Sec. 246 which provides:

SECTION 246. Matters to be entered therein. — The notary public shall enter in such register, in chronological order, the nature of each instrument executed, sworn to, or acknowledged before him, the person executing, swearing to, or acknowledging the instrument, the witnesses, if any, to the signature, the date of the execution, oath, or acknowledgment of the instrument, the fees collected by hint for his services as notary in connection therewith, and; when the instrument is a contract, he shall keep a correct copy thereof as part of his records, and shall likewise enter in said records a brief description of the substance thereof, and shall give to each entry a consecutive number, beginning with number one in each calendar year. The notary shall give to each instrument executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument the page or pages of his register on which the same is recorded. No blank line shall be left between entries.

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

At the end of each week the notary shall certify in his register the number of instruments executed, sworn to, acknowledged, or protested before him; or if none such, certificate shall show this fact.

A certified copy of each month's entries as described in this section and a certified copy of any instrument acknowledged before them shall within the first ten days of the month next following be forwarded by the notaries public to the clerk of the Court of First Instance of the province and shall be filed under the responsibility of such officer: *Provided*, That if there is no entry to certify for the month, the notary shall

confirms that the deed evidencing the sale of the subject lot to Juan was regularly notarized and affirms the presumption of regularity and due execution.[47]

It is settled that "a notarized instrument is admissible in evidence without further proof of its due execution, is conclusive as to the truthfulness of its contents, and has in its favor the presumption of regularity."[48] A public instrument enjoys the presumption of regularity and due execution. Absent evidence that is clear, convincing, and more than merely preponderant, the presumption must be upheld.[49]

While petitioners claim that the subject lot was never sold to Juan and that the foregoing deed was forged,[50] they manifestly failed to substantiate their claims. In *Spouses Santos v. Spouses Lumbao*,[51] the Court held:

> Furthermore, both "Bilihan ng Lupa" documents dated 17 August 1979 and 9 January 1981 were duly notarized before a notary public. **It is well-settled that a document acknowledged before a notary public is a public document that enjoys the presumption of regularity. It is a *prima facie* evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution. To overcome this presumption, there must be presented evidence that is clear and convincing. Absent such evidence, the presumption must be upheld**. In addition, one who denies the due execution of a deed where one's signature appears

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forward a statement to this effect in lieu of the certified copies herein required. (Underscoring and emphasis supplied.)

See also *Soriano v. Basco*, 507 Phil. 410 (2005).

[47] See *Skunac Corporation, et al. v. Sylianteng, et al.*, 734 Phil. 310, 324 (2014).

[48] Id.

[49] *Bravo-Guerrero v. Bravo*, *supra* note 35 at 264; *Sps. Tapayan v. Martinez*, 804 Phil. 523, 537 (2017); *Baluyo v. De la Cruz*, G.R. No. 197058, October 14, 2015, 722 SCRA 450, 460.

[50] *Rollo*, p. 40.

[51] 548 Phil. 332 (2007).

has the burden of proving that contrary to the recital in the *jurat*, one never appeared before the notary public and acknowledged the deed to be a voluntary act. Nonetheless, in the present case petitioners' denials without clear and convincing evidence to support their claim of fraud and falsity were not sufficient to overthrow the above-mentioned presumption; hence, the authenticity, due execution and the truth of the facts stated in the aforesaid "Bilihan ng Lupa" are upheld.[52]

Skunac Corporation, et al. v. Sylianteng, et al.,[53] further stated that "a notarized instrument is admissible in evidence without further proof of its due execution, is conclusive as to the truthfulness of its contents, and has in its favor the presumption of regularity. This presumption is affirmed if it is beyond dispute that the notarization was regular. To assail the authenticity and due execution of a notarized document, the evidence must be clear, convincing and more than merely preponderant."[54]

In the present case, petitioners failed to present any evidence, let alone clear and convincing evidence, to prove that the notarization of the subject deed was irregular as to strip it of its public character. As the Extrajudicial Settlement and Sale dated January 23, 1962 was duly executed, the RTC and the CA correctly found that it enjoys the presumption of regularity, which can only be overcome by clear and convincing evidence.

ii. The existence and due execution of the Extrajudicial Settlement and Sale dated January 23, 1962 may be proved without presenting the original

Petitioners nonetheless insist that the lower courts erred in giving weight to the Extrajudicial Settlement and Sale dated January 23, 1962 as the original was never presented during

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[52] *Id.* at 349. Emphasis and underscoring supplied; citations omitted.

[53] *Supra* note 47.

[54] *Id.* at 324.

trial.[55] Although they admit that the contents of the deed are not at issue, they nevertheless argue that the CA erred in ruling that the best evidence rule does not apply.[56] Again, petitioners' arguments fail.

"The best evidence rule requires that the original document be produced whenever its contents are the subject of inquiry, except in certain limited cases laid down in Section 3 of Rule 130."[57] *Heirs of Prodon v. Heirs of Alvarez*,[58] explained:

> The primary purpose of the Best Evidence Rule is to ensure that the exact contents of a writing are brought before the court, considering that (*a*) the precision in presenting to the court the exact words of the writing is of more than average importance, particularly as respects operative or dispositive instruments, such as deeds, wills and contracts, because a slight variation in words may mean a great difference in rights; (*b*) there is a substantial hazard of inaccuracy in the human process of making a copy by handwriting or typewriting; and (*c*) as respects oral testimony purporting to give from memory the terms of a writing, there is a special risk of error, greater than in the case of attempts at describing other situations generally. The rule further acts as an insurance against fraud. Verily, if a party is in the possession of the best evidence and withholds it, and seeks to substitute inferior evidence in its place, the presumption naturally arises that the better evidence is withheld for fraudulent purposes that its production would expose and defeat. Lastly, the rule protects against misleading inferences resulting from the intentional or unintentional introduction of selected portions of a larger set of writings.
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> But the evils of mistransmission of critical facts, fraud, and misleading inferences arise only when the issue relates to the *terms of the writing*. Hence, the Best Evidence Rule applies only when the terms of a writing are in issue. When the evidence sought to be introduced concerns external facts, such as the existence, execution or delivery of the writing, without reference to its terms, the Best

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[55] *Rollo*, pp. 21-23.

[56] Id. at 21.

[57] *Sps. Tapayan v. Martinez*, supra note 48 at 534.

[58] 717 Phil. 54 (2013).

Evidence Rule cannot be invoked. In such a case, secondary evidence may be admitted even without accounting for the original.[59]

Consistent therewith, *Skunac Corporation, et al. v. Sylianteng, et al.*,[60] held:

> The best evidence rule is inapplicable to the present case. The said rule applies only when the content of such document is the subject of the inquiry. Where the issue is only as to whether such document was actually executed, or exists, or on the circumstances relevant to or surrounding its execution, the best evidence rule does not apply and testimonial evidence is admissible. Any other substitutionary evidence is likewise admissible without need to account for the original. In the instant case, what is being questioned is the authenticity and due execution of the subject deed of sale. There is no real issue as to its contents.[61]

In the present case, petitioners claim that no sale took place and that the Extrajudicial Settlement and Sale dated January 23, 1962 was forged, *i.e.*, they question the authenticity and due execution of the foregoing deed. Evidently, neither the contents of the document nor the terms of the writing are at issue. As such, the CA correctly held that the best evidence rule does not apply and secondary evidence,[62] such as the instant certified true copy, may be admitted even without accounting for the original.

It is appropriate to reiterate at this juncture that by virtue of its consensual nature, a sale would be perfectly valid even if no deed whatsoever had been executed, subject only to the

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[59] *Id.* at 66-67. Italics in the original; underscoring supplied; citations omitted.

[60] *Supra* note 47.

[61] *Id.* at 223. Underscoring supplied; citations omitted.

[62] See Rule 130, Sec. 7 that states:

> **SEC. 7**. *Evidence admissible when original document is a public record.*— When the original of document is in the custody of public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof. (2a)

requirements of the Statute of Frauds.[63] As such, the parties may prove the existence of a perfected or performed contract of sale through any competent evidence available, be it an original deed, a copy thereof, a memorandum, or even testimony on the prior, subsequent, and contemporaneous acts of the parties.

iii. Lot No. 2930 was constructively delivered to Juan

In addition to the foregoing, the execution of the Extrajudicial Settlement and Sale dated January 23, 1962 in a public instrument resulted in the constructive delivery of the object of the sale. In *San Lorenzo Development Corporation v. Court of Appeals*,[64] the Court explained:

> Sale, being a consensual contract, is perfected by mere consent and from that moment, the parties may reciprocally demand performance. The essential elements of a contract of sale, to wit: (1) consent or meeting of the minds, that is, to transfer ownership in exchange for the price; (2) object certain which is the subject matter of the contract; (3) cause of the obligation which is established.
>
> The perfection of a contract of sale should not, however, be confused with its consummation. In relation to the acquisition and transfer of ownership, it should be noted that sale is not a mode, but merely a title. A mode is the legal means by which dominion or ownership is created, transferred or destroyed, but title is only the legal basis by which to affect dominion or ownership. Under Article 712 of the Civil Code, "ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition." Contracts only constitute titles or rights to the transfer or acquisition of ownership, while delivery or tradition is the mode of accomplishing the same. Therefore, sale by itself does not transfer or affect ownership; the most that sale does is to create the obligation to transfer ownership. It is tradition or delivery, as a consequence of sale, that actually transfers ownership.

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[63] *Alfredo v. Borras*, supra note 30 at 158. See also *Claudel v. Court of Appeals*, supra note 30 at 119-120.

[64] G.R. No. 124242, January 21, 2005, 449 SCRA 99.

Explicitly, the law provides that the ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Articles 1497 to 1501. The word "delivered" should not be taken restrictively to mean transfer of actual physical possession of the property. The law recognizes two principal modes of delivery, to wit: (1) actual delivery; and (2) legal or constructive delivery.

Actual delivery consists in placing the thing sold in the control and possession of the vendee. Legal or constructive delivery, on the other hand, may be had through any of the following ways: the execution of a public instrument evidencing the sale; symbolical tradition such as the delivery of the keys of the place where the movable sold is being kept; *traditio longa manu* or by mere consent or agreement if the movable sold cannot yet be transferred to the possession of the buyer at the time of the sale; *traditio brevi manu* if the buyer already had possession of the object even before the sale; and *traditio constitutum possessorium*, where the seller remains in possession of the property in a different capacity.[65]

In relation thereto, Article 1498 of the Civil Code pertinently provides:

Art. 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

With regard to movable property, its delivery may also be made by the delivery of the keys of the place or depository where it is stored or kept. (1463a)

Evidently, mere execution of the deed of conveyance in a public document is equivalent to the delivery of the property,[66] unless the deed otherwise provides.[67] In the present case, no

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[65] Id. at 113-114. Citations omitted.

[66] *Sabio v. International Corporate Bank, Inc.*, G.R. No. 132709, September 4, 2001, 364 SCRA 385, 416.

[67] CIVIL CODE, Art. 1498 states:

Art. 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object

reservation of ownership appears in the Extrajudicial Settlement and Sale dated January 23, 1962. On the contrary, the deed expressly provided that the "HEIRS-VENDOR do by these presents hereby SELL, TRANSFER, AND CONVEY unto the said Juan Lacambra, his heirs and assigns the above-described parcel land."[68] As such, the acknowledgment of the deed before the notary public, Atty. Leticia P. Callangan-Aquino,[69] transformed the deed into a public instrument and resulted in the constructive delivery of the ownership of Lot No. 2930.

iv. Lot No. 2930 was likewise actually delivered to Juan and his heirs, who thereafter exercised acts of ownership over the same

Although petitioners insist that Jose and Tomasa never sold the subject lot, the factual findings of the RTC and the CA regarding the contemporaneous and subsequent acts of the contracting parties confirm that the sale over the subject lot was not only validly perfected but also consummated. It bears emphasis that the nature of a contract is determined from the express terms of the written agreement and from the contemporaneous and subsequent acts of the contracting parties.[70]

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of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

With regard to movable property, its delivery may also be made by the delivery of the keys of the place or depositary where it is stored or kept.

See, however *Asset Privatization Trust v. T.J. Enterprise*, G.R. No. 167195, May 8, 2009, 587 SCRA 481, 487, where the Court held that "the execution of a public instrument only gives rise to a *prima facie* presumption of delivery. Such presumption is destroyed when the delivery is not affected because of a legal impediment. It is necessary that the vendor shall have control over the thing sold that, at the moment of sale, its material delivery could have been made. Thus, a person who does not have actual possession of the thing sold cannot transfer constructive possession by the execution and delivery of a public instrument."

[68] *Rollo*, p. 576.

[69] Id.

[70] *Ace Foods, Inc. v. Micro Pacific Technologies Co., Ltd.*, G.R. No. 200602, December 11, 2013, 712 SCRA 679, 686. *See also Far East Bank and Trust*

The very essence of a contract of sale is the obligation to transfer ownership over a thing in exchange for a price certain in money or its equivalent.[71]

As mentioned, the terms of the Extrajudicial Settlement and Sale dated January 23, 1962 prove that the parties entered into a contract of sale and the execution of the same in a public instrument resulted in the constructive delivery of the subject lot. Although already sufficient to prove the existence of a sale and the performance of the obligations arising therefrom, respondents likewise proved that pursuant to the sale, Juan took actual possession of the subject property and exercised acts of ownership over the property.

Notably, respondent Cirilio[72] and witness Rosita Balanuva[73] (Rosita), the step-daughter of Juan, testified that Jose and Tomasa met with their father and sold him the subject property. In fact, the latter stated that she was present during the execution of the sale and the payment thereof.[74] Although the property remained registered in Vicente's name, the lower courts found that Jose and Tomasa delivered the owner's duplicate copy of OCT No. 6106 to Juan.[75]

Thereafter, respondent Cirilio testified that their family took actual possession and control of the property[76] and planted fruit

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Company v. Philippine Deposit Insurance Corporation, G.R. No. 172983, July 22, 2015, 763 SCRA 438, 466.

[71] CIVIL CODE, Art. 1458 states:

Art. 1458. By the contract of sale one of the contracting parties obligates himself to transfer the ownership and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

A contract of sale may be absolute or conditional. (1445a)

[72] Transcript of Stenographic Notes (TSN), March 4, 1999, p. 4.

[73] TSN, February 2, 2004, p. 6.

[74] Id.

[75] Id. at 2. See rollo, p. 47.

[76] Supra note 70 at 6.

trees thereon[77] in accordance with Article 1497 of the Civil Code.[78] In fact, he stated that his brother, Catalino, built his house on the subject lot.[79] Rosita confirmed that she resided in said property and that at some point, Spouses Tamayao lived next door.[80]

The foregoing acts unequivocally confirm that Jose and Tomasa sold the subject lot to Juan, constructively delivered ownership over the subject lot when the contracting parties acknowledged the Extrajudicial Settlement and Sale dated January 23, 1962 in a public instrument, and actually delivered the same when they allowed Juan and his family to take control and possession of the same. In fact, upon Juan's death, his heirs exercised their ownership rights by selling portions of the same to Spouses Tamayao.[81] Indeed, Spouses Tamayao admit that the heirs of Lacambra possessed the property and that they bought a portion of the land from them before building their house.[82]

v. The failure to register the Extrajudicial Settlement and Sale dated January 23, 1962 with the Register of Deeds does not render the sale void

While the Court recognizes that the respondent's failure to register the Extrajudicial Settlement and Sale dated January 23, 1962 and to cause the issuance of a TCT in their names, considering that Jose and Tomasa already delivered the original

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[77] Id. at 6.

[78] CIVIL CODE, Art. 1497 provides:

Art. 1497. The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee.

[79] TSN, March 3, 1999, p. 6.

[80] Supra note 71 at 1-3.

[81] *Rollo*, pp. 47-48.

[82] Id. at 34.

owner's duplicate copy of OCT No. 6106,[83] was irresponsible and not prudent, such fact does not render a validly perfected and consummated sale void. As mentioned, registration is not essential for validity. It is not even a mode of acquiring ownership. *Chua v. Court of Appeals*[84] held:

> x x x There is a difference between transfer of the certificate of title in the name of the buyer, and transfer of ownership to the buyer. The buyer may become the owner of the real property even if the certificate of title is still registered in the name of the seller. As between the seller and buyer, ownership is transferred not by the issuance of a new certificate of title in the name of the buyer but by the execution of the instrument of sale in a public document.
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> x x x x
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> The recording of the sale with the proper Registry of Deeds and the transfer of the certificate of title in the name of the buyer are necessary only to bind third parties to the transfer of ownership. As between the seller and the buyer, the transfer of ownership takes

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[83] P.D. 1529, Sec. 53 provides:

Section 53. *Presentation of owner's duplicate upon entry of new certificate.* — No voluntary instrument shall be registered by the Register of Deeds, unless the owner's duplicate certificate is presented with such instrument, except in cases expressly provided for in this Decree or upon order of the court, for cause shown.

The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the Register of Deeds to enter a new certificate or to make a memorandum of registration in accordance with such instrument, and the new certificate or memorandum shall be binding upon the registered owner and upon all persons claiming under him, in favor of every purchaser for value and in good faith.

In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder for value of a certificate of title. After the entry of the decree of registration on the original petition or application, any subsequent registration procured by the presentation of a forged duplicate certificate of title, or a forged deed or other instrument, shall be null and void.

[84] Supra note 38.

effect upon the execution of a public instrument conveying the real estate. Registration of the sale with the Registry of Deeds, or the issuance of a new certificate of title, does not confer ownership on the buyer. Such registration or issuance of a new certificate of title is not one of the modes of acquiring ownership.[85]

While registration is not essential for perfection or performance however, registration under the Property Registration Decree or P.D. 1529 would be prudent in order to give due notice to third persons regarding the change of ownership. Notably, while valid between the contracting parties, the non-registration of a sale will render the rights of a buyer/property owner vulnerable to an innocent purchaser for value.[86] Nevertheless, since no innocent purchaser for value is involved in this case, the better right of the heirs of Lacambra must be sustained.

The Spouses Tamayao did not acquire any right over Lot No. 2930 by virtue of the Extrajudicial Settlement of a Parcel of Land with Sale dated December 24, 1981

The RTC and the CA invalidated the third sale and ordered the cancellation of TCT No. T-54668 in the name "Rogelio Tamayao married to Felipa Binasoy," after finding that the latter could not be deemed innocent purchasers for value. Both courts held that the Spouses Tamayao were well aware that the property was owned and possessed by the heirs of Lacambra when they sought to purchase the property from the heirs of Balubal.[87] Again, these factual findings are binding on the Court and need not be disturbed.

i. The Spouses Tamayao were not innocent purchasers for value

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[85] Id. at 70-74. Emphasis and underscoring supplied; citations omitted.

[86] *Heirs of Spouses Suyam v. Heirs of Julaton*, G.R. No. 209081, June 19, 2019.

[87] *Rollo*, p. 42.

Petitioners insist that they have a better right over Lot No. 2930 as they purchased the same in good faith and for value from the heirs of Balubal, whose title was free and clear from any form of lien or encumbrance.[88] The Court disagrees.

As the ownership over the subject lot had been transferred to Juan in 1962, the heirs of Balubal could not transmit any rights over the property through the execution of the Extrajudicial Settlement of a Parcel of Land with Sale dated December 24, 1981 in favor of Spouses Tamayao. "It is an established principle that no one can give what one does not have, *nemo dat quod non habet*."[89] In other words, a buyer can acquire no more than what the seller can legally transfer.[90] Since the heirs of Balubal no longer owned Lot No. 2930 at the time of the third sale in 1981, they could not legally transfer ownership and Spouses Tamayao could not acquire any right over the subject property.[91]

The Court is aware of the principle that a purchaser of property covered by a Torrens certificate of title is not required to explore further than what the certificate indicates on its face.[92] In *Melendres v. Catambay*[93] however, the Court clarified:

> This rule, however, applies only to innocent purchasers for value and in good faith; it excludes a purchaser who has knowledge of a defect in the title of the vendor, or of facts sufficient to induce a reasonable prudent man to inquire into the status of the property. Time and time again, this Court has stressed that registration does not vest, but merely serves as evidence of title. Our land registration

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[88] Id. at 24.

[89] *Naval v. Court of Appeals*, G.R. No. 167412, February 22, 2006, 483 SCRA 102, 112. *See also Development Bank of the Philippines v. Prudential Bank*, G.R. No. 143772, November 22, 2005, 475 SCRA 623, 633.

[90] Supra note 34 at 82-85.

[91] *See generally Naval v. Court of Appeals*, supra note 87. *See also Development Bank of the Philippines v. Prudential Bank*, supra note 87.

[92] *Melendres v. Catambay*, G.R. No. 198026, November 28, 2018, 887 SCRA 245, 287.

[93] Id.

laws do not give the holders any better title than that which they actually have prior to registration. Mere registration is not enough to acquire a new title. Good faith must concur.

One cannot rely upon the indefeasibility of a TCT in view of the doctrine that the defense of indefeasibility of a Torrens title does not extend to transferees who take the certificate of title in bad faith.

In a long line of cases, the Court has defined a purchaser in good faith or innocent purchaser for value as one who buys property and pays a full and fair price for it at the time of the purchase or before any notice of some other person's claim on or interest in it. It has been held that the burden of proving the status of a purchaser in good faith lies upon him who asserts that status and it is not sufficient to invoke the ordinary presumption of good faith, that is, that everyone is presumed to have acted in good faith.[94]

It is clear that while the law recognizes that innocent purchasers for value are protected in order to uphold a certificate of title's efficacy and conclusiveness under the Torrens system,[95] persons claiming to be such must definitively prove said status.

The Court has repeatedly held that "a person who deliberately ignores a significant fact which would create suspicion in an otherwise reasonable man is not an innocent purchaser for value. A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor."[96] Further, it is settled that "x x x where the land sold is in the possession of a person other than the vendor, the purchaser must go beyond the certificate of title and make inquiries concerning the actual possessor. A buyer of real property which is in possession of another must be wary and investigate the rights of the latter. Otherwise, without such inquiry, the buyer cannot be said to be in good faith and cannot have any

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[94] *Id.* at 287-288. Emphasis and underscoring supplied; citations omitted.

[95] *Eastworld Motor Industries Corporation v. Skunac Corporation*, G.R. No. 163994, December 16, 2005, 487 SCRA 420, 428.

[96] *Melendres v. Catambay*, supra note 90 at 289-290.

right over the property x x x."[97] A "buyer who could not have failed to know or discover that the land sold to him was in the adverse possession of another is a buyer in bad faith."[98]

In the instant case, the Court wholly agrees with the findings of the RTC and the CA that Spouses Tamayao were purchasers in bad faith. The Court cites the following disquisition of the CA with approval:

> Clearly, therefore, Rogelio's registration of Lot No. 2930 in his name was tainted with bad faith, he having had knowledge of the prior sale between Tomasa and Jose [Balubal] to Juan. Note tha[t] when Rogelio entered into the Deed of Sale of Undivided Share (5/14 *pro indiviso* share) with the [h]eirs of Lacambra, save Cirilio and Catalino, back on 21 January 1980, Rogelio was presented by the sellers with their documents of ownership, *i.e.*, the Extrajudicial Settlement and Sale dated 23 January 1962 between Tomasa and Jose, as sellers, and Juan, as buyer, as well as the owner's duplicate of OCT No. 6106. Patently, Rogelio knew of and acknowledged the transfer of ownership from Tomasa and Jose to the Lacambras, otherwise, why would he enter into any transaction with the latter over a lot which they do not own?
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> Similarly, Rogelio could hardly be considered to be without notice that another person has asserted a claim over the property. At the time of the registration, Rogelio could not deny that he was aware that persons, other than the persons with whom he originally purchased the 5/14 portion of Lot No. 2930, were claiming to be the owners of the property. Yet he proceeded with the purchase and registration anyway.
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> Felipa, Rogelio's widow, testified:
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> "Q (Atty. Mac Paul B. Soriano):
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> Madam witness, when you testified during the last hearing of this case, you said that when you constructed your house on the property in question the Balubal's [(*sic*)] came to see you. What were [(*sic*)] they [(*sic*)] in seeing you?

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[97] *Philippine National Bank v. Heirs of Estanislao Militar*, G.R. No. 164801, June 30, 2006, 494 SCRA 308, 315.

[98] *Heirs of Spouses Suyam v. Heirs of Julaton*, supra note 84.

A (Felipa Tamayao):

When I finished constructing my house[,] Alejandro [(*sic*)] and Pedro came to see me and inquired from me why did I build my house on that lot.

Q: And what was your response?

A: I told them that the Lacambra's [(*sic*)] sold to me the 5/14 [portion] of the lot.

Q: When you said that the Lacambra's (sic) sold to you the 5/14 [portion] of the lot, what did the Balubal's (sic) tell you?

A: According to the Balubal's [(*sic*)], they did not sell any property to the Lacambra's [(*sic*)], sir.

Q: And what happened after that?

A: I went to the Register of Deeds and I noticed that the title was not registered under the name of the Lacambra's [(*sic*)] but instead to the Balubal's [(*sic*)].

x x x x

Q: Now, when you found out that the title of the land was still in the name of Vicente Balubal and has not been cancelled, what did you do if any?

A: Alejandro [(*sic*)] and Pedro Balubal went again to my house and inquired from me if I am willing to buy the property and because they wanted me to vacate the property and I insinuated my desire to buy the land.

Q: Now, you said that the Balubal's [(*sic*)] wanted you to vacate the property. Now, what was your answer to them?

A: I told them that I am willing to buy the lot, sir.

Evidently, Rogelio, despite being fully aware of the sale of Lot No. 2930 by the Balubals to Juan, and his subsequent acquisition of a 5/14 undivided share from the [h]eirs of Juan [Lacambra], still proceeded in purchasing the very same property and succeeded in having the same registered in his name. x x x[99]

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[99] *Rollo*, pp. 59-61. Underscoring omitted.

Undoubtedly, Spouses Tamayao were not innocent purchasers for value. In fact, they were actually proven to be purchasers in bad faith who had actual knowledge that the title of the vendor, *i.e.*, the heirs of Balubal, was defective and that the land was in the actual adverse possession of another. In view of the foregoing, the principle that a defective deed can "be the root of a valid title when an innocent purchaser for value intervenes"[100] cannot apply.

It is of no moment that Spouses Tamayao were able to register the third sale, cause the cancellation of OCT No. 6106 and the issuance of TCT No. T-54668 in their names. The owner's duplicate of OCT No. 6106, which was issued pursuant to a petition for issuance of a new owner's duplicate filed by Pedro,[101] and the derivative TCT No. T-54668 are void. *Eastworld Motor Industries Corporation v. Skunac Corporation*[102] explains:

> This Court has consistently held that when the owner's duplicate certificate of title has not been lost, but is in fact in the possession of another person, then the reconstituted certificate is void, because the court that rendered the decision had no jurisdiction. Reconstitution can validly be made only in case of loss of the original certificate. The rationale for this principle is summarized in *Strait Times v. Court of Appeals*, from which we quote:
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> > "The reconstitution of a title is simply the reissuance of a new duplicate *certificate* of title allegedly lost or destroyed in its original form and condition. It does not pass upon the *ownership* of the land covered by the lost or destroyed title. Possession of a lost certificate is not necessarily equivalent to ownership of the land covered by it. The certificate of title, by itself, does not vest ownership; it is merely an evidence of title over a particular property.[103]

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[100] See *Heirs of Macalalad v. Rural Bank of Pola, Inc.*, G.R. No. 200899, June 20, 2018; *Heirs of Spouses Suyam v. Heirs of Julaton*, G.R. No. 209081, June 19, 2019.

[101] *Rollo*, p. 49.

[102] Supra note 93.

[103] Id. at 426-427. Emphasis and underscoring supplied; citations omitted.

In the case at bar, both the RTC and the CA found that the owner's duplicate copy of OCT No. 6106 was never lost but was in fact delivered by Tomasa and Jose to Juan in 1962.[104] Evidently, the reissued OCT procured by Pedro and the TCT derived therefrom are void. Again, the mere fact that the Spouses Tamayao "x x x were able to secure titles in their names did not operate to vest upon them ownership over the subject properties. That act has never been recognized as a mode of acquiring ownership. The Torrens system does not create or vest title. It only confirms and records title already existing and vested. It does not protect a usurper from the true owner. It cannot be a shield for the commission of fraud."[105]

ii. The Spouses Tamayao cannot rely on Article 1544 of the Civil Code

Petitioners may not even rely on Article 1544 or the rule on double sales, which states:

> Art. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.
>
> Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.
>
> Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. (1473) (Underscoring supplied)

The foregoing provision does not apply to the instant case. In Consolidated Rural Bank (Cagayan Valley), Inc. v. Court of Appeals,[106] the Court explained that the rule on double sales

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[104] *Rollo*, p. 47.

[105] *Campos-Bautista v. Pastrana*, G.R. No. 175994, December 8, 2009, 608 SCRA 55, 68.

[106] 489 Phil. 320 (2005).

does not apply when second sale was made when such person was no longer the owner of the property, because it had been acquired by the first purchaser in full dominion, *viz.*:

> The provision is not applicable in the present case. It contemplates a case of double or multiple sales by a single vendor. More specifically, it covers a situation where a single vendor sold one and the same immovable property to two or more buyers. According to a noted civil law author, it is necessary that the conveyance must have been made by a party who has an existing right in the thing and the power to dispose of it. It cannot be invoked where the two different contracts of sale are made by two different persons, one of them not being the owner of the property sold. And even if the sale was made by the same person, if the second sale was made when such person was no longer the owner of the property, because it had been acquired by the first purchaser in full dominion, the second purchaser cannot acquire any right.[107]

Even if the rule on double sales were to be applied to the instant case, the result remains the same. The heirs of Lacambra would still have a better right of ownership over the subject property as Spouses Tamayao failed to acquire and to register the sale in good faith.[108]

A noted legal expert explained that "[although] Article 1544 may lead one to believe that the rules govern, in a manner of speaking, a contest between two buyers, who race against each other to comply with the hierarchical modes provided for in said article to have preferential right over the subject matter,"[109] that is not the case. The first buyer is necessarily in good faith because at the time of the purchase, he or she was the only buyer. As such, he or she could not have been aware of any

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[107] Id. at 331, citing Arturo M. Tolentino, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES, Volume V, p. 96 (1999). Emphasis and underscoring supplied; citations omitted.

[108] See *Agustin v. De Vera*, G.R. No. 233455, April 3, 2019, 900 SCRA 203, 223.

[109] Supra note 34 at 252.

other sale as there was no such sale to speak of.[110] As the first buyer was first in time, the law exacts a higher price, *i.e.*, prior registration or possession in good faith, on the second buyer to defeat the stronger right of the first buyer.[111] *Uraca v. Court of Appeals*[112] held:

> x x x [T]he prior registration of the disputed property by the second buyer does not by itself confer ownership or a better right over the property. Article 1544 requires that such registration must be coupled with good faith. Jurisprudence teaches us that "(t)he governing principle is *primus tempore, potior jure* (first in time, stronger in right). Knowledge gained by the first buyer of the second sale cannot defeat the first buyer's rights except where the second buyer registers in good faith the second sale ahead of the first, as provided by the Civil Code. Such knowledge of the first buyer does not bar her from availing of her rights under the law, among them, to register first her purchase as against the second buyer. But in *converso*, knowledge gained by the second buyer of the first sale defeats his rights even if he is first to register the second sale, since such knowledge taints his prior registration with bad faith. This is the price exacted by Article 1544 of the Civil Code for the second buyer being able to displace the first buyer; that before the second buyer can obtain priority over the first, *he must show that he acted in good faith throughout (i.e., in ignorance of the first sale and of the first buyer's rights) — from the time of acquisition until the title is transferred to him by registration or failing registration, by delivery of possession*."[113]

As already discussed however, Spouses Tamayao were not in good faith at the time of sale since they had actual knowledge of the prior sale to and adverse possession of Juan and his heirs. Indeed, they recognized the latter's right over said property when they purchased 5/14 *pro indiviso* share of said lot in 1980.[114]

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[110] Id. at 252-253.

[111] Id. at 251-256.

[112] G.R. No. 115158, September 5, 1997, 278 SCRA 702, 712, citing *Cruz v. Cabana*, June 22, 1984, 129 SCRA 656, 663.

[113] Id. Underscoring supplied.

[114] Id. at 57-60.

This bad faith subsisted from the time of acquisition until the title was transferred to them by registration. Hence, Spouses Tamayao cannot defeat the stronger rights of the heirs of Lacambra.

WHEREFORE, premises considered, the Petition is **DENIED**. The Decision dated May 23, 2018 and Resolution dated January 14, 2019 of the Court of Appeals, Tenth Division, in CA-G.R. CV No. 106279 are hereby **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 245438. November 3, 2020]

FRABELLE PROPERTIES CORP., *Petitioner, v.* **AC ENTERPRISES, INC.,** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY ERRORS OF LAW MAY BE REVIEWED THEREIN; EXCEPTIONS. — It is a settled rule that the Supreme Court is not a trier of facts. The function of the Court in Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court is limited to reviewing errors of law that may have been committed by the lower courts. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this Court. . . . However, these rules admit of exceptions, which were listed in *Osmundo 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.

2. ID.; ID.; ID.; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT. — In *Far Eastern Surety and Insurance Co. Inc. v. People of the Philippines*, the Court held:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact. The test, therefore, is not the appellation given to a question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.

A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties. This review includes assessment of the probative value of the evidence presented.

3. ID.; EVIDENCE; BURDEN OF PROOF; IN NUISANCE CLAIMS, BURDEN OF PROOF IS ON THE PARTIES ESTABLISHING THEIR CLAIM; PREPONDERANCE OF EVIDENCE, DEFINED. — In this case, petitioner, as plaintiff, has the burden of proving by a preponderance of evidence that the noise from the blowers of Feliza Building is an actionable nuisance. After due consideration of the factual findings of the trial court, we rule that petitioner failed to discharge its burden. Under Section 1, Rule 131 of the Revised Rules on Evidence,the burden of proof is on the party establishing his or her claim, which in this civil case is the plaintiff. . . . Jurisprudence defines preponderance of evidence as the greater weight of evidence or evidence which is more convincing to the court as worthy of belief that that which is offered in opposition thereto.

4. CIVIL LAW; NUISANCE, DEFINED; CLASSIFICATIONS. — Article 694 of the Civil Code defines nuisance:

> A nuisance is any act, omission, establishment, business, condition of property, or anything else which: (1) Injures or endangers the health or safety of others; or (2) Annoys or offends the senses; or (3) Shocks, defies or disregards decency or morality; or (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) Hinders or impairs the use of property.

The Civil Code classifies nuisances as public or private. A private nuisance has been defined as one which violates only private rights and produces damages to but one or a few persons. A nuisance is public when it interferes with the exercise of public right by directly encroaching on public property or by causing a common injury.

5. ID.; ID.; NOISE CAN BE CONSIDERED A NUISANCE ONLY IF IT AFFECTS INJURIOUSLY THE HEALTH OR COMFORT OF ORDINARY PEOPLE IN THE VICINITY TO AN UNREASONABLE EXTENT. — The noise complained of by petitioner has already been recognized by this Court in *AC Enterprises* not to be a nuisance *per se*. Noise can be considered a nuisance only if it affects injuriously the health or comfort of ordinary people in the vicinity to an unreasonable extent.

In *AC Enterprises*, the Court held:

> The test is whether rights of property, of health or of comfort are so injuriously affected by the noise in question that the sufferer is subjected to a loss which goes beyond the reasonable limit imposed upon him by the condition of living, or of holding property, in a particular locality in fact devoted to uses which involve the emission of noise although ordinary care is taken to confine it within reasonable bounds; or in the vicinity of property of another owner who, though creating a noise, is acting with reasonable regard for the rights of those affected by it. xxxx
>
> The determining factor when noise alone is the cause of complaint is not its intensity or volume. It is that the noise is of such character as to produce **actual physical discomfort and annoyance to a person of**

ordinary sensibilities, rendering adjacent property less comfortable and valuable.

6. ID.; ID.; LOCAL GOVERNMENT UNITS DO NOT HAVE THE POWER TO DECLARE A PARTICULAR THING AS A NUISANCE UNLESS SUCH IS A NUISANCE *PER SE*; CASE AT BAR. — The act of granting permits and licenses is an exercise different and separate from and notably does not even require a determination of nuisance. More importantly, the Makati City government cannot through the exercise of granting permits and licenses determine nuisance in light of our pronouncement that local government units do not have power to declare a particular thing as a nuisance unless such is a nuisance *per se*. This matter is to be resolved by the courts in the ordinary course of law.Thus in *AC Enterprises*, we held:

> **A finding by the LGU that the noise quality standards under the law have not been complied with is not a prerequisite nor constitutes indispensable evidence to prove that the defendant is or is not liable for a nuisance and for damages**. Such finding is merely corroborative to the testimonial and/or other evidence to be presented by the parties. The exercise of due care by the owner of a business in its operation does not constitute a defense where, notwithstanding the same, the business as conducted, seriously affects the rights of those in its vicinity.

7. ID.; DAMAGES; *DAMNUM ABSQUE INJURIA* (DAMAGE WITHOUT INJURY); WHEN THE LOSS OR HARM WAS NOT THE RESULT OF A VIOLATION OF LEGAL DUTY, THERE IS NO BASIS FOR AN AWARD OF DAMAGES.— Petitioner failed to prove injury suffered due to respondent. As we held in *Sps. Custodio v. Court of Appeals*, damage without wrong does not constitute a cause of action, to *wit*:

> To warrant the recovery of damages, there must be both a right of action for a legal wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom. Wrong without damage, or damage without wrong, does not constitute a cause of action, since damages are merely part of the remedy allowed for the injury caused by a breach or wrong.

Even assuming petitioner suffered some loss, as it had failed to prove nuisance, there is no injury caused by respondent to petitioner to entitle the latter to an award of damages. In situations of *damnum absque injuria* or damage without injury, wherein the loss or harm was not the result of a violation of legal duty, there is no basis for an award of damages. There must first be a breach of duty and imposition of liability before damages may be awarded. At most, we can consider this to be a case of *damnum absque injuria*, for which petitioner is not entitled to an award of damages.

8. ID.; ID.; AWARD OF TEMPERATE DAMAGES, WHEN PROPER. — Petitioner is not entitled to the temperate and exemplary damages and attorney's fees it claims.

Temperate damages are only awarded by virtue of the wrongful act of a party when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.

9. ID.; ID.; EXEMPLARY DAMAGES, WHEN AWARDED. — Exemplary damages are awarded when the act of the offender is attended by bad faith or done in wanton, fraudulent, or malevolent manner.

10. ID.; ID.; ATTORNEY'S FEES; AWARD THEREOF, NOT PROPER IN CASE AT BAR.—As regards attorney's fees, we similarly find petitioner not entitled because the instant case does not fall under any of the grounds set forth in Article 2208 of the Civil Code.

APPEARANCES OF COUNSEL

Ang & Associates for petitioner.
Ponce Enrile Reyes & Manalastas for respondent.

D E C I S I O N

PERALTA, *C.J.*:

This petition for review on *certiorari* challenges the June 19, 2018 Decision[1] and the February 18, 2019 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 105817, which reversed and set aside the November 28, 2014 Decision[3] of the Regional Trial Court *(RTC)* of Malabon City, Branch 74, in favor of AC Enterprises, Inc. *(respondent)*.

Factual Antecedents

Frabelle Properties Corporation *(petitioner)*, a domestic corporation, is the developer and manager of Frabella I Condominium, a 29-storey building composed of residential and commercial units and located at 109 Rada Street, Legaspi Village, Makati City. Petitioner owns some of the units in Frabella I Condominium, and leases them out to tenants.[4]

Respondent, a domestic corporation, is the owner of Feliza Building, a 10-storey building composed of commercial and office units, and located along V.A. Rufino (formerly Herrera) Street, Legaspi Village, Makati City.[5]

Frabella I Condominium was constructed around 1995, about five years later than Feliza Building. Both buildings are located in Legaspi Village, which at that time was already a bustling business and commercial area with numerous establishments and busy streets. Rada and V.A. Rufino streets lie parallel to each other, with Rodriguez Street, a two-lane road approximately

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[1] Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Ramon R. Garcia and Germano Francisco D. Legaspi concurring; *rollo*, pp. 41-73.

[2] *Id.* at 75-76.

[3] *Id.* at 128-140.

[4] *Id.* at 44.

[5] *Id.*

12 meters wide situated in between. Feliza Building is located at the back of Frabella I Condominium, such that the exhaust of the blowers from the air-conditioning units at Feliza Building faces the direction of the rear of Frabella I Condominium.[6]

From the first to ninth floor of Feliza Building, there are air-conditioning units served by 36 blowers, with four blowers for each floor located outside the building's windows facing Frabella I Condominium.[7] Only a portion of the rear side of Feliza Building faces Frabella I Condominium, while the remaining portion of Feliza Building faces the Thailand Embassy, a building adjacent to Frabella I Condominium.[8]

Petitioner contends that respondent's blowers generate excessive noise and irritating hot air blown towards the direction of Frabella I Condominium. The noise and hot air are claimed to be a nuisance to petitioner and the tenants of Frabella I Condominium.[9]

According to petitioner, it had complained to respondent about the blowers in at least three letters dated April 11, 1995, June 6, 1995 and August 14, 2000, all of which were ignored.[10] It had also attempted to settle its complaint with respondent through other actions filed prior to the civil case. On March 10, 2001, petitioner filed a complaint with the Pollution Adjudication Board *(PAB)* for the abatement of noise and/or pollution and damages, with a plea of injunctive relief.[11] In a letter dated March 7, 2002, petitioner filed a complaint with then Makati City Mayor Jejomar C. Binay with prayer to cancel the Mayor's License and Business Permits of the Feliza Building.[12]

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

[7] *Id.* at 128.

[8] *Id.* at 44.

[9] *Id.* at 8.

[10] *Id.*

[11] *Id.* at 45.

[12] *Id.*

In response to petitioner's complaints, respondent introduced some improvements in 2000 and 2006, including the installation of soundproofing materials on all air-conditioning units and replacement of blowers and air-condensers.[13] However, petitioner continued to insist that respondent cease operation of its blowers.

On July 1, 2003, petitioner filed a Complaint for Abatement of Nuisance with Damages, with prayer for issuance of a writ of preliminary injunction against respondent, docketed as Civil Case No. 3745-MN,[14] originally raffled to RTC, Branch 170 of Malabon City, then re-raffled to Branch 74 upon the granting of respondent's motion to inhibit the presiding judge.[15]

The parties presented their respective evidence, which the RTC and CA summarized in their respective decisions.

Evidence presented by petitioner

Consuelo Albutra[16] *(Albutra)*, petitioner's Vice President, testified that even while Frabella I Condominium was under construction, it had already informed respondent that the noise from the blowers will affect their prospective tenants, but respondent failed to take any remedial measures. Thus, petitioner sought the assistance of the Metropolitan Manila Development Authority *(MMDA)* and Makati Commercial Estate Association *(MACEA)*. The MMDA and MACEA conducted an ocular inspection and found that the noise is on the intolerable level and exceeds the allowable standard level of 65 decibels per Section 78(b) of Presidential Decree No. 984.[17]

A series of noise pollution tests conducted by the Department of Environment and Natural Resources *(DENR)* in late 1995 up to early 1996 and in 2000 likewise bore the same result. As

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[13] *Id.* at 49-50.

[14] *Id.* at 193.

[15] *Id.* at 42.

[16] Also spelled as Alborta in some parts of the *rollo*.

[17] *Id.* at 128-129.

recommended by the DENR, petitioner referred the matter to the City Health Officer of Makati City, who conducted another test that resulted in findings similar to that made previously by MMDA, MACEA, and DENR.[18]

With the continuance of the noise, petitioner's rental rate was allegedly reduced from 25% to 30% because tenants were allegedly vacating due to the noise and hot air.[19] Petitioner presented letters of complaint from tenants, but failed to authenticate the same.

Of the tenants residing in Frabella I Condominium, only one testified. Tenant-witness Ma. Cristina A. Lee *(Lee)* who was occupying Unit 9-D facing Rodriguez Street testified that when she moved in Frabella I Condominium on June 2003, she noticed the loud noise and hot air going toward the direction of her unit, and upon checking, she noted it was coming from the blowers of the air-conditioning units of Feliza Building. Eventually, she never opened her balcony door and kept her air-conditioning units operating most of the time. She complained to the administration of the noise and hot air, but continued to occupy her unit.[20]

Jaime Matias *(Matias)*, General Manager of MACEA, testified that MACEA is an association of property owners within the Makati Central District. Sometime in 1995, MACEA received a letter-complaint from petitioner in connection with the noise coming from the blowers of the air-conditioning units of Feliza Building. In response, MACEA wrote a letter to respondent advising it to adopt remedial measures, which it failed to do. MACEA then sought the assistance of the DENR and Makati City Engineering Office. This resulted in the conduct of noise level measurements and the issuance of a Cease and Desist Order by the Makati City Government.[21]

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[18] *Id.* at 129.

[19] *Id.*

[20] *Id.*

[21] *Id.* at 130.

Sometime in 2001, MACEA conducted its own monitoring of the noise and MACEA imposed a daily fine on respondent, which the latter protested. The testing in 2001 was done using MACEA's own equipment (rayon noise level meter) with the supervision of MACEA's Assistant Manager who was assisted by security guards.[22]

Sometime in 2005, MACEA hired the services of the Technical Experts on Environmental Management which also conducted noise level tests and found that the noise level exceeded the allowable level of 65 decibels.[23]

Francisco Cabeltis, Jr., Sanitary Inspector of Makati City Health Department testified that acting on a letter-request of petitioner, he and Romualdo Panopio conducted an ocular inspection on March 2, 2002 and found that there is still an intolerable noise emitted by the air-conditioning units of Feliza Building. In conducting the test, no special equipment was used other than the physical senses of their eyes and ears.[24]

Lemelie Pascua *(Pascua)* testified that she was then an Environmental Management Specialist of the DENR and that she conducted an investigation on August 29, 2000 and September 27, 2000. On cross-examination, Pascua stated that the sound readings identified different sources of noise coming from the Thailand Embassy Building and some passing cars. She further noted that even when the blowers of Feliza Building were not in operation, the noise level already exceeded the permissible limits.[25]

Evidence presented by respondent

Raulito Dumangon, who was authorized to represent respondent, testified that when Feliza Building was constructed in 1989, the vicinity was already a commercial area. At the

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[22] *Id.*

[23] *Id.*

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

[25] *Id.* at 48.

time of Feliza Building's operation in 1990 up to 1995 when Frabella I Condominium was constructed, its air-conditioning units were not changed or altered, yet respondent never received complaints regarding the operation of its blowers.[26]

He also testified that respondent voluntarily made modifications and rectifications to improve the condition of the air-conditioning units of Feliza Building. In 2000, respondent engaged the services of MBA Urethane Products Contractor to install soundproofing materials (*i.e.*, two inches of thick layer of polyurethane) on all the air-conditioning units in all the floors of the Feliza Building. In February 2006, respondent hired Polar Wind Air-conditioning and Refrigeration, Inc., which replaced the blowers and air-condensers of the air-conditioning units at the sixth to tenth floors of the Feliza Building, and installed on its roof deck five units of condenser fans. Respondent also installed re-routing ducts to divert and re-route the air away from Frabella I Condominium and towards V.A. Rufino Street.[27] Respondent commenced the operation of the newly-installed air-condensers at the roof deck of the Feliza Building on June 28, 2006. The Office of the Building Official of Makati issued a Certificate of Operation that allowed respondent to operate its air-conditioning units.[28]

Engineer Albert Lusterio *(Engr. Lusterio)*, a Sanitary Engineer of the Makati City Health Department, testified that the Makati Health Office conducted a sound reading measurement and based on the results of the test, issued a closure order, to which respondent objected based on some technicality on the measurement. The City Health Officer then decided to avail the services of an independent sound expert, IAA Technologies, to conduct the measurement and reading of the noise.[29]

The testing was done on November 22, 2008 at 1:00 a.m. After the said test, it was determined that the sound produced

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[26] *Id.* at 131.

[27] *Id.*

[28] *Id.* at 49-50.

[29] *Id.* at 132.

by the blowers is within the standard during the daytime. The Makati City Government then lifted the Closure Order.[30]

Dar Quintos *(Quintos)*, owner of IAA Technologies and expert in audio and acoustics, was deputized by the Makati City Health Department to conduct the noise pollution tests on the air-conditioning system.[31] Quintos testified that he was the one who conducted the noise pollution test on that early morning of November 22, 2008, and rendered a report on his findings that the noise measured 63.4 decibels. Prior to that, on November 13, 2010, he also conducted a noise pollution test with a result that the noise measured 61.3 decibels, which he stated to be even below the noise levels specified in Makati Municipal Ordinance No. 93-181.[32] He furnished his report to the Makati City Health Department, which then issued to respondent a permit to operate the air-conditioning units of Feliza Building.[33]

The record also shows that the RTC issued an Order dated January 14, 2008, directing the Makati City Health Officer or her duly authorized representative to conduct a noise pollution test in the portion of Rodriguez Street located between Feliza Building and Frabella I Condominium on January 18, 2008. Hence, the Environment Health and Sanitation Division of the Makati Health Department carried out the noise pollution test in Rodriguez Street and inside Frabella I Condominium, and thereafter prepared and submitted the inspection report.[34]

The RTC summoned Sanitation Inspector Felipe Albayda, Jr. *(Albayda)* from the Makati Health Department, who conducted the test. Albayda explained that the noise emanating from the Feliza Building exceeded the allowable noise limit.[35]

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[30] *Id.*

[31] *Id.* at 50.

[32] *Id.* at 163.

[33] *Id.* at 133.

[34] *Id.* at 48.

[35] *Id.* at 49.

Ruling of the RTC

After trial on the merits, the RTC rendered the Decision dated November 28, 2014[36] in favor of petitioner, ruling that the noise generated by Feliza Building's blowers constitutes a private nuisance in favor of petitioner. It held:

> In the instant case, there is preponderant evidence consisting of the testimonies of its witness, to convince the Court that the thirty six (36) blowers in defendant's Feliza Building generate noise and blow hot air in the direction of plaintiff's Frabella I Condominium which annoys and offends the plaintiff and its tenants, the noise being monophonic and intense, and the hot air constantly blown towards its building, thus being of such character as to produce actual physical discomfort and annoyance to any person of ordinary sensibilities, rendering adjacent property less comfortable and valuable.[37]

The RTC permanently enjoined respondent from turning on and/or operating all the 36 blowers of the air-cooled condensers, and awarded petitioner temperate damages based on the loss of earnings by 25% to 30% on its revenue from rental of its units, exemplary damages and attorney's fees.[38]

Respondent moved for reconsideration of the RTC's Decision and for the inhibition of the presiding judge. Both motions having been denied by the RTC,[39] respondent filed an appeal before the CA.

Ruling of the CA

On appeal, respondent averred that the RTC erred in relying on the testimony of a single tenant of Frabella I Condominium, tenant-witness Lee, and on the obsolete sound tests conducted sometime in 1995 and 2005. Respondent also argued that the RTC disregarded its recent evidence showing that the noise

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[36] *Id.* at 128-138.

[37] *Id.* at 137.

[38] *Id.* at 137-138.

[39] *Id.* at 43.

levels of the blowers are already within reasonable levels based on the readings and sound tests conducted thereon, and that the Makati City government has been continuously allowing respondent to conduct its business and operate its air-conditioning system in Feliza Building, as shown by various permits and certificates of authority to operate air-conditioning units. Further, respondent questioned the RTC's award of temperate and exemplary damages and attorney's fees.[40]

Petitioner, on the other hand, argued that the evidence it presented was not obsolete, and it was able to prove the merit of its case by a preponderance of evidence as shown by the results of the testing done on January 18, 2008, which it asserts to have greater probative value than the testing conducted on November 22, 2008. Moreover, the RTC did not base its decision on the testimony of a single tenant considering the numerous letter-complaints of other tenants that were offered in evidence, and that witness Lee testified on behalf of all tenants similarly situated. On the award of damages and attorney's fees, petitioner averred that such was proper in light of respondent's continuous failure to act upon its complaints.[41]

In its Decision dated June 19, 2018, the CA granted respondent's appeal, and reversed and set aside the RTC's Decision dated November 28, 2014.[42]

The CA held that the standard used by the RTC, which is "whether it annoys or offends the senses of the plaintiff and its tenants in Frabella I Condominium" is not the accurate standard in determining the sufficiency of evidence of the existence of actionable nuisance entitling petitioner to relief and damages.[43] In reaching such conclusion, the CA relied on the case of *AC Enterprises, Inc. v. Frabelle Properties Corporation*,[44] which

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[40] *Id.* at 52.

[41] *Id.* at 53.

[42] *Id.* at 41-73.

[43] *Id.* at 56.

[44] 537 Phil. 114 (2006).

notably involved the same parties and factual antecedents, but had stemmed from a denial of respondent's motion to dismiss before the RTC:[45]

> Based on the foregoing, the mere existence of noise and hot air complained of by the plaintiff as offensive to sensibilities and causes discomfort and annoyance are not enough to prove that the noise and/or hot air is an actionable nuisance.
>
> The Supreme Court laid down the correct tests or standards of actionable nuisance, to wit:
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> 1) Whether rights of property, of health or of comfort are so injuriously affected by the noise in question that the sufferer is subjected to a loss which goes beyond the reasonable limit imposed upon him by the condition of living, or of holding property, in a particular locality in fact devoted to uses which involve the emission of noise although ordinary care is taken to confine it within reasonable bounds; or in the vicinity of property of another owner who, though creating a noise, is acting with reasonable regard for the rights of those affected by it;
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> 2) In every case the question is one of reasonableness. What is a reasonable use of one's property and whether a particular use is an unreasonable invasion of another use and enjoyment of his property so as to constitute a nuisance cannot be determined by exact rules, but must necessarily depend upon the circumstances of each case, such as locality and the character of the surroundings, the nature, utility and social value of the use, the extent and nature of the harm involved, the nature, utility and social value of the use or enjoyment invaded, and the like; and
>
> 3) Annoyances and discomforts must not be more than those ordinarily to be expected in the community or district, and which are incident to the lawful conduct of such trades and businesses. If they exceed what might be reasonably expected and cause unnecessary harm, then the court will grant relief.[46]

In applying the above standard, the CA found that petitioner failed to discharge its burden of proving nuisance. It emphasized

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[45] *Rollo*, pp. 62-63.

[46] *Id.*

that the testimony of only one tenant-witness Lee, was not sufficient evidence on the extent and nature of the discomfort caused to the tenants of Frabella I Condominium. It was not shown by petitioner that the perception, sensibility and lifestyle of Lee represented the normal and ordinary level of sensitivity and habits of living of the other tenants who had supposedly been offended also by the noise and hot air from Feliza Building. The CA also took cognizance of the fact that notwithstanding the discomforts raised, Lee continued to occupy her unit and did not vacate.[47]

The CA also considered that the sound test reports from 1995 to 2008. It observed that based on the latest findings and reports of the Environmental Management Bureau and the Makati City government, the noise level in the area surrounding the Feliza Building and Frabella I Condominium is already within normal allowance limits for a commercial area. Consequently, the Makati City government issued to respondent the licenses and permits for the operation of new air-conditioning and machinery units, as well as operation of its business.[48]

Finding an absence of preponderance of evidence of the existence of actionable nuisance and for lack of sufficient evidence of the petitioner's claim of loss of business rental income, the CA found that the RTC committed reversible error in ordering the closure of respondent's 36 blowers and in awarding temperate and exemplary damages and attorney's fees.[49]

Petitioner filed a motion for reconsideration,[50] which was denied in the CA Resolution dated February 18, 2019.[51]

Thus, petitioner filed this petition for review on *certiorari*, raising the following arguments:

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

[48] *Id.* at 67-71.

[49] *Id.* at 72.

[50] *Id.* at 77-85.

[51] *Id.* at 75-76.

I. THE COURT OF APPEALS ERRED IN FAULTING PETITIONER FOR PRESENTING ONLY ONE (1) OF THE TENANTS COMPLAINING OF THE NUISANCE.

II. THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER FAILED TO PROVE AND TO ESTABLISH THE REQUIRED DEGREE OF EVIDENCE.

III. THE COURT OF APPEALS ERRED IN GIVING WEIGHT TO THE PERMITS AND LICENSES ISSUED BY THE LOCAL GOVERNMENT OF MAKATI CITY TO FELIZA BUILDING.

IV. THE COURT OF APPEALS ALSO ERRED IN REVERSING THE AWARD GRANTED BY THE REGIONAL TRIAL COURT TO PETITIONER FOR TEMPERATE, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[52]

In its Comment, respondent argues that the CA correctly ruled that the petitioner failed to prove by a preponderance of evidence that the noise emanating from the air-conditioning units of Feliza Building constitutes a nuisance, and that petitioner is not entitled to the payment of temperate and exemplary damages, and attorney's fees.[53]

The Issues

I. WHETHER OR NOT THERE IS AN ACTIONABLE NUISANCE

II. WHETHER OR NOT PETITIONER IS ENTITLED TO THE PAYMENT OF TEMPERATE AND EXEMPLARY DAMAGES, AND ATTORNEY'S FEES

Our Ruling

The petition must be denied for lack of merit.

It is a settled rule that the Supreme Court is not a trier of facts. The function of the Court in Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court is limited to

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

[53] *Id.* at 167.

reviewing errors of law that may have been committed by the lower courts.[54] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this Court.[55]

In *Far Eastern Surety and Insurance Co., Inc. v. People of the Philippines*,[56] the Court held:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, its resolution must not involve an examination of the probative value of the evidence presented by the litigants, but must rely solely on what the law provides on the given set of facts. If the facts are disputed or if the issues require an examination of the evidence, the question posed is one of fact. The test, therefore, is not the appellation given to a question by the party raising it, but whether the appellate court can resolve the issue without examining or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[57] (Citations omitted)

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.[58]

In this case, petitioner in seeking a determination if the CA erred in its appreciation of the evidence presented, asks this

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[54] *Teresita E. Pascual, Widow of the Late Romulo Pascual, who was the Heir of the late Catalina Dela Cruz and Attorney-In-Fact of her Children and for her own behalf v. Encarnacion Pangyarihan Ang, Spouses Emelita Ang Gan and Vicente Gan, Spouses Nilda Ang-Roman and Roberto Roman, Spouses Rosita Ang-Estrella and Lunaver Estrella, Ernest Ang, Antonio Ang, Spouses Ruby Ang-Tan and Julio Tan, Spouses Ma. Victoria Ang-San Pedro and Amado San Pedro, and Danilo Ang*, G.R. No. 235711, March 11, 2020.

[55] *Maribelle Z. Neri v. Ryan Roy Yu*, G.R. No. 230831, September 5, 2018.

[56] 721 Phil. 760 (2013).

[57] *Id.* at 767.

[58] *Supra* note 55.

Court to assess the probative value of the evidence presented and therefore raises a question of fact.

However, these rules admit of exceptions, which were listed in *Osmundo Medina v. Mayor Asistio, Jr.*:[59]

> (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.[60] (Citations omitted)

In this case, an exception applies — the findings of the CA are contrary to those of the RTC. The Court will proceed to resolve the present petition.

Burden of proof in nuisance claims

In this case, petitioner, as plaintiff, has the burden of proving by a preponderance of evidence that the noise from the blowers of Feliza Building is an actionable nuisance. After due consideration of the factual findings of the trial court, we rule that petitioner failed to discharge its burden.

Under Section 1, Rule 131 of the Revised Rules on Evidence,[61] the burden of proof is on the party establishing his or her claim, which in this civil case is the plaintiff, petitioner herein:

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[59] 269 Phil. 225 (1990).

[60] *Id.* at 232.

[61] A.M. No. 19-08-15-SC.

> Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his or her claim or defense by the amount of evidence required by law. Burden of proof never shifts.
>
> Burden of evidence is the duty of a party to present evidence sufficient to establish or rebut a fact in issue to establish a *prima facie* case. Burden of evidence may shift from one party to the other in the course of the proceedings, depending on the exigencies of the case.[62]

This revised version of the rule is similar to the previous recital of the rule under Section 1, Rule 131 of the recently amended 1989 Rules on Evidence: "Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law."[63]

Interpreting the amended provision under the 1989 Rules, we have held that in civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence.[64] While such interpretation is of the amended rule, we find it applicable to the revised version as the first paragraph of the revised version carries over the whole of or at least the substance of the amended rule.

Jurisprudence defines preponderance of evidence as the greater weight of evidence or evidence which is more convincing to the court as worthy of belief that than which is offered in opposition thereto.[65]

In the case at bar, as will be discussed below, petitioner's evidence was not of greater weight than that presented by

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[62] Section 1, Rule 131, Revised Rules on Evidence (A.M. No. 19-08-15-SC).

[63] *Id.*

[64] *Sps. De Leon, et al. v. Bank of the Philippine Islands*, 721 Phil. 839, 848 (2013).

[65] *BP Oil and Chemicals International Philippines, Inc. v. Total Distribution & Logistic Systems, Inc.*, 805 Phil. 244, 262 (2017).

respondent such as to establish its claim of actionable nuisance. We affirm the CA's finding that petitioner failed to discharge its burden of proving by a preponderance of evidence that the noise and hot air coming from respondent's blowers is an actionable nuisance.

I. First Issue: Actionable Nuisance

Article 694 of the Civil Code defines nuisance:

> A nuisance is any act, omission, establishment, business, condition of property, or anything else which: (1) Injures or endangers the health or safety of others; or (2) Annoys or offends the senses; or (3) Shocks, defies or disregards decency or morality; or (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) Hinders or impairs the use of property.[66]

The Civil Code classifies nuisances as public or private. A private nuisance has been defined as one which violates only private rights and produces damages to but one or a few persons. A nuisance is public when it interferes with the exercise of public right by directly encroaching on public property or by causing a common injury.[67]

Noise nuisance

The noise complained of by petitioner has already been recognized by this Court in *AC Enterprises* not to be a nuisance *per se*. Noise can be considered a nuisance only if it affects injuriously the health or comfort of ordinary people in the vicinity to an unreasonable extent.[68]

In *AC Enterprises*, the Court held:

> The test is whether rights of property, of health or of comfort are so injuriously affected by the noise in question that the sufferer is subjected to a loss which goes beyond the reasonable limit imposed

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[66] Article 694, New Civil Code.

[67] *AC Enterprises, Inc. v. Frabelle Properties Corporation*, *supra* note 44, at 143-144.

[68] *Id.* at 149.

upon him by the condition of living, or of holding property, in a particular locality in fact devoted to uses which involve the emission of noise although ordinary care is taken to confine it within reasonable bounds; or in the vicinity of property of another owner who, though creating a noise, is acting with reasonable regard for the rights of those affected by it.

x x x x

The determining factor when noise alone is the cause of complaint is not its intensity or volume. It is that the noise is of such character as to produce **actual physical discomfort and annoyance to a person of ordinary sensibilities**, rendering adjacent property less comfortable and valuable. If the noise does that it can well be said to be substantial and unreasonable in degree, and reasonableness is a question of fact dependent upon all the circumstances and conditions. There can be no fixed standard as to what kind of noise constitutes a nuisance.[69] (Citations omitted and emphasis supplied)

The reasonable use of one's property is dependent on the circumstances of each case, taking into consideration factors such as locality and character of surroundings, the nature, utility and social value of the use, the extent and nature of the harm involved, the nature, utility and social value of the use of enjoyment invaded, and the like.[70]

We assess the circumstances of this case to determine if respondent's use of its blowers and consequent emission of noise was within reasonable bounds or if such is an actionable nuisance.

Results of noise pollution tests

Throughout the course of the dispute, several noise pollution tests were conducted over the years.

The tests conducted in 1995 and 2000 by the DENR yielded the same result that the noise being emitted by the blowers of Feliza Building exceeded the allowable noise level.[71] However,

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[69] *Id.* at 150-151.

[70] *Id.* at 151.

[71] *Rollo*, p. 129.

witness Pascua of the DENR noted that the sounds of passing cars and other externalities were also recorded, and that the noise level already exceeded permissible limits when the blowers of Feliza Building were not in operation.[72] A similar finding was reached by MACEA in 2005.[73]

From 2000 to 2006, respondent introduced improvements including the installation of soundproofing materials on all air-conditioning units and the replacement of blowers and air condensers.[74] On January 2008, a test was conducted by the Makati City government, which showed that the noise emitted exceeded the allowable noise level.[75] More recently, however, on November 2018, IAA Technologies, whose services were availed of by the City Health Officer, conducted a noise pollution test late in the evening to minimize the interference of external sounds. The results of the test show that the noise produced by the blowers of Feliza Building was within the allowable noise level during daytime.[76]

There is no law or jurisprudence that provides an absolute quantifiable standard as to the noise level that would qualify a sound as an actionable nuisance. Setting an absolute quantifiable standard is almost impossible considering that noise seems inseparable from the conduct of many other necessary occupations. In *AC Enterprises*, the Court held:

> Its [Noise] presence is a nuisance in the popular sense in which that word is used, but in the absence of statute, noise becomes actionable only *when it passes the limits of reasonable adjustment to the conditions of the locality and of the needs of the maker to the needs of the listener*. **What those limits are cannot be fixed by any definite measure of quantity or quality; they depend upon the**

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[72] *Id.* at 48.

[73] *Id.* at 130.

[74] *Id.* at 49-50.

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

[76] *Id.* at 132-133.

circumstances of the particular case.[77] (Emphasis supplied; italics in the original)

Thus, the results of the noise pollution tests are not controlling, but are among the factors to be considered in our determination of nuisance.

In *Velasco v. Manila Electric Co., et al.*,[78] we were constrained to rely on quantitative tests on the record due to the vague and imprecise testimony of witnesses. We found that the noise emitted continuously day and night from the electric transformers was a nuisance considering that the noise level was much higher compared to the ambient sound of the residential locality.[79]

The noise level limits applicable to respondent are found in National Pollution Control Commission (NPCC) Memorandum Circular No. 002, Series of 1980. For areas within any center of urban living with a section used as a heavy industrial area, the maximum allowable noise level is 65 decibels during daytime.[80] Similarly, Makati City Ordinance No. 93-181 provides that in areas considered primarily commercial, the maximum allowable noise level is 65 decibels during daytime.[81] The limits provided by these government bodies presumably reflect what is allowable in achieving the prevention and control of environmental pollution pursuant to Presidential Decree No. 984, which expressly vested the NPCC with the power to set up ambient standards and recognized that local governments may set up higher standards.[82] Thus, the noise level limits may reflect what is acceptable to a person of ordinary sensibilities.[83]

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[77] *Supra* note 44, at 150.

[78] 148-B Phil. 204 (1971).

[79] *Id.* at 215.

[80] Section 78, NPCC Memorandum Circular No. 002, Series of 1980. (May 12, 1980).

[81] Section 2 (b), Makati City Ordinance No. 93-181.

[82] Section 6 (i), Presidential Decree No. 984.

[83] *AC Enterprises, Inc. v. Frabelle Properties Corporation*, *supra* note 44, at 150.

However, while these provisions set noise level limits and provide for the abatement of the noise pollution or possible liability for exceeding noise level limits,[84] there is no law that states that violation of the noise level limits would result in the automatic finding of nuisance. Indeed, whether or not the noise level of the blowers of Feliza Building comply with or exceed the noise level limits imposed by the NPCC or Makati City government is not controlling in a determination of nuisance. In *Velasco*, wherein we found the existence of nuisance, apart from the results of the noise pollution tests, it was also proven that the complainant's ailments were caused by his inability to sleep due to the incessant noise with consequent irritation coming from the transformers that were continuously operational day and night.[85]

In the case at bar, several noise pollution tests were conducted and presented to the lower court as evidence. Of the noise pollution tests conducted, most indicated that the noise level of the blowers exceeded 65 decibels, while the recent one conducted on November 22, 2008 yielded a result of 61.3 decibels. The noise pollution tests have conflicting findings, but we consider the November 22, 2008 test to be most reliable.

Petitioner presented evidence on multiple noise pollution tests conducted, with results indicating that the noise level of the blowers exceeded 65 decibels, while respondent presented evidence of the noise pollution tests conducted on November 13, 2008 and November 22, 2008.

Petitioner presented evidence on multiple tests conducted over a long period of time from 1995 to January 2008. Notably these tests did not follow a standardized methodology, but instead varied as to equipment, administrating body, testing personnel, and schedule. In fact, one of the tests conducted in 2002 involved no special equipment other than the physical senses of eyes

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[84] NPCC Memorandum Circular No. 002, Series of 1980 (May 12, 1980); Makati City Ordinance No. 93-181.

[85] *Supra* note 78, at 215.

and ears.[86] Aside from the methodology employed, the tests cannot accurately reflect the noise level of Feliza Building due to the presence of externalities such as the passing vehicles, commuters, construction, and sounds from other nearby building such as the Thailand Embassy. Even petitioner's own witness Pascua admitted that the noise of other externalities were also recorded in the noise pollution tests, and that the noise level already exceeded permissible limits when the blowers of Feliza Building were not in operation.[87] Thus indicating that the blowers of Feliza Building may in fact be within allowable limits in the absence of the noise from the externalities.

Of the noise pollution tests conducted, we find the November 13, 2008 and November 22, 2008 noise pollution tests presented by respondent to be most reliable for several reasons. First, the tests were conducted by an independent entity, IAA Technologies, which was deputized by the Makati City Health Department.[88] Second, IAA Technologies is a sound expert using equipment designed for noise pollution testing and not merely relying on physical senses. Third, the tests were conducted late in the evening to minimize the recording of external sounds that are present during the daytime, thus capturing with more accuracy the noise level of the blowers. Fourth, these were the most recent tests conducted and submitted to the trial court, and the results had not been subsequently negated. Fifth, aside from the submission of the reports, the personnel that conducted the tests presented his testimony on the conduct and results thereof, and was able to justify the reliability of the tests.[89]

The report on the November 13, 2008 and November 22, 2008 noise pollution test shows that the noise level of the blowers of Feliza Building is at 61.3 and 63.4 decibels, respectively,[90]

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[86] *Rollo*, pp. 130-131.

[87] *Id.* at 48.

[88] *Id.* at 50.

[89] *Id.* at 132-133.

[90] *Id.* at 163.

which is below the 65-decibel limit provided under Makati City Ordinance No. 93-181.[91] We observe that technological advancements, heightened commercial activity, and over crowdedness in the Makati City Business District has increased through the years, while the 65-decibel limit has not been updated since 1980 and 1993 to reflect the evolving nature of the locality wherein more noise is expected with increased activity. Nevertheless, respondent still exerted reasonable efforts in maintaining an acceptable noise level that meets the limits provided under NPCC Memorandum Circular No. 002, Series of 1980 and Makati City Ordinance No. 93-181. While compliance with noise level limits is not tantamount to the absence of nuisance, we find that being within allowable limits supports respondent's position that there is no actionable nuisance in this case considering it was acting within the limitations of what the law itself views as permissible.

Issuance of permits and licenses by the Makati City government

Petitioner argues that the CA erred in giving weight to the permits and licenses issued by the Makati City government to respondent.[92] We agree with petitioner that the issuance of permits and licenses should not be given significant weight in the determination of nuisance. However, we find that the CA did not base its ruling on such fact alone.[93]

The act of granting permits and licenses is an exercise different and separate from and notably does not even require a determination of nuisance. More importantly, the Makati City government cannot through the exercise of granting permits and licenses determine nuisance in light of our pronouncement that local government units do not have power to declare a particular thing as a nuisance unless such is a nuisance *per se*. This matter is to be resolved by the courts in the ordinary course of law.[94] Thus in *AC Enterprises*, we held:

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[91] *Id.*

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

[93] *Id.* at 71.

[94] *AC Enterprises, Inc. v. Frabelle Properties Corporation*, *supra* note 44, at 149.

A finding by the LGU that the noise quality standards under the law have not been complied with is not a prerequisite nor constitutes indispensable evidence to prove that the defendant is or is not liable for a nuisance and for damages. Such finding is merely corroborative to the testimonial and/or other evidence to be presented by the parties. The exercise of due care by the owner of a business in its operation does not constitute a defense where, notwithstanding the same, the business as conducted, seriously affects the rights of those in its vicinity.[95] (Citation omitted and emphasis supplied)

Even if respondent's commercial activities in Feliza Building are presumed lawful considering the grant of permits and licenses by the Makati City government, it is to be noted that commercial activities which are lawful in themselves may become nuisances if they are so offensive to the senses that they render the enjoyment of life and property uncomfortable.[96]

In *Coventry v. Lawrence*, the United Kingdom (UK) Supreme Court ruled on the effect of a grant of planning permission in the finding of nuisance, to *wit*:

The grant of planning permission for a particular development does not mean that that development is lawful. All it means is that a bar to the use imposed by planning law, in the public interest, has been removed. Logically, it might be argued, the grant of planning permission for a particular activity in 1985 or 2002 should have no more bearing on a claim that that activity causes a nuisance than the fact that the same activity could have occurred in the 19th century without any permission would have had on a nuisance claim in those days.

Quite apart from this, it seems wrong in principle that, through the grant of a planning permission, a planning authority should be able to deprive a property-owner of a right to object to what would otherwise be a nuisance, without providing her with compensation, when there is no provision in the planning legislation which suggests such a possibility. x x x[97]

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[95] *Id.* at 151.

[96] *Id.* at 150.

[97] *Coventry v. Lawrence*, 2014 UKSC 13 (2014).

Guided by the foregoing, we find the grant of permits and licenses by the Makati City government, while corroborative to the other evidence presented by the parties,[98] to be of little weight in our determination of nuisance.

Locality and character of surroundings

This Court has found that the reasonable use of one's property is dependent as well on the locality and character of surroundings.[99] Guided by foreign jurisprudence, we now consider the locality and character of surroundings of the properties involved.

In *Coventry*, the character of locality factor was determinative on the court's assessment of nuisance. The court emphasized that the starting point in a nuisance claim is the "proposition that the defendant's activities are to be taken into account when assessing the character of the locality."[100] The injurious effect of a defendant's activity would depend greatly on the circumstances of the locality where it actually occurs.[101]

Feliza Building and Frabella I Condominium are located in the bustling Legaspi Village at the heart of the Makati Central Business District.[102] In any urban and commercial area, noise is expected from the business activities, passing vehicles, construction and development, and residents and commuters. Despite the efforts made to minimize the recording of external noise in the noise pollution tests conducted on Feliza Building, still some noise was recorded and contributed to the resulting reported noise levels.

The noise entering Frabella I Condominium is not only from the blowers of Feliza Building, but a combination of noise

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[98] *AC Enterprises, Inc. v. Frabelle Properties Corporation*, *supra* note 44, at 151.

[99] *Id.*

[100] *Supra* note 97.

[101] *Id.*

[102] *Rollo*, pp. 44-45.

naturally expected from a very busy area where commercial activities are prevalent. While noise is expected given the locality and character of the surroundings, it must not be more than those ordinarily expected. Otherwise, it shall be considered a nuisance. We held in *AC Enterprises*:

> Persons who live or work in thickly populated business districts must necessarily endure the usual annoyances and of those trades and businesses which are properly located and carried on in the neighborhood where they live or work. **But these annoyances and discomforts must not be more than those ordinarily to be expected in the community or district, and which are incident to the lawful conduct of such trades and businesses**. If they exceed what might be reasonably expected and cause unnecessary harm, then the court will grant relief.[103] (Citation omitted and emphasis supplied)

Hence, as we consider the locality and character of the Makati Central Business District in which the properties are situated, we must determine if the sounds from the blowers of Feliza Building are ordinarily to be expected in the district and lawful to the conduct of respondent's business or if they exceed what might be reasonably expected and cause unnecessary harm.

We find that the sounds from the blowers of Feliza Building are ordinarily to be expected in the Makati Central Business District and are lawful to the conduct of respondent's business. The use of air-conditioning units in commercial and office spaces, such as those in Feliza Building, is part of ordinary local business conditions and is expected in the commercial rental industry, especially considering that the Philippines is a tropical country with higher levels of heat intensity. Moreover, considering the limited available real estate in Makati Central Business District, buildings are closely located to each other; in this case, only 12 meters of road separate Frabella I Condominium and Feliza Building, thus sounds coming from buildings in the proximity are expected to be heard.

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[103] *Supra* note 44, at 151.

The sounds complained of do not exceed what might be reasonably expected and do not cause unnecessary harm. An illustration of unreasonable use of property can be found in *Rattigan v. Wile* wherein the United States (US) court found that the defendant's placement of items near the plaintiffs' property was intended to harass his neighbors, and although the said placement served a mixed purpose, defendant could have still accomplished his goals without undue hardship upon plaintiffs.[104] As compared to the defendant in *Rattigan*, the respondent in this case did not intentionally cause harm or undue hardship to petitioner, but acted within reasonable expectations and even made efforts to minimize any disturbance its blowers might have been causing.

In *Kasper v. H.P. Hood & Sons, Inc.*, the US court emphasized that the character of the locality is a circumstance of great importance in a determination of noise nuisance: "That a noise is disagreeable and disturbing to ordinary people is not enough. It must also be unreasonable under all the circumstances. The character of the locality is a circumstance of great importance."[105] The court did not find nuisance holding that the plaintiff's property was located in an industrial area, which is subject to conditions other than defendant's business that tend to make the vicinity less desirable for residential purposes, and that the defendant conducted its business without any more noise than is reasonably necessary for its business, even building a high fence to reduce the noise.[106]

Applying the doctrine in *Kasper*,[107] we similarly find the absence of nuisance considering the character and locality of the surroundings of the properties involved. The noise level of the Makati Central Business District is expected to be higher than other areas considering the magnitude of activity therein.

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[104] *Rattigan v. Wile*, 445 Mass. 850 (2006).

[105] *Kasper v. H. P. Hood & Sons, Inc.*, 291 Mass. 24 (1933).

[106] *Id.*

[107] *Id.*

It has been established that in conducting its business leasing commercial and office spaces, respondent did not act to make the vicinity less desirable, nor did it cause any more noise than that which was reasonably necessary to operate its air-conditioning units.

Injurious effect in the health or comfort of ordinary people

Ultimately, the determining factor is that the noise is of such character as to produce **actual physical discomfort and annoyance to a person of ordinary sensibilities**.[108]

In *Velasco*, we ruled that the noise from defendant's substation transformers was a nuisance, being of a much higher level than the ambient sound of the locality and having aggravated plaintiff's medical condition. We reached this decision finding that actual physical discomfort and annoyance was proven through a host of expert witnesses and voluminous medical literature, laboratory findings and statistics of income.[109]

In this case, petitioner only presented one tenant to testify on the annoyance she experienced with the noise and heat emanating from the blowers of Feliza Building. Tenant-witness Lee testified that she is a tenant of Frabella I Condominium with her unit facing the Feliza Building, and because of the noise and hot air that she observed to be coming from the blowers of Feliza Building, she never opened her balcony door and operated her air-conditioning units most of the time.[110] Petitioner argues that tenant-witness Lee represents the other tenants of Frabella I Condominium, but did not show any proof as to her authority. Instead, petitioner presented complaint letters that it allegedly received from Frabella I Condominium tenants.[111]

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[108] *AC Enterprises, Inc. v. Frabelle Properties Corporation*, *supra* note 44, at 150; *Velasco v. Manila Electric Co.*, *supra* note 78, at 210.

[109] *Velasco v. Manila Electric Co.*, *supra* note 78, at 216.

[110] *Rollo*, p. 129.

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

However, these letters deserve scant consideration as petitioner failed to prove the due execution and authenticity thereof. Thus, with only the testimony of sole tenant-witness Lee, petitioner failed in establishing how there was actual physical discomfort and annoyance to a person of ordinary sensibilities.[112]

We agree with petitioner that there is no requirement for every tenant to be offended before nuisance can be actionable.[113] The number of witnesses is not controlling in a determination of nuisance. In *Velasco*, even if several witnesses testified on their annoyance with the sounds from defendant's transformers, we found that the testimonies of the witnesses on the intensity of the sound were vague and imprecise, failing to give a definite idea of the intensity of the sound complained of.[114]

However, contrary to petitioner's assertion, we find that the CA did not base its ruling on the mere fact that the former only presented one tenant-witness. We agree with the CA's finding:

> "[I]t was not shown by [petitioner] that the perception, sensibility and lifestyle of tenant-witness Ma. Cristina Lee represented the normal and ordinary level of sensitivity and habits of living of each of the other tenants of Frabella who had supposedly been offended also by the noise and hot air from Feliza building."[115]

Petitioner failed to prove that tenant-witness Lee was of ordinary sensibilities, and that her sentiments were representative of the community. We do not agree with petitioner's assertion that tenant-witness Lee is presumed to be of ordinary sensibilities, as this is an evidentiary matter that cannot be presumed but must be proven by petitioner in support of its claim of nuisance.

Moreover, we find that petitioner failed to prove that the noise of respondent's blowers injuriously affects the health or

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[112] *AC Enterprises, Inc. v. Frabelle Properties Corporation, supra* note 44, at 150; *Velasco v. Manila Electric Co., supra* note 78, at 218-219.

[113] *Rollo*, p. 16.

[114] *Supra* note 78, at 212.

[115] *Rollo*, p. 67.

comfort of ordinary people in the vicinity to an unreasonable extent.[116] Apart from the sentiments of tenant-witness Lee, no other evidence was provided to show how the noise of respondent's blowers had adversely affected the community. The complaint of tenant-witness Lee that she had to keep her balcony door closed and air-conditioning units operational is not an unreasonable burden to an ordinary person though it might be peculiarly bothersome to one.

The sentiments and experiences of tenant-witness Lee cannot be presumed to be shared by the other tenants in the community so as to establish that ordinary persons living in that community would regard the noise to be a nuisance. If ordinary persons living in the community would not regard the sound to be a nuisance, there can be no actionable nuisance even if the idiosyncrasies of a particular member thereof, in this case tenant-witness Lee, may make the sound unendurable to her.[117]

In determining what is reasonably acceptable and what is invasive to a community, the court in *Rattigan* appreciated the evidence that being a residential community, there was implicit intolerance of the activities of defendant. Moreover, the plaintiff presented expert testimony that showed how one who might otherwise have rented Edgewater to decline to do so because of defendant's activities.[118] In the case at bar, no such evidence was presented to show how respondent's activities affected the rental opportunities and value of Frabella I Condominium. It is also worth noting that petitioner's sole tenant-witness Lee continued to reside in and did not vacate Frabella I Condominium despite the alleged discomfort caused to her by the noise and hot air.[119] Neither did petitioner present any evidence of loss of rental opportunities and value due to respondent's operation

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[116] *AC Enterprises, Inc. v. Frabelle Properties Corporation*, *supra* note 44, at 150.

[117] *Rattigan v. Wile*, *supra* note 104.

[118] *Id.*

[119] *Rollo*, p. 129.

of blowers, other than observations from its own personnel. In fact, petitioner's Vice President, witness Albutra, testified that she observed the noise from the blowers as early as when the Frabella I Condominium was being constructed.[120] Despite such observations of noise, petitioner successfully sold and rented out units, thus negating petitioner's assertion of the detrimental effects of respondent's blowers on the rental opportunities and value of Frabella I Condominium.

We are further guided by *Stevens v. Rockport Granite Company*, wherein the US Court emphasized that the number of people concerned by the noise should be considered in reaching a conclusion as to the standard, which is what ordinary people, acting reasonably, have a right to demand in the way of health and comfort under all circumstances:

> It is not enough that a person of peculiar temperament, unusual sensibilities or weakened physical condition, may be affected. Nor is a noise protected if persons of exceptional strength and robustness, or whose faculties have become benumbed by close business or other experience with it, are not disturbed. **The pertinent inquiry is whether the noise materially interferes with the physical comfort of existence, not according to exceptionally refined, uncommon, or luxurious habits of living, but according to the' simple tastes and unaffected notions generally prevailing among plain people. The standard is what ordinary people, acting reasonably, have a right to demand in the way of health and comfort under all the circumstances. The number of people concerned by the noise and the magnitude of the industry complained of are both elements** entitled to consideration in reaching a conclusion as to the fact.[121] (Emphasis and underscoring supplied)

Thus, while the number of tenant-witnesses is not in itself controlling on the finding of nuisance, it is relevant in establishing the standard acceptable to ordinary people. On the basis of the testimony of tenant-witness Lee alone, it is difficult to accept that her peculiar temperament is reflective of that of ordinary

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[120] *Id.* at 128-129.

[121] *Steven v. Rockport Granite Company*, 216 Mass. 486 (1914).

people. We find petitioner's evidence to be lacking not because it had presented only one tenant-witness to testify on the effects of the noise, but because its evidence as a whole failed to establish how the noise from the blowers is harmful to the health or comfort of ordinary people.

Other harms raised

Petitioner claims that the noise and hot air from respondent's blowers had caused some tenants to vacate Frabella I Condominium and decreased the rental value by 25% to 30%.

In *Rattigan*, the court ruled there was a nuisance and that damages were ascertainable because it found the residential community intolerant of defendant's activities. Its finding was supported by expert opinion that one who might have otherwise rented in the locality would probably decline to do so because of defendant's activities.[122]

In this case, other than its bare assertions, petitioner failed to adduce any reliable evidence in support of its claim of lost rental opportunities and decrease in income. As appreciated by the CA, "[t]here is no testimonial or documentary evidence stating that the 21% vacancies, more or less, were the result of cancellation of occupancy agreements as a consequence of the noise and hot air produced by Feliza Building."[123]

Further, even assuming the decrease in rental value had been proven, petitioner still failed to prove how such decrease was caused by respondent's operation of its blowers.

In any case, even assuming petitioner proved there was a decrease in rental value attributable to respondent's operation of its blowers, that fact alone would not prove the nuisance. We are guided by the US Court's pronouncement in *Tortorella v. H. Traiser & Company*, wherein it held: "A failure to secure or to retain a single tenant because of the existence of noise

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[122] *Supra* note 104.

[123] *Rollo*, p. 65.

would, in strictness, show a loss of rental value, but this falls far short of proving the noise to be unreasonable in extent."[124]

Petitioner also claims that the noise produced by respondent's blowers is harmful to the community. It relied on the testimony of its witness Albayda, a sanitation inspector, who had testified that based on his experience and training, the daily continuous intense noise produced by the blowers of Feliza Building may result in unhealthy consequences to people.[125] However, other than witness Albayda's observations as a sanitation inspector, no medical evidence or expert testimony was presented to prove the existence of the harm allegedly caused by the noise of the blowers.

Another claim we address is petitioner's allegation that the baby of a certain Mr. and Mrs. Taku Himeno *(Mr. and Mrs. Himeno)*, one of the tenants of Frabella I Condominium, suffered a seizure due to the sounds coming from Feliza Building, as testified by witness Albayda.[126] Albayda is a sanitation inspector with no medical knowledge or expertise to be a reliable witness in proving the connection between the sound and the baby's seizure. Moreover, he himself did not witness to seizure, but is presenting hearsay on what might have happened to the baby of Mr. and Mrs. Himeno. The fact that Mr. and Mrs. Himeno did not testify or file any complaint against respondent after this alleged incident casts doubt on whether respondent's operation of its blowers really caused such harm.

In *Velasco*, this Court found that the noise caused by defendant's transformers resulted in an actual harm to plaintiff's medical condition because of the medical evidence and expert testimony presented to prove the connection between the incessant noise caused by defendant and the deteriorating health condition of plaintiff. Clearly, this is not the case here as no medical evidence or expert testimony was presented. Neither

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[124] *Tortorella v. H. Traiser & Company*, 284 Mass. 497 (1933).

[125] *Rollo*, p. 19.

[126] *Id.*

was there any evidence presented from those with direct knowledge on the alleged harms caused by the noise of the blowers.

Further, in *Tortorella*, the court did not find nuisance even if it recognized that the noise was annoying and disturbing to the tenant of plaintiff, tending to cause irritability and headaches and affecting sleep, and had affected rental value to some extent. The court ruled that there was no nuisance because no one on the subject premises had suffered materially from the noise in comfort or health, and the operation of the factory did not unreasonably interfere with the comfort, health or property of the plaintiff.[127] In the absence of proof of material suffering in comfort or health, we are constrained to rule that there is no actionable nuisance.

Therefore, in light of the foregoing discussion and after a careful consideration of the facts and applicable law, We rule in favor of respondent and affirm the findings of the CA that there was no actionable nuisance caused by respondent's operation of its blowers.

Thus, in the absence of proof of material suffering in comfort or health, we do not find the sound of the blowers to be a nuisance.

II. Award of Damages and Attorney's Fees

The CA correctly deleted the award of damages, there being no injury caused by respondent to petitioner in the absence of nuisance. Respondent cannot be made to suffer for the lawful enjoyment of its property, petitioner having failed to prove nuisance.

Petitioner failed to prove injury suffered due to respondent. As we held in *Sps. Custodio v. Court of Appeals*,[128] damage without wrong does not constitute a cause of action, to *wit*:

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[127] *Tortorella v. H. Traiser & Company*, 284 Mass. 497 (1933), *supra* note 124.

[128] 323 Phil. 575 (1996).

To warrant the recovery of damages, there must be both a right of action for a legal wrong inflicted by the defendant, and damage resulting to the plaintiff therefrom. Wrong without damage, or damage without wrong, does not constitute a cause of action, since damages are merely part of the remedy allowed for the injury caused by a breach or wrong.[129]

Even assuming petitioner suffered some loss, as it had failed to prove nuisance, there is no injury caused by respondent to petitioner to entitle the latter to an award of damages. In situations of *damnum absque injuria* or damage without injury, wherein the loss or harm was not the result of a violation of legal duty, there is no basis for an award of damages. There must first be a breach of duty and imposition of liability before damages may be awarded.[130] At most, we can consider this to be a case of *damnum absque injuria*, for which petitioner is not entitled to an award of damages.

In *Tortorella*, the court did not award damages to the petitioner that had similarly claimed loss of rental value because there was no nuisance found in the case.[131] In the case at bar, there being no actionable nuisance, respondent was not in breach of duty but in the lawful exercise of its ownership rights, and therefore, there is no basis to sustain an award of damages in favor of petitioner.

Petitioner is not entitled to the temperate and exemplary damages and attorney's fees it claims.

Temperate damages are only awarded by virtue of the wrongful act of a party[132] when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.[133] Exemplary damages are

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[129] *Id.* at 585.

[130] *Id.*

[131] *Supra* note 124.

[132] *Laynesa, et al. v. Spouses Uy*, 570 Phil. 516, 533 (2008).

[133] Article 2224, New Civil Code.

awarded when the act of the offender is attended by bad faith or done in wanton, fraudulent, or malevolent manner.[134] As discussed, petitioner failed to prove nuisance, thus there is no wrongful act to serve as basis for an award of temperate or exemplary damages in its favor.

As regards attorney's fees, we similarly find petitioner not entitled because the instant case does not fall under any of the grounds set forth in Article 2208 of the Civil Code.

In view of the foregoing, we find no cogent reason to disturb the findings of the CA.

WHEREFORE, the petition is **DENIED**. The June 19, 2018 Decision and the February 18, 2019 Resolution of the Court of Appeals in CA-G.R. CV No. 105817 are hereby **AFFIRMED**.

SO ORDERED.

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

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[134] *Supra* note 132.

FIRST DIVISION

[G.R. No. 245862. November 3, 2020]

HERMIS CARLOS PEREZ, *Petitioner*, *v.* **SANDIGANBAYAN and the OMBUDSMAN,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; PROCEDURAL RULES ARE TO BE APPLIED LIBERALLY TO MERITORIOUS CASES AS WHEN THE DISMISSAL OF A PETITION BASED ON MERE TECHNICALITY MAY RESULT IN THE UNJUST DEPRIVATION OF THE LIBERTY OF THE ACCUSED. — While Perez indeed belatedly moved for the reconsideration of the denial of his motion to quash, the Court has, in some instances, liberally applied procedural rules. This exception applies to meritorious cases, as when it would result in the outright deprivation of the litigant's liberty or property.

In this case, the liberty and the constitutional right of the accused are at stake. The allegations of Perez are hinged on the extinction of his criminal liability because of the prescription of the offense. He likewise maintains that there was a violation of his right to the speedy disposition of cases. Verily, the dismissal of this petition on the basis of a mere technicality may result in the unjust deprivation of the liberty of the accused.

2. CRIMINAL LAW; PRESCRIPTION OF OFFENSES; AS A RULE, PRESCRIPTION OF OFFENSES DEFINED IN SPECIAL PENAL LAWS BEGINS TO RUN FROM THE TIME OF THE COMMISSION OF THE CRIME.— In resolving issues concerning the prescription of offenses, the Court must determine the following: (a) the prescriptive period of the offense; (b) when the period commenced to run; and (c) when the period was interrupted.

. . .

R.A. No. 3019 does not explicitly provide when the period begins to run. For this purpose, reference should be made to Act No. 3326, which governs the prescription of offenses punished by special penal laws.

As a general rule, Section 2 of Act No. 3326 prescribes that prescription is triggered by the commission of the crime.

3. ID.; ID.; "BLAMELESS IGNORANCE" PRINCIPLE; UNDER THIS PRINCIPLE, PRESCRIPTION BEGINS TO RUN FROM THE DISCOVERYOF THE OFFENSE WHEN THE PLAINTIFF IS UNABLE TO KNOW OR HAS NO REASONABLE MEANS OF KNOWING THE EXISTENCE OF A CAUSE OF ACTION. — If the commission of the offense is not known at that time, prescription begins to run from its discovery. This is otherwise referred to as the "blameless ignorance" principle which the Sandiganbayan relied upon to hold that the offense charged against Perez has not prescribed.

. . .

This "blameless ignorance" principle was mostly applied in cases involving behest loans executed during the Martial Law regime, as an exception to the general rule that prescription runs from the commission of the crime. . . .

As an exception, the "blameless ignorance" principle applies when the plaintiff is unable to know or has no reasonable means of knowing the existence of a cause of action. It cannot always be invoked to extend the prescriptive period of the offense.

4. ID.; ID.; INTERRUPTION OF THE PRESCRIPTIVE PERIOD; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); THE FILING OF A COMPLAINT FOR VIOLATION OF SECTION 3(e) WITH THE OFFICE OF THE OMBUDSMAN TOLLS THE RUNNING OF THE PRESCRIPTIVE PERIOD OF THE OFFENSE. — Prescription is interrupted when the preliminary investigation against the accused is commenced. . . .

The filing of the complaint with the OMB on April 27, 2016 against Perez effectively commenced the preliminary investigation proceedings. After the filing of the complaint, the OMB was duty-bound to determine whether probable cause existed to charge Perez with the offenses stated in the complaint. It was at that point that the prescriptive period was interrupted — approximately 14 years and five months after the commission of the alleged offense.

While Act No. 3326 speaks of *judicial* proceedings to suspend the period of prescription, the Court had settled in

Panaguiton, Jr. v. Department of Justice that the commencement of proceedings for the prosecution of the accused serves to interrupt the prescriptive period, even if the case is not filed yet with the appropriate court.

5. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS; RIGHT TO SPEEDY DISPOSITION OF CASES; THE STATE MUST NOT ONLY OBSERVE THE SUBSTANTIVE REQUIREMENTS ON PRELIMINARY INVESTIGATION, BUT MUST ALSO CONFORM WITH THE PRESCRIBED PERIODS UNDER APPLICABLE RULES. — The constitutional guarantee on due process requires the State not only to observe the substantive requirements on preliminary investigation, but to conform with the prescribed periods under the applicable rules. The correlation of the due process rights of the accused and the right to speedy disposition of cases was explained in *Tatad v. Sandiganbayan* (*Tatad*) as follows: "[s]ubstantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitationprescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law."

6. ID.; ID.; ID.; ID.; ID.; THE PROSECUTION HAS THE BURDEN TO PROVE THAT THE DELAY IN THE RESOLUTION OF THE PRELIMINARY INVESTIGATION WAS NOT INORDINATE. — From the filing of the last pleading on December 20, 2016, it took the OMB one year, two months, and two days to resolve the complaint against Perez. The preliminary investigation was therefore resolved beyond the 10-day period prescribed under the Rules. Following *Cagang*, the burden of proof was then shifted to the prosecution, who was required to establish that such delay was not inordinate. This involves proving the following: (a) the prosecution followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; (b) the complexity of the issues and the volume of evidence made the delay inevitable; and (c) no prejudice was suffered by the accused as a result of the delay.

7. ID.; ID.; ID.; ID.; ID.; THE PRINCIPLE OF INSTITUTIONAL DELAY IS NOT A BLANKET AUTHORITY FOR THE

OFFICE OF THE OMBUDSMAN'S NON-OBSERVANCE OF THE PERIODS FOR PRELIMINARY INVESTIGATION.— The oft-recognized principle of institutional delay is not a blanket authority for the OMB's non-observance of the periods fixed for preliminary investigation. The Court's ruling in *Javier v. Sandiganbayan* is instructive:

> . . .The Court understands the reality of clogged dockets — from which it suffers as well — and recognizes the current inevitability of institutional delays. However, "steady stream of cases" and "clogged dockets" are not talismanic phrases that may be invoked at whim to magically justify each and every case of long delays in the disposition of cases. Like all other facts that courts take into consideration in each case, the "steady stream of cases" should still be subject to proof as to its effects on a particular case, bearing in mind the importance of the right to speedy disposition of cases as a fundamental right.

8.ID.; ID.; ID.; ID.; ID.; MERE INACTION ON THE PART OF THE ACCUSED, WITHOUT MORE, DOES NOT QUALIFY AS AN INTELLIGENT WAIVER OF THE CONSTITUTIONAL RIGHT TO A SPEEDY DISPOSITION OF CASES.— The Court cannot emphasize enough that Perez's supposed inaction — or, to be more accurate, his failure to prod the OMB to perform a positive duty — should not be deemed as nonchalance or acquiescence to an unjustified delay. The OMB is mandated to "act promptly on complaints filed in any form or manner against officers and employees of the Government, or of any subdivision, agency or instrumentality thereof, in order to promote efficient service." In conjunction with the accused's constitutionally guaranteed right to the speedy disposition of cases, it was incumbent upon the OMB to adhere to the specified time periods under the Rules of Court. Mere inaction on the part of the accused, without more, does not qualify as an intelligent waiver of this constitutional right.

Most importantly, the Sandiganbayan neglected to see that Perez moved for the quashal of the Information against him at the earliest opportunity, that is, soon after the Information was filed with the Sandiganbayan, and prior to his arraignment. This motion was timely filed in accordance with Section 1, Rule

117 of the Rules of Court. The filing of this motion clearly contradicts any implied intention on the part of Perez to waive his constitutional right to the speedy disposition of cases.

APPEARANCES OF COUNSEL

Brillantes Arcilla Martinez Diokno & Dela Cruz Law Office for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

This is a petition[1] for *certiorari* and prohibition, with a prayer for the issuance of writ of preliminary injunction and temporary restraining order, filed by the petitioner Hermis Carlos Perez (Perez), seeking to nullify the Resolutions dated January 29, 2019[2] and March 8, 2019[3] of the Sandiganbayan in SB-18-CRM-0526. The challenged resolutions of the Sandiganbayan denied Perez's Motion to Quash[4] for lack of merit, ruling that the offense has not prescribed and there was no violation of Perez's right to the speedy disposition of cases.

The Facts

On April 27, 2016, a complaint for Malversation of Public Funds or Property, for violation of Section 3(e) and (g) of Republic Act (R.A.) No. 3019,[5] and for violation of Sections 37 and 48 of R.A. No. 9003[6] was filed against Perez, in his capacity as the Mayor of Biñan, Laguna. The complaint also impleaded

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[1] *Rollo*, pp. 2-25.

[2] Id. at 29-42. Penned by Associate Justice Kevin Narce B. Vivero with Associate Justices Sarah Jane T. Fernandez and Karl B. Miranda, concurring.

[3] Id. at 43-50.

[4] Id. at 55-66.

[5] ANTI-GRAFT AND CORRUPT PRACTICES ACT (Approved August 17, 1960).

[6] AN ACT PROVIDING FOR AN ECOLOGICAL SOLID WASTE MANAGEMENT PROGRAM, CREATING THE NECESSARY INSTITUTIONAL

Victor G. Rojo (Rojo), a private individual connected with Etsaw Consultancy and Construction of Environmental Technologies International Corporation of the Philippines[7] (ECCE).

The complaint stemmed from a Memorandum of Agreement[8] (MOA) executed on November 12, 2001 between the Municipality of Biñan, as represented by Perez, and ECCE, as represented by Rojo, wherein the Municipality of Biñan agreed to use ECCE's Hydromex Technology for its solid waste management program, and to obtain its services for project management, documentation, as-built drawings, installation, testing, supervision, and training. The MOA further stated that the Municipality of Biñan was satisfied and convinced of ECCE's capability to carry out the solid waste management program after it had observed ECCE's Hydromex Technology in the Quezon City Hall compound. Perez's authority to enter into the MOA was earlier granted by the *Sangguniang Bayan* of Biñan through *Kapasiyahan Blg.* 239-(2001),[9] issued on October 1, 2001.

An amended MOA was supposedly executed on March 25, 2002, having the same terms and conditions as the original MOA, except for the price and terms of payment. From ₱75,000,000.00, the price was reduced to ₱71,000,000.00, and the terms of payment were accelerated.[10]

The complaint, filed 14 years after the execution of the MOA, alleged that there was no competitive bidding undertaken to procure ECCE's solid waste management program and other services. Furthermore, it was alleged in the complaint that ECCE is incapable of complying with its contractual obligations under

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MECHANISMS AND INCENTIVES, DECLARING CERTAIN ACTS PROHIBITED AND PROVIDING PENALTIES, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES (Approved January 26, 2001).

[7] *Rollo*, p. 67.

[8] Id. at 78-80.

[9] Id. at 81.

[10] Id. at 69.

the MOA, especially since its investment in a Waste Treatment Machine is ₱130,303.39 but ECCE's subscribed capital stock amounts only to ₱28,000.00. The complaint further cited the harm and injury to residents near the dumpsite operations of ECCE.[11]

After more than four months from the filing of the complaint, the Office of the Ombudsman (OMB) Graft Investigation & Prosecution Officer issued a report on September 6, 2016, recommending the assignment of the case to a member of the Environmental Ombudsman Team. On October 13, 2016, Perez and Rojo were directed to file their respective counter-affidavits.[12]

On November 22, 2016, Perez's counsel filed a formal entry of appearance, and moved for the extension of time to submit the required counter-affidavit. On December 20, 2016, Perez submitted his counter-affidavit to the OMB, denying the accusations in the complaint.[13] Perez argued that the transaction between ECCE and the Municipality of Biñan was reviewed by the Local Prequalification, Bids and Awards Committee (PBAC). According to him, R.A. No. 9184,[14] or the Government Procurement Reform Act, is not applicable to the ECCE contract, and that Sections 37 and 38 of the Local Government Code[15] (LGC) should instead apply.[16]

In a Resolution[17] dated February 22, 2018, the OMB Graft Investigation and Prosecution Officer found probable cause to charge Perez with the violation of Section 3(e) of R.A. No. 3019:

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[11] Id. at 69-70.

[12] Id. at. 36.

[13] Id.

[14] AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES (Approved January 10, 2003).

[15] R.A. No. 7160, as amended (Approved October 10, 1991).

[16] *Rollo*, p. 71.

[17] Id. at 67-77.

WHEREFORE, this Office finds probable cause to indict respondent HERMIS C. PEREZ for violation of Section 3(e) of R.A. No. 3019. Let the corresponding Information be **FILED** before the Sandiganbayan.

The charges for Malversation of Public Funds or Property and violation of Section 3(g) of R.A. No. 3019 and Sections 37 and 48 [of R.A. No. 9003] against respondent Perez are **DISMISSED** for lack of merit.

The charges against respondent VICTOR G. ROJO are **DISMISSED** for lack of merit.

SO ORDERED.[18]

The OMB held that the execution of the MOA with ECCE was an act of manifest partiality on the part of Perez. ECCE was chosen without the benefit of a public bidding, which was the default mode of procurement even prior to the enactment of the Government Procurement Reform Act in 2003. Both the Local Government Code and the Commission on Audit (COA) Circular No. 92-386[19] prescribe competitive public bidding. The OMB also found that Perez was unable to substantiate his defense that the MOA was reviewed by the Local PBAC of Biñan.[20]

Moreover, the OMB held that Perez acted with gross inexcusable negligence in awarding the solid waste management program to ECCE. Since ECCE has a subscribed capital stock of only ₱28,000.00 and a paid-up capital of ₱7,000.00, the OMB found that Perez failed to conduct his own due diligence prior to the execution of the MOA. As a result, the OMB ruled that unwarranted benefits were given to ECCE.[21]

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[18] Id. at 76.

[19] PRESCRIBING RULES AND REGULATIONS ON SUPPLY AND PROPERTY MANAGEMENT IN THE LOCAL GOVERNMENTS (Approved October 20, 1992).

[20] *Rollo*, p. 72.

[21] Id.

As for the charge of conspiracy with Rojo, the OMB held that there was no evidence to establish this fact. The OMB also found insufficient evidence to prove the elements of the other criminal charges against Perez.[22]

On February 28, 2018, Ombudsman Conchita Carpio Morales (Ombudsman Carpio Morales) approved the February 22, 2018 Resolution finding probable cause against Perez.[23] Perez moved for the partial reconsideration of this resolution on May 7, 2018.[24] This motion was denied in the June 7, 2018 Order of the OMB.[25]

On July 19, 2018, an Information[26] was prepared against Perez, the accusatory portion of which reads as follows:

> That from 12 November 2001 to 25 March 2002, or sometime prior or subsequent thereto, in Biñan, Laguna, Philippines, and within the jurisdiction of this Honorable Court, accused **HERMIS CARLO PEREZ**, a high-ranking public officer, being then the Municipal Mayor of Biñan, Laguna, while in the performance of his administrative and/or official functions and committing the crime in relation to office, taking advantage of his official position, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give Etsaw Consultancy and Construction of Environmental Technologies International Corporation of the Philippines (ECCE) and/or Victor G. Rojo, President of ECCE, unwarranted benefit, advantage or preference by awarding, causing and/or ensuring the award to the latter the contract for the solid waste management program of the municipality, as well as the services for the project management, documentation/as-built drawings, installation, testing, acceptance, supervision and training services *via* Memorandum of Agreement dated 12 November 2001, and Agreement for the Supply of Hydromex Technology-Related Equipment dated 25 March 2002, in the amount of PhP71,000,000.00 despite the following irregularities: (a) the

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[22] Id. at 73-76.

[23] Id. at 76.

[24] Id. at 36-37.

[25] Id. at 37.

[26] Id. at 51-53.

absence of a public bidding as ECCE was only selected based on the latter's presentation of the Hydromex Technology, in violation of the Local Government Code and COA Circular No. 92-386; (b) the lack of the recommendation and/or approval of the bids and awards committee; (c) failure to conduct due diligence and background check on the financial qualification and technical capability of ECCE to undertake the project, which only had the subscribed capital stock of PhP28,000.00, and a paid-up capital of PhP7,000.00, and by causing or facilitating the payments in favor of ECCE notwithstanding the said irregularities, to the damage and prejudice of the government.

CONTRARY TO LAW.[27]

Ombudsman Carpio Morales approved the Information on July 20, 2018. Later, or on October 2, 2018, Ombudsman Samuel R. Martires likewise signified his approval to the filing of the Information with the Sandiganbayan.[28] The Information was finally filed with the Sandiganbayan on October 5, 2018.[29]

On October 31, 2018, Perez moved to quash[30] the Information on the ground of prescription of the offense. Perez pointed out that the alleged violation of Section 3(e) of R.A. No. 3019 occurred on November 12, 2001 up to March 25, 2002. Under Section 11 of R.A. No. 3019, all offenses punishable under this law prescribe after 15 years. Since the Information was filed with the Sandiganbayan only on October 5, 2018, or more than 16 years from the commission of the offense, the criminal charges should be dismissed on the ground of prescription. In addition, Perez invoked his constitutional right to the speedy disposition of cases.[31]

The People of the Philippines (People) opposed Perez's motion to quash. In its comment,[32] the People argued that the prescription

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[27] Id. at 51-52.

[28] Id. at 37, 53.

[29] Id. at 51.

[30] *Supra* note 4.

[31] *Rollo*, pp. 63-65.

[32] Id. at 84-95.

of the offense charged against Perez should be reckoned from the discovery of its commission. Even if the court were to reckon the period of prescription from the commission of the offense on November 12, 2001, the complaint against Perez was filed with the OMB on April 27, 2016, effectively tolling the running of the prescriptive period. As regards the right to the speedy disposition of cases, the People maintained that there was no delay, and even if there was any, the delay was not inordinate.[33]

Ruling of the Sandiganbayan

In a Resolution dated January 29, 2019, the Sandiganbayan found Perez's motion bereft of merit:

> **WHEREFORE**, premises considered, the motion to quash of accused **Hermis Carlo Perez** is hereby ***DENIED*** for lack of merit.
>
> Let the arraignment of the above-named accused be set accordingly.
>
> **SO ORDERED**.[34]

On the issue of prescription of the offense, the Sandiganbayan ruled that the 15-year period is applicable because R.A. No. 10910,[35] the amendatory law of R.A. No. 3019, took effect only on July 21, 2016. The Sandiganbayan likewise ruled that the prescriptive period commenced to run only from the discovery of the commission of the offense, pursuant to the "blameless ignorance"[36] doctrine in Section 2 of Act No. 3326.[37] For this reason, it was only when the problems with the MOA became evident that the offense was discovered. In any case, the Sandiganbayan held that even if it were to reckon the prescriptive period on the *Sangguniang Bayan*'s passage of its resolution

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[33] *Id.* at 84-93.

[34] *Id.* at 42.

[35] AN ACT INCREASING THE PRESCRIPTIVE PERIOD FOR VIOLATIONS OF REPUBLIC ACT NO. 3019, OTHERWISE KNOWN AS THE "ANTI-GRAFT AND CORRUPT PRACTICES ACT," FROM FIFTEEN (15) YEARS TO TWENTY (20) YEARS, AMENDING SECTION 11 THEREOF (Approved July 21, 2016).

[36] *Rollo*, p. 32.

on October 1, 2001, which approved the execution of the subject MOA, the filing of the complaint with the OMB interrupted the running of the prescriptive period.[38]

Further, the Sandiganbayan held that there was no violation of Perez's right to speedy disposition of cases. Since the complaint was filed on April 27, 2016 and the Information was filed with the Sandiganbayan on October 5, 2018, the OMB was able to resolve the preliminary investigation within a reasonable period of time. The Sandiganbayan further ruled that even if there was delay, Perez impliedly acquiesced when he failed to file a motion for the early resolution of his case.[39]

On February 13, 2019, Perez filed a motion for the reconsideration[40] of the Sandiganbayan's January 29, 2019 Resolution. Again, he argued that information as to the commission of the offense is readily available as early as October 1, 2001, the date of the *Sangguniang Bayan* resolution, or as late as March 25, 2002, the date of the MOA's amendment. He also stated that the filing of the complaint with the OMB cannot interrupt the prescriptive period, as only judicial or court proceedings may toll prescription.[41] The People opposed this motion.[42]

The Sandiganbayan, in its Resolution dated March 8, 2019, denied Perez's motion for having been filed beyond the reglementary period under the Revised Guidelines for Continuous Trial of Criminal Cases. The Sandiganbayan also ruled on the merits and found the motion of Perez unmeritorious:

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[37] AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN (Approved December 4, 1926).

[38] *Rollo*, p. 33.

[39] Id. at 34-41.

[40] Id. at 96-105.

[41] Id. at 100-104.

[42] Id. at 106-111.

WHEREFORE, the instant motion is *DENIED* for lack of merit. This Court's Resolution dated January 29, 2019, is hereby *AFFIRMED IN TOTO*.

SO ORDERED.[43]

Hence, Perez filed the instant petition.

Perez insists that prescription of the offense had set in his favor. Since October 1, 2001, or the date of approval of the *Sangguniang Bayan* resolution, the MOA was known to the public and irregularities in its execution may already be discovered. Perez also argues that prescription may be reckoned on November 12, 2001, the date of the notarization of the MOA, or at most, on March 25, 2002, when the MOA was amended. Insofar as the interruption of the prescriptive period is concerned, Perez disputes the Sandiganbayan ruling that the filing of the complaint with the OMB tolled the prescription of the offense. Finally, Perez again invokes his right to the speedy disposition of cases, positing that the OMB took more than two (2) years to resolve the complaint.[44] The petition also prays for the issuance of an injunctive writ against the Sandiganbayan to enjoin further proceedings in the criminal case.[45]

Issues

There are two issues for the resolution of the Court:

(a) Whether the offense charged against Perez has prescribed; and

(b) Whether Perez's right to the speedy disposition of cases was violated.

The Court's Ruling

The Court finds the petition meritorious.

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[43] Id. at 49.

[44] Id. at 7-23.

[45] Id. at 24.

Before proceeding with the merits of this case, the Court first determines whether Perez's motion for reconsideration was timely filed. The challenged March 8, 2019 Resolution of the Sandiganbayan states that Perez filed his motion for the reconsideration of the denial of his motion to quash beyond the five day period prescribed in the Revised Guidelines for Continuous Trial of Criminal Cases.[46] The pertinent portions of the Revised Guidelines for Continuous Trial of Criminal Cases state:

> III. Procedure
>
> x x x x
>
> 2. Motions
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> x x x x
>
> (c) *Meritorious Motions*. — Motions that allege plausible grounds supported by relevant documents and/or competent evidence, except those that are already covered by the Revised Guidelines, are meritorious motions, such as:
>
> x x x x
>
> v. Motion to quash information on the grounds that the facts charged do not constitute an offense, lack of jurisdiction, extinction of criminal action or liability, or double jeopardy under Sec. 3, pars. (a), (b), (g), and (i), Rule 117;
>
> x x x x
>
> The motion for reconsideration of the resolution of a meritorious motion shall be filed within a non-extendible period of five (5) calendar days from receipt of such resolution, and the adverse party shall be given an equal period of five (5) calendar days from receipt of the motion for reconsideration within which to submit its comment. Thereafter, the motion for reconsideration shall be resolved by the court within a non-extendible period of five (5) calendar days from the expiration of the five (5)-day period to submit the comment.
>
> Motions that do not conform to the requirements stated above shall be considered unmeritorious and shall be denied outright.

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[46] A.M. No. 15-06-10-SC (Approved: April 15, 2017).

By his own allegation, Perez received the January 29, 2019 Resolution of the Sandiganbayan on February 4, 2019.[47] Thus, he should have filed the motion for reconsideration on or before February 9, 2019. But since Perez filed his motion on February 13, 2019,[48] the Sandiganbayan ruled that Perez's motion may be denied based on this ground alone.[49]

While Perez indeed belatedly moved for the reconsideration of the denial of his motion to quash, the Court has, in some instances, liberally applied procedural rules. This exception applies to meritorious cases, as when it would result in the outright deprivation of the litigant's liberty or property.[50]

In this case, the liberty and the constitutional right of the accused are at stake. The allegations of Perez are hinged on the extinction of his criminal liability because of the prescription of the offense. He likewise maintains that there was a violation of his right to the speedy disposition of cases. Verily, the dismissal of this petition on the basis of a mere technicality may result in the unjust deprivation of the liberty of the accused.

The prescription of offenses defined in special penal laws generally begins to run upon the commission of the offense.

In resolving issues concerning the prescription of offenses, the Court must determine the following: (a) the prescriptive period of the offense; (b) when the period commenced to run; and (c) when the period was interrupted.[51]

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[47] *Rollo*, p. 96.

[48] Id.

[49] Id. at 46-47.

[50] See *Curammeng v. People*, G.R. No. 219510, November 14, 2016, 808 SCRA 613; See also *Malixi v. Baltazar*, G.R. No. 208224, November 22, 2017, 846 SCRA 244.

[51] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 130817, August 22, 2001, 363 SCRA 489, 493.

Since Perez was charged with the violation of Section 3 (e) of R.A. No. 3019, the prescriptive period of the offense is found in Section 11[52] of the same law, which provides that all offenses punishable under R.A. No. 3019 prescribes in 15 years. This provision was later amended by R.A. No. 10910, increasing the prescriptive period from 15 to 20 years. The amendatory law took effect on July 21, 2016. As such, this longer period of prescription may not be retroactively applied to crimes committed prior to the passage of R.A. No. 10910.[53] The applicable prescriptive period of the offense charged against Perez is therefore 15 years.

R.A. No. 3019 does not explicitly provide when the period begins to run. For this purpose, reference should be made to Act No. 3326, which governs the prescription of offenses punished by special penal laws.

As a general rule, Section 2 of Act No. 3326 prescribes that prescription is triggered by the commission of the crime:

> 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 proceeding 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. (Emphasis supplied)

If the commission of the offense is not known at that time, prescription begins to run from its discovery. This is otherwise referred to as the "blameless ignorance" principle which the

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[52] As amended by Batas Pambansa Blg. 195, Amending Certain Sections of R.A. No. 3019 (Approved March 16, 1982), Section 11 of R.A. No. 3019 reads as follows:

> Sec. 11. Prescription of offenses. — All offenses punishable under this Act shall prescribe in fifteen years.

[53] *Presidential Commission on Good Government v. Gutierrez*, G.R. No. 189800, July 9, 2018, 871 SCRA 148.

Sandiganbayan relied upon to hold that the offense charged against Perez has not prescribed.

Initial reference to the "blameless ignorance" principle was made in the Concurring and Dissenting Opinion of Justice Reynato S. Puno (Justice Puno) in the 1999 case of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*.[54] In his opinion, Justice Puno stated that:

> The application of this provision is *not simple and each case must be decided according to its facts*. It involves a careful study and analysis of *contentious facts*: (a) when the commission of the violation of the law happened; (b) whether or not the violation was known at the time of its commission, and (c) if not known then, the time of its discovery. In addition, there is the equally *difficult problem of choice of legal and equitable doctrines* to apply to the above elusive facts. For the *general rule* is that the mere fact that a person entitled to an action has no knowledge of his right to sue or of the facts out of which his right arises, does not prevent the running of the statute. This stringent rule, however, admits of an *exception*. Under the "*blameless ignorance*" doctrine, the statute of limitations runs *only* upon discovery of the fact of the invasion of a right which will support a cause of action. In other words, courts decline to apply the statute of limitations where the plaintiff neither knew nor had *reasonable means* of knowing the existence of a cause of action. Given all these factual and legal difficulties, the public respondent should have ordered private respondents to answer the sworn complaint, required a reply from the petitioners and conducted such hearings as may be necessary so he could have all the vital facts at his front and, upon their basis, resolve whether the offense charged has already prescribed. x x x[55]
> (Italics in the original)

This "blameless ignorance" principle was mostly applied in cases involving behest loans executed during the Martial Law regime,[56] as an exception to the general rule that prescription

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[54] G.R. No. 130140, October 25, 1999, 317 SCRA 272.

[55] Id. at 318-319.

[56] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, id.; *Presidential Ad Hoc Fact-Finding Committee on Behest Loans*

runs from the commission of the crime. Behest loans, by their very nature, are not easily discovered as they normally involved a large-scale conspiracy among the loan beneficiaries and the concerned public officials. Furthermore, there were negative repercussions entailing the prosecution of these offenses during the Martial Law regime. Taking the unique circumstances of behest loans under consideration, the Court ruled that the prescription of offenses arising from these contracts did not run until after the State discovered the violations.[57]

As an exception, the "blameless ignorance" principle applies when the plaintiff is unable to know or has no reasonable means of knowing the existence of a cause of action. It cannot always be invoked to extend the prescriptive period of the offense.

In *Del Rosario v. People*,[58] *(Del Rosario)* the Court rejected the Sandiganbayan's application of this doctrine with respect to the offense of non-filing of the Statement of Assets, Liabilities, and Net Worth (SALN). The filing of the SALN is mandatory for all public officials and employees, and there are fixed dates for its annual submission. Thus, the Court held in *Del Rosario* that the discovery rule is inapplicable because the OMB could easily verify the non-observance of the SALN requirement. Counting the period of prescription from the discovery of the offense therefore remains an exception to the general rule.

Here, the Court does not agree with the Sandiganbayan's reliance on the "blameless ignorance" principle to rule that the offense here has not prescribed.

Under the LGC, the local chief executive may enter into contracts on behalf of the local government unit, with the prior

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v. Desierto, supra note 51; *Presidential Commission on Good Government v. Desierto*, G.R. No. 135119, October 21, 2004, 441 SCRA 106.

[57] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, G.R. No. 130817, August 22, 2001, supra note 51, 494; See also Republic v. Cojuangco, Jr., G.R. No. 139930, June 26, 2012, 674 SCRA 492, 505-506.

[58] G.R. No. 199930, June 27, 2018, 1868 SCRA 471.

authorization from the concerned *sanggunian*. Legible copies of the contracts are required to be posted at a conspicuous place in the provincial capitol, or the city, municipal or barangay hall.[59] The concerned local government unit is further required to post a summary of the revenues and disbursements of funds for the preceding fiscal year, in at least three publicly accessible and conspicuous places in the local government unit, within 30 days from the end of the fiscal year.[60]

These posting requirements under the LGC constitute sufficient notice of the local government unit's contractual obligations. In line with this, information was readily available as regards the execution of the MOA with ECCE, especially since any funds disbursed for the payment of ECCE's services should have been posted at the end of the fiscal year. If there were irregularities in the execution of the MOA or the procurement of ECCE's services, including the absence of competitive bidding, such irregularities could have been discovered without substantial delay. Reference to the posted copies of the MOA and the other publicly available documents regarding the transaction provides the State with reasonable means of knowing the existence of the crime. As the Court adequately clarified in *Presidential Commission on Good Government (PCGG) v. Carpio Morales*:[61] "[i]f the necessary information, data, or records based on which the crime could be discovered is readily available to the public, the general rule applies."[62]

In this regard, the Sandiganbayan gravely abused its discretion when it misapplied the discovery rule. There was neither any allegation nor evidence that Perez deliberately concealed the

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[59] Local Government Code of 1991, Book I, Title I, Chapter II, Sec. 22 (c); See also Local Government Code of 1991, Book III, Title II, Chapter III, Article I, Sec. 444 (b) (1) (vi).

[60] Local Government Code of 1991, Book II, Title V, Chapter IV, Sec. 352.

[61] G.R. No. 206357, November 12, 2014, 740 SCRA 368.

[62] *Id.* at 381.

MOA with ECCE from the public, such that it would be impossible for the State to discover the anomalies in the contract. For this reason, prescription began to run upon the execution of the MOA between the Municipality of Biñan and ECCE on November 12, 2001, or when the violation of Section 3 (e) of R.A. No. 3019 was allegedly committed.[63]

The running of the prescriptive period was tolled upon the filing of the complaint with the OMB.

Perez avers that since the Information was filed with the Sandiganbayan only on October 5, 2018, the offense has prescribed. According to him, Act No. 3326 explicitly states that prescription is interrupted when judicial proceedings are instituted against the accused. On this matter, he argues that the filing of the complaint with the OMB on April 27, 2016 is not the judicial proceeding contemplated under the law. Perez is incorrect.

Prescription is interrupted when the preliminary investigation against the accused is commenced. In *People v. Pangilinan*,[64] the Court held as follows:

> x x x There is no more distinction between cases under the RPC and those covered by special laws with respect to the interruption of the period of prescription. The ruling in *Zaldivia v. Reyes. Jr.* is not controlling in special laws. **In *Llenes v. Dicdican, Ingco, et al. v. Sandiganbayan, Brillante v. CA, and Sanrio Company Limited v. Lim*, cases involving special laws, this Court held that the institution of proceedings for preliminary investigation against the accused interrupts the period of prescription. In *Securities and Exchange Commission v. Interport Resources Corporation, et al.*, the Court even ruled that investigations conducted by the Securities and Exchange Commission for violations of the Revised Securities Act and the Securities Regulation Code effectively interrupts the prescription period because it is equivalent to the preliminary investigation conducted by the DOJ in criminal cases.**

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[63] *Rollo*, pp. 68-69.

[64] G.R. No. 152662, June 13, 2012, 672 SCRA 105.

In fact, in the case of *Panaguiton, Jr. v. Department of Justice*, which is [on] all fours with the instant case, this Court categorically ruled that commencement of the proceedings for the prosecution of the accused before the Office of the City Prosecutor effectively interrupted the prescriptive period for the offenses they had been charged under BP Blg. 22. Aggrieved parties, especially those who do not sleep on their rights and actively pursue their causes, should not be allowed to suffer unnecessarily further simply because of circumstances beyond their control, like the accused's delaying tactics or the delay and inefficiency of the investigating agencies.[65] (Emphasis supplied)

The filing of the complaint with the OMB on April 27, 2016 against Perez effectively commenced the preliminary investigation proceedings. After the filing of the complaint, the OMB was duty-bound to determine whether probable cause existed to charge Perez with the offenses stated in the complaint.[66] It was at that point that the prescriptive period was interrupted — approximately 14 years and five months after the commission of the alleged offense.

While Act No. 3326 speaks of *judicial* proceedings to suspend the period of prescription, the Court had settled in *Panaguiton, Jr. v. Department of Justice*[67] that the commencement of proceedings for the prosecution of the accused serves to interrupt the prescriptive period, even if the case is not filed yet with the appropriate court. This interpretation of Act No. 3326 took into account the changes in the procedure for the prosecution of criminal offenses since the law's enactment in 1926.

It must be pointed out that when Act No. 3326 was passed on 4 December 1926, preliminary investigation of criminal offenses was conducted by justices of the peace, thus, the phraseology in the law,

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

[66] OMB Administrative Order No. 07, Rules of Procedure of the Office of the Ombudsman, Rule II, Sec. 3.

[67] G.R. No. 167571, November 25, 2008, 571 SCRA 549; See also *Securities and Exchange Commission v. Interport Resources Corporation*, G.R. No. 135808, October 6, 2008, 567 SCRA 354.

"institution of judicial proceedings for its investigation and punishment," and the prevailing rule at the time was that once a complaint is filed with the justice of the peace for preliminary investigation, the prescription of the offense is halted.

The historical perspective on the application of Act No. 3326 is illuminating. Act No. 3226 was approved on 4 December 1926 at a time when the function of conducting the preliminary investigation of criminal offenses was vested in the justices of the peace. Thus, the prevailing rule at the time, as shown in the cases of *U.S. v. Lazada* and *People v. Joson*, is that the prescription of the offense is tolled once a complaint is filed with the justice of the peace for preliminary investigation inasmuch as the filing of the complaint signifies the institution of the criminal proceedings against the accused. These cases were followed by our declaration in *People v. Parao and Parao* that the first step taken in the investigation or examination of offenses partakes the nature of a judicial proceeding which suspends the prescription of the offense. Subsequently, in *People v. Olarte*, we held that the filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation, should, and does, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed cannot try the case on the merits. In addition, even if the court where the complaint or information is filed may only proceed to investigate the case, its actuations already represent the initial step of the proceedings against the offender, and hence, the prescriptive period should be interrupted.[68]

Since the OMB carries the mandate of investigating acts or omissions of public officers or employees,[69] the Sandiganbayan was correct in ruling that the prescriptive period was interrupted by the filing of the complaint with the OMB. The OMB's conduct of a preliminary investigation carries the same effect as that originally contemplated in Act No. 3326, which is the institution of proceedings for the investigation and subsequent punishment of the offender. Although the complaint was filed at the eleventh hour, so to speak, it was still made within the 15-year period under Section 11 of R.A. No. 3019.

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[68] *Panaguiton, Jr. v. Department of Justice*, id. at 559-560.

[69] 1987 CONSTITUTION, Article XI, Sec. 13 (1).

Having settled the issue on whether the prescriptive period for the prosecution of the offense has set in, the Court proceeds to determine whether there was a violation of Perez's right to speedy disposition of cases.

There was inordinate delay in the resolution of the preliminary investigation.

In his petition, Perez argues that the OMB's resolution on the complaint took more than two years, which violated his right to the speedy disposition of cases.[70] The Court agrees that the intervening delay in the resolution of the preliminary investigation against Perez was unjustified.

The constitutional guarantee on due process requires the State not only to observe the substantive requirements on preliminary investigation, but to conform with the prescribed periods under the applicable rules. The correlation of the due process rights of the accused and the right to speedy disposition of cases was explained in *Tatad v. Sandiganbayan*[71] *(Tatad)* as follows: "[s]ubstantial adherence to the requirements of the law governing the conduct of preliminary investigation, including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law."[72]

Recently, the Court, in *Cagang v. Sandiganbayan, Fifth Division*[73] *(Cagang)*, clarified the guidelines in resolving questions concerning the right to speedy disposition of cases:

First, the right to speedy disposition of cases is different from the right to speedy trial. While the rationale for both rights is the

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[70] *Rollo*, p. 23.

[71] G.R. Nos. 72335-39, March 21, 1988, 159 SCRA 70.

[72] Id. at 82.

[73] G.R. Nos. 206438, 206458 & 210141-42, July 31, 2018, 875 SCRA 374.

same, the right to speedy trial may only be invoked in criminal prosecutions against courts of law. The right to speedy disposition of cases, however, may be invoked before any tribunal, whether judicial or quasi-judicial. What is important is that the accused may already be prejudiced by the proceeding for the right to speedy disposition of cases to be invoked.

Second, a case is deemed initiated upon the filing of a formal complaint prior to a conduct of a preliminary investigation. This Court acknowledges, however, that the Ombudsman should set reasonable periods for preliminary investigation, with due regard to the complexities and nuances of each case. Delays beyond this period will be taken against the prosecution. The period taken for fact-finding investigations prior to the filing of the formal complaint shall not be included in the determination of whether there has been inordinate delay.

Third, courts must first determine which party carries the burden of proof. If the right is invoked within the given time periods contained in current Supreme Court resolutions and circulars, and the time periods that will be promulgated by the Office of the Ombudsman, the defense has the burden of proving that the right was justifiably invoked. If the delay occurs beyond the given time period and the right is invoked, the prosecution has the burden of justifying the delay.

If the defense has the burden of proof, it must prove *first*, whether the case is motivated by malice or clearly only politically motivated and is attended by utter lack of evidence, and *second*, that the defense did not contribute to the delay.

Once the burden of proof shifts to the prosecution, the prosecution must prove *first*, that it followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; *second*, that the complexity of the issues and the volume of evidence made the delay inevitable; and *third*, that no prejudice was suffered by the accused as a result of the delay.

Fourth, determination of the length of delay is never mechanical. Courts must consider the entire context of the case, from the amount of evidence to be weighed to the simplicity or complexity of the issues raised.

An exception to this rule is if there is an allegation that the prosecution of the case was solely motivated by malice, such as when

the case is politically motivated or when there is continued prosecution despite utter lack of evidence. Malicious intent may be gauged from the behavior of the prosecution throughout the proceedings. If malicious prosecution is properly alleged and substantially proven, the case would automatically be dismissed without need of further analysis of the delay.

Another exception would be the waiver of the accused to the right to speedy disposition of cases or the right to speedy trial. If it can be proven that the accused acquiesced to the delay, the constitutional right can no longer be invoked.

In all cases of dismissals due to inordinate delay, the causes of the delays must be properly laid out and discussed by the relevant court.

Fifth, the right to speedy disposition of cases or the right to speedy trial must be timely raised. The respondent or the accused must file the appropriate motion upon the lapse of the statutory or procedural periods. Otherwise, they are deemed to have waived their right to speedy disposition of cases.[74]

The guidelines in *Cagang*, similar to *Tatad*, recognize the significance of the prosecution's adherence to the specified time periods for the resolution of the preliminary investigation. This is apparent in the third guideline of *Cagang* where courts are directed to first determine whether the prosecution or the defense carries the burden of proving that the delay is justified, or unjustified, as the case may be. In order to make this determination, courts must look into when the right to speedy disposition was invoked, *i.e.*, whether within or beyond the period prescribed under the rules.

Accordingly, for purposes of assessing whether the right of Perez to the speedy disposition of cases was violated, the Court must examine whether the OMB observed the specified time periods in its conduct of the preliminary investigation. But aside from the reglementary periods for the filing of the counter-affidavits and reply affidavits, the Rules of Procedure of the

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[74] *Id.* at 449-451.

OMB[75] do not prescribe a period within which the preliminary investigation should be concluded. That said, the Rules also provide, however, that preliminary investigation shall be conducted in accordance with Section 3, Rule 112 of the Rules of Court, subject to the specific provisions under the Rules of Procedure of the OMB.[76]

In Section 3(f), Rule 112 of the Rules of Court, the investigating officer must determine whether there is sufficient ground to hold the respondent for trial within 10 days after the investigation. Furthermore, Section 4, Rule 112 of the Rules of Court, which also fills the gap[77] in the procedure lacking in the Rules of Procedure of the OMB, likewise states:

> Section 4. *Resolution of investigating prosecutor and its review.*—
> x x x
>
> Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the *Sandiganbayan* in the exercise of its original jurisdiction. **They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.**
>
> No complaint or information may be filed or dismissed by an investigating prosecutor without the prior written authority or approval of the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his deputy.
>
> Where the investigating prosecutor recommends the dismissal of the complaint but his recommendation is disapproved by the provincial or city prosecutor or chief state prosecutor or the Ombudsman or his

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[75] OMB Administrative Order No. 7, Rules of Procedure of the Office of the Ombudsman (April 10, 1990).

[76] *Id.* at Rule II, Sec. 4.

[77] See also R.A. No. 6770, AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN AND FOR OTHER PURPOSES, Sec. 18 (2) (Approved November 17, 1989).

deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct another assistant prosecutor or state prosecutor to do so without conducting another preliminary investigation.

If upon petition by a proper party under such rules as the Department of Justice may prescribe or *motu proprio*, the Secretary of Justices reverses or modifies the resolution of the provincial or city prosecutor or chief state prosecutor, he shall direct the prosecutor concerned either to file the corresponding information without conducting another preliminary investigation, or to dismiss or move for dismissal of the complaint or information with notice to the parties. The same rule shall apply in preliminary investigations conducted by the officers of the Office of the Ombudsman. (Emphasis supplied)

Clearly, upon the termination of the investigation or the submission of the case for resolution, the investigating officer of the OMB has 10 days within which to determine the presence of probable cause.

The records of this case show that the complaint against Perez was filed on April 27, 2016. He was directed to file his counter-affidavit on October 13, 2016. After about five weeks, or on November 22, 2016, Perez requested for additional time to comply with this directive. Perez eventually filed his counter-affidavit on December 20, 2016.[78]

Thereafter, the resolution of the complaint against Perez remained stagnant for nearly two years, that is, until the investigating officer issued the February 22, 2018 Resolution finding probable cause to charge him with violation of Section 3(e) of R.A. No. 3019. Perez's motion for reconsideration was denied on June 7, 2018, and an Information dated July 19, 2018 was prepared by the Assistant Special Prosecutor of the OMB. The Information was then filed with the Sandiganbayan only on October 5, 2018, or more than two months counted from the denial of Perez's motion for reconsideration.[79]

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[78] *Rollo*, p. 36.

[79] Id. at 51, 54.

From the filing of the last pleading on December 20, 2016, it took the OMB one year, two months, and two days to resolve the complaint against Perez. The preliminary investigation was therefore resolved beyond the 10-day period prescribed under the Rules. Following *Cagang*, the burden of proof was then shifted to the prosecution, who was required to establish that such delay was not inordinate. This involves proving the following: (a) the prosecution followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; (b) the complexity of the issues and the volume of evidence made the delay inevitable; and (c) no prejudice was suffered by the accused as a result of the delay.[80]

The OMB was unable to establish that the delay was justified in this case.

Up until the filing of Perez's counter-affidavit, the OMB observed the time limitations set in its own procedural rules and in Section 3, Rule 112 of the Rules of Court. However, upon the submission of Perez's counter-affidavit on December 20, 2016, there was a lull in the proceedings for preliminary investigation. Significantly, the OMB did not set the case for further clarificatory hearing. Neither was Perez or the other parties required to submit additional documents. The OMB justified its inaction for more than a year by citing its heavy workload, and by invoking the judicial notice taken by courts of the steady stream of cases filed before it.[81]

Indeed, the Court has recognized that there are constraints in the OMB's resources, which hampers its capacity to timely carry out its mandates and increasing caseload,[82] which *Cagang* referred to as institutional delay.[83] However, this does not, by

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[80] *Cagang v. Sandiganbayan (First Division)*, supra note 73, at 450-451.

[81] *Rollo*, p. 88.

[82] *Corpuz v. Sandiganbayan*, G.R. No. 162214, November 11, 2004, 442 SCRA 294; *Cagang v. Sandiganbayan (First Division)*, supra note 73, at 441-442.

[83] In *Cagang*, pp. 441-442, the Court held as follows:

itself, suffice to explain the belated resolution of the preliminary investigation against an accused. As when parties request for additional time to comply with the court's directive, or for the admission of a belatedly filed pleading, the Court does not accept the solitary explanation of heavy workload on the part of the party's counsel.[84]

Aside from the mounting workload of the OMB, the prosecution must also establish that the issues are so complex and the evidence so voluminous, which render the delay inevitable. In this case, the prosecution neither alleged nor proved any of these circumstances. The oft-recognized principle of institutional delay is not a blanket authority for the OMB's non-observance of the periods fixed for preliminary investigation. The Court's ruling in *Javier v. Sandiganbayan*[85] is instructive:

> At this juncture, it is well to point out that the Ombudsman cannot repeatedly hide behind the "steady stream of cases that reach their

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> The reality is that institutional delay a reality that the court must address. The prosecution is staffed by overworked and underpaid government lawyers with mounting caseloads. The courts' dockets are congested. This Court has already launched programs to remedy this situation, such as the Judicial Affidavit Rule, Guidelines for Decongesting Holding Jails by Enforcing the Right of the Accused to Bail and to Speedy Trial, and the Revised Guidelines for Continuous Trial. These programs, however, are mere stepping stones. The complete eradication of institutional delay requires these sustained actions.
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> Institutional delay, in the proper context, should not be taken against the State. Most cases handled by the Office of the Ombudsman involve individuals who have the resources and who engage private counsel with the means and resources to fully dedicate themselves to their client's case. More often than not, the accused only invoke the right to speedy disposition of cases when the Ombudsman has already rendered an unfavorable decision. The prosecution should not be prejudiced by private counsels' failure to protect the interests of their clients or the accused's lack of interest in the prosecution of their case.

[84] *Heirs of Ramon B. Gayares v. Pacific Asia Overseas Shipping Corporation*, G.R. No. 178477, July 16, 2012, 676 SCRA 450; *Adtel, Inc. v. Valdez*, G.R. No. 189942, August 9, 2017, 836 SCRA 57, 67-68.

[85] G.R. No. 237997, June 10, 2020, accessed at <https://elibrary. judiciary. gov.ph/thebookshelf/showdocs/1/66260>.

office" despite the Court's recognition of such reality. The Court understands the reality of clogged dockets — from which it suffers as well — and recognizes the current inevitability of institutional delays. However, "steady stream of cases" and "clogged dockets" are not talismanic phrases that may be invoked at whim to magically justify each and every case of long delays in the disposition of cases. Like all other facts that courts take into consideration in each case, the "steady stream of cases" should still be subject to proof as to its effects on a particular case, bearing in mind the importance of the right to speedy disposition of cases as a fundamental right.[86]

Furthermore, the questioned transaction in this case involves only one contract, consisting of two pages, executed between two entities. The records are not voluminous, such that it would require additional time for the investigating prosecutor to review. The transaction was also straightforward — it did not require an exhausting examination for purposes of unraveling a grander scheme designed to circumvent the relevant procurement laws, rules, and regulations. The delay in the resolution of the preliminary investigation is therefore unjustified.

The Sandiganbayan, however, held that Perez waived his right to the speedy disposition of cases because he did not "take any step whatsoever to accelerate the disposition of the matter."[87] In its January 29, 2019 Resolution, the Sandiganbayan stated that:

> Even assuming there was delay in the termination of the preliminary investigation, accused is deemed to have slept on his right to a speedy disposition of cases. ***Currit tempus contra decides et sui juris contempores*** **(Time runs against the slothful and those who neglect their rights.)** Apparently, accused was impervious to the implications and contingencies of the projected criminal prosecution posed against him. He did not take any step whatsoever to accelerate the disposition of the matter. His nonchalance lends the impression that he did not object to the supervening delay, and hence it was impliedly with his

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[86] Id.

[87] *Rollo*, p. 39.

acquiescence. He did not make any overt act like, for instance, filing a motion for early resolution.[88] (Emphasis in the original)

In ruling that Perez should have moved for the early resolution of his case, the Sandiganbayan effectively shifted the burden back to the accused, despite the manifest delay on the part of the prosecution to terminate the preliminary investigation. The filing of a motion for early resolution is not a mandatory pleading during a preliminary investigation. With or without the prodding of the accused, the Rules of Procedure of the OMB, as well as Section 3, Rule 112 of the Rules of Court, fixed the period for the termination of the preliminary investigation. In other words, the OMB has the positive duty to observe the specified periods under the rules. The Court's pronouncement in *Coscolluela v. Sandiganbayan (First Division)*,[89] which was not abandoned in *Cagang*, remains good law,[90] to wit:

> Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo*:
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> > A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.[91]

The Court cannot emphasize enough that Perez's supposed inaction — or, to be more accurate, his failure to prod the OMB to perform a positive duty — should not be deemed as nonchalance or acquiescence to an unjustified delay. The OMB is mandated to "act promptly on complaints filed in any form or manner against officers and employees of the Government,

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[88] Id.

[89] G.R. Nos. 191411 & 191871, July 15, 2013, 701 SCRA 188.

[90] *Javier v. Sandiganbayan*, supra note 85.

[91] *Coscolluela v. Sandiganbayan (First Division)*, supra note 89, at 199.

or of any subdivision, agency or instrumentality thereof, in order to promote efficient service."[92] In conjunction with the accused's constitutionally guaranteed right to the speedy disposition of cases, it was incumbent upon the OMB to adhere to the specified time periods under the Rules of Court. Mere inaction on the part of the accused, without more, does not qualify as an intelligent waiver of this constitutional right.[93]

Most importantly, the Sandiganbayan neglected to see that Perez moved for the quashal of the Information against him at the earliest opportunity, that is, soon after the Information was filed with the Sandiganbayan, and prior to his arraignment.[94] This motion was timely filed in accordance with Section 1, Rule 117 of the Rules of Court.[95] The filing of this motion clearly contradicts any implied intention on the part of Perez to waive his constitutional right to the speedy disposition of cases.

Since the prosecution failed to provide ample justification for the delay in the termination of preliminary investigation, the Sandiganbayan gravely abused its discretion in denying Perez's motion to quash. In the same manner, the application for an injunctive relief is meritorious. The Sandiganbayan is therefore permanently enjoined from proceeding with the case.

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[92] *Coscolluela v. Sandiganbayan (First Division)*, id. at 197, citing *Enriquez v. Office of the Ombudsman*, G.R. Nos. 174902-06, February 15, 2008, 545 SCRA 618, 627; See also *Cervantes v. Sandiganbayan*, G.R. No. 108595, May 18, 1999, 307 SCRA 149, 155; *People v. Sandiganbayan, Fifth Division*, G.R. Nos. 199151-56, July 25, 2016, 798 SCRA 36, 57; *Inocentes v. People*, G.R. Nos. 205963-64, July 7, 2016, 796 SCRA 34, 50-51; 1987 CONSTITUTION, Article XI, Sec. 12.

[93] *Catamco v. Sandiganbayan (Sixth Division)*, G.R. Nos. 243560-62 & 243261-63, July 28, 2020, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66306>.

[94] *Rollo*, p. 55.

[95] Section 1, Rule 117 of the Rules of Court states:

SECTION 1. *Time to move to quash*. — At any time before entering his plea, the accused may move to quash the complaint or information. (1)

WHEREFORE, in view of the foregoing, the petition is hereby **GRANTED**. The assailed Resolutions dated January 29, 2019 and March 8, 2019 of the Sandiganbayan in SB-18-CRM-0526 are **ANNULLED** and **SET ASIDE**. The Sandiganbayan is likewise enjoined from further proceeding with the case, and is hereby ordered to **DISMISS** the criminal case docketed as SB-18-CRM-0526 for violation of the Constitutional right to speedy disposition of cases of petitioner Hermis Carlos Perez.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

FIRST DIVISION

[G.R. No. 245969. November 3, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **JOEL CATULANG *y* GUTIERREZ, POLY BERTULFO *y* DELLORO, AND CRISPOLO BERTULFO *y* DELLORO,** *Accused-Appellants.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS IN CRIMINAL CASES; AN APPEAL IN CRIMINAL CASES THROWS THE ENTIRE CASE WIDE OPEN FOR REVIEW.— [I]n criminal cases, an appeal throws the entire case wide open for review and the reviewing tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS THEREOF.— In order for the claim of self-defense to be valid, the following elements must be present, to wit: (a) there must be unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (c) lack of sufficient provocation on the part of the person defending himself.

3. ID.; ID.; DEFENSE OF A RELATIVE; ELEMENTS THEREOF.— [A] defense of a relative is valid when the following elements concur: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (c) he or she acts in defense of his or her spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree.

4. ID.; ID.; ID.; SELF-DEFENSE; UNLAWFUL AGGRESSION; UNLAWFUL AGGRESSION CEASES TO EXIST WHEN THE AGGRESSOR IS DISARMED. — There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of weapon. But based from the testimonies of Manuel and Poly, Romy was already unarmed when Poly stabbed him. Manuel and Romy were grappling with each other when Poly stabbed Romy. There was no actual or imminent threat to the life, limb or right of Manuel or Poly. Manuel testified that while they were wrestling with each other, there were times that he was on top of Romy and that Romy was on his top. This proves that both of them had equal strength in fighting each other and that Romy did not show any threat to him. Manuel did not testify that he was having a difficult time fighting Romy or that there was imminent peril to his life or limb. These circumstances belie the claim that there was unlawful aggression from the victim.

Unlawful aggression presupposes an actual, sudden, and unexpected attack or imminent danger thereof, and not merely a threatening or intimidating attitude. In this case, the unlawful aggression ceased when Manuel was able to disarm Romy and they began to grapple with each other. Manuel and Poly's acts of attacking Romy amounted to retaliation, wherein the aggression that was begun by the injured party already ceased to exist when the accused attacked him. Thus, there was no unlawful aggression anymore on the part of the deceased.

5. ID.; REMEDIAL LAW; EVIDENCE; QUANTUM OF PROOF; CONSPIRACY; HELPING THE ACCUSED DRAG THE VICTIM INSIDE THE GATE AND NOTHING ELSE IS NEITHER A CRIME NOR AN INDICATION OF CONSPIRACY.— [J]urisprudence provides that conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence of conspiracy is the unity of action and purpose. Its elements, like the physical acts constituting the crime itself, must be proved beyond reasonable doubt.

Direct proof is not essential to prove conspiracy for it may be deduced from the acts of the accused before, during and after the commission of the crime charged, from which it may

be indicated that there is a common purpose to commit the crime. It is not sufficient, however, that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants. It is necessary that the assailants be animated by one and the same purpose.

. . .

Before the criminal act, the defense witnesses, herein accused-appellants, testified that they were having a drinking session. There was no indication that they were planning or conniving to commit the murder. . . . there is no evidence that the accused-appellants had any enmity or grudge against the victim. In the absence of strong motives on their part to kill the deceased, it cannot safely be concluded that they conspired to commit the crime.

. . .

Where the quantum of proof required to establish conspiracy is lacking, the accused-appellant is responsible only for the consequences of his own acts. In this case, all that Joel did was to help the others drag Romy inside the gate and nothing else. Such act is not a crime. In criminal cases, the participation of the accused must be established by the prosecution by positive and competent evidence. It cannot be presumed. Lydia and Jonathan did not witness first-hand the commission of the crime. They only saw that Manuel hit Romy and that the latter was dragged inside the gate. There being no direct witnesses to the participation of Joel in the crime, he must be acquitted on reasonable doubt.

6. ID.; AGGRAVATING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH; ABUSE OF SUPERIOR STRENGTH IS PRESENT WHENEVER THERE IS A NUMERICAL SUPERIORITY WITH THE ACCUSED AND THE FORCE EXERTED BY THE AGGRESSORS TO COMMIT THE CRIME IS OUT OF PROPORTION TO THE MEANS OF DEFENSE AVAILABLE TO THE VICTIM. — [A]buse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. The fact that there were two persons who attacked the victim does not *per*

se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.

This Court affirms the finding of the RTC and the CA that the killing of Romy was attended by abuse of superior strength. There was numerical superiority with the accused and the force exerted by them to commit the crime was out of proportion to the means of defense available to the victim. Romy was attacked by several men, particularly Manuel, Poly and Crispolo, who had weapons including *dos por dos*, screwdriver and bolo. The accused took advantage of their superior strength to assault and kill Romy who was alone and defenseless. The attack made by Manuel and Poly were likewise out of proportion to the means of defense available to Romy. As established by the prosecution, Romy was already unarmed when the accused attacked him. Thus, the circumstance of abuse of superior strength was properly appreciated by the RTC and the CA.

7. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; ELEMENTS THEREOF; VOLUNTARY SURRENDER MAY BE APPRECIATED WHERE THE ACCUSED SPONTANEOUSLY SURRENDERS UPON THE ARRIVAL OF AN AGENT OF A PERSON IN AUTHORITY AT THE CRIME SCENE. — For voluntary surrender to be appreciated, the following elements must concur: (a) the accused has not been actually arrested; (b) the accused surrenders himself to a person in authority or the latter's agent; and (c) the surrender is voluntary.

All these elements are present in the case as established by the testimony of Purok Leader Eutequio. *First*, accused-appellants were not yet arrested at the time that the barangay officials arrived at the scene. *Second*, Purok Leader Eutequio testified that Crispolo and Manuel surrendered to them when they arrived. As established, Purok Leader Eutequio is an agent of a person in authority for being a Barangay Tanod tasked to

maintain public order and security within their purok or district. Lastly, Crispolo surrendered himself voluntarily, spontaneously and without any influence from the barangay tanods. Moreover, Crispolo even pointed to Purok Leader Eutequio where the bolo, used as weapon, could be located. The same elements were established with the other accused, Poly.

8. ID.; MURDER; PENALTY AND DAMAGES. — The penalty in this case is governed by Article 248 of the RPC, as amended by Republic Act No. 7659, wherein murder is punishable by *reclusion perpetua* to death. With no generic aggravating circumstance and one generic mitigating circumstance of voluntary surrender, the proper penalty imposable on the accused, in accordance with Article 63(3) of the RPC, should be the minimum period, which is *reclusion perpetua*.

. . .

. . . [O]n the award of damages, the Court deems it proper to modify the exemplary damages in accordance with the case of *People v. Jugueta*. Likewise, with respect to the award of actual damages, the same must also be modified.

. . .

. . . We sustain the award of ₱75,000.00 as civil indemnity, and ₱75,000.00 as moral damages but modify the exemplary damages from ₱30,000.00 to ₱75,000.00 in keeping with *People v. Jugueta* and delete the award of actual damages amounting to ₱31,950.00 and in lieu thereof, award temperate damages amounting to ₱50,000.00 in keeping with *People v. Racal*.

The award of damages shall likewise be subject to an interest of six percent (6%) *per annum* reckoned from the finality of this Decision until full payment.

APPEARANCES OF COUNSEL

The Solicitor General for plaintif-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

CARANDANG, *J.*:

When there is a shadow of doubt on the guilt of the accused, it is the duty of the Court to acquit him. No less than the Constitution has afforded every man the presumption of his innocence. Unless his guilt is proven to be beyond reasonable doubt, an accused must be acquitted.

Before this Court is an appeal[1] assailing the Decision[2] dated October 19, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08389, which affirmed the Decision[3] dated June 1, 2016 of the Regional Trial Court (RTC) of Caloocan City, Branch 128 finding accused-appellants Joel Catulang *y* Gutierrez (Joel), Poly Bertulfo *y* Delloro (Poly), and Crispolo Bertulfo *y* Delloro (Crispolo) guilty beyond reasonable doubt of committing murder under Article 248 of the Revised Penal Code (RPC).

Antecedents

The case stemmed from two separate Information, one charging Manuel Catulang *y* Villegas (Manuel), Joel, Poly and Crispolo of murder, the accusatory portion thereof reads:

> That on or about the 7th day of September, 2008 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapons and icepick, conspiring together confederating and mutually helping with one another, with the use of superior strength, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one ROMEO CANTIGA y MANTALABA, by then and there,

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[1] *Rollo*, pp. 21-22.

[2] Penned by Associate Justice Sesinando E. Villon, with the concurrence of Associate Justices Edwin D. Sorongon and Rafael Antonio M. Santos; id. at 3-19.

[3] Penned by Presiding Judge Eleanor R. Kwong; CA *rollo*, pp. 53-63.

hitting his head, stabbing him repeatedly, mauling him, thereby inflicting the latter mortal wound which were the direct and immediate cause of his death thereafter.

CONTRARY TO LAW.[4]

Another Information was charging Poly of attempted murder, the accusatory portion provides:

That on or about the 7th day of September, 2008 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, did then and there willfully, unlawfully and feloniously, with intent to kill and with treachery and evident premeditation, attack, assault and use personal violence upon one RODEL CAGUS y APOSTOL, by then and there, stabbing him on his back, thus, commencing directly by overt acts the commission of the crime of MURDER, but the herein accused nevertheless was not able to perform all the acts of execution which would constitute the said felony as a consequence, by reason or causes other than his own spontaneous desistance, that is due to timely arrival of their neighbors.

CONTRARY TO LAW.[5]

Version of the Prosecution

The prosecution presented six witnesses namely: Lydia Cantiaga (Lydia), the wife of the victim, Jonathan Rebose (Jonathan), Police Chief Inspector Editha Martinez (PCI Martinez), Eutequio Seming Jr. (Eutequio), PO1 Mark Andrew Bartolome (PO1 Bartolome), and Norberto Deciembro (Norberto).

Testimony of Lydia Cantiga

As testified by Lydia, on the night of September 7, 2008, she and her husband Romeo Cantiaga (Romy) were watching television inside their house when they suddenly heard a commotion outside. They decided to check what was going on

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[4] Records, p. 2.

[5] *Id.* at 16.

and ensure that their son Raffy was not involved in the commotion.[6]

The commotion was outside the house of Manuel. When they got there, Manuel suddenly went out of his house carrying a *dos por dos* and hit Romy on his left head causing Romy to fall on the ground. Thereafter, three men emerged from the house and dragged Romy inside the gate. The three men were later identified as Poly, Joel and Crispolo.[7] It was identified in court that Manuel and Joel are brothers while Poly and Crispolo are brothers-in-law of Manuel.[8]

While being dragged, Romy was shouting "*Mamamatay ako, papatayin nila ako*."[9] Lydia was not able to do anything for fear that the four men will retaliate against her. She asked the bystanders within the vicinity to ask for help and then she followed the men dragging her husband.[10]

The men dragged Romy inside Manuel's house and closed the gate. Lydia peeped through the gate and saw the four men simultaneously mauling and kicking her husband. Thereafter, she saw them stabbing him with a bolo and screwdriver. She saw that Crispolo was holding a bolo, Poly was holding a screwdriver and Manuel and Joel were both armed with wood.[11]

She ran for help and told the arresting officers that a group of men was mauling and stabbing her husband and that he was already dead.[12] She returned at the house of Manuel together with the Purok Leader Eutequio and barangay tanods Mendoza and Deciembro.[13]

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[6] TSN dated May 4, 2010; pp. 4-5.

[7] Id. at 6-7.

[8] TSN dated June 11, 2014, p. 3.

[9] TSN dated August 24, 2010, pp. 4-5.

[10] Id.

[11] Id. at 6.

[12] Id.

[13] TSN dated September 10, 2012, p. 4.

Testimony of Jonathan Rebose

Jonathan had a slightly different story. He testified that he was walking home with Russell and Raffy when they saw that Romy was hit by Manuel with a *dos por dos*. Thereafter, Joel and Poly dragged Romy inside the steel gate.[14]

Jonathan ran towards the house of Romy and informed his wife, Lydia, that Romy was being mauled. He further testified that Crispolo was holding a knife like a bolo while Poly was holding a screwdriver when they dragged Romy inside the gate of Manuel's house.[15]

He could no longer see what the four men were doing inside the house because there was no electricity inside.[16] He said that he stayed at the place of incident for 30 minutes waiting to see what happened to Romy until he was fetched by his mother. The next day, he learned from Romy's son that Romy had passed away.[17]

Testimony of PCI Editha Martinez

PCI Martinez testified that when she was conducting an autopsy on the body of Romy, she found multiple stab wounds in the thorax, particularly three stab wounds, two of which penetrated the lungs which caused the instant death of the victim.[18] She further testified that the stab wounds may have been caused by a sharp, pointed and bladed instrument which could possibly be a single bladed knife.[19]

Her autopsy also showed abrasion, contusion on the head, multiple abrasions, punctured wound on the thorax and fracture

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[14] TSN dated September 15, 2009, pp. 3-4, 6-7.

[15] Id. at 13-14.

[16] Id. at 11-12.

[17] Id. at 18-20.

[18] TSN dated November 21, 2011, pp. 9-12.

[19] Id. at 11.

on four ribs.[20] There was also a hematoma on the forehead. She posited that the victim could have suffered blows to the head or came into contact with a hard surface object, which is consistent with the possibility of being mauled and kicked.[21]

Testimony of Eutequio Seming Jr.

Purok Leader Eutequio testified that upon arriving at the scene, he heard Crispolo shout "*Nandiyan na ba si Purok, susuko ako kay Purok.*"[22] They entered the gate and saw the lifeless body of Romy on the ground. Manuel and Crispolo first surrendered to him and Crispolo pointed to him where the bolo can be found.[23] They were also able to retrieve a screwdriver inside the house. Thereafter, Poly and Joel surrendered as well. He saw that Manuel had wound on his palm while Joel had an injury on his forehead. All the four men appeared to be drunk.[24]

Testimony of PO1 Mark Andrew Bartolome

He testified that he was the investigating officer on the case and that the arresting officers turned over the seized bolo and screwdriver to him. He testified that he did not have personal knowledge of the incident.[25]

Testimony of Norberto Deciembro

Deciembro corroborated the testimony of Purok Leader Eutequio. He testified that they attended to the report of mauling at the house of Manuel. Upon arriving thereat, they saw the lifeless body of Romy on the floor with his face down. They also saw the four accused, who were half naked and appeared to be drunk. The four accused surrendered to them.[26]

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[20] Id. at 14.

[21] Id. at 16.

[22] TSN dated September 10, 2012, pp. 5-7.

[23] Id. at 12-13.

[24] Id. at 13-14.

[25] TSN dated February 27, 2013, pp. 5-6.

[26] TSN dated October 1, 2013, pp. 4-7.

Version of the Defense

The defense avers a different version of the story. According to them, the four men were having a drinking session inside the house of Manuel on the evening of the same day.[27] Suddenly, Romy pushed the gate and went inside shouting "*Matatapang ba talaga kayo?*" while holding a *tres cantos* ice pick. Manuel got up from his seat and approached Romy, who suddenly stabbed him. Manuel tried to parry the thrust but he was hit on his right hand. Thereafter, the ice pick fell on the ground and Romy and Manuel grappled with each other.[28]

While Romy was on top of Manuel, Poly came to Manuel's rescue and stabbed Romy at the back while he was not looking. Romy turned to Poly while Manuel ran inside his house. Upon Romy turning to him, Poly stabbed Romy again on his chest but he can no longer remember how many stabs he inflicted upon Romy. Then, Romy fell on the ground. In his testimony, Poly admitted that he stabbed Romy because of fear that Romy might kill the four of them.[29]

Thereafter, the barangay officials arrived and arrested the four men. Crispolo testified that he did not know what happened because he was inside the comfort room while the confrontation was happening. Joel also did not know what happened because he was asleep after having two bottles of Colt 45.[30]

On November 2, 2014, accused Manuel was rushed to the hospital due to difficulty of breathing. He was pronounced dead on the same day as evidenced by his Death Certificate.[31] Thus, the case against him is dismissed pursuant to Article 89 (1) of the RPC, which provides that criminal liability is totally extinguished by the death of the accused.

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[27] TSN dated June 11, 2014, pp. 4-5.

[28] Id. at 7-9.

[29] CA rollo, p. 59.

[30] Id. at 60-62.

[31] Records, p. 265.

Ruling of the Regional Trial Court

On June 1, 2016, RTC Branch 128, Caloocan City issued a Decision[32] convicting Joel, Poly and Crispolo for the crime of murder while acquitting Poly for the crime of attempted murder. The dispositive portion reads:

> WHEREFORE, finding the three (3) accused Joel Catulang y Gutierrez, Poly Bertulfo y Delloro, and Crispolo Bertulfo y Delloro, guilty beyond reasonable doubt for Murder, they are hereby sentenced to *Reclusion Perpetua*, with all the accessory penalties attached thereto.
>
> They are likewise directed to jointly and severally pay the heirs of the deceased Romeo Cantiga y Mantalaba, as follows:
>
> 1. Thirty One Thousand Nine Hundred Fifty Pesos (₱31,950.00), as actual damages;
>
> 2. Seventy Five Thousand Pesos (₱75,000.00), as civil indemnity;
>
> 3. Seventy Five Thousand Pesos (₱75,000.00), as moral damages; and
>
> 4. Thirty Thousand Pesos (₱30,000.00), as exemplary damages.[33]

RTC found that there was conspiracy among the four accused. Their concerted acts of attacking, dragging, mauling and stabbing the victim which resulted to the multiple stab wounds, abrasions, contusions and fractures on the victim's body support the theory of conspiracy. RTC resolved that these multiple injuries on the victim were inflicted by several persons.[34]

Further, it ruled that there was no treachery and evident premeditation in the commission of the crime but there was presence of abuse of superior strength. The four men took advantage of their combined strength and attacked the victim who was alone and defenseless.[35]

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[32] *Supra* note 3.

[33] Records, p. 63.

[34] Id. at 62.

[35] Id. at 63.

Aggrieved, Joel, Poly and Crispolo filed an appeal before the CA.[36]

Ruling of the Court of Appeals

On October 19, 2018, the CA denied the appeal and upheld the conviction of Joel, Poly and Crispolo for the crime of murder, *viz.*:

> **WHEREFORE**, premises considered, the instant appeal is **DENIED** for lack of merit. The assailed Decision dated June 1, 2016 rendered by Branch 128 of the Regional Trial Court of Caloocan City in Criminal Case No. C-80172, for Murder, is hereby **AFFIRMED**.[37] (Emphasis in the original)

CA did not give credence to their defenses of self-defense and defense of a relative because the element of unlawful aggression was no longer present when they hit Romy. Poly admitted that Romy was already unarmed when he stabbed him on the back. Such defenses were also belied by the number, nature and location of the injuries sustained by Romy. The gravity of his wounds is indicative of a determined effort to kill him and not just to defend themselves from an unlawful aggression.[38]

Further, the CA agreed with the RTC that conspiracy and abuse of superior strength were present in the case. The four accused helped each other in boxing, attacking, and stabbing the victim to do their criminal intent of killing him. They likewise took advantage of their combined strength in attacking the victim who was alone and defenseless.[39]

CA did not appreciate the mitigating circumstances of voluntary surrender. It lacks the element that the surrender must be spontaneous. Assuming that there was valid voluntary surrender, the same is in vain considering that the penalty imposed

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[36] Id. at 319.

[37] *Rollo*, p. 19.

[38] Id. at 10.

[39] Id. at 7-8.

for the crime of Murder is *reclusion perpetua* which is an indivisible penalty. Regardless of any mitigating circumstance attending the commission of the crime, the indivisible penalty shall be applied.[40]

Hence, this appeal.

Issues

In their Brief, the accused-appellants raised the following assignment of errors:

I. The Court *a quo* gravely erred in disregarding the claim of self-defense and defense of a relative on the part of Manuel Catulang and Poly Bertulfo, respectively.

II. The Court *a quo* gravely erred in not appreciating the fact that accused-appellants voluntarily surrendered.

III. The Court *a quo* gravely erred in finding the accused-appellants guilty of murder despite the prosecution's failure to establish conspiracy among them.

IV. The Court *a quo* gravely erred in failing to determine the individual culpability of the accused-appellants.

V. The Court *a quo* gravely erred in convicting accused-appellants of murder despite the glaring and material inconsistencies in the prosecution witnesses's testimonies.

VI. The Court *a quo* gravely erred in finding that the aggravating circumstance of abuse of superior strength attended the death of Romeo Cantiga.

The main issue raised by the accused-appellants is whether their guilt has been proven beyond reasonable doubt.

Ruling of this Court

The appeal is partly meritorious.

At the outset, we stress that, in criminal cases, an appeal throws the entire case wide open for review and the reviewing

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[40] Id. at 16-18.

tribunal can correct errors, though unassigned in the appealed judgment, or even reverse the trial court's decision based on grounds other than those that the parties raised as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[41]

Self-defense and defense of a relative; no unlawful aggression from the victim

In order for the claim of self-defense to be valid, the following elements must be present, to wit: (a) there must be unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (c) lack of sufficient provocation on the part of the person defending himself.[42]

On the other hand, a defense of a relative is valid when the following elements concur: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (c) he or she acts in defense of his or her spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree.[43]

Upon review of the records, this Court upholds the finding of the CA that there was no valid self-defense and defense of a relative. As correctly held by the CA, the accused-appellants failed to establish that there was unlawful aggression on the part of Romy to justify the criminal act done by them.

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[41] *Ramos v. People of the Philippines*; *People of the Philippines v. Ramos*, 803 Phil. 775, 783 (2017).

[42] REVISED PENAL CODE, Article 11 (1).

[43] REVISED PENAL CODE, Article 11 (2).

There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. There must be actual physical force or actual use of weapon.[44] But based from the testimonies of Manuel and Poly, Romy was already unarmed when Poly stabbed him.[45] Manuel and Romy were grappling with each other when Poly stabbed Romy. There was no actual or imminent threat to the life, limb or right of Manuel or Poly. Manuel testified that while they were wrestling with each other, there were times that he was on top of Romy and that Romy was on his top.[46] This proves that both of them had equal strength in fighting each other and that Romy did not show any threat to him. Manuel did not testify that he was having a difficult time fighting Romy or that there was imminent peril to his life or limb. These circumstances belie the claim that there was unlawful aggression from the victim.

Unlawful aggression presupposes an actual, sudden, and unexpected attack or imminent danger thereof, and not merely a threatening or intimidating attitude. In this case, the unlawful aggression ceased when Manuel was able to disarm Romy and they began to grapple with each other. Manuel and Poly's acts of attacking Romy amounted to retaliation, wherein the aggression that was begun by the injured party already ceased to exist when the accused attacked him. Thus, there was no unlawful aggression anymore on the part of the deceased.

Further, Poly continued to stab Romy on his chest despite the latter not having anything to defend himself from such attack.[47] Based from Poly's testimony, he initially stabbed Romy on the back while Romy and Manuel were grappling with each other. When Romy stood up and faced him, he continued to stab Romy in the chest, not remembering how many stabs he inflicted to the victim. As mentioned above, the unlawful

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[44] *People v. Crisostomo*, 195 Phil. 162, 172 (1981).

[45] TSN dated June 11, 2014, pp. 19-20.

[46] Id. at 9.

[47] TSN dated September 23, 2014, p. 10.

aggression already ceased to exist when Manuel was able to disarm Romy, thus Poly's attacks to the victim was not reasonably necessary to prevent or repel the unlawful aggression. Hence, the claim of self-defense and defense of a relative by the accused-appellants Manuel and Poly must fail.

Presence of Conspiracy was not established

With respect to the presence of conspiracy, jurisprudence provides that conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The essence of conspiracy is the unity of action and purpose. Its elements, like the physical acts constituting the crime itself, must be proved beyond reasonable doubt.[48]

Direct proof is not essential to prove conspiracy for it may be deduced from the acts of the accused before, during and after the commission of the crime charged, from which it may be indicated that there is a common purpose to commit the crime.[49] It is not sufficient, however, that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants. It is necessary that the assailants be animated by one and the same purpose.[50]

The trial court, as affirmed by the CA, held that there was conspiracy among the accused-appellants. However, upon review of the records, we hold that the participation and involvement of Joel in the commission of the crime is inadequate to render him criminally liable as a conspirator.

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[48] *Quidet v. People*, G.R. No. 170289, 632 Phil. 1, 11 (2010).

[49] *People v. Campos*, 668 Phil. 315, 330 (2011), citing *People v. Martin*, 588 Phil. 355, 364 (2008).

[50] *People v. Vistido*, 169 Phil. 599, 606 (1977).

In the case of *People v. Jesalva*,[51] this Court ruled that in a conspiracy, it is necessary to focus on the overt acts of an accused before, during and after the criminal act in order to determine if he or she was a part of the conspiracy and may be held liable as a conspirator. Upon review of the facts, this Court believes that Joel's overt acts before, during and after the criminal act are inadequate to hold him criminally liable as conspirator for the crime of murder.

Before the criminal act, the defense witnesses, herein accused-appellants, testified that they were having a drinking session. There was no indication that they were planning or conniving to commit the murder. Joel was drinking with Manuel, Poly and Crispolo inside Manuel's house. The OSG argues that conspiracy was established through the testimonies of Lydia and Jonathan. But after a thorough review of the records, the Court holds that their testimonies were insufficient to prove that Joel conspired with the other accused-appellants in committing the murder. More so, there is no evidence that the accused-appellants had any enmity or grudge against the victim. In the absence of strong motives on their part to kill the deceased, it cannot safely be concluded that they conspired to commit the crime.

During and after the criminal act, the prosecution witnesses, particularly Lydia and Jonathan, testified that Joel's participation was merely to drag Romy inside the house. On the other hand, all the defense witnesses testified that Joel was asleep after drinking two bottles of Colt 45 when the incident happened. Thus, the most that the prosecution could ascribe to Joel was his overt act of helping the other accused in dragging Romy inside the gate.

Further, we find the version of Lydia's story incredulous. Her testimony does not corroborate the testimony of Jonathan. In her version, she was together with Romy when Manuel hit her husband with *dos por dos*. But according to Jonathan, he

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[51] 811 Phil. 300 (2017).

called for Lydia when he saw that Romy was attacked. This Court can only believe one version of the story and we find Jonathan's version more credible than Lydia's. Her presence at the time of the incident is doubtful.

Hence, this Court holds that the evidence of the prosecution is not strong enough to sustain a conviction as against Joel. Although the fact of dragging Romy inside the gate appeared to be an act of helping the other accused in perpetuating the crime, such is not sufficient to hold him principally liable as a conspirator in the crime of murder.

Where the quantum of proof required to establish conspiracy is lacking, the accused-appellant is responsible only for the consequences of his own acts. In this case, all that Joel did was to help the others drag Romy inside the gate and nothing else. Such act is not a crime. In criminal cases, the participation of the accused must be established by the prosecution by positive and competent evidence. It cannot be presumed. Lydia and Jonathan did not witness first-hand the commission of the crime. They only saw that Manuel hit Romy and that the latter was dragged inside the gate. There being no direct witnesses to the participation of Joel in the crime, he must be acquitted on reasonable doubt.

On the other hand, the evidence presented to support the conviction of Poly and Crispolo are adequate to overcome the burden of proving their guilt beyond reasonable doubt.

With respect to Poly, he admitted before the trial court stabbing Romy at the back once and in front twice which was supported by the medical report of PCI Martinez showing multiple stab wounds sustained by the victim.

As testified by PCI Martinez, the deceased received stab wounds caused by a sharp and pointed instrument like a knife and a blunt instrument like a screwdriver.

Q How many stab wounds did you observe?

A Can I refer sir to the autopsy report . . . I found three (3) stab wounds, sir.

Q And they penetrated both vital organs of the body of the victim?

A Two of the three stab wounds penetrated the lungs, sir.

Q From the time the injury was inflicted, how long would the victim live if possible, Madam Witness?

A Just a few minutes, sir.

Q Now, Madam Witness, what kind of instrument, if any could have been used in inflicting the injury that your (sic) observe?

A Any sharp, pointed bladed instrument, sir.

Q Based on the dimension of the wound, Madam Witness, can you give an idea of what kind of bladed instrument?

A Based on the dimensions of the stab wound that I found at the time of my examination, it is possible that a knife was used, sir.

Q Single bladed or double?

A Can I refer, sir to the anatomical sketch . . . single bladed knife, sir.

x x x x

Q Let's go with each of the wounds. You observed a punctured wound, this is different from the stab wound you observed earlier?

A Yes, sir.

Q This would be caused by object such as either an ice pick or screwdriver, something like that?

A Yes, sir.

Q That would be a different instrument that could have caused the stab wound to the thorax?

A Yes, sir.

Q So it's possible that there is a second assailant with that weapon?

A It is possible, yes sir.[52]

The prosecution witnesses testified that Poly was holding a screwdriver when he dragged Romy inside the gate. More so, the police were able to find a screwdriver inside the house of Manuel where the incident happened. Even without the theory of conspiracy, these facts support the finding that Poly participated in the commission of the crime of murder against Romy.

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[52] TSN dated November 21, 2011, pp. 10-15.

With respect to Crispolo, circumstantial evidence supports his conviction. These circumstances comprise of the following:

1. Purok Leader Eutequio testified that Crispolo surrendered to him and pointed to him the bolo used to stab Romy.
2. Jonathan testified that Crispolo was holding a bolo.
3. The post mortem examination of Romy showed a stab wound which could have been caused by a knife like a bolo, as testified by PCI Martinez.
4. The bolo was surrendered as evidence to the police as testified by PO2 Bartolome.

All these circumstances support the conviction of Crispolo. The defense failed to ascribe any ill-motive against the prosecution's witnesses to impute to them such a grave crime. Thus, we give credence to the testimonies of Jonathan, Purok Leader Eutequio, PCI Martinez and PO2 Bartolome.

Therefore, we sustain the ruling of the RTC and CA finding Poly and Crispolo guilty of murder under Article 248 of the RPC.

There was abuse of superior strength

Further, abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. The fact that there were two persons who attacked the victim does not *per se* establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person

attacked. The appreciation of this aggravating circumstance depends on the age, size, and strength of the parties.[53]

This Court affirms the finding of the RTC and the CA that the killing of Romy was attended by abuse of superior strength. There was numerical superiority with the accused and the force exerted by them to commit the crime was out of proportion to the means of defense available to the victim. Romy was attacked by several men, particularly Manuel, Poly and Crispolo, who had weapons including *dos por dos*, screwdriver and bolo. The accused took advantage of their superior strength to assault and kill Romy who was alone and defenseless. The attack made by Manuel and Poly were likewise out of proportion to the means of defense available to Romy. As established by the prosecution, Romy was already unarmed when the accused attacked him. Thus, the circumstance of abuse of superior strength was properly appreciated by the RTC and the CA.

Voluntary surrender must be appreciated

Nonetheless, the mitigating circumstance of voluntary surrender must be given credence. For voluntary surrender to be appreciated, the following elements must concur: (a) the accused has not been actually arrested; (b) the accused surrenders himself to a person in authority or the latter's agent; and (c) the surrender is voluntary.

All these elements are present in the case as established by the testimony of Purok Leader Eutequio. *First*, accused-appellants were not yet arrested at the time that the barangay officials arrived at the scene. *Second*, Purok Leader Eutequio testified that Crispolo and Manuel surrendered to them when they arrived. As established, Purok Leader Eutequio is an agent of a person in authority for being a Barangay Tanod tasked to maintain public order and security within their purok or district. Lastly, Crispolo surrendered himself voluntarily, spontaneously and without any influence from the barangay tanods. Moreover,

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[53] *People v. Beduya*, 641 Phil. 399, 410-411 (2010).

Crispolo even pointed to Purok Leader Eutequio where the bolo, used as weapon, could be located. The same elements were established with the other accused, Poly.

Penalty

The penalty in this case is governed by Article 248 of the RPC, as amended by Republic Act No. 7659, wherein murder is punishable by *reclusion perpetua* to death. With no generic aggravating circumstance and one generic mitigating circumstance of voluntary surrender, the proper penalty imposable on the accused, in accordance with Article 63 (3) of the RPC, should be the minimum period, which is *reclusion perpetua*.

Hence, the penalty imposed by RTC and CA is affirmed, the same being in keeping with current law and jurisprudence.

However, on the award of damages, the Court deems it proper to modify the exemplary damages in accordance with the case of *People v. Jugueta*.[54] Likewise, with respect to the award of actual damages, the same must also be modified.

In *People v. Racal*,[55] the Court deleted the award of actual damages amounting to ₱30,000.00 and in lieu thereof, awarded temperate damages in the amount of ₱50,000.00. The Court therein held:

> x x x The settled rule is that when actual damages 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. Conversely, if the amount of actual damages proven exceeds, then temperate damages may no longer be awarded; actual damages based on the receipts presented during trial should instead be granted. The rationale for this rule is that it would be anomalous and unfair for the victim's heirs, who tried and succeeded in presenting receipts and other evidence to prove actual damages, to receive an amount which is less than

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[54] 783 Phil. 806 (2016).

[55] 817 Phil. 665 (2017).

that given as temperate damages to those who are not able to present any evidence at all.[56]

Hence, We sustain the award of ₱75,000.00 as civil indemnity, and ₱75,000.00 as moral damages but modify the exemplary damages from ₱30,000.00 to ₱75,000.00 in keeping with *People v. Jugueta*[57] and delete the award of actual damages amounting to ₱31,950.00 and in lieu thereof, award temperate damages amounting to ₱50,000.00 in keeping with *People v. Racal*.[58]

The award of damages shall likewise be subject to an interest of six percent (6%) *per annum* reckoned from the finality of this Decision until full payment.

WHEREFORE, the appeal is **PARTLY GRANTED**. Accused-appellant Joel Catulang *y* Gutierrez is **ACQUITTED** on reasonable doubt and is **ORDERED** to be **IMMEDIATELY RELEASED** from detention, unless he is being lawfully held for another cause. The Decision dated October 19, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08389 finding accused-appellants Crispolo Bertulfo *y* Delloro and Poly Bertulfo *y* Delloro **GUILTY** beyond reasonable doubt of the crime of Murder and is sentenced to suffer the penalty of *reclusion perpetua* is **AFFIRMED**. The damages awarded is likewise **AFFIRMED with MODIFICATION**:

(1) The award of exemplary damages is **INCREASED** from ₱30,000.00 to ₱75,000.00; and

(2) The award of actual damages is **DELETED** and in lieu thereof, temperate damages in the amount of ₱50,000.00 is awarded to the heirs of the victim.

The award of damages shall be subject to an interest of six percent (6%) *per annum* reckoned from the finality of this Decision until full payment.

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[56] Id. at 685-686.

[57] Supra note 54.

[58] Supra note 55.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, New Bilibid Prison for immediate implementation. The said Director is **DIRECTED** to report the action taken to this Court, within five (5) days from receipt of this Decision.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Zalameda, and *Gaerlan, JJ.,* concur..

FIRST DIVISION

[G.R. No. 252189. November 3, 2020]

GAMES AND AMUSEMENT BOARD AND BUREAU OF INTERNAL REVENUE, *Petitioners, v.* **KLUB DON JUAN DE MANILA, INC., AND CESAR AVILA, JR., MANILA JOCKEY CLUB, INC., PHILIPPINE RACING CLUB, INC., AND METRO MANILA TURF CLUB, INC.,** *Respondents*.

SYLLABUS

1. **TAXATION; 1997 NATIONAL INTERNAL REVENUE CODE (R.A. 8424 AS AMENDED); THE REMEDY OF INJUNCTION NOT AVAILABLE TO RESTRAIN COLLECTION OF TAX. —** Section 218. Injunction not Available to Restrain Collection of Tax. – No court shall have the authority to grant an injunction to restrain the collection of **any national internal revenue tax**, fee or charge imposed by this Code. Under Section 21(f) of the NIRC, documentary stamp taxes from part of the national internal revenue taxes. As early as 1915 in the old case of *Churchill v. Rafferty*, the Court has already prohibited the issuance of injunction against the collection of internal revenue taxes based on the lifeblood theory.

2. **ID.; COURT OF TAX APPEALS; JURISDICTION. —** [T]he Court of Tax Appeals (CTA) not only has 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, but also, the CTA has jurisdiction on cases directly challenging the constitutionality or validity of a tax law, or regulation or administrative issuance such a revenue orders, revenue memorandum circulars, revenue regulations and rulings.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.

Nisce Mamuric Guinto Rivera Alcantara Law Offices for respondent Metro Manila Turf Club, Inc.

Andres Padernal & Paras Law Offices for respondents Klub Don Juan de Manila, Inc. and Cesar G. Avila, Jr.

Reyno Tiu Domingo & Santos for respondent Manila Jockey Club, Inc.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated February 28, 2019 and the Resolution[3] dated November 11, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 158302 filed by Klub Don Juan De Manila, Inc. (Klub Don Juan) and Cesar G. Avila, Jr. against the Games and Amusement Board (GAB), the Bureau of Internal Revenue (BIR), Manila Jockey Club, Inc. (MJCI), Philippine Racing Club, Inc. (PRCI), and Metro Manila Turf Club, Inc. (MMTCI).

Facts of the Case

On May 25, 2018, Klub Don Juan filed a complaint for Injunction with Prayer for Issuance of Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction[4] against the GAB, the BIR, MJCI, PRCI, and MMTCI. Klub Don Juan is an organization whose members are racehorse owners regularly

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[1] *Rollo*, pp. 29-54.

[2] Penned by Associate Justice Pedro B. Corales, with the concurrence of Associate Justices Stephen C. Cruz and Ruben Reynaldo G. Roxas; id. at 10-23.

[3] Id. at 25-26.

[4] Id. at 93-107.

participating in horse racing conducted by different racing clubs.[5] On the other hand, the MJCI, PRCI, and MMTCI (collectively, racing clubs) are grantees of legislative franchises, allowing them to construct, maintain, and operate horse racing tracks.[6] Their legislative franchises imposed upon the racing clubs the duty to withhold and remit documentary stamp taxes (DST) to the BIR.[7]

Section 11 of Republic Act No. (R.A.) 8407 or the law granting franchise to MJCI provides for the following:

> Section 11. Documentary Stamps. — On each horse racing ticket, there shall be collected a documentary stamp tax of Ten centavos (₱0.10): provided, that if the cost of the ticket exceeds One peso (₱1.00), an additional tax of Ten centavos (₱0.10) on every One peso (₱1.00) or fractional part thereof shall be collected.

Section 8 of R.A. 7953, the law granting franchise to PRCI states that:

> Section 8. On each horse racing ticket, there shall be collected a documentary stamp tax of ten centavos (₱0.10): Provided, that if the cost of the ticket exceeds one peso (₱1.00), an additional tax of ten centavos (₱0.10) on every one peso (₱1.00) or fractional part thereof shall be collected: Provided, further, that in case of double, forecast/ quenelle and trifecta bets the tax shall be five centavos (₱0.05) on every one peso (₱1.00) worth of ticket.

Section 6 of R.A. 7978 or the law granting franchise to MMTCI provides that:

> Section 6. On each horse racing ticket, there shall be collected a documentary stamp tax of Ten centavos (₱0.10): Provided, That if the cost of the ticket exceeds One peso (₱1.00), an additional tax of Ten centavos (₱0.10) on every One peso (₱1.00) or fractional part thereof shall be collected: Provided, Further, That in the case of double forecast/quinella and trifecta bets, the tax shall be Five centavos (₱0.05) on every One peso (₱1.00) worth of ticket.

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[5] Id. at 94.

[6] Id. at 95.

[7] Id.

On January 1, 2018, R.A. 10963, otherwise known as the "Tax Reform for Acceleration and Inclusion (TRAIN) Law" took effect, which amended the old law on DST as follows:

> Section 63. Section 190 of the NIRC, as amended, is hereby further amended to read as follows:
>
> Section 190. Stamp Tax on Jai-alai, Horse Race, Tickets, Lotto or Other Authorized Numbers Games. — On each jai-alai, horse race ticket, lotto, or other authorized numbers games, there shall be collected a documentary stamp tax of **Twenty centavos (₱0.20)**: Provided, That if the cost of the ticket exceed One peso (₱1.00), an additional tax of **Twenty centavos (₱0.20)** on every **One peso (₱1.00)**, or fractional part thereof, shall be collected. (Emphasis supplied)

Upon the effectivity of the TRAIN Law, there was a substantial increase on the DST withheld as compared to the DST under the franchises of the racing clubs. Because of this, Klub Don Juan alleged that there is a conflict between the provisions of the franchises of the racing clubs being a special law and the provisions of the TRAIN Law.[8] Klub Don Juan asserted that the GAB and the BIR should be restrained from enforcing the provision of the TRAIN Law on the increased DST rate. Instead, the franchise rates should continue to apply since it was not specifically amended by the TRAIN Law. Further, Klub Don Juan claimed that the application of the increased DST resulted in the reduction of dividends granted to the winning bettor. The reduced dividends drove away bettors which resulted in lesser gross sales.[9]

The GAB and BIR through the Office of the Solicitor General filed an *Urgent Ad Cautelam Motion for Re-Raffle*[10] arguing that they have not received the Notice of Raffle of the case.[11] The GAB and the BIR, likewise, filed an *Ad Cautelam Opposition*

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[8] Id. at 98.

[9] Id. at 101.

[10] Id. at 109-112.

[11] Id. at 109-110.

to the Grant of a Temporary Restraining Order with a Motion to Dismiss.[12] According to the GAB and the BIR, the withholding of the increased rates of DST under the TRAIN Law, which is sought to be restrained by Klub Don Juan, is outside the territorial jurisdiction of the Regional Trial Court (RTC) of Mandaluyong City, Branch 213 because horse race tickets may be purchased all over the country and not just in Metro Manila.[13] The GAB and the BIR added that Section 218 of the National Internal Revenue Code (NIRC) prohibits the grant of injunction to restraint the collection of national internal revenue taxes including DST.[14] Lastly, the GAB and the BIR asserted that Klub Don Juan is not entitled to a TRO or Writ of Preliminary Injunction because it was not able to prove a clear legal right that would entitle it to the injunctive relief.[15]

MMTCI concurred with Klub Don Juan that the TRAIN Law is a general law that should yield to the law granting franchise to the racing clubs. PRCI and MCJI manifested their compliance with the TRAIN Law rate but averred that the higher DST on horse racing tickets threatened the continued operation of the racing clubs.[16]

Ruling of the Regional Trial Court

In its Order[17] dated July 25, 2018, the RTC explained that anent the motion for re-raffle, electronic raffle of all cases immediately after filing thereof has been mandated pursuant to the directive of the Court. Thus, the motion for re-raffle was denied.[18]

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[12] Id. at 117-132.

[13] Id. at 118-119.

[14] Id. at 122-123.

[15] Id. at 125.

[16] Id. at 16.

[17] Id. at 86-91.

[18] Id. at 87.

However, the RTC granted the motion to dismiss filed by the GAB and the BIR on the ground that it has no jurisdiction to restrain the collection of the DST under Section 218 of the NIRC.[19]

Klub Don Juan moved for reconsideration which was denied in a Resolution[20] dated September 18, 2018. Consequently, Klub Don Juan filed an appeal to the CA.

Ruling of the Court of Appeals

On February 28, 2019, the CA issued its Decision[21] which granted the appeal of Klub Don Juan, reinstated the case, and directed the RTC to continue the proceedings.

While the CA agreed that the RTC does not have the jurisdiction to grant the provisional relief of injunction prayed for by Klub Don Juan, nevertheless, the CA held that it was erroneous for the RTC to also dismiss the main action. The CA explained that although the complaint filed by Klub Don Juan with the RTC was denominated as one for "Injunction," nevertheless, the claims asserted therein made out a case for declaratory relief.[22]

According to the CA, the allegations in the complaint filed by Klub Don Juan and the ultimate prayer of the latter is for the RTC to make a judicial declaration as to which statutory DST rate to apply upon the effectivity of the TRAIN Law.[23] The CA held that all the requisites of an action for declaratory relief are present in the case because there is no showing of any breach yet of the provisions of the TRAIN Law on the increased DST rate. The CA also found that there is ripening judicial controversy considering the adverse positions of the

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[19] Id. at 87-88.

[20] Id. at 92.

[21] Supra note 2.

[22] *Rollo*, p. 20

[23] Id.

GAB and the BIR *vis-à-vis* Klub Don Juan and the racing clubs. Since the true cause of action of Klub Don Juan was for declaratory relief, then the complaint falls under the jurisdiction of the RTC. Thus, its dismissal by the RTC was premature.[24]

The GAB and the BIR filed a motion for reconsideration, but it was denied in a Resolution[25] dated November 11, 2019.

Insisting that the order of dismissal by the RTC was proper, GAB and the BIR filed this Petition for Review on *Certiorari*[26] under Rule 45 of the Rules of Court. The GAB and the BIR argue that the RTC is prohibited from issuing the injunctive relief prayed for by Klub Don Juan as well as the ancillary relief against the collection of DST under Section 63 of the TRAIN Law.[27] The GAB and the BIR claim that the CA erred in treating the complaint filed by Klub Don Juan as an action for declaratory relief and not a complaint for Injunction.[28] According to the GAB and the BIR, Klub Don Juan specifically asked the RTC to permanently enjoin the collection of the DST rate under the TRAIN Law.[29]

In its Comment,[30] Klub Don Juan agrees with the CA in treating the complaint for Injunction as one for declaratory relief.[31] Klub Don Juan insists that the TRAIN Law is a general law which could not prevail over the laws granting franchise to the racing clubs.[32]

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[24] Id. at 21-22.

[25] Id. at 25-26.

[26] Id. at 29-54.

[27] Id. at 37.

[28] Id. at 43.

[29] Id. at 44.

[30] Id. at 200-209.

[31] Id. at 201.

[32] Id. at 205.

Issue

The issue in this case is whether the RTC has jurisdiction to take cognizance of the complaint filed by Klub Don Juan.

Ruling of the Court

The petition is meritorious.

Klub Don Juan denominated its complaint before the RTC as one for Injunction. In the case of *Bacolod City Water District v. Labayen*,[33] the Court explained the nature of an action for injunction as a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the main action.

Since the racing clubs are already withholding the increased rate of DST under the TRAIN Law from Klub Don Juan members, the latter is seeking to enjoin the GAB and BIR from enforcing the provision of the TRAIN Law and instead apply the lower rate under their respective franchises. This assertion of Klub Don Juan is a violation of Section 218 of the NIRC which provides the following proscription:

> Section 218. Injunction not Available to Restrain Collection of Tax. — No court shall have the authority to grant an injunction to restrain the collection of **any national internal revenue tax**, fee or charge imposed by this Code. (Emphasis supplied)

Under Section 21(f)[34] of the NIRC, documentary stamp taxes form part of the national internal revenue taxes. As early as

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[33] 487 Phil. 335 (2004).

[34] Section 21. Sources of Revenue. — The following taxes, fees and charges are deemed to be national internal revenue taxes:

(a) Income tax;

(b) Estate and donor's taxes;

(c) Value-added tax;

(d) Other percentage taxes;

(e) Excise taxes;

1915 in the old case of *Churchill v. Rafferty*,[35] the Court has already prohibited the issuance of injunction against the collection of internal revenue taxes based on the lifeblood theory. Hence, the RTC was correct in dismissing the case for lack of jurisdiction.

Here, the CA reinstated the main action and treated the same as an action for declaratory relief to which the RTC has exclusive jurisdiction of.

However, whether the complaint filed by Klub Don Juan should be treated as an action for declaratory relief and not injunction is of no moment. Since the issue in this case is the validity of the provision of the TRAIN Law on the higher DST rate, the RTC is still devoid of jurisdiction because in *Banco de Oro v. Republic of the Philippines*,[36] the Court settled the question of which court has the jurisdiction to determine the constitutionality or validity of tax laws, rules and regulations, and other administrative issuances of the BIR. The case *Banco De Oro* made it clear that the Court of Tax Appeals (CTA) not only has 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, but also, the CTA has jurisdiction on cases directly challenging the constitutionality or validity of a tax law, or regulation or administrative issuance such as revenue orders, revenue memorandum circulars, revenue regulations and rulings. The case of *Banco De Oro* intends the CTA to have exclusive jurisdiction to resolve all tax problems except in cases questioning the legality or validity of assessment of local taxes where the RTC has jurisdiction.[37]

(f) Documentary stamp taxes; and

(g) Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue.

[35] 32 Phil. 580 (1915).

[36] 793 Phil. 97 (2016).

[37] *National Power Corp. v. Municipal Government of Navotas*, 747 Phil. 744 (2014).

WHEREFORE, the Court **GRANTS** the Petition for Review on *Certiorari*; **ANNULS** and **SETS ASIDE** the Decision dated February 28, 2019 and the Resolution dated November 11, 2019 of the Court of Appeals in CA-G.R. SP No. 158302; and **REINSTATES** the Orders dated July 25, 2018 and September 18, 2018 of the Regional Trial Court of Mandaluyong City, Branch 213.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Zalameda, and *Gaerlan, JJ.*, concur.

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malefactor from the defensive or retaliatory acts of the victim, no opportunity being given to the latter to defend himself or to retaliate, and (2) the means, method, or manner of execution was deliberately or consciously adopted by the offender. (People *v.* Ivero; G.R. No. 236301; Nov. 3, 2020) p. 751

— The fact that all the five stab wounds were frontal does not negate treachery; even a frontal attack could be treacherous when unexpected and on an unarmed victim who would be in no position to repel the attack or avoid it; in fact, treachery may still be appreciated even when the victim was forewarned of the danger to his or her person; what is decisive is that the execution of the attack made it impossible for the victim to defend himself or herself or to retaliate. (People *v.* Ivero; G.R. No. 236301; Nov. 3, 2020) p. 751

— In order for treachery to be properly appreciated, two (2) elements must be present: (1) at the time of the attack, the victim was not in a position to defend himself or to retaliate or escape; and (2) the accused consciously and deliberately adopted the particular means, methods, or forms of attack employed by him. (People *v.* Dayrit; G.R. No. 241632; Oct. 14, 2020) p. 293

— Treachery is present when the attack is so sudden and unexpected that there is no opportunity for the victims to defend themselves. (People *v.* Dayrit; G.R. No. 241632; Oct. 14, 2020) p. 293

***Use of a Motor Vehicle* —** The use of a motor vehicle is aggravating when it is used either to commit the crime or to facilitate escape. (People *v.* Dayrit; G.R. No. 241632; Oct. 14, 2020) p. 293

ALIBI AND DENIAL

Weight — Bare denial and alibi do not prevail over the categorical testimony and identification of accused. (People *v.* XXX; G.R. No. 248370; Oct. 14, 2020) p. 316

(People *v.* Dayrit; G.R. No. 241632; Oct. 14, 2020) p. 293

APPEALS

no intrinsic link to the lawyer's professional engagement as the same should be threshed out in a proper proceeding of such nature." (Reyes *v.* Atty. Gubatan; A.C. No. 12839; Nov. 3, 2020) p. 400

— A lawyer is not answerable for every error or honest mistake committed and will be protected as long as he acts honestly and in good faith to the best of his skill and knowledge. (Vega, Deputy Government Corporate Counsel, *et al. v.* Atty. Jurado, Former Government Corporate Counsel, *et al.*; A.C. No. 12247; Oct. 14, 2020) p. 13

— In disbarment proceedings, the quantum of proof is substantial evidence and the burden of proof is on the complainant to establish the allegations in his complaint. (Tan *v.* Alvarico; A.C. No. 10933; Nov. 3, 2020) p. 345

Appropriation or Borrowing Clients' Money — Jurisprudence holds that the deliberate failure to pay just debts constitutes gross misconduct for which a lawyer may be sanctioned with suspension from the practice of law; lawyers are expected to maintain not only legal proficiency, but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. (Reyes *v.* Atty. Gubatan; A.C. No. 12839; Nov. 3, 2020) p. 400

— Lawyers are not entitled to unilaterally appropriate their clients' money for themselves by the mere fact that the clients owe them attorney's fees. (*Id.*)

— The rule prohibiting lawyers from borrowing from their clients is intended to prevent the lawyer from taking advantage of his influence over the client as the rule presumes that the client is disadvantaged by the lawyer's ability to use all legal maneuverings to renege on his obligation. (*Id.*)

— Unduly borrowing money from clients and refusing to pay the same constitute abuse of trust and confidence and a violation of Canon 7 of the Code of Professional Responsibility. (*Id.*)

— Engaging in negotiations with the adverse party is not *per se* representation of conflicting interests; a survey of jurisprudence shows that negotiation would lead to a violation of the rule on conflicting interests when the respondent-attorney negotiates with the client's adversary in opposition to his client's interest or claim. (Tan *v.* Alvarico; A.C. No. 10933; Nov. 3, 2020) p. 345

— In *Paces Industrial Corporation v. Atty. Salandanan*, the Court emphasized that the rule prohibiting conflict of interests is grounded in the fiduciary obligation of loyalty, recognizing that the nature of the attorney-client relationship is one of trust and confidence of the highest degree. (*Id.*)

Duties of Lawyers — Rule 1.01, Canon 1 of the CPR commands that "as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing"; the Court has always reminded lawyers not to engage in unlawful, dishonest, or deceitful conduct. (Professional Services, Inc. *v.* Atty. Rivera; A.C. No. 11241; Nov. 3, 2020) p. 366

— The relationship between a lawyer and his client is highly fiduciary and ascribes to a lawyer a great degree of fidelity and good faith; thus, when they receive money from a client for a particular purpose, they are bound to render an accounting of how the money was spent for the said purpose; and in case the money was not used for the intended purpose, they must immediately return the money to the client. (*Id.*)

Good Moral Character — In *Advincula v. Macabata,* we emphasized that good moral character is a continuing condition to preserve membership in the Bar in good standing. (Manzano *v.* Atty. Rivera; A.C. No. 12173; Nov. 3, 2020) p. 377

Grounds for Disbarment, Suspension, or Disciplinary Action — A "lawyer shall not knowingly assist a witness to misrepresent himself or to impersonate another"; otherwise, the lawyer is as equally guilty as the witness

still limited to the implementation and interpretation of the laws it is tasked to enforce; but while the grant of the CSC's rule-making power is untouchable by Congress, the laws that the CSC interprets and enforces fall within the prerogative of Congress. (Lagman *v.* Executive Secretary Ochoa, Jr., *et al.;* G.R. No. 197422; Nov. 3, 2020) p. 434

Reinstatement to Former Position — Before a public official or employee can be automatically restored to her former position, there must first be a series of promotions; second, all appointments are simultaneously submitted to the CSC for approval; and third, the CSC disapproves the appointment of a person proposed to a higher position. (Marzan *v.* City Government of Olongapo, *et al.;* G.R. No. 232769; Nov. 3, 2020) p. 704

— The reinstatement to former position presupposes that the disapproved appointment would have constituted a promotion. (*Id.*)

— CSC MC No. 40-98 defines promotion as "the advancement of an employee from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary"; in contrast, a transfer contemplates "the movement of an employee from one position to another which is of equivalent rank, level or salary without break in the service involving the issuance of an appointment." (*Id.*)

Security of Tenure — Board members of GOCCs occupy non-career service positions and are appointed for a definite term fixed in the GOCC charter; they may be removed before their terms expire only for causes as may be provided in the GOCC's charter, the Administrative Code, and other relevant laws; it is in this sense that directors and trustees enjoy security of tenure. (Lagman *v.* Executive Secretary Ochoa, Jr., *et al.*; G.R. No. 197422; Nov. 3, 2020) p. 434

— GOCCs with original charters are embraced under the civil service; their officers and employees are covered by Article IX-B, Section 2(3) of the Constitution and

COLLECTIVE BARGAINING AGREEMENT (CBA)

CBAs of GOCCs — The economic terms of CBAs of GOCCs cannot be sustained in view of the moratorium in the increase of salaries and other benefits in the GOCCs and the absence of prior approval by the president. (Social Housing Employees Association, Inc. Represented by Its President Will O. Peran *v.* Social Housing Finance Corporation; G.R. No. 237729; Oct. 14, 2020) p. 217

COMMISSION ON AUDIT (COA)

Jurisdiction of COA — Money claims against the government must first be filed with, and approved by, the COA; all money claims against the government must first be filed with the COA which must act upon it within 60 days; the rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on *certiorari* and, in effect, sue the State. (Social Housing Employees Association, Inc. Represented by Its President Will O. Peran *v.* Social Housing Finance Corporation; G.R. No. 237729; Oct. 14, 2020) p. 217

— An appeal before the Director of a Central Office Audit Cluster or of a Regional Office of the COA must be filed within six months after the receipt of the decision to be appealed; an appeal with the COA proper shall be taken within the remaining period of the six months with due regard to the suspension of the running of the period. (Philippine Health Insurance Corporation *v.* Commission on Audit, *et al.;* G.R. No. 235832; Nov. 3, 2020) p. 733

Notice of Disallowance — A notice of disallowance must be served to each and every person that the Commission on Audit respondent holds liable; however, when there are several payees, service to the accountant is constructive service to all payees held liable; *Development Bank of the Philippines v. Commission on Audit* explained that the essence of due process in proceedings before respondent is not the service of notice *per se*, but the opportunity to be heard, or to seek reconsideration of the Notice of

— The abandonment of the doctrine of condonation is applied prospectively; it meant that the said doctrine *does not* anymore apply to public officials re-elected after its abandonment; stated differently, the doctrine still applies to those officials who have been re-elected prior to its abandonment. (*Id.*)

— The abandonment of the doctrine of condonation is prospective in application and is reckoned from 12 April 2016. (*Id.*)

— The condonation doctrine was abandoned because there was no legal authority to sustain it and that it was contrary to the Constitution's mandate of holding all public officials accountable to the people at all times; however, the abandonment of the condonation doctrine shall be "prospective in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines." (*Id.*)

— The doctrine of condonation states that an elected public official cannot be removed for administrative misconduct committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor. (*Id.*)

— When a public official had already been re-elected prior to the promulgation and finality of abandonment of the doctrine, he or she has every right to rely on the old doctrine that his or her re-election had already served as a condonation of his previous misconduct, thereby cutting the right to remove him from office, and a new doctrine decreeing otherwise would not be applicable against him or her; once re-elected, the public official already had the vested right not to be removed from office by reason of the condonation doctrine, which cannot be divested or impaired by a new law or doctrine without violating the Constitution. (*Id.*)

COURT PERSONNEL

COURTS

Doctrine of Hierarchy of Courts — As regards the rule on hierarchy of courts, Article VIII, Section 5(1) of the Constitution provides for this Court's "original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*"; this original jurisdiction is concurrent with the Regional Trial Courts and the Court of Appeals in certain cases; under the rule on hierarchy of courts, this Court will not entertain a direct resort to it when relief may be obtained in the lower courts. (Lagman *v.* Executive Secretary Ochoa, Jr., *et al.;* G.R. No. 197422; Nov. 3, 2020) p. 434

— Even the rule on hierarchy of courts is not absolute, direct recourse to this Court may be allowed when there are special and important reasons clearly set forth in the petition; *the Diocese of Bacolod* enumerates the following exceptions: (1) "there are genuine issues of constitutionality that must be addressed at the most immediate time…" (8) when the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy"; these cases fall under the first and eighth exceptions. (*Id.*)

— The rule on hierarchy of courts "ensures that this Court remains *a court of last resort* so that it is able to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition." (Lagman *v.* Executive Secretary Ochoa, Jr., *et al.;* G.R. No. 197422; Nov. 3, 2020) p. 434

— While *GIOS-SAMAR* attempted to streamline this rule by discussing that all Rule 65 petitions raising questions of fact will automatically be dismissed, this Court's discretion in exercising judicial review requires a more deliberate approach; the rule on hierarchy of courts relates to questions of justiciability, which in turn requires a nuanced exercise of this Court's discretion; even a claim

DENIAL

Weight of the Defense of Denial — Failure to ask for help and to bring a common-law spouse victim to the hospital negate the defenses of denial and frame-up. (People *v.* Ivero; G.R. No. 236301; Nov. 3, 2020) p. 751

DUE PROCESS

Procedural Due Process — The constitutional guarantee on due process requires the State not only to observe the substantive requirements on preliminary investigation, but to conform with the prescribed periods under the applicable rules including substantial compliance with the time limitation prescribed by the law for the resolution of the case by the prosecutor, is part of the procedural due process constitutionally guaranteed by the fundamental law. (Perez *v.* Sandiganbayan, *et al.;* G.R. No. 245862; Nov. 3, 2020) p. 990

EMINENT DOMAIN

Just Compensation — The determination of just compensation is a judicial function which cannot be curtailed or limited by legislation, much less by administrative rule. (Land Bank of the Philippines *v.* Del Moral, Inc.; G.R. No. 187307; Oct. 14, 2020) p. 44

EQUAL PROTECTION CLAUSE

Valid Qualification — A classification is reasonable where: (1) it is based on substantial distinctions which make for real differences; (2) it is germane to the purpose of the law; (3) it is not limited to existing conditions only; and (4) it applies equally to each member of the same class. (Lagman *v.* Executive Secretary Ochoa, Jr., *et al.;* G.R. No. 197422; Nov. 3, 2020) p. 434

— Excluding certain entities from the coverage of R.A. No. 10149 does not violate the equal protection clause when there is reasonable basis to do so. (*Id.*)

— It is not necessary that the classification be based on scientific or marked differences of things or in their

relation; neither is it necessary that the classification be made with mathematical nicety; legislative classification may in many cases properly rest on narrow distinctions, for the equal protection guaranty does not preclude the legislature from recognizing degrees of evil or harm, and legislation is addressed to evils as they may appear. (*Id.*)

— The equal protection clause in the Constitution is not a guarantee of absolute equality in the operation of laws; it applies only to persons or things that are identically situated; it does not bar a reasonable classification of the subject of legislation. (*Id.*)

— The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, and reasonable grounds exist for making a distinction between those who fall within such class and those who do not. (*Id.*)

— The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality; it is not intended to prohibit legislation which is limited either in the object to which it is directed or by territory within which it is to operate; it does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, under like circumstances and conditions both as to privileges conferred and liabilities enforced. (*Id.*)

Standards to Determine Reasonableness — There are three types of standards to determine the reasonableness of legislative classification: the strict scrutiny test applies when a classification either (i) interferes with the exercise of fundamental rights, including the basic liberties guaranteed under the Constitution, or (ii) burdens suspect classes; the intermediate scrutiny test applies when a classification does not involve suspect classes or fundamental rights, but requires heightened scrutiny,

such as in classifications based on gender and legitimacy; the rational basis test applies to all other subjects not covered by the first two tests. (Lagman *v.* Executive Secretary Ochoa, Jr., *et al.;* G.R. No. 197422; Nov. 3, 2020) p. 434

— This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary; in the exercise of its power to make classifications for the purpose of enacting laws over matters within its jurisdiction, the state is recognized as enjoying a wide range of discretion. (*Id.*)

EVIDENCE

Absence of Physical Examination — The absence of personal examination by a physician is not fatal as long as the totality of evidence sufficiently supports a finding of psychological incapacity. (Santos-Gantan *v.* Gantan; G.R. No. 225193; Oct. 14, 2020) p. 141

Admission by Silence — The failure to cross-examine a party on a matter not related to the subject of the case does not amount to admission by silence. (Tan *v.* Alvarico; A.C. No. 10933; Nov. 3, 2020) p. 345

Burden of Proof — As a rule, forgery cannot be presumed and must be proved by clear, positive, and convincing evidence, the burden of proof lies on the party alleging forgery; one who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it. (Malaque, The Heirs of Lope, namely: Loty Latonio Malaque, *et al. v.* Heirs of Salomon Malaque, namely: Sabina Malaque Pano, *et al.;* G.R. No. 208776; Nov. 3, 2020) p. 566

— In nuisance claims, the burden of proof is on the parties establishing their claim; preponderance of evidence as the greater weight of evidence or evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. (Frabelle Properties

of the Constitution imposes a restraint on the judiciary in rashly resolving questions of constitutionality. (*Id.*)

Requirement of Actual Case or Controversy — An actual case or controversy exists when there is "a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution"; it requires the existence of actual facts where there is real conflict of rights and duties; hypothetical or anticipated threats are insufficient to uphold a constitutional challenge. (Lagman *v.* Executive Secretary Ochoa, Jr., *et al.*; G.R. No. 197422; Nov. 3, 2020) p. 434

— As held in *Angara v. Electoral Commission*, the power of judicial review remains subject to this Court's discretion in resolving actual controversies; as a rule, this Court only passes upon the constitutionality of a statute if it is "directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned." (Lagman *v.* Executive Secretary Ochoa, Jr., *et al.;* G.R. No. 197422; Nov. 3, 2020) p. 434

— It is not this Court's function to render advisory opinions; even its expanded jurisdiction in Article VIII, Section 1, to determine whether any government branch or instrumentality committed grave abuse of discretion, requires that an actual case exists; otherwise, any resolution would merely constitute an "attempt at abstraction that could only lead to dialectics and barren legal questions and to sterile conclusions unrelated to actualities." (Lagman *v.* Executive Secretary Ochoa, Jr., *et al.;* G.R. No. 197422; Nov. 3, 2020) p. 434

Requirement of Ripeness — Closely related to the "actual case or controversy" requirement is the requirement of "ripeness" for adjudication; a constitutional question is ripe for adjudication when the governmental act being challenged has had a direct adverse effect on the individual challenging it. (Lagman *v.* Executive Secretary Ochoa, Jr., *et al.*; G.R. No. 197422; Nov. 3, 2020) p. 434

of the question is unavoidably necessary to the decision of the case itself; these requisites all relate to the justiciability of the issues raised by the parties; if no justiciable controversy is found, this Court may deny the petition as a matter of discretion. (Lagman *v.* Executive Secretary Ochoa, Jr., *et al.;* G.R. No. 197422; Nov. 3, 2020) p. 434

— This justiciability requirement is "intertwined with the principle of separation of powers"; it cautions the judiciary against unnecessary intrusion on matters committed to the other branches of the government. (*Id.*)

JURISDICTION

Bases of Jurisdiction — Jurisdiction is a court's competence "to hear, try and decide a case"; it is granted by law and requires courts to examine the remedies sought and issues raised by the parties, the subject matter of the controversy, and the processes employed by the parties in relation to laws granting competence; once this Court determines that the procedural vehicle employed by the parties raises issues on matters within its legal competence, it may then decide whether to adjudicate the constitutional issues brought before it. (Lagman *v.* Executive Secretary Ochoa, Jr., *et al.;* G.R. No. 197422; Nov. 3, 2020) p. 434

JUSTIFYING CIRCUMSTANCES

Defense of a Relative — Defense of a relative is valid when the following elements concur: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed to prevent or repel the unlawful aggression; and (c) he or she acts in defense of his or her spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree. (People *v.* Catulang, *et al.*; G.R. No. 245969; Nov. 3, 2020) p. 1023

Unlawful Aggression — There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent; there must be actual physical force or actual

bodies the power to "fill in" the details of a statute; enacting subordinate legislation has become necessary amid the "proliferation of specialized activities and their attendant peculiar problems, which the legislature may not be able to competently address." (Lagman *v.* Executive Secretary Ochoa, Jr., *et al.;* G.R. No. 197422; Nov. 3, 2020) p. 434

— Authorizing the Governance Commission to establish a fit and proper rule in the selection and nomination of GOCC directors or trustees is not a duplication or a removal of the Civil Service Commission's authority to act on appointments. (Lagman *v.* Executive Secretary Ochoa, Jr., *et al.;* G.R. No. 197422; Nov. 3, 2020) p. 434

— The delegation of the power to establish a Compensation and Position Classification System, subject to the president's approval, is constitutional; Republic Act No. 10149 amends the provisions in the GOCC charters empowering their board of directors or trustees to determine their own compensation system, in favor of the grant of authority to the president to perform this act. (*Id.*)

Power to Create Government-Owned and Controlled Corporations — As discussed in *Provincial Government of Camarines Norte*, these acts do not violate the security of tenure when done in good faith; since the creation of a chartered GOCC is purely legislative, Congress has the power to modify or abolish it, as well as to enact whatever restrictions it may deem fit for the public good. (Lagman *v.* Executive Secretary Ochoa, Jr., *et al.;* G.R. No. 197422; Nov. 3, 2020) p. 434

— Congress can, for legitimate purpose, reduce the terms of officers of GOCCs with independent charters; even the vested right to security of tenure is qualified by the law that creates the office and provides for its appurtenances; while neither Congress nor the president may simply declare a position vacant, Congress acted well within its powers when it legislated a new term; Section 17 of Republic Act No. 10149 merely shortened

officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of an act done"; thus, *mandamus* will not lie to compel the performance of a discretionary act. (Marzan *v.* City Government of Olongapo, *et al.;* G.R. No. 232769; Nov. 3, 2020) p. 704

MARRIAGES

***Psychological Incapacity* —** Dissolving marital bonds on the ground of psychological incapacity is actually protecting the sanctity of marriage. (Santos-Gantan *v.* Gantan; G.R. No. 225193; Oct. 14, 2020) p. 141

— Psychological incapacity refers to a mental incapacity that causes a party to be non-cognitive of the basic marital covenants which must be assumed and discharged by the parties to the marriage; marital covenants include their mutual obligations to live together, observe love, respect, and fidelity and to help and support each other; the law has intended to confine psychological incapacity to the most serious cases of personality disorders that clearly demonstrate an utter insensitivity or inability to give meaning and significance to the marriage; it is the inability to understand the obligations of marriage, as opposed to a mere inability to comply with them. (*Id.*)

— [T]he procedures adopted by Dr. Dela Cruz in his expert opinion, including the facts and data she used to come up with his expert conclusions, are procedures, facts and data that other psychologists rendering an opinion in relation to a petition under Article 36, *Family Code*, would rely upon. This is because the very nature of Article 36 *whereby the otherwise inadmissible facts or data are the bread and butter of every psychiatric of psychological expert opinion, that is, psychiatrists and psychologists reasonably rely upon such type of facts and data in rendering their opinions*. (*Id.*)

Effects of Notarization — Notaries public are constantly reminded that notarization is not an empty, meaningless, and routinary act; a private document is converted into a public document once it has undergone notarization and makes it admissible in evidence; consequently, a notarized document is by law, entitled to full faith and credit upon its face; for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. (Spouses Aldea *v.* Atty. Bagay; A.C. No. 12733; Oct. 14, 2020) p. 24

Nature of Notarization — Notarization is not a mere empty, meaningless, routinary act; it is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. (Manzano *v.* Atty. Rivera; A.C. No. 12173; Nov. 3, 2020) p. 377

Requirement of Signatories' Presence — The 2004 Rules on Notarial Practice which provides that a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity; the purpose of these requirements is to enable the notary public to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed. (Berzola *v.* Atty. Baldovino; A.C. No. 12815; Nov. 3, 2020) p. 388

Violations of the Notarial Rules — Notarizing a document in the absence of the signatories thereof and of competent evidence of their identity amount to negligence for which liability attaches not only as a notary public, but also as a lawyer. (Spouses Aldea *v.* Atty. Bagay; A.C. No. 12733; Oct. 14, 2020) p. 24

— Previous infractions as a notary public are considered in imposing a penalty. (*Id.*)

NUISANCE

Definition — A nuisance is any act, omission, establishment, business, condition of property, or anything else which:

Powers — Since it is armed with the power to investigate, coupled with the principle that the Court is not a trier of facts, the Ombudsman is in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause; the foregoing general rule, however, is subject to an exception, where there is an allegation of grave abuse of discretion; the Ombudsman's act cannot escape judicial scrutiny under the Court's own constitutional power and duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Pahkiat, *et al. v.* Office of the Ombudsman-Mindanao, *et al.;* G.R. No. 223972; Nov. 3, 2020) p. 611

— The general rule is that the Court defers to the sound judgment of the Ombudsman; the Court's consistent policy has been to maintain non-interference in the determination by the Ombudsman of the existence of probable cause; this is on account of the recognition that both the Constitution and R.A. 6770, otherwise known as The Ombudsman Act of 1989, give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. (*Id.*)

OWNERSHIP OF REAL PROPERTY

— A buyer can acquire no more than what the seller can legally transfer. (Tamayao, *et al. v.* Lacambra, *et al.;* G.R. No. 244232; Nov. 3, 2020) p. 910

Innocent Purchasers for Value — Persons claiming to be innocent purchasers for value must definitively prove said status; a person who deliberately ignores a significant fact which would create suspicion in an otherwise reasonable man is not an innocent purchaser for value; a purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor. (Tamayao, *et al. v.* Lacambra, *et al.;* G.R. No. 244232; Nov. 3, 2020) p. 910

PRESCRIPTION

Blameless Ignorance Principle — If the commission of the offense is not known at that time, prescription begins to run from its discovery; this is otherwise referred to as the "blameless ignorance" principle. (Perez *v.* Sandiganbayan, *et al.;* G.R. No. 245862; Nov. 3, 2020) p. 990

— This "blameless ignorance" principle was mostly applied in cases involving behest loans executed during the Martial Law regime, as an exception to the general rule that prescription runs from the commission of the crime; as an exception, the "blameless ignorance" principle applies when the plaintiff is unable to know or has no reasonable means of knowing the existence of a cause of action; it cannot always be invoked to extend the prescriptive period of the offense. (*Id.*)

Prescription of Offenses — In resolving issues concerning the prescription of offenses, the Court must determine the following: (a) the prescriptive period of the offense; (b) when the period commenced to run; and (c) when the period was interrupted. (Perez *v.* Sandiganbayan, *et al.;* G.R. No. 245862; Nov. 3, 2020) p. 990

PROPERTY REGISTRATION

Registration of Alienable and Disposable Land — An applicant for land registration must prove that the land sought to be registered has been declared by the President or the DENR Secretary as alienable and disposable land of the public domain; specifically, an applicant must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. (Republic *v.* Herederos de Ciriaco Chunaco Disteleria Incorporada; G.R. No. 200863; Oct. 14, 2020) p. 64

— A certificate of land classification status issued by the CENRO or PENRO of the DENR and approved by the DENR Secretary must also be presented to prove that the land subject of the application for registration is

RIGHTS OF THE ACCUSED

Right to a Speedy Disposition of Cases — Accused persons cannot invoke a violation of their right to a speedy disposition of cases when their acts belie any presumed prejudice that they may have suffered or when they had acquiesced to the delay. (Mamansual, *et al. v.* Sandiganbayan (5th Division), *et al.*; G.R. Nos. 240378-84; Nov. 3, 2020) p. 847

— Burden of proof was then shifted to the prosecution, who was required to establish that such delay was not inordinate; this involves proving the following: (a) the prosecution followed the prescribed procedure in the conduct of preliminary investigation and in the prosecution of the case; (b) the complexity of the issues and the volume of evidence made the delay inevitable; and (c) no prejudice was suffered by the accused as a result of the delay. (Perez *v.* Sandiganbayan, *et al.;* G.R. No. 245862; Nov. 3, 2020) p. 990

— Mere inaction on the part of the accused, without more, does not qualify as an intelligent waiver of the constitutional right to a speedy disposition of cases. (*Id.*)

— The OMB's protracted delay in the conduct of the preliminary investigation shifts the burden to the prosecution to prove that there was no violation of the right to speedy disposition of cases. (Mamansual, *et al. v.* Sandiganbayan (5th Division), *et al.*; G.R. Nos. 240378-84; Nov. 3, 2020) p. 847

— The principle of institutional delay is not a blanket authority for the Office of the Ombudsman's non-observance of the periods for preliminary investigation. (Perez *v.* Sandiganbayan, *et al.;* G.R. No. 245862; Nov. 3, 2020) p. 990

— The prosecution has the burden to prove that the delay in the resolution of the preliminary investigation was not inordinate. (*Id.*)

improper, as this is not a continuous crime where there are series of acts yet there is only one crime committed, hence, there is only one penalty. The diversions of accused-appellant of the payments made by Dasman Realty's clients, on fourteen occasions, i.e. from September 13, 2011 to January 19, 2013 cannot be considered as proceeding from a single criminal act since the taking were not made at the *same time* and on the *same occasion*, but on *variable dates*. Each occasion of "taking" constitutes a single act with an independent existence and criminal intent of its own. All the "takings" are not the product of a consolidated or united criminal resolution, because each taking is a complete act by itself. Each taking results in a *complete execution or consummation* of the delictual act of defalcation. (*Id.*)

TRAFFICKING IN PERSONS

Elements — For a successful prosecution of Trafficking in Persons, the following elements must be shown: (*a*) the *act* of "recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders"; (*b*) the *means* used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another;" and (*c*) the *purpose* of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." (People *v.* Estonilo; G.R. No. 248694; Oct. 14, 20200) p. 332

Gravamen of Trafficking — The gravamen of the crime of trafficking is "the act of recruiting or using, with or without consent, a fellow human being for sexual exploitation." (People *v.* Estonilo; G.R. No. 248694; Oct. 14, 2020) p. 332

by the trial court, and the appellate courts will not generally disturb the findings of the trial court in this respect; findings of the trial court, which are factual in nature and which involve the credibility of witnesses are accorded with respect, if not finality by the appellate court, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings; certainly, the trial judge is in a better position to ascertain the conflicting testimonies of witnesses after having heard them and observed their deportment and mode of testifying during the trial, the task of taking on the issue of credibility is a function properly lodged with the trial court. (People *v.* XXX; G.R. No. 248370; Oct. 14, 2020) p. 316

CITATION

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I. LOCAL CASES

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II. FOREIGN CASES