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CASES

DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

NOVEMBER 4 - 10, 2020

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(as of June 2023)

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(as of November 2020)

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 11119. November 4, 2020]

ATTY. JOSEPH VINCENT T. GO, *Complainant*, *v.* **ATTY. VIRGILIO T. TERUEL,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING, DISCUSSED. — It is well-settled that "[t]he essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining of favorable judgment. It exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion in another, or when he institutes two or more actions or proceedings grounded on the same cause to increase the chances of obtaining a favorable decision. An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs. Forum shopping exists where the elements of *litis pendentia* are present or **where a final judgment in one case will amount to *res judicata* in another**."

2. ID.; ID.; ID.; IT IS THE MERE ACT OF FILING MULTIPLE COMPLAINTS WITH THE SAME CAUSES OF ACTION, PARTIES, AND RELIEFS WHICH CONSTITUTES A VIOLATION OF THE RULE AGAINST FORUM SHOPPING. — The Court notes that it is not strictly the actual docketing of the administrative complaints but the mere act of filing multiple

> complaints with the same cause/s of action, parties and relief/s which constitutes a violation of the rule against forum shopping. The aforementioned provision clearly states that it is the commencement of the filing of actions involving the same parties, issue/s and relief/s which would amount to forum shopping. There is no qualification that the pleadings should first be accepted by the tribunal/agency or properly docketed before forum shopping could be deemed committed. It is enough that the party concerned filed multiple actions involving the same parties, cause/s of action, and relief/s before a court, tribunal, or agency. The intent of the individual who files multiple complaints to secure a favorable ruling is what is being sought to be penalized.

D E C I S I O N

HERNANDO, *J.*:

This is a Complaint[1] for disbarment for violation of Rules 12.02 and 12.04 as well as Canon 8 of the Code of Professional Responsibility (CPR) filed by Atty. Joseph Vincent T. Go (Atty. Go) against Atty. Virgilio T. Teruel (Atty. Teruel).

The Antecedents:

This administrative complaint for disbarment stemmed from Civil Case Nos. 1172 and 1176 for Forcible Entry with Damages pending before Branch 68 of the Regional Trial Court (RTC) of Dumangas, Iloilo,[2] where Atty. Go and Atty. Teruel were the opposing counsels for the parties.

Atty. Go filed a Complaint[3] dated April 4, 2011 for Falsification and Perjury, and for violation of Canons 8, 10, and 11 of the CPR against Atty. Teruel before the Integrated Bar of the Philippines (IBP) which was docketed as IBP-CBD Case No. 11-2989 (CBD Case No. 11-2989). Atty. Go claimed that Atty. Teruel maliciously charged him with deliberate misrepresentation

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[1] *Rollo*, Vol. I, pp. 2-19.

[2] Id. at 157.

[3] Id. at 20-27.

and intellectual dishonesty. Apparently, Atty. Teruel alleged that Atty. Go's associate in the law office misrepresented the date of receipt of the Notice of Appealed Case in Civil Case No. 1176 to supposedly mislead Branch 68 of the RTC of Dumangas, Iloilo that the law office timely filed its Memorandum of Appeal.[4] Atty. Teruel filed his Answer[5] on May 13, 2011[6] while Atty. Go filed a Reply[7] on June 3, 2011. Afterwards, Atty. Teruel filed a Rejoinder to Reply and Counter-Complaint[8] on June 22, 2011 which charged Atty. Go with violations of Section 20 (b) and (f), Rule 138 of the Rules of Court, and of Canon 11 as well as Rules 11.03 and 11.04 of the CPR. In response, Atty. Go filed a Sur-Rejoinder and Motion for Severance[9] dated July 14, 2011.

Significantly, on June 21, 2011, a day before Atty. Teruel filed his Rejoinder to Reply and Counter-Complaint, Atty. Teruel's client, Rev. Fr. Antonio P. Reyes (Fr. Reyes), initiated a Complaint[10] for grave professional misconduct against Atty. Go which was docketed as IBP-CBD Case No. 11-3105 (CBD Case No. 11-3105). Notably, Atty. Teruel prepared the complaint of Fr. Reyes against Atty. Go. The Commission on Bar Discipline (CBD) of the IBP (IBP-CBD) then directed Atty. Go to submit his answer therein in an Order[11] dated July 29, 2011. Atty. Go filed separate motions[12] in CBD Case Nos. 11-2989 and 11-3105 praying that Atty. Teruel and Fr. Reyes be cited for contempt and that both Atty. Teruel's Counter-Complaint and Fr. Reyes' Complaint be dismissed on the ground of forum shopping.[13]

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[4] Id. at 24.

[5] Not attached in the records.

[6] See *rollo*, Vol. I, p. 157.

[7] *Rollo*, Vol. II, pp. 490-526.

[8] *Rollo*, Vol. I, pp. 78-86.

[9] Id. at 125-130.

[10] Id. at 132-138.

[11] Not attached in the records.

[12] Not attached in the records.

[13] *Rollo*, Vol. I, p. 16.

In view of these developments, Atty. Go filed another verified Complaint[14] dated October 13, 2011 and docketed as IBP-CBD No. 11-3225 (the case at bench) against Atty. Teruel. Atty. Go alleged that Atty. Teruel's Counter-Complaint and Fr. Reyes' Complaint were substantially the same except for the complainants, and both pleadings were prepared by Atty. Teruel. Atty. Go further alleged that Atty. Teruel violated Rules 12.02 and 12.04 as well as Canon 8 of the CPR for filing multiple actions arising from the same cause, a violation of the rule against forum shopping.

Atty. Teruel, in his Answer[15] dated November 4, 2011, countered that he did not commit forum shopping. He clarified that his Counter-Complaint, being undocketed, had yet to be acted upon and thus could not be treated as a complaint for the purpose of applying the rule against forum shopping.[16] He added that Fr. Reyes filed the Complaint in his personal capacity and that he (Fr. Reyes) was not a party in the first administrative case (CBD Case No. 11-2989) which Atty. Go filed and which Atty. Teruel answered with a Rejoinder to Reply and Counter-Complaint. Additionally, Atty. Teruel argued that he expressly stated in the Verification and Certification portion of his Rejoinder to Reply and Counter-Complaint the existence of Fr. Reyes' Complaint against Atty. Go (in CBD Case No. 11-3105).[17]

In his Reply[18] dated November 18, 2011, Atty. Go contended that it is not the admission or docketing of Atty. Teruel's Counter-Complaint which should be considered in determining whether there was forum shopping, but the act of filing multiple actions involving the same or identical cause/s of action, which Atty. Teruel clearly committed when he prepared and filed Fr. Reyes' Complaint and subsequently his own Counter-Complaint.[19]

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[14] Id. at 2-19.

[15] Id. at 156-162.

[16] Id. at 159.

[17] Id. at 160.

[18] Id. at 190-195.

[19] Id. at 192.

Report and Recommendation of the IBP:

In a Report and Recommendation[20] dated July 6, 2013, the Investigating Commissioner[21] of the IBP-CBD found that, indeed, Atty. Teruel committed forum shopping; however, Atty. Go failed to prove that it was willful and deliberate considering Atty. Teruel's disclosure in the Verification and Certification portion of his Counter-Complaint that Fr. Reyes also filed a Complaint against Atty. Go. According to the Investigating Commissioner, such disclosure proved good faith on the part of Atty. Teruel. Hence, he recommended the dismissal of Atty. Go's Complaint against Atty. Teruel with a warning that he (Atty. Teruel) should exercise more prudence in the drafting and filing of pleadings in the future to avoid willful and deliberate forum shopping.[22]

In its Resolution[23] No. XXI-2014-579 dated September 27, 2014, the Board of Governors (BOG) of the IBP (IBP-BOG) adopted and approved the Report and Recommendation of the Investigating Commissioner. It affirmed that Atty. Go's Complaint against Atty. Teruel should be dismissed for lack of merit but with a reminder on the latter to be more cautious in the preparation of pleadings and attachments.

Aggrieved, Atty. Go filed a Motion for Reconsideration[24] dated March 30, 2015, clarifying that willful and deliberate forum shopping was not the sole issue that he raised. He averred that the issues are whether or not Atty. Teruel violated Rules 12.02 and 12.04 as well as Canon 8 of the CPR and committed forum shopping when he knowingly filed two identical complaints for disbarment against Atty. Go.[25] Atty. Go posited that if Atty. Teruel was a real party-in-interest, he could have just joined

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[20] Id. at 302-307.

[21] Peter Irving C. Corvera.

[22] *Rollo*, Vol. I, p. 306.

[23] Id. at 300.

[24] Id. at 308-327.

[25] Id. at 310.

Fr. Reyes as a complainant in CBD Case No. 11-3105 instead of filing a separate but significantly identical Counter-Complaint. Atty. Go opined that by filing multiple administrative complaints, Atty. Teruel should be adjudged guilty of employing harassing tactics against him.[26]

In Resolution[27] No. XXI-2015-359 dated June 5, 2015, the IBP-BOG denied Atty. Go's motion for reconsideration and affirmed its ruling dismissing the Complaint against Atty. Teruel.

Undeterred, Atty. Go filed a Petition[28] assailing the IBP-BOG's Resolution Nos. XXI-2014-579 dated September 27, 2014 and XXI-2015-359 dated June 5, 2015 which dismissed the instant administrative complaint against Atty. Teruel.

In a Resolution[29] dated June 20, 2016, We referred this administrative case to the Office of the Bar Confidant (OBC) for its report and recommendation.

Report and Recommendation of the OBC:

In a Report and Recommendation[30] dated October 11, 2018, the OBC recommended that Atty. Teruel be suspended from the practice of law for a period of six (6) months. It found that contrary to the findings of the IBP-BOG, Atty. Teruel actually committed forum shopping since he had a hand in the preparation of Fr. Reyes' Complaint and in the filing of a Counter-Complaint merely a day after with the same tenor against Atty. Go. The OBC further noted that Atty. Teruel was the counsel of Fr. Reyes in his Complaint against Atty. Go which underscored his active participation in the drafting of the said Complaint. Additionally, both Fr. Reyes' Complaint and Atty. Teruel's Counter-Complaint contained the same allegations.[31]

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[26] Id. at 318-319.

[27] Id. at 357.

[28] Under Section 12 (c), Rule 139-B of the Rules of Court.

[29] *Rollo*, Vol. II, pp. 913-914.

[30] Id. at 915-917.

[31] Id. at 916.

The OBC likewise stated that "[m]ere substantial identity of parties, or a community of interests between a party in the first case and a party in the subsequent case, even if the latter was not impleaded in the first case, is sufficient."[32] It noted that Atty. Teruel filed the Counter-Complaint pertaining to the same issues with full knowledge that Fr. Reyes had already filed a similar Complaint against Atty. Go a day earlier. Moreover, Atty. Teruel's disclosure in the Verification and Certification portion of his knowledge of the existence of Fr. Reyes' Complaint would not negate his liability for knowingly committing forum shopping because as a lawyer, he is tasked to assist the courts in the speedy administration of justice and not to resort to forum shopping as doing so clogs the dockets of the courts.[33]

The OBC concluded that the filing of another action on the same subject matter in contravention of the doctrine of *res judicata* violates Canon 12 of the CPR which requires a lawyer to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice. It additionally found that by his actions, Atty. Teruel likewise violated Rules 12.02 and 12.04 of the CPR as well as the mandate in the Lawyer's Oath "to delay no man for money or malice."[34]

Our Ruling

The Court adopts the findings of the OBC and its recommendation that Atty. Teruel be suspended from the practice of law for six months.

Integral to the resolution of the case at bench is the determination of whether Atty. Teruel committed forum shopping when he filed the Complaint of Fr. Reyes followed by his own Counter-Complaint a day after, both against Atty. Go. After a perusal of both pleadings, there is no doubt that the significant portions were almost completely the same, save for the parts wherein the complainant's name or personal circumstances were

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[32] Id.

[33] Id.

[34] Id. at 917.

provided in order for the documents to be cohesive. In fact, Atty. Teruel admitted having prepared and filed the two administrative complaints, as he even specified in the Verification and Certification portion of his Counter-Complaint that Fr. Reyes had earlier filed a Complaint against Atty. Go.

It is well-settled that "[t]he essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. It exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion in another, or when he institutes two or more actions or proceedings grounded on the same cause to increase the chances of obtaining a favorable decision. An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs. Forum shopping exists where the elements of *litis pendentia* are present or **where a final judgment in one case will amount to *res judicata* in another**."[35]

Evidently, Atty. Teruel willfully committed forum shopping when he instituted two actions grounded on the same cause, even if strictly speaking, he was not included as a "complainant" in Fr. Reyes' Complaint. This is because he prepared and filed both administrative actions with full knowledge that they have the same cause of action and contained nearly exactly the same allegations. Simply put, the outcome in one case would necessarily have an effect in the other since both cases share the same cause of action and involve the same parties.

Section 5, Rule 7 of the Rules of Court provides:

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,

[35] *Alonso v. Relamida*, 640 Phil. 325, 334 (2010).

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. (Underscoring and emphasis supplied).

The Court notes that it is not strictly the actual docketing of the administrative complaints but the mere act of filing multiple complaints with the same cause/s of action, parties and relief/s which constitutes a violation of the rule against forum shopping. The aforementioned provision clearly states that it is the commencement of the filing of actions involving the same parties, issue/s and relief/s which would amount to forum shopping. There is no qualification that the pleadings should first be accepted by the tribunal/agency or properly docketed before forum shopping could be deemed committed. It is enough that the party concerned filed multiple actions involving the same parties, cause/s of action, and relief/s before a court, tribunal, or agency. The intent of the individual who files multiple complaints to secure a favorable ruling is what is being sought to be penalized. In any case, even if Atty. Teruel's Counter-Complaint was not acted upon or separately docketed by the IBP, the same pleading, specifically his Rejoinder to Reply and Counter-Complaint in CBD Case No. 11-2989, was still admitted. In other words, Atty. Teruel's Rejoinder to Reply was still considered in CBD Case No. 11-2989 even if his Counter-Complaint has yet to be processed or acted upon.

The Court likewise finds merit in Atty. Go's argument that "[Atty. Teruel's] assertion and certification that he has not '*filed any complaint or any other action* ***involving the same issues, parties and subject matter***' implies that the pending related cases, including the administrative complaint filed by Rev. Fr. Reyes, ***do not involve the same issues*** as those raised in his subsequent (undocketed) Counter-Complaint in CBD Case No. 11-2989. [Atty. Teruel's] certification is *partly false* and *misleading* because the Counter-Complaint raised identical facts, issues and reliefs which [are] also the same facts, issues and reliefs in CBD Case No. 11-3105 [Fr. Reyes' Complaint]."[36]

We are likewise persuaded by Atty. Go's contention that "there was no showing that [Atty. Teruel] or **Rev. Fr. Reyes informed** the IBP Commissioner Salvador B. Belaro, Jr. in CBD Case No. 11-1305, of the filing and pendency of the subsequent (undocketed) Counter-Complaint of the respondent [Atty. Teruel] as required under [S]ection 5, Rule 7 of the 1997 Rules of Civil Procedure[.]"[37]

Taking all these into consideration, We agree with the findings of the OBC that indeed Atty. Teruel committed willful and deliberate forum shopping. Atty. Teruel cannot feign innocence or good faith when it is clear as day that the allegations in his Counter-Complaint and Fr. Reyes' Complaint are essentially the same. This was validated by his own admission that he prepared the Complaint of Fr. Reyes. Without a doubt, Atty. Teruel knew the arguments and issues raised in Fr. Reyes' Complaint, as he even made sure to modify the designations of the complainants in both pleadings, including the wordings of the allegations in order to give the impression that these were "different" complaints even when they were basically not.

In fine, and considering Atty. Teruel's commission of forum shopping, there is adequate basis to hold him liable for violation of the Lawyer's Oath and the CPR.

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[36] *Rollo*, Vol. I, pp. 323-324.

[37] Id. at 325.

Rule 12.02 of the CPR explicitly provides that "[a] lawyer shall not file multiple actions arising from the same cause," while Rule 12.04 states that "[a] lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes." It must be emphasized that "[l]awyers should not trifle with judicial processes and resort to forum shopping because they have the duty to assist the courts in the administration of justice. Filing of multiple actions contravenes such duty because it does not only clog the court dockets, but also takes the courts' time and resources from other cases."[38]

In addition, We find that when Atty. Teruel engaged in forum shopping, he thereby violated Canon 1 of the CPR "which directs lawyers to obey the laws of the land and promote respect for the law and legal processes. He also disregarded his duty to assist in the speedy and efficient administration of justice."[39]

Aside from committing violations of the CPR, Atty. Teruel likewise transgressed a number of the recitals in the Lawyer's Oath, as follows:

> I, x x x do solemnly swear that I will maintain allegiance to the Republic of the Philippines, I will support 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 the doing of any in court; 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 delay no man 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 voluntary obligation without any mental reservation or purpose of evasion. So help me God.[40] (Underscoring supplied)

At this juncture, We reiterate that "[a]ll lawyers must bear in mind that their oaths are neither mere words nor an empty

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[38] *In Re: Ildefonso Suerte*, 788 Phil. 492, 508 (2016).

[39] *Teodoro III v. Gonzales*, 702 Phil. 422, 431 (2013) citing Canon 12, Code of Professional Responsibility.

[40] Attorney's Oath; *see* Form 28 of the Appendix of Forms found in the Rules of Court.

formality. When they take their oath as lawyers, they dedicate their lives to the pursuit of justice. They accept the sacred trust to uphold the laws of the land. Canon 1 of the CPR states that '[a] lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and legal processes.' Moreover, according to the lawyer's oath they took, lawyers should "not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid or consent to the same."[41]

In fine, We adopt the recommendation of the OBC to suspend Atty. Teruel from the practice of law for a period of six months for violating the Lawyer's Oath as well as Canons 1 and 12 and Rules 12.02 and 12.04 of the CPR.[42]

ACCORDINGLY, Atty. Virgilio T. Teruel is hereby found **GUILTY** of violating the Lawyer's Oath and the Code of Professional Responsibility and is meted the penalty of **SUSPENSION** from the practice of law for a period of six (6) months.

Respondent is **DIRECTED** to file a Manifestation to this Court that his suspension has started and to copy furnish 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. Virgilio T. Teruel as an attorney-at-law; 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.

Leonen (Chairperson), *Inting, Delos Santos,* and *Rosario, JJ.*, concur.

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[41] *Alonso v. Relamida*, *supra* note 35, at 333 (2010).

[42] *In Re: Ildefonso Suerte*, 788 Phil. 492, 508 (2016).

SPECIAL FIRST DIVISION

[A.M. No. RTJ-14-2378. November 4, 2020]
[Formerly OCA IPI No. 11-3629-RTJ]

IMELDA P. YU, *Complainant*, *v.* **JUDGE DECOROSO M. TURLA,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; CONFLICT BETWEEN THE DISPOSITIVE PART AND THE BODY OF A DECISION; WHERE THERE IS A CONFLICT BETWEEN THE *FALLO* OR THE DISPOSITIVE PART AND THE BODY OF A DECISION, THE *FALLO* IS GENERALLY CONTROLLING.— In cases where there is a conflict between the *fallo*, or the dispositive part, and the body of a decision, the *fallo* is generally controlling on the theory that it is the final order which becomes the subject of execution while the body of the decision merely contains the *ratio decidendi* for the disposition. In other words, the execution of a decision must conform to that which is ordained or decreed in the *fallo*; otherwise, the order of execution has *pro-tanto* no validity.

2. ID.; ID.; ID.; WHERE THERE IS A GLARING ERROR IN THE *FALLO*, THE BODY OF THE DECISION WILL PREVAIL.— It should be stressed, however, that this rule is *not* absolute. "The only exception when the body of a decision prevails over the *fallo* is when the inevitable conclusion from the former is that there was a glaring error in the latter, in which case the body of the decision will prevail." In such cases, the clerical error, mistake, or omission in the *fallo* may be *corrected* or *supplied* even after the judgment has been entered to make it conform with the body of the decision.

Here, a careful perusal of the Resolution clearly reveals a *clerical error* in the *fallo* as to the penalty to be imposed upon Judge Turla. After all, the Court, in no uncertain terms, resolved to impose the penalty of reprimand against Judge Turla for his actions, taking into account the absence of bad faith on his part and his being a first-time offender.

RESOLUTION

INTING, *J.*:

Before the Court is the Memorandum[1] dated November 20, 2019 of Court Administrator Jose Midas P. Marquez requesting clarification as to the penalty imposed upon Presiding Judge Decoroso M. Turla (Judge Turla), Branch 21, Regional Trial Court (RTC), Laoang, Northern Samar in the Court's Resolution[2] dated July 30, 2019 in A.M. No. RTJ-14-2378 [Formerly OCA IPI No. 11-3629-RTJ].

The Antecedents

This case is rooted on a verified Letter-Complaint[3] dated April 4, 2011 filed by complainant Imelda P. Yu (Imelda) against Judge Turla for grave misconduct, gross ignorance of the law, incompetence, violation of the provisions of the Code of Judicial Conduct, and violation of Section 3 (e) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.

Imelda is the private complainant and aunt of Teresita Y. Tan and Romeo Y. Tan, the accused in Criminal Case No. 4503 entitled "*People of the Philippines v. Teresita Y. Tan and Romeo Y. Tan*," for Robbery with Force Upon Things under Article 299 of the Revised Penal Code which was raffled to the *sala* of Judge Turla.[4]

In the Resolution dated July 30, 2019, the Court found Judge Turla administratively liable for:

(1) *gross ignorance of the law* for his failure to issue warrants of arrest in Criminal Case No. 4503 despite the finding of probable cause against the accused therein, in violation of Section 5 (a), Rule 112 of the Rules of Court;[5]

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[1] *Rollo*, pp. 367-368.

[2] *Id.* at 361-366.

[3] *Id.* at 1-2.

[4] *Id.* at 351.

[5] *Id.* at 364.

(2) *undue delay in rendering orders* for having incurred unjustifiable delay in resolving the motions filed by Imelda and the accused in Criminal Case No. 4503 in breach of Section 15 (1), Article VIII of the Constitution as well as Rule 3.05, Canon 3 of the Code of Judicial Conduct and Section 5, Canon 6 of the New Code of Judicial Conduct;[6] and

(3) *simple misconduct* for communicating with Imelda while Criminal Case No. 4503 was pending before his court.[7]

Accordingly, the Court deemed it proper to reprimand Judge Turla for his actions, with a stern warning that the commission of the same or similar acts shall be dealt with more severity, *viz.*:

> As for the penalty, the Court notes that this is the first time that Judge Turla had been the subject of an administrative complaint. Considering the absence of bad faith and that this will be his first offense, the Court deems it proper *to issue a reprimand* against Judge Turla with a stern warning that the commission of similar acts shall be dealt with more severity.[8] (Italics supplied.)

This notwithstanding, the *fallo* of the Resolution reads:

> WHEREFORE, the Court FINDS Judge Decoroso M. Turla, Presiding Judge, Regional Trial Court, Branch 21, Laoang, Northern Samar, GUILTY of gross ignorance of the law, undue delay in rendering orders and simple misconduct; and issues a STERN WARNING that a repetition of the same or similar acts shall be dealt with more severity.
>
> Let a copy of this Decision *[sic]* be attached to the personnel records of Judge Decoroso M. Turla in the office of the Administrative Services, Office of the Court Administrator.
>
> SO ORDERED.[9]

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[6] *Id.*

[7] *Id.* at 365.

[8] *Id.*

[9] *Id.* at 365-366.

Given the apparent discrepancy between the body and *fallo* of the Resolution, the Office of the Court Administrator now seeks clarification as to the penalty to be imposed against Judge Turla.

The Court's Ruling

In cases where there is a conflict between the *fallo*, or the dispositive part, and the body of a decision, the *fallo* is generally controlling on the theory that it is the final order which becomes the subject of execution,[10] while the body of the decision merely contains the *ratio decidendi* for the disposition.[11] In other words, the execution of a decision must conform to that which is ordained or decreed in the *fallo*; otherwise, the order of execution has *pro-tanto* no validity.[12]

It should be stressed, however, that this rule is *not* absolute. "The only exception when the body of a decision prevails over the *fallo* is when the inevitable conclusion from the former is that there was a glaring error in the latter, in which case the body of the decision will prevail."[13] In such cases, the clerical error, mistake, or omission in the *fallo* may be *corrected* or *supplied* even after the judgment has been entered to make it conform with the body of the decision.[14]

Here, a careful perusal of the Resolution clearly reveals a *clerical error* in the *fallo* as to the penalty to be imposed upon Judge Turla. After all, the Court, in no uncertain terms, resolved to impose the penalty of reprimand against Judge Turla for his actions, taking into account the absence of bad faith on his part and his being a first-time offender.

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

[11] *PH Credit Corporation v. Court of Appeals*, 421 Phil. 821, 833 (2001).

[12] *Florentino v. Rivera*, 515 Phil. 494, 503 (2006), citing *Jose Clavano, Inc. v. Housing and Land Use Regulatory Board*, 428 Phil. 208, 223 (2002).

[13] *Id.* at 834, citing *Rosales v. Court of Appeals*, 405 Phil. 638, 655 (2001).

[14] See *Spouses Rebuldela v. Intermediate Appellate Court*, 239 Phil. 487, 494 (1987).

Given these circumstances, the Court finds that this case easily falls under the exception rather than the general rule and clarifies that Judge Turla was indeed meted out with the penalty of reprimand, with a stern warning that a repetition of the same or similar acts shall be dealt with more severity in the Resolution dated July 30, 2019.

WHEREFORE, the Court hereby **AMENDS** the *fallo* in its Resolution dated July 30, 2019 to read as follows:

> "**WHEREFORE,** Judge Decoroso M. Turla, Presiding Judge, Regional Trial Court, Branch 21, Laoang, Northern Samar, is hereby **REPRIMANDED** for gross ignorance of the law, undue delay in rendering orders, and simple misconduct, and is **STERNLY WARNED** that a repetition of the same or a similar offense will warrant the imposition of a more severe penalty.
>
> Let a copy of this Resolution be attached to the personnel records of Judge Decoroso M. Turla in the office of the Administrative Services, Office of the Court Administrator.
>
> **SO ORDERED.**"

Gesmundo (Chairperson), Carandang, and *Lopez, JJ.*, concur.

Gaerlan, J., on official leave.

THIRD DIVISION

[G.R. No. 201867. November 4, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **ROGELIO NATINDIM, JIMMY P. MACANA, ROLANDO A. LOPEZ, DANNY A. PIANO, ARNOLD A. ARANETA, JOHNNY O. LOPEZ, SATORANE PANGGAYONG, NESTOR LABITA, CARLITO PANGGAYONG, GERRY LOPEZ NATINDIM, EDIMAR PANGGAYONG, AND MARQUE B. CLARIN,** *Accused-Appellants*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL JUDGES' EVALUATION THEREOF IS ACCORDED THE HIGHEST RESPECT BECAUSE OF THEIR UNIQUE OPPORTUNITY TO OBSERVE DIRECTLY THE DEMEANOR OF THE WITNESSES.— The RTC and the CA's conclusions are to be accorded due respect as these were based on Judith's positive identification of the appellants as the malefactors and on her narration of their individual acts or participation in the commission of the crimes charged. The trial judge's evaluation of the credibility of a witness and of the witness' testimony is accorded the highest respect because he or she has the unique opportunity to observe directly the demeanor of the witness which enables him or her to determine whether the witness is telling the truth or not, more so when it is affirmed by the CA. Such evaluation is, therefore, binding on the Court unless facts or circumstances of weight have been overlooked, misapprehended, or misinterpreted that, if considered, would materially affect the disposition of the case. Considering that appellants failed to prove that the RTC or the CA overlooked, misapprehended or misinterpreted some facts or circumstances, this Court affirms their finding that Judith's positive declarations on the identities of the appellants prevailed over the latter's denials and *alibi*.

2. CRIMINAL LAW; CONSPIRACY; CONSPIRACY MAY BE DEDUCED FROM THE MODE AND MANNER IN WHICH

THE CRIMINAL ACT WAS PERPETRATED.— Contrary to the contention of appellants, conspiracy exists in the present case. Under Article 8 of the Revised Penal Code (RPC), a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The State need not prove appellants' previous agreement to commit Murder and Robbery because conspiracy can be deduced from the mode and manner in which they perpetrated their criminal act. They acted in concert in killing Pepito and taking his properties, with their individual acts manifesting a community of purpose and design to achieve their evil purpose. All the fifteen accused as conspirators in this case are liable as co-principals. Hence, they cannot now successfully assail their conviction as co-principals in Murder and Robbery.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; SUFFICIENCY OF AN INFORMATION; QUALIFYING CIRCUMSTANCES MUST BE PROPERLY PLEADED IN THE INFORMATION.— The Information is sufficient if it contains the full name of the accused, the designation of the offense given by the statute, the acts or omissions constituting the offense, the name of the offended party, the approximate date, and the place of the offense. The herein Information complied with these conditions. Contrary to appellants' contention, the qualifying circumstance of "treachery" was specifically alleged in the Information. "The rule is that qualifying circumstances must be properly pleaded in the Information in order not to violate the accused's constitutional right to be properly informed of the nature and cause of the accusation against him."

4. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS THEREOF; SUDDEN AND UNEXPECTED SHOOTING OF AN UNARMED VICTIM WHO WAS LOOKING OUT THE WINDOW INDICATED TREACHERY.— The essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on the victim's part. The two elements of treachery, namely: (1) that at the time of the attack, the victim was not in a position to defend himself or herself, and (2) that the offender consciously adopted the particular means, method or form of attack employed by him or her, are both present in this case.

Pepito was unarmed and looking out the window to ascertain the noise outside when appellant Edimar shot him on his head which consequently knocked him on the floor. The prosecution also established that appellants consciously and deliberately adopted the mode of attack. They lurked outside Pepito's residence and waited for him to appear. When Pepito emerged from his window with a flashlight which he used to focus on and determine the people outside his house, appellant Edimar immediately shot him on the head with the use of a firearm.

5. ID.; ID.; AGGRAVATING CIRCUMSTANCES; ABUSE OF SUPERIOR STRENGTH, IN AID OF ARMED MEN, AND NIGHTTIME ARE ABSORBED BY, AND NECESSARILY INCLUDED IN, TREACHERY.— Since treachery qualified the crime to murder, the generic aggravating circumstances of abuse of superior strength, in aid of armed men and nighttime are absorbed by and necessarily included in the former. Unless the aggravating circumstance of nighttime was purposely sought and founded on different factual bases, then nighttime can be considered as a separate generic aggravating circumstance, which is however not present in the case at bar. The prosecution failed to prove by sufficient evidence that nighttime was purposely and deliberately sought by the appellants. Thus, this Court holds that since treachery was alleged in the Information and duly established by the prosecution during trial, the appellants' conviction for the crime of Murder is proper.

6. ID.; ID.; ID.; REMEDIAL LAW; CRIMINAL PROCEDURE; SUFFICIENCY OF THE ALLEGATIONS IN AN INFORMATION; EVIDENT PREMEDITATION; FOR EVIDENT PREMEDITATION TO BE APPRECIATED AS A QUALIFYING CIRCUMSTANCE, THE ACTS CONSTITUTING IT MUST BE SPECIFICALLY ALLEGED IN THE INFORMATION, BUT IT MAY BE CONSIDERED AS A GENERIC AGGRAVATING CIRCUMSTANCE IF NOT SPECIFICALLY ALLEGED.— [E]vident premeditation as a qualifying circumstance cannot be appreciated in this case for failure of the prosecution to specifically allege in the Information the acts constituting it. Mere reference to evident premeditation is not sufficient because it is in the nature of a conclusion of law, not factual averments. Section 9, Rule 110 of the Rules of Court requires that the acts or omissions complained of as constituting the offense must be stated in "ordinary and concise

language without repetition, not necessarily in the terms of the statute defining the offense." This is to sufficiently apprise the accused of what he or she allegedly committed. Thus, the Information must state the facts and circumstances alleging the elements of a crime to inform the accused of the nature of the accusation against him/her so as to enable him/her to suitably prepare his/her defense. In this case, however, the prosecution failed to specifically allege in the Information the acts constituting evident premeditation. Nevertheless, it can still be considered a generic aggravating circumstance, as in this case.

7. ID.; AGGRAVATING CIRCUMSTANCES; EVIDENT PREMEDITATION; REQUISITES THEREOF; EVIDENT PREMEDITATION PRESUPPOSES A DELIBERATE PLANNING OF THE CRIME BEFORE EXECUTING IT.— Evident premeditation is attendant when the following requisites are proven during trial: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that he/she clung to his determination; (3) a sufficient lapse of time between the determination and execution, to allow him/her to reflect upon the consequences of his/her act, and to allow his/her conscience to overcome the resolution of his will. It presupposes a deliberate planning of the crime before executing it. The execution of the criminal act, in other words, must be preceded by cool thought and reflection. There must be showing of a plan or preparation to kill, or proof that the accused meditated and reflected upon his/her decision to execute the crime.

In the case at bar, the following circumstances indicated the presence of evident premeditation: (1) the meeting of all the accused at 3 o'clock in the afternoon of July 29, 1997 at Binago Forest, Salimbal, Tinagpoloan to plan the killing of Pepito; (2) the act of buying and drinking alcohol and arming themselves with four homemade guns known as *paleontods*, an improvised pistol and bolos; and (3) a sufficient lapse of time, that is, six hours from the time of their meeting at 3 o'clock in the afternoon until the time of killing of Pepito at 9 o'clock in the evening.

8. ID.; REMEDIAL LAW; CRIMINAL PROCEDURE; SUFFICIENCY OF THE ALLEGATIONS IN AN INFORMATION; AGGRAVATING CIRCUMSTANCES; CRUELTY; DWELLING; INTOXICATION; THE GENERIC AGGRAVATING CIRCUMSTANCES OF CRUELTY, DWELLING, AND

INTOXICATION CANNOT BE CONSIDERED WHEN NOT SPECIFICALLY ALLEGED IN THE INFORMATION. — [T]he generic aggravating circumstances of cruelty, dwelling and intoxication cannot be considered in this case. In *People v. Legaspi,* the Court held that for both qualifying and aggravating circumstances to be considered in the case, they must be specifically alleged in the Information or Complaint, as provided in the amended Sections 8 and 9, Rule 110, of the Rules of Court. Otherwise, they will not be appreciated even if duly proved during the trial. Given that the Judgment of the court *a quo* was promulgated on November 23, 2000 wherein the ruling in *Legaspi* has not yet been issued, this Court gives this doctrinal rule a retroactive effect being favorable to the appellants. Hence, only the qualifying circumstance of treachery which absorbs abuse of superior strength, in aid of armed men and nighttime, as well as the generic aggravating circumstance of evident premeditation, can be considered in the present case.

9. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; VOLUNTARY SURRENDER MUST BE BY REASON OF THE CRIME FOR WHICH THE ACCUSED IS TO BE PROSECUTED.— The surrender, to be deemed voluntary, must be spontaneous in which the accused voluntarily submits himself or herself to the authorities with an acknowledgment of his or her guilt and with the intent to save them from trouble and expense of effecting his/her capture. Moreover, the voluntary surrender must be by reason of the crime for which the accused is to be prosecuted which is not the case here.

10. ID.; MURDER; PENALTY; WHEN THE PENALTY IS COMPOSED OF TWO INDIVISIBLE PENALTIES, AND THERE IS AN AGGRAVATING CIRCUMSTANCE, THE HIGHER PENALTY SHOULD BE IMPOSED.— Article 248 of the RPC provides that the presence of the attending circumstance of treachery qualified the killing into murder which is punishable by *reclusion perpetua* to death. Article 63 of the same Code provides that if the penalty is composed of two indivisible penalties, as in the instant case, and there is an aggravating circumstance, the higher penalty should be imposed. Since evident premeditation can be considered as an ordinary aggravating circumstance, treachery, by itself, being sufficient to qualify the killing, the proper imposable penalty — the higher

sanction — is death. However, in view of the enactment of Republic Act No. 9346 prohibiting the imposition of the death penalty, the penalty for the killing of Pepito is *reclusion perpetua* without eligibility for parole. The penalty thus imposed by the RTC and affirmed by the appellate court on each appellant is correct.

11. ID.; ID.; ROBBERY; CIVIL LAW; DAMAGES; WHEN THE AMOUNT OF ACTUAL DAMAGES PROVED DURING THE TRIAL IS LESS THAN THE AMOUNT OF TEMPERATE DAMAGES FIXED BY PREVAILING JURISPRUDENCE FOR MURDER, AN AWARD OF TEMPERATE DAMAGES IN LIEU OF ACTUAL DAMAGES IS PROPER.— As to actual damages, settled is the rule 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. Since the amount of actual damages proved during the trial, that is, ₱15,000.00, is less than the amount of temperate damages of ₱50,000.00 fixed by prevailing jurisprudence for Murder, it is proper to award temperate damages in lieu of actual damages.

12. ID.; ID.; ID.; SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE; IF ROBBERY FOLLOWS THE HOMICIDE EITHER AS AN AFTERTHOUGHT OR MERELY AS AN INCIDENT OF THE HOMICIDE, TWO SEPARATE CRIMES OF ROBBERY AND MURDER OR HOMICIDE ARE COMMITTED, AND NOT THE SPECIAL COMPLEX CRIME OF ROBBERY WITH HOMICIDE.— A conviction for Robbery with Homicide requires that Robbery is the main purpose and objective of the malefactors and the killing is merely incidental to the Robbery. If, originally, the malefactors did not comprehend Robbery, but Robbery follows the Homicide either as an afterthought or merely as an incident of the Homicide, then the malefactor is guilty of two separate crimes, that of Homicide or Murder and Robbery, and not of the special complex crime of Robbery with Homicide.

In this case, the original intention of the appellants was to kill Pepito to exact revenge from Pepito for assaulting appellant Gerry. In fact, appellant Edimar immediately shot Pepito on his head when the latter looked out from his window to ascertain the people outside his house. This shows that the appellants

did not intend to commit Robbery at the outset. Nonetheless, Robbery was committed incidentally by the appellants when Jimmy took Pepito's air gun and FM radio while Rogelio took the bolo after hacking the body of Pepito. Subsequently, appellant Edimar shouted "Attack!" thereby giving the other appellants the signal to ransack the other valuables of the spouses Gunayan.

13. ID.; ROBBERY; PROPER PENALTY IN CASE AT BAR.— Conspiracy having been established as earlier discussed, the appellants are guilty of Robbery under Article 294(5) of the RPC punishable by *prision correccional* in its maximum period to *prision mayor* in its medium period. The RTC and CA therefore erred when they applied the penalty prescribed by law for Robbery with Homicide when the present case charged the appellants with separate crimes of Murder and Robbery.

Absent any aggravating and mitigating circumstance, the penalty shall be applied in its medium period. In this case, the penalty prescribed by law *i.e. prision correccional* in its maximum period to *prision mayor* in its medium period has three periods namely: (a) minimum - four (4) years, two (2) months and one (1) day to six (6) years, one (1) month and ten (10) days; (b) medium - six years, one (1) month and eleven (11) days to eight (8) years and twenty (20) days; and (c) maximum - eight (8) years and twenty-one (21) days to ten (10) years.

Applying the Indeterminate Sentence Law, the maximum of the imposable penalty shall be eight (8) years and twenty (20) days taken from the medium period of the imposable penalty. The minimum of the penalty shall be within the full range of *arresto mayor* maximum to *prision correccional* medium which is one degree lower than that prescribed by law. Hence, the minimum of the penalty to be imposed shall be four (4) years and two (2) months. In sum, the appellants shall be sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and twenty (20) days of *prision mayor,* as maximum.

However, as regards appellants Gerry, Nestor, and Edimar, they are to be credited with the mitigating circumstance of voluntary confession of guilt. Hence, the maximum of the penalty imposed shall be in the minimum period, that is, within four (4) years, two (2) months and one (1) day to six (6) years, one

(1) month and ten (10) days. Thus, appellants Gerry, Nestor, and Edimar shall be sentenced to four (4) years, two (2) months and one (1) day of *prision correccional* as minimum to six (6) years, one (1) month and ten (10) days of *prision mayor* as maximum.

14. ID.; ID.; CIVIL LAW; DAMAGES; ACTUAL DAMAGES; LEGAL COST; INTEREST; CASE AT BAR.— [T]he appellants shall be jointly and severally liable to pay Judith Gunayan and her two children actual damages in the total amount of ₱7,700.00 and to pay the legal cost. The monetary award shall be subject to interest at the rate of six percent (6%) per *annum* from the finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this appeal is the October 14, 2011 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00088-MIN, which affirmed with modification the November 23, 2008 Judgment[2] of the Regional Trial Court (RTC), Branch 25 of Cagayan de Oro City in Criminal Case Nos. 97-1257 and 97-1258 finding accused-appellants Rogelio Natindim (Rogelio), Jimmy P. Macana (Jimmy), Rolando A. Lopez (Rolando), Danny A. Piano (Danny), Arnold A. Araneta (Arnold), Johnny O. Lopez (Johnny), Satorane Panggayong (Satorane), Nestor Labita (Nestor), Carlito Panggayong (Carlito), Gerry Lopez Natindim (Gerry), Edimar Panggayong (Edimar), and Marque B. Clarin (Marque) guilty beyond reasonable doubt of the crimes of Robbery and Murder.

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[1] CA *rollo*, Vol. II, pp. 956-1000; penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Pamela Ann Abella Maxino and Zenaida T. Galapate-Laguilles.

[2] Records, Vol. IV, pp. 2733-2761, penned by Judge Noli T. Catli.

Appellants were charged before the RTC with the crimes of Robbery and Murder in two separate Informations that read:

Criminal Case No. 97-1257 (Robbery):

That at around 9:00 o'clock in the evening of July 29, 1997 at Sitio Sta. Cruz, Dansolihon, Cagayan de Oro City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, with intent to gain, with violence and intimidation of persons, and armed with deadly weapons, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously take, rob and carry away one air gun worth ₱3,000.00, one radio worth ₱500.00, one goat worth ₱600.00, two pigs worth ₱3,000.00, one fighting cock worth ₱500.00 and one hen worth ₱100.00, all owned by and belonging to Judith Gunayan *y* de la Pe[ñ]a, without the consent of the latter, when the said accused after having attained their primary purpose of shooting, hacking and stabbing to death Pepito A. Gunayan, husband of Judith Gunayan, forcibly entered the house of Pepito and Judith Gunayan, hogtied Judith Gunayan and proceeded to take, rob and carry away the properties aforementioned, to the damage and prejudice of Judith Gunayan in the total amount of ₱7,700.00, Philippine Currency.[3]

Criminal Case No. 97-1258 (Murder):

That at around 9:00 o'clock in the evening of July 29, 1997 at Sitio Sta. Cruz, Dansolihon, Cagayan de Oro City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, with evident premeditation, with treachery, by taking advantage of superior strength and under cover of night, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously shoot, with the use of a firearm, one Pepito Angga Gunayan, hitting the latter on the head, and as Pepito Angga Gunayan fell dying, the said accused did then and there willfully, unlawfully and feloniously hack and stab, with the use of bladed weapons, their victim inflicting upon the aforementioned Pepito A. Gunayan mortal wounds that eventually caused his death, to the great damage and prejudice of the wife and children of the deceased.[4]

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[3] Records, Vol. I, p. 3.

[4] Id. at 4.

Upon arraignment, all accused pleaded not guilty to the crimes charged except for accused-appellants Edimar, Nestor, and Gerry. Thereafter, trial on the merits ensued.

Judith Gunayan (Judith) and Geronima de la Peña testified for the prosecution while Nestor, Gerry, Maribel Sinukat (Maribel), Edimar, Arnold, Danny, Johnny, Rolando, Jimmy, Marque, Fernando Piano (Fernando), Rogelio, and Dino Natindim (Dino) testified for the defense.

Evidence for the Prosecution:

The evidence for the prosecution presented the following version of events:

On July 29, 1997, at around 9 o'clock in the evening, Judith and her husband Pepito Gunayan (Pepito), together with their two minor children, Pepito, Jr. and Jopet, were having dinner at their residence in Sta. Cruz, Dansolihon, Cagayan de Oro City when they heard the hushed conversation of several persons outside their house and the cocking of a "*paleontod*" firearm (homemade shot gun). Pepito stood up to check the noise outside. He went to their bedroom and looked out from the window. Suddenly, a gunshot was fired which hit and knocked Pepito on the floor. Judith immediately put off their kerosene lamp and embraced her two children.[5]

Somebody from the outside then shouted: *"Panganaog kamo dinha aron dili kamo maangin. Mga Ronda Tanod kami sa Mambuaya. Kami si Freddie Macana ug Yañez."* which means *"Come down so that you will not be involved. We are Ronda Tanods of Mambuaya. We are Freddie Macana and Yañez."*[6] The men continued to shout saying: *"mag-ihap lang kami sa tulo ug kon dili kamo manganaog, masakeron kamo namo."* which means *"We will count to three and if you do not go down, we will massacre you."*[7]

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[5] Records, Vol. IV, p. 2735.

[6] Id.

[7] Id.

At this moment, Judith stood and peeped through the window. She asked for the identities of the men and one of them replied "*Ronda Tanod kami sa Mambuaya*," which means "We are *Ronda Tanod* from Mambuaya."[8] She then recognized her neighbor Rolando standing beside a molave tree and saying "*uno, dos*."[9]

Overwhelmed by fear, she and her children went downstairs. She was met by Dino, Marque, Fernando, and Danny whom she recognized as they were close friends in Purok Uno, Mambuaya where she worked when she was a student at Mambuaya Elementary School. She also used to see them at fiestas. Judith also recognized Gerry as he spoke close to her face and asked her *"nang asa ang inyong cuarta?"* During the incident, Dino, Rogelio, and Jimmy were carrying a firearm, a *bolo*, and an air gun, respectively.[10]

Thereafter, Arnold and Johnny entered the house. Hacking sounds were then heard from inside the house. Rogelio and Jimmy also entered their house. After a short while, Jimmy returned outside and handed an FM radio to Gerry. Jimmy then went back inside the house and took Pepito's air gun while Rogelio took a 25-inch *bolo*.[11]

When Rogelio, Jimmy, Arnold, and Johnny went out of the house, Satorane shouted "Attack!" At this point, Satorane took their goat, while Edimar rushed towards the kitchen and snatched their hen, Gerry got their fighting cock, and someone took and pulled their two pigs.[12]

Afterwards, everyone gathered around Judith and her two children. Then someone said "It is better we just include and kill her as well." Then someone replied "that's a good idea." Judith pleaded for mercy saying "Please don't kill me, I have

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[8] Id. at 2736.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

small children."[13] Dino then poked a *paleontod* in her head. However Maribel intervened and shoved it away. Then Carlito mashed her vagina.[14]

Meanwhile, Gerry got a piece of rope which he used to tie Judith's hands. Before leaving, Gerry warned Judith: "Do not ever shout, Nang, because if you shout, we will kill you."[15] Then, the group left.[16]

After a few minutes, Judith screamed for help. Her neighbors, Mario Fernandez, Jerry Fernandez, and Edwin Caayon responded and untied her. When she entered their house, she saw her husband Pepito slumped on the floor with gunshot and hack wounds.[17]

Evidence for the Defense:

The defense presented the following version of events:

Nestor Labita. Appellant Nestor pleaded guilty and testified that on July 29, 1997, about two hours before the incident, he and his companions, namely, Edimar, Gerry, Satorane, Carlito and Maribel met at Kibonhog Forest, Tinagpoloan and planned to kill Pepito that evening. All were armed with *paleontod* except for Maribel.[18]

At around 9:30 in the evening, Maribel brought them to the house of Pepito in Sta. Cruz, Dansolihon, Cagayan de Oro City. Sensing their presence, Pepito looked out from their window and focused his flashlight on them. Edimar immediately shot Pepito using his *paleontod* which knocked him down.[19]

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[13] Id.

[14] Id.

[15] Id.

[16] Id. at 2736-2737.

[17] Id. at 2737.

[18] Id. at 2741.

[19] Id.

Thereafter, they approached the door of the house shouting *"Gawas mo diha kay don dili mo mogawas, amo kamong masakeron."* which means "Come out, otherwise if you will not come out, we will massacre all of you." Judith came out trembling and crying while holding her two children. Gerry immediately tied her to the wooden sled.[20]

They then went inside the house followed by Edimar, Gerry, and Maribel. There they saw Pepito lying on the floor. Gerry hacked Pepito several times prompting Nestor to say: *"Exacto na kana kay patay na kana siya, looy kaayo."* which means "Enough, he is already dead. He is pitiful." Afterwards, Edimar and Gerry took the air gun and FM radio. However, Nestor denied that they took the spouses' goat and two pigs.[21]

Gerry Natindim. Appellant Gerry also pleaded guilty to the commission of the crime. Before the incident, Gerry, Edimar, Nestor, Lando Panggayong (Lando), and Maribel met at 3 o'clock in the afternoon of July 29, 1997 in a secluded place to discuss how to exact revenge against Pepito who was a member of Ronda Tanod of Dansolihon and who earlier boxed Gerry during Dansolihon's fiesta. Edimar, Lando, and Nestor carried shotguns while Gerry was armed with a bolo.[22]

Gerry testified that they did not intend to rob Pepito. However, when Pepito fired his air gun at them, he commanded Edimar to shoot Pepito which he did. When they went inside the house, he hacked Pepito while Edimar took the couple's air gun, fighting cock, hen and radio. He denied taking their goat and pigs.[23]

When they went out of the house, he saw Judith and her two children hogtied at the yard by Lando and his group. Thereafter, he and his other companions, except for Nestor who stayed behind, left and went to Edimar's house in Salimbal forest where

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[20] Id.

[21] Id. at 2742.

[22] Id. at 2743.

[23] Id. at 2743-2744.

they stayed for one month before surrendering to the police authorities.

Maribel Sinukat. Maribel alleged that on July 29, 1997 at about 8 o'clock in the morning, she was washing her clothes when Carlito, Satorane and Edimar, Nestor and Gerry arrived and forced her to go with them to the house of Gerry in Dalican, Mambuaya. During their drinking spree, the group agreed to kill Pepito.[24]

She further testified that all the accused carried paleontods. She denied participating in the murder of Pepito and insisted that she was only forced to go with the group because her live-in partner, Satorane, threatened to kill her. She narrated that Edimar shot Pepito and the group stole the belongings of spouses Gunayan.[25]

Edimar Panggayong. Appellant Edimar likewise pleaded guilty and narrated that before the incident, he was instructed by one Usting de la Peña (Usting) to kill Pepito because the latter shot Usting's daughter, Judith, with an air gun. He further testified that Usting gave him ₱1,000.00 and promised to pay the balance of ₱3,000.00 as soon as they kill Pepito.[26]

On the evening of July 29, 1997, Edimar was at Binago, Salimbal forest together with Gerry, Nestor, and Lando drinking alcohol. Afterwards, they proceeded to Pepito's residence in Sta. Cruz, Mambuaya. He averred that Pepito aimed his gun at him while looking out from the window and focusing his flashlight at him. Thus, he shot Pepito and the latter fell down.[27]

Thereafter, Gerry and Lando went inside the house. When the two men returned outside, the group left and fetched Carlito, Satorane, and Maribel who were about 500 meters away from Mambuaya.[28]

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[24] Id. at 2745.

[25] Id.

[26] Id. at 2746.

[27] Id.

[28] Id.

Arnold Araneta. Appellant Arnold testified that on July 29, 1997, at around 5:30 in the afternoon, he was at the crossing to Lumbia Airport to visit his parents-in-law. He spent the night at his in-law's house and did not go home in Kawilihan, Mambuaya as it was already late. He went home the next day at around 9 o'clock in the morning.[29]

He denied Judith's testimony that they were neighbors. He averred that he was not familiar with Sta. Cruz, Dansolihon. He likewise denied knowing Maribel, Edimar, Carlito, Satorane, and Nestor. However, he testified that he knew Gerry as they were neighbors in Mambuaya. But he denied meeting him in the morning of July 29, 1997.[30]

Danny Piano. Appellant Danny recollected that on July 29, 1997, he was working at a construction site in Kitamban, Binuangan, Misamis Oriental. He denied Judith's testimony that they were neighbors but admitted that he was acquainted with spouses Gunayan. He likewise denied knowing the Panggayong brothers and Nestor. But he admitted that he knew Gerry, Dino, and Maribel.[31]

Johnny Lopez. Appellant Johnny testified that on July 29, 1997, he was at his house in Kawilihan, Mambuaya with his wife and three children. He denied participating in the commission of the crime or knowing the Panggayong brothers and Nestor, but he averred that he knew Gerry and Maribel.[32]

Rolando Lopez. Appellant Rolando testified that on July 29, 1997 he was sleeping with his wife and children at their house in Kawilihan, Mambuaya. He denied Judith's testimony that they were neighbors as his residence is far from spouses Gunayan's house. He also averred that he had seen Pepito once during a fiesta and that he knew where Pepito's house was. Lastly, he admitted that he knew the Panggayong brothers,

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[29] Id.

[30] Id. at 2747.

[31] Id. at 2747-2748.

[32] Id. at 2748-2749.

Nestor, Gerry, Maribel, Arnold, Johnny Lopez, Danny, Dino Piano (Piano), Fernando Piano (Fernando), Dino and Marque.[33]

Jimmy Macana. Appellant Jimmy averred that on July 29, 1997, at around 9 o'clock in the evening, he was sleeping at his home with his wife and three children in Dalican, Mambuaya. He denied knowing Pepito and Judith. He likewise belied the testimony of Judith that he stole their air gun. He denied knowing the Panggayong brothers and Nestor; however, he knew Dino, Fernando, Piano, Marque, Rolando, and Johnny.[34]

Marque Clarin. Appellant Marque testified that on July 29, 1997, he was sleeping at his house with his wife and children. He invoked a similar defense of alibi and denial.[35]

He averred that he only knew of Pepito's death when somebody related a story about his killing. He denied knowing the Panggayong brothers and Nestor. He likewise belied the testimony of Judith that they were friends.

Fernando Piano. Appellant Fernando, a resident of Kawilihan, Mambuaya, averred that on July 29, 1997, he worked from one o'clock in the afternoon until four o'clock in the afternoon. Afterwards, he cooked dinner at home. He admitted being friends with spouses Gunayan but denied the accusations of murder and robbery against him.[36]

On July 30, 1997, at around 10 o'clock in the evening, Fernando saw his first cousin Gerry with Maribel and four other companions carrying firearms. He identified in court these four companions as Nestor, Edimar, Satorane, and Carlito. He admitted knowing Danny, Rogelio, Gerry, Rolando, Johnny, Jimmy, Marque, and Arnold.[37]

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[33] Id. at 2749-2750.

[34] Id. at 2750-2751.

[35] Id. at 2751.

[36] Id. at 2751-2752.

[37] Id. at 2752.

Rogelio Natindim. Appellant Rogelio recalled that on July 29, 1997 at around 9 o'clock in the evening, he was at home with his wife and children. He denied any participation in the crime. He averred that he is not friends with Pepito and he does not know Judith. He admitted that he knew Gerry, Dino, and Maribel.[38]

Dino Natindim. Dino swore that Rogelio and Gerry are his father and brother, respectively. On July 29, 1997, at around 9 o'clock in the evening, he was having dinner in the house of his employer Nestor Alovera in Purok Uno, Mambuaya, Cagayan de Oro City. He denied any participation in the commission of the crime. He likewise denied knowing the spouses Gunayan but admitted that he knew Marque, Jimmy, Danny, Arnold and Maribel.[39]

Ruling of the Regional Trial Court:

On November 23, 2000, the RTC rendered a Judgment[40] convicting appellants for the crimes of Murder and Robbery.

The RTC held that all the accused are guilty beyond reasonable doubt of murder. The court *a quo* found the testimony of Judith as corroborated by the Autopsy Report of the National Bureau of Investigation Medico-Legal Officer and the testimonies of Gerry, Edimar, and Nestor, who admitted the crime, competent evidence that all the 15 accused conspired to commit the crimes charged.[41]

The prosecution also proved the following aggravating circumstances: (a) dwelling; (b) treachery; (c) nighttime; (d) cruelty; (e) with the aid of armed men; and (f) intoxication. However, as to accused Gerry, Edimar, and Nestor, their voluntary surrender qualified them to one mitigating circumstance which was offset by the aggravating circumstance of dwelling.[42]

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[38] Id. at 2753.

[39] Id. at 2753-2754.

[40] Id. at 2733-2761.

[41] Id. at 2751.

[42] Id. at 2758.

The court *a quo* did not consider the defenses of denial and alibi of appellants Rogelio, Dino, Jimmy, Rolando, Johnny, Marque, Fernando, Danny, Arnold, Satorane and Carlito because it was not shown that it was not impossible for them to be at the scene of the crime at 9 o'clock in the evening of July 29, 1997 in Sta. Cruz, Dansolihon, Cagayan de Oro City. Moreover, they failed to corroborate their alibi testimonies with credible witnesses.[43]

Furthermore, Judith had no ill motive to falsely testify against them. Her testimony was candid, straightforward and spontaneous which merited the consideration of the court *a quo*.[44]

With regard to the crime of robbery with violence or intimidation against persons, the RTC ruled that all the accused were guilty beyond reasonable doubt. They acted with intent to gain and in conspiracy with each other, without consent and with violence and to the prejudice of Judith and her two children, took the following: (a) one air gun worth ₱3,000.00; (b) one FM radio worth ₱500.00; (c) one goat worth ₱600.00; (d) two pigs worth ₱3,000.00; (e) one (1) fighting cock worth ₱500.00; and (f) one hen worth ₱100.00 for a total amount of ₱7,700.00. However, the RTC credited Gerry, Nestor, and Edimar with the mitigating circumstance of spontaneous plea of guilty which was offsetted against the aggravating circumstance of nighttime.

The *fallo* of the RTC Judgment reads:

IN THE LIGHT OF THE FOREGOING CONSIDERATION, this Court hereby renders Judgment finding all accused namely:

1. Rogelio Natindim	6. Dino A. Natindim	11. Satorane Panngayong
2. Jimmy P. Macana	7. Danny A. Piano	12. Gerry Lopez Natindim
3. Marque B. Clarin	8. Arnold A. Araneta	13. Edimar Panggayong
4. Rolando A. Lopez	9. Johnny O. Lopez	14. Maribel Sinukat
5. Fernando A. Piano	10. Satorane Panggayong	15. Nestor Labita

guilty beyond reasonable doubt of committing the crime of Murder as charged in conspiracy with each other, with the qualifying

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[43] Id. at 2757.

[44] Id.

circumstance of evident premeditation and with the generic aggravating circumstance of:

1. with aid of armed men;
2. cruelty;
3. taking advantage of superior strength;
4. treachery;
5. dwelling;
6. nighttime;
7. intoxication.

With one (1) mitigating circumstance of:

1. spontaneous plea of guilty;

Which offset one generic aggravating circumstance thus, leaving five (5) generic aggravating circumstances which under Par. 3 of Art. 63 of the Revised Penal Code, constrains this Court to impose the penalty in its MAXIMUM PERIOD and therefore sentences accused:

1. Rogelio Natindim
2. Jimmy P. Macana
3. Marque B. Clarin
4. Rolando A. Lopez
5. Fernando A. Piano
6. Danny Piano
7. Arnold A. Araneta
8. Johnny O. Lopez
9. Satorane Panggayong
10. Carlito Panggayong
11. Gerry Lopez Natindim
12. Edimar Panggayong
13. Nestor Labita

to death by lethal injection.

Accused Maribel Sinukat who was 17 years, 4 months and 2 days and Dino A. Natindim who was 17 years, 3 months and 3 days (both minors at the time of the incident on July 29, 1997), and are therefore entitled to a previlige (sic) mitigating circumstance of one degree lower and are individually sentenced to an indeterminate penalty of 10 years and 1 day Prision Mayor as minimum, to 17 years and 4 months and 1 day Reclusion Temporal as the maximum terms.

Maribel Sinukat and Dino Natindim are no longer entitled to a suspended sentence, having reached the age of 18 years old (Pp. vs. Casiguran, 2:45387 9 (sic), Nov. 7, 1979: Pp. vs. Mendez, 122 SCRA 551).

This Court likewise orders all accused to jointly and severally pay ₱75,000.00 to Judith Gunayan and her two (2) children as civil indemnity ex delicio (sic); ₱75,000.00 in solidum as moral damages; to pay actual expenses of ₱15,000.00 for burial and to pay the cost.

Accused who have undergone preventive imprisonment, shall be credited in the service of their sentence consisting of deprivation of liberty with the full time during which they have undergone preventive imprisonment.[45]

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IN THE LIGHT OF THE FOREGOING CONSIDERATION, this Court renders Judgment finding the accused namely:

1. Rogelio Natindim
2. Jimmy P. Macana
3. Marque B. Clarin
4. Rolando A. Lopez
5. Fernando A. Piano
6. Danny Piano
7. Arnold A. Araneta
8. Johnny O. Lopez
9. Satorane Panggayong
10. Carlito Panggayong
11. Gerry Lopez Natindim
12. Edimar Panggayong
13. Nestor Labita

guilty beyond reasonable doubt of the crime charged and individually sentences the aforenamed accused to *Reclusion Perpetua*.

Accused Dino Natindim and Maribel Sinukat, being minors at the time of the incident in question, are entitled to a privileged mitigating circumstance of one degree lower and are therefore, individually sentenced to suffer an indeterminate penalty of 10 years and 1 day of Prision Mayor as minimum, to 17 years, 4 months and 1 day of Reclusion Temporal as maximum.

This Court likewise orders all accused to pay jointly and severally, Judith Gunayan and their two (2) children, ₱7,700.00 as actual damages and pay the cost.

Accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty with the full time during which they have undergone preventive imprisonment.

SO ORDERED.[46]

Ruling of the Court of Appeals:

Appellants filed an appeal before the CA.

In its assailed Decision,[47] the CA affirmed the RTC's conviction of Marque, Rolando, Johnny, Danny, Rogelio, Jimmy,

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[45] Id. at 2758-2759.

[46] Id. at 2761.

[47] CA *rollo*, Vol. II, pp. 956-1000.

Carlito, Edimar, Nestor, Arnold, and Gerry for the crimes of Murder and Robbery. Judith's positive identification of the above-mentioned accused was corroborated by Edimar, Nestor, and Gerry who pleaded guilty to the crimes charged.[48]

Moreover, their defenses of denial and alibi was belied by Judith's testimony that he knew Marque, Rolando, Johnny, Danny, Rolando, and Jimmy since their elementary days at Mambuaya Elementary School. Also, Judith testified that the distance of her residence to accused Marque, Rogelio, Jimmy, Fernando and Danny is only about one kilometer while the house of Rolando is just a mere 15-minute walk from her residence. Judith could therefore positively identify them since they were neighbors or close acquaintances.[49]

With regard to Carlito, Edimar, Nestor, Arnold, and Gerry, the CA ruled that they were correctly convicted of Murder by the trial court. The Information specifically alleged the qualifying circumstances of evident premeditation, treachery, taking advantage of superior strength and nighttime. It was sufficient that the qualifying circumstances were recited in the Information and duly proven by the prosecution and supported by the evidence on record.[50]

As to Satorane, the CA remanded his case to the RTC for further proceeding in accordance with Section 51 of Republic Act (R.A.) No. 9344 following the report that Satorane was a minor at the time of the commission of the crime.[51]

The appellate court ultimately affirmed the November 23, 2000 RTC Judgment but with the following modification as to Satorane:

WHEREFORE, premises considered, the Appeal is hereby **DENIED**, and the September 30, 2008[52] decision rendered by Branch 25, Regional

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[48] Id. at 977.

[49] Id. at 982-984.

[50] Id. at 984-986.

[51] Id. at 986-998.

[52] Should read as November 23, 2000.

Trial Court, 10th Judicial Region, Cagayan de Oro City is hereby **AFFIRMED** with **MODIFICATIONS**. For the Crime of Murder, [in] view of R.A. 9346, the Act Prohibiting the Imposition of the Death Penalty, Accused-Appellants are hereby sentenced to Reclusion Perpetua. For the Crime of Robbery, Accused-Appellants are hereby sentenced to Reclusion Perpetua, pursuant to Article 294 of the Revised Penal Code, as amended by R.A. 9346. The case as to accused-appellant Satorane Panggayong is hereby ordered **REMANDED** to the court of origin for its appropriate action in accordance with Section 51 of Republic Act No. 9344.

SO ORDERED.[53]

Hence, the present appeal.[54]

Appellants Carlito, Edimar, Marque, Rolando, Johnny, Danny, Rogelio, Jimmy, Gerry, Nestor, and Arnold filed their respective appellants' brief while plaintiff-appellee adopted its brief before the CA. Appellants all similarly raised the following issues:

Issues

I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF THE CRIMES CHARGED ALTHOUGH THE CIRCUMSTANCE THAT WILL QUALIFY THE CRIME INTO MURDER HAS NOT BEEN SPECIFICALLY ALLEGED IN THE INFORMATION.

II

THE TRIAL COURT GRAVELY ERRED IN IMPOSING THE DEATH PENALTY EVEN THOUGH THERE WAS A PATENT ERRONEOUS APPRECIATION OF THE ATTENDANT CIRCUMSTANCES.

III

THE TRIAL COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANTS ARNOLD ARANETA, MARQUE B. CLARIN, ROLANDO LOPEZ, JOHNNY LOPEZ, DANILO PIANO, ROGELIO

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[53] CA *rollo*, Vol. II, pp. 999-1000.

[54] Id. at 1017.

NATINDIM AND JIMMY MACANA GUILTY BEYOND REASONABLE DOUBT OF THE CRIMES OF ROBBERY AND MURDER.[55]

Moreover, Arnold also assigned as errors the following:

IV

THE TRIAL COURT GRAVELY ERRED WHEN IT HELD THAT THE PROSECUTION OVERCOMES THE ACCUSED'S PRESUMPTION OF INNOCENCE.

V

THE TRIAL COURT GRAVELY ERRED WHEN IT CONVICTED ACCUSED OF MURDER EVEN WHEN THERE IS NO EVIDENCE PRESENTED TO SHOW THAT HE IS IN CONSPIRACY TO COMMIT THE CRIME OF MURDER OR EVIDENTLY PREMEDITATED.[56]

Lastly, Carlito and Edimar raised the following issue:

VI

THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING THE MITIGATING CIRCUMSTANCES OF VOLUNTARY PLEA OF GUILTY AND VOLUNTARY SURRENDER IN FAVOR OF THE ACCUSED-APPELLANTS CARLITO PANGGAYONG AND EDIMAR PANGGAYONG.[57]

Dino, Fernando, and Rolando died during the pendency of this case, while accused Maribel escaped from detention and is presently at large.

Our Ruling

Appellants' conviction is affirmed with modifications as to the penalty imposed and the nature and amounts of damages awarded.

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[55] Id. at 132-133, 247, 314-315.

[56] Id. at 247.

[57] Id. at 315.

The RTC and the CA's conclusions are to be accorded due respect as these were based on Judith's positive identification of the appellants as the malefactors and on her narration of their individual acts or participation in the commission of the crimes charged. The trial judge's evaluation of the credibility of a witness and of the witness' testimony is accorded the highest respect because he or she has the unique opportunity to observe directly the demeanor of the witness which enables him or her to determine whether the witness is telling the truth or not, more so when it is affirmed by the CA.[58] Such evaluation is, therefore, binding on the Court unless facts or circumstances of weight have been overlooked, misapprehended, or misinterpreted that, if considered, would materially affect the disposition of the case.[59] Considering that appellants failed to prove that the RTC or the CA overlooked, misapprehended or misinterpreted some facts or circumstances, this Court affirms their finding that Judith's positive declarations on the identities of the appellants prevailed over the latter's denials and *alibi*.

Contrary to the contention of appellants, conspiracy exists in the present case. Under Article 8 of the Revised Penal Code (RPC), a conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The State need not prove appellants' previous agreement to commit Murder[60] and Robbery because conspiracy can be deduced from the mode and manner in which they perpetrated their criminal act.[61] They acted in concert in killing Pepito and taking his properties, with their individual acts manifesting a community of purpose and design to achieve their evil purpose. All the fifteen accused as conspirators in this case are liable as co-principals. Hence, they cannot now successfully assail their conviction as co-principals in Murder and Robbery.

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[58] *People v. Pascual*, 541 Phil. 369, 377 (2007).

[59] *Atizado v. People*, 647 Phil. 427, 438 (2010) citing *People v. Domingo*, 616 Phil. 261, 269 (2009), *People v. Gerasta*, 595 Phil. 1087, 1097 (2008).

[60] Id. at 439; *People v. Cabrera*, 311 Phil. 33, 41 (1995).

[61] *People v. Factao*, 464 Phil. 47, 59 (2004).

A. Murder

Murder is defined and punished under Article 248 of the RPC, as amended by R.A. No. 7659, which provides:

> Art. 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
> 2. In consideration of a price, reward, or promise.
> 3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
> 4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
> 5. With evident premeditation.
> 6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Appellants argue that they should not have been convicted of murder considering that no circumstances have been specifically alleged in the Information which would qualify the killing into murder. They cited *People v. Alba*[62] *(Alba)* where it was ruled that the circumstance must be alleged with specificity as a qualifying circumstance; otherwise, it can only be considered as a generic aggravating circumstance. Appellants contend that *People v. Gano*[63] clarified that Alba should be given a retroactive effect as it is more favorable to the accused. Hence, the ruling in *Alba* must be applied in the present case.

The argument deserves scant consideration.

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[62] 425 Phil. 666, 677 (2002).

[63] 405 Phil. 573, 586-589 (2001).

Section 6, Rule 110 of the Rules of Court states:

> Sec. 6. Sufficiency of complaint or information. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense; and the place where the offense was committed.
>
> When the offense is committed by more than one person, all of them shall be included in the complaint or information.

The Information is sufficient if it contains the full name of the accused, the designation of the offense given by the statute, the acts or omissions constituting the offense, the name of the offended party, the approximate date, and the place of the offense. The herein Information complied with these conditions. Contrary to appellants' contention, the qualifying circumstance of "treachery" was specifically alleged in the Information. "The rule is that qualifying circumstances must be properly pleaded in the Information in order not to violate the accused's constitutional right to be properly informed of the nature and cause of the accusation against him."[64]

Notably, the Information alleged that with treachery, the appellants shot Pepito on the head with the use of a firearm and thereafter hacked him even though he was dying and helpless on the ground, to wit:

Criminal Case No. 97-1258

That at around 9:00 o'clock in the evening of July 29, 1997 at Sitio Sta. Cruz, Dansolihon, Cagayan de Oro City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, with evident premeditation, with treachery, by taking advantage of superior strength and under cover of night, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously shoot, with the use of a firearm, one Pepito Angga Gunayan, hitting the latter on the

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[64] *People v. Asilan*, 685 Phil. 633, 650 (2012) citing *People v. Lab-eo*, 424 Phil. 482, 497 (2002).

head, and as Pepito Angga Gunayan fell dying, the said accused did then and there willfully, unlawfully and feloniously hack and stab, with the use of bladed weapons, their victim inflicting upon the aforementioned Pepito A. Gunayan mortal wounds that eventually caused his death, to the great damage and prejudice of the wife and children of the deceased.[65] (Emphasis ours)

The essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on the victim's part.[66] The two elements of treachery, namely: (1) that at the time of the attack, the victim was not in a position to defend himself or herself, and (2) that the offender consciously adopted the particular means, method or form of attack employed by him or her,[67] are both present in this case.

Pepito was unarmed and looking out the window to ascertain the noise outside when appellant Edimar shot him on his head which consequently knocked him on the floor. The prosecution also established that appellants consciously and deliberately adopted the mode of attack. They lurked outside Pepito's residence and waited for him to appear. When Pepito emerged from his window with a flashlight which he used to focus on and determine the people outside his house, appellant Edimar immediately shot him on the head with the use of a firearm. The location of the wound obviously indicated that the appellants deliberately and consciously aimed for the vital part of Pepito's body to ensure the commission of the crime. The attack was done suddenly and unexpectedly, leaving Pepito without any means of defense. More importantly, the subsequent hacking of Pepito when he lay lifeless on the floor indicated treachery since he was already wounded and unable to put up a defense.

Since treachery qualified the crime to murder, the generic aggravating circumstances of abuse of superior strength, in aid

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[65] Records, Vol. 1, p. 4.

[66] *People v. Abadies*, 436 Phil. 98, 105 (2002) citing *People v. Garcia*, 409 Phil. 152, 171 (2001).

[67] *People v. Ordona*, 818 Phil. 670, 681 (2017) citing *People v. Abadies*, supra.

of armed men and nighttime are absorbed by and necessarily included in the former. Unless the aggravating circumstance of nighttime was purposely sought and founded on different factual bases, then nighttime can be considered as a separate generic aggravating circumstance,[68] which is however not present in the case at bar. The prosecution failed to prove by sufficient evidence that nighttime was purposely and deliberately sought by the appellants. Thus, this Court holds that since treachery was alleged in the Information and duly established by the prosecution during trial, the appellants' conviction for the crime of Murder is proper.

However, evident premeditation as a qualifying circumstance cannot be appreciated in this case for failure of the prosecution to specifically allege in the Information the acts constituting it. Mere reference to evident premeditation is not sufficient because it is in the nature of a conclusion of law, not factual averments.[69] Section 9, Rule 110 of the Rules of Court requires that the acts or omissions complained of as constituting the offense must be stated in "ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense." This is to sufficiently apprise the accused of what he or she allegedly committed. Thus, the Information must state the facts and circumstances alleging the elements of a crime to inform the accused of the nature of the accusation against him/her so as to enable him/her to suitably prepare his/her defense.[70] In this case, however, the prosecution failed to specifically allege in the Information the acts constituting evident premeditation. Nevertheless, it can still be considered a generic aggravating circumstance, as in this case.

To be sure, both the RTC and the CA correctly found the presence of evident premeditation in the killing of the victim. Evident premeditation is attendant when the following requisites

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[68] *People v. Berdida*, 123 Phil. 1368, 1379 (1966) and *People v. Ong*, 159 Phil. 212, 255-256 (1975).

[69] *People v. Delector*, 819 Phil. 310, 320 (2017).

[70] Id. at 320-321.

are proven during trial: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that he/she clung to his determination; (3) a sufficient lapse of time between the determination and execution, to allow him/her to reflect upon the consequences of his/her act, and to allow his/her conscience to overcome the resolution of his will.[71] It presupposes a deliberate planning of the crime before executing it. The execution of the criminal act, in other words, must be preceded by cool thought and reflection. There must be showing of a plan or preparation to kill, or proof that the accused meditated and reflected upon his/her decision to execute the crime.[72]

In the case at bar, the following circumstances indicated the presence of evident premeditation: (1) the meeting of all the accused at 3 o'clock in the afternoon of July 29, 1997 at Binago Forest, Salimbal, Tinagpoloan to plan the killing of Pepito; (2) the act of buying and drinking alcohol and arming themselves with four homemade guns known as *paleontods*, an improvised pistol and bolos; and (3) a sufficient lapse of time, that is, six hours from the time of their meeting at 3 o'clock in the afternoon until the time of killing of Pepito at 9 o'clock in the evening.

Undoubtedly, the appellants were determined to commit the crime. The commission of the crime was clearly not a product of accident, as it was evident that they planned to kill Pepito. However, being merely a generic aggravating circumstance, evident premeditation cannot qualify the killing into murder. To reiterate, since treachery was sufficiently alleged in the Information and duly proven by the prosecution, the killing of Pepito constitutes Murder and not merely Homicide as contended by the appellants. On the other hand, evident premeditation is to be considered merely as a generic aggravating circumstance which is necessary in the correct imposition of penalty.

Meanwhile, the generic aggravating circumstances of cruelty, dwelling and intoxication cannot be considered in this case. In

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[71] *People v. Sanchez*, 636 Phil. 560, 582 (2010) citing *People v. Herida*, 406 Phil. 205, 215 (2001).

[72] Id. citing *People v. Guzman*, 524 Phil. 152, 172-173 (2007).

People v. Legaspi,[73] the Court held that for both qualifying and aggravating circumstances to be considered in the case, they must be specifically alleged in the Information or Complaint, as provided in the amended Sections 8 and 9, Rule 110, of the Rules of Court. Otherwise, they will not be appreciated even if duly proved during the trial. Given that the Judgment of the court *a quo* was promulgated on November 23, 2000 wherein the ruling in *Legaspi* has not yet been issued, this Court gives this doctrinal rule a retroactive effect being favorable to the appellants.[74] Hence, only the qualifying circumstance of treachery which absorbs abuse of superior strength, in aid of armed men and nighttime, as well as the generic aggravating circumstance of evident premeditation, can be considered in the present case.

The RTC and the CA correctly disregarded the voluntary surrender claimed by appellants Edimar and Carlito as a mitigating circumstance since their surrender was not for the two crimes charged in this case but for the other cases of Robbery committed in Talakag. The surrender, to be deemed voluntary, must be spontaneous in which the accused voluntarily submits himself or herself to the authorities with an acknowledgment of his or her guilt and with the intent to save them from trouble and expense of effecting his/her capture. Moreover, the voluntary surrender must be by reason of the crime for which the accused is to be prosecuted which is not the case here.[75]

Nonetheless, even if we consider their voluntary surrender as a mitigating circumstance in addition to their voluntary confession of guilt, one mitigating circumstance may offset the generic aggravating circumstance of evident premeditation as to leave appellant Edimar with only one mitigating circumstance which is voluntary confession of guilt. Appellant Carlito is left with no other attending circumstance. This, however, will still not reduce by one degree the penalty imposed by the RPC for murder, that is, *reclusion perpetua* to death.

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[73] 409 Phil. 254, 273 (2001).

[74] *People v. Ramirez*, 409 Phil. 238, 252 (2001).

[75] *People v. Semañada*, 103 Phil. 790, 797 (1958).

Regardless of the number of ordinary mitigating circumstances and despite the absence of an aggravating circumstance, the penalty cannot be reduced to any degree.[76] The reduction applies only when the sentence imposed by law is a divisible penalty which is either a single divisible penalty or three different penalties which are divisible into three periods which is not the case herein. Hence, the contention of the appellants that the penalty for Edimar and Carlito should be within the range of *prision mayor* as minimum to *reclusion temporal* as maximum is without basis in law.

Article 248 of the RPC provides that the presence of the attending circumstance of treachery qualified the killing into murder which is punishable by *reclusion perpetua* to death. Article 63 of the same Code provides that if the penalty is composed of two indivisible penalties, as in the instant case, and there is an aggravating circumstance the higher penalty should be imposed. Since evident premeditation can be considered as an ordinary aggravating circumstance, treachery, by itself, being sufficient to qualify the killing, the proper imposable penalty — the higher sanction — is death. However, in view of the enactment of Republic Act No. 9346 prohibiting the imposition of the death penalty, the penalty for the killing of Pepito is *reclusion perpetua* without eligibility for parole. The penalty thus imposed by the RTC and affirmed by the appellate court on each appellant is correct.

As to their civil liabilities,[77] since their penalty of death is reduced to *reclusion perpetua* because of R.A. No. 9346, the appellants shall be jointly and severally liable to pay civil indemnity in the total amount of ₱100,000.00, moral damages in the total amount of ₱100,000.00, and exemplary damages in the total amount of ₱100,000.00.

As to actual damages, settled is the rule that when actual damages proven by receipts during the trial amount to less than

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[76] *People v. Castañeda*, 60 Phil. 604, 609 (1934).

[77] *People v. Jugueta*, 783 Phil. 806 (2016).

the sum allowed by the Court as temperate damages,[78] the award of temperate damages is justified in lieu of actual damages which is of a lesser amount.[79] Since the amount of actual damages proved during the trial, that is, ₱15,000.00, is less than the amount of temperate damages of ₱50,000.00 fixed by prevailing jurisprudence[80] for Murder, it is proper to award temperate damages in lieu of actual damages.

In addition, the monetary awards payable by the appellants are subject to interest at the rate of six percent (6%) per *annum* from the finality of this Decision until fully paid.

B. Robbery

Article 294 of the RPC as amended by R.A. No. 7659 reads:

ART. 294. *Robbery with violence against or intimidation of persons — Penalties*. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of reclusion perpetua to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

x x x x x x x x x

5. The penalty of prision correccional in its maximum period to prision mayor in its medium period in other cases.

Notably, the appellants were charged with separate crimes of Murder and Robbery and not the complex crime of Robbery with Homicide. A conviction for Robbery with Homicide requires that Robbery is the main purpose and objective of the malefactors and the killing is merely incidental to the Robbery. If, originally, the malefactors did not comprehend Robbery, but Robbery follows the Homicide either as an afterthought or merely as an

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[78] *People v. Racal*, 819 Phil. 665, 685 (2017) citing *People v. Jugueta*, supra.

[79] *Id.* citing *People v. Villanueva*, 456 Phil. 14, 29 (2003); *Quidet v. People*, 632 Phil. 1, 19 (2010); *People v. Villar*, 757 Phil. 675, 682 (2015).

[80] *People v. Jugueta*, *supra* at 853.

incident of the Homicide, then the malefactor is guilty of two separate crimes, that of Homicide or Murder and Robbery, and not of the special complex crime of Robbery with Homicide.[81]

In this case, the original intention of the appellants was to kill Pepito to exact revenge from Pepito for assaulting appellant Gerry. In fact, appellant Edimar immediately shot Pepito on his head when the latter looked out from his window to ascertain the people outside his house. This shows that the appellants did not intend to commit Robbery at the outset. Nonetheless, Robbery was committed incidentally by the appellants when Jimmy took Pepito's air gun and FM radio while Rogelio took the bolo after hacking the body of Pepito. Subsequently, appellant Edimar shouted "Attack!" thereby giving the other appellants the signal to ransack the other valuables of the spouses Gunayan, namely, a goat, two pigs, a fighting cock and a hen without the consent and at gun point and with use of bolos against Judith and her children.

Conspiracy having been established as earlier discussed, the appellants are guilty of Robbery under Article 294 (5) of the RPC punishable by *prision correccional* in its maximum period to *prision mayor* in its medium period. The RTC and CA therefore erred when they applied the penalty prescribed by law for Robbery with Homicide when the present case charged the appellants with separate crimes of Murder and Robbery.

Absent any aggravating and mitigating circumstance, the penalty shall be applied in its medium period. In this case, the penalty prescribed by law, *i.e.*, *prision correccional* in its maximum period to *prision mayor* in its medium period has three periods namely: (a) minimum — four (4) years, two (2) months and one (1) day to six (6) years, one (1) month and ten (10) days; (b) medium — six years, one (1) month and eleven (11) days to eight (8) years and twenty (20) days; and (c) maximum — eight (8) years and twenty-one (21) days to ten (10) years.

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[81] *People v. Daniela*, 449 Phil. 547, 564 (2003) citing *People v. Salazar*, 342 Phil. 745, 765-766 (1997).

Applying the Indeterminate Sentence Law, the maximum of the imposable penalty shall be eight (8) years and twenty (20) days taken from the medium period of the imposable penalty. The minimum of the penalty shall be within the full range of *arresto mayor* maximum to *prision correccional* medium which is one degree lower than that prescribed by law. Hence, the minimum of the penalty to be imposed shall be four (4) years and two (2) months. In sum, the appellants shall be sentenced to an indeterminate penalty of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years and twenty (20) days of *prision mayor*, as maximum.

However, as regards appellants Gerry, Nestor, and Edimar, they are to be credited with the mitigating circumstance of voluntary confession of guilt. Hence, the maximum of the penalty imposed shall be in the minimum period, that is, within four (4) years, two (2) months and one (1) day to six (6) years, one (1) month and ten (10) days. Thus, appellants Gerry, Nestor, and Edimar shall be sentenced to four (4) years, two (2) months and one (1) day of *prision correccional* as minimum to six (6) years, one (1) month and ten (10) days of *prision mayor* as maximum.

In addition, the appellants shall be jointly and severally liable to pay Judith Gunayan and her two children actual damages in the total amount of ₱7,700.00 and to pay the legal cost. The monetary award shall be subject to interest at the rate of six percent (6%) per *annum* from the finality of this Decision until fully paid.

WHEREFORE, the appeal is **DISMISSED**. The October 14, 2011 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00088-MIN is **AFFIRMED** with **MODIFICATIONS**, to wit:

Criminal Case No. 97-1258 (Murder):

1) Appellants Rogelio Natindim, Jimmy Macana, Marque Clarin, Danny Piano, Arnold Araneta, Johnny Lopez, Carlito Panggayong, Gerry Natindim, Edimar Panggayong and Nestor Labita are **SENTENCED** to *reclusion perpetua* without eligibility for parole.

2) Criminal Case No. 97-1258 is **DISMISSED** insofar as accused Dino Natindim, Fernando Piano and Rolando Lopez are concerned, in view of their demise during the pendency of their appeal. Further, as to them, the appealed November 23, 2000 Judgment and the assailed October 14, 2011 Decision of the Court of Appeals are set aside. Their criminal and civil liabilities for the crime of Murder are hereby extinguished on account of their death pending appeal in accordance with Article 89 (1) of the Revised Penal Code.

3) Appellants Rogelio Natindim, Jimmy Macana, Marque Clarin, Danny Piano, Arnold Araneta, Johnny Lopez, Carlito Panggayong, Gerry Natindim, Edimar Panggayong and Nestor Labita, are hereby **ORDERED** to jointly and severally pay the heirs of Pepito Gunayan, namely Judith Gunayan and her two children, temperate damages in the total amount of ₱50,000.00, civil indemnity in the total amount of ₱100,000.00, moral damages in the total amount of ₱100,000.00 and exemplary damages in the total amount of ₱100,000.00. The monetary awards are subject to interest at the rate of six percent (6%) per *annum* from the finality of this Decision until fully paid.

Criminal Case No. 97-1257 (Robbery):

1) Appellants Rogelio Natindim, Jimmy Macana, Marque Clarin, Danny Piano, Arnold Araneta, Johnny Lopez and Carlito Panggayong are **SENTENCED** to the indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum to eight (8) years and twenty (20) days of *prision mayor* as maximum.

2) Appellants Gerry Natindim, Nestor Labita and Edimar Panggayong are hereby credited with the mitigating circumstance of voluntary confession of guilt and are **SENTENCED** to suffer an indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional* as minimum to six (6) years, one (1) month and ten (10) days of *prision mayor* as maximum.

3) Criminal Case No. 97-1257 is **DISMISSED** insofar as accused Dino Natindim, Fernando Piano and Rolando Lopez are concerned in view of their demise during the pendency of

their appeal. Further, as to these deceased appellants, the November 23, 2000 Judgment and the assailed October 14, 2011 Decision of the Court of Appeals are set aside. The criminal and civil liabilities for the crime of Robbery are hereby extinguished on account of their death pending appeal in accordance with Article 89 (1) of the Revised Penal Code.

4) Appellants Rogelio Natindim, Jimmy Macana, Marque Clarin, Danny Piano, Arnold Araneta, Johnny Lopez, Carlito Panggayong, Gerry Natindim, Edimar Panggayong and Nestor Labita are hereby **ORDERED** to jointly and severally pay the heirs of Pepito Gunayan, namely Judith Gunayan and her two children actual damages in the total amount of ₱7,700.00 and to pay the cost. The 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.

Leonen (Chairperson), *Inting, Delos Santos,* and *Rosario, JJ.*, concur.

THIRD DIVISION

[G.R. No. 202004. November 4, 2020]

GIL G. CHUA, *Petitioner*, *v.* **CHINA BANKING CORPORATION,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; AN ATTACHMENT MAY BE DISCHARGED BY POSTING A SECURITY OR BY SHOWING ITS IMPROPER OR IRREGULAR ISSUANCE.—

> A writ of preliminary attachment is a provisional remedy issued upon the order of the court where an action is pending. Through the writ, the property or properties of the defendant may be levied upon and held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured by the attaching creditor against the defendant. The provisional remedy of attachment is available in order that the defendant may not dispose of the property attached, and thus prevent the satisfaction of any judgment that may be secured by the plaintiff from the former.

Under Sections 12 and 13, Rule 57 of the Rules of Court, there are two ways to secure the discharge of an attachment, as mentioned by the CA. First, the party whose property has been attached or a person appearing on his/her behalf may post a security. Second, said party may show that the order of attachment was improperly or irregularly issued. In this case, Chua successfully had the attachment against him initially discharged on the second ground.

2. ID.; ID.; ID.; AFFIDAVIT OF MERIT; FACTS THAT NEED TO BE ALLEGED IN AN AFFIDAVIT OF MERIT.— China Bank's basis in applying for the writ of preliminary attachment is Section 1(d), Rule 57 of the Rules of Court, *i.e.*, "[i]n an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in the performance thereof." Section 3 of the same rule requires that an affidavit of merit be issued alleging the following facts: (1) that a sufficient cause of action exists; (2) that the case is one of those mentioned in Section 1 hereof; (3)

that there is no other sufficient security for the claim sought to be enforced by the action; and (4) that the amount due to the applicant, or the value of the property the possession of which he/she is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims.

3. ID.; ID.; ID.; FRAUD AS A GROUND FOR ATTACHMENT; FRAUDULENT INTENT CANNOT BE INFERRED FROM MERE NON-PAYMENT OF DEBT OR FAILURE TO COMPLY WITH AN OBLIGATION.— Contrary, however, to the declaration of the CA, there must be a showing of fraud, at least on the allegations in the application for writ of preliminary attachment.

> To sustain an attachment on this ground, it must be shown that the debtor in contracting the debt or incurring the obligation intended to defraud the creditor. The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he[/she] would not have otherwise given. To constitute a ground for attachment in Section 1(d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay. x x x

The applicant for a writ of preliminary attachment must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation.

4. ID.; ID.; ID.; ID.; COMMERCIAL LAW; TRUST RECEIPT AGREEMENT; DELIBERATELY DIVERTING THE DELIVERY OF GOODS COVERED BY LETTERS OF CREDIT (LCs) TO A LOCATION DIFFERENT FROM THAT INDICATED IN THE SALES INVOICE IS A MISAPPROPRIATION DEMONSTRATING FRAUDULENT INTENT THAT WARRANT THE ISSUANCE OF A WRIT OF ATTACHMENT.— A perusal of the allegations in the affidavit reveals fraud in the violation of trust receipt agreements. According to China Bank, it advanced a total of ₱189 Million as payment for the goods of Nestle in favor of Interbrand. These goods are considered highly saleable thus they naturally expected immediate and regular remittance of the sales proceeds. However,

instead of remitting the sales proceeds to China Bank, Interbrand misappropriated the same by deliberately diverting the delivery of the goods covered by the L/Cs to a location different from that indicated in the sales invoice. This act of misappropriation demonstrates a clear intent of fraud.

. . .

Suffice it to say that on the face of the allegations, the issuance of a writ of preliminary attachment is regular and proper. Thus, we agree with the CA in reinstating the March 3, 2010 Order directing the issuance of a writ of attachment against the properties of Chua.

5. ID.; ID.; ID.; ID.; A FINDING ON THE LIABILITY OF THE PARTIES UNDER THE SURETYSHIP AGREEMENT IN THE LIFTING OF THE WRIT OF ATTACHMENT WOULD NECESSARILY DELVE INTO THE MERIT OF THE CASE. — Chua, having signed the surety agreement, bound himself to jointly and solidarily fulfill the obligation of Interbrand to China Bank. The question of whether he was an officer and stockholder at the time when the Complaint for Sum of Money with Application for Writ of Attachment was filed was raised by petitioner and considered by the trial court in lifting the writ of attachment against him. We hold that such finding would necessarily delve into the merits of the case as China Bank seeks to hold petitioner and other sureties liable under the Suretyship Agreements.

APPEARANCES OF COUNSEL

Valero & Associates Law Offices for petitioner.
Alcala Dumlao Alameda Casiding & Tan for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the November 10, 2011 Decision[2] of the Court of Appeals (CA) in CA-G.R.

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[1] *Rollo*, pp. 13-32.

[2] Id. at 33-46; penned by Associate Justice Leoncia R. Dimagiba and concurred in by Associate Justices Noel G. Tijam (now retired Supreme Court Associate Justice) and Marlene Gonzales-Sison.

SP No. 116595, which granted respondent China Banking Corporation's (China Bank) Petition for *Certiorari* and *Mandamus* with Application for Temporary Restraining Order and/or Writ of Preliminary Injunction[3] under Rule 65 of the Rules of Court questioning the lifting of the writ of attachment by the Regional Trial Court (RTC), as well as the May 16, 2012 Resolution[4] denying petitioner Gil G. Chua's (Chua) Motion for Reconsideration.[5]

The facts, as culled from the records, are as follows.

On several occasions, Interbrand Logistics & Distribution, Inc.[6] (Interbrand) represented by its duly authorized officer, Almer L. Caras (Caras), applied with China Bank for the issuance of Domestic Letters of Credit (L/C) for the purchase of goods from Nestlé Philippines. Accordingly, twelve (12) L/Cs with corresponding trust receipts were issued to Interbrand. By the terms of the trust receipts, Interbrand agreed to hold the goods in trust for China Bank. Pursuant to the L/Cs, China Bank advanced the amount of ₱189,831,288.17 in full payment of the invoice value of said goods. The goods were all delivered to Interbrand's warehouses in Libis, Quezon City, Tarlac City, and Meycauayan, Bulacan. Due to advances made by China Bank, the parties jointly executed two Surety Agreements whereby in the first Agreement, Interbrand and its officers, Chua, Carlos Francisco Mijares (Mijares), and Caras served as sureties; while Edgar San Luis (San Luis) was the individual surety in the second Agreement.[7]

When the obligation became due, Interbrand failed to pay China Bank despite repeated demands. China Bank likewise demanded payment from the sureties, including Chua, but the latter failed and refused to pay.[8]

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[3] CA *rollo*, pp. 3-37.

[4] *Rollo*, pp. 48-49.

[5] CA *rollo*, pp. 284-292.

[6] Formerly Publicis Interbrand, Inc.

[7] *Rollo*, pp. 34-35.

[8] Id. at 35.

On March 1, 2010, China Bank filed a Complaint for Sum of Money and Damages with Application for Issuance of Writ of Preliminary Attachment[9] against Chua and the other sureties before the RTC of Makati City, Branch 59. China Bank averred that Interbrand, with knowledge and consent of Chua and other individuals as officers of the company, had committed acts of fraud, deceit and gross bad faith in contracting their indebtedness from China Bank, with manifest intention not to comply in good faith with their respective obligations both in the trust receipts and in the surety agreements.

Ruling of the Regional Trial Court:

On March 3, 2010, the trial court issued an Order[10] granting the application for issuance of a Writ of Preliminary Attachment. The dispositive portion reads:

> WHEREFORE, as prayed for and upon plaintiff's posting of a bond fixed at PhP189,831,288.17 subject to the approval of this Court, let a Writ of Preliminary Attachment issue directing the Branch Sheriff of this Court to attach all the properties, real or personal, of the defendants Interbrand Logistics and Distribution, Inc. with principal office located at #62 11th Avenue, Cubao, Quezon City; Almer L. Caras located in #2 Banaba Street corner Narra Avenue, Mapayapa Village, Libis, Quezon City; **Gil G. Chua located in #4 Red Arrow Street, White Plains Subdivision, Quezon City**; Carlos Francisco S. Mijares located in #23 Pikadon Street, Midtown Subdivision, San Roque, Marikina City; Edgar S. San Luis located in #3 Troy Street, Acropolis Village, Quezon City or anywhere in the Philippines, not exempt from execution or so much thereof as may be sufficient to satisfy plaintiff's demand for PhP189,831,288.17 plus attorney's fees, unless the defendants make a deposit or give a counterbond in an amount sufficient to satisfy such demands, besides costs, or in an amount equal to the value of the properties which are about to be attached. The condition of the plaintiff's bond is such that it shall answer for all the costs and damages which the defendants Interbrand Logistics and Distribution, Inc. Almer L. Caras, **Gil G. Chua**, Carlos Francisco S. Mijares and Edgar S. San Luis may sustain by reason of the attachment, if the court shall finally adjudge that the plaintiff

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[9] Id. at 384-400.

[10] Id. at 401-402; penned by Presiding Judge Winlove M. Dumayas.

is not entitled thereto. In the event defendants make deposit or give a counterbond as stated above, the same shall be conditioned to secure payment to the plaintiff of any judgment which it may recover in this action.[11] (Emphasis ours)

Chua and the other sureties filed a Motion to Lift Writ of Attachment,[12] alleging that they are not debtors, thus should not be guilty of fraud in incurring the obligation. Chua filed a Supplement to the Motion to Lift the Writ of Attachment arguing that he is neither an officer, director nor a stockholder of Interbrand. Consequently, the trial court lifted the writ of attachment against petitioner in an Order[13] dated May 21, 2010. China Bank filed a Motion for Reconsideration.[14] It presented the Minutes of the Special Meeting of the Board of Directors of Interbrand[15] which shows that petitioner was one of the directors of Interbrand who approved the authority of its President, San Luis, and CFO-Director Caras to obtain loans from and sign trust receipt and loan documents with China Bank. China Bank likewise presented a copy of the Amended Articles of Incorporation[16] adopted on July 9, 2005 which indicated petitioner as one of the incorporators. Moreover, China Bank argued that Chua admitted in his Answer that he executed the Surety Agreement. The trial court did not give credence to the documents presented by China Bank because none of these documents indicated that during the period material to the case, from September to December 2009, Chua was still a stockholder and director of Interbrand.

Ruling of the Court of Appeals:

China Bank filed a Petition for *Certiorari* and *Mandamus* with Application for Temporary Restraining Order (TRO) and/

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[11] Id.

[12] Id. at 403-406.

[13] Id. at 412-416.

[14] Id. at 417-422.

[15] Id. at 423.

[16] Id. at 424-430.

or Writ of Preliminary Injunction[17] with the CA. On November 10, 2011, the CA rendered a Decision[18] granting the petition and reinstating the March 3, 2010 Order which directed the branch sheriff to attach the properties of Chua. The appellate court noted that Chua voluntarily signed the Surety Agreement and his liability therein is not limited during his incumbency as an officer and stockholder of Interbrand. The appellate court opted not to tackle the issue on fraud because it would be tantamount to ruling on the merits. Chua moved for reconsideration but it was denied by the CA in its May 16, 2012 Resolution.[19]

Chua filed the instant Petition for Review on *Certiorari*[20] challenging the ruling of the CA. He claims that the appellate court violated his right to due process when the latter disregarded his evidence to support the lifting of the writ of attachment and finding that he voluntarily signed the surety agreement. Chua contends that when the appellate court held that the trial court committed grave abuse of discretion when it lifted the writ of preliminary attachment, it was in effect making his liability as surety conditional on his being a director, officer or a stockholder, without taking into consideration whether fraud attended the incurrence of the obligation. Finally, Chua asserts that the remedy from the order lifting the writ of attachment is not through a writ of *certiorari* but may be corrected only by appeal.[21]

In China Bank's Comment,[22] it maintains that under the surety agreement, Chua became obligated to perform the obligation and duty of Interbrand in the trust receipts even without possessing a direct or personal interest in the obligations

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[17] CA *rollo*, pp. 3-37.

[18] *Rollo*, pp. 33-46.

[19] Id. at 48-49.

[20] Id. at 13-32.

[21] Id.

[22] Id. at 108-130.

constituted by the latter and despite the fact that Chua is not a signatory in the trust receipts. China Bank adds that the obligation of Chua being direct, primary and absolute, it was as if he personally bound himself to fulfill all and any other obligations of Interbrand in the trust receipt agreements in favor of China Bank. China Bank asserts that fraud was manifested on the part of Chua when he, as a surety, was fully aware of his obligations to remit to China Bank the sale proceeds described in the trust agreement, but he did not have the intention to pay China Bank the proceeds. China Bank adds that mere failure to comply with the trust receipt obligation is a crime.[23]

Issue

The issue for our resolution concerns only the propriety of the attachment on the properties of Chua.

Our Ruling

A writ of preliminary attachment is a provisional remedy issued upon the order of the court where an action is pending. Through the writ, the property or properties of the defendant may be levied upon and held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured by the attaching creditor against the defendant. The provisional remedy of attachment is available in order that the defendant may not dispose of the property attached, and thus prevent the satisfaction of any judgment that may be secured by the plaintiff from the former.[24]

Under Sections 12[25] and 13,[26] Rule 57 of the Rules of Court, there are two ways to secure the discharge of an attachment, as

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[23] Id.

[24] *Security Bank Corporation v. Great Wall Commercial Press Company, Inc.*, 804 Phil. 565, 573 (2017), citing *Republic v. Mega Pacific eSolutions, Inc.*, 788 Phil. 160, 185 (2016).

[25] Section 12. *Discharge of attachment upon giving counter-bond.* — After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the

mentioned by the CA. First, the party whose property has been attached or a person appearing on his/her behalf may post a security. Second, said party may show that the order of attachment was improperly or irregularly issued.[27] In this case, Chua successfully had the attachment against him initially discharged on the second ground.

China Bank's basis in applying for the writ of preliminary attachment is Section 1 (d), Rule 57 of the Rules of Court, *i.e.*, "[i]n an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the

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attaching party with the clerk of the court where the application is made, in an amount equal to that fixed by the court in the order of attachment, exclusive of costs. But if the attachment is sought to be discharged with respect to a particular property, the counter-bond shall be equal to the value of that property as determined by the court. In either case, the cash deposit or the counter-bond shall secure the payment of any judgment that the attaching party may recover in the action. A notice of the deposit shall forthwith be served on the attaching party. Upon the discharge of an attachment in accordance with the provisions of this section, the property attached, or the proceeds of any sale thereof, shall be delivered to the party making the deposit or giving the counter-bond, or to the person appearing on his behalf, the deposit or counter-bond aforesaid standing in place of the property so released. Should such counter-bond for any reason be found to be, or become insufficient, and the party furnishing the same fail to file an additional counter-bond, the attaching party may apply for a new order of attachment.

[26] Section 13. *Discharge of attachment on other grounds*. — The party whose property has been ordered attached may file a motion with the court in which the action is pending, before or after levy or even after the release of the attached property, for an order to set aside or discharge the attachment on the ground that the same was improperly or irregularly issued or enforced, or that the bond is insufficient. If the attachment is excessive, the discharge shall be limited to the excess. If the motion be made on affidavits on the part of the movant but not otherwise, the attaching party may oppose the motion by counter-affidavits or other evidence in addition to that on which the attachment was made. After due notice and hearing, the court shall order the setting aside or the corresponding discharge of the attachment if it appears that it was improperly or irregularly issued or enforced, or that the bond is insufficient, or that the attachment is excessive, and the defect is not cured forthwith.

[27] *Security Pacific Assurance Corporation v. Hon. Tria-Infante*, 505 Phil. 609, 620-621 (2005).

action is brought, or in the performance thereof." Section 3[28] of the same rule requires that an affidavit of merit be issued alleging the following facts: (1) that a sufficient cause of action exists; (2) that the case is one of those mentioned in Section 1 hereof; (3) that there is no other sufficient security for the claim sought to be enforced by the action; and (4) that the amount due to the applicant, or the value of the property the possession of which he/she is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims.[29]

Contrary, however, to the declaration of the CA, there must be a showing of fraud, at least on the allegations in the application for writ of preliminary attachment.

> To sustain an attachment on this ground, it must be shown that the debtor in contracting the debt or incurring the obligation intended to defraud the creditor. The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he[/she] would not have otherwise given. To constitute a ground for attachment in Section 1(d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay. x x x

The applicant for a writ of preliminary attachment must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation.[30] (Citations omitted)

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[28] Section 3. *Affidavit and bond required*. — An order of attachment shall be granted only when it appears by the affidavit of the applicant, or of some other person who personally knows the facts, that a sufficient cause of action exists, that the case is one of those mentioned in Section 1 hereof, that there is no other sufficient security for the claim sought to be enforced by the action, and that the amount due to the applicant, or the value of the property the possession of which he is entitled to recover, is as much as the sum for which the order is granted above all legal counterclaims. The affidavit, and the bond required by the next succeeding section, must be duly filed with the court before the order issues.

[29] *Watercraft Venture Corporation v. Wolfe*, 769 Phil. 394, 408-409 (2015).

[30] *Metro, Inc. v. Lara's Gifts and Decors, Inc.*, 621 Phil. 162, 170 (2009),

In the Joint Affidavit executed by the officers of China Bank, the following pertinent allegations were made to substantiate the application for a writ of preliminary attachment:

5. In the discharge of our duties, we have encountered and/or processed the accounts of defendants INTERBRAND LOGISTICS & DISTRIBUTION, INC., Almer L. Caras, Gil G. Chua, Carlos Francisco S. Mijares, and Edgar San Luis, wherein:

[5].a. On several occasions, defendant INTERBRAND, thru its duly authorized officers, defendant Almer L. Caras, applied in writing with plaintiff for the issuance of domestic Letters of Credit (L/C) for the purchase of goods described therein from Nestle Philippines, Inc. (NESTLE, for short). Plaintiff approved these applications and accordingly issued domestic Letters of Credit; x x x

[5].b. In consideration of and as agreed by plaintiff and defendants in said Letters of Credit (L/Cs), plaintiff financed in the ordinary course of its banking business the purchase by defendant INTERBRAND of the goods described in said L/Cs from the supplier, NESTLE, by advancing for INTERBRAND's account the total principal amount of ₱189,831,288.17, Philippine currency, in full payment of the total invoice value of said goods. Such advance payments by plaintiff are duly evidenced by bank drafts drawn for and accepted by defendant INTERBRAND, through defendant Almer L. Caras, upon presentment with stamps, expenses and charges duly paid.

[5].c. Contemporaneously and/or in connection with the preceding transactions, defendant INTERBRAND executed Trust Receipt Agreements, x x x the obligations of defendant INTERBRAND and/or defendant Almer L. Caras of which are specified therein as follows:

(i) Sell or procure the sale of goods, or to manufacture/process the same with the ultimate purpose of sale, and to remit to plaintiff the proceeds thereof, at the latest on or before the maturity dates of said trust receipts;

(ii) In case of non-sale, defendants must return said goods invariably on or before the maturity dates of the trust receipts; and

(iii) Defendants must account to plaintiff for the goods received in trust for the latter and/or the proceeds of the sale thereof, if any, on or before the maturity dates of the trust receipts;

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citing *Liberty Insurance Corporation v. Court of Appeals*, 294 Phil. 41, 49-50 (1993).

[5].d. Furthermore, defendant INTERBRAND as PRINCIPAL, and defendants Gil G. Chua, Carlos Francisco S. Mijares, Almer L. Caras and Edgar S. San Luis as Sureties, executed Surety Agreements dated April 24, 2008 and May 22, 2008 x x x wherein they jointly and severally bound and obligated themselves to pay in full plaintiff their trust receipt obligations on or before the respective maturity dates of the trust receipts;

[6]. In January 2010, defendants failed to pay their trust receipt obligations. Despite their request, plaintiff did not grant defendants a 60-day extension of the maturity dates of their trust receipts. Also, despite demands, defendants also failed to comply with their obligations in the Surety Agreements x x x whereby they obligated and undertook themselves to pay all the trust receipt obligations of defendant INTERBRAND;

[7]. Because of this, plaintiff thru its account officers conducted an investigation/inquiry on the underlying causes of the default of defendants on their respective obligations as stated above. As shown by the Letters of Credit, the Nestle products purchased by defendant INTERBRAND are among others, Bearbrand Milk, Milo and Nescafe items. These are known to be basic and prime commodities. As such, they are highly saleable because they are known to be consumed daily by customer;

[8]. When letters of credit were opened in behalf of defendants and for the benefit of Nestle Phils[.], Inc. as the supplier of the goods, these goods were to be delivered to the warehouses of INTERBRAND in McArthur Highway, Block 9, Tarlac City, Cagayan Valley Road 346, Sta. Rita, Guiguinto, Bulacan and Libis, Quezon City as stated in the Sales Invoices. Being saleable products, the proceeds of the sale of these products could be and were collected by the sales agents of INTERBRAND from their customers in a matter of 2 weeks. Since Interbrand could collect the proceeds of the sale in approximately 2 weeks, it should have, and was in fact obliged under the trust receipts to immediately remit such payments or proceeds to plaintiff such being its trust receipt obligation as stated in par. [5].c above. This is so because plaintiff financed and/or advanced the payment of the invoice value of said products for INTERBRAND;

[9]. Despite collection of said sale proceeds, defendants deliberately failed to make the aforesaid remittance to plaintiff. Instead, defendants INTERBRAND and Almer L. Caras, with the knowledge and consent of the other defendants, misappropriated the sale proceeds for their benefit and satisfaction to the extreme damage of plaintiff. Such constituted the crime of Estafa under Article 315, par. 1(b) of the Revised Penal Code;

[10]. Also, instead of delivering the goods/Nestle products to the warehouses of defendants INTERBRAND in Libis, Quezon City, Tarlac City and Meycauayan, Bulacan, we discovered that defendants caused/allowed/facilitated the delivery of the goods covered by the Letters of Credit and Sales Invoices mentioned above to a warehouse located at Oliveros Drive, Quezon City;

[11]. Upon ocular inspection of said warehouse in Oliveros Drive, Quezon City, the security guard stationed therein and whom we talked to revealed to us that said warehouse is not owned by defendant INTERBRAND as shown by the fact that the goods existing therein were Belo Cosmetic items and Datu Puti Products, not Nestle products;

[12]. Because of this deliberate diversion in the delivery of the Nestle products covered by the Letters of Credit to a location different from the warehouses of defendant INTERBRAND, plaintiff, in the process was prevented from monitoring the circumstances by which INTERBRAND was supposed to utilize the same goods to make sure that defendants would be able to comply with their obligations in the trust receipts;

[13]. The foregoing circumstances obviously indicate that defendants did not actually have the honest intention to faithfully comply with their trust receipt obligations. The real intention of defendants was not to turn over the proceeds of the sale of the Nestle products to plaintiff, but to misappropriate the same to the unlawful satisfaction and benefit of the defendants[;]

[14]. Defendants are obviously guilty of fraud in contracting their obligations/indebtedness with plaintiff, hence, the latter is lawfully entitled to the issuance of the Writ of Preliminary Attachment under Rule 57, Section 01 of the Revised Rules of Court.[31]

A perusal of the allegations in the affidavit reveals fraud in the violation of trust receipt agreements. According to China Bank, it advanced a total of ₱189 Million as payment for the goods of Nestlé in favor of Interbrand. These goods are considered highly saleable thus they naturally expected immediate and regular remittance of the sales proceeds. However, instead of remitting the sales proceeds to China Bank, Interbrand misappropriated the same by deliberately diverting the delivery of the goods covered by the L/Cs to a location different from that indicated in the sales invoice. This act of misappropriation demonstrates a clear intent of fraud.

[31] *Rollo*, pp. 381-383.

Chua, having signed the surety agreement, bound himself to jointly and solidarily fulfill the obligation of Interbrand to China Bank. The question of whether he was an officer and stockholder at the time when the Complaint for Sum of Money with Application for Writ of Attachment was filed was raised by petitioner and considered by the trial court in lifting the writ of attachment against him. We hold that such finding would necessarily delve into the merits of the case as China Bank seeks to hold petitioner and other sureties liable under the Suretyship Agreements.

Suffice it to say that on the face of the allegations, the issuance of a writ of preliminary attachment is regular and proper. Thus, we agree with the CA in reinstating the March 3, 2010 Order directing the issuance of a writ of attachment against the properties of Chua.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The November 10, 2011 Decision and the May 16, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 116595 are **AFFIRMED**.

SO ORDERED.

Leonen (Chairperson), *Inting, Delos Santos,* and *Rosario, JJ.*, concur.

THIRD DIVISION

[G.R. No. 214319. November 4, 2020]

MYRNA C. PASCO, *Petitioner*, *v.* **ISABEL CUENCA, ROMEO M. YTANG, JR., and ESTHER C. YTANG,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL QUESTIONS WILL NOT BE ENTERTAINED BY THE COURT UNDER RULE 45 OF THE RULES OF COURT, AND MERE ASSERTION THAT THE CASE FALLS UNDER THE EXCEPTIONS TO THAT RULE DOES NOT SUFFICE.— [I]t bears stressing that a petition for review under Rule 45 is limited only to questions of law. Thus, the Court will not entertain questions of fact as it is not the Court's function to analyze or weigh all over again the evidence already considered by the court *a quo*. Although this rule is not absolute, the present petition failed to show why the exceptions should be applied here. It is well settled that mere assertion that the case falls under the exceptions does not suffice.

2. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; DUTIES OF A COUNSEL AFTER CLIENT'S DEATH; COUNSELS HAVE NO AUTHORITY TO APPEAR IN BEHALF OF A DECEASED CLIENT UNLESS THE SUBSTITUTE PARTIES RETAIN THEIR SERVICES, SINCE THE DEATH OF THEIR CLIENT TERMINATES THEIR LAWYER-CLIENT RELATIONSHIP. — The rule is that upon the death of a party, his or her counsel has no further authority to appear, save to inform the court the fact of his or her client's death and to take steps to safeguard the decedent's interest, *unless* his or her services are further retained by the substitute parties. It is the counsel's duty to give the names and addresses of the legal heirs of the deceased and submit as far as practicable the latter's Death Certificate. "This is the *only* representation that a counsel can undertake after his client's death as the fact of death essentially terminates the lawyer-client relationship that they had with each other."

3. ID.; ID.; ID.; REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; A COUNSEL HAS NO AUTHORITY TO FILE AN APPEAL AND SIGN THE VERIFICATION OR CERTIFICATION OF NON-FORUM SHOPPING IN BEHALF OF A DECEASED CLIENT WITHOUT AUTHORIZATION FROM THE LATTER'S LEGAL REPRESENTATIVES OR HEIRS.— Here, it appears that Atty. Angeles had no authority to file the present petition with the Court considering that: *first*, his lawyer-client relationship with petitioner was necessarily terminated upon the latter's death on August 19, 2011, or almost four years prior to the promulgation of the assailed CA Decision; and *second*, the records show that Atty. Angeles was only given authority by the heirs of petitioner, represented by Saile, to file the petition *after* the Court required him to submit proof that he was indeed authorized to sign the verification/certification of non-forum shopping in petitioner's behalf. Worse, it was only at this point during the pendency of the case that Atty. Angeles notified the Court of petitioner's death.

In other words, Atty. Angeles filed the present petition in behalf of his dead client, who clearly had no personality to institute the appeal, or be represented by an attorney, and without the authority of his client's legal representative/s or heirs. Thus, the petition should be denied on the ground of Atty. Angeles' lack of authority to file the petition and to sign the verification/certification of non-forum shopping in petitioner's behalf.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACT OF SALE; ELEMENTS THEREOF.— [A] contract of sale is a consensual contract which requires for its perfection and validity the meeting of the minds of the parties on the object and the price. The essential elements of a contract of sale are: (a) consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; (b) determinate subject matter; and (c) price certain in money or its equivalent. All these elements must be present to constitute a valid contract.

5. ID.; ID.; ID.; ABSOLUTE AND RELATIVE SIMULATION OF CONTRACT, DISTINGUISHED; PARTIES TO AN ABSOLUTELY SIMULATED CONTRACT MAY RECOVER FROM EACH OTHER WHAT THEY MAY HAVE GIVEN UNDER THE CONTRACT.— Simulation takes place when the parties do not really want the contract they have executed

to produce the legal effects expressed by its wordings. Article 1345 of the Civil Code provides that the "[s]imulation of a contract may either be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement." Hence, in absolute simulation the contract is void, and the parties may recover from each other what they may have given under the contract.

6. ID.; ID.; ID.; A DEED OF SALE OF REAL PROPERTY IS ABSOLUTELY SIMULATED WHEN THE SELLERS HAVE NO INTENTION TO BE BOUND BY IT, BUT MERELY LENT THE TITLE OF THE PROPERTY TO THE PURPORTED BUYER FOR THE LATTER TO SECURE A LOAN.— In determining the true nature of a contract, the primary test is the intention of the parties. As the CA aptly pointed out, the Spouses Baguispas *never* intended to be bound by the subject deed of sale x x x.

x x x x

The CA also quoted Isabel's testimony wherein she unequivocally stated that she and Antonio only signed the Deed of Sale of Real Property dated July 1, 1986 in order to accommodate petitioner's request for assistance in connection with her loan application with the SSS x x x.

x x x x

Based on these considerations, the Court finds no cogent reason to overturn the CA's findings and conclusions. There is no question that the Deed of Sale of Real Property dated July 1, 1986 is void for being an absolutely simulated contract.

APPEARANCES OF COUNSEL

Angeles & Associates Law Office for petitioner.
Barbaso & Pacatang Law Office for respondents.

D E C I S I O N

INTING, *J.*:

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court assailing the Decision[2] dated August 27, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 02386-MIN.

The Antecedents

At the core of the controversy is a parcel of land, Lot No. 38-B, situated in the Municipality of Katipunan, Province of Zamboanga del Norte with an area of 336 square meters, formerly registered in the names of Spouses Antonio Baguispas (Antonio) and Isabel Cuenca-Baguispas (Isabel) (collectively, Spouses Baguispas) under Transfer Certificate of Title (TCT) No. T-12461.[3]

On September 9, 1999, Myrna Pasco (petitioner) filed with Branch 6, Regional Trial Court (RTC), Dipolog City, a complaint for annulment of TCT, annulment of deed of sale, recovery of ownership and damages against Isabel and Spouses Romeo M. Ytang, Jr. and Esther C. Ytang (Spouses Ytang) (collectively, respondents) docketed as Civil Case No. 5437.[4]

Petitioner alleged that: (a) sometime in June 1986, the Spouses Baguispas offered to sell Lot No. 38-B to her for ₱50,000.00, to which she agreed; (b) pursuant to their agreement, the Spouses Baguispas executed a Deed of Sale of Real Property dated July 1, 1986 in her favor, which was duly notarized; (c) on March 3, 1987, Antonio died leaving no compulsory heir except his wife, Isabel; (d) on June 8, 1988, more than one year after Antonio's death, Isabel executed an affidavit of self-

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[1] *Rollo*, pp. 22-33.

[2] *Id.* at 43-54; penned by Associate Justice Oscar V. Badelles with Associate Justices Romulo V. Borja and Edward B. Contreras, concurring.

[3] *Id.* at 44.

[4] *Id.*

adjudication, conveying unto herself Lot No. 38-B; (e) without petitioner's knowledge, Isabel surreptitiously caused the transfer of title over Lot No. 38-B to her name and thereafter, sold the subject property to the Spouses Ytang, as evidenced by a Deed of Absolute Sale (DOAS) of a registered land dated May 8, 1998; and (f) consequently, Lot No. 38-B was registered under respondents' names in TCT No. T-62536.[5]

Thus, in her complaint, petitioner prayed that TCT No. T-62536 be cancelled for being spurious and the affidavit of self-adjudication and the DOAS dated May 8, 1998 executed by Isabel in favor of the Spouses Ytang be declared null and void.[6]

In their answer, respondents alleged that the sale of Lot No. 38-B to petitioner was fictitious and simulated as it was not supported by any consideration. According to them, the Spouses Baguispas only executed the Deed of Sale of Real Property dated July 1, 1986 in favor of petitioner for the purpose of showing the deed to the Social Security System (SSS) as collateral for the grant of the latter's loan application. Isabel later requested petitioner to execute a deed of conveyance of the subject property to her, but the latter refused saying that the deed of sale had no force and effect anyway.[7]

Ruling of the RTC

On May 31, 2010, the RTC rendered judgment in favor of petitioner as follows:

> WHEREFORE, IN VIEW OF THE FOREGOING, *by preponderance of evidence*, the Court hereby finds for the plaintiff (herein appellee) Judgment is hereby rendered:
>
> 1) declaring aforesaid TCT No. T-62536 issued in the name of Romeo Ytang, married to Esther Colot (herein appellants) as null and void, as well as the Absolute Deed of Sale of a Registered Land, executed on May 8, 1998 by defendant Isabel Cuenca in favor of the vendee Romeo Ytang;

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[5] *Id.*

[6] *Id.*

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

2) declaring the plaintiff as the lawful owner of the house and lot identified as Lot No. 38-B situated in Katipunan, Zamboanga del Norte, with an area of 336 square meters and now covered by the aforesaid TCT No. T-62536;

3) directing the Register of Deeds of Zamboanga del Norte to reinstate TCT No. T-12461 issued in the name of spouses Antonio Baguispas and Isabel Cuenca and annotate thereon, in the event plaintiff shall cause the registration, the Deed of Sale of Real Estate dated July 1, 1986 executed in her favor by the spouses Antonio Baguispas and Isabel Cuenca.

No costs.

IT IS SO ORDERED.[8]

The RTC ruled that there was a valid sale between the Spouses Baguispas and petitioner. Accordingly, it rejected respondents' contention that the sale was simulated.[9]

Respondents moved for reconsideration, but the RTC denied it for lack of merit.[10] Dissatisfied with the RTC ruling, respondents filed an appeal with the CA.

Ruling of the CA

In the Decision[11] dated August 27, 2014, the CA reversed and set aside the RTC Decision. It held that: *first*, the deed of sale between the Spouses Baguispas and petitioner is void *ab initio* for lack of consideration; *second*, the sale is void under Article 1471[12] of the Civil Code of the Philippines (Civil Code) considering that the price is simulated; and *third*, the parties had no intention of binding themselves at all to the sale.[13]

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[8] See Decision dated August 27, 2014 of the Court of Appeals, *id*. at 45-46.

[9] *Id.* at 46.

[10] *Id.*

[11] *Id.* at 43-54.

[12] Art. 1471 of the Civil Code of the Philippines provides:

Article 1471. If the price is simulated, the sale is void, but the act may be shown to have been in reality a donation, or some other act or contract. (Underscoring supplied.)

[13] *Rollo*, p. 52.

The CA observed that after the execution of the deed of sale on July 1, 1986 until the filing of the complaint with the RTC on September 9, 1999, petitioner never attempted in any manner to assert her ownership over the property in question. Such failure is a clear badge of simulation that renders the whole transaction void.[14] Thus, the CA declared the subsequent sale between Isabel and the Spouses Ytang as valid.[15]

Hence, this petition.

Proceedings before the Court

In a Resolution[16] dated January 28, 2015, the Court directed petitioner to submit, among others, proof of authority of Atty. Senen O. Angeles (Atty. Angeles), petitioner's counsel, to sign the verification of the petition/certification on non-forum shopping for and in behalf of petitioner.

In a Compliance and Manifestation[17] dated June 1, 2015, Atty. Angeles alleged that petitioner had already died on August 19, 2011 at the Zanorte Medical Center in Dipolog City and her estate subject of the litigation has been under the possession of her heirs, represented by Emma P. Saile (Saile). He claimed that the present petition was filed in good faith by the heirs of petitioner, in the belief that they would be affected directly by the outcome of the case.[18] Atty. Angeles also submitted a Letter of Authority[19] dated September 20, 2014, signed by Saile, authorizing him to file a petition for review before the Court and to sign the verification/certification of non-forum shopping and all other documents necessary for the filing thereof.

In their Comment,[20] respondents argued that the counsel of petitioner has not shown any valid authority to commence the

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[14] *Id.*

[15] *Id.* at 53.

[16] *Id.* at 35-36.

[17] *Id.* at 37-39.

[18] *Id.* at 38.

[19] *Id.* at 58.

[20] *Id.* at 60-80.

petition, and he cannot sign the verification as he has no personal knowledge of the facts of the case. Moreover, they averred that the petition is bereft of any direct citation to the evidence on record as required by the rules.[21]

In a Resolution[22] dated July 5, 2016, the Court directed Atty. Angeles to show cause why he should not be disciplinarily dealt with or held in contempt for having failed to file a reply, and to submit the required reply.

In a Manifestation and Explanation[23] dated November 7, 2016, Atty. Angeles, through counsel, stated that the non-filing of the reply was not intended to defy any order or resolution of the Court. He claimed that despite his earnest effort, his clients, as represented by Saile, refused to come to his office, showing their lack of interest to prosecute the case. Hence, he prays that the submission of a reply be considered waived and that the instant case be resolved based on the pleadings already submitted.[24]

Thus, in a Resolution[25] dated April 25, 2018, the Court resolved to dispense with the filing of petitioner's reply.

The Issue

Whether the CA erred in ruling that the Deed of Sale of Real Property dated July 1, 1986 is null and void for lack of consideration and lack of intent by the parties to be bound by the deed of sale.[26]

The Court's Ruling

At the outset, it bears stressing that a petition for review under Rule 45 is limited only to questions of law.[27] Thus, the

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[21] *Id.* at 60.

[22] *Id.* at 88.

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

[24] *Id.* at 90.

[25] *Id.* at 99.

[26] *Id.* at 26.

[27] Section 1, Rule 45, Rules of Court.

Court will not entertain questions of fact as it is not the Court's function to analyze or weigh all over again the evidence already considered by the court *a quo*.[28] Although this rule is not absolute, the present petition failed to show why the exceptions[29] should be applied here. It is well settled that mere assertion that the case falls under the exceptions does not suffice.[30]

Atty. Angeles had no authority to file the present petition in petitioner's behalf.

The rule is that upon the death of a party, his or her counsel has no further authority to appear, save to inform the court the fact of his or her client's death and to take steps to safeguard the decedent's interest, *unless* his or her services are further retained by the substitute parties.[31] It is the counsel's duty to give the names and addresses of the legal heirs of the deceased and submit as far as practicable the latter's Death Certificate.[32] "This is the *only* representation that a counsel can undertake after his client's death as the

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[28] *Miro v. Vda. de Erederos, et al.*, 721 Phil. 772, 785 (2013).

[29] The general rule for petitions filed under Rule 45 admits exceptions, to wit: (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record. (See *Ignacio v. Ragasa*, G.R. No. 227896, January 29, 2020)

[30] *Pascual v. Burgos, et al.*, 776 Phil. 167, 184 (2016).

[31] See *Judge Sumaljag v. Sps. Literato, et al.*, 578 Phil. 48 (2008).

[32] Section 16, Rule 3 of the Rules of Court.

fact of death essentially terminates the lawyer-client relationship that they had with each other."[33]

Here, it appears that Atty. Angeles had no authority to file the present petition with the Court considering that: *first*, his lawyer-client relationship with petitioner was necessarily terminated upon the latter's death on August 19, 2011,[34] or almost four years prior to the promulgation of the assailed CA Decision; and *second*, the records show that Atty. Angeles was only given authority by the heirs of petitioner, represented by Saile, to file the petition *after* the Court required him to submit proof that he was indeed authorized to sign the verification/certification of non-forum shopping in petitioner's behalf.[35] Worse, it was only at this point during the pendency of the case that Atty. Angeles notified the Court of petitioner's death.

In other words, Atty. Angeles filed the present petition in behalf of his dead client, who clearly had no personality to institute the appeal, or be represented by an attorney,[36] and without the authority of his client's legal representative/s or heirs. Thus, the petition should be denied on the ground of Atty. Angeles' lack of authority to file the petition and to sign the verification/certification of non-forum shopping in petitioner's behalf.

The sale of Lot No. 38-B between the Spouses Baguispas and petitioner is void for being absolutely simulated.

In any case, the Court finds that the CA did not err in reversing the RTC Decision.

Article 1458 of the Civil Code defines a contract of sale in this wise: "[b]y the contract of sale one of the contracting parties

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[33] *Siao v. Atty. Atup*, A.C. No. 10890, July 1, 2020, citing *Judge Sumaljag v. Sps. Literato, et al.*, supra note 31 at 56.

[34] *Rollo*, p. 38.

[35] *Id.* at 36.

[36] *Atty. Laviña v. Court of Appeals*, 253 Phil. 670, 680-681 (1989). Citations omitted.

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."

Otherwise stated, a contract of sale is a consensual contract which requires for its perfection and validity the meeting of the minds of the parties on the object and the price.[37] The essential elements of a contract of sale are: (a) consent or meeting of the minds, that is, consent to transfer ownership in exchange for the price; (b) determinate subject matter; and (c) price certain in money or its equivalent.[38] All these elements must be present to constitute a valid contract.

Respondents maintain that the subject deed of sale executed by the Spouses Baguispas in favor of petitioner is absolutely simulated as it was executed only to make it appear that the latter owned Lot No. 38-B for purposes of securing a loan. They claim that the Spouses Baguispas never really intended to sell the land to petitioner.

Simulation takes place when the parties do not really want the contract they have executed to produce the legal effects expressed by its wordings.[39] Article 1345 of the Civil Code provides that the "[s]imulation of a contract may either be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement."[40] Hence, in absolute simulation the contract is void, and the parties may recover from each other what they may have given under the contract.

In determining the true nature of a contract, the primary test is the intention of the parties.[41] As the CA aptly pointed out,

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[37] *Akang v. Municipality of Isulan, Sultan Kudarat Province*, 712 Phil. 420, 435 (2013).

[38] *Reyes v. Tuparan*, 665 Phil. 425, 440 (2011).

[39] *Clemente v. Court of Appeals, et al.*, 771 Phil. 113, 124 (2015), citing *Sps. Lopez v. Sps. Lopez*, 620 Phil. 368, 378 (2009), further citing *Cruz v. Bancom Finance Corporation*, 429 Phil. 225, 233 (2002).

[40] *Id.*

[41] *Id.* at 125.

the Spouses Baguispas *never* intended to be bound by the subject deed of sale, *viz.*:

> The Court is convinced that Spouses Baguispas out of pity for their niece and moved by close-knit familial ties agreed to execute the assailed Deed of Sale of Real Estate dated 1 July 1986 in favor of [petitioner] just to enable her to obtain a loan with SSS but spouses Baguispas never really intended to sell Lot No. 38-B to [petitioner] and they never received the amount of ₱50,000.00 stipulated in the simulated deed of sale.[42] x x x.

The CA also quoted Isabel's testimony wherein she unequivocally stated that she and Antonio only signed the Deed of Sale of Real Property dated July 1, 1986 in order to accommodate petitioner's request for assistance in connection with her loan application with the SSS, to wit:

> Q Do you remember if Myrna Pasco came home to your place in Katipunan sometime in the middle of 1986?
> A Yes, ma'am.
>
> Q Do you know the reason why she went home?
> A She went home to borrow our title because she wanted to secure a loan from the SSS.
>
> Q Did you agree with that?
> A Yes, ma'am, because she pleaded.
>
> Q And what did you do?
> A We agreed but instead of giving her the title she wanted to ask me to execute a deed of sale in her favor.
>
> Q I show to you a deed of sale of real estate previously marked as our exhibit "3," We would like to manifest, Your Honor, that exhibit "3" is the deed of absolute sale executed by Antonio Baguispas and Isabel Cuenca in favor of Myrna Pasco dated 1st day of July 1986 which is presently not available because it has been authenticated by the [petitioner] so we provisionally show to this witness exhibit which is annex "B" of the complaint, entitled Deed of Sale of Real Estate, please go over this if this is the same document which

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[42] *Rollo*, p. 49.

Myrna Pasco asked you for her intention to obtain a loan from the SSS?

A Yes, ma'am.

Q It stated here as in our exhibit "3" that the amount which Antonio Baguispas and yourself received was ₱50,000.00, did you actually receive ₱50,000.00 as a consideration of this deed of sale of real estate?

A Not even a single centavo.

Q Then why did you sign this deed of sale of real estate in favor of Myrna Pasco?

A *Because that was the one she pleaded for her to be able to secure a loan from the SSS and so I accommodated her.*[43] (Italics supplied.)

This was further corroborated by the testimony of Rene Pasco, petitioner's own brother. Thus:

Q Do you remember in 1986 when Myrna Pasco came to Katipunan from Manila?

A Yes, ma'am.

Q Do you remember why she visited Katipunan?

A Yes, ma'am.

Q Can you state to the record?

A As far as I can remember, sometime in 1986 my sister Myrna Pasco came home to Katipunan from Manila and had an agreement with my late Auntie Isabel Cuenca Bagispas to have that house loaned but the loan will be executed in Manila and that the title will be subsequently transferred to the name of my sister.

Court

Q (to the witness) *In other words, your sister Myrna Pasco requested that she be allowed to use the property in question as a collateral to a certain loan which she was going to obtain in Manila?*

A *Yes, Your Honor, that is it.*[44] (Italics supplied.)

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[43] *Id.* at 49-50.

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

Based on these considerations, the Court finds no cogent reason to overturn the CA's findings and conclusions. There is no question that the Deed of Sale of Real Property dated July 1, 1986 is void for being an absolutely simulated contract.

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated August 27, 2014 of the Court of Appeals in CA-G.R. CV No. 02386-MIN is **AFFIRMED**.

SO ORDERED.

Leonen (Chairperson), *Hernando, Delos Santos,* and *Rosario, JJ.*, concur.

THIRD DIVISION

[G.R. No. 214981. November 4, 2020]

EULOGIO ALDE, *Petitioner*, *v.* **CITY OF ZAMBOANGA, as represented by CITY MAYOR CELSO L. LOBREGAT,** *Respondent*.

SYLLABUS

1. CIVIL LAW; LAND TITLES AND DEEDS; COMMONWEALTH ACT NO. 141 (PUBLIC LAND ACT); LANDS CLASSIFIED AS ALIENABLE AND DISPOSABLE LANDS MUST BE DECLARED THROUGH A POSITIVE ACT OF THE GOVERNMENT AS UNNECESSARY FOR PUBLIC USE OR PUBLIC SERVICE BEFORE THEY CAN BE SOLD OR LEASED TO PRIVATE PARTIES, ENTITIES, OR CORPORATIONS.— [The Court does] not agree with the CA's pronouncement that a presidential proclamation is required. A reading of Section 63 invoked by the appellate court provides room for alternatives.

In *In re: Flordeliza*, the Court ruled that the word ***decide*** is defined as "to form a definite opinion" or "to render judgment". [The Court applied] the same in the statute in question. As long as a definite opinion or judgment is rendered that certain alienable or disposable public lands are not needed for public use or public service or even for national wealth, then the legal requirement under Section 63, in relation to Section 61, is deemed complied with. Therefore, [the] Court infers that when the lawmakers used the word "*decided*" in Section 63, this must be construed to mean that it admits of a legal scenario beyond the stricture of a presidential proclamation requirement, contrary to the finding of the CA.

[The Court holds] that Section 63, in relation to Section 61, of CA 141 gives leeway to the President and the DENR Secretary in choosing the manner, mechanism or instrument in which to declare certain alienable or disposable public lands as unnecessary for public use or public service before these are disposed through sale or lease to private parties, entities or corporations.

Hence, all alienable and disposable lands enumerated in Section 59, from (a) to (d), suitable for residence, commercial, industrial or other productive purposes other than agricultural, under Chapter VIII of the same CA 141, must be subject to a presidential declaration that such are exempt from public use or public service before they can be sold or leased, as the case may be, but such need not be solely through a presidential proclamation.

2. ID.; ID.; ID.; ID.; THE REQUIREMENT OF A PRESIDENTIAL DECLARATION THAT A PUBLIC LAND IS DISPOSABLE NEED NOT BE SOLELY THROUGH A PRESIDENTIAL PROCLAMATION, BUT MAY BE THROUGH AN EXECUTIVE ORDER, AN ADMINISTRATIVE ACTION, INVESTIGATIVE REPORTS OF BUREAU OF LANDS INVESTIGATORS, OR A LEGISLATIVE ACT OR STATUTE.— [The] Court has time and again ruled that to prove that a public land is alienable and disposable, what must be clearly established is the existence of a positive act of the government. This is not limited to a presidential proclamation. Such fact could additionally be proven through an executive order; an administrative action; investigative reports of Bureau of Lands investigators; and a legislative act or a statute.

. . .

In the case at bar, the OP, upon the recommendation of the DENR Secretary, validly declared the subject lots disposable through lease, through an administrative action, one of the modes that is expressly recognized for said purpose pursuant to our pronouncement in *Republic v. Jabson*.

3. ID.; ID.; REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; ACTIONS *QUASI IN REM;* A MISCELLANEOUS LEASE APPLICATION (MLA) BEFORE THE COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE (CENRO) IS AN ADMINISTRATIVE PROCEEDING THAT IS IN THE NATURE OF AN ACTION QUASI *IN REM*.— [The] Court agrees with Alde that the MLA remains valid even beyond the posting and publication thereof because as an administrative proceeding before the CENRO, it is in the nature of an action *quasi in rem*.

In an action *quasi in rem*, an individual is named as defendant and the purpose of the proceeding is to subject his interests

therein to the obligation or loan burdening the property. Actions *quasi in rem* deal with the status, ownership or liability of a particular property but which are intended to operate on these questions only as between the particular parties to the proceedings and not to ascertain or cut off the rights or interests of all possible claimants. The judgments therein are binding only upon the parties who joined in the action.

Thus, the City Government of Zamboanga is not without recourse. It can legally step in and assert its interest after the expiration of the lease awarded to Alde.

4. ID.; ID.; THE POWER TO CLASSIFY PUBLIC LANDS AS ALIENABLE AND DISPOSABLE AND TO RELEGATE TO THE PRIVATE DOMAIN OR PATRIMONIAL PROPERTY OF THE GOVERNMENT IS REPOSED IN THE PRESIDENT AND THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES.— Not even the Local Government Code empowers local government units to reserve, on their own, particular public lands for the private domain or patrimonial property of the Government. By statute, this power to classify public lands as alienable and disposable and to relegate to the private domain or patrimonial property, is reposed in the President and the DENR Secretary, as delegated to them by Congress, through CA 141 and Presidential Decree (P.D.) No. 705. Therefore, they cannot delegate the same to another office or officer, such as the City Government of Zamboanga. What has once been delegated by Congress can no longer be further delegated or redelegated by the original delegate to another, as expressed in the Latin maxim — *Delegata potestas non potest delegari*.

5. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES APPLIES WHEN THE GOVERNMENT OFFICIALS CONCERNED DID NOT COMMIT ACTS IN EXCESS OR LACK OF JURISDICTION.— [T]his Court holds that the presumption of regularity in the performance of official duties applies in the instant case. We find that the DENR and the OP did not commit acts in excess or lack of jurisdiction in awarding the lease to Alde.

> To stress, CA 141 as amended, has given the President and the DENR Secretary leeway when it comes to disposing or conceding lands under Section 61 in relation to Section 59 (d). By all accounts, the OP and the DENR Secretary have legally exercised that authority through an administrative action. Thus, in fairness to Alde who faithfully complied with the requirements of the authorities concerned, the lease awarded to him should be given due course. Given the time that has lapsed for such award, so should the same be given with dispatch.

APPEARANCES OF COUNSEL

Faundo Esguerra & Associates for petitioner.
Office of the City Legal Officer for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the February 27, 2014 Decision[2] and the September 26, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 04147-MIN.

The Antecedents

Petitioner Eulogio Alde (Alde) filed a Miscellaneous Lease Application (MLA) No. 097332-10 covering two (2) lots with the Community Environment and Natural Resources Office (CENRO), Region IX, Zamboanga City, on February 9, 2001.[4] With a combined area of Eight Hundred and Five (805) square meters, the two lots were covered by Transfer Certificates of

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[1] *Rollo*, pp. 15-34.

[2] Id. at 37-47; penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Romulo V. Borja and Oscar V. Badelles.

[3] Id. at 49-56; penned by Associate Justice Oscar V. Badelles and concurred in by Associate Justices Romulo V. Borja and Edgardo T. Lloren.

[4] Id. at 57.

Title (TCT) Nos. T-7301[5] and T-7300,[6] both in the name of the Republic. These lots were originally leased by the now defunct Bureau of Buildings and Real Property Management, Department of General Services to a certain Clarita Chan for a period of twenty (20) years, or until July 17, 1994. Subsequently, Executive Order (EO) No. 285, Series of 1987[7] was issued transferring the control and possession of the lots to the Department of Environment and Natural Resources (DENR).[8]

On May 14, 2002, the Office of the Regional Executive Director (RED) of the DENR-Region IX, Zamboanga City, ordered the appraisal of the subject lots covered by the MLA.[9] On May 17, 2002, the Appraisal Committee reported that the lots are classified as commercial properties in the Zoning Ordinance under Department Order No. 145-95[10] of the Department of Finance. The Appraisal Committee reported an appraised value of ₱6,800.00 per square meter or ₱6,475,000.00 for the entire 805 square meters.[11] In addition, it determined the rental rate per *annum* at ₱174,250.00 representing three percent (3%) of the value of the land and one percent (1%) of

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[5] CA *rollo*, p. 64.

[6] Id. at 63.

[7] Entitled as "*Abolishing the General Services Administration and Transferring its Functions to Appropriate Government Agencies*." Approved on July 25, 1987. The relevant provisions are as follows:

"Section 3. *Building Services and Real Property Management Office*. — The functions of the Building Service and Real Property Management Office are hereby transferred, as follows:

x x x x

2. To the Department of Environment and Natural Resources.

a. Custody and administration of commercial, industrial and urban properties under the management of the abolished Building Services and Real Property Management Office;

b. Sale, lease, rental or transfer of these commercial, industrial and urban lands.

[8] CA *rollo*, pp. 49 and 103-104.

[9] Id. at 50.

[10] Id. at 104.

[11] Id.

the proposed improvements, in accordance with Section 37[12] of Commonwealth Act (CA) No. 141 or "The Public Land Act."[13]

Ruling of the RED-DENR Region IX:

On May 23, 2002, the RED of DENR-Region IX approved the abovementioned appraisal and granted the authority to lease the land in accordance with the Public Land Act.[14]

Thereafter, the Chief of the Land Management Division issued a Notice of Lease for purposes of bidding the subject lots. The Notice of Lease over the subject lots was published by the National Printing Office in the *Official Gazette* as evidenced by a Certificate of Publication dated October 11, 2002;[15] and in a newspaper called *Zamboanga Star*, which was posted at

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[12] SEC. 37. The annual rental of the land leased shall not be less than three *per centum* of the value of the land, according to the appraisal and reappraisal made in accordance with Section one hundred sixteen of this Act; except for lands reclaimed by the Government, which shall not be less than four *per centum* of the appraised and reappraised value of the land: *Provided*, That one-fourth of the annual rental of these lands reclaimed prior to the approval of this Act shall accrue to the construction and improvement portion of the Portworks Fund: *And provided, further*, That the annual rental of not less than four *per centum* of the appraised and reappraised value of the lands reclaimed using the Portworks Fund after the approval of this Act shall all accrue to the construction and improvement portion of the Portworks Fund. But if the land leased is adapted to and be devoted for grazing purposes, the annual rental shall be not less than two *per centum* of the appraised and reappraised value thereof. Every contract of lease under the provisions of this chapter shall contain a clause to the effect that a reappraisal of the land leased shall be made every ten years from the date of the approval of the lease, if the term of the same shall be in excess of ten years. In case the lessee is not agreeable to the reappraisal and prefers to give up his contract of lease, he shall notify the Director of Lands of his desire within the six months next preceding the date on which the reappraisal takes effect, and in case his request is approved, the Director of Lands may, if the lessee should so desire, proceed in accordance with Section one hundred of this Act. (As amended by Rep. Act No. 2694, An Act to Amend Certain Provisions of Sections Thirty-Seven and Sixty-Four of Commonwealth Act Numbered One Hundred Forty-One. Approved June 18, 1960.)

[13] Approved on November 7, 1936.

[14] *Rollo*, p. 59.

[15] CA *rollo*, p. 86.

the *barangay* hall where the subject lots are located. Alde, the lone bidder, was declared as winner after submitting a bid of ₱174,250.00. As the winner, he paid ten percent (10%) of the bid price.[16]

On July 4, 2002, the CENRO of the DENR referred to the Department of Public Works and Highways (DPWH) the matter of determining whether the subject lots are needed by the Government for public use.[17] The Regional Director of the DPWH interposed no objection to the approval of the MLA.

In turn, on November 28, 2002, the Secretary of the DPWH endorsed Alde's MLA to the RED-DENR Region IX interposing no objection to Alde's MLA, provided "that 4.0 meters from the edge of the sidewalk be reserved for future widening/ improvements of the National Government."[18]

Thus, on July 2, 2003, the RED-DENR Region IX issued an Order of Award[19] for the lease of the subject lots in favor of Alde.

The respondent City Government of Zamboanga objected to the lease application of Alde over the subject lots. In two letters dated August 18, 2003 and September 10, 2003, the City Government of Zamboanga claimed that the awarded lots were needed for public use and that the posting and publication requirements of the notice of lease, were not complied with.[20] The City Government of Zamboanga sent another letter of opposition to the DENR Secretary dated October 13, 2003.[21]

On November 12, 2003, the City Government of Zamboanga eventually filed a verified Opposition[22] with the DENR Regional

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[16] Id. at 104.

[17] *Rollo*, pp. 57-58.

[18] CA *rollo*, p. 85.

[19] Id. at 65-66.

[20] Id. at 105.

[21] Id. at 67-70.

[22] Id. at 71-81.

Office IX which was docketed as DENR Case No. 8361. A Committee was then created to investigate the pending controversy by virtue of Regional Special Order No. 184 issued on September 3, 2004.[23]

On March 1, 2005, the Committee submitted an Investigation Report to the RED DENR-Region IX, recommending the dismissal of the Opposition of the City Government and for the MLA of Alde to be given due course.[24] The pertinent portions of that Investigation Report read:

> The DPWH Regional Office interposed no objection on (sic) the application of Eulogio Alde, as to whether there is intention of (sic) of the Government to use the land for government purposes, and the Office of the Secretary DPWH, concurred with the opinion of the Regional Office.
>
> Records would also show that before the Bidding, there [was] no objection/opposition filed on record by any Governmental Agency.
>
> The Committee therefore believes and so holds that the land subject of the case is not intended for governmental purposes.
>
> x x x x x x x x x
>
> The Committee after scrutiny and verification of the records believes and so holds the process under RA (Act) 3038 were (sic) properly observed, especially in the Notice and Publication of the Application.[25]

Ruling of the DENR Secretary:

The City Government of Zamboanga appealed its case to the DENR Secretary. On May 27, 2007, the DENR Secretary issued a Decision[26] in DENR Case No. 8361, denying the Opposition filed by the City Government of Zamboanga and giving due course to the Order of Award to Alde, *viz.*:

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[23] Id. at 105.

[24] Id. at 52-53.

[25] Id. at 53.

[26] Id. at 49-57.

Records of the investigation reveal that the requirements relative to publication and posting have been complied with. Such findings, along with the presumption of regularity afforded to public officials in the performance of their official functions, cannot be overcome by general statements of the City denying compliance of said requirements and unsupported by any specific and concrete evidence. This Office also disagrees with the contention that specific notice should have been made to the City as no such requirement appears in the law.

As to the actual conduct of the bidding itself, the Minutes of the Bidding show compliance with the prescribed procedures of the law.

Anent the appraisal of the property, the Appraisal Committee (created pursuant to DAO 98-20) reported the value of the land and improvements at Six Million Four Hundred Seventy[-]Five Thousand Pesos (Php6,475,000.00) and One Million Pesos (Php1,000,000.00), respectively. Based on such valuations, the Committee then recommended that the minimum annual rental of the land be set at One Hundred Seventy[-]Four Thousand Two Hundred Fifty Pesos (Php174,250.00).

Sec. 64 (a), Chapter IX, Title III of the Public Land Act provides that the leases executed thereunder shall not be less than three (3) per centum of the appraised or reappraised value of the land plus one (1) per centum of the appraised or reappraised value of the improvements.

Upon computation, this Office holds the minimum rental rate submitted by the Committee and consequently, the bid made by Applicant and accepted by the same Committee, to be valid as within the required limitations provided for by law.[27]

Subsequently, the City Government of Zamboanga filed a Motion for Reconsideration but it was denied by the DENR in an Order dated July 29, 2009, for being *pro forma*.[28]

Thereafter, the City Government of Zamboanga filed an appeal with the Office of the President (OP).

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[27] Id. at 56.

[28] Id. at 106.

Ruling of the Office of the President:

In its Decision[29] in O.P. Case No. 09-I-423 dated June 18, 2010 and Resolution[30] dated March 1, 2011 the OP affirmed the May 27, 2007 Decision and the July 29, 2009 Order of the DENR Secretary giving due course to the Order of Award to Alde.

The OP affirmed the ruling of the DENR that the commercial classification of the subject lots is based on EO No. 285 of 1987 and that the DENR's control and disposition over the subject properties are based also on Sections 3[31] and 4[32] of the Public Land Act.

Citing Sections 58,[33] 59,[34] and 61[35] of the Public Land Act, the OP held that the subject lots do not fall under paragraphs

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[29] Id. at 42-48.

[30] Id. at 40-41.

[31] Section 3. The Secretary of Agriculture [now Environment] and Natural Resources shall be the executive officer charged with carrying out the provisions of this Act through the Director of Lands, who shall act under his immediate control.

[32] Section 4. Subject to said control, the Director of Lands shall have direct executive control of the survey, classification, lease, sale or any other form of concession or disposition and management of the lands of the public domain, and his decisions as to questions of fact shall be conclusive when approved by the Secretary of Agriculture [now Environment] and Natural Resources.

[33] Section 58. Any tract of land of the public domain which, being neither timber nor mineral land, is intended to be used for residential purposes or for commercial, industrial, or other productive purposes other than agricultural, and is open to disposition or concession, shall be disposed of under the provisions of this Chapter and not otherwise.

[34] Section 59. The lands disposable under this Title shall be classified as follows:

(a) Lands reclaimed by the Government by dredging, filling, or other means;

(b) Foreshore;

(c) Marshy lands or lands covered with water bordering upon the shores or banks of navigable lakes or rivers;

(d) Lands not included in any of the foregoing classes.

[35] Section 61. The lands comprised in classes (a), (b), and (c) of Section

(a), (b), or (c) of Section 59, but under paragraph (d), *i.e.*, "lands not included in any of the foregoing classes." Accordingly, the OP ratiocinated that:

> [T]he subject lots may be disposed of by lease even without a prior declaration of non-necessity for public service considering that such is not a condition *sine qua non* before disposition of lands falling under paragraph (d) may be made. Clearly evident from Section 61 afore-cited is that, unlike lands classified under (a), (b) and (c) of Section 59 which needs a declaration that the land is not necessary for public service prior to disposition, no such requirement is provided for lands included in class (d), as subject lots herein.
>
> Thus, and contrary to the [City of Zamboanga's] contention, a declaration that the disputed lots are not required for public service is not a prerequisite to the disposition of the same by lease.
>
> Besides, it is worthy to note that the record of the case bears out the fact that the subject lots were and are not intended for public purposes. One, the lots were already the subject of a previous lease spanning twenty (20) years. Two, the DPWH interposed no objection to the lease application after determining that there is no intention of using the subject lots for a government purpose. And three, there is no showing that, prior to the bidding, any government agency or instrumentality, or any local government unit such as the appellant herein, filed an objection/opposition to the lease application.[36]

With the dismissal of its appeal and denial of its Motion for Reconsideration by the OP in its March 1, 2011 Resolution,[37] the City Government of Zamboanga filed a Petition for Review under Rule 43 of the Rules of Court with the CA.

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fifty-nine shall be disposed of to private parties by lease only and not otherwise, as soon as the President, upon recommendation by the Secretary of Agricultural [now Environment] and Natural Resources, shall declare that the same are not necessary for public service and are open to disposition under this Chapter. The lands included in class (d) may be disposed of by sale or lease under the provisions of this Act.

[36] CA *rollo*, pp. 46-47.

[37] Id. at 40-41.

The Ruling of the Court of Appeals:

In its Petition for Review filed with the CA, the respondent raised the following issues: 1) whether the disposition of public lands, such as through sale, lease, etc., under the Public Land Act, applies when the real property is already titled in the name of the Republic; and, 2) whether the Land Management Bureau (LMB)-DENR-Regional Office (RO) - IX has the power and jurisdiction to entertain and give due course to Alde's MLA considering that the two parcels of lands are already titled in the name of the Republic and covered by TCT No. T-7300 and TCT No. T-7301.[38]

In its assailed Decision, the appellate court ruled in favor of respondent City of Zamboanga. It reversed and set aside the June 18, 2010 Decision of the OP. It also declared as null and void the Order of Award by the RED-DENR Region IX dated July 2, 2003 for having been issued in excess or lack of jurisdiction.[39]

The appellate court ruled in this wise:

> Initially, the authority to sell or lease land of private domain of the National Government was vested in the Office of the now defunct Secretary of Agriculture and Natural Resources pursuant to **Act No. 3038**.
>
> Meanwhile, the creation of the General Services Administration vested the Building Services and Real Property Management Office the custody and administration of the properties owned by the National Government. However, upon the enactment of Executive Order 285 of 1987, these functions were transferred to the Department of Environment and Natural Resources, thus:
>
> > Section 3. Building Services and Real Property Management Office. The functions of the Building Services and Real Property Management Office are hereby transferred as follows:

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[38] *Rollo*, p. 41.

[39] Id. at 46.

1. x x x
2. **To the Department of Environment and Natural Resources**.
a. Custody and administration of commercial, industrial and urban properties under the management of the abolished Building Services and Real Property Management Office;
b. Sale, lease, rental or transfer of these commercial, industrial and urban lands.
x x x x x x x x x

Having been conferred with the aforementioned authority, the DENR clearly possesses jurisdiction to accept application for lease over the subject properties which was classified as commercial lands.

Question now arises, which law should DENR apply in order to dispose these kinds of lands, either by sale or lease?

Act 3038 provides that the lease of land of private domain of the Government, not otherwise agricultural, shall be in conformity of the Chapter IX with the Public Land Act. Section 2 of Act 3038 states in particular:

> Section 2. **The** sale or **lease of the land** referred to in the preceding section **shall**, if such land is agricultural, **be made in the manner and** subject to the limitations prescribed in chapter five and six, respectively, of said Public Land Act, and **if it be classified differently in conformity with the provisions of chapter nine of said Act: Provided, however, that the land necessary for the public service shall be exempt from the provisions of this Act.**

Without doubt, the provision on Chapter IX of the Public Land Act (Commonwealth Act No. 141) shall govern the proper disposal of lands owned by the Government.

Under the aforequoted provision, land of private domain of the Government which is necessary for public service cannot be made a subject of a sale or lease. It is only when the land is declared as *not necessary for public service* that it may be made available either for sale or lease. It is therefore imperative that before a government-owned land be disposed of, a proclamation/declaration to such effect must first be secured.

Who, then, has the power to declare government-owned land open for disposition as it is not necessary for public service?

Section 61 specifically states:

> **Sec. 61. The lands** comprised in **classes (a), (b), and (c) of section fifty-nine** shall be disposed of to private [parties] **by lease only** and not otherwise, as soon as ***the President***, upon recommendation by the Secretary of Agriculture, ***shall declare that the same are not necessary for the public service and are open to disposition*** under this chapter. **The lands included in class (d) may be disposed of by sale or lease under the provisions of this Act.**

The findings of the Office of the President [in the] instant case, however, say that no such declaration is needed in the instant case. The Office of the President ratiocinated that the subject properties, being classified already as commercial property, thus fell under class (d) of the classification made in Section 59 of the Public Land Act that does not need proclamation to that effect. Section 59 provides:

> Section 59. The lands disposable under this title shall be classified as follows:
>
> (a) Lands reclaimed by the Government by dredging, filing, or other means;
>
> (b) Foreshore;
>
> (c) Marshy lands or lands covered with water bordering upon the shores or banks of navigable lakes or rivers;
>
> (d) Land not included in any of the foregoing classes.

The assailed findings of the Office of the President are clearly not in accord with the law — the Public Land Act. Moreover, the interpretation of the Office of the President on Section 61 of the Public Land Act that certain [classes] of lands need no more proclamation — that the land is not necessary for public service — is absurd.

Previous Presidential Proclamations by virtue of which the President of the Philippines specifically declared government-owned land open for disposition had sustained this requirement of the proclamation of non-necessity for public purpose.

Also, Section 61, as afore-quoted, states how the lands classified in Section 59 may be disposed of. The provision did not specifically discard the requirement of presidential proclamation that the same are not intended for public service.

Section 61 even emphasized that class (d) of the classification may be disposed either by sale or lease, however, such disposal must

still be made in accordance with the provisions of the Public Land Act. The Public Land Act necessitates the presidential proclamation that the land sought to be disposed of is not intended for public service.

Incidentally this presidential proclamation requirement is further reinforced in Section 63 thereof which says:

> **Whenever it is decided that lands covered by this chapter are not needed for public purposes**, the Director of Lands shall ask the Secretary of Agriculture and Commerce for authority to dispose of the same. Upon receipt of such authority, the Director of Lands shall give notice by public advertisement in the manner as in the case of leases or sales of agricultural public land, that the Government will lease or sell as the case may be, the lots or blocks specified in the advertisement, for the purpose stated in the notice and subject to the conditions specified in this chapter.

Not only that, this Section 63 is specific that the authority to dispose these lands covered by the Public Land Act can only be done after they are proclaimed as not intended for public purpose.

Since the subject properties fall within the coverage of the Public Land Act by virtue of **Act 3038**, the required presidential proclamation must then be strictly observed.

It likewise did not escape this Court's notice that the posting and publication required under the Public Land Act had not been complied with.

It is said that the Director of Lands shall give notice by public advertisement in the manner as in the case of leases or sales of agricultural public land. In relation thereto Section 34 states, *a notice of the date and place of the auction of the right to lease the land shall be published and announced in the same manner as that prescribed for the publication and announcement of notice of sale, in section twenty-four (24) of this act.*

In relation thereto, Section 24 partly says:

> x x x. The Director of [L]ands shall announce the sale thereof publishing the proper notice **once a week for six consecutive weeks in the Official Gazette, and in two newspapers one published in Manila and the other published in the municipality or in the province where the lands are located,**

> **or in a neighboring province**, and the same notice shall be posted on the bulletin board of the Bureau of Lands in Manila, and in the most conspicuous place in the provincial building and the municipal building of the province and municipality, respectively, where the land is located, and if practicable, on the land itself; x x x
>
> The evidence shows that the publication of the Notice of Lease in a newspaper was made only on July 26, August 2 and 9, all in year 2002; short of three (3) more weeks as mandated in the aforementioned provision.
>
> The disputable presumption of regularity in the performance of official duties does not lie in the present case. This presumption was clearly rebutted by the fact that there is convincing evidence that first, there was no proclamation yet declaring that the subject properties are no longer intended for public purpose, and second the requirements of publication were not complied with.[40] (Emphasis in the original)

In fine, the CA ruled that a presidential proclamation is necessary to declare that a parcel of public land is not necessary for public service before it can be disposed, even for those lands referred to in Section 59 (d) of CA 141.

Alde filed a motion for reconsideration which was denied by the CA in its Resolution dated September 26, 2014.

Hence this Petition.

Our Ruling

The Court grants the Petition.

There is no argument that there must be some sort of a presidential declaration that a piece of land classified under Section 59 (d) of the Public Land Act is no longer necessary for public use or public service before it can be leased to private parties or private entities or private corporations. However, we hold that the same need not be exclusively in the form of a presidential proclamation. Any other form of presidential declaration is acceptable.

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[40] Id. at 42-46.

This Court agrees with the CA that even lands classified under Section 59 (d) of CA 141 must be established as unnecessary for public use or for public service before they can be sold or leased to private parties or entities or private corporations. However, this Court does not subscribe to the absolute necessity of a presidential proclamation for such purposes.

An administrative action by the OP that declares a land under Section 59 (d) as alienable and disposable and not necessary for public use or public service, complies with the required Presidential declaration that alienable and disposable lands are not necessary for public use or for public service before they can be open for sale or lease or disposed, to private parties, entities or corporations

As earlier presented, the CA relied upon Section 63 of the Public Land Act to support its conclusion that lands under Section 59 (d) must be proclaimed as "not intended for public purpose" before their disposition is authorized. The appellate court emphasized the words of the statute "*[w]henever it is* ***decided*** *that lands covered by this chapter are not needed for public purposes.*"

For clarity, Section 63 of CA 141 is herein reproduced:

SECTION 63. Whenever it is decided that lands covered by this chapter are not needed for public purposes, the Director of Lands shall ask the Secretary of Agriculture and Commerce for authority to dispose of the same. Upon receipt of such authority, the Director of Lands shall give notice by public advertisement in the same manner as in the case of leases or sales of agricultural public land, that the Government will lease or sell, as the case may be, the lots or blocks specified in the advertisement, for the purpose stated in the notice and subject to the conditions specified in this chapter.

We do not agree with the CA's pronouncement that a presidential proclamation is required. A reading of Section 63 invoked by the appellate court provides room for alternatives.

In *In re: Flordeliza*,[41] the Court ruled that the word ***decide*** is defined as "to form a definite opinion" or "to render judgment." We now apply the same in the statute in question. As long as a definite opinion or judgment is rendered that certain alienable or disposable public lands are not needed for public use or public service or even for national wealth, then the legal requirement under Section 63, in relation to Section 61, is deemed complied with. Therefore, this Court infers that when the lawmakers used the word "*decided*" in Section 63, this must be construed to mean that it admits of a legal scenario beyond the stricture of a presidential proclamation requirement, contrary to the finding of the CA.

We hold that Section 63, in relation to Section 61, of CA 141 gives leeway to the President and the DENR Secretary in choosing the manner, mechanism or instrument in which to declare certain alienable or disposable public lands as unnecessary for public use or public service before these are disposed through sale or lease to private parties, entities or corporations.

Hence, all alienable and disposable lands enumerated in Section 59, from (a) to (d), suitable for residence, commercial, industrial or other productive purposes other than agricultural, under Chapter VIII of the same CA 141, must be subject to a presidential declaration that such are exempt from public use or public service before they can be sold or leased, as the case may be, but such need not be solely through a presidential proclamation.

This Court has time and again ruled that to prove that a public land is alienable and disposable, what must be clearly established is the existence of a positive act of the government. This is not limited to a presidential proclamation. Such fact could additionally be proven through an executive order; an

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[41] 44 Phil. 614 (1923).

administrative action; investigative reports of Bureau of Lands investigators; and a legislative act or a statute.[42]

Thus, while we agree with the CA that a presidential edict is required to declare that the subject lots that are classified under Section 59 (d) of CA 141 as not necessary for public use or for public service before they can be leased to Alde, however, We disagree that it has to be in the form of a presidential Proclamation.

In the case at bar, the OP, upon the recommendation of the DENR Secretary, validly declared the subject lots disposable through lease, through an administrative action, one of the modes that is expressly recognized for said purpose pursuant to our pronouncement in *Republic v. Jabson*.[43] Hence, Alde validly complied with the administrative requirements which led to the issuance of the Order of Award for the Lease by the OP upon the recommendation of the DENR Secretary.

There was substantial compliance with posting and publication requirement.

While the factual findings of the appellate court are binding on this Court, We retain full discretion on whether to review the same.[44]

In this case, the appellate court held that the required posting and publication under the Public Land Act was not complied with.[45]

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[42] *Republic vs. Jabson*, G.R. No. 200223, June 6, 2018, 864 SCRA 391, 405 citing *Fortuna vs. Republic of the Philippines*, 728 Phil. 373, 382-383 (2014).

[43] *Id.*

[44] *Pascual vs. Burgos*, 776 Phil. 167 (2016).

[45] SECTION 63, CA 141: Whenever it is decided that lands covered by this Chapter (Chapter IX — Classification and Concession of Public Lands Suitable for Residence, Commerce and Industry) are not needed for public purposes, the Director of Lands shall ask the Secretary of Agriculture and Natural Resources (now Secretary of Environment and Natural Resources)

We disagree.

The Certificate of Publication issued by the National Printing Office showed that the Notice of Lease issued to Alde was published in the *Official Gazette* for six (6) consecutive weeks, specifically on: 1) September 9, 2002; 2) September 16, 2002; 3) September 23, 2002; 4) September 30, 2002; 5) October 7, 2002; and 6) October 14, 2002.[46]

Moreover, it was published in the provincial newspaper, *Zamboanga Star*, for three (3) consecutive weeks on July 26, 2002, August 2, 2002, and August 9, 2002, as evidenced by an Affidavit subscribed and sworn to by the publisher.[47]

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for authority to dispose of the same. Upon receipt of such authority, the Director of Lands shall give notice by public advertisement in the same manner as in the case of leases or sales of agricultural public land, that the Government will lease or sell, as the case may be, the lots or blocks specified in the advertisement, for the purpose stated in the notice and subject to the conditions specified in this Chapter.

SECTION 34, CA 141: A notice of the date and place of the auction of the right to lease the land shall be published and announced in the same manner as that prescribed for the publication and announcement of the notice of sale, in Section twenty-four of this Act.

SECTION 24, CA 141: Lands sold under the provisions of this chapter (Chapter V - Sale) must be appraised in accordance with Section one hundred and sixteen of this Act. The Director of Lands shall announce the sale thereof by publishing the proper notice once a week for six consecutive weeks in the *Official Gazette*, and in two newspapers one published in Manila and the other published in the municipality or in the province where the lands are located, or in a neighboring province, and the same notice shall be posted on the bulletin board of the Bureau of Lands in Manila, and in the most conspicuous place in the provincial building, and the municipal building of the province and municipality, respectively, where the land is located, and, if practicable, on the land itself; but if the value of the land does not exceed two hundred and forty pesos, the publication in the *Official Gazette* and newspapers may be omitted. The notices shall be published one in English and the other (in Spanish or) in the local dialect, and shall fix a date not earlier than sixty days after the date of the notice upon which the land will be awarded to the highest bidder, or public bids will be called for, or other action will be taken as provided in this chapter.

[46] *CA rollo*, p. 134.

[47] *Id.* at 135.

In addition, this Court agrees with Alde that the MLA remains valid even beyond the posting and publication thereof because as an administrative proceeding before the CENRO, it is in the nature of an action *quasi in rem*.

In an action *quasi in rem*, an individual is named as defendant and the purpose of the proceeding is to subject his interests therein to the obligation or loan burdening the property. Actions *quasi in rem* deal with the status, ownership or liability of a particular property but which are intended to operate on these questions only as between the particular parties to the proceedings and not to ascertain or cut off the rights or interests of all possible claimants. The judgments therein are binding only upon the parties who joined in the action.[48]

Thus, the City Government of Zamboanga is not without recourse. It can legally step in and assert its interest after the expiration of the lease awarded to Alde.

In defending its case, it bears noting that the City Government did not present any presidential proclamation, executive order, statute, investigative report by the LMB or an administrative action, that clearly reserved the subject lots for public use by the local government. Not even the Local Government Code empowers local government units to reserve, on their own, particular public lands for the private domain or patrimonial property of the Government. By statute, this power to classify public lands as alienable and disposable and to relegate to the private domain or patrimonial property, is reposed in the President and the DENR Secretary, as delegated to them by Congress, through CA 141 and Presidential Decree (P.D.) No. 705.[49] Therefore, they cannot delegate the same to another office or officer, such as the City Government of Zamboanga. What has once been delegated by Congress can no longer be further delegated or redelegated by the original delegate to

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[48] *San Pedro vs. Ong*, 590 Phil. 781, 794 (2008).

[49] *The Forestry Reform Code of the Philippines*, dated May 19, 1975.

another, as expressed in the Latin maxim — *Delegata potestas non potest delegari*.[50]

Additionally, it would be the height of injustice if Alde loses his Award of Lease over the subject lots after having relied on and complied with the requirements under CA 141. For the government to renege on its Award of Lease to Alde — who faithfully complied with the requirements to lease the subject lots — is to undermine the people's trust in the Government which this Court cannot be a party to.

At this juncture, this Court holds that the presumption of regularity in the performance of official duties applies in the instant case. We find that the DENR and the OP did not commit acts in excess or lack of jurisdiction in awarding the lease to Alde.

To stress, CA 141 as amended, has given the President and the DENR Secretary leeway when it comes to disposing or conceding lands under Section 61 in relation to Section 59 (d). By all accounts, the OP and the DENR Secretary have legally exercised that authority through an administrative action. Thus, in fairness to Alde who faithfully complied with the requirements of the authorities concerned, the lease awarded to him should be given due course. Given the time that has lapsed for such award, so should the same be given with dispatch.

WHEREFORE, the Petition for Review is hereby **GRANTED**. The Decision of the Court of Appeals in C.A.-G.R. SP No. 04147-MIN dated February 27, 2014 and the Resolution dated September 26, 2014 are hereby **REVERSED** and **SET ASIDE**. Let the Miscellaneous Lease Application No. 097332-10, subject of the Order of Award dated July 2, 2003 issued by the Regional Executive Director, Department of Environment and Natural Resources-Region IX, be **GIVEN DUE COURSE WITH DISPATCH**. No cost.

SO ORDERED.

Leonen (Chairperson), *Inting, Delos Santos,* and *Rosario, JJ.*, concur.

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[50] *Dumo vs. Republic*, G.R. No. 218269, June 6, 2018, 865 SCRA 119, 157-158.

THIRD DIVISION

[G.R. No. 217169. November 4, 2020]

OMANFIL INTERNATIONAL MANPOWER DEVELOPMENT CORPORATION & MODH AL-ZOABI TECHNICAL PROJECTS CORP., *Petitioners*, *v.* **ROLANDO B. MESINA,** *Respondent*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; AUTHORIZED CAUSES; REQUISITES FOR A DISEASE TO BE A VALID GROUND FOR DISMISSAL.— [F]or a dismissal on the ground of disease to be considered valid, two requisites must concur: (a) the employee suffers from a disease which cannot be cured within six months and his/her continued employment is prohibited by law or prejudicial to his/her health or to the health of his/her co-employees, and (b) a certification to that effect must be issued by a competent public health authority.

In the instant case, petitioners did not comply with the foregoing requirements to justify Mesina's termination on the ground of a disease. . . .

Thus, when Mesina was repatriated on February 21, 2006, none of his medical records showed that his ailment was permanent or that he suffered from a disease which could not be cured within six months and that his continued employment was prohibited by law or prejudicial to his health or to the health of his co-employees. This is validated by the absence of the required Certification from a competent public authority certifying to such a health condition on his part.

2. ID.; MIGRANT WORKERS; SEAFARERS; COMPENSABILITY OF AN ILLNESS; FOR AN ILLNESS TO BE COMPENSABLE, IT IS ENOUGH THAT THE EMPLOYMENT HAD CONTRIBUTED, EVEN TO A SMALL DEGREE, TO THE DEVELOPMENT OF THE DISEASE.— [T]his Court finds that the very nature of petitioner's work as an Expediter had contributed to the aggravation of his illness - if indeed it was pre-existing at the time of his employment. In *De Leon v.*

Maunlad Trans, Inc., We have held that "it is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits provided therefor. It is enough that the employment had contributed, even to a small degree, to the development of the disease."

3. ID.; ID.; TERMINATION OF EMPLOYMENT; PURSUING AN ILLEGAL DISMISSAL CASE AGAINST ONE'S EMPLOYER NEGATES AN EMPLOYER'S CLAIM THAT THE EMPLOYEE VOLUNTARILY AGREED TO A REPATRIATION FOR MEDICAL TREATMENT.— [T]his Court finds that petitioners failed to substantiate their claim that Mesina voluntarily returned to the Philippines for medical treatment. If the repatriation was indeed voluntary on his part, he would not have pursued a case of illegal termination against petitioners which would cost him time and money. As it is, Mesina's immediate filing of a case of illegal dismissal negates petitioners' claim that he voluntarily agreed to his repatriation to seek medical treatment in his home country. Likewise, petitioners failed to establish the fact that they provided Mesina a re-entiy visa to support their argument that they did not dismiss him. In any case, even the existence of a re-entry visa does not necessarily defeat an illegal dismissal complaint.

APPEARANCES OF COUNSEL

Miguel T. Florendo for petitioners.
Meru Llantino Diaz-Salcedo Law Firm for respondent.

D E C I S I O N

HERNANDO, *J.*:

Challenged in this Petition[1] is the March 11, 2014 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 114750 which

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[1] *Rollo*, pp. 8-32.

[2] Id. at 34-45; penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Isaias P. Dicdican and Victoria Isabel A. Paredes.

held that respondent Rolando B. Mesina (Mesina) was illegally dismissed, and its February 25, 2015 Resolution[3] which denied the Motion for Reconsideration thereof.

The Antecedents

Petitioner Omanfil International Manpower Development Corporation (Omanfil) hired Mesina for an overseas work as an Expediter. Omanfil deployed him to petitioner Modh Al-Zoabi Technical Projects Corporation (MAZTPC; collectively petitioners) with a particular job assignment at Al Khaji Joint Operations (AKJO) in Dammam, Saudi Arabia.[4]

Mesina's employment contract which took effect on May 4, 2005, stated the following terms and conditions:

Position	Expediter
Duration	24 months
Monthly salary	SR4,000
Benefits	30 days annual leave after completion of 12 months service
Accident or illness	In the event of the employee being unable to discharge his duties through accident or illness incurred while working on the project or projects, medical treatment will be provided free by the employer. If the illness prolongs or is found to be permanent, the employee will be returned to point of departure at the employer's expense.[5]

On May 4, 2005, Mesina left for Saudi Arabia and commenced working with AKJO on May 7, 2005.[6]

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[3] Id. at 47-48; penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Isaias P. Dicdican and Normandie B. Pizarro.

[4] Id. at 50.

[5] Id. at 50-51.

[6] Id. at 51.

On the first week of February 2006, or after nine months since he started working, Mesina experienced chest pains. He was confined at a local hospital on February 11, 2006 on account thereof. His severe chest pain was diagnosed as a heart disease but he was discharged as his health was regarded "in good condition."[7]

On February 18, 2006, Mesina was again admitted to the same hospital because of chest pains. His condition eventually improved, but his doctor advised him to immediately undergo an Angiogram Test in a better equipped hospital. He was discharged on February 19, 2006.[8]

According to petitioners, Mesina opted to come home to the Philippines since he felt he could be treated better in his home country for his congenital heart ailment with his family around. They likewise claimed that they gave Mesina an entry-reentry visa so that he could return to them for work after his recovery.[9]

However, contrary to the foregoing, Mesina claimed[10] that against his will, the following day, or on February 20, 2006, MAZTPC requested AKJO to immediately repatriate him due to his serious medical condition.[11]

On February 22, 2006, Mesina was repatriated.[12]

During the first week of June 2006, Mesina reported to Omanfil and sought reimbursement for his medical expenses and for further expenses for the operation and treatment of his illness in the total amount of ₱500,000.00 and submitted, among others, a Philippine Heart Center's (PHC) quotation for operation materials in the amount of ₱366,099.90, exclusive of doctors'

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[7] Id.

[8] Id.

[9] Id. at 12.

[10] Id. at 258.

[11] Id. at 51 and 74.

[12] Id. at 51.

fees and hospitalization charges.[13] However, petitioners did not accede to his demands since pursuant to the employment contract, the free medical treatment may only be availed of by Mesina during the period of his employment.[14] Moreover, Mesina's heart ailment could not have been work-related or acquired during his short term employment of nine months, thus he is not entitled to free extensive medical treatment, as contemplated in Item 8 of his employment contract.[15]

Aggrieved by what he believed to be termination of his employment without any legal justification,[16] Mesina proceeded to file a case for illegal dismissal, refund of hospitalization and medical expenses, damages and attorney's fees[17] against petitioners.

Ruling of the Labor Arbiter:

In a Decision dated December 21, 2007,[18] the Labor Arbiter dismissed Mesina's claim for illegal dismissal but ordered petitioners to pay him separation pay.[19] The dispositive portion of said Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing complainant's claim for illegal dismissal for lack of merit. However, [petitioners] are ordered to pay complainant Rolando B. Mesina the sum of FOUR THOUSAND SAUDI RIYALS (SR4,000.00) or its peso equivalent at the time of payment, representing payment of his separation pay.
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> All other claims are dismissed for lack of merit.
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> SO ORDERED.[20]

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[13] Id. at 12-13.

[14] Id. at 13 and 25-26.

[15] Id. at 21.

[16] Id. at 59.

[17] Id. at 52.

[18] Id. at 58-64; penned by Labor Arbiter Pablo C. Espiritu, Jr.

[19] Id. at 37 and 52.

[20] Id. at 63-64.

Ruling of the National Labor Relations Commission (NLRC):

Mesina subsequently filed an appeal with the NLRC. However, in its May 29, 2009 Decision,[21] the NLRC affirmed the findings of the Labor Arbiter. It held that Mesina's dismissal was based on an authorized cause under the terms and conditions in his employment contract, that is, an employee will be repatriated if his illness, if incurred while working, is prolonged or is found to be permanent.[22] The dispositive portion of said Decision reads:

> WHEREFORE, the appealed Decision is hereby AFFIRMED and the appeal of complainant is DISMISSED for lack of merit.[23]

Mesina filed a Motion for Reconsideration of the foregoing Decision, which the NLRC denied in its February 26, 2010 Resolution.[24]

Ruling of the Court of Appeals:

Displeased, Mesina filed a Petition for *Certiorari* under Rule 65 of the Rules of Court with the CA.[25] In said petition, he prayed that the NLRC's Decision and Resolution be declared null and void for having been issued with grave abuse of discretion.[26]

In its March 11, 2014 Decision, the CA found that petitioners herein illegally dismissed Mesina when his contract was pre-terminated and he was repatriated back to the Philippines without any just or authorized cause.[27] Contrary to the NLRC's findings,

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[21] *Id.* at 49-55; penned by Commissioner Perlita B. Velasco and concurred in by Presiding Commissioner Gerardo C. Nograles and Commissioner Romeo L. Go.

[22] Id. at 53.

[23] Id. at 54.

[24] Id. at 56.

[25] Id. at 34.

[26] Id. at 37-38.

[27] Id. at 38.

the CA held that MAZCO pre-terminated Mesina's contract and repatriated him without any showing that his disease had been a prolonged one, or that such disease was found to be permanent.[28] Furthermore, the appellate court pointed out that petitioners herein "failed to prove, through the required Certification from a competent public authority, that petitioner Mesina's disease was of such nature or was at such a stage that the disease could not be cured within six (6) months even after proper medical treatment, or, that petitioner's continued employment was prejudicial to his health or to those of his colleagues."[29] The *fallo* of said Decision reads:

> **WHEREFORE**, the Petition is **GRANTED**. The assailed Decision and Resolution are **SET ASIDE** and **REVERSED**. A new one is rendered **DECLARING** private respondents Omanfil International Manpower Development Corporation and Modh Al-Zoabi Technical Projects Corporation Remco Transport liable for Illegal Dismissal and **ORDERING** them to pay, jointly and severally, petitioner Rolando B. Mesina full reimbursement of his Placement Fee and his salaries for the unexpired portion of his employment contract.
>
> The case is **REMANDED** to the Labor Arbiter for the computation of such monetary awards.
>
> **SO ORDERED.**[30]

Herein petitioners' Motion for Reconsideration of the foregoing Decision was denied by the appellate court's February 25, 2015 Resolution.

Aggrieved, petitioners filed the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Petitioners mainly assert that the CA erred in holding that Mesina was illegally dismissed because of the absence of a medical certificate as required under Sec. 8, Rule I, Book VI of the Omnibus Rules Implementing the Labor Code of the Philippines.[31]

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[28] Id. at 41.

[29] Id.

[30] Id. at 44.

[31] Id. at 19.

Our Ruling

After a careful review of the records on hand, We find no cogent reason to disturb the findings of the CA.

Item 8 of Mesina's employment contract with petitioners provides:

> In the event of the Employee being unable to discharge his duties through accident or illness incurred while working on the project or projects, medical treatment will be provided free by the employer. If the illness [is prolonged] or is found to be permanent, the employee will be returned to point of departure at the employer's expense. It should be noted that the employer will not be responsible for any medication required for personal injury or illness due to improper behavior by employee.[32]

On the other hand, an employer may terminate an employee's employment on the ground of a disease, as provided under Article 284 of the Labor Code:

> ARTICLE 299 [284]. *Disease as Ground for Termination*. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.[33]

However, Section 8, Rule 1 of the Omnibus Rules Implementing the Labor Code sets out the requirements in order to validly terminate an employee on the foregoing ground, to wit:

> SECTION 8. *Disease as a ground for dismissal*. — Where the employee suffers from a disease and his continued employment is

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[32] Id. at 17 and 105.

[33] Labor Code of the Philippines, Presidential Decree No. 442 (Amended & Renumbered), July 21, 2015.

prohibited by law or prejudicial to his health or to the health of his co-employees, the employer shall not terminate his employment unless there is a certification by competent public health authority that the disease is of such nature of at such a stage that it cannot be cured within a period of six (6) months even with proper medical treatment. If the disease or ailment can be cured within the period, the employer shall not terminate the employee but shall ask the employee to take a leave of absence. The employer shall reinstate such employee to his former position immediately upon the restoration of his normal health.[34]

In a bundle of cases,[35] We have held that for a dismissal on the ground of disease to be considered valid, two requisites must concur: (a) the employee suffers from a disease which cannot be cured within six months and his/her continued employment is prohibited by law or prejudicial to his/her health or to the health of his/her co-employees, and (b) a certification to that effect must be issued by a competent public health authority.

In the instant case, petitioners did not comply with the foregoing requirements to justify Mesina's termination on the ground of a disease. We note that MAZCO repatriated Mesina to the Philippines without any showing that he had a prolonged and permanent disease. Furthermore, Mesina's Medical Reports[36] established that he was first confined on February 11, 2006 due to acute retrosternal chest pain and upon his discharge on February 14, 2006, he was "in good general condition with an advice to [undergo] a percutaneous coronary intervention (PCI) for further evaluation and management." Similarly, during his second confinement on February 18, 2006 due to left sided precordial pain on his left shoulder and forearm, his February 20, 2006 Medical Report indicated that "[t]he patient was

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[34] Omnibus Rules Implementing the Labor Code, May 27, 1989.

[35] *Duterte v. Kingswood Trading Co., Inc.*, 561 Phil. 11, 18 (2007); *Crayons Processing, Inc. v. Pula*, 555 Phil. 527, 537 (2007); *Manly Express, Inc. v. Payong, Jr.*, 510 Phil. 810, 824 (2005).

[36] CA *rollo*, pp. 40-41.

admitted in the hospital under observation with follow up ECG & cardiac enzymes. ECG showed no new changes. The cardiac enzymes were within normal range. He was given a strong analgesic & the specific treatment & was discharged on 19.02.06 with an advice for urgent PCI for more evaluation. . . ."[37]

Thus, when Mesina was repatriated on February 21, 2006, none of his medical records showed that his ailment was permanent or that he suffered from a disease which could not be cured within six months and that his continued employment was prohibited by law or prejudicial to his health or to the health of his co-employees. This is validated by the absence of the required Certification from a competent public authority certifying to such a health condition on his part.

The CA therefore properly held that petitioners failed to comply with the provisions of Mesina's Employment Agreement/ Contract, and with the provisions of Article 284 of the Labor Code and Section 8, Rule I of the Omnibus Rules Implementing the Labor Code. Had they done so, Mesina's Ischaemic Heart Disease could have been considered as an authorized cause for his dismissal.[38]

Petitioners further assert that Mesina could not have acquired his ailment during his 9-month employment with them. They claim that Item 8 in Mesina's employment contract excludes his ailment of Ischaemic Heart Disease since it was a congenital one aggravated by an unhealthy lifestyle and therefore not related to work. It was also not possible for them to comply with the requirements mandated by law for termination on the ground of disease since they did not terminate Mesina's employment when he was repatriated on February 21, 2006. What transpired was that Mesina's temporary repatriation was for the sole purpose of his medical treatment in the Philippines, even if his illness was not work-related.[39]

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[37] Id. at 41.

[38] *Rollo*, p. 40.

[39] Id. at 26.

We find the foregoing arguments unmeritorious.

Firstly, this Court finds that the very nature of petitioner's work as an Expediter had contributed to the aggravation of his illness — if indeed it was pre-existing at the time of his employment. In *De Leon v. Maunlad Trans., Inc.*,[40] We have held that "it is not required that the employment be the sole factor in the growth, development or acceleration of the illness to entitle the claimant to the benefits provided therefor. It is enough that the employment had contributed, even to a small degree, to the development of the disease." Moreover, in *Wallem Maritime Services, Inc. v. National Labor Relations Commission*,[41] We pointed out that:

> Neither is it necessary, in order to recover compensation, that the employee must have been in perfect condition or health at the time he contracted the disease. Every workingman brings with him to his employment certain infirmities, and while the employer is not the insurer of the health of the employees, he takes them as he finds them and assumes the risk of liability. x x x[42]

Secondly, this Court finds that petitioners failed to substantiate their claim that Mesina voluntarily returned to the Philippines for medical treatment. If the repatriation was indeed voluntary on his part, he would not have pursued a case of illegal termination against petitioners which would cost him time and money. As it is, Mesina's immediate filing of a case of illegal dismissal negates petitioners' claim that he voluntarily agreed to his repatriation to seek medical treatment in his home country. Likewise, petitioners failed to establish the fact that they provided Mesina a re-entry visa to support their argument that they did not dismiss him. In any case, even the existence of a re-entry visa does not necessarily defeat an illegal dismissal complaint.

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[40] 805 Phil. 531, 541 (2017).

[41] 376 Phil. 738 (1999).

[42] Id. at 747.

WHEREFORE, the instant Petition is hereby **DENIED**. The assailed March 11, 2014 Decision and the February 25, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 114750 are hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Leonen (Chairperson), Inting, Delos Santos, and *Rosario, JJ.*, concur.

THIRD DIVISION

[G.R. No. 219243. November 4, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **ANTONIO PINGOL @ ANTON,** *Accused-Appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; AN APPEAL IN A CRIMINAL CASE OPENS THE ENTIRE CASE FOR REVIEW.— Since "an appeal in a criminal case opens the entire case for review[,] the Court can correct errors *unassigned* in the appeal." Hence, we modify the characterization of the crime committed by accused-appellant, as well as the amounts of damages awarded in favor of the victim.

2. CRIMINAL LAW; FORCIBLE ABDUCTION, ELEMENTS OF. — To constitute forcible abduction requires the concurrence of the following elements: "(1) the victim is a woman, regardless of age, civil status, or reputation, (2) she is taken against her will, and (3) the abduction was done with lewd designs."

3. ID.; RAPE, ELEMENTS OF.— [U]nder Article 266-A(1) of the Revised Penal Code, as amended by Republic Act No. 8353, rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
   a) Through force, threat, or intimidation;
   b) When the offended party is deprived of reason or otherwise unconscious;
   c) By means of fraudulent machination or grave abuse of authority; and
   d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

4. ID.; FORCIBLE ABDUCTION WITH RAPE, ELEMENTS OF. — Forcible abduction is deemed complexed by rape when the culprit has carnal knowledge of the woman "and there is (1) force or intimidation; (2) the woman is deprived of reason or otherwise unconscious; or (3) she is under 12 years of age or demented."

5. ID.; RAPE; FORCIBLE ABDUCTION IS ABSORBED BY RAPE WHEN THE ACCUSED'S PRIMARY INTENT IS TO HAVE CARNAL KNOWLEDGE OF THE VICTIM.— [F]orcible abduction is *absorbed* by rape when the primordial intent is to have carnal knowledge of the victim. "There is no complex crime of forcible abduction with rape if the primary objective of the accused is to commit rape."

Here, it was through the pretense that she would be brought to work that AAA was induced to board the company car with accused-appellant. Indubitably, there was no valid consent on her part, as the deceit became the constructive force that amply constituted the crime of forcible abduction.

Nevertheless, accused-appellant can only be convicted of rape. From the trial court's findings, it can be reasonably deduced that his main objective for the taking was to have carnal knowledge of AAA . . . .

6. ID.; ID.; REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, THE CREDIBLE TESTIMONY OF THE VICTIM CAN BE THE SOLE BASIS FOR ACCUSED'S CONVICTION.— In cases involving rape, "the credibility of the victim's testimony is almost always the single most important factor." When their statements are credible, it can be the "sole basis for accused's conviction."

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT, ESPECIALLY WHEN UPHELD BY THE COURT OF APPEALS, IS USUALLY AFFORDED UTMOST WEIGHT AND EVEN FINALITY; EXCEPTIONS.— The assessment of witnesses' credibility is best left to the trial court, as it had the chance to perceive their conduct during proceedings. Save in cases where the findings were attained arbitrarily or where significant incidents were overlooked which, if duly considered, would affect the result of the case, the trial court's evaluation is usually afforded utmost weight and even finality, especially when upheld by the Court of Appeals.

In this case, both the trial and appellate courts gave credence to AAA's testimony. Hence, it became imperative on accused-appellant to offer clear and convincing reasons for this Court to decide the appeal in his favor and set aside the lower court's unanimous determination. Yet, he miserably failed to do so.

We find no cogent reason to overturn the consistent findings that AAA's statements were "straightforward, candid, unflawed by inconsistencies or contradictions in its material points[.]" Besides, accused-appellant's manner of committing the act of rape is clearly established by the victim's testimony . . . .

8. ID.; ID.; CRIMINAL LAW; RAPE; MEDICAL FINDINGS; MOTIVE; A WOMAN WOULD NOT FALSELY CONVEY A TALE OF RAPE, UNDERGO EXAMINATION OF HER PRIVATE PARTS, AND EXPOSE HERSELF TO PUBLIC TRIAL IF SHE HAS NOT, IN TRUTH, BEEN RAPED.— Dr. Cunanan's findings showing deep laceration in AAA's genitals and abrasions on her extremities buttress AAA's assertion that accused-appellant forced himself upon her . . . .

. . .

. . . [The] testimonies reveal that, contrary to accused-appellant's claim, AAA's motel story was not merely fabricated. As the trial court aptly found, the defense has not shown any improper motive on AAA's part to falsely testify against accused-appellant. No woman would falsely convey a tale of defloration, undergo examination of her private parts, and expose herself to "public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her."

9. ID.; ID.; ID.; ID.; SWEETHEART THEORY; THE RELATIONSHIP BETWEEN THE ACCUSED AND THE VICTIM MUST BE PROVEN BY CONCRETE PROOF OF A ROMANTIC NATURE OR AT LEAST REINFORCED WITH TESTIMONIES OF WITNESSES.— For a plausible defense of sweetheart theory, the relationship must be proven by other evidence like love letters, documents, photographs, "or any concrete proof of a romantic nature." None of them are present here. As this is accused-appellant's foremost defense, he should have at least sufficiently reinforced it with testimonies of witnesses who knew about their purported relationship, but even this he did not bother doing.

10. ID.; ID.; ID.; ID.; ID.; BEING SWEETHEARTS DOES NOT DETERMINE CONSENT, SINCE A LOVE AFFAIR DOES NOT JUSTIFY RAPE.— In any case, even if accused-appellant and the victim were lovers, the law does not excuse the use of force and intimidation to satisfy carnal urges and desires. Being

sweethearts does not determine consent, since "a love affair does not justify rape, for the beloved cannot be sexually violated against her will."

11. CRIMINAL LAW; RAPE; A NON-CONSENSUAL ACT, EVEN WITHIN THE CONFINES OF MARRIAGE, CONSTITUTES RAPE.— "Even *married* couples, upon whom the law imposes the duty to cohabitate, are protected from forced sexual congress."

As explained in *People v. Jumawan*, husbands have no property rights over the bodies of their wives. Hence, a non-consensual sexual act—even within the confines of marriage—constitutes rape. In convicting the accused of the rape charges committed against his wife, this Court in *Jumawan* dismissed the accused's claim that "consent to copulation is presumed between cohabiting husband and wife unless the contrary is proved." This Court stressed that such archaic view has been overtaken by the present global values on equality of rights and regard for human dignity . . . .

12. ID.; ID.; RAPE IS CONSIDERED AS VIOLENCE AGAINST WOMEN REGARDLESS OF RELATIONSHIP.— We emphasize that rape under Article 266-A merely entails that sexual intercourse be enforced by a man on another individual, *regardless* of their relationship. Like so, Republic Act No. 9262 considers rape as violence against women which may be committed by a person against his wife, former wife, or whom one has or had an intimate relationship . . . .

13. ID.; ID.; REMEDIAL LAW; EVIDENCE; SWEETHEART DEFENSE; THE EXCULPATORY VALUE OF THE SWEETHEART DEFENSE HAS ALREADY BEEN DIMINISHED EXCEPT IN PROVING MOTIVE.— In light of advanced views on patriarchy, the exculpatory value of the sweetheart defense, except in proving motive, has already been diminished in our jurisprudence to the point of being negligible.

14. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; PEOPLE REACT DIFFERENTLY, AND THERE IS NO STANDARD FORM OF BEHAVIOR WHEN CONFRONTED BY UNUSUAL EVENTS.— Time and again, this Court has emphasized "that behavioral psychology would indicate that most people, confronted by unusual events, react dissimilarly to like situations." Here, from the beginning, AAA was already begging accused-appellant to let her go, but he turned deaf to

her protests all throughout the ordeal. It can thus reasonably be deduced that her seemingly passive conduct was a manifestation of desperation . . . .

Moreover, contrary to accused-appellant's assertion, there was no occasion for AAA to escape. . . .

. . .

. . . [W]e . . . cannot subscribe to accused-appellant's claim that AAA's act of signing the barangay blotter indicated her voluntariness to the elopement. As she was confined in a place where accused-appellant and his relatives reside, we agree with the Court of Appeals that *fear* might have been overwhelming and that her consent could not have been freely given since "she was in a place and situation where she had no choice but to affix her signature." This finds support in AAA's testimony . . . .

Similarly, accused-appellant's claim that AAA's silence before Atty. DDD was "a most strange reaction of a person who was purportedly abducted and raped" does not hold water. "The workings of a human mind are unpredictable; people react *differently* and there is no standard form of behavior when one is confronted by a shocking incident."

15. ID.; ID.; ID.; CRIMINAL LAW; RAPE; THE VICTIM'S DEMEANOR IMMEDIATELY FOLLOWING THE SEXUAL ASSAULT IS IMPORTANT IN ASCERTAINING THE TRUTHFULNESS OF HER CLAIM.— AAA's actuations after the incident bolstered her case against accused-appellant. The victim's demeanor immediately following a purported sexual assault is important in ascertaining the truthfulness of . . . [her] claims. "For instance, the victim's instant willingness, as well as courage, to face interrogation and medical examination could be a mute but eloquent proof of the truth of her claim." Here, when AAA was brought home to Laguna, she immediately underwent a medical examination and consequently filed a complaint against accused-appellant.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Villones Law Offices for accused-appellant.

D E C I S I O N

LEONEN, *J.*:

An accused's bare invocation of the sweetheart defense can never suffice without proof establishing the purported romantic relationship with the victim.

This Court resolves an appeal[1] assailing the Decision[2] of the Court of Appeals, which affirmed with modifications the Regional Trial Court Judgment[3] ruling that Antonio Pingol @ "Anton" (Pingol) was guilty beyond reasonable doubt of forcible abduction with rape.

Private complainant AAA[4] and Pingol were co-workers at [redacted],[5] a service provider for the [redacted][6] in Laguna.[7]

On August 23, 1999, an Information for forcible abduction with rape pursuant to Article 48 in relation to Articles 335[8]

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[1] *Rollo*, pp. 21-23, Notice of Appeal.

[2] Id. at pp. 2-20, The July 25, 2014 Decision in CA-G.R. CR-HC No. 05130 was penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Sesinando Villon and Florito S. Macalino of the Fifteenth Division of the Court of Appeals, Manila.

[3] CA *rollo*, pp. 15-82. The January 27, 2011 Judgment in Criminal Case No. 10733-B was penned by Presiding Judge Marino E. Rubia of the Regional Trial Court of Biñan, Laguna, Branch 24.

[4] In view of Supreme Court Amended Administrative Circular No. 83-15 (2017), the real names of victims and other information that would establish their identity was either withheld or replaced with fictitious names.

[5] In the Brief submitted by accused-appellant (CA *rollo*, p. 107), it was mentioned that he was a steel-man at [redacted], a construction company which has a "wastewater facility installation project at the [redacted] at Canlubang, Laguna." However, in the Brief submitted by appellee (CA *rollo*, p. 178), it was stated that SDIC is an agency which provides medical services to companies.

[6] *Rollo*, p. 3, CA Decision.

[7] CA *rollo*, p. 17, RTC Decision.

[8] *See* Republic Act No. 7659 (1993), sec. 11, Death Penalty Law.

(now Art. 266-A) and 342 of the Revised Penal Code was filed against Pingol, the accusatory portion of which reads:

That on or about January 29, 1999 in the Municipality of [redacted], Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, accused Antonio Pingol alias "Anton" with intent to satisfy his lust by means of force, violence and intimidation, and with the use of a White Nissan Sentra bearing Plate No. PNB-897 and registered in the name of Carlo Guanzon, did then and there willfully, unlawfully and feloniously abduct, take and carry away [AAA] from her home at Brgy. [redacted], Laguna by means of deceit, and pretense of bringing her to Canlubang, Laguna where she is working succeeded in forcibly bringing her in a motel somewhere in Pampanga, did then and there feloniously, willfully and unlawfully and by means of force, violence and intimidation have sexual intercourse with her against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.[9]

Pingol was apprehended on September 17, 1999.[10] On arraignment, Pingol pleaded not guilty plea to the crime charged. Pursuant to his urgent motion for bail, trial on the merits immediately followed.[11]

The prosecution presented the following witnesses: AAA;[12] her mother BBB;[13] Dr. Soledad Rosanna C. Cunanan (Dr.

ARTICLE 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by ***reclusion perpetua***. . . (Emphasis supplied)

[9] CA *rollo*, pp. 15-16.

[10] *Rollo*, p. 5.

[11] Id. at 16.

[12] Id.

[13] Id. at 75.

Cunanan), the municipal health officer;[14] Barangay Captain Adriano Camalit[15] (Barangay Captain Camalit);[16] and AAA's uncles, CCC[17] and Atty. DDD.[18]

Their statements corroborated the following account of events:

AAA testified that Pingol, at about 4:00 p.m. on January 29, 1999, called to say that he would fetch her[19] at her house.[20] She declined, but Pingol insisted and explained that their supervisor, Engineer Mañalac, assented to the use of the company car.[21]

Pingol arrived at around 7:45 p.m.[22] AAA thought that, under the direction of Engineer Mañalac, she would be brought to their workplace.[23] They left the house at about 8:30 p.m.[24]

While on their way, AAA asked why they were taking a different route. Pingol responded that Engineer Mañalac allegedly needed to use the car. While nearing South Luzon Expressway, however, he suddenly detoured to Manila on the pretense that he would be meeting someone.[25] AAA then asked Pingol to just drop her off along the way, or to instead bring her back home. Her words fell on deaf ears as he merely continued driving. She cried and pleaded, but he only laughed

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[14] CA *rollo*, p. 30.

[15] He is the Barangay Captain of the place where AAA and her family are residing.

[16] CA *rollo*, p. 37. In the RTC and CA Decisions, he was also referred to as Barangay Captain Adriano Camalig.

[17] Id. at 41. His wife is the sister of BBB.

[18] Id. at 53-54. He is BBB's brother.

[19] *Rollo*, p. 5.

[20] CA *rollo*, p. 16.

[21] *Rollo*, p. 5.

[22] Id.

[23] CA *rollo*, p. 17.

[24] *Rollo*, p. 5.

[25] Id.

it off and told her that they would be going to Pampanga since he loved her so.[26]

At some point, Pingol dropped by his sister's house, leaving AAA in the car. She did not try to escape because he told her that they would be heading back to Laguna. Yet, as they moved along, he continued driving until AAA saw the "Welcome Pampanga" signage at around 2:00 a.m. the following day.[27]

Soon they reached an enclosed compound with multiple apartments. Pingol parked the car in one of the garages. When the gate automatically closed, he forced AAA to get out of the car, but she refused. He then reclined her seat, mounted her, and kissed her. She could only move her head since his weight was pressing on her body. He then pulled down her pants, lifted her shirt and bra, caressed her breasts, and kissed her nipples. AAA pleaded for him to stop, but instead he held her left arm down while he removed his pants. With AAA fending him off, Pingol took time to insert his penis into her vagina, but as AAA soon became exhausted to fight, he finally succeeded. After that, he wiped her face with his shirt and drove out of the gate.[28]

Pingol proceeded to the house of his siblings. Despite wanting to escape, AAA stayed inside the car as she was too weak to move, and because she was not familiar with the place.[29] AAA then remembered being in the house of Pingol's grandfather[30] at Barangay Pulong Masle in Guagua, Pampanga.[31] When his relatives saw her crying, they invited her for breakfast, but she declined.[32] When asked if she and Pingol were a couple, she said no. When Pingol's aunt asked her to sign a barangay blotter stating that she acquiesced to what had happened, she

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[26] CA *rollo*, p. 18.

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

[28] Id. at 6.

[29] Id.

[30] CA *rollo*, p. 19.

[31] Id. at 38.

[32] Id. at 19.

refused and told her that she would only do so if accompanied by a relative.[33]

While in their house, Pingol's aunt received a call from Engineer Mañalac. The aunt passed the phone to AAA, who told Engineer Mañalac that she was merely brought there by Pingol and that she did not wish to be there. To this, Engineer Mañalac merely responded, "*[P]ag-usapan na lang ninyo ang nangyari*."[34] Later, a barangay official arrived with a handwritten paper captioned as barangay blotter.[35] Against her will and due to the insistence of Pingol's relatives, AAA acceded to sign it.[36]

According to BBB, Pingol's mother called at around 9:00 a.m. on January 30, 1999 to say that AAA was in Pampanga with her son.[37] BBB asked if she could talk to her daughter, but Pingol's mother merely assured her that everything was fine and that they would bring AAA back home.[38] Worried, BBB asked help from her brother Atty. DDD[39] and her brother-in-law, DDD.[40]

DDD testified that they went to the office of their barangay captain to report the incident and have it recorded in the blotter.[41] Atty. DDD added that together with other relatives, they also went to AAA's workplace and were able to procure a sketch of her location from their supervisor.[42] As BBB was being hysterical,[43] only DDD, Atty. DDD, Barangay Captain Camalit,

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[33] Id. at 21-22.

[34] Id. at 22.

[35] *Rollo*, p. 6.

[36] CA *rollo*, p. 22.

[37] Id. at 75.

[38] Id. at 78.

[39] *Rollo*, p. 6.

[40] CA *rollo*, p. 41.

[41] Id.

[42] Id. at 54-55.

[43] Id. at 77.

and other barangay officials proceeded to Pulong Masle on board the patrol car.[44]

Barangay Captain Camalit testified that they asked help from the barangay captain of Pulong Masle. It took them a while before they found AAA, who was crying and appeared terrified.[45] Initially, Pingol's relatives refused to let AAA go as they feared what would happen,[46] and insisted that she should just go back with them to Laguna the following day.[47]

Dr. Cunanan[48] conducted AAA's examination.[49] Based on her findings, AAA's "hymen had a deep-healing laceration at 7'o clock position and an erythematous abrasion of the posterior fourchette, the posterior vulvar area."[50] In her opinion, the laceration was caused by a force in the genital organ which might have happened within 24 to 48 hours.[51] She also remembered executing another medical report on AAA's physical injuries where she noted some abrasions on her extremities.[52]

AAA denied having a relationship with Pingol and clarified that they have only known each other for a month. Nevertheless, she admitted on cross-examination that before the incident, she ate with him at least twice after her shift. There was also a time when the company car broke down on their way to work, which prompted Pingol to park at a gas station close to Calesa

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[44] Id. at 43-48. In his testimony, DDD specified that when they went to Pampanga, they were accompanied by their Barangay Captain and his driver, as well as two unnamed barangay tanods and a civilian who was allegedly neither connected to him nor the barangay.

[45] Id. at 38-39.

[46] Id. at 39.

[47] Id. at 56.

[48] *Rollo*, p. 4. Dr. Cunanan examined AAA on February 1, 1999.

[49] CA *rollo*, p. 30.

[50] *Rollo*, pp. 8 and 32.

[51] Id. at 8. *See also* pp. 32-33.

[52] CA *rollo*, p. 34.

Café.[53] She recalled staying with him inside the car until 5:00 a.m. the next day and going home just to change her clothes, then going back with Pingol to explain to Engineer Mañalac that the car's engine was damaged.[54]

AAA also clarified that all throughout the ride on the day of the incident, she remained mum despite stopping at toll stations since, allegedly, no one was manning the booths. She added that no one was in the motel Pingol brought her to.[55]

According to BBB, it was Engineer Mañalac who would usually bring her daughter to work. She only saw Pingol once on January 29, 1999 when he fetched AAA at their house, and denied that there had been courtship between the two.[56] When asked about AAA and Pingol spending the night in the car a few days before the incident, BBB claimed that AAA never brought up the matter to her.[57]

On ocular inspection, the prosecutor perceived that the inside of the company car cannot be seen from the outside and the car's broken lock cannot be opened easily. When AAA was asked to show how the rape happened, she "sat at the right seat and moved it back to create space."[58]

In the course of the proceedings, the trial court denied Pingol's petition for bail. Hence, the presentation of evidence-in-chief continued.[59]

The defense, on the other hand, presented the following witnesses: Pingol; his sister Mary Luz Evangelista (Luz);[60]

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[53] In the RTC Decision (CA *rollo*, p. 61), this is also referred to as "*Kalesa Café*."

[54] *Rollo*, p. 7.

[55] *Rollo*, p. 7.

[56] CA *rollo*, p. 75.

[57] *Rollo*, p. 7.

[58] Id. at 8.

[59] CA *rollo*, p. 52.

[60] *Rollo*, p. 89.

Barangay Pulong Masle Lupong Tagapamayapa member PO2 Serafin Dizon (Dizon);[61] and Pingol's mother, Edelwina Pingol (Edelwina).[62]

Pingol banked on the sweetheart theory, insisting that AAA was his girlfriend and that they intended to elope.[63] He courted her after they had been introduced on December 5, 1998[64] by a certain "Dina,"[65] AAA's co-nurse at SIDC.[66] He would allegedly pass by the company clinic before and after work. Pingol also recalled fetching her at home for around 15 to 20 times using the company car and having met BBB four times during his visits there. They eventually became a couple, but BBB was against it since she was "choosy."[67]

Two to three days after December 25, 1998, he allegedly went with AAA to Calesa Café to discuss their relationship. They were not able to go home since the car engine would not start, so they spent the night in the car where they kissed and talked about intending to stay in Guagua, Pampanga.[68] Pingol added that they could not simply get married despite being of legal age[69] since BBB was against their relationship.[70]

As planned, Pingol fetched AAA at home on January 29, 1999. While en route to Pampanga, they dropped by the houses of his sisters Luz and Carol in Novaliches and Ebus, Guagua

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[61] CA *rollo*, p. 73.

[62] *Rollo*, p. 9. In the RTC Decision (CA *rollo*, p. 73), she was also referred to as "*Wilma Pingol*."

[63] Id. at 8.

[64] Id.

[65] Id. CA *rollo*, p. 58.

[66] *Rollo*, p. 8.

[67] Id.

[68] Id. at 9.

[69] In the RTC Decision (CA *rollo*, p. 63), Pingol claimed that he was then 23 while AAA was turning 23.

[70] *Rollo*, p. 9.

to tell them about the elopement.[71] Luz verified that the two went there at around midnight. She allegedly asked them to stay for the night, but AAA declined the offer since she wanted to go straight to Pampanga.[72]

Pingol further narrated that when they reached Pampanga at around 7:00 a.m. on January 30, 2009, his mother advised them to inform AAA's parents about the elopement. Since they could not reach AAA's family over the phone, they called Engineer Mañalac instead and notified him of their location. Pingol said that they slept for a few hours, but nothing happened. It was later that day, between 1:00 p.m. and 4:00 p.m., when they allegedly engaged in the "usual activity" that a couple does.[73]

According to Pingol, AAA even confirmed to the barangay officers of Pulong Masle that she freely went with him. The barangay officers, who similarly stood as their witnesses, prepared the blotter they duly signed. At about 4:00 p.m. that same day, his relatives[74] went to AAA's residence in Laguna. However, even before they reached their destination, they were told that AAA's relatives were already in Pampanga. On the pretense that AAA would be blamed in case something bad happens to her ailing mother and grandmother, AAA's relatives succeeded in bringing her home.[75]

On cross-examination, Pingol posited that he did not know why AAA filed the case. He insisted that despite the barangay officials' advice, she allegedly signed the blotter even without her relatives. It was also revealed on cross-examination that the barangay captain is a distant relative of Pingol while Engineer Mañalac is his cousin.[76]

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[71] Id.

[72] CA *rollo*, p. 72.

[73] *Rollo*, p. 9.

[74] In the RTC Decision (CA *rollo*, p. 71). Pingol specified that his mother, his aunt Raquel, his aunt Viring and his uncle Domingo were the ones who went to AAA's house in Laguna.

[75] *Rollo*, pp. 9-10.

[76] Id. at 10.

Dizon testified that he prepared the blotter signed by Pingol and AAA. On cross-examination, he stated that no complaint was filed in his office, and that the incident was merely recorded in the barangay blotter per the request of Pingol's mother, Edelwina.[77]

For her part, Edelwina testified that she went to the barangay for advice and invited them[78] in her house to discuss the matter with her son and AAA. She corroborated AAA's declaration before the barangay officials that she freely went with Pingol. As advised by the barangay, she called AAA's mother and informed her about the situation. Edelwina left Pampanga for Laguna past 6:00 p.m., but turned back after being informed that AAA was already with her relatives. Edelwina went to AAA's place the following day, but she did not meet AAA's parents.[79]

When Edelwina was asked to identify AAA in court, she responded that AAA was not present there. However, the prosecution was able to establish AAA's presence in the courtroom.[80]

On January 27, 2011, the Regional Trial Court convicted[81] Pingol after finding that all the elements of forcible abduction with rape[82] were established. It explained that there was "constructive force" when AAA was made to believe that she would be brought to work for her 9:00 p.m. shift. Thus, the element of lewd design became manifest when Pingol began disregarding her pleas and when he later forced her to have sexual intercourse with him.[83]

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[77] CA *rollo*, pp. 73-74.

[78] In Edelwina's testimony (CA *rollo*, p. 74), said barangay officers were Mr. Santos and Barangay Tanod Manalac.

[79] CA *rollo*, pp. 74-75.

[80] Id. at 74.

[81] Id. at 15-82. Based on the trial court's decision, the case was inherited from two previous presiding judges and the case was already raffled to their branch as early as September 3, 1999.

[82] Id. at 81.

[83] Id. at 79-80.

The trial court gave full faith and credence to AAA's testimony because apart from it being straightforward, the trial court found no improper motive for her to falsely testify against Pingol. It frowned upon Pingol's claim of elopement, noting that AAA would not have undergone the examination of her private part and the difficulties of trial if her contentions were untrue and "if she was not solely motivated by the desire to have the person responsible for he[r] defloration apprehended and punished."[84]

The trial court considered the barangay blotter as proof of guilt on the part of Pingol and his relatives. It explained that if AAA indeed freely consented, there was no need to report the matter to the barangay. Besides, both of them were of legal age and in case they really did wish to marry, they could do so even without their parents' consent.[85]

Finally, in the absence of compelling evidence, the trial court was not persuaded of Pingol's sweetheart theory. It held that such defense "does not rule out rape."[86] Even if the theory were true, the trial court ruled that "the relationship does not, by itself, establish consent for love is not a license for lust."[87] The dispositive portion of its Decision reads:

> Wherefore, in the light of the foregoing, and pursuant to Art. 48 in relation to Articles 342 and 355 (now 266-A) of the Revised Penal Code, the herein accused i[s] found **GUILTY** of the crime of Forcible Abduction With Rape and he is hereby sentenced to suffer the penalty of *Reclusion Perpetua* and its accessory penalties.
>
> Accused is likewise ordered to pay the victim the amount of seventy-Five Thousand Pesos (₱75,000.00) by way of compensatory damages, the amount of Two Hundred Thousand Pesos (₱200,000.00) by way of moral damages, and, the cost of suit.[88] (Emphasis in the original)

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[84] Id. at 81.

[85] Id.

[86] Id.

[87] Id.

[88] Id. at 82.

On appeal, Pingol assailed AAA's credibility and asserted that her version of the story was beyond ordinary human experience. He insisted on his sweetheart defense and maintained that she freely went with him. He also belabored AAA's passive actuations during their long trip to Pampanga and asserted lack of proof that there was force, threat, or intimidation.[89]

On July 25, 2014, the Court of Appeals upheld[90] Pingol's conviction. It rejected his uncorroborated assertion of the sweetheart theory, pointing out that no co-employee, not even Engineer Mañalac, was presented to testify that he and AAA were indeed introduced by AAA's fellow nurse and that he was a frequent visitor in the company clinic.[91] It also found that AAA's admission that she dined with Pingol twice before the incident did not amply establish their alleged romantic relationship, since even friends go out together. Besides, to the Court of Appeals, AAA's immediate filing of the complaint belied the claim that they were a couple.[92]

As to the elements of the charge, the Court of Appeals ruled that Pingol's "deception suffices to constitute forcible abduction"[93] and the element of lewd design was made evident through the act of rape.[94] It held that the sweetheart defense essentially "admits carnal knowledge, the first element of rape"[95] while the pairing element of force and intimidation was proven with moral certainty by AAA's firm testimony, as corroborated by the medical findings.[96]

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[89] Id.

[90] *Rollo*, pp. 2-19. In the Court of Appeals Decision, fictitious initials were used to represent the victim and other pertinent information which might establish her identity and her immediate family.

[91] Id. at 12.

[92] Id. at 13.

[93] Id. at 14.

[94] Id.

[95] Id.

[96] Id. at 14-17.

The Court of Appeals also upheld the trial court's assessment of the witnesses' credibility[97] and found that AAA's statements were candid and corroborated in its material points. It emphasized that her seeming passive actuations during the incident did not, on its own, discredit her as there is "no standard human reaction when one is faced with an experience that is so traumatic[.]"[98] Contrary to Pingol's claim, the Court of Appeals found no proof that AAA had all the opportunity to escape, and pointed out that she might have been scared when she was in Pingol's place where his relatives "would naturally defend him[.]"[99]

With certain modifications on the damages awarded, the Court of Appeals disposed the case in this wise:

> **WHEREFORE**, the appeal is **DENIED**. The January 27, 2011 Judgment of the Regional Trial Court, Branch 24, Biñan, Laguna in Criminal Case No. 10733-B is **AFFIRMED** with the **MODIFICATIONS** that the accused-appellant is further ordered to pay AAA ₱50,000.00 civil indemnity and ₱30,000.00 exemplary damages. The award for compensatory damages is **DELETED** for want of supporting evidence while the award for moral damages is reduced to ₱50,000.00.
>
> **SO ORDERED**.[100] (Emphasis in the original)

Hence, Pingol filed a Notice of Appeal.[101]

The case records were forwarded to this Court[102] pursuant to the Court of Appeals' September 16, 2014 Resolution[103] giving due course to Pingol's Notice of Appeal.

On September 7, 2015, this Court noted the case records and required the parties to file their supplemental briefs.[104]

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[97] Id. at 17-18.

[98] Id. at 18.

[99] Id.

[100] Id. at 19.

[101] Id. at 21-23.

[102] Id. at 1.

[103] Id. at 24.

[104] Id. at 26-27.

Plaintiff-appellee People, through the Office of the Solicitor General, manifested that it would no longer file a supplemental brief.[105] On the other hand, Pingol filed his Supplemental Brief[106] dated March 6, 2017.[107]

Upon being required by this Court,[108] the Superintendent of the New Bilibid Prison confirmed[109] Pingol's confinement there.

Accused-appellant calls this Court to examine AAA's statement with utmost caution, given that only two persons are usually involved in rape.[110] He points out several matters that, to him, taints AAA's credibility and makes her version of the story contrary to human experience.[111]

First, there was allegedly not even the slightest hint of force, intimidation, or threat when he fetched AAA on the night of the incident. Her and her mother's statements reveal that she voluntarily went with him to elope, says accused-appellant.[112] He adds that there was no proof showing that he employed the same when he brought her to Pampanga or when the sexual intercourse happened. This is allegedly fatal to the prosecution's

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[105] Id. at 28-31.

[106] The Supplemental Brief submitted before this Court is a mere reiteration of the arguments in the Appellant's Brief (CA *rollo*, pp. 104-182).

[107] *Rollo*, pp. 45-98. Accused-appellant's counsel was required to show cause on September 19, 2016 (*Rollo*, p. 34) why he should not be disciplinary dealt with for failing to comply with the Court's September 7, 2015 Resolution. On January 30, 2017 (*rollo*, pp. 35-36), a fine was then imposed against him for failure to comply with the Court's Show Cause Resolution. On July 3, 2017 (*rollo*, pp. 100-101), this Court noted the counsel's payment of fine and change of address, as well as accused-appellant's Supplemental Brief.

[108] Id. at 103.

[109] Id. at 107 (Noted by this Court on February 28, 2018 at 109), 111 (pursuant to this Court's December 13, 2017 Resolution at *rollo*, p. 105 and noted by this Court on June 4, 2018).

[110] CA *rollo*, p. 117, Appellant's Brief.

[111] Id. at 120.

[112] Id. at 120-121.

case, as it must prove that the victim was taken "against her will." Besides, "[e]ven if the taking away of the woman was accomplished by means of deceit at the beginning, still, it is necessary to prove that the taking was by means of violence and intimidation later."[113]

Second, accused-appellant posits that apart from being well manned, toll gates have bars which prompts cars to make full stops whenever they pass through. Thus, he asserts that AAA could have easily escaped or gained sympathetic attention, more so as he was "unarmed and had not threatened her with bodily harm nor had shown any tendency to do violence."[114] He also underscores that if AAA were really abducted, she could have escaped when he left her inside the car or had informed his sisters about eloping.[115]

Accused-appellant adds that AAA's motel story was merely fabricated. He says that it would be improbable for her to say that she was raped in their house "since there were a number of individuals who were present during the time that [she] was there and who therefore would have contradicted any claim of rape being committed there."[116] He claims that if her assertions were true, she could have asked Engineer Mañalac to report the matter instead of just asking him to inform her parents about the elopement.[117] Besides, her voluntariness was allegedly made clear when she signed the blotter before barangay officials.[118] Accused-appellant insists that Dizon's uncontradicted testimony deserves credit as it was given "by an agent of a person in authority in connection with the performance of his duty and as directed by the Punong Barangay[.]"[119] He claims that AAA's

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[113] Id. at 124-125.

[114] Id. at 128.

[115] Id. at 129-138.

[116] Id. at 138-139.

[117] Id. at 143.

[118] Id. at 144.

[119] Id. at 155.

failure to report the incident to the barangay makes her assertion all the more doubtful.[120]

Furthermore, accused-appellant alleges that apart from the laceration in AAA's genitalia, the medico-legal report showed no other physical injuries. He assails as dubious Dr. Cunanan's purported second medical-legal report, as it was neither presented in court nor raised by any of the parties.[121]

Finally, accused-appellant finds it strange that AAA did not inform Atty. DDD about her alleged abduction and rape. In the words of her uncle, AAA was silent, and appeared ashamed of what she has done. In fact, accused-appellant insists, AAA was merely constrained to go with her relatives when they told her that she would be blamed for anything bad that might happen to her mother and grandmother.[122]

Accused-appellant insists that even if their purported relationship was not proven through photographs or letters, there were allegedly more than enough proof to corroborate it.[123]

Plaintiff-appellee,[124] on the other hand, maintains that individuals respond differently to varied situations "and there is no standard form of behavioral response when one is confronted with a strange or startling experience."[125] It says that apart from fear, AAA would surely have no strength to escape because she was brought to unfamiliar places and before people she hardly knew.[126]

As to the alleged lack of force and intimidation, plaintiff-appellee asserts that it should be seen "in light of the victim's perception and judgment at the time of the commission of the

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[120] Id.

[121] Id. at 156.

[122] Id. at 170.

[123] Id. at 178.

[124] Id. at 173-191, Appellee's Brief.

[125] Id. at 183.

[126] Id.

crime."[127] It "need not even be irresistible, it being enough that it is present and it brings about the desired result."[128] In this case, AAA's testimony that she was forced by Pingol was corroborated by Dr. Cunanan when she found "abrasions on her extremities as well as lacerations on her vagina."[129]

On the premise that only two individuals are involved in rape cases,[130] plaintiff-appellee asserts that "the sole testimony of the offended party is sufficient to sustain the accused's conviction if it rings the truth or is otherwise credible."[131] It maintains that AAA's testimony should be given full credence as it was candid, spontaneous, and corroborated in its material points. Besides, it points out that no woman would make a story of rape, permit an examination of her private parts, and allow to be perverted in trial if she was not solely driven by the urge to have the offender jailed or punished.[132]

Moreover, plaintiff-appellee underscores that all the elements of forcible abduction with rape were established. Based on the records, it was evident that AAA was taken against her will. Equally telling is the fact that she cried when Engineer Mañalac called, informing him that she did not wish to be with Pingol or to be in Pampanga. AAA's resistance also became apparent when abrasions were found on her extremities. As to the element of lewd design, it was manifested when Pingol committed rape.[133]

Lastly, plaintiff-appellee concludes that accused-appellant's true intent was not only to rape the victim, but also to make her his wife. By taking AAA against her will and eventually raping her, it follows that he would later convince her to stay.

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[127] Id. at 183-184.

[128] Id. at 184.

[129] Id.

[130] Id. at 185.

[131] Id. at 183.

[132] Id. at 185-186.

[133] Id. at 186-188.

Plaintiff-appellee points out that forcing AAA to sign the documents was a defensive move on the part of Pingol's relatives to protect him, "a natural reaction from family members."[134] However, when they left Laguna without AAA, their purported intention to show good faith became highly suspect.[135]

The sole issue here is whether or not the guilt of accused-appellant Antonio Pingol has been proven beyond reasonable doubt.

We rule against accused-appellant. His conviction is upheld.

I

Since "an appeal in a criminal case opens the entire case for review[,] the Court can correct errors *unassigned* in the appeal."[136] Hence, we modify the characterization of the crime committed by accused-appellant, as well as the amounts of damages awarded in favor of the victim.

Article 342 of the Revised Penal Code partly provides:

> ARTICLE 342. *Forcible Abduction.* — The abduction of any woman against her will and with lewd designs shall be punished by *reclusion temporal*.

To constitute forcible abduction requires the concurrence of the following elements: "(1) the victim is a woman, regardless of age, civil status, or reputation, (2) she is taken against her will, and (3) the abduction was done with lewd designs."[137]

Pertinently, under Article 266-A (1)[138] of the Revised Penal Code, as amended by Republic Act No. 8353, rape is committed:

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[134] Id. at 189.

[135] Id.

[136] *People v. Talan*, 591 Phil. 812, 818 (2008) [Per J. Carpio, First Division].

[137] *People v. Villanueva*, G.R. No. 230723, February 13, 2019 [Per J. Del Castillo, First Division].

[138] Otherwise known as The Anti-Rape Law of 1997.

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

    a) Through force, threat, or intimidation;
    b) When the offended party is deprived of reason or otherwise unconscious;
    c) By means of fraudulent machination or grave abuse of authority; and
    d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

Forcible abduction is deemed complexed by rape when the culprit has carnal knowledge of the woman "and there is (1) force or intimidation; (2) the woman is deprived of reason or otherwise unconscious; or (3) she is under 12 years of age or demented."[139] However, forcible abduction is *absorbed* by rape when the primordial intent is to have carnal knowledge of the victim.[140] "There is no complex crime of forcible abduction with rape if the primary objective of the accused is to commit rape."[141]

Here, it was through the pretense that she would be brought to work that AAA was induced to board the company car with accused-appellant.[142] Indubitably, there was no valid consent on her part, as the deceit became the constructive force that amply constituted the crime of forcible abduction.[143]

Nevertheless, accused-appellant can only be convicted of rape. From the trial court's findings, it can be reasonably deduced that his main objective for the taking was to have carnal knowledge of AAA:

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[139] *People v. Villanueva*, G.R. No. 230723, February 13, 2019 [Per J. Del Castillo, First Division].

[140] *People v. Domingo*, 810 Phil. 1040 (2017) [Per J. Bersamin, Third Division].

[141] Id. at 1041.

[142] *CA rollo*, p. 80, RTC Decision.

[143] *People v. Caraang*, 463 Phil. 715 (2003) [Per J. Panganiban, First Division].

In the case at bench, when complainant [AAA] was fetched at her residence at Barangay [redacted], Laguna by accused Antonio Pingol at about 8:30 in the evening of January 29, 1999, it was former's understanding that she will be brought by the accused to her workplace in Canlubang in time for her [9] o'clock evening duty and not to Pampanga. *As a matter of fact, when [AAA] noticed that, they were heading towards Manila (and not to Canlubang) and later to North Express Way (sic), she repeatedly questioned the accused where they were going and when accused simply ignored her continuing queries, she beg[ged] that she should be brought to her workplace or if not drop her somewhere so that she will just commute to her workplace in Canlubang. Notwithstanding her pleas, accused persisted to bring her to Pampanga and while there, accused brought her to a motel where she was being, forced to alight from the car and when she resisted, accused succeeded in raping her inside the car[.]*[144] (Emphasis supplied)

Accused-appellant, for his part, attacks AAA's credibility by listing circumstances that allegedly show the improbability of her narrations. He claims that these incidents were ignored by the trial court when it wholly adopted AAA's version of the story.[145]

In cases involving rape, "the credibility of the victim's testimony is almost always the single most important factor."[146] When their statements are credible, it can be the "sole basis for accused's conviction."[147]

The assessment of witnesses' credibility is best left to the trial court, as it had the chance to perceive their conduct during proceedings.[148] Save in cases where the findings were attained arbitrarily or where significant incidents were overlooked which, if duly considered, would affect the result of the case, the trial

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[144] *CA rollo*, pp. 79-80, RTC Decision.

[145] Id. at 120, Appellant's Brief.

[146] *People v. Talan*, 591 Phil. 812, 819 (2008) [Per J. Carpio, First Division].

[147] Id.

[148] Id.

court's evaluation is usually afforded utmost weight and even finality, especially when upheld by the Court of Appeals.[149]

In this case, both the trial[150] and appellate[151] courts gave credence to AAA's testimony. Hence, it became imperative on accused-appellant to offer clear and convincing reasons for this Court to decide the appeal in his favor and set aside the lower court's unanimous determination.[152] Yet, he miserably failed to do so. We find no cogent reason to overturn the consistent findings that AAA's statements were "straightforward, candid, unflawed by inconsistencies or contradictions in its material points[.]"[153] Besides, accused-appellant's manner of committing the act of rape is clearly established by the victim's testimony:

> 03: T: Bakit nais mong id[e]manda si Antonio Pingol?
> S: Dahil gusto ko pong magkaroon ng katarungan ang ginawa niya sa akin.
>
> 04: T: Ano ang ginawa niya sa iyo?
> S: Pinilit po niya ako madala sa Pampanga at pagkatapos ay pinagsamantalahan niya ako.
>
> 05: T: Kailan at saan naganap ang pangyayaring ito?
> S: Kinuha po niya ako sa bahay noong ika-29 ng Enero, 1999 humigit kumulang sa alas 8:30 ng gabi doon sa Barangay [redacted], Laguna at pinagsamantalahan niya ako noong ika-30 ng Enero 1999, sa pagitan ng alas 3:00 hanggang alas 4:00 ng madaling araw sa loob ng kotse sa Pampanga.
>
> . . . . . .
>
> 14. T: Papaano mo nalaman na Pampanga ang pinagdalhan sa iyo?
> S: Nakita ko po ang Welcome to Pampanga.

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[149] *People v. Domingo*, 810 Phil. 1040 (2017) [Per J. Bersamin, Third Division].

[150] CA *rollo*, pp. 80-81, RTC Decision.

[151] *Rollo*, pp. 17-18, CA Decision.

[152] *People v. Domingo*, 810 Phil. 1040 (2017) [Per J. Bersamin, Third Division].

[153] *Rollo*, p. 18, CA Decision. *See also* CA *rollo*, p. 81, RTC Decision.

15. T: Pagdating ninyo sa Pampanga, ano and sumunod na nangyari?
S: Dire-diretso pa rin ang sasakyan at ng dumating sa mga bahay na parang apartment at may malaking gate ay ipinasok niya ang kotse doon at sumarado po ang gate at ng nandoon na kami sa loob [ng] isang garahe na husto lamang ang kotse ay pinilit niya ako na bumaba sa kotse at hindi ako bumaba hanggang sa pinilit niya ako na bumaba at ng ayaw kong bumaba ay ibinaba niya ang sandalan ng upuan at dinaganan niya ako iniwasan ko siya pero hindi ako makagalaw dahil ulo na lamang ang aking naigagalaw hanggang sa hinahalikan na niya ako at patuloy pa rin ako sa pagmamakaawa hanggang sa ibaba na niya ang aking pantalon at panty hanggang sa tuhod at itaas niya ang aking t-shirt at bra hanggang sa may leeg na nakaipit pa rin ang aking katawan dahil nakadagan siya sa akin at dahil sa malaki syang lalaki ay hindi ako makakilos at ng mahubaran niya ako ay hinihimas niya ang aking dibdib at hinahalikan niya ang aking nipple at ibinaba niya ng isang kamay ang kaniyang pantalon at ang isang kamay ay nakahawak sa akin at ng makapaghubad na siya ay ipinasok ang ari niya sa akin umiiyak po ako pero ayaw niyang tigilan at natagalan po siya bago niya maipasok ang kaniyang ari dahil sa iyak po ako ng iyak at hindi ko po matagalan ang sakit at ng matapos siya ay hindi na po ako makagalaw dahil hinang-hina na ako at umalis siya sa pagkakadagan sa akin at ng hinubad niya ang kaniyang t-shirt at pinunasan ang pawis ko at hindi na siya nagbihis ng t-shirt at ini-start na niya ang sasakyan at tuloy-tuloy ng umalis hanggang sa hindi ko na rin alam ang nangyayari.[154]

Moreover, Dr. Cunanan's findings showing deep laceration in AAA's genitals and abrasions on her extremities buttress AAA's assertion that accused-appellant forced himself upon her:

Q: Do you remember, Dra., if you use[d] some instrument for the determination of physical signs of sexual abuse?
A: Usually, sir, I use gloves and cotton tip applicator.

. . . . . .

[154] CA *rollo*, pp. 16-19, RTC Decision.

Q: After using that kind of instrument, what have you found in the genital organ of the said patient?
A: *Based on my examination, sir, as far as I can recall from my written report, there is laceration of the hymen*.

Q: And what was the condition of the laceration of the hymen?
A: *There was a deep-healing laceration at 7 o'clock position and there was also an erythematous or abrasion on the posterior fourchette or the posterior of the vulvar area of the reproductive system, sir*.

. . . . . .

Q: In your medical opinion, Dr., is the kind of laceration that you have found in the genital organ of the victim may be considered (sic) an ordinary laceration once there is a sexual intercourse between a woman and a man?
A: *Considering that during the time of my examination, the patient is single and not married and the laceration is deep and I did not state here that there is healing or is healed already. So, the actual laceration is just new, sir*.

. . . . . .

Q: You stated that you have found a deep laceration [at the] 7 o'clock position. What instrument may have caused that particular laceration?
A: Any object that has penetrated in the hymenal area, sir.

Q: Would it be possible that it could have been caused by a male organ?
A: Yes, sir. It is possible.

. . . . . .

Q: Do you remember if you have noticed another sign of physical injury that was sustained on the body of the patient?
A: *As far as I remember, I have another Medical Report on physical injuries on the said patient and I stated that there [were] also signs of abrasion on the extremities of the patient*.

. . . . . .

Q: Dra., what may have caused those bruises or injuries that were sustained in the body of the said patient?
A: It is possible, sir, that the victim fought somebody and she

> was pushed and then fell hitting a hard object or a hard floor, thus the patient sustained those bruises or lacerations.[155] (Emphasis supplied)

These testimonies reveal that, contrary to accused-appellant's claim, AAA's motel story was not merely fabricated.[156] As the trial court aptly found, the defense has not shown any improper motive on AAA's part to falsely testify against accused-appellant.[157] No woman would falsely convey a tale of defloration, undergo examination of her private parts, and expose herself to "public trial or ridicule if she has not, in truth, been a victim of rape and impelled to seek justice for the wrong done to her."[158]

II

The totality of accused-appellant's arguments revolves around his sweetheart defense. Allegedly, on the night of the incident, AAA freely went with him to Pampanga pursuant to elope as planned, and hence, the sexual act was consensual.[159] He adds that while their relationship is not evinced by notes and photographs, his frequent visits to the clinic, his repeated act of bringing her home, the late dines, and them sleeping together in the car several days before the incident were more than adequate to substantiate it.[160]

Accused-appellant's bare assertions do not suffice.

For a plausible defense of sweetheart theory, the relationship must be proven by other evidence like love letters, documents, photographs, "or any concrete proof of a romantic nature."[161]

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[155] Id. at 31-34.

[156] *See* CA *rollo*, pp. 138-139.

[157] CA *rollo*, pp. 81.

[158] *People v. Bontuan*, 437 Phil. 233, 241 (2002) [Per J. Ynares-Santiago, First Division].

[159] CA *rollo*, pp. 116-125.

[160] Id. at 178.

[161] *People v. Sabredo*, 387 Phil. 682, 690 (2000) [Per J. Quisumbing, *En Banc*].

None of them are present here. As this is accused-appellant's foremost defense, he should have at least sufficiently reinforced it with testimonies of witnesses who knew about their purported relationship, but even this he did not bother doing. As the Court of Appeals aptly found:

> *Notably, despite Antonio's allegation that a fellow nurse in SIDC introduced him to AAA and he had frequented the clinic to see her, their co-employees never testified to lend credence to his claim that they had been sweethearts. Even Engr. Mañalac who authorized the use of the company car failed to corroborate Antonio's testimony*. Clearly, the sweetheart theory is a self-serving defense and mere fabrication of accused-appellant to exculpate himself from the charges filed against him. It also bears stressing that during her testimony before the trial court, AAA vehemently denied that she and Antonio were sweethearts.
>
> *Further, AAA's admission that she had dined with Antonio for two occasion[s] does not suffice to prove romantic relationship. Based on human experience, even friends go out together*. Besides, if there was indeed romantic relationship between Antonio and AAA, the latter's normal reaction would have been to cover up for the man she supposedly loved. On the contrary, AAA lost no time in filing a complaint against Antonio, right after she was rescued by her relatives.[162] (Emphasis supplied, citations omitted)

Moreover, from his actuations, accused-appellant's claim that there was a pre-arranged elopement spurs disbelief. Since he was claiming that AAA's mother BBB was against the relationship, it is incredulous that, instead of being discreet, he even opted to fetch AAA at home where BBB would surely be present. This makes his claim even more doubtful.

In any case, even if accused-appellant and the victim were lovers, the law does not excuse the use of force and intimidation to satisfy carnal urges and desires.[163] Being sweethearts does not determine consent, since "a love affair does not justify rape,

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[162] *Rollo*, pp. 12-13, CA Decision.

[163] *People v. Domingo*, 810 Phil. 1040 (2017) [Per J. Bersamin, Third Division].

for the beloved cannot be sexually violated against her will."[164] "Even *married* couples, upon whom the law imposes the duty to cohabitate, are protected from forced sexual congress."[165]

As explained in *People v. Jumawan*,[166] husbands have no property rights over the bodies of their wives. Hence, a non-consensual sexual act—even within the confines of marriage—constitutes rape.[167] In convicting the accused of the rape charges committed against his wife, this Court in *Jumawan* dismissed the accused's claim that "consent to copulation is presumed between cohabiting husband and wife unless the contrary is proved."[168] This Court stressed that such archaic view has been overtaken by the present global values on equality of rights and regard for human dignity:

> *The ancient customs and ideologies from which the irrevocable implied consent theory evolved have already been superseded by modern global principles on the equality of rights between men and women and respect for human dignity established in various international conventions, such as the CEDAW. The Philippines, as State Party to the CEDAW recognized that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between them. Accordingly, the country vowed to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices, customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. One of such measures is R.A. No. 8353 insofar as it eradicated the archaic notion that marital rape cannot exist because a husband has absolute proprietary rights over his wife's body and thus her consent to every act of sexual intimacy with him is always obligatory or at least, presumed.*

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[164] *People v. Bautista*, 474 Phil. 531, 556 (2004) [Per J. Panganiban, First Division].

[165] *People v. Quintos*, 746 Phil. 809, 826 (2014) [Per J. Leonen, Second Division].

[166] 733 Phil. 102 (2014) [Per J. Reyes, First Division].

[167] Id.

[168] Id. at 139.

Another important international instrument on gender equality is the UN Declaration on the Elimination of Violence Against Women, which was promulgated by the UN General Assembly subsequent to the CEDAW. The Declaration, in enumerating the forms of gender-based violence that constitute acts of discrimination against women, identified 'marital rape' as a species of sexual violence[.]

. . . . . .

Clearly, it is now acknowledged that rape, as a form of sexual violence, exists within marriage. A man who penetrates her wife without her consent or against her will commits sexual violence upon her, and the Philippines, as a State Party to the CEDAW and its accompanying Declaration, defines and penalizes the act as rape under R.A. No. 8353.

A woman is no longer the chattel-antiquated practices labeled her to be. A husband who has sexual intercourse with his wife is not merely using a property, he is fulfilling a marital consortium with a fellow human being with dignity equal to that he accords himself. He cannot be permitted to violate this dignity by coercing her to engage in a sexual act without her full and free consent. Surely, the Philippines cannot renege on its international commitments and accommodate conservative yet irrational notions on marital activities that have lost their relevance in a progressive society.

It is true that the Family Code, obligates the spouses to love one another but this rule sanctions affection and sexual intimacy, as expressions of love, that are both spontaneous and mutual and not the kind which is unilaterally exacted by force or coercion.

Further, the delicate and reverent nature of sexual intimacy between a husband and wife excludes cruelty and coercion. Sexual intimacy brings spouses wholeness and oneness. It is a gift and a participation in the mystery of creation. It is a deep sense of spiritual communion. It is a function which enlivens the hope of procreation and ensures the continuation of family relations. It is an expressive interest in each other's feelings at a time it is needed by the other and it can go a long way in deepening marital relationship. When it is egoistically utilized to despoil marital union in order to advance a felonious urge for coitus by force, violence or intimidation, the Court will step in to protect its lofty purpose, vindicate justice and protect our laws and State policies. Besides, a husband who feels aggrieved by his indifferent or uninterested wife's absolute refusal to engage in sexual

intimacy may legally seek the court's intervention to declare her psychologically incapacitated to fulfill an essential marital obligation. But he cannot and should not demand sexual intimacy from her coercively or violently.[169] (Emphasis supplied, citations omitted)

We emphasize that rape under Article 266-A merely entails that sexual intercourse be enforced by a man on another individual, *regardless* of their relationship.[170] Like so, Republic Act No. 9262 considers rape as violence against women which may be committed by a person against his wife, former wife, or whom one has or had an intimate relationship:

> SECTION 3. *Definition of Terms.* — As used in this Act, (a) *"Violence against women and their children" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child*, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:
>
> A. "Physical violence" refers to acts that include bodily or physical harm;
>
> B. *"Sexual violence" refers to an act which is sexual in nature, committed against a woman or her child*. It includes, but is not limited to:
>
> a) *rape*, sexual harassment, acts of lasciviousness[.][171] (Emphasis supplied)

In light of advanced views on patriarchy, the exculpatory value of the sweetheart defense, except in proving motive, has

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[169] Id. at 139-142.

[170] *People v. Quintos*, 746 Phil. 809 (2014) [Per J. Leonen, Second Division].

[171] Republic Act No. 9262 (2004), sec. 3. Anti-Violence Against Women and their Children Act of 2004.

already been diminished in our jurisprudence to the point of being negligible.

Accused-appellant also makes much of the claim that while on their way to Pampanga, AAA "did not make an outcry, attempt to flee, or act to attract sympathetic attention . . . despite ample opportunity to do so[.]"[172] He says that if she were really abducted, she would have easily alighted from the car in times of full stop on toll gates[173] or when she was left alone inside when they stopped by his sisters' separate houses. As support, he cites[174] *People v. Sison*[175] and *People v. Suñga*.[176]

Time and again, this Court has emphasized "that behavioral psychology would indicate that most people, confronted by unusual events, react dissimilarly to like situations."[177] Here, from the beginning, AAA was already begging accused-appellant to let her go, but he turned deaf to her protests all throughout the ordeal. It can thus reasonably be deduced that her seemingly passive conduct was a manifestation of desperation:

> 12. T: Maari mo bang isalaysay sa akin ang buo at tunay na pangyayari na naganap?
>
> S: Mga alas 4:00 po ng hapon, ika-29 ng Enero 1999, ay tumawag sa bahay si Antonio at susunduin raw niya ako ng gabi at tinanong ko po sa kaniya kung alam ni Sir Alfred at sinabi niya na "Oo, alam ni Sir" at nakapagpaalam na raw siya at sinabi ko na kung gagamitin ni Sir ang kotse ay huwag na akong sunduin sa bahay dahil kaya kong magcommute at sinabi ko na kung talagang walang lakad ay sunduin na lamang ako ng alas 9:00 ng gabi pero maagang dumating si Antonio sa bahay mga alas 7:45 ng gabi at ako ay nagmadaling magbihis dahil hindi pa ako nakakabihis ng dumating ang

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[172] CA *rollo*, p. 125.

[173] Id. at 128.

[174] Id. at 129-138.

[175] 210 Phil. 305 (1983) [Per J. Makasiar, *En Banc*].

[176] 208 Phil. 288 (1983) [Per J. Relova, Second Division].

[177] *People v. Rapisora*, 403 Phil. 194, 204 (2001) [Per J. Vitug, En Banc].

sasakyan at noong umalis kami sa bahay ay alas 8:30 na ng gabi at ng umalis kami ay dumaan kami sa San Lorenzo South Subdivision ang dahilan niya any mageexpressway kami para makarating kaagad sa planta dahil kailangan ang sasakyan at ng dumating kami sa exit papuntang Maynila ay iniliko niya doon ang kotse at sinabi niya na may dadaanan daw siya sandali. *Nagtalo kami dahil hindi doon ang daan papuntang Canlubang at sinabi ko sa kaniya na ibaba na lamang ako o kaya ay ibalik na lamang ako pero hindi siya nakikinig at natakot na ako sa kaniya dahil parang hindi niya ako naririnig at dumire-diretso na siyang papuntang Maynila at patuloy na ako sa pagmamaka-awa pero hindi niya ako pinakikinggan.*

13. T: Ano pa ang sumunod na pangyayari na iyong natatandaan?

S: Sinabi po niya sa akin na dadalhin niya ako sa Pampanga, ayaw kong pumayag at niyuyugyog ko siya at sinabi niya na kaya daw po ginagawa niya sa akin ang bagay na iyon ay dahil mahal daw po niya ako at nagmamaka-awa pa rin ako sa kanya pero ayaw po niyang makinig at sinabi niya na ayaw na niya akong mapahiwalay sa kaniya. *Umiiyak na po ako habang nagmamaka-awa ay ayaw pa rin niya akong pakinggan at tinatawanan lamang po niya ako at niloko-loko pa niya na iyon daw po ang daan papuntang Canlubang.*

. . . . . .

23. T: Mahaba ang biyahe[,] hindi ka ba nagkaroon ng pagkakataon na humingi ng tulong sa mga dinadaanan ng sasakyan?

S: *Wala po akong makitang makakatulong sa akin dahil tinted ang sasakyan at gabi na po.*

24. T: Bakit hindi ka sumigaw para makahingi ka ng tulong?

S: *Dahil alam ko pong walang makakarinig sa akin dahil kulong ang sasakyan at dinadaan ko siya sa pakiusap pero ayaw niyang makinig.*[178] (Emphasis supplied)

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[178] CA *rollo*, pp. 17-21.

Moreover, contrary to accused-appellant's assertion, there was no occasion for AAA to escape. As the Court of Appeals aptly found:

> Further, Antonio's postulate that AAA failed to make an attempt to flee despite ample opportunity to do so was belied by the evidence on record. *There is no indication that she had the chance to escape from her abductor. Although AAA was left alone in the car, it was not shown that the same was unlocked. As a matter of fact, it was established during the ocular inspection that the door of the car would not easily open because it was damaged. In addition, fear might have engulfed AAA considering that the places they stopped belong to Antonio's relatives who would naturally defend him*[.][179] (Emphasis supplied)

Notably, the cases accused-appellant cites are not on all fours here. Although this Court did acquit the accused in *People v. Sison*[180] because the victim failed to scream, escape, or create a commotion on their long trip from Quezon City to Novaliches, the facts there show that the ordeal commenced on a Sunday afternoon where the accused and the victim boarded a tricycle and had two jeepney rides in the course of the trip. This Court was also convinced that the victim voluntarily went with the accused because both her mother and employer neither looked for her during the six days she went missing, nor reported the matter to the authorities. Clearly, the events in *Sison* are not similar to what happened here.

As to *People v. Suñga*,[181] the accused was acquitted of rape because of the witnesses who saw him in the act of having

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[179] *Rollo*, p. 18.

[180] 210 Phil. 305 (1983) [Per J. Makasiar, En Banc].

In *Sison*, the alleged abduction happened on a Sunday afternoon somewhere in Quezon City. The accused, purportedly with the use of a knife, forced the victim to board his tricycle and then brought her to España Rotonda. From there, they boarded a passenger jeepney going to his aunt's house in Balintawak where he introduced her as his girlfriend. Afterwards, they proceeded to the house of accused's aunt in Novaliches where the incidents of rape allegedly happened. After six days, together with his relatives, accused brought back the victim to her mother.

[181] 208 Phil. 288 (1983) [Per J. Relova, Second Division].

carnal knowledge of a woman. This Court deduced that "as the flashlight was focused on the appellant and the woman, the latter must have been aware that there were people around from whom she could ask for help but which she did not."[182] Besides, while the victim in *Suñga* insisted that she was given fist blows on the chest, the examining doctor did not see any contusions on her body other than a mere abrasion on the upper chest, which was only about the size of a one-peso coin. Undoubtedly, like *Sison*, the events in *Suñga* are unlike the circumstances of this present case.

III

All told, we also cannot subscribe to accused-appellant's claim that AAA's act of signing the barangay blotter indicated her voluntariness to the elopement.[183] As she was confined in a place where accused-appellant and his relatives reside, we agree with the Court of Appeals that *fear* might have been overwhelming and that her consent could not have been freely given since "she was in a place and situation where she had no choice but to affix her signature."[184] This finds support in AAA's testimony, which reads:

> Q: What happened after that?
> A: That a certain person came and according to the relatives it was the barangay officer and I have to sign the blotter and they explained to me that it must appear that I voluntarily went with the accused so that nobody would be held liable.
>
> Q: After that what happened next?
> A: *Because of their insistence and because I was alone at that time, I was forced by the relatives of the accused to sign the blotter, sir. I signed it against my will*.[185] (Emphasis supplied, citation omitted)

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[182] Id. at 295. One of the witnesses was residing approximately fifteen (15) meters away from where the incident occurred.

[183] *See* CA *rollo*, p. 144.

[184] *Rollo*, p. 18.

[185] CA *rollo*, p. 22.

Similarly, accused-appellant's claim that AAA's silence before Atty. DDD was "a most strange reaction of a person who was purportedly abducted and raped"[186] does not hold water. "The workings of a human mind are unpredictable; people react *differently* and there is no standard form of behavior when one is confronted by a shocking incident."[187]

Nevertheless, AAA's actuations after the incident bolstered her case against accused-appellant. The victim's demeanor immediately following a purported sexual assault is important in ascertaining the truthfulness of their claims. "For instance, the victim's instant willingness, as well as courage, to face interrogation and medical examination could be a mute but eloquent proof of the truth of her claim."[188] Here, when AAA was brought home to Laguna, she immediately underwent a medical examination and consequently filed a complaint against accused-appellant.[189]

Lastly, Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, provides that rape under Article 266-A (1) is punishable by *reclusion perpetua*. In consonance with *People v. Jugueta*,[190] we modify the Court of Appeals' award of civil indemnity, moral damages, and exemplary damages to ₱75,000.00 each.

WHEREFORE, the appeal is **DISMISSED**. The assailed July 25, 2014 Decision of the Court of Appeals in CA-G.R. CR-HC No. 05130 is **MODIFIED** in that accused-appellant Antonio Pingol @ "Anton" is found **GUILTY** beyond reasonable doubt of rape under Article 266-A (1) of the Revised Penal Code, as amended by Republic Act No. 8353. He is sentenced to suffer the penalty of *reclusion perpetua* and is directed to

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[186] *See* CA *rollo*, p. 170.

[187] *People v. Magallones*, 530 Phil. 310, 317 (2006) [Per J. Ynares-Santiago, First Division].

[188] *People v. Rapisora*, 403 Phil. 194, 206 (2001) [Per J. Vitug, En Banc].

[189] *Rollo*, pp. 3-4.

[190] *People v. Jugueta*, 783 Phil. 806 (2016) [Per J. Peralta, En Banc].

pay the private complainant ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and the costs of suit.

All damages awarded shall be subject to interest at the rate of 6% per annum from the finality of this Decision until their full satisfaction.[191]

SO ORDERED.

Hernando, Inting, Delos Santos, and *Rosario, JJ.*, concur.

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

THIRD DIVISION

[G.R. No. 221981. November 4, 2020]

RAUL OFRACIO, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PETITION FOR REVIEW ON *CERTIORARI*; THE FACTUAL FINDINGS OF LOWER COURTS ARE BINDING ON THE SUPREME COURT EXCEPT WHEN THEY ARE GROUNDED ON SPECULATION, SURMISES, OR CONJECTURES. — [O]nly questions of law may be raised in a petition for review on *certiorari* and the factual findings of the Court of Appeals bind this Court. While there are exceptions to this rule, these exceptions must be alleged, substantiated, and proved by the parties.

Medina v. Mayor Asistio, Jr. lists 10 recognized exceptions to the rule:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises, or conjectures; . . .

The first exception where "the conclusion is a finding grounded entirely on speculation, surmises or conjectures" is present here, thus placing this case well-within the exception to the general rule that only questions of law may be brought to this Court in a Rule 45 petition.

In the case at bar, the lower courts found both parties negligent but that petitioner could have avoided the accident had he only acted with prudence. The Municipal Trial Court in Cities held:

. . .

The lower courts surmised that petitioner's failure to avoid the collision when he had every opportunity to do so made him liable under the doctrine of last clear chance.

2. CIVIL LAW; TORTS; DOCTRINE OF LAST CLEAR CHANCE; TWO SCENARIOS THEREOF; WHEN EITHER OF THE TWO SCENARIOS ARE PRESENT, THE PARTY WHO

FAILED TO AVOID THE HARM OR ACCIDENT DESPITE HAVING THE LAST OPPORTUNITY TO DO SO IS LIABLE FOR NEGLIGENCE. — The doctrine of last clear chance contemplates two (2) possible scenarios. First is when both parties are negligent but the negligent act of one party happens later in time than the negligent act of the other party. Second is when it is impossible to determine which party caused the accident. When either of the two (2) scenarios are present, the doctrine of last clear chance holds liable for negligence the party who had the last clear opportunity to avoid the resulting harm or accident but failed to do so.

3. ID.; ID.; ID.; THE DOCTRINE OF LAST CLEAR CHANCE FINDS NO APPLICATION WHEN THE PROSECUTION FAILED TO SHOW BEYOND REASONABLE DOUBT THAT THE ACCUSED WAS NEGLIGENT OR COULD HAVE AVOIDED THE ACCIDENT HAD HE ACTED WITH MORE PRUDENCE. — A tricycle traveling within the speed limit, can easily cover four (4) to five (5) meters (or 13-16.5 feet) in a few seconds. A speeding tricycle would traverse the same distance even faster. Hence, from the moment petitioner saw the approaching tricycle, which was barreling towards his lane in an erratic and unpredictable manner, no appreciable time had elapsed which would have afforded him the last clear opportunity to avoid the collision.

Even petitioner's act of transporting lumber on top of his tricycle cannot be said to be a negligent act per se. This Court takes judicial notice that the use of tricycles to transport heavy objects such as appliances and furniture is a common practice in the Philippines, particularly in rural areas, as tricycles are readily available and a more affordable way of transporting items, especially for those who cannot afford to rent a truck or jeepney.

Clearly, the doctrine of last clear chance is not applicable here since the prosecution failed to show beyond reasonable doubt that petitioner negligently acted or that he could have avoided the accident if he had acted with more prudence.

4. CRIMINAL LAW; RECKLESS IMPRUDENCE; ELEMENTS THEREOF. — Reckless imprudence "consists in voluntary, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of

precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time[,] and place." It has the following elements:

> (1) that the offender does or fails to do an act; (2) that the doing or the failure to do that act is voluntary; (3) that it be without malice; (4) that material damage results from the reckless imprudence; and (5) that there is inexcusable lack of precaution on the part of the offender, taking into consideration his employment or occupation, degree of intelligence, physical condition, and other circumstances regarding persons, time[,] and place.

. . .

Here, petitioner was slowly driving his lumber-laden tricycle on the lane where he was supposed to be, when Ramirez's tricycle appeared from the opposite direction, moving at great speed and in an erratic manner, before it crashed into his tricycle. Clearly, there was no imprudent or negligent act on petitioner's part which led to or contributed to the collision or to Ramirez's death.

5. ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; FLIGHT; FLIGHT AFTER THE ACCIDENT IS NOT THE WILLFUL OR INEXCUSABLE NEGLIGENCE REQUIRED TO UPHOLD A FINDING OF GUILT FOR RECKLESS IMPRUDENCE. — It seems as if the lower courts construed petitioner's flight after the accident as an absolute manifestation of guilt and ignored the other pieces of evidence which pointed to his lack of negligence. While leaving the severely injured Ramirez after the collision might have been a badge of guilt, this remains disputable and is not the willful and inexcusable negligence required to uphold a finding of guilt for reckless imprudence resulting to homicide and damage to property.

. . .

With the prosecution's failure to prove beyond reasonable doubt all the elements of reckless imprudence resulting to homicide or that petitioner was liable under the doctrine of last clear chance, petitioner must consequently be acquitted.

APPEARANCES OF COUNSEL

Allegre Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

The doctrine of last clear chance does not apply when only one of the parties was negligent. For the doctrine to apply, it must be shown that both parties were negligent but the negligent act of one was appreciably later in time than that of the other. It may also apply when it is impossible to determine who caused the resulting harm, thus, the one who had the last opportunity to avoid the impending harm and failed to do so will be held liable.[1]

This resolves a Petition for Review on Certiorari[2] assailing the Court of Appeals Decision[3] which affirmed the Regional Trial Court Decision[4] convicting Raul Ofracio (Ofracio) of Reckless Imprudence Resulting to Homicide with Damage to Property.

On May 29, 2002, Ofracio was driving a tricycle loaded with lumber when it collided with the tricycle being driven by Roy Ramirez (Ramirez). Ramirez was hit by the lumber, causing his instantaneous death. Ramirez's tricycle was also damaged in the collision.[5]

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[1] *LBC Air Cargo, Inc. v. Court of Appeals*, 311 Phil. 717, 722-723 (1995) [Per J. Vitug, Third Division] (citation omitted).

[2] *Rollo*, pp. 8-25.

[3] Id. at 27-34. The November 27, 2015 Decision docketed as CA-G.R. CR No. 35640 was penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Fernanda Lampas Peralta and Maria Elisa Sempio Diy of the Special Sixth Division, Court of Appeals, Manila.

[4] Id. at 27. The January 8, 2013 Decision was docketed as Criminal Case No. 2012-8402 and promulgated by Regional Trial Court, Branch 52, Sorsogon City.

[5] Id. at 28.

On June 25, 2002, a complaint for reckless imprudence resulting to homicide with damage to property was filed with the Municipal Trial Court in Cities, Branch 2, Sorsogon City against Ofracio. The Municipal Trial Court in Cities found probable cause and issued a warrant for Ofracio's arrest.[6]

On August 7, 2002, Ofracio entered a plea of not guilty to the charge against him.[7]

The parties admitted the following during the pre-trial conference:

> (T)he place, date[,] and time of the incident subject of the case; identity of the parties; that there was a vehicular accident involving two tricycles one of which was driven by accused Raul Ofracio; an investigation was conducted by the police authorities; and the competence of Dra. Myrna Listanco, who issued the Certificate of Death of the victim, Roy Ramirez.[8]

The prosecution presented the following as their witnesses: (a) SPO2 Camelo Murillo (SPO2 Murillo); (b) Carlos Dayao (Dayao); (c) Rosario Ramirez (Rosario); and (d) Dr. Larry Garrido (Dr. Garrido).

SPO2 Murillo testified that he was on duty at the Police Sub-Station 2 when a tricycle driver reported an accident in Bibincahan, Sorsogon City. When he arrived at the scene of the accident, he saw Ramirez lying face down on the road. He then asked a barangay tanod to bring Ramirez to the hospital. At the accident scene, he observed that some of the lumber atop Ofracio's tricycle had pierced the windshield of Ramirez's tricycle.[9]

Dayao testified that he was conversing with some friends at around 11:00 p.m. when he heard a loud thud and cries for help. He and his friends ran towards the noise and found Ramirez

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[6] Id.

[7] Id.

[8] Id.

[9] Id. at 29.

bloodied and lying on the ground, face down. Dayao admitted that he did not see the actual collision of the tricycles.[10]

Rosario was the deceased's mother and she testified on the expenses she incurred in burying her son and filing a case against Ofracio.[11]

Dr. Garrido, an expert witness who testified on the post-mortem examination report conducted by Dr. Myrna Jasmin-Listanco, concluded that the cause of Ramirez's death appeared to be "cerebral hemorrhage secondary to skull fracture secondary to vehicular accident."[12]

The defense presented two witnesses: (a) Ofracio and (b) Reyden Despuig (Despuig).

Ofracio testified that on May 29, 2002, past 11:00 p.m., he was transporting forty-six (46) pieces of lumber in a tricycle with Despuig as his passenger.[13]

Ofracio claimed that he was slowly and carefully driving because of his heavy cargo. As he was driving, he suddenly saw a bright light 4 to 5 meters in front of him. The collision occurred in Ofracio's lane, with his tricycle hitting Ramirez's sidecar. He admitted fleeing the scene of the accident but the following day, when he went to the hospital for his own injuries, he voluntarily surrendered to the police when he found out that they knew about his involvement in the collision.[14]

Despuig corroborated Ofracio's testimony.[15]

On June 1, 2011, the Municipal Trial Court in Cities, Branch 2 of Sorsogon City found Ofracio guilty beyond reasonable doubt of the crime of reckless imprudence resulting in

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[10] Id.

[11] Id.

[12] Id. at 29-30.

[13] Id. at 30.

[14] Id.

[15] Id.

homicide and sentenced him to an indeterminate penalty of four (4) months and one (1) day of *arresto mayor* as minimum, to four (4) years, nine (9) months and ten (10) days of *prision correccional* as maximum. Ofracio was also ordered to compensate the heirs of Ramirez in the amounts of ₱60,950.00 as actual damages, ₱50,000.00 as civil indemnity, and ₱30,000.00 as moral damages.[16]

Ofracio appealed, but the Regional Trial Court, Branch 52 of Sorsogon City affirmed the ruling of the Municipal Trial Court in Cities. The Regional Trial Court also denied his motion for reconsideration.[17]

Ofracio elevated the Regional Trial Court's ruling to the Court of Appeals, arguing that the Regional Trial Court erred in holding him liable under the doctrine of last clear chance.[18] However, the Court of Appeals[19] upheld the findings of both the Municipal Trial Court in Cities and the Regional Trial Court.[20]

In his Petition for Review on *Certiorari*[21] before this Court, petitioner posits that the Court of Appeals failed to take judicial notice of the laws of physics which find application in any vehicular accident.[22] Petitioner presents computations to show that contrary to the lower courts' findings, perceiving the imminent collision at a distance of only 4 or 5 meters, was not enough to avoid the collision, since the total stopping distance was 5.39m.[23]

Furthermore, petitioner maintains that he was slowly driving because his tricycle was weighed down by the 46 pieces of

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[16] Id. at 30-31.

[17] Id. at 31.

[18] Id.

[19] Id. at 27-34.

[20] Id. at 32-34.

[21] Id. at 8-25.

[22] Id. at 13-22.

[23] Id. at 19-21.

lumber it was transporting.[24] He states that the lumber on top of his tricycle were still in their original position even after the collision, supporting his testimony that he was not driving at high speed.[25]

Petitioner likewise claims that transporting lumber on top of a tricycle is a common practice in Sorsogon City and cannot be considered as imprudence and negligence per se, as long as the necessary precautions are taken to secure the lumber to the tricycle.[26]

In its Comment,[27] respondent People of the Philippines, represented by the Office of the Solicitor General, states that the factual issues raised in the Petition are beyond the ambit of a petition for review on certiorari.[28] Respondent also posits that the lower courts did not err when they unanimously found that even if Ramirez was driving his tricycle in a zigzagging motion, petitioner still had the last clear chance to avoid the collision.[29]

Petitioner was directed to submit a reply to respondent's Comment but he manifested that he was waiving his right to do so.[30]

The only issue raised for this Court's resolution is whether or not petitioner should be held liable under the doctrine of last clear chance.

The Petition is meritorious.

Pascual v. Burgos[31] instructs that only questions of law may be raised in a petition for review on *certiorari* and the factual

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[24] Id. at 16.

[25] Id. at 18.

[26] Id. at 22.

[27] Id. at 55-70.

[28] Id. at 61.

[29] Id. at 64-66.

[30] Id. at 94-96.

[31] 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

findings of the Court of Appeals bind this Court. While there are exceptions to this rule, these exceptions must be alleged, substantiated, and proved by the parties.[32]

Medina v. Mayor Asistio, Jr.[33] lists 10 recognized exceptions to the rule:

> (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.[34] (Citations omitted)

The first exception where "the conclusion is a finding grounded entirely on speculation, surmises or conjectures" is present here, thus placing this case well-within the exception to the general rule that only questions of law may be brought to this Court in a Rule 45 petition.

In the case at bar, the lower courts found both parties negligent but that petitioner could have avoided the accident had he only acted with prudence. The Municipal Trial Court in Cities held:

> (T)he accused himself testified, he saw the victim Roy Ramirez' tricycle approaching him in a zigzagging manner. At this point, the prudent driver seeing the possibility of a collision should have stopped immediately upon seeing the danger which was clearly approaching.

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[32] Id. at 184.

[33] 269 Phil. 225 (1990) [Per *J.* Bidin, Third Division].

[34] Id. at 232.

But alas, the accused did otherwise or proceeded to confront the peril looming closer.

This account cannot absolve the victim, Roy Ramirez from any negligence, as by accounts, he was driving in a zigzagging manner.

Considering that both drivers were negligent, the doctrine of Last Clear Chance finds application.[35]

The Court of Appeals then stated:

The doctrine of last clear chance states that where both parties are negligent but the negligent act of one is appreciably later than that of the other, or where it is impossible to determine whose fault or negligence caused the loss, the one who had the clear opportunity to avoid the loss but failed to do so is chargeable with the loss.

In the case at bar, assuming that the deceased Roy Ramirez was indeed driving his tricycle in a "zigzagging" and fast manner as claimed by Petitioner Raul Ofracio, the latter cannot be exonerated from his culpability for the death of Roy Ramirez, as he, himself, admitted that he already saw "a very bright light"/the incoming vehicle "about four (4) or five (5) meters away." In fact, in his testimony before the trial court, he stated:

. . . . . .

To our mind, considering that Petitioner was aware of the incoming tricycle as far away as 4 or 5 meters because of the bright headlight of the tricycle, he could have taken precautionary measures to avoid the collision with the other tricycle. He could have slowed down, parked at the side of the road, or applied his breaks and stopped on his tracks.

To make matters worse, records show that Petitioner had in his tricycle 46 pieces of lumber[,] some of which even protruded from his tricycle. The absence of any evidence showing that Petitioner made efforts to secure the said pieces of wood to his tricycle further evinces his imprudence and negligence.[36]

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[35] *Rollo*, pp. 31-32.

[36] Id. at 32-34.

The lower courts surmised that petitioner's failure to avoid the collision when he had every opportunity to do so made him liable under the doctrine of last clear chance.

The lower courts are mistaken.

The doctrine of last clear chance contemplates two (2) possible scenarios. First is when both parties are negligent but the negligent act of one party happens later in time than the negligent act of the other party. Second is when it is impossible to determine which party caused the accident. When either of the two (2) scenarios are present, the doctrine of last clear chance holds liable for negligence the party who had the last clear opportunity to avoid the resulting harm or accident but failed to do so.[37] *Bustamante v. Court of Appeals*[38] further explains:

> The practical import of the doctrine is that a negligent defendant is held liable to a negligent plaintiff, or even to a plaintiff who has been grossly negligent in placing himself in peril, if he, aware of the plaintiff's peril, or according to some authorities, should have been aware of it in the reasonable exercise of due care, had in fact an opportunity later than that of the plaintiff to avoid an accident.[39]

From every indication, it was Ramirez's act of driving his tricycle in a speedy and unpredictable manner (*i.e.*, zigzagging) which caused the accident. However, the lower courts also ascribed negligence to petitioner because he supposedly had enough time to either steer clear of Ramirez or stop his tricycle altogether to prevent the collision.

The records showed that Ramirez's tricycle hit petitioner's tricycle while the latter was within its lane, thereby substantiating petitioner's testimony that Ramirez was driving in a zigzag manner. This also demonstrated that petitioner stayed within his lane the entire time prior to the accident.

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[37] *Philippine National Railways Corporation v. Vizcara*, 682 Phil. 343, 358 (2012) [Per J. Reyes, Second Division].

[38] 271 Phil. 633 (1991) [Per J. Medialdea, First Division].

[39] Id. at 642.

Petitioner likewise testified that he was slowly driving prior to the accident, and this was corroborated by his passenger.[40] Additionally, he had 46 pieces of lumber strapped on top of his tricycle, which made it impossible for him to drive his tricycle at top speed. This was apparent during his cross-examination:

> COURT INTERPRETER:
>
> [Ofracio] A. I was still p[l]ying my route that day because of my purpose also to augment the family income.
>
> [Atty. Labitag] Q. And because you were then performing something illegal you were driving your motorized tricycle in a very fast speed?
>
> A. No Sir, at the time I cannot drive my tricycle fast or as fast as I wanted to because the fact is I had lumber in the tricycle and I cannot make the tricycle run as fast.
>
> Q. You wanted to run the tricycle fast at that time?
> A. No Sir.
>
> Q. You cannot run fast because your motorized tricycle was laden with lumber, 46 pieces in all according to the police report, do you agree with me Mr. witness?
> A. I was so careful in driving at that time because I was aware that I had so much lumber in my tricycle and it was heavy.[41]

Also, the fact that only two (2) pieces of lumber were dislodged from the roof of petitioner's tricycle even after the collision supports his testimony that he was slowly driving and that the pieces of lumber were secured to his tricycle.[42]

The lower courts concluded that petitioner had ample time to avoid Ramirez as he became aware of the oncoming tricycle when it was about 4-5 meters away, thus, he should have taken precautionary measures like slowing down, parking at the side of the road, or even stopping altogether.[43]

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[40] *Rollo*, p. 30.

[41] Id. at 17.

[42] Id. at 18 and 22.

[43] Id. at 33.

The lower courts erred on this point.

A tricycle, traveling within the speed limit, can easily cover four (4) to five (5) meters (or 13-16.5 feet) in a few seconds. A speeding tricycle would traverse the same distance even faster. Hence, from the moment petitioner saw the approaching tricycle, which was barreling towards his lane in an erratic and unpredictable manner, no appreciable time had elapsed which would have afforded him the last clear opportunity to avoid the collision.

Even petitioner's act of transporting lumber on top of his tricycle cannot be said to be a negligent act per se. This Court takes judicial notice[44] that the use of tricycles to transport heavy objects such as appliances and furniture is a common practice in the Philippines, particularly in rural areas, as tricycles are readily available and a more affordable way of transporting items, especially for those who cannot afford to rent a truck or jeepney.

Clearly, the doctrine of last clear chance is not applicable here since the prosecution failed to show beyond reasonable doubt that petitioner negligently acted or that he could have avoided the accident if he had acted with more prudence.

In the same manner, the prosecution failed to prove that petitioner was guilty of reckless imprudence as punished in Article 365[45] of the Revised Penal Code. Reckless imprudence "consists in voluntary, but without malice, doing or failing to

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[44] RULES OF COURT, Rule 129, sec. 2 provides:

SECTION 2. *Judicial notice, when discretionary*. — A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

[45] REV. PEN. CODE, art. 365 provides:

ARTICLE 365. Imprudence and Negligence. — Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of *arresto mayor* in its maximum period to *prisión correccional* in its medium period; if it would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium periods shall be imposed.

do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time[,] and place."[46] It has the following elements:

(1) that the offender does or fails to do an act; (2) that the doing or the failure to do that act is voluntary; (3) that it be without malice; (4) that material damage results from the reckless imprudence; and (5) that there is inexcusable lack of precaution on the part of the offender, taking into consideration his employment or occupation,

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Any person who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony, shall suffer the penalty of *arresto mayor* in its medium and maximum periods; if it would have constituted a less serious felony, the penalty of *arresto mayor* in its minimum period shall be imposed.
When the execution of the act covered by this article shall have only resulted in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damages to three times such value, but which shall in no case be less than 25 pesos.
A fine not exceeding 200 pesos and censure shall be imposed upon any person who, by simple imprudence or negligence, shall cause some wrong which, if done maliciously, would have constituted a light felony.
In the imposition of these penalties, the court shall exercise their sound discretion, without regard to the rules prescribed in article 62.
The provisions contained in this article shall not be applicable:
1. When the penalty provided for the offense is equal to or lower than those provided in the first two paragraphs of this article, in which case the court shall impose the penalty next lower in degree than that which should be imposed, in the period which they may deem proper to apply.
2. When, by imprudence or negligence and with violation of the Automobile Law, the death of a person shall be caused, in which case the defendant shall be punished by *prisión correccional* in its medium and maximum periods.
Reckless imprudence consists in voluntary, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.
Simple imprudence consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not immediate nor the danger clearly manifest.

[46] REV. PEN. CODE, art. 365.

degree of intelligence, physical condition, and other circumstances regarding persons, time[,] and place.[47]

Gonzaga v. People[48] instructs that the prosecution must show the "direct causal connection between such negligence and the injuries or damages complained of"[49] to establish a motorist's liability for negligence. *Gonzaga* likewise stressed that mere negligence is not enough to constitute reckless driving, rather, the prosecution must prove that the motorist acted in utter disregard of the consequence of his or her action, as it is the "inexcusable lack of precaution or conscious indifference to the consequences of the conduct which supplies the criminal intent and brings an act of mere negligence and imprudence under the operation of the penal law."[50]

Here, petitioner was slowly driving his lumber-laden tricycle on the lane where he was supposed to be, when Ramirez's tricycle appeared from the opposite direction, moving at great speed and in an erratic manner, before it crashed into his tricycle. Clearly, there was no imprudent or negligent act on petitioner's part which led to or contributed to the collision or to Ramirez's death.

It seems as if the lower courts construed petitioner's flight after the accident as an absolute manifestation of guilt[51] and ignored the other pieces of evidence which pointed to his lack of negligence. While leaving the severely injured Ramirez after the collision might have been a badge of guilt, this remains disputable and is not the willful and inexcusable negligence required to uphold a finding of guilt for reckless imprudence resulting to homicide and damage to property.

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[47] *Cabugao v. People*, 740 Phil. 9, 21-22 (2014) [Per J. Peralta, Third Division].

[48] 751 Phil. 218 (2015) [Per J. Perlas-Bernabe, First Division].

[49] *Gonzaga v. People*, 751 Phil. 218, 227 (2015) [Per J. Perlas-Bernabe, First Division].

[50] Id. at 228.

[51] *Rollo*, pp. 33-34.

For a successful conviction in a criminal case, the prosecution must prove the elements of the crime charged beyond reasonable doubt or with moral certainty. Rule 133, Section 2 of the Revised Rules on Evidence defines moral certainty as "that degree of proof which produces conviction in an unprejudiced mind."

The Constitution requires the prosecution to establish the accused's guilt beyond reasonable doubt in recognition of the presumption of innocence enjoyed by the accused. *People v. Ganguso*[52] expounds:

> An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[53]

With the prosecution's failure to prove beyond reasonable doubt all the elements of reckless imprudence resulting to homicide or that petitioner was liable under the doctrine of last clear chance, petitioner must consequently be acquitted.

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals Decision dated November 27, 2015 in CA-G.R. CR No. 35640 is **REVERSED** and **SET ASIDE**. Raul Ofracio is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.

Hernando, Inting, Delos Santos, and *Rosario, JJ.*, concur.

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[52] 320 Phil. 324 (1995) [Per J. Davide, Jr., First Division].

[53] Id. at 335.

THIRD DIVISION

[G.R. No. 222133. November 4, 2020]

AFP GENERAL INSURANCE CORPORATION, *Petitioner*, *v.* **COMMISSIONER OF INTERNAL REVENUE,** *Respondent*.

SYLLABUS

1. TAXATION; TAX ASSESSMENT; REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTIES; IT IS INCUMBENT UPON A TAXPAYER WHO DENIES DEFICIENCY TAX LIABILITY TO SHOW THAT THE ASSESSMENT IS VOID OR ERRONEOUS, OR THAT THE TAX AUTHORITIES HAD BEEN REMISS IN ISSUING IT.— It is settled that tax assessments are *prima facie* correct. At the same time, tax authorities enjoy the presumption of regularity in the performance of their duties in relation to tax investigation and assessment. Thus, in denying deficiency tax liability, it is incumbent upon a taxpayer to show clearly that the assessment is void or erroneous, or that the tax authorities had been remiss in issuing the same.

2. ID.; ID.; POWER TO ASSESS AND AUDIT; ONLY THE COMMISSIONER OF INTERNAL REVENUE (CIR) OR THE DULY AUTHORIZED REPRESENTATIVE, AS EVIDENCED BY A LETTER OF AUTHORITY (LOA), MAY AUTHORIZE THE EXAMINATION OF TAXPAYERS AND ISSUE AN ASSESSMENT AGAINST THEM.— The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him. Verily, the law vests the BIR with general powers in relation to the "assessment and collection of all national internal revenue taxes." However, certainly, not all BIR personnel may *motu proprio* proceed to audit a taxpayer. Only "the CIR or his duly authorized representative may *authorize the examination of any taxpayer*" and issue an assessment against him.

That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA, which "empowers a designated [r]evenue [o]fficer to examine, verify, and scrutinize

a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period."

3. ID.; ID.; ID.; ID.; WHEN THE BUREAU OF INTERNAL REVENUE (BIR) CONDUCTS AN AUDIT WITHOUT A VALID LOA, THE RESULTING ASSESSMENT IS VOID AND INEFFECTUAL.— In cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.

4. ID.; ID.; ID.; ID.; LOA; 30-DAY EXPIRATION PERIOD FOR SERVICE OF LOA; AN LOA WHICH HAS REMAINED UNSERVED FOR MORE THAN THIRTY DAYS PAST ITS ISSUANCE DATE BECOMES NULL AND VOID UNLESS REVALIDATED.— The LOA commences the audit process and informs the taxpayer that he shall be investigated for possible deficiency tax assessment. RAMO 1-00 dated March 17, 2000 prescribes the use of the Updated Handbook on Audit Procedures and Techniques, defines an LOA, and describes its function and the manner by which it shall be served, to wit:

2. Serving of Letter of Authority

. . .

2.3 A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated. The taxpayer has all the right to refuse its service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words "Revalidated on _____" on the face of the copy of the Letter of Authority issued.

LOA No. 00021964 echoes Subparagraph 2.3 above, *viz.*:

IMPORTANT: Please address any communication on this matter to the authorized officer(s) of the National Investigation Division x x x *This Letter of Authority becomes void* if it contains erasures, *or if not*

> *service to the taxpayer within 30 days from the date hereof*, or if dry seal of BIR is not present.

The foregoing rule invalidates a previously issued LOA, which has remained unserved for more than 30 days past its issuance date, unless the same is revalidated.

. . .

Read in these lights, the rules clearly impose a *30-day expiration period for service*. Upon expiration, the LOA becomes *wholly unenforceable*, inasmuch as it cannot be served without revalidation upon the taxpayer who, in turn, has the right to refuse the same.

5. ID.; ID.; ID.; ID.; POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; TO UPHOLD THE TAXPAYER'S RIGHT TO DUE PROCESS, THE BIR'S AUTHORITY TO ASSESS AND COLLECT TAKES EFFECT ONLY AFTER THE CIR OR THE DULY AUTHORIZED REPRESENTATIVE ISSUES AN LOA AND SERVES IT UPON THE INTENDED TAXPAYER.— In the exercise of the power to assess and collect taxes, the BIR has the commensurate duty to uphold a taxpayer's fundamental right to due process. Thus, its authority must be understood to take effect only after the CIR or his duly authorized representative *issues an LOA* and the designated revenue officer *serves it* upon the intended taxpayer. That an LOA remains unserved signifies that the tax authorities have yet to formally apprise the taxpayer and, consequently, have not commenced actual audit.

6. ID.; ID.; ID.; ID.; LOA; REVALIDATION REQUIREMENT; THE REVALIDATION REQUIREMENT INVOLVING AN UNSERVED LOA IS IMPOSED ON THE REVENUE OFFICERS TO RECONFIRM THEIR DESIGNATION OR AUTHORITY TO AUDIT AND EXTEND THE PERIOD OF SERVICE.— The revalidation requirement involving an *unserved LOA* is imposed on the revenue officer because he/she exclusively derives authority therefrom. It is intended to *reconfirm his/her designation* as the BIR personnel duly authorized (by the CIR) to examine the taxpayer's books and *extend the period of service*. Otherwise, his/her subsequent

presence in a taxpayer's premises for a supposed tax audit shall be illegitimate.

In the case at bar, the CIR issued LOA No. 00021964 on May 8, 2008, the 30th day therefrom fell on June 6, 2008. However, AGIC claimed to have received the subject LOA only on June 13, 2008. By that time, without revalidation, the LOA had already become null and void.

7. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; FACTUAL QUESTION; THE ISSUE OF WHETHER OR NOT THE TAX AUTHORITIES ACTUALLY SERVED THE LOA WITHIN THIRTY DAYS FROM ISSUANCE IS A FACTUAL QUESTION WHICH IS NOT A PROPER SUBJECT FOR REVIEW THROUGH A RULE 45 PETITION.— [W]hether or not the tax authorities actually served the subject LOA within 30 days from issuance is a factual question, which is outside the scope of the Court's review sought through a Rule 45 petition. The Court is not a trier of facts. The Court shall not reexamine or reevaluate "the truthfulness or falsity of the allegations of the parties."

. . . [T]he CTA *En Banc* found that AGIC received the LOA dated May 7, 2008 on May 13, 2008 or well within the 30-day reglementary period of service. The Court gives utmost respect to the findings of the tax court as the Court recognizes its expertise on tax matters. The Court shall uphold these findings as long as there is no showing of grave abuse of discretion and its ruling is supported by substantial evidence.

8. TAXATION; TAX ASSESSMENT; POWER TO ASSESS AND AUDIT; LOA; AUTHORITY TO INVESTIGATE; 120-DAY RULE; THE EXPIRATION OF THE 120-DAY PERIOD DOES NOT VOID THE LOA *AB INITIO,* BUT MERELY RENDERS IT UNENFORCEABLE; RATIONALE.— AGIC relies on RMC 40-06, which imposes a "120-day rule" in connection with LOA re-validation. The circular refers to RMO 38-88 . . . .

. . .

The . . . issuance refers to the "120-day period" as the time within which an investigation report shall be rendered.

. . .

Notably, the above-cited issuances mention a "120-day period/rule," but do not provide a complete context within which the rule was established. Thus, to evaluate the theory, the Court must look into other related tax issuances to determine the nature and intended effect of the reglementary period adverted to by AGIC.

An early tax issuance[, RMO 43-64,] mentions both 30 and 120-day reglementary periods in imposing an LOA revalidation requirement . . . .

. . .

. . . [I]t is clear that failure to comply with the 120-day rule does not void LOA *ab initio*. The expiration of the 120-day period merely renders an LOA *unenforceable*, inasmuch as the revenue officer must first seek ratification of his *expired authority to audit* to be able to validly continue investigation beyond the first 120 days.

That the revenue officer is unable to conduct *further* investigation does not invalidate his/her authority during the first 120 days or the procedures he/she had already performed within that period. He/she may instead render a report based on the results of his/her initial investigation from which an assessment may be legitimately issued.

. . . Failure to revalidate the LOA in accordance with the 120-day rule shall only be an issue in cases where tax authorities proceeded with an extended audit without first seeking the requisite revalidation.

9. ID.; ID.; ID.; ID.; ID.; ID.; A REVENUE OFFICER ASSIGNED TO AN AUDIT MUST RENDER AN INVESTIGATION REPORT WITHIN 120 DAYS FROM THE LOA'S ISSUANCE, BUT AN LOA REVALIDATION MAY BE REQUESTED.— RMO 43-64, read together with RMO 38-88 . . . confirms that a revenue officer assigned to an audit is *duty-bound* to render an investigation report within 120 days from the LOA's issuance. The *120-day period for rendering an investigation report* was intended as an internal efficiency measure: to expedite the conduct of audits and ensure that BIR examiners regularly report open investigations and their progress.

Nonetheless, the revenue officer may validly request for LOA revalidation, which shall be supported by a progress report and an enumeration of reasons to justify his request.

The superior officer or the Division Chief/Revenue District Officer (RDO) shall review the request. If justified, he/she shall recommend the LOA's revalidation and endorse the request to the CIR/his duly authorized representative for the latter's approval.

10. ID.; ID.; ID.; ID.; ID.; REVALIDATION REQUIREMENT; WITHOUT A REVALIDATION, AN LOA IS VOID AND THE REVENUE OFFICER IS PROHIBITED FROM FURTHER INVESTIGATION.— Without revalidation, the LOA shall be considered void and the assigned revenue officer is "prohibited from *further* investigation and contact with the taxpayer." The revalidation requirement here is aimed at *reconfirming* the revenue officer's authority and *extending the period of audit*. It contemplates a *served LOA* and *an on-going audit investigation*. Stated differently, the revenue officer was already authorized to commence an audit only that he was unable to conclude it within 120 days.

11. ID.; ID.; PRESCRIPTIVE PERIOD FOR TAX ASSESSMENT; THE CIR'S AUTHORITY TO ISSUE A TAX ASSESSMENT WITHIN A THREE-YEAR PRESCRIPTIVE PERIOD MAY BE EXTENDED TO TEN YEARS IN CASE OF A FALSE OR FRAUDULENT RETURN OR FAILURE TO FILE A RETURN. — In general, the CIR may issue a tax assessment within a three-year prescriptive period counted from: (a) the statutory deadline to file a return for the specific tax type, or (b) if filed beyond the deadline, the date of actual filing of the tax return, whichever is later. However, by exception, this prescriptive period may be extended to ten years, in case of a false or fraudulent return with intent to evade tax or of failure to file a return.

12. ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE TAXPAYER HAS THE BURDEN OF PROVING THAT THE PRESCRIPTIVE PERIOD HAS LAPSED, INCLUDING POSITIVELY IDENTIFYING WHEN THE PRESCRIPTIVE PERIOD BEGAN TO RUN AND EXACTLY WHEN IT EXPIRED.— Prescription is a matter of defense. The taxpayer has the burden of proving that the prescriptive period has lapsed, including positively identifying when the prescriptive period began to run and exactly when it expired. Consequently, AGIC cannot avail itself of the defense of prescription inasmuch as they failed to present proof of actual filing of their DST returns.

13. ID.; ID.; ID.; THE APPLICATION OF THE 10-YEAR PRESCRIPTIVE PERIOD IS JUSTIFIED IN AN UNDISPUTED CASE OF A FALSE OR FRAUDULENT RETURN.— [T]he court *a quo* upheld the timeliness of the issuance of the deficiency VAT assessment after applying the 10-year prescription period, instead of the general rule of three years.

. . .

. . . [T]he court *a quo's* application of the 10-year period was justified by its finding that AGIC had under-declared their 2006 gross receipts subject to VAT by 38.88%.

Under the Tax Code, failure to report sales, receipts, or income of at least 30% of the amount declared in the return constitutes *prima facie* evidence of a false or fraudulent return. This presumption shall stand as AGIC did not present proof to dispute the finding of under-declaration. There being an undisputed case of a false or fraudulent return, an exception to the general rule, the CTA *En Banc* correctly applied the 10-year prescriptive period under Section 222(a), instead of the three-year period under Section 203 of the Tax Code.

14. ID.; DOUBLE TAXATION; THAT AN INDIVIDUAL OR CORPORATION IS SIMULTANEOUSLY A WITHHOLDING AGENT AND INCOME TAXPAYER WOULD NOT GIVE RISE TO DOUBLE TAXATION.— There is double taxation if there are two taxes imposed "on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period, and the taxes must be of the same kind or character."

. . .

The CIR assessed AGIC for *deficiency EWT* for failure to withhold required taxes on its expenses. At the same time, the CIR disallowed those expenses from being claimed as deductions from taxable income, resulting in a *deficiency IT* assessment. In other words, both the deficiency EWT and IT assessments were grounded on the fact of non-withholding.

. . .

> . . . That the above mentioned assessments both arose from AGIC's failure to withhold the required taxes does not in itself amount to double taxation.
>
> The CIR issued a *deficiency EWT* assessment against AGIC in its capacity as a *withholding agent*. . . .
>
> On the other hand, the *deficiency IT* assessment was issued against AGIC in its capacity as a *domestic corporation* liable for tax on its own taxable income as provided under Section 27 of the Tax Code . . . .
>
> It is not contested that both *deficiency EWT* and *IT* assessment were consequences of AGIC's failure to withhold. However, the *deficiency IT* arising from the disallowance of items claimed as deductions should not be confused with *deficiency EWT* imposed on a withholding agent for its failure to withhold. To be sure, that an individual or corporation is simultaneously a withholding agent and income taxpayer is not a rare and obnoxious incident that would give rise to double taxation.

15. ID.; NATIONAL INTERNAL REVENUE TAXES; TAX ON INCOME; RETURNS AND PAYMENT OF TAX; WITHHOLDING OF TAX AT SOURCE; A WITHHOLDING ENTITY WHO FAILS TO DEDUCT AND REMIT AS REQUIRED IS LIABLE FOR DEFICIENCY WITHHOLDING TAX.— Enterprises such as AGIC are legally obliged under Section 57 of the Tax Code to deduct in advance a percentage of tax from his payment to a third party and remit the same to the government. The third party, from whom the taxpayer purchased a good/service, is the actual income earner in the transaction. Although acting merely as an agent of the government in the collection of taxes, a withholding entity who fails to deduct and remit as required shall be liable for deficiency withholding tax, such as EWT.

16. ID.; ID.; ID.; TAX ON CORPORATIONS; A CORPORATE INCOME TAXPAYER IS ALLOWED TO CLAIM DEDUCTIONS FROM ITS GROSS INCOME PROVIDED THE TAX REQUIRED TO BE WITHHELD FROM THESE ITEMS HAS BEEN REMITTED TO THE BIR.— In computing taxable income, the law allows a corporate income taxpayer to claim deductions from its gross income (*e.g.*, business expenses), provided that the tax required to be withheld from

these items has been remitted to the BIR. Otherwise, these will be disallowed, just as in AGIC's case.

17. ID.; TAX AMNESTY; THE TAXPAYER-APPLICANT SHALL BE IMMUNE FROM TAXES SPECIFIED UNDER A TAX AMNESTY LAW ONLY UPON COMPLETION OF THE REQUIREMENTS SET FORTH UNDER THE LAW ITSELF AND APPLICABLE TAX ISSUANCES.— The mere filing of an application for tax amnesty will not extinguish the taxpayer's tax liabilities. The taxpayer-applicant shall be immune from taxes specified under a tax amnesty law only upon *completion* of the requirements set forth under the law itself and applicable tax issuances.

In the present case, the CTA Division found that while AGIC lodged an application, they did not submit a SALN, a required attachment under RA 9480. Aside from their bare claims that they in fact availed of tax amnesty, AGIC does not offer proof showing that they have fully complied with the requirements under RA 9480, particularly the requirement to submit a SALN. Thus, the Court shall no longer disturb the findings of the court below.

APPEARANCES OF COUNSEL

Florentino & Esmaquel Law Office for petitioner.
Office of the Solicitor General for respondent.
BIR Litigation Division, special counsel for respondent.

D E C I S I O N

INTING, *J.*:

This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by AFP General Insurance Corporation (AGIC) assailing the Decision[2] dated January 4,

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[1] *Rollo*, Vol. 1, pp. 42-93.

[2] *Id.* at 9-35; penned by Associate Justice Amelia R. Cotangco-Manalastas with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla

2016 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 1223 (CTA Case No. 8191). The assailed Decision modified the Amended Decision[3] dated September 1, 2014 of the CTA Third Division (CTA Division) in CTA Case No. 8191 which ordered AGIC to pay deficiency tax assessments, plus surcharge and interests, under respondent Commissioner of Internal Revenue's (CIR) Formal Letter of Demand (FLD)[4] dated April 6, 2010.

The Antecedents

The CIR, through Deputy CIR Gregorio V. Cabantac, issued a Letter of Authority (LOA) No. 00021964[5] dated May 7, 2008, empowering Bureau of Internal Revenue (BIR) Revenue Officers Mercedes J. Espina and Jonas P. Punza to examine AGIC's books of account and records in relation to taxable year 2006.[6] It contained the following notation: "[t]his [LOA] becomes void if it contains erasures, or if not served to the taxpayer within 30 days from the date hereof, or if dry seal of BIR office is not present."

As a result of the audit investigation, the CIR issued a Preliminary Assessment Notice[7] (PAN) against AGIC. AGIC responded to the PAN through a Letter[8] dated January 25, 2010 addressed to the CIR.

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and Ma. Belen M. Ringpis-Liban, concurring, Associate Justice Erlinda P. Uy, concurring and dissenting and Presiding Justice Roman G. Del Rosario, inhibited.

[3] *Id.* at 177-208; penned by Associate Justice Lovell R. Bautista with Associate Justices Esperanza R. Fabon-Victorino and Ma. Belen M. Ringpis-Liban, concurring.

[4] *Id.* at 275-278; issued by Deputy Commissioner Gregorio V. Cabantac of the Legal and Inspection Group, Bureau of Internal Revenue.

[5] *Id.* at 319.

[6] *Id.*

[7] *Id.* at 295-298.

[8] *Id.* at 301-307.

In turn, the CIR issued a Revised PAN[9] dated February 19, 2010, with attached details of discrepancies,[10] finding AGIC liable for deficiency income tax (IT), documentary stamp tax (DST) on the increase of capital stock, value-added tax (VAT), late remittance of DST on insurance policies, expanded withholding tax (EWT) amounting to ₱13,158,571.63,[11] ₱486,833.25,[12] ₱8,730,457.05,[13] ₱2,212,705.47,[14] and ₱785,077.29,[15] respectively, inclusive of penalties,[16] surcharge, and interest.

Subsequently, the CIR issued a Formal Letter of Demand (FLD)[17] dated April 6, 2010, with attached details of discrepancy[18] and assessment notices,[19] requesting AGIC to pay deficiency internal revenue taxes amounting to ₱25,647,389.04, computed as follows:

Tax Type	Basic Tax	Surcharge	Interest	Compromise Penalty	Subtotal
IT	₱8,294,889.09	-	₱4,976,933.45	₱25,000.00	₱13,296,822.54
DST*	250,000.00	62,500.00	162,500.00	16,000.00	491,000.00
VAT	4,092,402.38	2,046,201.19	2,660,061.55	-	8,798,655.12
DST**	316,237.83	1,114,521.99	710,216.39	77,000.00	2,217,976.21
EWT	470,863.74		306,061.43	16,000.00	792,925.17
Civil penalty					50,000.00
Total					₱25,647,389.04

* DST on the increase of capital stock
** late remittance of DST on insurance policies

[9] *Id.* at 308-311.

[10] *Id.* at 312-315.

[11] *Id.* at 308.

[12] *Id.*

[13] *Id.* at 309.

[14] *Id.*

[15] *Id.* at 310.

[16] With civil penalty amounting to ₱50,000.00, *id.* at 311.

[17] *Id.* at 275-278.

[18] *Id.* at 279-282.

[19] *Id.*

AGIC formally protested these assessments on April 22, 2010 (administrative protest).[20]

Due to the CIR's alleged inaction on its protest, AGIC elevated the assessment case to the CTA docketed as CTA Case No. 8191.[21] In turn, the CIR filed an answer to AGIC's petition.

Ruling of the CTA Division

Decision[22] *dated March 13, 2014.*

After trial, the CTA Division partially granted AGIC's petition.[23] It ruled as follows:

First, the assessment for unremitted DST on insurance policies must be cancelled. It pertains to taxable year 2005; thus, outside the coverage of the subject LOA, which was issued for "the examination of books of accounts and other accounting for the taxable year 2006."[24] *Second*, the period for assessment for deficiency VAT had already prescribed by the time the CIR issued the FLD on April 6, 2010. *Third*, in contrast, the CIR timely assessed AGIC for its late remittance of DST on insurance policies pertaining to January, February, and May 2006, as well as deficiency DST on the increase in capital stock. *Fourth*, AGIC failed "to substantiate its claims of undue disallowance of its legitimate expenses [in relation to IT], erroneous assessment for [EWT], and the correct computation of its deficiency [IT and EWT]."[25] *Fifth*, the amounts of compromise penalty for each tax type must be cancelled because there is no showing that the parties mutually

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

[21] See Petition for Review for Annulment and Cancellation of Disputed Assessment under Formal Letter of Demand dated April 6, 2010 for the Taxable Year 2006, *id.* at 242-271.

[22] *Id.* at 192-208.

[23] *Id.* at 205.

[24] *Id.* at 199.

[25] *Id.* at 201.

agreed on the imposition thereof.[26] *Sixth*, AGIC applied for the tax amnesty program under Republic Act No. (RA) 9480, which covered all unpaid internal revenue taxes for taxable year 2005 and prior years. However, AGIC failed to submit its Statement of Assets, Liabilities and Net Worth (SALN), a required attachment to the taxpayer's application under RA 9480. Failure to fully comply with the documentary requirements of the amnesty law disqualifies AGIC from availing itself of RA 9480's benefits.[27]

Based on its findings, the CTA Division reduced the total assessment to ₱12,746,567.80.[28] In addition, it ordered AGIC to pay the following: (a) *20% deficiency interest* on the amount of basic deficiency tax (IT, DST on increase of capital stock, and EWT) as prescribed under Section 249 (B) of the National Internal Revenue Code of 1997 (Tax Code); (b) *20% delinquency interest* on the amount of basic deficiency tax (IT, DST on increase of capital stock, and EWT) *plus surcharge*, as prescribed under Section 249 (C) of the Tax Code; (c) *20% delinquency interest* on the incremental amounts resulting from the late remittance of DST on insurance policies, as prescribed under Section 249 (C) of the Tax Code; and (d) *20% delinquency interest* on the total amount of deficiency interest computed under (a) above, as prescribed under Section 249 (C) of the Tax Code.

Both parties moved to reconsider the aforementioned Decision.

For its part, AGIC insisted that the CTA Division failed to resolve the principal issue of the case: LOA No. 00021964's validity. According to AGIC, the subject LOA is invalid "for failure of the concerned [r]evenue [o]fficer to have the same revalidated after x x x 120 days [*i.e.*, within which the tax authorities must issue an audit investigation report], pursuant to Revenue Memorandum Order No. [RMO] 38-88 dated August 24, 1988, as reiterated in Revenue Memorandum Circular [RMC]

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[26] *Id.* at 202.

[27] *Id.* at 203-205.

[28] Basic tax deficiency plus 25% surcharge, *id.* at 205-206.

No. 40-2006, dated July 13, 2006."[29] The CIR countered that "the non-revalidation of a [LOA] would only warrant a disciplinary action against the concerned [r]evenue [o]fficer, and not render the same invalid or void."[30]

On the other hand, respondent CIR pointed out that "[a]s proven during trial, [AGIC] never filed a return for [DST on] insurance policies for taxable year 2005."[31] Thus, the applicable prescriptive period is 10 years counted from the discovery of the falsity, fraud, or omission (non-filing). Further, the discrepancies between the audited financial statements and the unregistered general ledger resulted in an under-declaration of gross income subject to [VAT].[32]

Amended Decision dated September 1, 2014.

Ruling on the parties' motions, the CTA Division held as follows: *first*, the revenue officers' failure to have the LOA revalidated after the 120-day reglementary period does not nullify the LOA. Under the aforecited tax issuances, such failure gives rise to administrative sanctions/penalties, but does not invalidate the LOA itself.[33] *Second*, the cancellation of the assessment for unremitted DST on insurance policies for taxable year 2005 was proper inasmuch as the subject LOA only covered taxable year 2006. *Third*, in the PAN and Memoranda filed before the CTA Division, respondent CIR clearly alleged that the deficiency VAT assessment was grounded on the "substantial [under-declaration] of taxable sales, receipts or income and failure to report sales, receipts or income in an amount exceeding x x x 30% of that declared per return."[34] However, AGIC failed to refute the assessments, including the alleged under-declaration.

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[29] *Id.* at 181.

[30] *Id.*

[31] *Id.* at 180.

[32] *Id.*

[33] *Id.* at 184.

[34] *Id.* at 187.

Consequently, the CTA reinstated the deficiency tax assessment and ordered AGIC to pay deficiency VAT amounting to ₱6,138,603.57,[35] inclusive of 50% surcharge and the following interests: *20% deficiency interest* on the amount of basic deficiency VAT, as prescribed under Section 249 (B) of the Tax Code; (b) *20% delinquency interest* on the amount of basic deficiency VAT *plus surcharge*, as prescribed under Section 249 (C) of the Tax Code.[36]

Aggrieved, AGIC brought the case before the CTA *En Banc*.

Ruling of the CTA En Banc

In its assailed Decision, the CTA *En Banc* modified the CTA Division ruling to reduce the amount of deficiency VAT assessment to ₱5,912,622.72, inclusive of 50% surcharge, plus applicable interests.[37]

The court *a quo* ruled as follows: *first*, when the concerned revenue officers failed to submit their report within 120 days after service of the LOA, they likewise failed to submit the subject LOA for revalidation. However, their failure to do so did not affect the LOA's validity. RMO 38-88 and RMC 40-06 do not treat an LOA as void once it is not revalidated within the said period.[38] *Second*, verily, Revenue Audit Memorandum Order No. (RAMO) 01-00 invalidates an LOA that: (a) remains unserved 30 days after its issuance, and (b) is not submitted for revalidation. However, there is proof that AGIC received the LOA dated May 7, 2008 on May 13, 2008 or within 30 days from its issuance.[39] *Third*, AGIC did not present its DST returns for taxable year 2006. "Having failed to do so, [AGIC] failed to prove that the subject deficiency DST assessment is already barred by prescription x x x."[40] *Fourth*, AGIC failed to

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[35] *Id.* at 189.

[36] *Id.* at 190.

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

[38] *Id.* at 18.

[39] *Id.* at 20-21.

[40] *Id.* at 22.

establish that it withheld the proper taxes on its expenses. "[T]he consequence of non-withholding of taxes is the disallowance of the related expense as deduction from gross income, resulting in an increase in taxable income and consequently to the income tax due."[41] *Fifth*, the tax authorities alleged that, for VAT purposes, AGIC failed to report gross receipts for VAT purposes by 38.88%.[42] This under-declaration is *prima facie* evidence of a false return, which allowed the BIR 10 years, instead of the usual three, to assess. Likewise, AGIC failed to dispute the output VAT it allegedly did not remit.[43] Thus, AGIC was properly assessed therefor.

After evaluation, the CTA *En Banc* upheld the assessments for IT, EWT, and DST, amounting to ₱12,746,567.80,[44] as computed in the CTA Division Decision dated March 13, 2014. In addition, it ordered AGIC to pay deficiency VAT amounting to ₱5,912,622.72,[45] which brought the total assessment to ₱18,659,190.52 computed as follows:

Tax Type	Basic Tax	Surcharge Sec. 248(A)(3)	20% Interest Sec. 249	Subtotal
IT	₱8,294,889.09	₱2,073,722.27		₱10,368,611.36
DST*	250,000.00	62,500.00		312,500.00
EWT	470,863.74	117,715.94		588,579.68
DST**	-	1,035,462.53	441,414.23	1,476,876.76
CTA Division***	₱9,015,752.83	₱3,289,400.74	₱441,414.23	₱12,746,567.80
VAT****	3,941,748.48	1,970,874.24		5,912,622.72
Total	₱12,957,501.31	₱5,260,274.98	₱441,414.23	₱18,659,190.52

* on increase of capital stock
** late remittance of DST on insurance policies
*** CTA Division Decision dated March 13, 2014
**** as modified by the CTA *En Banc*

Hence, AGIC filed the present petition.

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[41] *Id.* at 25.

[42] *Id.* at 30.

[43] *Id.* at 29.

[44] Inclusive of 25% surcharge, plus applicable interests, *id.* at 33.

[45] Inclusive of 50% surcharge, plus applicable interests, *id.*

AGIC insists that the CTA *En Banc* erred in upholding the assessments for the following reasons: *first*, the *subject LOA was invalid* because it remained "un-revalidated"[46] despite (a) belated service thereof,[47] and (b) the non-submission of a report within the reglementary 120-day period.[48] *Second*, AGIC admits that it was liable for deficiency EWT and withholding tax on compensation (WTC).[49] However, it was not liable for *deficiency IT* because: (a) the assessments amount to double taxation,[50] and (b) the CIR already recognized that the expenses in question were legitimate.[51] Thus, it was estopped from questioning its deductibility for income tax purposes. *Third*, it was not liable for *deficiency DST and VAT* because (a) the CIR's authority to assess these taxes have already prescribed,[52] (b) the assessments amount to double taxation,[53] and (c) AGIC's availment of tax amnesty extinguished its liabilities therefor.[54]

Issues

In order to ascertain AGIC's liability for deficiency taxes, the Court shall resolve the following issues:

(1) Was the subject LOA invalid?;

(2) Had the CIR's power to assess AGIC for deficiency *VAT* and *DST* already prescribed by the time it issued the FLD dated April 6, 2010?;

(3) Did the deficiency IT and VAT assessments amount to double taxation?; and

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[46] *Id.* at 54.

[47] *Id.* at 60-62.

[48] *Id.* at 56-59.

[49] *Id.* at 71.

[50] *Id.* at 64-68.

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

[52] *Id.* at 74-78.

[53] *Id.* at 79-82.

[54] *Id.* at 82-84.

(4) Did AGIC's application for tax amnesty under RA 9480 extinguish its liabilities for the deficiency DST and VAT?

Notably, only the deficiency IT, VAT, and DST assessments remain at issue, taking into account AGIC's admission of its liability for deficiency EWT.[55]

The Court's Ruling

The petition has no merit.

It is settled that tax assessments are *prima facie* correct. At the same time, tax authorities enjoy the presumption of regularity in the performance of their duties in relation to tax investigation and assessment.[56] Thus, in denying deficiency tax liability, it is incumbent upon a taxpayer to show clearly that the assessment is void or erroneous, or that the tax authorities had been remiss in issuing the same.[57]

After a judicious review of the case records, the Court finds that AGIC failed to discharge this burden.

I

Validity of LOA No. 00021964

The power to assess and the power to audit a taxpayer.

The power to assess necessarily includes the authority to examine any taxpayer for purposes of determining the correct amount of tax due from him.[58] Verily, the law vests the BIR

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[55] *Id.* at 71.

[56] See *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, 494 Phil. 306, 335 (2005).

[57] *Commissioner of Internal Revenue v. Hon. Gonzalez, et al.*, 647 Phil. 462, 492 (2010), citing *Marcos II v. CA*, 339 Phil. 253, 271-272 (1997); *Collector of Internal Revenue v. Bohol Land Transportation Co.*, 107 Phil. 965 (1960).

[58] Section 6 (A), Tax Reform Act of 1997 (Tax Code) provides:

SECTION 6. *Power of the Commissioner to Make Assessments and Prescribe*

with general powers in relation to the "assessment and collection of all national internal revenue taxes."[59] However, certainly, not all BIR personnel may *motu proprio* proceed to audit a taxpayer. Only "the CIR or his duly authorized representative may *authorize the examination of any taxpayer*"[60] and issue an assessment against him.[61]

Additional Requirements for Tax Administration and Enforcement. —

(A) *Examination of Returns and Determination of Tax Due*. — After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: *Provided, however*, That failure to file a return shall not prevent the Commissioner from authorizing the examination of any taxpayer.

The tax or any deficiency tax so assessed shall be paid upon notice and demand from the Commissioner or from his duly authorized representative.

Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided*, That within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further*, That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer.

[59] Section 2, Tax Code provides:

SECTION 2. Powers and Duties of the Bureau of Internal Revenue. — The Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws.

[60] Section 6 (A), Tax Code.

[61] Section 228, Tax Code provides:

SECTION 228. *Protesting of Assessment*. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

That a representative has in fact been authorized to audit a taxpayer is evidenced by the LOA, which "empowers a designated [r]evenue [o]fficer to examine, verify, and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period."[62]

In cases where the BIR conducts an audit without a valid LOA, or in excess of the authority duly provided therefor, the resulting assessment shall be void and ineffectual.[63] In the present case, AGIC uses this principle to invalidate the deficiency tax assessments in the present case.

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final executory and demandable.

[62] Updated Handbook on Audit Procedures and Techniques Volume I (Revision — Year 2000), Revenue Audit Memorandum Order No. 1-00, [March 17, 2000].

[63] See *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*, 808 Phil. 528 (2017).

Petitioner AGIC insists that the subject LOA is defective because it was not revalidated: (a) upon the expiration of the 30-day period of service and (b) upon the expiration of the 120-day period, as required by RMO No. 38-88 and RMC No. 40-06.

In other words, AGIC relies on defects allegedly arising from non-compliance with the LOA revalidation requirements. At this juncture, We must distinguish between the requirement of revalidating an LOA that is *unserved*, as opposed to revalidating it *after service*, due to the lapse of the reglementary period mentioned in RMO No. 38-88.

Revalidating an unserved LOA.

The LOA commences the audit process and informs the taxpayer that he shall be investigated for possible deficiency tax assessment.[64] RAMO 1-00 dated March 17, 2000 prescribes the use of the Updated Handbook on Audit Procedures and Techniques, defines an LOA, and describes its function and the manner by which it shall be served, to wit:

2. Serving of Letter of Authority

2.1 On the first opportunity of the Revenue Officer to have personal contact with the taxpayer, he should present the Letter of Authority (LA) together with a copy of the Taxpayer's Bill of Rights. The LA should be served by the Revenue Officer assigned to the case and no one else. He should have the proper identification card and should be in proper attire.

2.2 A Letter of Authority authorizes or empowers a designated Revenue Officer to examine, verify and scrutinize a taxpayer's books and records in relation to his internal revenue tax liabilities for a particular period.

2.3 A Letter of Authority must be served or presented to the taxpayer within 30 days from its date of issue; otherwise, it becomes null and void unless revalidated. The taxpayer has all the right to refuse its

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[64] *Commissioner of Internal Revenue v. De La Salle University, Inc.*, 799 Phil. 141, 174 (2016). Citation omitted.

service if presented beyond the 30-day period depending on the policy set by top management. Revalidation is done by issuing a new Letter of Authority or by just simply stamping the words "Revalidated on _____" on the face of the copy of the Letter of Authority issued. (Italics supplied.)

LOA No. 00021964 echoes Subparagraph 2.3 above, *viz.*:

> IMPORTANT: Please address any communication on this matter to the authorized officer(s) of the National Investigation Division x x x *This Letter of Authority becomes void* if it contains erasures, *or if not service to the taxpayer within 30 days from the date hereof*, or if dry seal of BIR is not present. (Italics supplied.)

The foregoing rule invalidates a previously issued LOA, which has remained unserved for more than 30 days past its issuance date, unless the same is revalidated.

In the exercise of the power to assess and collect taxes,[65] the BIR has the commensurate duty to uphold a taxpayer's fundamental right to due process. Thus, its authority must be understood to take effect only after the CIR or his duly authorized representative *issues an LOA* and the designated revenue officer *serves it* upon the intended taxpayer. That an LOA remains unserved signifies that the tax authorities have yet to formally apprise the taxpayer and, consequently, have not commenced actual audit.

Read in these lights, the rules clearly impose a *30-day expiration period for service*. Upon expiration, the LOA becomes *wholly unenforceable*, inasmuch as it cannot be served without revalidation upon the taxpayer who, in turn, has the right to refuse the same.

The revalidation requirement involving an *unserved LOA* is imposed on the revenue officer because he/she exclusively derives authority therefrom. It is intended to *reconfirm his/her designation* as the BIR personnel duly authorized (by the CIR)

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[65] Section 2, Tax Code.

to examine the taxpayer's books and *extend the period of service*. Otherwise, his/her subsequent presence in a taxpayer's premises for a supposed tax audit shall be illegitimate.

In the case at bar, the CIR issued LOA No. 00021964 on May 8, 2008, the 30th day therefrom fell on June 6, 2008. However, AGIC claimed to have received the subject LOA only on June 13, 2008. By that time, without revalidation, the LOA had already become null and void.[66]

The argument has no merit.

First, whether or not the tax authorities actually served the subject LOA within 30 days from issuance is a factual question, which is outside the scope of the Court's review sought through a Rule 45 petition.[67] The Court is not a trier of facts. The Court shall not reexamine or reevaluate "the truthfulness or falsity of the allegations of the parties."[68]

Second, the CTA *En Banc* found that AGIC received the LOA dated May 7, 2008 on May 13, 2008 or well within the 30-day reglementary period of service. The Court gives utmost respect to the findings of the tax court as the Court recognizes its expertise on tax matters.[69] The Court shall uphold these findings as long as there is no showing of grave abuse of discretion[70] and its ruling is supported by substantial evidence.[71]

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[66] *Rollo*, Vol. I, p. 61.

[67] Rule 45, Section 1, Rules of Court. See also *Phil. Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*, 823 Phil. 1043, 1063-1064 (2018).

[68] *Pascual v. Burgos, et al.*, 776 Phil. 167, 183 (2016). Also see *Phil. Airlines, Inc. (PAL) v. Commissioner of Internal Revenue, supra*.

[69] *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, 752 Phil. 375, 397 (2015). Citations omitted.

[70] *Rep. of the Phils. v. Team (Phils.) Energy Corp.*, 750 Phil. 700, 717 (2015). Also see *Coca-Cola Bottlers Philippines, Inc. v. Commissioner of Internal Revenue*, 826 Phil. 329, 347 (2018).

[71] *Phil. Airlines, Inc. (PAL) v. Commissioner of Internal Revenue*, *supra* note 67 at 1065, citing *Commissioner of Internal Revenue v. Tours Specialists, Inc., and the Court of Tax Appeals*, 262 Phil. 437, 442 (1990).

Third, even if the Court brushes aside these recognized principles and follows AGIC's reasoning, it is clear that they would have had the legal right to refuse service of an LOA it believed was defective due to lack of revalidation.[72] However, it is undisputed that AGIC did not contest the LOA upon receipt and allowed the tax authorities to proceed with and complete the audit.

Moreover, AGIC did not question the timeliness of the LOA's service in any of the following: reply[73] to the PAN, two-page formal administrative protest to the FLD,[74] Petition for Review,[75] and Motion for Reconsideration[76] before the CTA Division. AGIC raised this argument only on appeal (to the CTA *En Banc*).

To the Court's mind, AGIC's failure to exercise its right to refuse the service of an allegedly defective LOA shows that they had acquiesced to the tax authorities' investigation. That it waited until after the issuance of the PAN, FLD, as well as the CTA Division's adverse decision before objecting to this irregularity could only be interpreted as a mere afterthought to resist possible tax liability.

Revalidating a served LOA in connection with the "120-day rule."

Alternatively, AGIC argues that the subject LOA also became null and void when it was not submitted for revalidation after the lapse of a supposed "120-day period."[77]

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[72] Paragraph 2.3, RAMO 1-00.

[73] *Rollo*, Vol. 1, pp. 301-307.

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

[75] *Id.* at 242-271.

[76] *Id.* at 209-226.

[77] *Id.* at 59.

AGIC relies on RMC 40-06,[78] which imposes a "120-day rule" in connection with LOA re-validation. The circular refers to RMO 38-88, which provides as follows:

> This Order aims to set the guidelines on the revalidation of Letters of Authority (LAs) for a more effective and efficient investigation and reporting on cases:
>
> The following are henceforth prescribed:
>
> 1. Revalidation of Letters of Authority shall be limited to only once in the regional offices and twice in the National Office after issuance of the original LA.
>
> 2. A revalidation shall be covered by the issuance of a new Letter of Authority under the name(s) of the same investigating officer(s), and the superseded LA(s) shall be attached to the new LA issued.
>
> 3. Requests for revalidation shall be supported with a progress report on the case and a justification for said revalidation.
>
> 4. The Division Chief/RDO shall indorse the request for revalidation which shall be duly approved or disapproved by the Assistant Commissioner (SOS)/Regional Director.
>
> *5. The Division Chief/RDO shall be responsible for the monthly monitoring of LAs issued to ensure that reports are rendered within the reglementary 120-day period. The Division Chief/RDO shall be jointly responsible with the REOs for cases with LAs pending beyond the 120-day period.*
>
> *6. It shall be the duty of the Division Chief/RDO to report immediately to the Inspection Service any tax case for which no report of investigation has been rendered 120 days after the issuance of an LA.* (Italics supplied.)

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[78] The objectives of RMC 40-06 are: "This Circular is issued to clarify certain issues concerning the jurisdictions of the Large Taxpayer Service (LTS), the Enforcement Service (ES) and the Revenue Regions, including the Revenue District Offices (RDOs) and Divisions under them, performing audit and investigation functions, and to prescribe guidelines and procedures which must be observed in the performance of such audit and investigation functions and in the disposition of tax cases."

The foregoing issuance refers to the "120-day period" as the time within which an investigation report shall be rendered.

AGIC claims that LOA No. 00021964 was nullified due to the assigned revenue officers' failure to: (1) render the investigation report within this period, and (2) submit the LOA for revalidation. Thus, the resulting tax assessments are also void.[79]

Notably, the above-cited issuances mention a "120-day period/ rule," but do not provide a complete context within which the rule was established. Thus, to evaluate the theory, the Court must look into other related tax issuances to determine the nature and intended effect of the reglementary period adverted to by AGIC.

An early tax issuance[80] mentions both 30 and 120-day reglementary periods in imposing an LOA revalidation requirement, *viz.*:

REVENUE MEMORANDUM ORDER NO. 43-64

SUBJECT: Period of Limitation for Action on Cases Received

TO : All Department Heads, Regional Directors, Division Chiefs, Chief Revenue Officers and Others Concerned

In order to expedite the flow of papers assigned for action to each and every employee of the Bureau, the following guidelines are hereby promulgated for the compliance of all concerned:

1. All income tax, business tax, estate and inheritance tax, amusement tax and other kinds of tax returns assigned to fieldmen for investigation or reinvestigation should be accompanied by an authority to investigate. For this purpose dockets received from any branch in the region or any division in the National Office shall likewise be subject to the issuance of the corresponding authority to investigate.

2. Fieldmen are hereby enjoined to serve the authority to investigate within thirty (30) days from the date of the issuance and to conduct

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[79] *Rollo*, Vol. 1, pp. 57, 59.

[80] Period of Limitation for Action on Cases Received, Revenue Memorandum Order No. 43-64, [July 3, 1964].

the investigation and submit the report thereon within one hundred twenty (120) days from the date of the issuance of the authority. Any authority to investigate which has not been reported within the above-mentioned period is considered void and the examiner concerned is prohibited from further investigation or contact with the taxpayer after the said period unless the authority is revalidated.

3. Any examiner who believes that he may not be able to submit the report of investigation within the required period should prepare a memorandum to his superior officer detailing the progress of the investigation and the reasons why he needs an additional period within which to terminate the investigation. The said memorandum should be reviewed by the superior official who will make the corresponding recommendation for the issuance of a revalidated authority or to issue a revalidated authority for the said case if he is the officer authorized to do so. (Italics supplied.)

RMO 43-64, read together with RMO 38-88, discredits AGIC's claim.

The issuance confirms that a revenue officer assigned to an audit is *duty-bound* to render an investigation report within 120 days from the LOA's issuance. The *120-day period for rendering an investigation report* was intended as an internal efficiency measure: to expedite the conduct of audits and ensure that BIR examiners regularly report open investigations and their progress.

Nonetheless, the revenue officer may validly request for LOA revalidation, which shall be supported by a progress report and an enumeration of reasons to justify his request.[81]

The superior officer or the Division Chief/Revenue District Officer (RDO) shall review the request. If justified, he/she shall recommend the LOA's revalidation and endorse the request to the CIR/his duly authorized representative for the latter's approval.

Without revalidation, the LOA shall be considered void and the assigned revenue officer is "prohibited from *further*

[81] Item No. 3, RMO 38-88.

investigation and contact with the taxpayer." The revalidation requirement here is aimed at *reconfirming* the revenue officer's authority and *extending the period of audit*. It contemplates a *served LOA* and *an on-going audit investigation*. Stated differently, the revenue officer was already authorized to commence an audit only that he was unable to conclude it within 120 days.

Given this context, it is clear that failure to comply with the 120-day rule does not void LOA *ab initio*. The expiration of the 120-day period merely renders an LOA *unenforceable*, inasmuch as the revenue officer must first seek ratification of his *expired authority to audit* to be able to validly continue investigation beyond the first 120 days.

That the revenue officer is unable to conduct *further* investigation does not invalidate his/her authority during the first 120 days or the procedures he/she had already performed within that period. He/she may instead render a report based on the results of his/her initial investigation from which an assessment may be legitimately issued.

In any case, AGIC does not even allege facts showing that the assigned revenue officers continued with their audit investigation beyond the first 120 days after issuance/service of the LOA. Failure to revalidate the LOA in accordance with the 120-day rule shall only be an issue in cases where tax authorities proceeded with an extended audit without first seeking the requisite revalidation.

Furthermore, even if the Court assumes that the BIR illegally extended their investigation, AGIC could have also resisted further investigation as early as the 121st day after the LOA's issuance/service if it truly believed that the assigned revenue officers no longer possessed the requisite authority. That it kept silent about the supposed violation and complained only when it was already found liable for deficiency taxes, once again, only show that it acquiesced to the BIR's extended audit, if any.

Based on the foregoing, absent any showing that the failure to revalidate resulted in a violation of AGIC's right to due process, the Court upholds the subject LOA's validity.

II

Prescription of the CIR's Power to Assess Deficiency VAT and DST

Prescriptive period of the power to assess.

In general, the CIR may issue a tax assessment within a three-year prescriptive period counted from: (a) the statutory deadline to file a return for the specific tax type, or (b) if filed beyond the deadline, the date of actual filing of the tax return, whichever is later.[82] However, by exception, this prescriptive period may be extended to ten years, in case of a false or fraudulent return with intent to evade tax or of failure to file a return.[83]

AGIC argues that the CIR's assessments for unremitted DST on insurance policies and deficiency VAT were issued beyond the *three-year prescriptive period*.

Unremitted DST on insurance policies.

In the assailed Decision, the CTA upheld the timeliness of the unremitted DST assessment after finding that AGIC failed to present in evidence its 2006 DST returns, which would have shown the actual date on which these were filed.

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[82] See Section 203, Tax Code.

[83] Section 222 (a), Tax Code provides:

SECTION 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes*. —

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

The CTA's ruling is supported by law and jurisprudence.

Prescription is a matter of defense. The taxpayer has the burden of proving that the prescriptive period has lapsed, including positively identifying when the prescriptive period began to run and exactly when it expired.[84] Consequently, AGIC cannot avail itself of the defense of prescription inasmuch as they failed to present proof of actual filing of their DST returns.

Deficiency VAT.

On the other hand, the court *a quo* upheld the timeliness of the issuance of the deficiency VAT assessment after applying the 10-year prescription period, instead of the general rule of three years.

A careful reading of the petition reveals that AGIC assails this ruling by relying heavily on the claim that the *three-year prescriptive period* had already expired. AGIC did not even allege facts or present proof to dispute the correctness of applying the *10-year prescriptive period*. Certainly, AGIC's argument must be stricken down for being unresponsive and unsubstantiated.

In any case, the court *a quo's* application of the 10-year period was justified by its finding that AGIC had under-declared their 2006 gross receipts subject to VAT by 38.88%.[85]

Under the Tax Code, failure to report sales, receipts, or income of at least 30% of the amount declared in the return constitutes *prima facie* evidence of a false or fraudulent return.[86] This

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[84] *PNOC v. Court of Appeals*, 496 Phil. 506, 582 (2005), citing *Querol v. Collector of Internal Revenue*, 116 Phil. 615 (1962).

[85] *Rollo*, Vol. 1, p. 30.

[86] Section 248 (B), Tax Code provides:
SECTION 248. Civil Penalties. —
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(B) In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations, or in case a false or fraudulent return is willfully made, the penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax, in case any payment has been

presumption shall stand as AGIC did not present proof to dispute the finding of under-declaration. There being an undisputed case of a false or fraudulent return, an exception to the general rule, the CTA *En Banc* correctly applied the 10-year prescriptive period under Section 222 (a), instead of the three-year period under Section 203 of the Tax Code.

III

Deficiency IT and VAT assessments *vis-à-vis* double taxation

There is double taxation if there are two taxes imposed "on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period, and the taxes must be of the same kind or character."[87]

According to AGIC, the CIR's deficiency IT and VAT assessments amount to double taxation.

Deficiency IT due to disallowed expenses.

The CIR assessed AGIC for *deficiency EWT* for failure to withhold required taxes on its expenses. At the same time, the CIR disallowed those expenses from being claimed as deductions from taxable income, resulting in a *deficiency IT* assessment. In other words, both the deficiency EWT and IT assessments were grounded on the fact of non-withholding.

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made on the basis of such return before the discovery of the falsity or fraud: Provided, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute prima facie evidence of a false or fraudulent return: Provided, further, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein.

[87] *The City of Manila v. Coca-Cola Bottlers Philippines, Inc.*, 612 Phil. 609, 632 (2009), citing *Commissioner of Internal Revenue v. Bank of Commerce*, 498 Phil. 673, 692 (2005).

AGIC admits its liability for *deficiency EWT* as a result of its failure to withhold taxes from expense payments. However, it theorizes that the CIR cannot simultaneously assess them for *deficiency IT* arising from the disallowance of the very same expenses.[88]

The Court disagrees with AGIC's contention. That the abovementioned assessments both arose from AGIC's failure to withhold the required taxes does not in itself amount to double taxation.

The CIR issued a *deficiency EWT* assessment against AGIC in its capacity as a *withholding agent*. Enterprises such as AGIC are legally obliged under Section 57[89] of the Tax Code to deduct

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[88] *Rollo*, Vol. 1, p. 67.

[89] Section 57. Tax Code provides:

SECTION 57. *Withholding of Tax at Source*. —

(A) *Withholding of Final Tax on Certain Incomes*. — Subject to rules and regulations the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, for tax imposed or prescribed by Sections 24 (B) (1), 24 (B) (2), 24 (C), 24 (D) (1); 25 (A) (2), 25 (A) (3), 25 (B), 25 (C), 25 (D), 25 (E); 27 (D) (1), 27 (D) (2), 27 (D) (3), 27 (D) (5); 28 (A) (4), 28 (A) (5), 28 (A) (7) (a), 28 (A) (7) (b), 28 (A) (7) (c), 28 (B) (1), 28 (B) (2), 28 (B) (3), 28 (B) (4), 28 (8) (5) (a), 28 (B) (5) (b), 28 (B) (5) (c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.

(B) *Withholding of Creditable Tax at Source*. — The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.

(C) *Tax-free Covenant Bonds*. — In any case where bonds, mortgages, deeds of trust or other similar obligations of domestic or resident foreign corporations, contain a contract or provision by which the obligor agrees to pay any portion of the tax imposed in this Title upon the obligee or to reimburse the obligee for any portion of the tax or to pay the interest without deduction for any tax which the obligor may be required or permitted to pay thereon or to retain therefrom under any law of the Philippines, or any state or country, the obligor shall deduct and withhold a tax equal to thirty

in advance a percentage of tax from his payment to a third party and remit the same to the government. The third party, from whom the taxpayer purchased a good/service, is the actual income earner in the transaction. Although acting merely as an agent of the government in the collection of taxes, a withholding entity who fails to deduct and remit as required shall be liable for deficiency withholding tax, such as EWT.[90]

On the other hand, the *deficiency IT* assessment was issued against AGIC in its capacity as a *domestic corporation* liable for tax on its own taxable income as provided under Section 27[91] of the Tax Code. In computing taxable income, the law allows a corporate income taxpayer to claim deductions from its gross income (*e.g.*, business expenses),[92] provided that the tax required to be withheld from these items has been remitted to the BIR.[93] Otherwise, these will be disallowed, just as in AGIC's case.

It is not contested that both *deficiency EWT* and *IT* assessment were consequences of AGIC's failure to withhold. However, the *deficiency IT* arising from the disallowance of items claimed as deductions should not be confused with *deficiency EWT* imposed on a withholding agent for its failure to withhold.[94]

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percent (30%) of the interest or other payments upon those bonds, mortgages, deeds of trust or other obligations, whether the interest or other payments are payable annually or at shorter or longer periods, and whether the bonds, securities or obligations had been or will be issued or marketed, and the interest or other payment thereon paid, within or without the Philippines, if the interest or other payment is payable to a nonresident alien or to a citizen or resident of the Philippines.

[90] See *Commissioner of Internal Revenue v. La Flor Dela Isabela, Inc.*, G.R. No. 211289, January 14, 2019.

[91] Section 27 of the Tax Code provides the "Rates of Income Tax on Domestic Corporations."

[92] Section 34, Tax Code.

[93] Section 2.58.5, Revenue Regulations No. (RR) 2-98, as amended by RR 14-02, [September 9, 2002].

[94] See *LG Electronics Philippines, Inc. v. Commissioner of Internal Revenue*, 749 Phil. 155 (2014).

To be sure, that an individual or corporation is simultaneously a withholding agent and income taxpayer is not a rare and obnoxious incident that would give rise to double taxation.

Deficiency VAT.

AGIC asserts that the CIR included gross receipts already subjected to VAT in 2005 in computing the VAT due for 2006. Thus, the deficiency VAT assessment is arbitrary and amounts to double taxation.[95]

AGIC is mistaken.

The CTA *En Banc* already found that there was nothing in the computation of deficiency VAT that pertained to 2005 gross receipts. It explained:

> Even though 2005 figures are involved, respondent is not assessing petitioner for deficiency VAT for 2005, rather respondent is questioning the discrepancy of P93,259.52 between the amount of input tax carried over from the 4th quarter of 2005 declared per return (P226,002.97) and per general ledger (P132,743.45). The input tax carried over from the 4th quarter of 2005 will have an effect on the total allowable input tax for 2006 (and consequently on the VAT payable for 2006) since the Tax Code allows the excess input tax in a given quarter to be carried over to the succeeding quarter/s. Hence, petitioner should account for the alleged discrepancy, unfortunately, petitioner failed to do so.
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> Respondent also made an adjustment of P15,359.11, alleging that this amount was claimed as creditable input VAT for 2006 but pertains to 2005, hence, was deducted from the input VAT claimed, which has the effect of increasing the output VAT due. Hence, petitioner should prove that this amount is not "out-of-period" input taxes. Again, petitioner failed to do so.[96]

While the allegation of double taxation is a legal question, the matter of the 2005 gross receipts inclusion in the 2006 VAT computation is a factual one. The Court shall not brush aside

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[95] *Rollo*, Vol. 1, p. 79.

[96] *Id.* at 31.

the tax court's findings as long as supported by substantial evidence and not tainted by grave abuse.[97]

IV

AGIC's Availment of Tax Amnesty

Finally, AGIC insists that the assessments for deficiency VAT and late remittance of DST on insurance policies were extinguished by their availment of tax amnesty under RA 9480.

The CIR counters that while AGIC applied for tax amnesty, it failed to comply with the requirements under the tax amnesty law. More specifically, it did not submit its SALN as of December 31, 2005, which RA 9480 required to be attached to its application.

The Court agrees with the CIR.

The mere filing of an application for tax amnesty will not extinguish the taxpayer's tax liabilities. The taxpayer-applicant shall be immune from taxes specified under a tax amnesty law only upon *completion* of the requirements set forth under the law itself and applicable tax issuances.[98]

In the present case, the CTA Division found that while AGIC lodged an application, they did not submit a SALN, a required attachment under RA 9480.[99] Aside from their bare claims that they in fact availed of tax amnesty, AGIC does not offer proof showing that they have fully complied with the requirements under RA 9480, particularly the requirement to submit a SALN. Thus, the Court shall no longer disturb the findings of the court below.

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[97] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 224327, June 11, 2018, 866 SCRA 104, 113.

[98] See *Commissioner of Internal Revenue v. Philippine Aluminum Wheels, Inc.*, 816 Phil. 638, 645-646 (2017), citing *Philippine Banking Corp. v. Commissioner of Internal Revenue*, 597 Phil. 363, 388 (2009).

[99] See Court of Tax Appeals Division Decision dated March 13, 2014, *id.* at 192-208.

WHEREFORE, the instant petition is **DENIED**. The Decision dated January 4, 2016 of the Court of Tax Appeals *En Banc* in CTA EB Case No. 1223 (CTA Case No. 8191) is **AFFIRMED**.

SO ORDERED.

Leonen (Chairperson), Hernando, Delos Santos, and *Rosario, JJ.*, concur.

THIRD DIVISION

[G.R. No. 233316. November 4, 2020]

SUSANA P. BAUZON, *Petitioner*, *v.* **MUNICIPALITY OF MANGALDAN, PANGASINAN, Represented by MAYOR BONA FE DE VERA-PARAYNO,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ISSUES ON APPRECIATION OF EVIDENCE BY THE CIVIL SERVICE COMMISSION AND THE COURT OF APPEALS ARE QUESTIONS OF FACT WHICH ARE BEYOND THE AMBIT OF A PETITION FOR REVIEW ON *CERTIORARI*.— [T]he grounds raised by petitioner regarding the appreciation of the evidence by the CSC and the CA are inevitably questions of fact which are beyond the ambit of the Court's jurisdiction in a petition for review on *certiorari*. It is not the Court's task to go over the proofs presented before CSC and the CA to ascertain if they were appreciated and weighed correctly, most especially when, as in this case, the CA and the CSC were uniform in their findings and conclusions. Although it is widely held that this rule of limited jurisdiction admits of exceptions, none exists or is even alleged as existing, in the present case.

2. POLITICAL LAW; ADMINISTRATIVE LAW; GRAVE MISCONDUCT; DEFINITION THEREOF.— Misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty. Qualified by the term "gross", it means conduct that is "out of all measure beyond allowance; flagrant; shameful; such conduct as is not to be excused."

3. ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; QUANTUM OF EVIDENCE; SUBSTANTIAL EVIDENCE; THE FAILURE OF A MUNICIPAL TREASURER TO TAKE PROPER CUSTODY AND EXERCISE PROPER MANAGEMENT OF MUNICIPAL FUNDS CONSTITUTE SUBSTANTIAL

EVIDENCE OF NEGLIGENCE AND GROSS MISCONDUCT, WARRANTING A DISMISSAL FROM SERVICE.— The evidence on record demonstrates a pattern of negligence and gross misconduct on the part of the petitioner that fully satisfies the standard of substantial evidence. Substantial evidence is such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. In the case at bench, as the CA pointed out, petitioner's failure to take proper custody of and exercise proper management of the funds of the Municipality of Mangaldan not only constitute violation of applicable laws, but also reflect poorly on the government. Indeed, her omission provided ripe opportunity for fraud and corruption.

. . .

Under Section 52, Rule IV of the Revised Rules on Administrative Cases in the Civil Service, Gross Misconduct is a grave offense punishable with dismissal for the first offense, without prejudice to the Ombudsman's right to file the appropriate criminal case against the petitioner or other responsible individuals.

4. ID.; ID.; NEGLECT OF DUTY; THE FAILURE OF A MUNICIPAL TREASURER TO DILIGENTLY VERIFY THE CORRECTNESS OF CHECKS FOR SIGNATURE IS A NEGLECT OF DUTY TO EXERCISE PROPER MANAGEMENT OF THE MUNICIPAL FUNDS.— As treasurer of the municipality, petitioner was charged with the responsibility to verify the correctness of the checks submitted to her office for signature. Given the huge amounts that she is handling, it behooves upon her to exercise the highest degree of care over the custody, management, and disbursement of municipal funds. There is a tremendous difference between the degree of responsibility, care, and trustworthiness expected of a clerk or ordinary employee in the bureaucracy and that required of bank managers, cashiers, finance officers, and other officials directly handling large sums of money and properties. Even if petitioner offered her justifications, it is worthy to note that these explanations were belatedly done, effected only after the COA Regional Office No. 1 issued several AOM, Notices of Suspension, and Notices of Disallowance. Interestingly, she did not refute the alterations in the payroll; instead, she merely denied any participation thereto.

. . .

In sum, petitioner cannot discount the fact that she failed to diligently verify the correctness of the amounts indicated in the cash advance vouchers and checks that passed her office. She took lightly her duty to exercise proper management of the municipal funds.

5. ID.; ID.; ID.; THE HEAD OF AN OFFICE CANNOT EASILY SHIFT THE LIABILITY FOR IRREGULARITIES TO SUBORDINATES.— The Court is also not convinced that the irregularities complained of are the result of mere inadvertence, or that petitioner's liability can easily be shifted to her subordinates. Notwithstanding her system of apportioning the tasks, petitioner remained to be the head of her office. Needless to say, her subordinates remained under her direct supervision and control.

APPEARANCES OF COUNSEL

Jason R. Mejia for petitioner.

R E S O L U T I O N

INTING, *J.*:

No less than the Constitution declares that public office is a public trust. A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity, and is accountable to all those he or she serves. Public officers, specifically those in custody of public funds like herein petitioner, are held to the highest standards of ethical behavior and are expected to uphold the public interest over personal interest at all times. It is in this spirit that this Court conveys its deep disdain for all those whose actions betray the trust and confidence reposed in public officers, and those who attempt to conceal wrongdoing through misdirection and blatantly belated explanations.[1]

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[1] See *Hallasgo v. Commission on Audit (COA) Regional Office No. X, et al.*, 615 Phil. 577, 580-581 (2009).

This is a Petition for Review on *Certiorari*[2] filed pursuant to Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[3] dated March 20, 2017 and the Resolution[4] dated July 4, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 139707. The assailed Decision affirmed the Decision No. 140931[5] dated December 5, 2014 and the Resolution No. 1500279[6] dated March 3, 2015 of the Civil Service Commission (CSC) which dismissed Susana P. Bauzon (petitioner) for Grave Misconduct.

The Antecedents

On April 4, 2012, the Office of the Municipal Mayor of Mangaldan, Pangasinan (respondent) received the Audit-Observation Memorandum (AOM) No. Mang. 2012-021 dated February 13, 2012 from the Commission on Audit (COA), Office of the Audit Team Leader, Audit Group E. It stated that the payrolls and other liquidation documents pertaining to the 2011 cash advances of the Assistant Municipal Treasurer amounting to ₱29,362,148.95 were not submitted for post-audit. On April 19, 2012, respondent received another AOM stating its observation that, in the course of its post-audit on the disbursement and payroll accounts, some of the basic requirements in respondent's disbursement process were not complied with.[7]

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[2] *Rollo*, pp. 24-42.

[3] *Id*. at 47-54; penned by Associate Justice Stephen C. Cruz with Associate Justices Jose C. Reyes, Jr. (now a retired member of the Court) and Nina G. Antonio-Valenzuela, concurring.

[4] *Id*. at 56-57.

[5] *Id*. at 212-226; signed by Chairman Francisco T. Duque III and Commissioners Robert S. Martinez and Nieves L. Osorio, and attested by Director IV Dolores B. Bonifacio of the Civil Service Commission (CSC).

[6] *Id*. at 260-267; signed by Commissioners Robert S. Martinez and Nieves L. Osorio, and attested by Director IV Dolores B. Bonifacio of the Civil Service Commission (CSC).

[7] *Id*. at 48-49.

The COA Regional Office No. 1 then issued several AOM, Notices of Suspension, and Notices of Disallowance against respondent, including the Notices of Disallowance relative to cash advances for the payrolls for the months of January to March 2011, May to December 2011, and January to March 2012. The Notices of Disallowance indicated that Marilyn D. Gonzales (Gonzales), Evelyn L. Bernabe (Bernabe) and petitioner were liable as accountable officer, internal auditor, and the official directly responsible for check preparation, respectively. The folders for disallowed payrolls disclosed that the total amount in obligation requests and payrolls were altered and increased to reflect an incorrect bigger sum. A total of ₱1,959,155.00 was later returned to respondent per Bernabe's letter to the Provincial Auditor dated May 3, 2012 and the official receipts from the municipal government. In the meantime, petitioner and Bernabe appealed before the Office of the Regional Director in San Fernando City, La Union, the various Notices of Disallowance issued by the COA auditors.[8]

On May 15, 2012, then Mayor Herminio A. Romero (Mayor Romero) filed with the Civil Service Commission Regional Office No. 1 (CSCRO I) a Complaint[9] for Grave Misconduct and Gross Dishonesty, Disgraceful and Immoral Conduct, and Conduct Prejudicial to the Best Interest of the Service against Helen A. Aquino (Aquino), Gonzales, Bernabe and petitioner.

After preliminary investigation, Atty. Engelbert Anthony D. Unite, Director IV of CSCRO I issued Resolution No. FC-2012-046[10] finding *prima facie* case against Gonzales, Bernabe, and petitioner; while in Decision No. 2012-065, he dismissed the charge against Aquino. The motion for reconsideration of Decision No. 2012-065[11] dated August 28, 2012 filed by

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[8] *Id.* at 49-50.

[9] *Id.* at 65-72.

[10] *Id*. at 117-121.

[11] *Id*. at 104-106; signed by Director IV Atty. Engelbert Anthony D. Unite of CSC Regional Office No. 1 (CSCRO I).

Mayor Romero was denied for lack of merit through a Resolution No. 12-00047[12] dated September 28, 2012. Formal investigation ensued thereafter.

Ruling of the CSCRO I

On June 26, 2014, the CSCRO I issued Decision No. 14-0066[13] finding Bernabe, Gonzales, and petitioner guilty of Grave Misconduct and dismissed them from service with all the accessory penalties attached thereto. The decretal portion of the Decision reads:

> WHEREFORE, premises considered, Marilyn D. Gonzales, Evelyn L. Bernabe, and Susana P. Bauzon, Assistant Municipal Treasurer, Municipal Accountant, and Municipal Treasurer, respectively, of the Municipal Government of Mangaldan, Pangasinan, are hereby found GUILTY of Grave Misconduct. Accordingly, they are meted the penalty of DISMISSAL with all accessory penalties or inherent disabilities pursuant to the Revised Rules on Administrative Cases in the Civil Service.[14]

The CSCRO I held: that the failure of Bernabe and petitioner to notice, bring out, or do something about the irregularities committed by Gonzales give credence to her admissions and statements in her comment and counter-affidavit; that the disallowed payrolls readily show that the total amount was altered and increased, paving the way for the illegal check padding; that it was unbelievable that Bernabe and petitioner were unable to notice such alterations perpetrated for almost the entire year of 2011 and the early months of 2012;[15] that under the circumstances, Gonzales committed irregularities in the preparation of illegally padded checks, while Bernabe and petitioner showed their acquiescence thereto by failing

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[12] *Id*. at 108-115.

[13] *Id*. at 150-182; signed by Director IV Nelson G. Sarmiento of the CSCRO I.

[14] *Id*. at 182.

[15] *Id*. at 181.

to perform their duties of safeguarding the finances of respondent; and that such omission was highly inexcusable.[16]

Unperturbed, petitioner filed a petition for review before the CSC proper.

Ruling of the CSC

On December 5, 2014, the CSC affirmed[17] Decision No. 14-0066 of the CSCRO I finding substantial evidence to hold petitioner guilty of Grave Misconduct. The pertinent portions thereof state:

> Bauzon stated in her Answer that the payrolls prepared by the Office of the Municipal Accountant together with the obligation requests and other supporting documents, were transmitted to the Office of the Treasurer. The Office of the Treasurer then forwards the payrolls to the Office of the Mayor for approval. The approved payrolls were returned to the Office of the Treasurer which prepared the cash advance vouchers and checks. At this point, Bauzon had the duty to verify the amount stated in the cash advance vouchers against the summary of the payrolls to be paid. It must be emphasized that before Bauzon come up with the summary of the payrolls, she also has to examine the payrolls involved and she has all the opportunity to see the alterations in the total amount indicated therein. As Municipal Treasurer, she has the obligation to verify the correctness of such altered amount because it is her primary duty to take custody of and exercise proper management of the funds of the Municipal Government of Mangaldan, Pangasinan. Also, her office is the one directly responsible for the preparation of checks. Thus, Bauzon cannot claim that only Gonzales is the accountable officer for the amount disallowed in audit considering that she has direct supervision over Gonzales, the Assistant Municipal Treasurer.
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> In this case, Bauzon deliberately failed to observe the irregularities committed by Gonzales as admitted by the latter in her Counter-Affidavit and Comment. The disallowed payrolls indisputably show that the total amount was altered and increased that led to the legal

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[16] *Id*. at 182.

[17] See Decision No. 140931 dated December 5, 2014, *id*. at 212-226.

padding of checks. As the Municipal Treasurer, Bauzon cannot deny that she has a hand in such alterations perpetrated in several payrolls from 2011 to 2012, taking into consideration that Gonzales is under her direct supervision.[18]

Petitioner moved for a reconsideration,[19] but the CSC denied it in Resolution No. 1500279[20] dated March 3, 2015. She thus filed a petition for review before the CA.

Ruling of the CA

In the Decision[21] dated March 20, 2017, the CA affirmed the ruling of the CSC. According to the CA, petitioner's failure to take custody of and exercise proper management of respondent's funds not only constitute violation of Republic Act No. (RA) 7160,[22] it likewise reflects poorly on her capacity as Municipal Treasurer. Despite the knowledge of her duties and responsibilities, she failed to properly exercise the duties of her office. The CA discussed:

> As treasurer of the municipality, Bauzon should perform her responsibilities diligently, faithfully, and efficiently. Bauzon should exercise the highest degree of care over the custody, management, and disbursement of municipal funds. Even if Bauzon may have justified that, as part of their standard operating procedures, and before she signs a check for a cash advance voucher, the corresponding cash advance vouchers upon which checks are based have passed several other offices; still, Bauzon cannot discount the fact that she failed to diligently verify the correctness of the amounts indicated therein. Considering that Bauzon has a duty to exercise proper management of the municipal funds and that it is her office which is directly and ultimately responsible for the preparation of the checks (and not to mention the amount of money involved), the sum-total of evidence clearly shows that Bauzon took a light stance of such responsibilities and, in the process, flagrantly disregarded established

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[18] *Id*. at 222, 225.

[19] See Motion for Reconsideration, *id*. at 227-252.

[20] *Id*. at 260-267.

[21] *Id*. at 47-54.

[22] Local Government Code of 1991.

rules. Her grave misconduct paved the way for the commission of more fraud against and consequent damage to, the Municipality of Mangaldan.

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We are not convinced that Bauzon's responsibilities can so easily be shifted to her subordinates because of the system she had instituted for the efficient management of cash disbursement in the Treasurer's Office. Notwithstanding such system of apportioning the tasks in Treasurer's Office, it should be noted that Bauzon remained to be the head of such office. Hence, Bauzon's subordinates remained under her direct supervision and control. As discussed elsewhere, Bauzon's failure to ensure the correctness of the amounts indicated by her subordinates in the documents she signs demonstrates her wanton and deliberate disregard for the demands of public service.[23]

Undaunted, petitioner filed a Motion for Reconsideration,[24] but the CA denied it in a Resolution[25] dated July 4, 2017.

Hence, this petition for review filed by petitioner arguing that respondent failed to discharge its burden of proving the fact that she committed the acts complained of.

In its Comment[26] on the other hand, respondent argues that the liability of petitioner was duly established by substantial evidence, both testimonial and documentary. It prays that the subject petition be dismissed for being patently dilatory and unmeritorious.[27]

The Issues

I.

WHETHER THE CA COMMITTED REVERSIBLE ERROR IN AFFIRMING DECISION NO. 14-0066 DATED DECEMBER 5, 2014

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[23] *Rollo*, pp. 51-52.

[24] *Id*. at 60-64.

[25] *Id*. at 56-57.

[26] *Id*. at 423-425.

[27] *Id*. at 424.

AND RESOLUTION NO. 1500279 DATED MARCH 23, 2015 OF THE CSC; AND

II.

WHETHER THE CA ERRED IN FINDING AND HOLDING THAT PETITIONER IS GUILTY OF GRAVE MISCONDUCT.

Ruling of the Court

The petition lacks merit.

Primarily, the grounds raised by petitioner regarding the appreciation of the evidence by the CSC and the CA are inevitably questions of fact which are beyond the ambit of the Court's jurisdiction in a petition for review on *certiorari*. It is not the Court's task to go over the proofs presented before CSC and the CA to ascertain if they were appreciated and weighed correctly, most especially when, as in this case, the CA and the CSC were uniform in their findings and conclusions.[28] Although it is widely held that this rule of limited jurisdiction admits of exceptions, none exists or is even alleged as existing, in the present case.

Misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty. Qualified by the term "gross," it means conduct that is "out of all measure beyond allowance; flagrant; shameful; such conduct as is not to be excused."[29]

The evidence on record demonstrates a pattern of negligence and gross misconduct on the part of the petitioner that fully satisfies the standard of substantial evidence. Substantial evidence

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[28] *Dumduma v. Civil Service Commission*, 674 Phil. 257, 267 (2011), citing *Bacasasar v. Civil Service Commission*, G.R. No. 180853, January 20, 2009, 576 SCRA 787, 794.

[29] *Hallasgo v. Commission on Audit Regional Office No. X, et al.*, *supra* note 1 at 591, citing *Rodriguez v. Eugenio*, 550 Phil. 78, 93-94 (2007) and *Malabanan v. Metrillo*, 568 Phil. 1, 7 (2008).

is such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. In the case at bench, as the CA pointed out, petitioner's failure to take proper custody of and exercise proper management of the funds of the Municipality of Mangaldan not only constitute violation of applicable laws,[30] but also reflect poorly on the government. Indeed, her omission provided ripe opportunity for fraud and corruption.

This is not the first time that a government employee was dismissed from service for Gross Misconduct.

In *Gonzales v. Civil Service Commission*,[31] the Court dismissed petitioner Carlos R. Gonzales (petitioner Gonzales) on the ground

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[30] *Id*. at 592. Such laws include:

Section 344 of Republic Act No. 7160, which provides that no money shall be disbursed unless the local budget officer certifies to the existence of the appropriation that has been legally made for the purpose, the local accountant has obligated said appropriation, and the local treasurer certifies to the availability of the funds for the purpose.

Section 69 of Presidential Decree No. 1445, which provides that public officers authorized to receive and collect money arising from taxes, revenues, or receipts of any kind shall remit intact the full amounts so received and collected by them to the treasurer of the agency concerned and credited to the particular accounts to which the said money belong.

Section 89 of Presidential Decree No. 1445, which provides that no cash advance shall be given unless for a legally authorized public purpose. A cash advance shall be reported on and liquidated as soon as the purpose for which it was given has been served. No additional cash advance shall be allowed to any official or employee unless the previous cash advance given to him is first settled or a proper accounting thereof is made.

COA-MOF Joint Memorandum Circular No. 2-81 dated 15 October 1981 provides that cash advances shall be granted only to duly designated paymaster, property officers, and supply officers of the local government unit concerned, for the payment of salaries and wages and other petty operating expenses, except when the grant of the cash advance is authorized by special law or competent authority, or is extremely necessary as determined by the chief executive and/or the heads of offices of the local government unit, as hereinafter provided. In no case shall the Treasurer or his cashier be granted a cash advance under his own accountability except for his foreign travel or such other official purpose as the ministry of finance may authorize. (Underscoring in the original.)

[31] 524 Phil. 271 (2006).

of his dishonesty and gross misconduct. Through their gunner, petitioner Gonzales and the branch manager of Casino Filipino-Davao City violated the table and time limits of Philippine Amusement and Gaming Corporation (PAGCOR) officers. Petitioner Gonzales accompanied one Quintin Llorente to the treasury window as an alleged applicant for accommodation of checks despite knowing that the true applicant was a certain Castillo who only had ₱20,000.00 in her bank account. Petitioner Gonzales facilitated the accommodation of the checks by making it appear that the checks had the clearance of the proper officers. But even assuming that he had the authority to make such facilitation, he could not have validly done it since he was not on official duty at that time. His acts, the Court held, constituted fraud or deceit. He deliberately flouted the rule of law, standards of behavior, and established procedures. He even used his influence and position for his own benefit and to the prejudice of PAGCOR. As such, he was correctly held liable for dishonesty and gross misconduct.

Similarly, in *Civil Service Commission v. Almojuela*,[32] in consenting to a prisoner's escape, the Court found SJO2 Arlie Almojuela guilty of gross misconduct in the performance of his duties as Senior Jail Officer II. Thus:

> We find SJO2 Almojuela guilty of gross misconduct in the performance of his duties as Senior Jail Officer II. Misconduct has been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." Misconduct becomes grave if it "involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence." In SJO2 Almojuela's case, we hold it established by substantial evidence that he consented to Lao's escape from the Makati City Jail. Thus, there was willful violation of his duty as Senior Jail Officer II to oversee the jail compound's security, rendering him liable for gross misconduct.[33]

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[32] 707 Phil. 420 (2013).

[33] *Id*. at 451. Citations omitted.

Still, in *Hallasgo v. Commission on Audit (COA) Regional Office No. X, et al.*,[34] petitioner therein Gloria G. Hallasgo (petitioner Hallasgo), Municipal Treasurer of Damulog, Bukidnon was accused of unauthorized withdrawal of monies of the public treasury amounting to malversation of public funds. She was liable for the following acts: (1) making unrecorded withdrawals from the municipality's bank account totaling ₱360,000.00 without the required supporting documents; and (2) failing to liquidate cash advances despite the lapse of over a year in the amount of ₱171,256.00. The Court was unconvinced that the anomalies complained of are the result of mere inadvertence, or that responsibility can so easily be shifted by petitioner Hallasgo to her subordinates. In contrast, petitioner Hallasgo's actions demonstrate her wanton and deliberate disregard for the demands of public service. Her failure to ensure that disbursements are properly documented or that cash advances granted to her are properly and timely liquidated certainly deserves administrative sanction. The Court held:

> It bears stressing that petitioner never bothered to explain what took place with respect to the funds subject of LBP Check Nos. 15627907 (for ₱350,000.00) and 15627921 (for ₱380,000.00). In stark contrast with the staunch defense she launched for other matters, she never thought to account for these checks, whether before the Office of the Ombudsman, the CA, or this Court. She cannot abdicate responsibility for the checks by claiming that it was the audit team's duty to undertake forensic analysis to uncover how these funds were spent. Rather, as treasurer, she should have deposited the funds as she was tasked to do, and subsequently accounted for the use of said funds.
>
> All these collectively constitute gross misconduct. Pursuant to Section 52, Rule IV of the Civil Service Rules, gross misconduct is a grave offense punishable with dismissal for the first offense, without prejudice to the Ombudsman's right to file the appropriate criminal case against the petitioner or other responsible individuals. We are, of course, aware that in several administrative cases, this Court has refrained from strictly imposing the penalties provided by the law,

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[34] *Hallasgo v. Commission on Audit (COA) Regional Office No. X, et al.*, *supra* note 1.

in light of mitigating factors such as the offending employee's length of service, acknowledgment of his or her infractions and feeling of remorse, family circumstances, advanced age, and other equitable considerations. However, we find that petitioner's recalcitrant refusal to explain the use (or misuse) of the more than ₱700,000.00 in cash placed in her possession makes her unworthy of such humanitarian consideration, and merits the most serious penalty provided by law.[35]

The same principle applies here.

As treasurer of the municipality, petitioner was charged with the responsibility to verify the correctness of the checks submitted to her office for signature.[36] Given the huge amounts that she is handling, it behooves upon her to exercise the highest degree of care over the custody, management, and disbursement of municipal funds. There is a tremendous difference between the

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[35] *Id*. at 593-594. Citations omitted.

[36] Under Section 470 (d) of Republic Act No. 7160 or the Local Government Code of 1991, the Treasurer shall have the following duties:

SECTION 470. *Appointment, Qualifications, Powers, and Duties.* — x x x

x x x x x x x x x

(d) The treasurer shall take charge of the treasury office, perform the duties provided for under Book II of this Code, and shall:

(1) Advise the governor or mayor, as the case may be, the sanggunian, and other local government and national officials concerned regarding disposition of local government funds, and on such other matters relative to public finance;
(2) Take custody and exercise proper management of the funds of the local government unit concerned;
(3) Take charge of the disbursement of all local government funds and such other funds the custody of which may be entrusted to him by law or other competent authority;
(4) Inspect private commercial and industrial establishments within the jurisdiction of the local government unit concerned in relation to the implementation of tax ordinances, pursuant to the provisions under Book II of this Code;
(5) Maintain and update the tax information system of the local government unit;
(6) In the case of the provincial treasurer, exercise technical supervision over all treasury offices of component cities and municipalities; and
(e) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

degree of responsibility, care, and trustworthiness expected of a clerk or ordinary employee in the bureaucracy and that required of bank managers, cashiers, finance officers, and other officials directly handling large sums of money and properties.[37] Even if petitioner offered her justifications, it is worthy to note that these explanations were belatedly done, effected only after the COA Regional Office No. 1 issued several AOM, Notices of Suspension, and Notices of Disallowance. Interestingly, she did not refute the alterations in the payroll; instead, she merely denied any participation thereto. The CSCRO I aptly observed:

> Respondent Bauzon likewise claims that she is not aware of the payroll alterations committed by respondent Gonzales. In Bauzon's answer, she stated that she merely verifies the amount stated in the cash advance vouchers prepared by Gonzales against the summary of the payrolls to be paid. Bauzon's statement is unacceptable as well. For her to arrive at the summary of the payrolls, she also necessarily has to examine the payrolls involved and she could have easily seen the alterations in the total amount therein. She could have verified the correctness of such altered amounts especially considering that she has a duty to exercise proper management of the municipal funds and that it is her office which is directly responsible for the preparation of checks.
>
> The failure of respondents Bernabe and Bauzon to notice, bring out, or do something about the irregularities committed by respondent Gonzales gives credence to the latter's statements and admissions in her comment and counter-affidavit. The disallowed payrolls readily show that the total amount was altered and increased, paving the way for the illegal check padding. This Office finds it hard to believe that respondents Bernabe and Bauzon were not able to notice such alterations perpetrated in several payrolls for almost every month in 2011 and the early months of 2012. This Office is more convinced that said respondents knew of the irregularities committed by Gonzales but simply closed their eyes. In effect, they acquiesced to such irregularities committed by Gonzales.
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> The Notices of Disallowances, Disallowed Payrolls, and Gonzales' admissions coupled with the peculiar circumstances discussed above

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[37] *Echano, Jr. v. Toledo*, 645 Phil. 97, 101 (2010), citing *Al-Amanah Islamic Investment Bank of the Phils. v. CSC*, 284 Phil. 92, 104-105 (1992).

are more than substantial evidence to support the allegations in the formal charge.[38]

In sum, petitioner cannot discount the fact that she failed to diligently verify the correctness of the amounts indicated in the cash advance vouchers and checks that passed her office. She took lightly her duty to exercise proper management of the municipal funds.[39]

The Court is also not convinced that the irregularities complained of are the result of mere inadvertence, or that petitioner's liability can easily be shifted to her subordinates. Notwithstanding her system of apportioning the tasks, petitioner remained to be the head of her office. Needless to say, her subordinates remained under her direct supervision and control.[40]

Under Section 52, Rule IV of the Revised Rules on Administrative Cases in the Civil Service, Gross Misconduct is a grave offense punishable with dismissal for the first offense, without prejudice to the Ombudsman's right to file the appropriate criminal case against the petitioner or other responsible individuals.

WHEREFORE, the petition is **DENIED**. The Decision dated March 20, 2017 and the Resolution dated July 4, 2017 of the Court of Appeals in CA-G.R. SP No. 139707 are **AFFIRMED**. Petitioner Susana P. Bauzon is hereby found **GUILTY** of **GRAVE MISCONDUCT** and is ordered **DISMISSED** from service with forfeiture of all retirement benefits except accrued leave credits, with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and -controlled corporations.

SO ORDERED.

Leonen (Chairperson), *Hernando, Delos Santos,* and *Rosario, JJ.*, concur.

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[38] *Rollo*, p. 181.

[39] *Id*. at 52.

[40] *Id*.

THIRD DIVISION

[G.R. No. 244423. November 4, 2020]

ROBERTO F. RODELAS, JR., *Petitioner*, *v.* **MST MARINE SERVICES (PHILS.), INC.,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON CERTIORARI; CONFLICTING FACTUAL FINDINGS OF THE COURT OF APPEALS AND THE PANEL OF VOLUNTARY ARBITRATORS WARRANT A REVIEW OF FACTUAL QUESTIONS.— In a Petition for Review on Certiorari under Rule 45, this Court is limited to questions of law. This rule admits of certain exceptions as laid down in *Pascual v. Burgos*:

> . . . (5) ***When the findings of fact are conflicting***; . . . (7) ***The findings of the Court of Appeals are contrary to those of the trial court***; . . .

Petitioner must demonstrate that the case falls under the exceptions which would warrant a review of factual questions.

Here, the factual findings of the Court of Appeals and Panel of Voluntary Arbitrators are conflicting.

2. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); EMPLOYER'S OBLIGATIONS UPON A SEAFARER'S MEDICAL REPATRIATION; DISABILITY AND DEATH BENEFITS.— [A]n employer has the following obligations upon a seafarer's medical repatriation:

> In fact, in The Late Alberto B. Javier v. Philippine Transmarine Carriers, Inc., the Court ruled that the POEA-SEC contemplates three liabilities of the employer when a seafarer is medically repatriated: (a) payment of medical treatment of the employee, (b) payment of sickness allowance, both until the seafarer is declared fit to work or when his disability rating is determined, and (c) payment of the disability benefit (total or partial), in

case the seafarer is not declared fit to work after being treated by the company-designated physician.

3. ID.; ID.; ID.; ID.; THE COMPANY-DESIGNATED PHYSICIAN MUST ISSUE A FINAL AND DEFINITE ASSESSMENT ON THE EXTENT OF A SEAFARER'S DISABILITY AND FITNESS TO RESUME WORK WITHIN THE 120/240-DAY PERIOD.— The 120/240-day period is for the company-designated physician to make a final and definite assessment as to the extent of a seafarer's disability and fitness to return to work. During this period, a seafarer is entitled to receive sickness allowance and obligated to report to the company-designated physician.

. . .

The assessment must not only be final but should also "reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such." The purpose of a final and determinative assessment is for the award of disability benefits to "be commensurate with the prolonged effects of the injuries suffered."

4. ID.; ID.; ID.; THE COMPANY-DESIGNATED PHYSICIAN'S INTERIM ASSESSMENT ON THE SEAFARER'S DISABILITY RATING BECOMES ITS FINAL AND DEFINITIVE ASSESSMENT WHEN THE EMPLOYER TERMINATES THE SEAFARER'S TREATMENT WITHOUT THE BENEFIT OF MEDICAL PROCEDURE.— Respondent is not obliged to exhaust the extended period of 240 days and wait for petitioner's consent to undergo surgery before terminating petitioner's treatment. However, in terminating petitioner's treatment, its interim assessment as to petitioner's disability rating without the benefit of surgery necessarily becomes its final and definitive assessment.

Respondent is now estopped from assailing the finality of its assessment. It admitted to terminating petitioner's treatment on October 17, 2014 because of the latter's indecision to undergo surgery.

In terminating the treatment without surgery, petitioner's disability rating remained at Grade 11. Further, in offering US$14,345.18 based on the interim disability rating, respondent recognized the finality of the interim assessment. Such act fulfils

the purpose of a final and determinative assessment which is to award a seafarer his or her disability benefits "commensurate to the prolonged effects of the injuries suffered." This signifies that after several months of treatment, respondent was convinced that without surgery, petitioner's disability rating would remain at Grade 11. Thus, it is estopped from assailing the finality of its assessment.

5. ID.; ID.; ID.; SEAFARERS MAY CONTINUE TO AVAIL OF MEDICAL TREATMENTS FROM THE COMPANY-DESIGNATED PHYSICIAN WHILE IN A STATE OF TEMPORARY TOTAL DISABILITY.— Since the period of petitioner's treatment had been extended to 240 days, he may continue to avail of his treatments within this period. In fact, petitioner is mandated to report to the company-designated physician, otherwise, he risks forfeiting his disability benefits.

. . .

Thus, respondent cannot blame petitioner for continuously reporting to the company-designated physician. Since petitioner is in a state of temporary total disability on September 26, 2014, he is entitled to enjoy the benefits provided by law. His consultation with Dr. Runas during this period does not remove his right to receive medical treatments from respondent.

6. ID.; ID.; ID.; SEAFARERS DO NOT LOSE THEIR RIGHT TO CONSENT TO THE MEDICAL PROCEDURE PRESCRIBED BY THE COMPANY-DESIGNATED PHYSICIAN.— Seafarers do not lose their right to consent to the prescribed medical procedure of the company-designated physician. . . .

. . .

Here, respondent failed to prove that petitioner's refusal to undergo surgery was unjustified. Other than mere speculation that petitioner will be better with surgery, there was no evidence supporting this allegation. The company-designated physician clarified that the results of the surgery may range from "improvement of functional capacity with residual disability to full functional capacity." Thus, even if petitioner consented to surgery, there is no conclusive proof that he will be restored to his previous capacity, or that he will be able to return to his duties.

7. ID.; ID.; ID.; REQUIREMENTS TO NEGATE A SEAFARER'S ENTITLEMENT TO DISABILITY BENEFITS; THE REFUSAL TO UNDERGO A MEDICAL PROCEDURE DOES NOT DISQUALIFY A SEAFARER FROM RECEIVING DISABILITY BENEFITS.— Petitioner's refusal to consent to the procedure does not disqualify him from availing of disability benefits.

Section 20. D of the POEA-SEC reads:

. . .

Under this provision, a seafarer is disqualified from receiving disability benefits if the employer proves the following: (1) that the injury, incapacity, or disability is directly attributable to the seafarer; (2) that the seafarer committed a crime or willful breach of duties; and (3) the causation between the injury, incapacity, or disability, and the crime or breach of duties. None of these requirements are present here. There was no allegation that petitioner breached his duties or committed a crime. Respondent merely alluded to petitioner's refusal to undergo surgery as the supposed cause of his illness.

8. ID.; ID.; ID.; COLLECTIVE BARGAINING AGREEMENT; THE EMPLOYERS CANNOT COMPEL THEIR EMPLOYEES TO UNDERGO INVASIVE MEDICAL TREATMENTS.— Respondent also invokes Article 15.4 of the Collective Bargaining as basis for petitioner's disqualification:

. . .

There is nothing in this provision which can be construed as evidence that members of the union bargained away their right to consent in all prescribed medical procedures of the company-designated physician. While it is the employer's responsibility to shoulder medical treatments of its employees injured in relation to their work, they cannot compel their employees to undergo invasive medical treatments.

9. ID.; ID.; ID.; PREROGATIVE OF SEAFARERS TO SEEK SECOND OPINION; REFERRAL TO A THIRD DOCTOR; THE OPINION OF A THIRD DOCTOR JOINTLY AGREED UPON BY THE EMPLOYER AND SEAFARER SHALL BE FINAL AND BINDING ON THEM.— In a long

line of cases, this Court has recognized the right of a seafarer to seek a second opinion:

. . .

Transocean Ship Management (Phils.), Inc. v. Vedad explained that the mechanism of referral to a third doctor was created to balance the right of a seafarer to seek opinion from his preferred physician, and the possibility of bias in the assessment of a company-designated physician: . . .

. . .

Section 20 A of the 2010 POEA-SEC states in part:

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

10. ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; THE TOTALITY OF EVIDENCE PRESENTED MUST BE WEIGHED IN FAVOR OF THE SEAFARER IN CASE OF DOUBT ON WHEN THE DISABILITY ASSESSMENT AND OFFER OF SETTLEMENT WAS MADE BY THE EMPLOYER.— Here, the parties have conflicting versions of when respondent informed petitioner of the interim assessment and offered the settlement amount. Petitioner asserts that it was on September 24, 2014 when he was made to report to PANDIMAN who informed him of a Grade 11 disability assessment and offered him US$14,345.18 as settlement.

On the other hand, respondent alleges that it was only after October 17, 2014, when it terminated petitioner's treatment, that it made the offer. It insists that it could not have made such offer on September 24, 2014 because at that time, petitioner was still undecided on whether he will undergo surgery. . . . Respondent alleges that it only received Dr. Runas' medical opinion on October 23, 2014.

This Court finds petitioner's version more credible.

As both parties failed to present proof to support their allegations when the interim assessment and offer was made, the totality of evidence should be weighed in favor of the seafarer in case of doubt as held in *Saso v. 88 Aces Maritime Service Inc.* [.]

11. ID.; ID.; ID.; ID.; ID.; THE MEDICAL ASSESSMENT OF A COMPANY-DESIGNATED PHYSICIAN IS NOT BINDING UPON THE COURT, BUT SHALL BE EVALUATED BASED ON ITS INHERENT MERIT.— In *Maunlad Transport, Inc. v. Manigo*, the assessment of the company-designated physician is not by itself, binding or conclusive:

> . . . However, in submitting himself to examination by the company-designated physician, a claimant does not automatically bind himself to the medical report issued by the company-designated physician; neither are the labor tribunals and the courts bound by said medical report. Its inherent merit will be weighed and duly considered. . . .
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> . . .
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> In this case, Dr. Nolasco gave a Grade 11 disability rating to petitioner's condition without surgery. It does not escape this Court that Dr. Nolasco may have given a disability rating more favorable to the respondent. It is also apparent that respondent tried to downplay its failure to accede to petitioner's request for a referral to a third doctor. This Court relies on the findings of the Panel of Voluntary Arbitrators that there is no incompatibility in the medical opinion of Dr. Nolasco and that of Dr. Runas[.]

12. ID.; ID.; ID.; DISABILITY BENEFITS; AN AWARD OF PERMANENT DISABILITY BENEFITS IS PROPER WHERE THE STRENUOUS NATURE OF WORK ABOARD A SHIP RESULTS TO AN INJURY THAT INCAPACITATES A SEAFARER FROM PURSUING THE USUAL WORK. — Dr. Nolasco's identification of "lifting heavy weights [and] heavy upper body" as risk factors for petitioner is relevant. Given these findings, it is highly improbable that petitioner can return as Chief Cook since it will be risky for him to carry out his basic functions such as loading the provisions of a ship. It is also unlikely that he can be employed in a similar capacity given his condition.

> . . .
>
> Based on the totality of evidence, it is reasonable that without surgery, petitioner could not have been declared fit for duty as Chief Cook. This explains the numerous opportunities respondent

gave to petitioner to consider surgery and risk the chance of improvement. Contrary to respondent's suggestion, it was not petitioner's indecision that prevented him from pursuing his usual work. Rather, it is precisely his strenuous work aboard the MV Sparta that resulted to his disability.

13. **ID.; ID.; ID.; ATTORNEY'S FEES; MORAL DAMAGES; AN AWARD OF ATTORNEY'S FEES MAY BE GRANTED WHEN A SEAFARER IS COMPELLED TO LITIGATE BECAUSE OF THE EMPLOYER'S REFUSAL TO HEED TO THE REQUEST FOR REFERRAL TO A THIRD DOCTOR; AN AWARD OF MORAL DAMAGES LACKS BASIS WHERE THE DENIAL THEREOF IS NOT ASSAILED.**— As regards petitioner's claim for attorney's fees, the award of 10% of the total claim is likewise reinstated. Contrary to respondent's allegation, petitioner was compelled to litigate because of its refusal to heed his request for referral to a third doctor. Lastly, since petitioner did not assail the denial of his claim for moral damages, its award lacks basis.

APPEARANCES OF COUNSEL

Henry S. Zamora for petitioner.
Retoriano & Olalia-Retoriano for respondent.

D E C I S I O N

LEONEN, *J.*:

A seafarer does not lose the right to consent to the prescribed medical treatments of a company-designated physician. The employer has the option to either wait for the seafarer to consent to the procedure or to terminate it within the 120/240 day period in which it should make a final and definite assessment of the seafarer's disability. In terminating a seafarer's treatment, the employer either recognizes the lack of a final assessment, or the finality of its interim assessment.

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, assailing the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. SP No. 142957. The Court of Appeals modified the decision of the Panel of Voluntary Arbitrators[4] and found petitioner entitled to permanent partial disability benefits instead of permanent total disability benefits.

MST Marine Services (Phils.), Inc. (MST Marine), hired Roberto Rodelas (Rodelas), Jr. as Chief Cook aboard MV Sparta for its principal, Thome Management Private Limited.[5] Rodelas is a member of the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP) which had a collective bargaining agreement with MST Marine effective from January 1, 2012 to December 31, 2014.[6]

Rodelas' duties as Chief Cook in MV Sparta included receiving provisions of the ship such as frozen fish and meat, maintaining these provisions, and preparing meals for the crew.[7]

On May 6, 2014, Rodelas felt pain on his lower right abdomen and back. He was then brought to a clinic in South Korea where he was diagnosed with lumbar sprain.[8] He was given medicine and was advised to undergo a Magnetic Resonance Imaging or

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[1] *Rollo*, pp. 7-24.

[2] Id. at 32-51. The February 20, 2018 Decision was penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Celia C. Librea-Leagogo and Samuel H. Gaerlan.

[3] Id. at 29-31. The January 14, 2019 Resolution was penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Celia C. Librea-Leagogo and Samuel H. Gaerlan.

[4] Id. at 96-112. The Panel of Voluntary Arbitration in AC-028-RCMB-NCR-MVA-003-01-01-2015 that issued the September 15, 2015 Decision was composed of MVA Jesus S. Silo (Chairperson) and members MVA Leonardo B. Saulog and MVA Herminigildo C. Javen.

[5] Id. at 33.

[6] Id. at 134.

[7] Id. at 9-10.

[8] Id. at 33.

Computed Tomography scan if the medication did not improve his condition.[9]

On May 22, 2014, he was brought to a hospital in South Korea, where he was diagnosed with "Chronic Back Pain. HIVD-Herniated Inter Vertebral Disc L4L5 (bulging)[,]" a colon inflammation, and was declared unfit to work.[10]

On May 24, 2014, Rodelas was repatriated to the Philippines.[11] Two days after, he was referred to the company-designated physicians at Nolasco Medical Clinic for a post-employment medical exam.[12] During the examination, he complained of back pain and abdominal discomfort. Thus, he was referred to an orthopaedic surgeon for examination of his spine and a gastroenterologist.[13] After a series of tests, his abdominal condition was diagnosed as "non-specific appendicitis" and was later declared to be asymptomatic and marked "resolved."[14]

On May 30, 2014, he was examined by an orthopaedic surgeon for his back pain. The surgeon recommended that Rodelas undergo physical therapy for six (6) sessions and, if the pain subsists, to undergo an MRI of his spine.[15] He was then diagnosed with "Lumbar Degenerative Disc Disease/Herniated Nucleus Pulposus."[16] After completion of the sessions, he returned and complained of back pain and numbness of his right leg. Thus, the orthopaedic surgeon recommended an MRI of his spine and found:

VENTRAL AND BILATERAL DISC PROTRUSION MORE TOWARDS THE RIGHT SIDE AT L4-5 LEVEL WITH ACCOMPANYING

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[9] Id.

[10] Id.

[11] Id.

[12] Id. at 805.

[13] Id.

[14] Id. at 806.

[15] Id.

[16] Id.

DEGENERATIVE DISC DESSICATION CHANGES AND SLIGHT SPINAL CANAL STENOSIS.[17] (Citation omitted)

On July 4, 2014, the orthopaedic surgeon recommended that Rodelas undergo "Laminotomy, Discectomy[,] and Foraminotomy with application of spacer L4-5[,]" otherwise referred to as spine surgery, and to continue his medications.[18] After several follow-up sessions, petitioner was undecided if he will undergo spine surgery.[19]

On September 6, 2014, MST Marine sought the opinion of its designated physicians in Nolasco Medical Clinic whether the pain in Rodelas' lower right extremity was caused by his back problem. It further requested for an assessment/disability grading of Rodelas' back problem. Dr. Elpidio Nolasco (Dr. Nolasco) replied in the affirmative and assessed petitioner's back problem as "[s]light rigidity of one third (1/3) loss of motion or lifting power of the trunk (back)" with a Grade 11 disability.[20]

On September 10, 2014, Dr. Nolasco responded to MST Marine's additional queries on the etiology, risk factors, and plan of management in case Rodelas decides not to undergo surgery:

Regarding your queries:

The etiology and risk factors of patient's medical condition and the plan of management, in the event that Mr. Rodelas will not undergo his recommended procedure.

Etiology is herniated disc.

Risk factors: lifting of heavy weights, heavy upper body

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[17] Id. at 807.

[18] Id. at 34 and 807.

[19] *See* Medical Reports for the following dates: July 14, 2014, July 21, 2014, July 28, 2014, August 5, 2014, August 12, 2014, and August 20, 2014, pp. 295-325.

[20] *Rollo*, p. 326.

Plan of management: Spine surgery if not, continuous rehabilitation therapy[.][21]

Dr. Nolasco reiterated Rodelas' disability grading:

Mr. Rodelas' interim disability grade

Disability grading for back is:

Slight rigidity or one third (1/3) loss of motion or lifting power of the trunk (back) . . . Gr. 11

Reference:

Primer 2010 POEA Standard Employment Contract, under Chest-Trunk-Spine, page 21. Item #6[.][22]

On September 18, 2014, Rodelas went back to Nolasco Medical Clinic where he was referred to the orthopaedic spine surgeon who recommended epidural injections and physical therapy. However, he was unsure of receiving injections.[23]

On September 24, 2014, Rodelas alleged that he was advised to go to PANDIMAN, his principal's correspondent in the Philippines.[24] There, he was told of the Grade 11 disability assessment and was offered compensation amounting to US$14,345.18 as stated in the Collective Bargaining Agreement.[25] He was allegedly told that to question this assessment, he should "seek a second medical opinion[.]"[26]

On September 26, 2014, Rodelas sought an opinion from Dr. Renato P. Runas (Dr. Runas), who declared that "spinal surgery will not provide a complete recovery from the symptoms" and that Rodelas was "permanently unfit for sea duty in whatever capacity with a permanent disability."[27]

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[21] Id. at 327.

[22] Id.

[23] Id. at 329.

[24] Id. at 16.

[25] Id. at 14.

[26] Id.

[27] Id. at 34.

Rodelas continued his medical treatment in the Nolasco Medical Clinic. After several sessions, Rodelas was still undecided on whether he will undergo spine surgery or receive epidural injections.[28]

After his last check-up on October 17, 2014, MST Marine opted to terminate Rodelas' treatment due to his inability to decide on undergoing the recommended course of treatment. MST Marine claimed this was when it informed Rodelas of his disability grading and offered him the amount of US$14,325.19 as settlement.[29]

Rodelas rejected the offer and sought the help of his union. On October 22, 2014, AMOSUP sent a letter to MST Marine inviting them for a clarificatory meeting to discuss Rodelas' disability benefits.[30] However, they failed to arrive at an amicable settlement.[31]

Thus, on November 10, 2014, Rodelas filed a Notice to Arbitrate with the National Conciliation and Mediation Board.[32] During the conferences, Rodelas requested for a third medical assessment, but MST Marine did not act on it despite numerous requests for referral. Thus, the parties submitted the case for decision.[33]

On September 15, 2015, the Panel of Voluntary Arbitrators issued a decision, the dispositive portion of which stated:[34]

WHEREFORE, PREMISES CONSIDERED, a decision is hereby rendered ORDERING herein respondents MST MARINE SERVICES (PHILS.), INC[.] AND ARTEMIO V. SERAFICO to pay jointly and

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[28] Id. at 332-339. *See* Medical Reports for September 26, 2014, September 30, 2014, October 9, 2014, and October 17, 2014.

[29] Id. at 809.

[30] Id. at 340.

[31] Id. at 34.

[32] Id.

[33] Id. at 97.

[34] Id. at 34.

solidarily complainant ROBERTO RODELAS, JR., the amount of NINETY FIVE THOUSAND NINE HUNDRED FORTY NINE U.S. DOLLARS ($95,949.00) as permanent total disability benefits; and ten percent (10%) thereof as attorney's fees in the amount of **NINE THOUSAND FIVE HUNDRED NINETY FOUR U.S. DOLLARS AND NINETY CENTS ($9,594.90)**, or in the total amount of **ONE HUNDRED FIVE THOUSAND FIVE HUNDRED THIRTY NINE AND NINETY CENTS ($105,539.9[0])**, or its Philippine Peso equivalent converted at the prevailing rate of exchange at the time of actual payment[.][35] (Emphasis in the original)

The Panel of Voluntary Arbitrators held that entitlement to permanent total disability benefits does not depend on the assessment of the company-designated physician, but on the capacity of the employee to pursue and earn from his usual work.[36] Relying on *Crystal Shipping v. Natividad*,[37] it held that a disability preventing a seafarer from performing and earning from his usual work for more than 120 days leads to permanent total disability. It noted that more than 120 days have lapsed from Rodelas' repatriation on May 24, 2014 until the case was submitted for decision. It also held that Rodelas cannot go back to his sea duties without serious discomfort and danger to his life. Thus, he was awarded permanent total disability benefits amounting to US$95,949.00 as stipulated in the Collective Bargaining Agreement[38] and 10% attorney's fees.[39]

It also gave more weight to Dr. Runas' findings over the company-designated physicians because it was grounded on the impact of the nature of Rodelas' work in relation to his injury.[40]

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[35] Id. at 35.

[36] Id. at 106.

[37] 510 Phil. 332 (2005) [Per J. Quisumbing, First Division].

[38] *Rollo*, pp. 106-107.

[39] Id. at 107-108.

[40] Id. at 108.

On November 10, 2015, MST Marine filed a petition for review before the Court of Appeals.[41]

Pending appeal, the Panel of Voluntary Arbitrators granted and issued a writ of execution for the satisfaction of its award. Hence, on February 9, 2016, MST Marine issued an RCBC Check No. 670781 amounting to ₱5,013,145.25 to NLRC which then released it to Rodelas.[42]

On February 20, 2018, the Court of Appeals issued a Decision[43] partially granting the Petition and modifying the award from permanent total to partial disability benefits amounting only to US$7,465.00:

> **WHEREFORE**, the instant petition for review is hereby **PARTIALLY GRANTED**.
>
> Accordingly, the Decision dated 15 September 2015 rendered by the Panel of Voluntary Arbitrators of the NCMB is **MODIFIED**, ordering petitioner MST Marine Services (Phils.) and Artemio V. Serafico to jointly and severally pay respondent Roberto F. Rodelas, Jr. permanent and partial disability benefits corresponding to a Grade 11 disability under the 2010 POEA-SEC in the amount of US$7,465.00 or its peso equivalent at the time of payment, with legal interest at the rate of six percent (6%) per annum from the finality of this Decision until full satisfaction[.][44] (Emphasis in the original)

The Court of Appeals found that Rodelas was only entitled to permanent and partial disability benefits.[45] It held that the period of assessment of the company-designated physician was extended from 120 to 240 days because Rodelas needed further treatment.[46] Before the lapse of the 240-day period, Rodelas already filed his claims with the National Conciliation and

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[41] Id. at 811.

[42] Id.

[43] Id. at 32-51.

[44] Id. at 49-50.

[45] Id. at 47.

[46] Id. at 42.

Mediation Board.[47] It held that Rodelas' failure to decide on the prescribed treatment prevented the company-designated physician from making a final assessment within the 240-day period.[48] It ruled that the Grade 11 disability rating is merely an interim assessment that is not definitive of petitioner's condition.[49] Thus, Rodelas' right to consult with a physician of his own choice was premature because it presupposed the existence of a final assessment of his disability from the company-designated physician.[50]

Nonetheless, the Court of Appeals held that as a matter of equity, Rodelas was entitled to permanent partial disability benefits, since it is undisputed that his injury was work-related.[51] It gave credence to the Grade 11 disability rating assessment of the company-designated physician who examined, diagnosed, and treated Rodelas from his medical repatriation.[52] It modified the rate as provided for in Section 32 of the 2010 POEA Standard Employment Contract (POEA-SEC).[53]

Finally, the Court of Appeals found that Rodelas was not entitled to attorney's fees as he was neither forced to litigate nor were his wages unlawfully withheld as the delay was caused by his own indecision.[54]

The Court of Appeals denied Rodelas' motion for reconsideration in its January 14, 2019 Resolution.[55] Hence, this Petition.

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[47] Id. at 44.

[48] Id.

[49] Id. at 46.

[50] Id. at 46-47.

[51] Id. at 17. Court of Appeals Decision.

[52] Id. at 47-48.

[53] Id. at 48.

[54] Id. at 49.

[55] Id. at 29.

Petitioner does not dispute receiving several consultations and treatments from company-designated physicians. However, he alleges that even after he had signified his intention to undergo surgery he was told by respondent that he can no longer return to his sea duties.[56] He claims he was advised by respondent to go to its correspondent in the Philippines, PANDIMAN.[57] There, he learned that he was assessed a Grade 11 disability with a compensation of US$14,345.18.[58] He was allegedly told that if he wanted to dispute this assessment, he should seek a second medical opinion.[59] Thus, he went to Dr. Runas who found him permanently unfit for sea duties, which the respondent refused to acknowledge.[60] It was then that he sought the help of his union, AMOSUP, to claim his disability benefits.[61]

Petitioner asserts he sought a second opinion from Dr. Runas to get an improved offer of compensation and possible amicable settlement from the respondent.[62] Further, he argues that the company-designated physician's assessment was final[63] and that his medical condition already rendered him totally and permanently disabled by law.

On the other hand, respondent contends that its representative had been diligent in responding to petitioner's medical needs. It faults petitioner for his repeated failure to avail of the prescribed surgery and injections which led to its decision to terminate his medical treatment.[64] Respondent denies dissuading petitioner from consenting to the surgery and claims even the company-designated physician was consistent in its recommendation to

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[56] Id. at 13.

[57] Id. at 16.

[58] Id. at 14.

[59] Id.

[60] Id. at 14-15.

[61] Id. at 15.

[62] Id. at 18.

[63] Id. at 16-18.

[64] Id. at 820.

proceed with surgery. Since there was a chance petitioner could regain his full functional capacity after the surgery, respondent asserts petitioner should have consented to the procedure.[65] It concludes that petitioner's unjustified refusal to undergo surgery disqualifies him from claiming disability benefits under Section 20.D of the POEA-SEC and Article 15.4 of the Collective Bargaining Agreement.[66]

Respondent insists that the assessment was only interim and blames the lack of a final assessment on petitioner's inability to decide on undergoing the surgery.[67] It avers that petitioner's continued medical treatment after the 120th day effectively extended the period to 240 days for respondent to finalize his disability assessment.[68] Since there was no final assessment issued by its company-designated physician when petitioner filed the notice to arbitrate, respondent alleges that petitioner's claim for disability benefits is premature and lacks a cause of action.[69]

Respondent imputes bad faith on petitioner's act of securing a second medical opinion from Dr. Runas while he was still undergoing treatment from the company-designated physician.[70] Petitioner allegedly did not have a right to seek a second opinion since his treatment has yet to be completed.[71] In addition, it claims that Dr. Runas' examination should not be given credence for being speculative as he only examined petitioner once without conducting any diagnostic or confirmatory medical tests. This is compared to the company's course of treatments spanning five (5) months.[72] It also avers that Dr. Runas' findings were

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[65] Id. at 820-821.

[66] Id. at 821.

[67] Id. at 824.

[68] Id.

[69] Id. at 825-826.

[70] Id. at 828.

[71] Id. at 835.

[72] Id. at 828-831.

deficient as he failed to identify the degree of disability in accordance with the provisions of the Collective Bargaining Agreement and POEA-SEC.[73] Respondent concludes that whatever disability Dr. Runas assessed was attributable solely to petitioner's refusal to undergo surgery.[74]

Finally, it claims that even if petitioner was entitled to disability benefits, he is only entitled to a Grade 11 disability as found by the company-designated physician who assessed that petitioner's back injury only slightly affected the movement of his lower extremities.[75]

Respondent reasons that the treatments it sponsored for five months from May 26 to October 17, 2014 suffice in determining petitioner's disability grading and it was petitioner's indecisiveness which prevented him from regaining his pre-injury capacity. Thus, it claimed that the Court of Appeals correctly awarded partial disability compensation equivalent to Grade 11 disability under the POEA Rules.

The relevant issues in this case are as follows:

First, whether or not this Court may resolve factual issues involved in a petition under Rule 45 of the Rules of Court;

Second, whether or not petitioner had cause of action for disability benefits when the notice to arbitrate was filed;

Third, whether or not the petitioner's refusal to undergo surgery disqualified him from availing disability benefits; and

Lastly, whether or not petitioner is entitled to permanent total disability benefits.

This Court grants the Petition.

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[73] Id. at 832.

[74] Id. at 833.

[75] Id. at 834.

I

In a Petition for Review on Certiorari under Rule 45, this Court is limited to questions of law.[76] This rule admits of certain exceptions as laid down in *Pascual v. Burgos*:[77]

> (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.[78] (Citation omitted, emphasis supplied)

Petitioner must demonstrate that the case falls under the exceptions which would warrant a review of factual questions.[79]

Here, the factual findings of the Court of Appeals and Panel of Voluntary Arbitrators are conflicting. Petitioner then assails the Court of Appeals' comprehension of facts as supposedly based on speculations, surmises, and conjectures contrary to evidence on record.[80]

This Court agrees. In reversing the Panel of Voluntary Arbitrator's award of permanent disability benefits, the Court of Appeals failed to consider the termination of petitioner's

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[76] RULES OF COURT, Rule 45, sec. 1.

[77] 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

[78] Id. at 182-183.

[79] Id. at 167 citing *Borlongan v. Madrideo*, 380 Phil. 215, 223 (2000) [Per J. De Leon, Jr., Second Division].

[80] *Rollo*, p. 8.

treatment because of his indecision to undergo surgery, his right to consent with the prescribed medical procedures, his right to a second opinion, and the weakness of respondent's evidence.

II

Articles 197 to 199 of the Labor Code, the Amended Rules on Employee Compensation, the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC), and the Collective Bargaining Agreement provide the guidelines for payment of disability benefits.[81]

An employee who sustains an injury or contracts an illness in relation to the conduct of his work may be entitled to three types of disability benefits under the Labor Code:

> ARTICLE 197. [191] *Temporary total disability*. —
>
> a. Under such regulations as the Commission may approve, any employee under this Title who sustains an injury or contracts sickness resulting in temporary total disability shall, for each day of such a disability or fraction thereof, be paid by the System an income benefit equivalent to ninety percent of his average daily salary credit, subject to the following conditions: the daily income benefit shall not be less than Ten Pesos nor more than Ninety Pesos, nor paid for a continuous period longer than one hundred twenty days, except as otherwise provided for in the Rules, and the System shall be notified of the injury or sickness. (As amended by Section 2, Executive Order No. 179)
>
> b.
>
> . . . .
>
> ARTICLE 198. [192]. *Permanent total disability*. —
>
> a. Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall, for each month until his death, be paid by the System during such a disability, an amount equivalent to the monthly income benefit, plus ten percent thereof for each dependent child, but not exceeding five, beginning

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[81] *Tamin v. Magsaysay Maritime Corporation*, 794 Phil. 286 (2016) [Per J. Velasco, Third Division].

with the youngest and without substitution: Provided, That the monthly income benefit shall be the new amount of the monthly benefit for all covered pensioners, effective upon approval of this Decree.

b. The monthly income benefit shall be guaranteed for five years, and shall be suspended if the employee is gainfully employed, or recovers from his permanent total disability, or fails to present himself for examination at least once a year upon notice by the System, except as otherwise provided for in other laws, decrees, orders or Letters of Instructions. (As amended by Section 5, Presidential Decree No. 1641)

c. The following disabilities shall be deemed total and permanent:

1. Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules;

. . . .

d. The number of months of paid coverage shall be defined and approximated by a formula to be approved by the Commission.

ARTICLE 199 [193]. *Permanent partial disability*. —

a. Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in permanent partial disability shall, for each month not exceeding the period designated herein, be paid by the System during such a disability an income benefit for permanent total disability. (Citations omitted)

Meanwhile, Rule X, Section 2 of the Amended Rules on Employee Compensation states the period of entitlement to disability benefits:

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

as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

(b) After an employee has fully recovered from an illness as duly certified to by the attending physician, the period covered by any relapse he suffers, or recurrence of his illness, which results in disability and is determined to be compensable, shall be considered independent of, and separate from, the period covered by the original disability. Such a period shall not be added to the period covered by his original disability in the computation of his income benefit for temporary total disability (TTD). (ECC Resolution No. 1029, August 10, 1978). (Emphasis supplied)

Section 20 of the POEA-SEC provides additional guidelines:

3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.

The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.

For this purpose, the seafarer shall submit himself to a postemployment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory

reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

. . . .

6. In case of permanent total or partial disability of the seafarer caused by either injury or illness the seafarer shall be compensated in accordance with the schedule of benefits enumerated in Section 32 of his Contract. Computation of his benefits arising from an illness or disease shall be governed by the rates and the rules of compensation applicable at the time the illness or disease was contracted.

The disability shall be based solely on the disability gradings provided under Section 32 of this Contract, and shall not be measured or determined by the number of days a seafarer is under treatment or the number of days in which sickness allowance is paid.

Based on the foregoing, an employer has the following obligations upon a seafarer's medical repatriation:

In fact, in The Late Alberto B. Javier v. Philippine Transmarine Carriers, Inc., the Court ruled that the POEA-SEC contemplates three liabilities of the employer when a seafarer is medically repatriated: (a) payment of medical treatment of the employee, (b) payment of sickness allowance, both until the seafarer is declared fit to work or when his disability rating is determined, and (c) payment of the disability benefit (total or partial), in case the seafarer is not declared fit to work after being treated by the company-designated physician.[82]

The 120/240-day period is for the company-designated physician to make a final and definite assessment as to the extent of a seafarer's disability and fitness to return to work. During

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[82] *Carino v. Maine Marine Phils. Inc.*, G.R. No. 231111, October 17, 2018 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64770> [Per J. Caguioa, Second Division] citing *The Late Alberto B. Javier v. Philippine Transmarine Carriers, Inc.*, 738 Phil. 374 (2014) [Per J. Brion, Second Division].

this period, a seafarer is entitled to receive sickness allowance and obligated to report to the company-designated physician.[83]

Magsaysay Mol Marine, Inc. v. Atraje[84] reiterated the rules on the issuance of a final medical assessment:

> In *Talaroc v. Arpaphil Shipping Corp.*, this Court summarized the rules regarding the duty of the company-designated physician in issuing a final medical assessment, as follows:
>
> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
>
> 2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;
>
> 3. *If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification* (e.g., seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and
>
> 4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.[85] (Citations omitted)

The assessment must not only be final but should also "reflect the true extent of the sickness or injuries of the seafarer and his or her capacity to resume work as such."[86] The purpose of a final and determinative assessment is for the award of disability

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[83] POEA-SEC, sec. 20 (3).

[84] G.R. No. 229192, July 23, 2018 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64478> [Per J. Leonen, Third Division].

[85] Id.

[86] Id.

benefits to "be commensurate with the prolonged effects of the injuries suffered."[87]

In this case, it is not disputed that petitioner incurred a work-related injury aboard MV Sparta.[88] Petitioner asserts that the Grade 11 disability assessment of the company-designated physician was final as he was offered compensation based on this.[89] However, respondent contends that its designated physician was unable to arrive at a final assessment of petitioner's disability due to his unjustified refusal to undergo surgery.[90]

This Court rejects respondent's contentions.

Respondent is not obliged to exhaust the extended period of 240 days and wait for petitioner's consent to undergo surgery before terminating petitioner's treatment. However, in terminating petitioner's treatment, its interim assessment as to petitioner's disability rating without the benefit of surgery necessarily becomes its final and definitive assessment.

Respondent is now estopped from assailing the finality of its assessment. It admitted to terminating petitioner's treatment on October 17, 2014 because of the latter's indecision to undergo surgery:

> Considering that the Petitioner was not keen on undergoing the surgery and injection recommended by the company-designated physicians, Respondent and its foreign principal opted to terminate his treatment, which decision duly discussed with him. Respondent, through Pandiman Philippines, Inc., the foreign Principal's local correspondent, in utmost good faith, offered to pay Petitioner USD14,325.19, the amount corresponding to Disability Grade 11, computed based on the rate provided by the CBA. Petitioner, however, rejected the Respondent's offer.[91]

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[87] Id.

[88] *Rollo*, p. 16, Court of Appeals Decision.

[89] Id. at 17.

[90] Id. at 824.

[91] Id. at 809.

In terminating the treatment without surgery, petitioner's disability rating remained at Grade 11. Further, in offering US$14,345.18 based on the interim disability rating, respondent recognized the finality of the interim assessment. Such act fulfils the purpose of a final and determinative assessment which is to award a seafarer his or her disability benefits "commensurate to the prolonged effects of the injuries suffered."[92] This signifies that after several months of treatment, respondent was convinced that without surgery, petitioner's disability rating would remain at Grade 11. Thus, it is estopped from assailing the finality of its assessment.

Respondent cannot be allowed to invoke petitioner's indecision only when it is favorable. On one hand, it invokes petitioner's indecision in order to extend the period of treatment despite petitioner's reluctance to undergo spine surgery.[93] Yet it invokes the same for its failure to arrive at a final and definite assessment. This only shows that respondent made a calculated decision in waiting for petitioner's consent to undergo surgery.

Respondent had 120 days from May 26, 2014 when petitioner first reported to Nolasco Medical Clinic, or until September 23, 2014 to assess petitioner's disability and make a definite and final assessment as to his fitness to work. On September 6, 2014, respondent inquired as to the status of petitioner's treatment, to which its doctor gave an interim assessment of a Grade 11 disability.[94]

Respondent then asked its company-designated physician as to the plan of management and risk factors should petitioner forego spine surgery. In its report, the company-designated physician reiterated petitioner's Grade 11 interim disability.[95]

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[92] *Magsaysay Mol. Marine v. Atraje*, G.R. No. 229192, July 23, 2018 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64478> [Per J. Leonen. Third Division].

[93] *Rollo*, p. 808.

[94] Id. at 823.

[95] Id.

Respondent further clarified if petitioner's condition will improve with surgery, to which their designated physician answered:

> Mr. Rodelas' condition is expected to improve with surgery. If he will not undergo surgery and resort to continuous physical therapy, his condition will not improve. In fact, he has already undergone several physical therapy sessions but his condition did not really improve.[96]

Given these clarifications, on September 18, 2014, respondent decided to extend petitioner's medical treatment.[97] The extension of the period of assessment was confirmed when petitioner reported to the company designated physician on September 26, 2014 for a follow-up check-up.[98]

Respondent also imputes bad faith on petitioner for continuing treatments even after consulting with Dr. Runas. Petitioner allegedly deceived respondent when he purported that he was still considering surgery even if he was already convinced that he was permanently unfit for sea duties.[99]

This Court disagrees. Since the period of petitioner's treatment had been extended to 240 days, he may continue to avail of his treatments within this period. In fact, petitioner is mandated to report to the company-designated physician, otherwise, he risks forfeiting his disability benefits.[100]

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[96] Id. at 328.

[97] Id. at 808.

[98] Id.

[99] Id. at 827.

[100] POEA-SEC, sec. 20 (3), par. 3 provides:

> For this purpose, the seafarer shall submit himself to a postemployment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

Sunit v. OSM Maritime Services, Inc.,[101] held that during the 120/240-day assessment period, the employee is in a state of temporary total disability:

> The case of *Vergara v. Hammonia Maritime Services, Inc.* harmonized the provisions of the Labor Code and the AREC with Section 20 (B) (3) of the POEA-SEC (now Section 20 [A] [3] of the 2010 POEA-SEC). Synthesizing the abovementioned provisions, *Vergara* clarifies that the 120-day period given to the employer to assess the disability of the seafarer may be extended to a maximum of 240 days:
>
> > As these provisions operate, the seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. ***For the duration of the treatment but in no case to exceed 120 days, the seaman is on temporary total disability*** as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine Laws. ***If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a permanent partial or total disability already exists***. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.[102] (Citation omitted, emphasis supplied)

Thus, respondent cannot blame petitioner for continuously reporting to the company-designated physician. Since petitioner is in a state of temporary total disability on September 26, 2014, he is entitled to enjoy the benefits provided by law. His consultation with Dr. Runas during this period does not remove his right to receive medical treatments from respondent.

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[101] 806 Phil. 505 (2017) [Per J. Velasco, Third Division] citing *Hammonia Maritime Services, Inc.*, 588 Phil. 895 (2008) [Per J. Brion, Second Division].

[102] Id. at 515-516.

III

Seafarers do not lose their right to consent to the prescribed medical procedure of the company-designated physician. In *Dr. Rubi Li v. Spouses Soliman*,[103] this Court recognized the right of a person to decide on what can and cannot be done to his or her body, and to arrive at an informed consent on a potentially dangerous medical procedure:

> The doctrine of informed consent within the context of physician-patient relationships goes far back into English common law. As early as 1767, doctors were charged with the tort of "battery" (i.e., an unauthorized physical contact with a patient) if they had not gained the consent of their patients prior to performing a surgery or procedure. In the United States, the seminal case was *Schoendorff v. Society of New York Hospital* which involved unwanted treatment performed by a doctor. Justice Benjamin Cardozo's oft-quoted opinion upheld the basic right of a patient to give consent to any medical procedure or treatment: "***Every human being of adult years and sound mind has a right to determine what shall be done with his own body***; and a surgeon who performs an operation without his patient's consent, commits an assault, for which he is liable in damages." From a purely ethical norm, informed consent evolved into a general principle of law that a physician has a duty to disclose what a reasonably prudent physician in the medical community in the exercise of reasonable care would disclose to his patient as to whatever grave risks of injury might be incurred from a proposed course of treatment, so that a patient, exercising ordinary care for his own welfare, and faced with a choice of undergoing the proposed treatment, or alternative treatment, or none at all, may intelligently exercise his judgment by reasonably balancing the probable risks against the probable benefits.[104] (Citations omitted, emphasis supplied)

Respondent argues that petitioner's unjust refusal of the prescribed medical treatment disqualifies him from receiving disability benefits under Section 20.D of the POEA-SEC and Article 15.4 of the Collective Bargaining Agreement.[105]

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[103] 666 Phil. 29 (2011) [Per J. Villarama, En Banc].

[104] Id. at 54-55.

[105] *Rollo*, p. 821.

This Court denies these contentions.

Here, respondent failed to prove that petitioner's refusal to undergo surgery was unjustified. Other than mere speculation that petitioner will be better with surgery,[106] there was no evidence supporting this allegation. The company-designated physician clarified that the results of the surgery may range from "improvement of functional capacity with residual disability to full functional capacity."[107] Thus, even if petitioner consented to surgery, there is no conclusive proof that he will be restored to his previous capacity, or that he will be able to return to his duties.

This Court gives credence to petitioner's reasons for his reluctance to undergo an invasive medical procedure. Assessing the risks, he feared not being able to return to his sea duties even after receiving surgery:

> Petitioner thereafter reported to respondent manning agency and manifested his willingness to undergo surgical operation. Petitioner wanted the operation to push through the earliest time possible as he wanted to go back to sea duty. But when he asked respondent manning agency if after the operation he can resume his duties as a seafarer, the latter responded that petitioner can no longer go back to sea duties. He can no longer be rehired as the company will not risk petitioner to send on board the vessel knowing that he has back injury.
>
> Petitioner thereafter, went back to Dr. Pidlaoan to verify what would be his condition if he decided to push through with the operation. Dr. Pidlaoan confirmed to petitioner that the latter will experience limitation of movement including the bending and stretching movement, most specially carrying objects. With all those limitations of movement, it only means one thing[:] complainant can no longer go back to sea duty as a seafarer.
>
> Because of the statement of the company doctor, petitioner was now confused whether he will undergo surgical operation. Even without being operated yet, petitioner has already experienced all the limitation

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[106] Id.

[107] Id. at 331.

of movements which the doctor explained to him. And these limitations will linger on even if he will be subject for surgical operations.[108]

Petitioner's refusal to consent to the procedure does not disqualify him from availing of disability benefits.[109]

Section 20.D of the POEA-SEC reads:

> Section 20. COMPENSATION AND BENEFITS. —
>
> . . .
>
> D. No compensation and benefits shall be payable in respect or any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or intentional breach of his duties, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer.

Under this provision, a seafarer is disqualified from receiving disability benefits if the employer proves the following: (1) that the injury, incapacity, or disability is directly attributable to the seafarer; (2) that the seafarer committed a crime or willful breach of duties; and (3) the causation between the injury, incapacity, or disability, and the crime or breach of duties. None of these requirements are present here. There was no allegation that petitioner breached his duties or committed a crime. Respondent merely alluded to petitioner's refusal to undergo surgery as the supposed cause of his illness.[110]

Moreover, *Centennial Transmarine, Inc. v. Sales*,[111] held that a seafarer's refusal to undergo surgery is not a breach of duty under Section 20.D of the POEA-SEC as the employer had several opportunities to stop the seafarer's treatment for his supposed breach of duty, but failed to do so:

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[108] Id. at 13-14.

[109] Id. at 821.

[110] Id. at 821 and 833.

[111] G.R. No. 196455, July 8, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65532> [Per J. Carandang, First Division].

Further, if, as CTI argues, Sales' refusal for surgery was a breach of duty, then CTI should have immediately stopped the medical treatment of Sales. From the facts, Sales refused to undergo surgery as early as July 2006. Yet, CTI continued observing and treating Sales conservatively through physical rehabilitation. CTI had several opportunities to notify Sales, during his treatment and physical therapy sessions, that not resorting to surgery is a breach and would forfeit his disability benefits. Further, if Sales had indeed abandoned treatment, CTI would not have issued a disability assessment in September 2006 because Sales had not completed his treatment. The foregoing factual incidents do not convince this Court that CTI considered Sales to have breached his duty.[112]

Similar to *Centennial Transmarine*, respondent had several opportunities to stop petitioner's treatment had it genuinely believed that he was disqualified under Section 20.D of the POEA-SEC. As early as July 4, 2014, the company-designated physician has recommended surgery. Since then, at least six (6) more sessions went by where petitioner was undecided about spine surgery.[113] In fact, respondent even extended the period of treatment to give petitioner time to consider the procedure.[114] Thus, respondent's invocation of Section 20.D is baseless and a mere afterthought.

Respondent also invokes Article 15.4 of the Collective Bargaining as basis for petitioner's disqualification:

Proof of continued entitlement to medical attention for work-related condition shall be by submission of satisfactory medical reports, endorsed, where necessary, by a company appointed doctor. if a doctor appointed by or on behalf of the seafarer disagrees with the assessment, a third doctor may be nominated jointly between the Company and the Union and the decision of this doctor shall be final and binding on both parties. *The seafarers agree to follow the full course of treatment prescribed by the designated Company doctor, including advice regarding exercise, rest, or other factor which may hinder*

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[112] Id.

[113] *See* Medical Reports dated July 21, 2014, July 28, 2014, August 5, 2014, August 12, 2014, and August 20, 2014, *Rollo*, pp. 314-325.

[114] Id. at 808.

his proper recovery. Failure to do so may affect any subsequent disability or death benefit. The company appointed doctor or clinic attending to a medically repatriated seafarer must submit a medical report on the status, predicted degree of disability or continued duration of treatment of the seafarer within one hundred (100) days from arrival in the Philippines.[115] (Emphasis supplied)

There is nothing in this provision which can be construed as evidence that members of the union bargained away their right to consent in all prescribed medical procedures of the company-designated physician. While it is the employer's responsibility to shoulder medical treatments of its employees injured in relation to their work,[116] they cannot compel their employees to undergo invasive medical treatments.

Even assuming this provision mandates an employee to assent to all the prescribed treatment of the company-designated physician, it was not conclusively established that spine surgery was the only available treatment. Continuous rehabilitation therapy was part of Dr. Nolasco's plan of management had petitioner refused spine surgery.[117] In fact, in the company-designated physician's September 26, 2014 medical report, it was stated that rehabilitation therapy will be conducted even

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[115] Id. at 148-149.

[116] POEA SEC 2010, sec. 20 states:

SECTION 20. *Compensation and Benefits*. —

A. *Compensation and Benefits* for Injury or Illness

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

. . . .

2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared to work or to be repatriated. *However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company designated physician.* (Emphasis supplied).

[117] Id. at 327.

after epidural injections.[118] Thus, petitioner is not disqualified from availing of his disability benefits.

IV

In a long line of cases, this Court has recognized the right of a seafarer to seek a second opinion:

> Respecting the findings of the CA that it is the 1996 POEA-SEC which is applicable, nonetheless the case of *Abante v. KJGS Fleet Management Manila* is instructive and worthy of note. In the said case, the CA similarly held that the contract of the parties therein was also governed by Memo Circular No. 55, series of 1996. Thus, the CA ruled that it is the assessment of the company-designated physician which is deemed controlling in the determination of a seafarer's entitlement to disability benefits and not the opinion of another doctor. Nevertheless, that conclusion of the CA was reversed by this Court. Instead, the Court upheld the findings of the independent physician as to the claimant's disability. The Court pronounced:
>
> > Respecting the appellate court's ruling that it is POEA Memo Circular No. 55, series of 1996 which is applicable and not Memo Circular No. 9, series of 2000, apropos is the ruling in *Seagull Maritime Corporation v. Dee* involving employment contract entered into in 1999, before the promulgation of POEA Memo Circular No. 9, series of 2000 or the use of the new POEA Standard Employment Contract, like that involved in the present case. In said case, the Court applied the 2000 Circular in holding that while it is the company-designated physician who must declare that the seaman suffered permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion which can then be used by the labor tribunals in awarding disability claims.
>
> Verily, in the cited case of *Seagull Maritime Corporation v. Dee*, this Court held that nowhere in the case of *German Marine Agencies, Inc. v. NLRC* was it held that the company-designated physician's assessment of the nature and extent of a seaman's disability is final and conclusive on the employer company and the seafarer-claimant. While it is the company-designated physician who must declare that the seaman suffered a permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion.

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[118] Id. at 332.

The case of *Maunlad Transport, Inc. v. Manigo, Jr.* is also worthy of note. In the said case, the Court reiterated the prerogative of a seafarer to request for a second opinion with the qualification that the physician's report shall still be evaluated according to its inherent merit for the Court's consideration, to wit:

> All told, the rule is that under Section 20-B (3) of the 1996 POEA-SEC, it is mandatory for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a claim for disability benefits. However, in submitting himself to examination by the company-designated physician, a claimant does not automatically bind himself to the medical report issued by the company-designated physician; neither are the labor tribunals and the courts bound by said medical report. Its inherent merit will be weighed and duly considered. Moreover, the claimant may dispute the medical report issued by the company-designated physician by seasonably consulting another physician. The medical report issued by said physician will also be evaluated by the labor tribunal and the court based on its inherent merits.

In the recent case of *Daniel M. Ison v. Crewserve, Inc., et al.*, although ruling against the claimant therein, the Court upheld the above-cited view and evaluated the findings of the seafarer's doctors vis-a-vis the findings of the company-designated physician. A seafarer is, thus, not precluded from consulting a physician of his choice. Consequently, the findings of petitioner's own physician can be the basis in determining whether he is entitled to his disability claims.

Verily, the courts should be vigilant in their time-honored duty to protect labor, especially in cases of disability or ailment. When applied to Filipino seamen, the perilous nature of their work is considered in determining the proper benefits to be awarded. These benefits, at the very least, should approximate the risks they brave on board the vessel every single day.

Accordingly, if serious doubt exists on the company-designated physician's declaration of the nature of a seaman's injury and its corresponding impediment grade, resort to prognosis of other competent medical professionals should be made. In doing so, a seaman should be given the opportunity to assert his claim after proving the nature of his injury. These pieces of evidence will in turn be used

to determine the benefits rightfully accruing to him.[119] (Citations omitted)

Transocean Ship Management (Phils.), Inc. v. Vedad[120] explained that the mechanism of referral to a third doctor was created to balance the right of a seafarer to seek opinion from his preferred physician, and the possibility of bias in the assessment of a company-designated physician:

> In determining whether or not a given illness is work-related, it is understandable that a company-designated physician would be more positive and in favor of the company than, say, the physician of the seafarer's choice. It is on this account that a seafarer is given the option by the POEA-SEC to seek a second opinion from his preferred physician. And the law has anticipated the possibility of divergence in the medical findings and assessments by incorporating a mechanism for its resolution wherein a third doctor selected by both parties decides the dispute with finality, as provided by Sec. 20 (B)(3) of the POEA-SEC quoted above.[121]

Section 20 A of the 2010 POEA-SEC states in part:

> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties.

Here, the parties have conflicting versions of when respondent informed petitioner of the interim assessment and offered the settlement amount. Petitioner asserts that it was on September 24, 2014 when he was made to report to PANDIMAN who informed him of a Grade 11 disability assessment and offered him US$14,345.18 as settlement.[122]

On the other hand, respondent alleges that it was only after October 17, 2014, when it terminated petitioner's treatment,

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[119] *Nazareno v. Maersk Filipinas Crewing, Inc.*, 704 Phil. 625, 633-635 (2013) [Per J. Peralta, En Banc].

[120] 707 Phil. 194 (2013) [Per J. Velasco, Third Division].

[121] Id. at 707.

[122] *Rollo*, p. 14.

that it made the offer.[123] It insists that it could not have made such offer on September 24, 2014 because at that time, petitioner was still undecided on whether he will undergo surgery.[124] Respondent also imputes bad faith on petitioner for making it believe that he would still avail of the company-sponsored treatment when he already secured a second opinion with the belief that he was permanently unfit to return to work. Respondent alleges that it only received Dr. Runas' medical opinion on October 23, 2014.[125]

This Court finds petitioner's version more credible.

As both parties failed to present proof to support their allegations when the interim assessment and offer was made, the totality of evidence should be weighed in favor of the seafarer in case of doubt as held in *Saso v. 88 Aces Maritime Service, Inc.*:[126]

> It bears to stress that in the same way that a seafarer has the duty to faithfully comply with and observe the terms and conditions of the POEA-SEC, the employer also has the duty to provide proof that the procedures laid therein were followed. And in case of doubt in the evidence presented by the employer, the scales of justice should be tilted in favor of the seafarer pursuant to the principle that the employer's case succeeds or fails on the strength of its evidence and not the weakness of that adduced by the employee.[127] (Citations omitted)

In this case, the company-designated physician already had an interim disability grading for petitioner as early as September 6, 2014. Before the expiration of the initial 120 days, respondent repeatedly coordinated with its physician—assessing the risk factor, plan of management, and expected results should petitioner avail of the surgery. It is significant that under the Collective

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[123] Id. at 820.

[124] Id. at 823-824.

[125] Id. at 825.

[126] 770 Phil. 677 (2015) [Per J. Del Castillo, Second Division].

[127] Id. at 691.

Bargaining Agreement, the employee is entitled up to 130 days of medical attention.[128]

Since petitioner's reluctance to consent to surgery resulted in the extension of the period for his treatment, it is reasonable that respondent and petitioner communicated with each other. It is illogical for respondent to extend the period of treatment on September 18, 2014 and continue incurring medical costs without prior communications with petitioner.[129] Hence, it is highly unlikely that the respondent only coordinated with petitioner after October 17, 2014, or the last day that he reported to the company-designated physician. Respondent did not even specify the actual date when it allegedly discussed with petitioner the termination of his treatment.[130] Thus, this Court gives more credence to petitioner's allegation that he reported to PANDIMAN on September 24, 2014 where he was informed of the disability assessment, offer of compensation, and referral to a second doctor.

This then prompted petitioner to consult with Dr. Runas on September 26, 2014, who found him "permanently unfit for sea duty in whatever capacity with permanent disability[:]"

> Based on the above manifestations, Seaman Rodelas is incapacitated as a result of the back injury sustained onboard. According to him. He cannot recall any incident of low back pain prior to the injury and also not mentioned in his physical examination report prior to boarding. As a Chief Cook/seaman, his job is not only limited to the confines of the kitchen. He is also engaged in strenuous and rigorous activities which include heavy lifting during re-supply and re-provision. He also assists and carries heavy loads as ordered by his superior. These activities will exert undue pressure on the involved discs will only offer mild and temporary relief. Spinal surgery will not provide a complete recovery from the symptoms, as residual pain is commonly experienced in patients undergoing spinal surgery. He has lost his pre-injury capacity status. He will benefit from lifestyle and work modification. Since he can no longer perform the usual routine jobs

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[128] *Rollo*, p. 148 citing Art. 15.3 (a), Collective Bargaining Agreement.

[129] Id. at 808.

[130] Id. at 809.

as a seafarer, he is permanently unfit for sea duty in whatever capacity with permanent disability.[131]

Respondent emphasizes that Dr. Runas only examined petitioner once, without conducting medical and other diagnostic tests and relied only on his patient's medical history.[132] Thus, it concludes that Dr. Runas' medical assessment deserves scant consideration.

Again, this Court disagrees.

In *Maunlad Transport, Inc. v. Manigo*,[133] the assessment of the company-designated physician is not by itself, binding or conclusive:

> All told, the rule is that under Section 20-B (3) of the 1996 POEA-SEC, it is mandatory for a claimant to be examined by a company-designated physician within three days from his repatriation. The unexplained omission of this requirement will bar the filing of a claim for disability benefits. However, in submitting himself to examination by the company-designated physician, a claimant does not automatically bind himself to the medical report issued by the company-designated physician; neither are the labor tribunals and the courts bound by said medical report. Its inherent merit will be weighed and duly considered. Moreover, the claimant may dispute the medical report issued by the company-designated physician by seasonably consulting another physician. The medical report issued by said physician will also be evaluated by the labor tribunal and the court based on its inherent merits.[134]

In this case, Dr. Nolasco gave a Grade 11 disability rating to petitioner's condition without surgery. It does not escape this Court that Dr. Nolasco may have given a disability rating more favorable to the respondent. It is also apparent that respondent tried to downplay its failure to accede to petitioner's

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[131] Id. at 14.

[132] Id. at 827-832.

[133] 577 Phil. 319 (2008) [Per J. Austria-Martinez, Third Division].

[134] Id. at 330.

request for a referral to a third doctor.[135] This Court relies on the findings of the Panel of Voluntary Arbitrators that there is no incompatibility in the medical opinion of Dr. Nolasco and that of Dr. Runas:

> The company-designated physician assessed complainant's disability Grade 11, while Dr. Runas, complainant's doctor, did not give any Specific grade but assessed complainant to be permanently unfit for sea duty in whatever capacity with permanent disability. The company doctor based his assessment on the gravity or the medical significance of the injury while Dr. Runas based his assessment in relation to nature of work of the seafarer. ***It must be noted that these assessments are not incompatible with each other***. Both speak of disability. The only difference is the determination of whether or not complainant is permanently and totally disabled.
>
> And since there was no referral to the third doctor because of the inaction of respondents despite the repeated manifestations of willingness to undergo third assessment by complainant, this Panel took the cudgel to study and decide the contradicting medical opinions of the parties and related jurisprudence. In *HFS Philippines, Inc. v. Pilar*, the Court held that claimant may dispute the company-designated physician's report by seasonably consulting another doctor. In such a case, the medical report issued by the latter shall be evaluated by the labor tribunal and the court based on its inherent merit.
>
> After judicious evaluation of the medical opinions of the parties, We find reason on the medical assessment of Dr. Renato Runas. As mentioned earlier, both opinions of the doctors speak of disability. They only differed as to whether the latter is permanently or totally disabled. Dr. Renato Runas, as a surgeon specializing in orthopedics and trauma injuries, merely elucidated the impact of complainant's injury to the nature of his work as a seaman. And true enough, the same is compatible with determining the nature of permanent total disability, which is "disablement of an employee to earn wages in the same kind of work, or work of similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment could do."[136]

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[135] *Rollo*, p. 97.

[136] Id. at 108-109.

Dr. Nolasco's identification of "lifting heavy weights [and] heavy upper body" as risk factors for petitioner is relevant.[137] Given these findings, it is highly improbable that petitioner can return as Chief Cook since it will be risky for him to carry out his basic functions such as loading the provisions of a ship.[138] It is also unlikely that he can be employed in a similar capacity given his condition.

Finally, in the similar case of *Tamin v. Magsaysay*,[139] a chief cook was assessed a Grade 11 disability rating and was declared fit to work after having undergone amputation of his left index finger. However, this Court ruled otherwise:

> The law is clear on the total and permanent nature of petitioner's disability. As it were, petitioner was not able to perform his gainful occupation as chief cook and seafarer for more than 240 days. Given petitioner's loss of gripping power and inability to carry light objects, it is highly improbable that he would be employed as a chief cook again.
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> Jurisprudence has repeatedly held that disability is intimately related to one's earning capacity. It is the inability to substantially do all material acts necessary to the pursuit of an occupation he was trained for without any pain, discomfort, or danger to life. A total disability does not require that the seafarer be completely disabled or totally paralyzed. What is necessary is that the injury incapacitates an employee from pursuing and earning his or her usual work. A total disability is considered permanent if it lasts continuously for more than 120 days.[140] (Citation omitted)

Based on the totality of evidence, it is reasonable that without surgery, petitioner could not have been declared fit for duty as Chief Cook. This explains the numerous opportunities respondent gave to petitioner to consider surgery and risk the chance of improvement. Contrary to respondent's suggestion, it was not petitioner's indecision that prevented him from pursuing his

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[137] Id. at 327.

[138] Id. at 9-10.

[139] 794 Phil. 286 (2016) [Per J. Velasco, Third Division].

[140] Id. at 303.

usual work. Rather, it is precisely his strenuous work aboard the MV Sparta that resulted to his disability.

Thus, this Court reinstates the award of permanent disability benefits by the Panel of Voluntary Arbitrators amounting to US$95,949.00 based on the Collective Bargaining Agreement:

> 20.1.4 Permanent Medical Unfitness
>
> A seafarer whose disability is assessed at 50% or more under the POEA Employment Contract shall, for the purpose of this paragraph be regarded as permanently unfit for further sea service in any capacity and entitled to 100% compensation, as follows: US$151,470.00 for senior officers, US$121,176.00 for junior officers, and US$90,882.00 for ratings (effective 2012); US$155,257.00 for senior officers, US$124,205.00 for junior officers, and US$93,154.00 for ratings (effective 2013); US$159,914.00 for senior officers, US$127,932.00 for junior officers, and US$95,949.00 for ratings (effective 2014). Furthermore, *any seafarer assessed at less than 50% disability under the Contract but certified as permanently unfit for further sea service in any capacity by the company doctor, shall also be entitled to 100% compensation*.[141] (Emphasis supplied)

As regards petitioner's claim for attorney's fees, the award of 10% of the total claim is likewise reinstated. Contrary to respondent's allegation, petitioner was compelled to litigate because of its refusal to heed his request for referral to a third doctor. Lastly, since petitioner did not assail the denial of his claim for moral damages, its award lacks basis.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The February 20, 2018 Decision and January 14, 2019 Resolution of the Court of Appeals in CA-G.R. SP No. 142957 are **REVERSED**, and the September 15, 2015 Decision of the Panel of the Voluntary Arbitrators of the National Conciliation and Mediation Board is **REINSTATED**.

SO ORDERED.

Hernando, Inting, Delos Santos, and *Rosario, JJ.*, concur.

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[141] *Rollo*, p. 150.

THIRD DIVISION

[G.R. No. 246194. November 4, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **XXX,**[1] *Accused-Appellant*.

SYLLABUS

1. CRIMINAL LAW; STATUTORY RAPE; IN STATUTORY RAPE, WHAT ONLY NEEDS TO BE ESTABLISHED IS THAT THE ACCUSED HAD CARNAL KNOWLEDGE OF THE VICTIM WHO WAS UNDER TWELVE (12) YEARS OLD. — In *People v. Lolos* (*Lolos Case*), the Court expounded that:

> The gravamen of the offense of rape is sexual congress with a woman by force and without consent. As provided in the Revised Penal Code, sexual intercourse with a girl below 12 years old is statutory rape. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. Sexual congress with a girl under 12 years old is always rape.
>
> From the foregoing, it is clear that what only needs to be established is that the accused had carnal knowledge of the victim who was under twelve (12) years old.

In the case at bar, the trial court, as affirmed by the appellate court, concluded that the prosecution was able to prove beyond reasonable doubt that accused-appellant had carnal knowledge of the private complainant who was only eight (8) years old at the time of the incident. Private complainant positively identified accused-appellant and candidly testified that he undressed her, laid her down on the floor, and "inserted his penis [into her] vagina." Private complainant's testimony was substantiated by Dr. Guzman, who, after conducting her medical examination

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[1] Initials were used to identify the accused-appellant pursuant to Amended Administrative Circular No. 83-15 dated September 5, 2017 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.

just a day after the rape, reported that private complainant had hymenal lacerations at 3, 6, and 9 o'clock positions. Furthermore, private complainant's age at the time she was raped, *i.e.*, eight (8) years old, was clearly established through her Birth Certificate.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY; THE FACTUAL FINDINGS OF THE TRIAL COURT ARE ACCORDED HIGH RESPECT, ESPECIALLY WHEN AFFIRMED BY THE APPELLATE COURT.— Absent any compelling reason, the Court will not reverse the factual findings of both the trial and appellate courts. Findings of fact of the trial court, its calibration of the testimonial evidence, its assessment of the probative weight thereof, as well as its conclusions anchored on the said findings, are accorded high respect, if not conclusive effect, when affirmed by the appellate court. The trial court had the opportunity to observe the witnesses on the stand and detect if they were telling the truth.

3. ID.; ID.; CRIMINAL LAW; RAPE; VICTIM'S LACK OF RESISTANCE; FAILURE TO IMMEDIATELY DISCLOSE THE RAPE; THERE IS NO STANDARD FORM OF BEHAVIOR, ESPECIALLY FOR AN EIGHT-YEAR-OLD RAPE VICTIM.— The Court is not swayed by accused-appellant's insistence that private complainant . . . behave[d] normally during and after the purported rape. He points out to the lack of resistance on private complainant's part as she was being raped, as well as her failure to disclose the rape right away to [CCC], her uncle. . . .

To stress, there is no standard form of behavior for a rape victim, more so for a minor such as private complainant, who was just eight (8) years old and who was under the moral ascendancy of accused-appellant, a distant relative who she considers her *lolo* or grandfather.

4. ID.; ID.; ID.; ID.; MOTIVE; IN THE ABSENCE OF EVIDENCE OF ANY IMPROPER MOTIVE, IT IS PRESUMED THAT NO SUCH MOTIVE EXISTS.— Accused-appellant likewise fails to convince the Court that private complainant and her family were motivated by ill intentions in charging him with Rape. His claim that [CCC], private complainant's uncle and one of the prosecution witnesses, stole money from his wife, is unsubstantiated. The Court had previously declared that "[i]n the absence of evidence of any improper motive, it is presumed

that no such motive exists" and "that it is wholly unnatural for a mother to sacrifice her own daughter, a child of tender years at that, and subject her to the rigors and humiliation of a public trial for Rape if she were not motivated by an honest desire to have her daughter's transgressor punished accordingly." It makes it more implausible in this case that BBB as a mother would be willing to sacrifice her daughter's reputation for the sake of her brother-in-law.

5. ID.; ID.; ID.; ID.; DENIAL; DENIAL CANNOT PREVAIL OVER THE VICTIM'S AFFIRMATIVE TESTIMONY AND POSITIVE IDENTIFICATION OF THE ACCUSED.— [A]ccused-appellant's denial cannot prevail over private complainant's positive identification of him as the perpetrator. The Court has consistently held that denial is an inherently weak defense. It is viewed upon with disfavor by the courts due to the ease with which it can be concocted. Inherently weak, denial as a defense crumbles in the light of positive identification of the accused. Mere denial, unsubstantiated by clear and convincing evidence, is negative self-serving evidence which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters.

6. ID.; ID.; DESIGNATION OF OFFENSES; STATUTORY RAPE IS THE CRIME COMMITTED WHEN THE VICTIM IS UNDER TWELVE (12) YEARS OF AGE.— Notably, the courts below prosecuted and convicted accused-appellant with Rape committed against the minor victim as defined under **Article 266-A, Paragraph 1(d) of the RPC in relation to RA 7610**. Pursuant to our pronouncement in *People v. Tulagan*, we find a need to fix the error in the nomenclature of accused-appellant's crime. Accused-appellant should be criminally held liable for Statutory Rape defined under **Article 266-A, Paragraph 1(d) 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 (d) and Article 266-B of the RPC and not under RA 7610[.]

7. ID.; ID.; STATUTORY RAPE; PENALTY AND DAMAGES.— Since accused-appellant's guilt for Statutory Rape under Article 266-A(1)(d) of the RPC, as amended, has been proven beyond reasonable doubt by the prosecution, he must perforce suffer the penalty of *reclusion perpetua* pursuant to Article 266-B of the RPC. The awards by the appellate court of ₱75,000,00 as

civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages are in accord with latest jurisprudence. All monetary awards shall bear interest of six percent (6%) per *annum* from finality of this Decision until fully paid.

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.*:

Before the Court is an appeal of the September 27, 2018 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08749, which affirmed with modification the August 10, 2016 Decision[3] of the Regional Trial Court (RTC) of Aparri, Cagayan, Branch 9 in Criminal Case No. II-11687, finding XXX (accused-appellant) guilty beyond reasonable doubt of the Rape of private complainant AAA.[4]

In the Information[5] dated September 11, 2014 filed before the RTC, accused-appellant was charged with Rape as defined

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[2] *Rollo*, pp. 3-15, penned by Associate Justice Zenaida T. Galapate-Laguilles and concurred in by Associate Justices Stephen C. Cruz and Rafael Antonio M. Santos.

[3] *CA rollo*, pp. 51-59, penned by Presiding Judge Conrado T. Tabaco.

[4] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, and for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and their Children, effective November 15, 2004." (*People v. Dumadag*, 667 Phil. 664, 669 [2011]).

[5] *Rollo*, pp. 3-4.

and penalized under Articles 266-A (1) (d) and 266-B of the Revised Penal Code (RPC), as amended by Republic Act (RA) No. 8363 (RA 8363), in relation to RA 7610 and RA 8363, allegedly committed as follows:

> That on or about June 10, 2013, in the [redacted],[6] Province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, by the use of force or intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the herein offended party, [AAA], a minor, under twelve (12) years old, all against her will and consent, the sexual assault thereby gravely threatening the survival and normal development of the child and demeaned her intrinsic worth as human being.[7]

During the arraignment on November 7, 2013, accused-appellant pleaded not guilty to the crime charged. After pre-trial, the RTC proceeded with the trial proper.

The prosecution called to the witness stand the private complainant herself; the private complainant's mother, BBB;[8] Dr. Ma. Rowena Guzman (Guzman); BBB's brother-in-law, CCC; and Police Officer (PO) 2 Mosby Melanie Ramos (Ramos). The prosecution additionally submitted as documentary evidence CCC's Affidavit, the private complainant's Sworn Statement, BBB's Sworn Statement, the private complainant's Medical Certificate issued by Dr. Guzman, and the private complainant's Birth Certificate.[9]

The evidence for the prosecution presented the following version of events:

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[6] Geographical location is blotted out pursuant to Supreme Court Amended Circular No. 83-2015 dated September 5, 2017 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.

[7] *Rollo*, pp. 3-4.

[8] Supra note 3.

[9] CA *rollo*, p. 54.

[Private complainant], then an eight-year old minor, and [accused-appellant] were close neighbors in [redacted].[10] He is the grand uncle since his wife is the sister of her grandfather. She calls him [redacted].

At about 2:30 in the afternoon of June 10, 2013, her eighth birthday, [accused-appellant] called [private complainant] to his house then instructed her to buy candy for him at a nearby store. After buying, she returned to [accused-appellant's] house to give him the candy. When she was about to leave his house, he held her and forcibly laid her down on the floor and removed her short pants. He also removed his own shirt, pants and brief. He then went on top of her and inserted his private organ into hers.

Meanwhile, [private complainant's] uncle, [CCC], who was engaged in a drinking spree with (accused-appellant] and others just outside the house, was about to follow accused-appellant inside the house. Upon reaching the house, [CCC] saw from a window of the house that [accused-appellant] stood up while putting his underwear back on. About one meter from [accused-appellant], he saw [private complainant] lying down on the floor in the act of putting on her panty.

[CCC] went back to the place where they were having a drinking session and reported to a certain DDD what he saw. When he asked [private complainant] why was she on the floor putting her underwear back on, [private complainant] told [him] that [accused-appellant] pulled her and laid her down, then she cried.

[CCC] also went to [private complainant's] mother — whose house was only three meters away — to tell her about [accused-appellant's] dastardly act. [CCC] and [private complainant's] mother, together with other companions, immediately went to [accused-appellant's] house. A commotion ensued when they confronted him. Thereafter, the incident was reported to the Barangay.

On the following day, June 11, 2013, Barangay Officials x x x arrested and brought [accused-appellant] to the [redacted] Police Station. On the other hand, [private complainant] was brought to the Municipal Health Office of [redacted], [redacted] for medical examination. Dr. Ma. Rowena Guzman examined [private complainant's] reproductive organ and found hymenal lacerations on its 3, 6 and 9 o'clock positions.[11]

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[10] Supra note 5.

[11] Id. at 68-69, Brief for the Plaintiff-Appellee.

Evidence for the defense principally consisted of accused-appellant's testimony, together with his Medical Certificate and Counter-Affidavit. Accused-appellant recounted that:

10. The [accused-appellant] is the uncle of [BBB]; hence, he considers himself as the grandfather of [private complainant]. The [accused-appellant] denied having committed the crime of rape for the 10 June 2013 incident. According to him, on the morning of 10 June 2013, he prepared breakfast and the lunch of his own grandson, [EEE]. At around 9:30 o'clock, [CCC] invited him to go to DDD's house, which was less than fifty (50) meters and have a drinking spree.

11. The [accused-appellant] and his companions engaged in merriment as they all sang and drank at DDD's house. At around 3:00 o'clock in the afternoon, he left DDD's house and went home as he and the rest (CCC and DDD) were to go to [redacted] for a business transaction [at] 4:00 o'clock in the afternoon.

12. Upon arriving at his home, the [accused-appellant] saw EEE and [private complainant] playing. He instructed EEE to buy some shampoo but [private complainant] volunteered to buy and took the money away from EEE. [Private complainant] then left while EEE went to the back of the house. Considering that he was pressed for time, the [accused-appellant] took a bath. Thirty (30) minutes later, while the [accused-appellant] was already putting on his clothes, [private complainant] arrived and threw the shampoo and some candy. She was followed by [CCC] who shouted that they have to leave for [redacted] [Private complainant] then went to her own house as she was called by [BBB].

13. Soon after, [BBB] called several persons, including [CCC], in order to beat up the [accused-appellant] for allegedly having raped [private complainant]. The [accused-appellant] went out of the house and was struck by [CCC] and DDD, hitting his left eye. He was pushed back inside his house by the two, who were shouting that the [accused-appellant] rapes children. The [accused-appellant] replied that they were lying as he just sent out [private complainant] to buy and asked them if they have seen anything. The [accused-appellant] had a bruised left eye and dislocated his left thumb because of the mauling he received from [CCC] and DDD. After the mauling, a barangay official named x x x arrived and accused him of having raped [private complainant] and advised to bring her to the hospital.

14. The [accused-appellant] then went to the [redacted] Hospital for medical treatment the following morning. After he was examined, he went to the [redacted] Police Station x x x for interrogation. He denied all the accusations against him.[12]

On August 10, 2016, the RTC promulgated its Decision finding accused-appellant guilty as charged and sentencing him, thus:

WHEREFORE, foregoing premises considered, the Court hereby finds [accused] guilty beyond reasonable doubt of the capital offense of Rape under Articles 266-A and 266-B of the Revised Penal Code, in relation to Republic Act 7610, as charged in the Information, and he is hereby sentenced to suffer the penalty of **RECLUSION PERPETUA**. He is hereby ordered to indemnify [private complainant] the amount of **FIFTY THOUSAND (₱50,000.00) PESOS** by way of civil indemnity; and another amount of **FIFTY THOUSAND PESOS (₱50,000.00)** by way of moral damages, plus interest of six percent (6%) per *annum* on each item reckoned from finality of the Decision until full payment and directing him further to pay the cost of the suit.[13] (Emphasis in the original)

Acting on accused-appellant's appeal, the appellate court rendered a Decision dated September 27, 2018, affirming with modification the judgment of conviction of the RTC. The dispositive portion of the appellate court's Decision reads:

WHEREFORE, premises considered, the instant Appeal is **DENIED**. The Decision dated August 10, 2016 rendered by the Regional Trial Court, Branch 9, [redacted], [redacted] in Criminal Case No. II-11687 is **AFFIRMED WITH MODIFICATION** in that the award[s] of civil indemnity and moral damages are both increased to ₱75,000.00. Accused-appellant is also **ORDERED** to pay private complainant exemplary damages in the amount of ₱75,000.00.

All other aspects in the assailed Decision are **AFFIRMED**.

SO ORDERED.[14] (Emphasis in the original)

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[12] Id. at 32-34, Brief for the Accused-Appellant.

[13] Id. at 59.

[14] *Rollo*, pp. 14-15.

In its Resolution dated December 13, 2018, the appellate court gave due course to accused-appellant's Notice of Appeal and ordered the elevation of the records of his case to this Court.

Hence, the present appeal.

Both the plaintiff-appellee and the accused-appellant manifested that they will no longer file supplemental briefs, having already extensively discussed their respective positions in their previous briefs before the CA.[15]

In his Brief, accused-appellant assigned several errors on the part of the RTC, to wit:

I.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED NOTWITHSTANDING THE INCREDIBILITY OF THE TESTIMONIES AND QUESTIONABLE BEHAVIOR OF THE PROSECUTION WITNESSES WHICH PUT GRAVE AND SERIOUS DOUBTS ON THEIR CREDIBILITY.[16]

II.

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED AS THERE IS NO CONCLUSIVE FINDING THAT HE RAPED [PRIVATE COMPLAINANT] ILL-MOTIVE (sic) ON THE PART OF THE PROSECUTION'S WITNESSES.[17]

III.

THE COURT *A QUO* GRAVELY ERRED IN NOT CONSIDERING THE ACCUSED-APPELLANT'S DEFENSE OF DENIAL.[18]

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[15] Id. at 28-29, Manifestation (re: Resolution dated June 3, 2019) of Plaintiff-Appellee; and pp. 31-35, Manifestation in Lieu of Supplemental Brief of Accused-Appellant.

[16] *CA rollo*, p. 34.

[17] Id. at 45.

[18] Id. at 46.

Accused-appellant is essentially challenging the findings of fact of both the trial court and the appellate court, raising doubts as to the credibility of the witnesses and the weight and credence accorded to the evidence of the prosecution. He highlights that private complainant failed to offer any resistance when she was supposedly raped; that she did not report the incident right away; that there are many other causes of hymenal lacerations; and that there was ill motive on the part of prosecution witness CCC who allegedly stole money from accused-appellant's wife.

The Court is not persuaded.

Rape is defined and penalized as follows under the RPC, as amended:

Article 266-A. *Rape; When and How Committed*. — Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x

Article 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x

In *People v. Lolos*[19] *(Lolos Case)*, the Court expounded that:

The gravamen of the offense of rape is sexual congress with a woman by force and without consent. As provided in the Revised

[19] 641 Phil. 624 (2010).

Penal Code, sexual intercourse with a girl below 12 years old is statutory rape. The two elements of statutory rape are: (1) that the accused had carnal knowledge of a woman; and (2) that the woman was below 12 years of age. Sexual congress with a girl under 12 years old is always rape.

From the foregoing, it is clear that what only needs to be established is that the accused had carnal knowledge of the victim who was under twelve (12) years old.[20]

In the case at bar, the trial court, as affirmed by the appellate court, concluded that the prosecution was able to prove beyond reasonable doubt that accused-appellant had carnal knowledge of the private complainant who was only eight (8) years old at the time of the incident. Private complainant positively identified accused-appellant and candidly testified that he undressed her, laid her down on the floor, and "inserted his penis [into her] vagina."[21] Private complainant's testimony was substantiated by Dr. Guzman, who, after conducting her medical examination just a day after the rape, reported that private complainant had hymenal lacerations at 3, 6, and 9 o'clock positions. Furthermore, private complainant's age at the time she was raped, *i.e.*, eight (8) years old, was clearly established through her Birth Certificate.

Absent any compelling reason, the Court will not reverse the factual findings of both the trial and appellate courts. Findings of fact of the trial court, its calibration of the testimonial evidence, its assessment of the probative weight thereof, as well as its conclusions anchored on the said findings, are accorded high respect, if not conclusive effect, when affirmed by the appellate court. The trial court had the opportunity to observe the witnesses on the stand and detect if they were telling the truth.[22] Again, relevant herein are the following pronouncements of the Court in the *Lolos Case*:

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[20] Id. at 632.

[21] *Rollo*, pp. 9-11.

[22] *Roque v. People*, 757 Phil. 392, 398 (2015).

Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. As a general rule, on the question whether to believe the version of the prosecution or that of the defense, the trial court's choice is generally viewed as correct and entitled to the highest respect because it is more competent to conclude so, having had the opportunity to observe the witnesses' demeanor and deportment on the witness stand as they gave their testimonies. The trial court is, thus, in the best position to weigh conflicting testimonies and to discern if the witnesses were telling the truth.[23]

The Court is not swayed by accused-appellant's insistence that private complainant did not behave normally during and after the purported rape. He points out to the lack of resistance on private complainant's part as she was being raped, as well as her failure to disclose the rape right away to [CCC], her uncle. Similar arguments were also raised before but squarely rejected by the Court in the *Lolos Case*, thus:

The fact that the accused never threatened or forced AAA on that particular night and that she was still able to go out of the house and buy something from a store cannot exculpate him. **Even if she did not resist him or even gave her consent, his having carnal knowledge of her is still considered rape considering that she was only eight (8) years old at that time. It must be remembered that the accused is an uncle of the victim and has moral ascendancy over her.** Her behavior can be explained by the fear she had of the accused, who had repeatedly beaten her for various reasons. His moral ascendancy over her, combined with memories of previous beatings, was more than enough to intimidate her and render her helpless and submissive while she was being brutalized.

> . . . . The behavior and reaction of every person cannot be predicted with accuracy. **It is an accepted maxim that different people react differently to a given situation or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling experience. Not every rape victim can be expected to act conformably to the usual expectations of everyone.** Some may shout; some may faint; and some be shocked into

[23] *People v. Lolos*, *supra* note 18 at 632-633.

> insensibility, while others may openly welcome the intrusion. Behavioral psychology teaches us that people react to similar situations dissimilarly. There is no standard form of behavior when one is confronted by a shocking incident. The workings of the human mind when placed under emotional stress are unpredictable. This is true specially in this case where the victim is a child of tender age under the moral ascendancy of the perpetrator of the crime.[24] (Emphases supplied.)

To stress, there is no standard form of behavior for a rape victim, more so for a minor such as private complainant, who was just eight (8) years old and who was under the moral ascendancy of accused-appellant, a distant relative who she considers her *lolo* or grandfather.

Accused-appellant likewise fails to convince the Court that private complainant and her family were motivated by ill intentions in charging him with Rape. His claim that [CCC], private complainant's uncle and one of the prosecution witnesses, stole money from his wife, is unsubstantiated. The Court had previously declared that "[i]n the absence of evidence of any improper motive, it is presumed that no such motive exists" and "that it is wholly unnatural for a mother to sacrifice her own daughter, a child of tender years at that, and subject her to the rigors and humiliation of a public trial for Rape if she were not motivated by an honest desire to have her daughter's transgressor punished accordingly."[25] It makes it more implausible in this case that BBB as a mother would be willing to sacrifice her daughter's reputation for the sake of her brother-in-law.

Moreover, accused-appellant's denial cannot prevail over private complainant's positive identification of him as the perpetrator. The Court has consistently held that denial is an inherently weak defense. It is viewed upon with disfavor by the courts due to the ease with which it can be concocted. Inherently weak, denial as a defense crumbles in the light of

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[24] Id. at 633-634.

[25] *People v. Bohol*, 415 Phil. 749, 762-763 (2001).

positive identification of the accused. Mere denial, unsubstantiated by clear and convincing evidence, is negative self-serving evidence which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters.[26]

Notably, the courts below prosecuted and convicted accused appellant with Rape committed against the minor victim as defined under **Article 266-A, Paragraph 1 (d) of the RPC in relation to RA 7610.** Pursuant to our pronouncement in *People v. Tulagan*,[27] we find a need to fix the error in the nomenclature of accused-appellant's crime. Accused-appellant should be criminally held liable for Statutory Rape defined under **Article 266-A, Paragraph 1 (d) penalized under Article 266-B of the RPC.**[28] **The correlation to RA 7610 is deleted.** *People v. Tulagan*[29] explains the *ratio* for a correct designation of offenses under Article 266-A, Paragraph 1 (d) and Article 266-B of the RPC and not under RA 7610:

> [W]e rule that when the offended party is under 12 years of age or is demented, only the first *proviso* of Section 5(b), Article III will apply, to wit: '*when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape x x x.*' The penalty for statutory rape under Article 335 is *reclusion perpetua*, which is still the same as in the current rape law, *i.e.*, paragraph 1(d), Article 266-A in relation to Article 266(B) of the RPC, as amended by R.A. No. 8353, x x x.
>
> x x x x
>
> With this decision, We now clarify the principles laid down in *Abay*, *Pangilinan* and *Tubillo* to the effect that there is a need to examine the evidence of the prosecution to determine whether the person accused of rape should be prosecuted under the RPC or R.A. No. 7610 when the offended party is 12 years old or below 18.

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[26] *People v. Pancho*, 462 Phil. 193, 206 (2003).

[27] G.R. No. 227363, March 12, 2019.

[28] Id.

[29] Id.

***First*, if sexual intercourse is committed with an offended party who is a child less than 12 years old or is demented, whether or not exploited in prostitution, it is always a crime of statutory rape; more so when the child is below 7 years old, in which case the crime is always qualified rape.**

x x x x

Therefore, there could be no instance that an Information may charge the same accused with the crime of rape where "force, threat or intimidation" is the element of the crime under the RPC, and at the same time violation of Section 5(b) of R.A. No. 7610 x x x.

x x x x

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.**

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[30] (Emphasis supplied.)

Thus, the rectification of accused-appellant's conviction under a single criminal law provision is in order. Accused-appellant is to be held liable for Statutory Rape as defined in Article 266-A, Paragraph 1 (d) of the RPC.

Since accused-appellant's guilt for Statutory Rape under Article 266-A (1) (d) of the RPC, as amended, has been proven beyond reasonable doubt by the prosecution, he must perforce suffer the penalty of *reclusion perpetua* pursuant to Article 266-B of the RPC. The awards by the appellate court of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages are in accord with latest jurisprudence.[31] All monetary awards shall bear interest of six percent (6%) per *annum* from finality of this Decision until fully paid.

WHEREFORE, the appeal is hereby **DISMISSED**. The Decision dated September 27, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08749 is **AFFIRMED** with **MODIFICATION** that accused-appellant XXX is hereby found guilty of Statutory Rape under Article 266 (A) (1) (d) of the Revised Penal Code. He is sentenced to suffer the penalty of *reclusion perpetua* and to pay AAA ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. All monetary awards shall bear interest at the rate of six percent (6%) per *annum* from finality of this Decision until fully paid.

SO ORDERED.

Leonen (Chairperson), Inting, Delos Santos, and *Rosario, JJ.*, concur.

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[30] Id.

[31] *People v. Jugueta*, 783 Phil. 806, 840 (2016).

THIRD DIVISION

[G.R. No. 246499. November 4, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee, v.* **XXX,** *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; FORCE AND INTIMIDATION; RAPE VICTIM'S SILENCE; THE SILENCE OF A RAPE VICTIM DOES NOT NEGATE RAPE BY FORCE AND INTIMIDATION, ESPECIALLY WHEN PERPETRATED BY A CLOSE KIN WITH A REPUTATION FOR VIOLENCE. — Accused-appellant likewise points to AAA's silent reaction when she saw him three days after the first rape incident. He implies that AAA's lack of apprehension toward him negates the possibility of rape by force and intimidation. We are not convinced.

In *People v. Entrampas*, this Court held that "the silence of the rape victim does not negate her sexual molestation or make her charge baseless, untrue, or fabricated." Further:

> Force and intimidation must be appreciated in light of the victim's perception and judgment when the assailant committed the crime. *In rape perpetrated by close kin, such as the common-law spouse of the child's mother, actual force or intimidation need not be employed.*
>
> . . .

In any case, "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. People react differently to emotional stress, and rape victims are no different from them."

2. ID.; ID.; REMEDIAL LAW; EVIDENCE; HYMENAL LACERATIONS; THE STATE OF THE HYMEN IS NOT AN ELEMENT OF RAPE.— As to accused-appellant's claim that the presence of deep healed hymenal lacerations one day after the second rape incident negates sexual abuse, we reiterate our ruling in *People v. Araojo* that the state of the hymen is not an element of rape:

> 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 of rape. A healed or fresh laceration would of course be a compelling proof of defloration. [However,] the *foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer*. . . .

3. ID.; ID.; ID.; ID.; LACK OF FULL PENETRATION DOES NOT NEGATE THE FINDING OF RAPE.— [T]he lack of fresh wounds may be attributed to accused-appellant's failure to fully penetrate the vagina of his minor victim. Lack of full penetration, however, does not negate the finding of rape. Rape is consummated upon "the entrance of the male organ into the labia of the pudendum of the female organ. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape."

4. ID.; ID.; ID.; ID.; DENIAL AND ALIBI; IN RAPE CASES, THE BARE DENIAL OF THE ACCUSED FALTERS AGAINST THE POSITIVE IDENTIFICATION BY THE VICTIM.— To controvert AAA's positive assertions, accused-appellant only interposed the defenses of denial and alibi, which are inherently weak defenses for being self-serving. It is likewise settled that in rape cases, the bare denial of the accused "falters against the 'positive identification by, and straightforward narration of the victim.'"

5. ID.; ID.; QUALIFYING CIRCUMSTANCES; VICTIM'S MINORITY AND RELATIONSHIP TO THE ACCUSED; WHEN THE VICTIM IS A MINOR AND THE ACCUSED IS RELATED TO THE VICTIM BY AFFINITY OR CONSAGUINITY WITHIN THE THIRD CIVIL DEGREE, RAPE IS QUALIFIED.— [R]ape is qualified when the victim is a minor and the accused is related to the victim by affinity or consanguinity within the third civil degree. It is not disputed that accused-appellant is the brother of AAA's father, making him AAA's uncle—a relative by consanguinity within the third civil degree. The prosecution likewise established that AAA was a minor when she was raped by accused-appellant.

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

LEONEN, *J.*:

An uncle's moral ascendancy or influence over his minor niece supplants the element of violence or intimidation in a charge of rape. In this case, such influence, together with his reputation for violence, was why the victim did not shout or struggle while her uncle sexually abused her.

This Court resolves an appeal[1] assailing the Court of Appeals' Decision,[2] which upheld the Regional Trial Court's Decision[3] convicting XXX of two charges of qualified rape defined and penalized under Article 266-A(l)(a) in relation to Article 266-B(l) of the Revised Penal Code, as amended.

In two separate Informations, XXX was charged with the crime of qualified rape of AAA, his minor niece. They read:

Criminal Case No. 5878

That on or about 10:00 o'clock in the morning of March 8, 2009, at xxxxxxxxxxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, and taking advantage of his moral ascendancy being the uncle and relative within the third civil degree of consanguinity of the offended party, did then and there, willfully, unlawfully and feloniously, had sexual intercourse with

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[1] *Rollo*, pp. 27-29.

[2] Id. at 3-26. The January 11, 2019 Decision in CA-G.R. CR-HC No. 09091 was penned by Associate Justice Samuel H. Gaerlan (now a member of this Court), and concurred in by Associate Justices Celia C. Librea-Leagogo and Pablito A. Perez of the Fifth Division, Court of Appeals, Manila.

[3] CA *rollo*, pp. 54-72. The November 11, 2016 Decision in Criminal Case Nos. 5878 and 5879 was penned by Judge Alben C. Rabe of the Regional Trial Court, Ligao City, Branch 12.

[AAA], a minor 14 years, born on 17 November 1994, against the latter's will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.[4]

Criminal Case No. 5879

That on or about 7 o'clock in the evening on March 11, 2009, at xxxxxxxxxxx, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd and unchaste design, through force and intimidation, and taking advantage of his moral ascendancy being the uncle and relative within the third civil degree of consanguinity of the offended party, did then and there, willfully, unlawfully and feloniously, had sexual intercourse with [AAA], a minor 14 years, born on 17 November 1994, against the latter's will and consent, to her damage and prejudice.

ACTS CONTRARY TO LAW.[5]

On arraignment, XXX entered a plea of not guilty to both charges. The two cases were eventually consolidated and joint trial on the merits ensued.[6]

The prosecution presented the following as its witnesses: (1) private complainant AAA; (2) her mother BBB; (3) Senior Police Officer 4 Edgar J. Tuason (SPO4 Tuason); (4) Police Officer 2 Alma C. del Valle; (5) Police Officer 2 Elton del Valle; and (6) Dr. James M. Belgira (Dr. Belgira).[7]

AAA testified that at around 10:00 a.m. on March 8, 2009, she went to a creek near her house to gather snails to cook.[8]

While she was looking for snails, she saw her uncle, XXX, at the upper portion of the creek. XXX went down the creek toward AAA, removed some leaves off a banana plant, and arranged them on the ground. He then grabbed AAA's hand,

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[4] Id. at 54, RTC Decision.

[5] Id. at 55.

[6] *Rollo*, p. 5.

[7] Id.

[8] CA *rollo*, p. 65.

embraced her, and guided her to lie down on the banana leaves. AAA said that she did not question or fight off her uncle, who was then unarmed, because she was afraid that he would punch her.[9]

Once AAA lay down on the leaves, XXX held both her hands, spread her legs, and removed her shorts. She tried to resist and free her hands from his, but she failed to escape his grip.[10]

XXX then removed AAA's undergarments before kissing her from the neck all the way to her vagina. He placed saliva on his hand and rubbed it on her vagina. While pinning down AAA, he removed his shorts and briefs and unsuccessfully tried to insert his penis inside her vagina. He managed to penetrate AAA with his second attempt and then he proceeded to masturbate in front of her. He ejaculated on her vagina and slid his fingers inside AAA, causing her to feel pain.[11]

After satisfying himself, XXX told AAA to dress up. She followed his order and ran home.[12] Her mother, BBB, who was then picking some pechay near their house, saw AAA running uphill toward the house while XXX stayed downhill. AAA did not tell BBB what transpired with XXX out of fear.[13]

AAA then testified that at around 7:00 p.m. on March 11, 2009,[14] she was watching television with her parents and siblings when XXX appeared at their house.[15] She went out of the house to use the outdoor toilet, and when she got out, there was XXX who had apparently followed her. He grabbed AAA and dragged her uphill toward a cluster of banana plants.[16]

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[9] Id. at 65-66.

[10] Id. at 66.

[11] Id. at 66-67.

[12] Id. at 67.

[13] Id. at 64 and 67.

[14] *Rollo*, p. 7.

[15] CA *rollo*, p. 67.

[16] *Rollo*, p. 7.

AAA struggled against XXX while he dragged her but then she stopped[17] because she was afraid of her uncle who had once stabbed their relative in the stomach.[18]

XXX removed his shirt, embraced AAA, and made her lie on the ground. He then began kissing her on the face and on her body. She tried to resist him but was pinned down by his arms. He removed her shorts and panties and inserted his penis inside her vagina. AAA tried to shove him away, but XXX instead inserted his finger inside her vagina. Once he removed it, he masturbated for about a minute and ejaculated on AAA's vagina. He then stood and ordered AAA to dress up. She quickly dressed up and ran away from him.[19]

On her way home, AAA saw her father, who was angrily looking for her. She told her father about what XXX did to her.[20]

That same evening, BBB and AAA reported the incident to their barangay captain, who then accompanied them to the police station to lodge a complaint against xxx.[21]

The following morning, several police officers came to arrest XXX, read him his constitutional rights, and brought him to the police station.[22]

Later that same day, AAA underwent a physical and genital examination. Dr. Belgira, the forensic physician who examined AAA, testified that he observed "a deep healed laceration" in the six o'clock position of [AAA]'s genitals, which may have been caused by any blunt, hard object that was forcefully inserted into her vagina.[23]

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[17] Id.

[18] CA *rollo*, p. 68.

[19] *Rollo*, p. 7.

[20] Id.

[21] CA *rollo*, p. 58.

[22] Id. at 58-59.

[23] Id. at 61-62.

The defense presented XXX as its sole witness and he denied raping AAA on both occasions.[24]

He claimed that from 8:30 a.m. to 11:00 a.m. on March 8, 2009, he was near his house harvesting peanuts with AAA's parents, so he could not have molested AAA at 10:00 a.m. that day.[25]

He also denied raping AAA on the evening of March 11, 2009. He claimed that he was home that time eating dinner with his family. He added that he did not see AAA that night.[26]

XXX asserted that the unfounded allegations of rape were due to the land dispute between him and AAA's parents.[27]

In its November 11, 2016 Decision,[28] the Regional Trial Court found XXX guilty beyond reasonable doubt of both charges against him. It gave full credit to the testimony of AAA, holding that XXX's alibi cannot prevail over AAA's clear and positive assertions.[29] It noted that "[t]hroughout the lengthy examination conducted by the prosecution [and] the equally lengthy examination conducted by the defense during which occasion [AAA] never wavered except for some minor lapses [that are] natural and normal of someone who is naive of promiscuity."[30] The dispositive portion of the Decision reads.

> WHEREFORE, foregoing premises considered, judgment is hereby rendered finding accused JESUS MALBAROSA guilty beyond reasonable doubt of the crime of Rape punishable under Article 266-A(l)(a) in relation to Article 266-B(l) of the Revised Penal Code, as amended.

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[24] Id. at 68.

[25] Id. at 68-69.

[26] Id. at 69.

[27] Id.

[28] Id. at 54-72.

[29] Id. at 70-71.

[30] Id. at 71.

He is hereby sentenced to suffer imprisonment of *Reclusion Perpetua*.

In consonance with existing jurisprudence, accused shall indemnify the private offended party the following:

(a) ₱40,000.00 as civil indemnity;
(b) ₱40,0000.00 as moral damages; and
(c) ₱40,000.00 as exemplary damages.

SO ORDERED.[31]

The prosecution moved to clarify whether the conviction and imposition of civil liability should be applied to both Criminal Case No. 5878 and Criminal Case No. 5879.[32]

In its January 9, 2017 Order, the Regional Trial Court modified its Decision as follows:

Acting upon the Motion for Clarification and Modification filed by Associate Prosecution Attorney II Ma. Czarina S. Lanuzo seeking to clarify anent the Court's Judgment dated November 11, 2016 which found accused [XXX] guilty beyond reasonable doubt [of] the crime of Rape punishable under Art 266-A(l)(a) in relation to Article 266-B(l) of the Revised Penal Code as amended wherein the Court pronounced sentencing him to suffer imprisonment of *reclusion perpetua*, which pronouncement should be for the accused to suffer imprisonment of *reclusion perpetua* in each of the Criminal Case Nos. 5878 and 5879.

In consonance therewith and in line with existing jurisprudence, accused shall indemnify the private offended party the following: a) Forty Thousand Pesos (₱40,000.00) as civil indemnity in each of the two (2) counts; b) Forty Thousand Pesos (₱40,000.00) as moral damages in each of the two (2) counts and c) Forty Thousand Pesos (₱40,000.00) as exemplary damages in each of the criminal case[s].

WHEREFORE, considering the foregoing amendment, the court's Decision dated November 11, 2016 is hereby modified as such.

SO ORDERED.[33]

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[31] Id. at 72.

[32] *Rollo*, pp. 10-11.

[33] Id. at 11.

On the other hand, XXX filed a Notice of Appeal,[34] which the Regional Trial Court gave due course to in its January 19, 2017 Order.[35]

In its January 11, 2019 Decision,[36] the Court of Appeals affirmed XXX's conviction. It deferred to the Regional Trial Court's assessment of credibility of witnesses, pointing out that the trial court is best situated to determine the probative value of testimonies.[37] On XXX's claim that the rape charges were motivated by the existing land dispute between their families, it held that in the absence of proof to the contrary, witnesses cannot be presumed to be motivated by any ill will or bias.[38]

The Court of Appeals likewise pointed out that XXX's defense of alibi was unconvincing as he admitted that his house was merely 40 meters away from the creek and 30 meters away from AAA's house. He thus failed to prove that it was physically impossible for him to have been at the crime scene when the alleged rape incidents happened.[39]

The Court of Appeals, however, modified[40] the award of damages in view of this Court's ruling in *People v. Jugueta*.[41] The dispositive portion of the Court of Appeals Decision reads:

WHEREFORE, premises considered, the instant appeal is **DENIED**. Accordingly, the Decision of the Regional Trial Court of Ligao City, Branch 12, in Criminal Case Nos. 5878 and 5879 finding accused-appellant [XXX] guilty beyond reasonable doubt of two (2) counts of rape is hereby **AFFIRMED** with the following **MODIFICATIONS**:

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[34] CA *rollo*, p. 17.

[35] Id. at 18. The Order was penned by Judge Annielyn B. Medes-Cabelis.

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

[37] Id. at 15.

[38] Id. at 16-17.

[39] Id. at 19.

[40] Id. at 25.

[41] *People v. Jugueta*, 783 Phil. 806 (2016) [Per J. Peralta, En Banc].

(1) The accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* without eligibility of parole for each count of qualified rape;

(2) The accused-appellant is ordered to pay the private complainant One Hundred Thousand Pesos (Php100,000.00) as civil indemnity; One Hundred Thousand Pesos (Php100,000.00) as moral damages; and One Hundred Thousand Pesos (Php100,000.00) as exemplary damages for each count of qualified rape; and

(3) The civil indemnity, moral damages, and exemplary damages awarded herein shall be subject to six percent interest (6%) per annum from the finality of this Decision until full payment thereof.

SO ORDERED.[42] (Emphasis in the original, citation omitted)

XXX filed a Notice of Appeal,[43] to which the Court of Appeals gave due course.[44]

On June 3, 2019, this Court issued a Resolution[45] notifying the parties that they may file their respective supplemental briefs. Both plaintiff-appellee People of the Philippines[46] and accused-appellant[47] manifested that they would no longer file supplemental briefs and would instead be adopting their briefs filed before the Court of Appeals.

In his Brief,[48] accused-appellant claims that AAA's testimonies on the two rape incidents were almost identical, engendering suspicion that she was coached or that her testimony was rehearsed or contrived.[49] He also points out that AAA seemed

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[42] *Rollo*, pp. 25-26.

[43] Id. at 27-30.

[44] Id. at 31.

[45] Id. at 33-34.

[46] Id. at 43-47.

[47] Id. at 38-42.

[48] CA *rollo*, pp. 38-52.

[49] Id. at 47.

to be unbothered with his presence days after the alleged first rape incident, thus belying her accusations of assault and abuse.[50] He contends that "the sight [of a man masturbating] would necessarily frighten a woman" and, because AAA did not appear so, he says the chances that he "never sexually abused AAA cannot be discounted."[51]

To support his claim that the rape did not happen, he underscores that the medical findings revealed a deep healed laceration even though AAA was subjected to physical and genital examination only one day after the alleged second rape incident.[52]

On the other hand, in its Appellee's Brief,[53] plaintiff-appellee stresses that the trial court found AAA's testimony to be credible and straightforward.[54] It further claims that rape victims suffer trauma, which affects not only their recollection of the circumstances attending their sexual abuse, but also their human reaction to it.[55] Finally, it asserts that accused-appellant's defense of alibi fails in view of his testimony that he was merely 30 meters away from AAA's house, negating physical impossibility.[56]

For this Court's resolution is the lone issue of whether or not the prosecution was able to prove beyond reasonable doubt accused-appellant XXX's guilt for the two counts of qualified rape.

We affirm the conviction of accused-appellant.

Article 266-A, paragraph 1 of the Revised Penal Code, as amended, lists the elements for the crime of rape through carnal knowledge of a woman:

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[50] Id. at 47-48.

[51] Id. at 48.

[52] Id.

[53] Id. at 94-113.

[54] Id. at 105.

[55] Id. at 106.

[56] Id. at 110.

ARTICLE 266-A. *Rape; When and How Committed*. — Rape is committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;
b) When the offended party is deprived of reason or otherwise unconscious;
c) By means of fraudulent machination or grave abuse of authority; and
d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.[57]

People v. Arlee[58] states that conviction m rape cases "virtually depends entirely on the credibility of the complainant's narration since usually, only the participants can testify as to its occurrence."[59]

Here, the Regional Trial Court believed AAA's candid and straightforward testimony. It stressed that she remained consistent and steadfast during cross-examination and redirect examination.[60] The Regional Trial Court stated:

Corollarily, as between the positive and affirmative assertions of [AAA] and accused['s] negative denials, the former is entitled to full faith and credit tha[n] that of the latter. [AAA] in her young and tender age was able to recount in [a] straightforward and candid manner

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[57] REV. PEN. CODE, art. 266-A, as amended by Republic Act No. 8353 (1997).

[58] 380 Phil. 164 (2000) [Per J. Purisima, Third Division].

[59] Id. at 175 citing *People v. Castillon*, 291 Phil. 75 (1993) [Per J. Regalado, Second Division].

[60] CA *rollo*, p. 71.

how she surmount[ed] the sexual assault [done] to her. Throughout the lengthy direct examination conducted by the prosecution was the equally lengthy cross-examination conducted by the defense during which occasion [AAA] never wavered except for some minor lapses [that are] natural and normal of one who is naive of promiscuity. By and large, she surpassed the test of being a credible witness, which provides that in order for one's testimony to be credible, it must not only prove from the mouth of a credible witness, but it must also be credible in itself.[61]

The trial court's findings were affirmed by the Court of Appeals, which also appreciated AAA's clear and positive assertions.[62]

This Court finds no reason to depart from the findings of the Regional Trial Court, as upheld by the Court of Appeals. It is settled "that factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal, unless the trial court is shown to have overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance."[63]

Accused-appellant's contention that AAA's testimonies on both rape incidents were "almost identical" and appeared to be "coached, rehearsed, or contrived"[64] cannot trump the findings of the trial court, which was best situated to determine the veracity of AAA's assertions.

Accused-appellant likewise points to AAA's silent reaction when she saw him three days after the first rape incident. He implies that AAA's lack of apprehension toward him negates the possibility of rape by force and intimidation.[65]

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[61] Id.

[62] *Rollo*, p. 16.

[63] *People v. De Jesus*, 695 Phil. 114, 122 (2012) [Per J. Brion, Second Division].

[64] CA *rollo*, p. 47.

[65] Id. at 48.

We are not convinced.

In *People v. Entrampas*,[66] this Court held that "the silence of the rape victim does not negate her sexual molestation or make her charge baseless, untrue, or fabricated."[67] Further:

> Force and intimidation must be appreciated in light of the victim's perception and judgment when the assailant committed the crime. *In rape perpetrated by close kin, such as the common-law spouse of the child's mother, actual force or intimidation need not be employed.*
>
> "While [accused-appellant] was not the biological father of AAA . . . [she] considered him as her father since she was a child." *Moral influence or ascendancy added to the intimidation of AAA. It enhanced the fear that cowed the victim into silence.* Accused-appellant's physical superiority and moral influence depleted AAA's resolve to stand up against her foster father. . . . As accused-appellant sexually assaulted AAA, she cried and pleaded him to stop. Her failure to shout or tenaciously repel accused-appellant does not mean that she voluntarily submitted to his dastardly act.[68] (Emphasis supplied, citation omitted)

Here, as in *Entrampas*, accused-appellant was of close kin to the victim, his niece. Worse, during the rape incidents, the victim knew that her uncle had once beat up one of their relatives. Certainly, his influence, coupled with his reputation for violence, attended the crime that accused-appellant committed against AAA.

In any case, "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. People react differently to emotional stress, and rape victims are no different from them."[69]

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[66] 808 Phil. 258 (2017) [Per J. Leonen, Second Division].

[67] Id. at 269 citing *People v. Lor*, 413 Phil. 725, 736 (2001) [Per J. Ynares-Santiago, En Banc].

[68] Id. at 269-270.

[69] *People v. Crespo*, 586 Phil. 542, 566 (2008) [Per J. Chico-Nazario, Third Division] citing *People v. Iluis*, 447 Phil. 517 (2003) [Per J. Vitug, En Banc].

As to accused-appellant's claim that the presence of deep healed hymenal lacerations one day after the second rape incident negates sexual abuse, we reiterate our ruling in *People v. Araojo*[70] that the state of the hymen is not an element of rape:

> 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 of rape. A healed or fresh laceration would of course be a compelling proof of defloration. [However,] the *foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer*.[71] (Emphasis supplied, citations omitted)

People v. Evangelio[72] is likewise illuminating:

> Although Dr. Cordero's report stated that AAA's lacerations were deep healing and healed lacerations, this finding does not negate the commission of rape on October 3, 2001. The Court held that the absence of fresh lacerations does not prove that the victim was not raped. *A freshly broken hymen is not an essential element of rape and healed lacerations do not negate rape. Hence, the presence of healed hymenal lacerations the day after the victim was raped does not negate the commission of rape by the appellant* when the crime was proven by the combination of highly convincing pieces of circumstantial evidence. In addition, *a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case*.[73] (Emphasis supplied, citations omitted)

Further, the lack of fresh wounds may be attributed to accused-appellant's failure to fully penetrate the vagina of his minor victim. Lack of full penetration, however, does not negate the

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[70] 616 Phil. 275 (2009) [Per J. Velasco, Third Division].

[71] *People v. Araojo*, 616 Phil. 275, 288 (2009) [Per J. Velasco, Third Division] citing *People v. Boromeo*, 474 Phil. 605 (2004) [Per Curiam, En Banc] and *People v. Espino, Jr.*, 577 Phil. 546, 566 (2008) [Per J. Chico-Nazario, Third Division].

[72] 672 Phil. 229 (2011) [Per J. Peralta, Third Division].

[73] Id. at 245.

finding of rape.[74] Rape is consummated upon "the entrance of the male organ into the labia of the pudendum of the female organ. Penetration of the penis by entry into the lips of the vagina, even without rupture or laceration of the hymen, is enough to justify a conviction for rape."[75]

AAA's testimony of her sexual abuse clearly and positively demonstrates consummated rape. On the first rape incident, AAA testified:

Q: Before we go to that part, did his penis touch your vagina?
A: Yes, sir.

Q: In which part of your vagina?
A: My vagina.

. . . .

Q: This is my question, did his penis touch the outer lip of your vagina?
A: Yes, sir.

Q: Did this (sic) penis touch the clitoris or the tongue-like of the vagina?
A: Yes, sir.

Q: Was his penis able to at least touch the smaller one?
A: Yes, sir.[76] (Citation omitted)

As to the second rape incident, AAA testified:

Q: What else did he do, if any?
A: He placed his penis to my vagina.

Q: Showing you again the same sketch, you said he placed his penis to your vagina, did his penis touch your vagina referring to the labia majora?
A: Yes, sir.

. . . .

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[74] *People v. Ortoa*, 599 Phil. 232 (2009) [Per J. Austria-Martinez, En Banc].

[75] Id. at 247.

[76] *Rollo*, pp. 20-21.

Q: Did you see his erect penis?
A: Yes, Your Honor.

Q: And were you able to see in what part of your vagina was the denting of his penis?
A: I felt it, Your Honor.

Q: Did you not try to kick his penis to avoid from denting your vagina?
A: I cannot kick because my legs were clipped.[77]

To controvert AAA's positive assertions, accused-appellant only interposed the defenses of denial and alibi, which are inherently weak defenses for being self-serving.[78] It is likewise settled that in rape cases, the bare denial of the accused "falters against the 'positive identification by, and straightforward narration of the victim.'"[79]

Finally, rape is qualified when the victim is a minor and the accused is related to the victim by affinity or consanguinity within the third civil degree.[80] It is not disputed that accused-appellant is the brother of AAA's father, making him AAA's uncle—a relative by consanguinity within the third civil degree. The prosecution likewise established that AAA was a minor when she was raped by accused-appellant.[81]

In view of these qualifying circumstances, the Court of Appeals correctly imposed the penalty of *reclusion perpetua* without eligibility of parole for each count of qualified rape in lieu of the imposition of death penalty.[82] This Court likewise affirms

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[77] Id. at 21-22.

[78] *People v. Remudo*, 416 Phil. 422 (2001) [Per Curiam, En Banc].

[79] *People v. Divinagracia, Sr.*, 814 Phil. 730, 753 (2017) [Per J. Leonen, Second Division] citing *Imbo v. People*, 758 Phil. 430 (2015) [Per J. Perez, First Division].

[80] REV. PEN. CODE, art. 266-B, as amended by Republic Act No. 8353 (1997).

[81] *Rollo*, p. 5.

[82] *People v. Lumaho*, 744 Phil. 233, 246 (2014) [Per J. Perez, First Division].

its modifications on the award of damages in light of our ruling in *People v. Jugueta*.[83]

WHEREFORE, the January 11, 2019 Decision of the Court of Appeals in CA-G.R. CR-HC No. 09091, finding accused-appellant XXX guilty beyond reasonable doubt of two counts of qualified rape, is **AFFIRMED**. Accused-appellant is sentenced to suffer the penalty of two counts of *reclusion perpetua* to be served successively, without eligibility for parole. He is also ordered to pay the victim, for each count of rape, the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages.

All damages awarded shall be subject to interest at the rate of 6% per annum from the finality of this Decision until their full satisfaction.[84]

SO ORDERED.

Hernando, Inting, Delos Santos, and *Rosario, JJ.*, concur.

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[83] 783 Phil. 806 (2016) [Per J. Peralta, En Banc].

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

THIRD DIVISION

[G.R. No. 200474. November 9, 2020]

MAXIMO AWAYAN, *Petitioner*, *v.* **SULU RESOURCES DEVELOPMENT CORPORATION,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; EXCEPTIONS TO THE RULE THAT ONLY QUESTIONS OF LAW MAY BE RAISED IN A RULE 45 PETITION; THE CONFLICTING FACTUAL FINDINGS OF THE COURT OF APPEALS AND QUASI-JUDICIAL AGENCIES WARRANT A REVIEW OF FACTUAL QUESTIONS.— Under the Rules of Court, only questions of law may be raised in a Rule 45 petition. This Court is not a trier of facts. Generally, we will not entertain questions of fact because the "factual findings of the appellate courts are final, binding, or conclusive on the parties and upon this [C]ourt when supported by substantial evidence." Nevertheless, this rule admits certain exceptions, subject to this Court's discretion.

In *Medina v. Mayor Asistio, Jr.*, this Court outlined 10 recognized exceptions, . . .

These "exceptions must be alleged, substantiated, and proved by the parties" to allow the resolution of questions of fact in a petition for review.

. . .

Here, petitioner sufficiently established that the Court of Appeals' findings are contrary to those of the Department of Environment and Natural Resources. The Court of Appeals essentially overturned the Department's ruling that the cancellation of the Agreement was warranted. This exception alone allows the cognizance of the Petition.

2. ID.; ID.; PARTIES TO CIVIL ACTIONS; REAL PARTIES IN INTEREST; SURFACE OWNERS ARE REAL PARTIES IN INTEREST AND HAVE STANDING TO ASSAIL A MINING AGREEMENT, AS THEY ARE BOUND TO BE INJURED BY ITS CONTINUING IMPLEMENTATION IF

PROVEN TO BE NON-COMPLIANT WITH THE GOVERNMENT SAFEGUARDS.— Rule 3, Section 2 of the Rules of Court requires that every action must be prosecuted or defended in the name of the real party in interest, unless otherwise authorized by law or the rules. A real party in interest is defined as "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."

A party's interest must be direct, substantial, and material. It must be "a present substantial interest, not a mere expectancy, or a future, contingent, subordinate, or consequential interest.". . .

Petitioner is a real party in interest. As a surface owner, he has shown personal and substantial interest on whether the Agreement complies with the government safeguards, and is bound to be injured by its continuing implementation should the Agreement prove to be noncompliant. Moreover, petitioner invokes his right to protect his property and, consequently, the full enjoyment of his rights as an owner. Thus, contrary to respondent's argument, petitioner is not a mere nominal party. He has standing to file the Petition before this Court.

3. POLITICAL LAW; ADMINISTRATIVE LAW; THE PHILIPPINE MINING ACT OF 1995 (REPUBLIC ACT NO. 7942); REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES; THE DENR'S ADMINISTRATIVE POWER TO CANCEL MINERAL AGREEMENT IS EXECUTIVE IN NATURE, AND ITS FACTUAL FINDINGS ARE ACCORDED GREAT RESPECT AND FINALITY IF NOT ARRIVED AT ARBITRARILY OR IN DISREGARD OF THE EVIDENCE ON RECORD.— Canceling mineral agreements is executive in nature, an exercise of the Department of Environment and Natural Resources' administrative power. Courts accord great respect and finality to the factual findings of administrative agencies, as they are presumed to have the knowledge and expertise over matters within their jurisdiction.

. . .

Despite the general rule, this Court may set aside an administrative action if it is shown that "the issuing authority has gone beyond its statutory authority, has exercised unconstitutional powers or has clearly acted arbitrarily and

without regard to his duty or with grave abuse of discretion." This also holds true where the administrative agency's findings are clearly shown to have been arrived at arbitrarily or in disregard of the evidence on record.

4. ID.; ID.; ID.; ID.; ID.; EVEN WITHOUT A RECOMMENDATION FROM THE DIRECTOR OF THE BUREAU OF MINES AND GEOSCIENCES, THE DENR SECRETARY MAY CANCEL A MINING AGREEMENT FOR VIOLATION OF THE TERMS THEREOF.— Given the broad and explicit power and functions, the Environment Secretary, as the head of the Department of Environment and Natural Resources, can monitor and determine whether a licensee violated any provision of the mineral agreement. The Environment Secretary need not wait for a recommendation from the Mines and Geosciences Bureau Director to cancel the agreement.

Thus, in this case, Secretary Atienza's cancellation order cannot be annulled solely because it lacks a recommendation from the Mines and Geosciences Bureau Director. While Section 7(e) of Administrative Order No. 40-96 authorizes the Mines and Geosciences Bureau to cancel and to recommend the cancellation of mineral agreements, this does not prohibit the Environment Secretary to make their own determination and, if warranted, order the cancellation of a mineral agreement.

5. ID.; ID.; ID.; ID.; ID.; DOCTRINE OF PRIMARY JURISDICTION; QUANTUM OF PROOF; THE DENR SECRETARY'S FINDING OF VIOLATIONS OF THE PROVISIONS OF A MINING AGREEMENT AND THE ISSUANCE OF CANCELLATION ORDER WILL NOT BE REVERSED BY THE SUPREME COURT IF SUPPORTED BY SUBSTANTIAL EVIDENCE.— The doctrine of primary administrative jurisdiction precludes courts from resolving matters that are within an administrative body's exclusive jurisdiction. A court cannot "arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence." . . .

Nevertheless, this Court may reverse administrative decisions if it finds that these decisions are tainted with grave of abuse of discretion. . . .

Hence, this Court's judicial review will "not go as far as evaluating the evidence as the basis of their determinations,

but is confined to issues of jurisdiction or grave abuse of discretion[.]"

In this case, we find that Secretary Atienza's cancellation of the Agreement was not tainted with grave abuse of discretion. His cancellation order and finding of violations was supported by substantial evidence.

6. ID.; ID.; ID.; CIVIL LAW; *FORCE MAJEURE*; DEFINITION AND REQUISITES TO SUCCESSFULLY INVOKE *FORCE MAJEURE*; AN EVENT IS REMOVED FROM THE AMBIT OF *FORCE MAJEURE* WHEN THE SAME IS PARTLY THE RESULT OF HUMAN INTERVENTION, NEGLECT, OR INACTION.—Under Article 1174 of the New Civil Code, *force majeure* refers to those extraordinary events that "could not be foreseen, or which, though foreseen, were inevitable."

To successfully invoke *force majeure*, the following requisites must concur:

> (a) the cause of the unforeseen and unexpected occurrence, or the failure of the debtors to comply with their obligations, must have been independent of human will; (b) the event that constituted the *[force majeure]* must have been impossible to foresee or, if foreseeable, impossible to avoid; (c) the occurrence must have been such as to render it impossible for the debtors to fulfill their obligation in a normal manner; and (d) the obligor must have been free from any participation in the aggravation of the resulting injury to the creditor.

When the event is found to be partly the result of a party's participation—whether by active intervention, neglect, or failure to act—the incident is humanized and removed from the ambit of *force majeure*. Hence, there must be no human intervention that caused or aggravated the event, or at the very least, it must be beyond the obligor's will.

7. ID.; ID.; ID.; ID.; ID.; THE DISPUTE BETWEEN A LICENSEE AND SURFACE OWNERS IS NOT A *FORCE MAJEURE* WHEN THE SAME RESULTED FROM THE FORMER'S NEGLECT OR FAILURE TO UTILIZE VARIOUS REMEDIES AVAILABLE TO IT.— In this case, respondent failed to avail of the remedies to resolve its dispute with the surface owners. Under Section 76 of the Agreement, respondent can ensure that

it would be allowed entry to the areas by posting a bond, which would answer any damage that may be caused to the surface owners' properties. Moreover, respondent disregarded the Mines and Geosciences Bureau's recommendation to bring the dispute before the Panel of Arbitrators to determine the reasonable compensation rate and right-of-way charges to be paid to the surface owners.

Respondent cannot claim that the dispute with the surface owners is a *force majeure*, as it failed to implement recommendations and available remedies to immediately resolve the dispute. The dispute partly resulted from respondent's neglect and failure to remedy the situation. Its persistent inaction and refusal to employ the remedies provided in the Agreement operate against it. Mining companies should endeavor to deal with surface owners by utilizing various remedies available to them; after all, in such disputes, the surface owners stand to suffer the most.

8. ID.; ID.; ID.; ID.; ESTOPPEL; PRINCIPLE OF NON-ESTOPPEL OF THE GOVERNMENT; THE INCUMBENT DENR SECRETARY IS NOT ESTOPPED BY THE FLAWED FINDINGS OF *FORCE MAJEURE* BY A FORMER DENR SECRETARY.— Under the principle of non-estoppel of the government, the State cannot be estopped by the mistakes or errors of its officials or agents. *Republic v. Sandiganbayan* clarified that this immunity refers "to acts and mistakes of its officials, especially those which are irregular[.]" Nevertheless, while estoppel against the State is not a favored policy, it may still be invoked in extraordinary circumstances, . . .

. . .

We find that the previous finding of *force majeure* by then Secretary Gozun was correctly overturned by Secretary Atienza. [T]he earlier finding of *force majeure* is flawed because respondent's inaction contributed to the persistence of the dispute with the surface owners.

APPEARANCES OF COUNSEL

The Law Firm of Chan Robles & Associates for petitioner.
Caguioa & Gatmaytan for respondent.

D E C I S I O N

LEONEN, *J.*:

The Secretary of the Department of Environment and Natural Resources has the authority to cancel a mineral production sharing agreement upon showing that the licensee failed to comply with the terms of such agreement. This authority is not contingent on a prior recommendation from the Mines and Geosciences Bureau Director.

This Court resolves a Petition for Review on Certiorari[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals, which reversed the Office of the President and the Department of Environment and Natural Resources Secretary's (Environment Secretary) cancellation of the Mineral Production Sharing Agreement (Agreement) with Sulu Resources Development Corporation (Sulu Resources).

On April 7, 1998, the Republic of the Philippines entered into an Agreement with Sulu Resources,[4] a mining company, for the "development and utilization for commercial purposes of certain gold, precious and base metals and rock aggregate materials and other minerals."[5] This Agreement covered a

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[1] *Rollo*, pp. 35-70. Filed under Rule 45 of the Rules of Court.

[2] Id. at 72-92. The August 16, 2011 Decision was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Isaias P. Dicdican and Agnes Reyes-Carpio of the Seventeenth Division of the Court of Appeals, Manila.

[3] Id. at 72-92. The February 2, 2012 Resolution was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Isaias P. Dicdican and Agnes Reyes-Carpio of the Seventeenth Division of the Court of Appeals, Manila.

[4] Id. at 910. Sulu Resources Development Corporation changed its corporate name to Holcim Aggregates Corporation effective March 15, 2010. It changed its name again to Holcim Mining and Development Corporation in July 2011.

[5] Id. at 14.

775.1659-hectare area in Barangay Cupang, Antipolo, Rizal, for a period of 25 years renewable for another 25 years.[6]

As required by the Agreement, Sulu Resources submitted quarterly reports for July to December 1998, January to September 1999, October to December 1999, January to March 2000, and April to June 2000, as well as the annual accomplishment report for July 1999 to June 2000. However, on April 16, 2002 and August 2, 2002, Sulu Resources said that it could no longer submit the required reports, as well as the Declaration of Mining Project Feasibility, due to *force majeure*. This prompted the Mines and Geosciences Bureau Assistant Director to order a field investigation to verify Sulu Resources' claims.[7]

Per its field investigation on October 15, 2002,[8] the Mines and Geosciences Bureau found that Sulu Resources was prevented from entering the contract area due to a roadblock and checkpoint manned by a well-armed security force under the order of a certain Armando Carpio (Carpio). Sulu Resources tried to negotiate for the road right-of-way, to no avail. Allegedly, Carpio demanded an exorbitant rate for right-of-way, and the ownership over the area was still being contested before the courts.[9]

The field investigation team concluded that Sulu Resources' failure to submit the mandatory reports was justified by *force majeure* under Section 3 (s) of Republic Act No. 7942, or the Philippine Mining Act of 1995.[10] It recommended that the dispute with the surface owners be submitted to the Panel of Arbitrators to determine the reasonable compensation rate and right-of-way charges, as well as the amount due be deposited in an escrow account pending resolution of the cases.[11]

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[6] Id. at 40 and 73.

[7] Id. at 508.

[8] Id. at 502-507.

[9] Id. at 503.

[10] Id.

[11] Id. at 504.

In 2003, then Environment Secretary Elisea Gozun (Secretary Gozun) issued an Order affirming that Sulu Resources "has not violated any terms and conditions of the [Agreement] and has performed the obligations thereunder."[12] Succeeding Environment Secretary Michael T. Defensor (Secretary Defensor) later issued another Order in 2005, stating that the Agreement was not among the agreements canceled for non-performance and violation of Republic Act No. 7942.[13]

In September 2006, technical personnel of the Mines and Geosciences Bureau reported based on an annual field validation that Sulu Resources failed to submit the reports due to *force majeure*. It cited Sulu Resources' subsisting dispute with the surface owners.[14]

On March 18, 2008, Sulu Resources submitted a report on "geological confirmation data gathering activities" in preparation for feasibility studies.[15] In 2009, Sulu Resources submitted its Quarterly Report for 2008 on the following activities:

a. Completed geophysical survey (geo-resistivity seismic) in area of approximately 130 hectares
b. Completed one (1) confirmatory drill hole with a total depth of 55 meters
c. Demobilization of drill equipment and materials from . . . site to a new site
d. Coordinated with landowners and local officials.[16]

Subsequently, Sulu Resources was also issued an Environmental Compliance Certificate.[17]

On February 16, 2009, Maximo Awayan (Awayan), who owned part of the contract area, filed before the Department of

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[12] Id. at 547.

[13] Id. at 549-560.

[14] Id. at 544.

[15] Id.

[16] Id.

[17] Id.

Environment and Natural Resources a Petition seeking to cancel the Agreement with Sulu Resources.[18] He alleged the following:

1) Since the grant of the MPSA in 1998, the contract area has been non-operational and inactive;

2) The inclusion of his private property as part of the contract area without his consent and the non-performance of work thereon has deprived him of the right to benefit from the said private property;

3) The contractual obligations of [Sulu Resources] under the MPSA such as to perform all mining operations and submit the required reports, among others, were not complied with;

4) [Sulu Resources] failed to comply with the required filing of a declaration of Mining Project Feasibility, thereby hindering the development of the area and contravening its representation and warranty that it has the financial and technical capabilities to carry out the objectives of MPSA No. 108-98A-IV;

5) [Sulu Resources] has over-extended the Exploration Period of the MPSA, to the prejudice of the Government and to his disadvantage as surface owner; and

6) [Sulu Resources] does not meet the minimum requirement of Php2,500,000.00 as paid-up, henc[e], it is not a "Qualified Person."[19]

On September 19, 2009, Environment Secretary Jose L. Atienza, Jr. (Secretary Atienza) granted Awayan's petition and ordered the cancellation of the Agreement with Sulu Resources,[20] thus:

WHEREAS, the verification by this Department confirms that Sulu has committed the following violations of the terms and conditions of MPSA No. 108-98A-IV:

1. Sulu [Resources] has not filed an application for renewal of the Exploration Period of MPSA No. 108-98A-IV since its

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[18] Id. at 40.

[19] Id. at 41.

[20] Id. at 318-320.

initial 2-year term that expired in year 2000, in violation of Section 5.1 thereof;

2. Sulu [Resources] has not submitted a Declaration of Mining Project Feasibility during the term of the Exploration Period from 1998 to 2000, in violation of the provisions of Section 5.5 thereof;

3. Sulu [Resources] has not submitted the required reports in violation of Section 5.6 thereof, which requires the submission of quarterly and annual reports and the final and relinquishment reports, among others;

WHEREAS, such violations are grounds for cancellation of MPSA No. 108-98A-IV, pursuant to the provisions of Section 96 of the Mining Act and Section 15.2 of the MPSA;

WHEREAS, it is the pronounced policy of this Department to accelerate the development of mineral resources of the country and in so doing, cleanse its records of non-performing mining tenements in line with the ongoing program of revitalizing the minerals industry;

WHEREFORE, the foregoing premises considered, the Mineral Production Sharing Agreement No. 108-98A-IV granted to Sulu Resources Development Corporation is hereby **cancelled**.[21] (Emphasis in the original)

Sulu Resources moved for reconsideration, but this was denied by Secretary Atienza, who likewise declared the area open to mining application.[22]

Sulu Resources appealed before the Office of the President, contending that: (1) it was prevented and excused by *force majeure* from strictly complying with its obligations; (2) it substantially complied in good faith with its obligations; and (3) Secretary Atienza erred in ruling that canceling the Agreement would achieve State policies on mining and serve the public interest.[23]

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[21] Id. at 319-320.

[22] Id. at 42.

[23] Id.

In a March 5, 2010 Decision,[24] the Office of the President affirmed the Orders of the Department of Environment and Natural Resources. It ruled that the deficiencies invoked by Sulu Resources were all due in 2000, and that the problem's persistence militated against Sulu Resources' claim. It also emphasized that the findings of administrative agencies are generally accorded great respect.[25] The dispositive portion of the Office of the President's Decision reads:

> After a careful and thorough evaluation and study of the records of this case, this Office finds the Orders of the DENR to be in accord with facts, law and jurisprudence relevant to the case.
>
> **WHEREFORE**, premises considered, the assailed Orders of the DENR dated September 18, 2009 and November 20, 2009 are hereby **AFFIRMED** in toto.[26] (Emphasis in the original)

Sulu Resources moved for reconsideration, but this was denied.[27] Hence, it filed a Petition for Review before the Court of Appeals.

In its August 16, 2011 Decision,[28] the Court of Appeals granted Sulu Resources' Petition and ruled that Secretary Atienza's cancellation order was tainted with grave abuse of discretion in disregarding due process, considering that several officers of the Department of Environment and Natural Resources repeatedly recognized that *force majeure* justified the partial noncompliance of Sulu Resources.[29]

In ruling that Sulu Resources was justified in not strictly complying with its obligations, the Court of Appeals disposed of the case as follows:

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[24] Id. at 152-155.

[25] Id. at 154.

[26] Id. at 154-155.

[27] Id. at 185.

[28] Id. at 13-28.

[29] Id. at 20.

IN LIGHT OF ALL THE FOREGOING, the instant petition is **GRANTED**. The assailed Decision dated March 5, 2010 and the resolution dated May 28, 2010, respectively issued by the Office of the President which affirmed the cancellation of MPSA No. 108-98A-IV are hereby **ANNULLED**. Accordingly, the Orders dated September 18, 2009 and November 20, 2009 issued by DENR Secretary Lito Atienza are **REVERSED AND SET ASIDE**. The Mineral Production Sharing Agreement No. 108-98A-IV, granted in favor of petitioner, Sulu Resources Development Corporation, now known as Holcim Aggregates Corporation, is declared to be in full force and effect.

SO ORDERED.[30] (Emphasis in the original)

The Court of Appeals held that the Mines and Geosciences Bureau's recommendation is required in canceling mining agreements, pursuant to Section 7 (e) of Administrative Order No. 96-42, or the Implementing Rules and Regulations of Republic Act No. 7942,[31] which states:

SECTION 7. Organization and Authorization of the Bureau.

. . . .

The Bureau shall have the following authority, among others:

. . . .

e. To cancel or to recommend cancellation after due process, mining rights, mining applications and mining claims for non-compliance with pertinent laws, rules and regulations[.][32]

Because Secretary Atienza canceled the Agreement without the Mines and Geosciences Bureau Director's recommendation, the Court of Appeals declared the cancellation void.[33]

Awayan moved for reconsideration, but this was denied.[34]

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[30] Id. at 27.

[31] Id. at 21-23.

[32] Id. at 22 citing Implementing Rules and Regulations of Republic Act No. 7942 (1995), sec. 7 (e).

[33] Id. at 82.

[34] Id. at 30-33.

Thus, on March 9, 2012, Awayan filed this Petition for Review on Certiorari.[35] On June 26, 2012, Sulu Resources filed its Comment, to which petitioner filed his Reply[36] on May 21, 2013.

In a November 9, 2016 Resolution, this Court resolved to give due course to the Petition and required the parties to submit their respective memoranda.[37]

Sulu Resources filed its Memorandum on January 10, 2017,[38] while Awayan filed his on January 26, 2017.[39]

Before this Court, petitioner asserts that he has legal standing to file the Petition. He argues that he is a real party in interest because as a surface owner, he stands to be injured by the Agreement and has the right to protect the full enjoyment of his ownership over the property. He adds that since the Agreement is imbued with public interest, this case demands a proper review by this Court.[40]

While admitting that a Rule 45 petition should only raise questions of fact, petitioner claims that his Petition falls under the recognized exceptions, particularly: (1) the Court of Appeals committed grave abuse of discretion; (2) its findings of facts are conflicting; and (3) its findings contrast with those of the Department of Environment and Natural Resources.[41] Petitioner contends that neither the Office of the President nor the Department of Environment and Natural Resources gravely abused its discretion in evaluating the evidence.[42]

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[35] Id. at 35-70. Petitioner had earlier moved to extend time to file a petition, which was granted.

[36] Id. at 963.

[37] Id. at 999.

[38] Id. at 1016.

[39] Id. at 1099.

[40] Id. at 963-964.

[41] Id. at 964.

[42] Id. at 1100.

Petitioner also argues that the absence of a recommendation from the Mines and Geosciences Bureau Director does not nullify Secretary Atienza's decision to cancel the Agreement. He contends that the Court of Appeals unduly stretched the Bureau's powers under Section 7 of Administrative Order No. 96-40[43] to mean that the Secretary alone cannot cancel a mineral agreement without such recommendation.[44]

Petitioner avers that the power given to the Mines and Geosciences Bureau Director simply means they may recommend the cancellation; it does not say that only upon such recommendation would mineral agreements be canceled.[45] He also asserts that the Environment Secretary, as the administrative head of the department in charge of managing and supervising natural resources, can cancel a mineral agreement for violation of its terms even without a petition for its cancellation.[46] Citing *Celestial Nickel Mining Exploration Corporation v. Macroasia Corporation*,[47] petitioner submits that the jurisdiction to cancel mineral agreements or lease contracts belong to the Environment Secretary.[48]

Petitioner adds that since the cancellation order was based on the findings of respondent's substantial breach of the

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[43] Department of Environment and Natural Resources Administrative Order No. 96-40, otherwise known as Revised Implementing Rules and Regulations of Republic Act No. 7942 or Philippine Mining Act of 1995, sec. 7 (e) provides:

Section 7. Organization and Authority of the Bureau. The Bureau shall have the following authority, among others;

. . . .

(e) To cancel or to recommend cancellation, after due process, mining rights, mining applications and mining claims for noncompliance with pertinent laws, rules and regulations;

[44] *Rollo*, p. 47.

[45] Id.

[46] Id. at 53.

[47] 545 Phil. 466 (2007) [Per J. Velasco, Jr., Second Division].

[48] *Rollo*, p. 1109.

Agreement, it could not have been issued with grave abuse of discretion.[49]

Petitioner then claims that the Court of Appeals erred in finding that the cancellation was without regard to due process. He zeroes in on Section 2.19 of the Agreement, which provides:

> *Force Majeure* means acts or circumstances beyond the reasonable control of the Contractor including but not limited to, war, rebellion, insurrection, riots, civil disturbances, blockades, sabotage, embargo, strike, lockout, any dispute with surface owners and other labor disputes, epidemics, earthquake, storm, flood, or other adverse weather conditions, explosion, fire, adverse action of the Government or by any of its instrumentality or subdivision thereof, Act of God or any public enemy and any cause as herein described over which the affected party has no reasonable control.[50]

Petitioner contends that respondent's defenses that it was denied access to the contract area by the owner of the adjacent lands and that there was a dispute with the surface owners do not constitute *force majeure*. He avers that to qualify as a *force majeure*, the circumstance must be among those enumerated in Section 2.19, and must be beyond the control of the party claiming a *force majeure*.[51]

Petitioner argues that the dispute is not beyond respondent's control, because nothing prevented it from gaining access to the contract area considering that there are remedies under Sections 75[52] and 76[53] of Republic Act No. 7942. Under these

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[49] Id. at 53-55.

[50] Id. at 56.

[51] Id.

[52] Republic Act No. 7942 (1995), sec. 75 provides:

SECTION 75. *Easement Rights*. — When mining areas are so situated that for purposes of more convenient mining operations it is necessary to build, construct or install on the mining areas or lands owned, occupied or leased by other persons, such infrastructure as roads, railroads, mills, waste dump sites, tailing ponds, warehouses, staging or storage areas and port facilities, tramways, runways, airports, electric transmission, telephone or telegraph lines, dams and their normal flood and catchment areas, sites for

sections, petitioner posits that respondent only needs to pay just compensation and to post a bond so that it would be allowed to enter the area.[54] Petitioner concludes that respondent's financial limitation is the reason for its problem with the surface owners.[55]

Since there is no *force majeure*, petitioner contends that respondent is not entitled to the automatic period extension, per Section 16.4 of the Agreement.[56] Its failure to comply with its obligations, says petitioner, constitutes substantial breach which justifies the Agreement's cancellation.[57]

Petitioner points out that the Agreement had long been granted to respondent, but it only gathered data for feasibility studies 10 years later, in 2008. As the Agreement is imbued with public interest, petitioner says the government has long been deprived of the supposed benefits from the Agreement.[58]

Petitioner likewise rejects the Court of Appeals' reliance on the findings and statements of the Department of Environment

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water wells, ditches, canals, new river beds, pipelines, flumes, cuts, shafts, tunnels, or mills, the contractor, upon payment of just compensation, shall be entitled to enter and occupy said mining areas or lands.

[53] Republic Act No. 7942 (1995), sec. 76 provides:

SECTION 76. *Entry into Private Lands and Concession Areas*. — Subject to prior notification, holders of mining rights shall not be prevented from entry into private lands and concession areas by surface owners, occupants, or concessionaires when conducting mining operations therein: Provided, That any damage done to the property of the surface owner, occupant, or concessionaire as a consequence of such operations shall be properly compensated as may be provided for in the implementing rules and regulations: Provided, further, That to guarantee such compensation, the person authorized to conduct mining operation shall, prior thereto, post a bond with the regional director based on the type of properties, the prevailing prices in and around the area where the mining operations are to be conducted, with surety or sureties satisfactory to the regional director.

[54] *Rollo*, pp, 56-59.

[55] Id. at 60.

[56] Id. at 62-63.

[57] Id. at 63-64.

[58] Id. at 60-61.

and Natural Resources' former secretaries and field agents that respondent did not violate the Agreement due to *force majeure*.[59] He argues that the government cannot be estopped by the statements and acts of its officers and agents. Thus, to him, Secretary Atienza could issue a contrary finding, as long as it would be supported by substantial evidence.[60]

On the other hand, respondent argues that the Petition should be dismissed because petitioner is not a real party in interest, but merely one of the surface owners in the contract area. To respondent, petitioner failed to specify any substantial interest, or allege that he would sustain direct injury from the Agreement's enforcement.[61] At most, petitioner is merely a nominal party. Respondent suspects that petitioner's eagerness to cancel the Agreement is due to an attempt to award it to another entity, Suncorp Mines and Development Corporation.[62]

Respondent also maintains that the Petition raises questions of fact improper in a Rule 45 petition, and none of the exceptions apply.[63] It notes that since the Court of Appeals based its ruling on the Department of Environment and Natural Resources' own factual findings, there could be no conflicting factual findings.[64]

Respondent goes on to say that the Court of Appeals correctly nullified Secretary Atienza's cancellation order, it being tainted with grave abuse of discretion. To bolster his point, respondent cites the lack of recommendation from the Mines and Geosciences Bureau and the lack of factual or legal basis for the cancellation.[65]

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[59] Id. at 61.

[60] Id. at 62.

[61] Id. at 913-916.

[62] Id. at 916.

[63] Id. at 918.

[64] Id. at 918-919.

[65] Id. at 919.

On this score, respondent highlights the Mines and Geosciences Bureau's power under Section 7 (e) of Administrative Order 96-40 "to cancel or to recommend cancellation, after due process, mining rights, mining applications and mining claims for noncompliance with pertinent laws, rules and regulations."[66] That there was no recommendation, says respondent, was more reason to say that Secretary Atienza gravely abused his discretion in ordering the cancellation without factual and legal basis.[67]

Respondent admits that it was not able to promptly prepare and submit its reportorial requirements, but claims that this delay was justified by *force majeure*—particularly, the difficulties it faced involving the surface owners. Respondent narrates that, as likewise found by the Mines and Geosciences Bureau personnel, it was refused entry into the area, which was itself subject to conflicting claims of ownership.[68]

Respondent adds that former Environment Secretaries Gozun and Defensor also affirmed the Mines and Geosciences Bureau's findings when they recognized that respondent has not violated any terms and conditions of the Agreement.[69] Hence, respondent submits that its failure to renew its exploration period and to submit the reports was excused by *force majeure* causes, as provided in Section 16.4 of the Agreement.[70]

Respondent maintains that its disputes with the surface owners constitute *force majeure* as uniformly and clearly provided under

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[66] Id. citing Implementing Rules and Regulations of Republic Act No. 7942 (1995), sec. 7 (e).

[67] Id. at 920.

[68] Id. at 921-925.

[69] Id. at 931. Secretary Gozun issued an Order dated September 6, 2003 which stated that "Sulu has not violated any terms and conditions of the Mineral Production Sharing Agreement and has performed its obligations thereunder." Secretary Defensor in Memorandum Order No. 2005-13 dated August 5, 2005 did not include the Mineral Production Sharing Agreement among the "cancelled non-mining tenements in view of certain violation of the provisions of the Philippine Mining Act of 1995, its implementing rules and regulations and/or the terms and conditions of the mining tenements."

[70] Id. at 927.

Section 2.19 of the Agreement,[71] Section 3 (s) of Republic Act No. 7942,[72] and Section 5 (a) (i) of Administrative Order 96-40.[73] Thus, it says petitioner erred in further requiring that the dispute must be beyond the reasonable control of the contractor to be considered a *force majeure*.[74]

Moreover, respondent claims that the remedies under Sections 75 and 76 of Republic Act No. 7942 do not preclude a finding of *force majeure*;[75] otherwise, a situation may arise where the law's provisions are irreconcilable and inconsistent.[76]

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[71] Id. at 932-933. Section 2.19 of the Mineral Production Sharing Agreements provides:

2.19 Force Majeure means acts or circumstances beyond the reasonable control of Contractor including, but not limited to, war, rebellion, insurrection, riots, civil disturbances, blockade, sabotage, embargo, strike, lockout, any dispute with surface owners, and other labor disputes, epidemic, earthquake, storm, flood or other adverse weather conditions, explosion, fire, adverse action by Government or by any instrumentality or subdivision thereof, Act of God, or any public enemy and any cause as herein described over which the affected party has no reasonable control.

[72] Id. at 933. Republic Act No. 7942 (1995), sec. 3 (s) provides:

(s) Force Majeure means acts or circumstances beyond the reasonable control of Contractor including, but not limited to, war, rebellion, insurrection, riots, civil disturbances, blockade, sabotage, embargo, strike, lockout, any dispute with surface owners, and other labor disputes, epidemic, earthquake, storm, flood or other adverse weather conditions, explosion, fire, adverse action by Government or by any instrumentality or subdivision thereof, Act of God, or any public enemy and any cause as herein described over which the affected party has no reasonable control.

[73] Id. at 933. Department Administrative Order No. 96-40, sec. 5 (ai) provides:

ai. "Force Majeure" means acts or circumstances beyond the reasonable control of Contractor including, but not limited to, war, rebellion, insurrection, riots, civil disturbances, blockade, sabotage, embargo, strike, lockout, any dispute with surface owners, and other labor disputes, epidemic, earthquake, storm, flood or other adverse weather conditions, explosion, fire, adverse action by Government or by any instrumentality or subdivision thereof, Act of God, or any public enemy and any cause as herein described over which the affected party has no reasonable control.

[74] Id. at 935.

[75] Id. at 935-936.

[76] Id. at 936.

Respondent also argues that filing a case before the Panel of Arbitrators or posting a bond will not sufficiently address its problems involving the adverse claims. It asserts that filing a case would be impractical and difficult, adding that the Panel of Arbitrators does not have the jurisdiction to resolve conflicting claims of ownership.[77]

Respondent stresses that it eventually found other ways of resolving the adverse claims when it obtained the consent of the claimants.[78]

With a finding of *force majeure*, respondent claims that the renewal of the exploration period is automatic under Section 16.4 of the Agreement, and an amendment is no longer required. It says the extension or renewal does not require the approval or consent of the Republic.[79] And, since *force majeure* was established, respondent argues that it cannot be held in substantial breach of the Agreement.[80]

Respondent adds that the Agreement's cancellation would be counter-productive, as it would cause undue delay to the prejudice of the government for wasting all the significant progress made. If another contractor would be awarded the contract, it would allegedly take a significant amount of time to complete the activities that had already been undertaken by respondent.[81]

Lastly, respondent argues that the principle of non-estoppel does not apply, since the Department of Environment and Natural Resources' previous findings were not alleged to be mistaken or irregular. It repeats that Secretary Atienza's cancellation order was unfounded.[82]

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[77] Id. at 937.

[78] Id. at 938.

[79] Id. at 946-947.

[80] Id. at 949.

[81] Id. at 950.

[82] Id. at 946.

The issues for this Court's resolution are the following:

First, whether or not questions of fact may be resolved in this Petition for Review;

Second, whether or not petitioner Maximo Awayan has the legal standing to assail the Agreement; and

Third, whether or not the Court of Appeals erred in finding that the Agreement's cancellation is proper. Subsumed under this issue are the following:

a. Whether or not the Mines and Geosciences Bureau's recommendation is necessary for the Environment Secretary's cancellation of a mineral agreement;

b. Whether or not Secretary Atienza gravely abused his discretion in ordering the cancellation of the Agreement; and

c. Whether or not the previous findings of the former Secretaries bind Secretary Atienza.

I

Under the Rules of Court, only questions of law may be raised in a Rule 45 petition.[83] This Court is not a trier of facts.[84] Generally, we will not entertain questions of fact because the "factual findings of the appellate courts are final, binding, or conclusive on the parties and upon this [C]ourt when supported by substantial evidence."[85] Nevertheless, this rule admits certain exceptions, subject to this Court's discretion.

In *Medina v. Mayor Asistio, Jr.*,[86] this Court outlined 10 recognized exceptions, thus:

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[83] RULES OF COURT, Rule 45, sec. 1.

[84] *Pascual v. Burgos*, 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

[85] Id. at 182.

[86] 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

(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.[87] (Citations omitted)

These "exceptions must be alleged, substantiated, and proved by the parties" to allow the resolution of questions of fact in a petition for review.[88]

In claiming that this Court may resolve his Petition, petitioner invokes several exceptions: (1) that the Court of Appeals committed grave abuse of discretion; (2) that its findings of facts are conflicting; and (3) that its findings conflict with those of the Department of Environment and Natural Resources.

Here, petitioner sufficiently established that the Court of Appeals' findings are contrary to those of the Department of Environment and Natural Resources. The Court of Appeals essentially overturned the Department's ruling that the cancellation of the Agreement was warranted. This exception alone allows the cognizance of the Petition.

Moreover, petitioner alleged that the Court of Appeals committed grave abuse of discretion in reversing the findings of the Department of Environment and Natural Resources.

Considering that the exceptions invoked are present here, this Court shall review the Petition.

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[87] Id. at 232.

[88] *Pascual v. Burgos*, 776 Phil. 167, 169 (2016) [Per J. Leonen, Second Division].

II

Rule 3, Section 2 of the Rules of Court requires that every action must be prosecuted or defended in the name of the real party in interest, unless otherwise authorized by law or the rules. A real party in interest is defined as "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."[89]

A party's interest must be direct, substantial, and material.[90] It must be "a present substantial interest, not a mere expectancy, or a future, contingent, subordinate, or consequential interest."[91] *Stronghold Insurance Company, Inc. v. Cuenca*[92] explains:

> Where the plaintiff is not the real party in interest, the ground for the motion to dismiss is lack of cause of action. The reason for this is that the courts ought not to pass upon questions not derived from any actual controversy. Truly, a person having no material interest to protect cannot invoke the jurisdiction of the court as the plaintiff in an action. Nor does a court acquire jurisdiction over a case where the real party in interest is not present or impleaded.
>
> . . . .
>
> . . . Such a rule is intended to bring before the court the party rightfully interested in the litigation so that only real controversies will be presented and the judgment, when entered, will be binding and conclusive and the defendant will be saved from further harassment and vexation at the hands of other claimants to the same demand.[93] (Citations omitted)

Petitioner is a real party in interest. As a surface owner, he has shown personal and substantial interest on whether the

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[89] RULES OF COURT, Rule 3, sec 2.

[90] *Alliance for Rural and Agrarian Reconstruction, Inc. v. Commission on Elections*, 723 Phil. 160 (2013) [Per *J.* Leonen, En Banc].

[91] *Stronghold Insurance Co., Inc. v. Cuenca*, 705 Phil. 441, 454 (2013) [Per *J.* Bersamin, First Division].

[92] 705 Phil. 441 (2013) [Per *J.* Bersamin, First Division].

[93] Id. at 455-456.

Agreement complies with the government safeguards, and is bound to be injured by its continuing implementation should the Agreement prove to be noncompliant. Moreover, petitioner invokes his right to protect his property and, consequently, the full enjoyment of his rights as an owner. Thus, contrary to respondent's argument, petitioner is not a mere nominal party. He has standing to file the Petition before this Court.

III

Canceling mineral agreements is executive in nature, an exercise of the Department of Environment and Natural Resources' administrative power. Courts accord great respect and finality to the factual findings of administrative agencies, as they are presumed to have the knowledge and expertise over matters within their jurisdiction.[94]

In *Republic v. Express Telecommunication Company, Inc.*,[95] this Court held that, generally, it will not interfere with purely administrative and discretionary functions, thus:

> (T)he powers granted to the Secretary of Agriculture and Commerce (natural resources) by law regarding the disposition of public lands such as granting of licenses, permits, leases and contracts, or approving, rejecting, reinstating, or canceling applications, are all executive and administrative in nature. It is a well recognized principle that purely administrative and discretionary functions may not be interfered with by the courts. In general, courts have no supervising power over the proceedings and actions of the administrative departments of the government. This is generally true with respect to acts involving the exercise of judgement or discretion and findings of fact.[96]

Despite the general rule, this Court may set aside an administrative action if it is shown that "the issuing authority has gone beyond its statutory authority, has exercised unconstitutional powers or has clearly acted arbitrarily and

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[94] *Espiritu v. Del Rosario*, 745 Phil. 566, 579 (2014) [Per J. Leonen, Second Division].

[95] 424 Phil. 372 (2002) [Per J. Ynares-Santiago, First Division].

[96] Id. at 401 citing *Lacuesta v. Herrera*, 159 Phil. 133 (1975) [Per J. Teehankee, First Division].

without regard to his duty or with grave abuse of discretion."[97] This also holds true where the administrative agency's findings are clearly shown to have been arrived at arbitrarily or in disregard of the evidence on record.[98]

Thus, in resolving whether the Agreement's cancellation is proper, this Court must determine the statutory authority conferred on the Secretary of the Department of Environment and Natural Resources and the Mines and Geosciences Bureau. Then, we determine if this authority was exercised without grave abuse of discretion.

The authority of the Department of Environment and Natural Resources can be traced back to 1863, when the Spanish authorities created *Inspeccion General de Montes*, which was tasked to protect the forests and regulate timber cutting.[99] On the other hand, the Mines and Geosciences Bureau was first instituted through the *Inspeccion General de Minas*, which was mainly in charge of the administration and disposition of minerals and mineral lands. However, in 1886, the *Inspeccion General de Minas* was abolished and its functions were transferred to the General Directorate of Civil Administration.[100]

In 1900, under the reorganization during the American Regime, the Mining Bureau was created[101] and *Inspeccion General de Montes* was renamed as the Forestry Bureau.[102] A year later,

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[97] *Liwat-Moya v. Ermita*, 828 Phil. 43, 61 (2018) [Per J. Martires, Third Division].

[98] *Maya Farms Employees Organization v. National Labor Relations Commission*, 309 Phil. 465 (1994) [Per J. Kapunan, First Division].

[99] Department of Environment and Natural Resources National Capital Region, *DENR Through History, available at* <http://ncr.denr.gov.ph/index.php/about-us/organizational-profile> (last accessed on November 9, 2020).

[100] Mines and Geosciences Bureau, *MGB: More than a century of championing sustainability in mining and geosciences*, <http://www.mgb.gov.ph/about-us/brief-history> (last accessed on November 9, 2020).

[101] Id.

[102] Department of Environment and Natural Resources National Capital Region, *DENR Through History*, <http://ncr.denr.gov.ph/index.php/about-us/organizational-profile> (last accessed on November 9, 2020).

the Forestry Bureau was replaced by the Department of Interior. In 1916, its functions were transferred to the Department of Agriculture and Natural Resources, now vested with supervisory powers over the Bureaus of Agriculture, Forestry, Lands, Science, and Weather.[103] In 1932, the Department of Agriculture and Natural Resources was renamed as the Department of Agriculture and Commerce.[104] In 1935, the Mining Bureau, renamed Bureau of Mines, was reorganized under the same Department.[105]

In 1974, the Department was split into the Department of Agriculture and the Department of Natural Resources, with the latter absorbing the Bureau of Mines, among other line bureaus. The Department of Natural Resources was later renamed as the Ministry of Natural Resources, following the shift to a parliamentary form of government.[106]

After the EDSA Revolution, Executive Order No. 131 was issued to abolish the Ministry and, in its stead, the Department of Energy, Environment, and Natural Resources was created. It was later reorganized to what is now the Department of Environment and Natural Resources.[107]

Executive Order No. 292, or the Administrative Code of 1987, mandated the Department of Environment and Natural Resources to "be in charge of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization, and conservation of the country's natural resources."[108] On the

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[103] Id.

[104] Id.

[105] Mines and Geosciences Bureau, MGB: *More than a century of championing sustainability in mining and geosciences*, <http://www.mgb.gov.ph/about-us/brief-history> (last accessed on November 9, 2020).

[106] Department of Environment and Natural Resources National Capital Region, DENR Through History, <http://ncr.denr.gov.ph/index.php/about-us/organizational-profile> (last accessed on November 9, 2020).

[107] Department of Environment and Natural Resources National Capital Region, DENR Through History, <http://ncr.denr.gov.ph/index.php/about-us/organizational-profile> (last accessed on November 9, 2020).

[108] Executive Order No. 292 (1987), Book IV, Title XIV, Ch. 1, sec. 2 (2).

other hand, the Mines and Geosciences Bureau was tasked to advise the Environment Secretary on matters "pertaining to geology and mineral resources exploration, development, utilization and conservation[.]"[109]

In 1995, Republic Act No. 7942, or the Philippine Mining Act, was enacted. Subsequently, its implementing rule, Administrative Order No. 40-96, was issued.

Both the law and its implementing rules are silent on the procedure for canceling mineral agreements, as recognized in *Celestial Nickel Mining Exploration Corporation v. Marcoasia Corporation*,[110] where this Court traced the history and development of statutes pertaining to the Environment Secretary's power to cancel mineral agreements.

In *Celestial*, this Court, citing the Administrative Code of 1987, found that the Environment Secretary's authority springs from their administrative authority, supervision, management, and control over mineral resources. Title XIV of Book IV of the Administrative Code of 1987 states:

CHAPTER 1 — General Provisions

SECTION 1. Declaration of Policy. — (1) The State shall ensure, for the benefit of the Filipino people, the full exploration and development as well as the judicious disposition, utilization, management, renewal and conservation of the country's forest, mineral, land, waters, fisheries, wildlife, off-shore areas and other natural resources. . .

SECTION 2. Mandate. — (1) The Department of Environment and Natural Resources shall be primarily responsible for the implementation of the foregoing policy. (2) It shall, subject to law and higher authority, be in charge of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization, and conservation of the country's natural resources.

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[109] Executive Order No. 292 (1987), Title XIV, Ch. 3. sec. 16.

[110] 565 Phil. 466 (2007) [Per J. Velasco, Jr., Second Division].

SECTION 4. Powers and Functions. — The Department shall:

. . . .

(2) Formulate, implement and supervise the implementation of the government's policies, plans, and programs pertaining to the management, conservation, development, use and replenishment of the country's natural resources;

. . . .

(4) Exercise supervision and control over forest lands, alienable and disposable public lands, mineral resources. . .

. . . .

(12) Regulate the development, disposition, extraction, exploration and use of the country's forest, land, water and mineral resources;

(13) Assume responsibility for the assessment, development, protection, licensing and regulation as provided for by law, where applicable, of all energy and natural resources; the regulation and monitoring of service contractors, licensees, lessees, and permit for the extraction, exploration, development and use of natural resources products; . . .

. . . .

(15) Exercise exclusive jurisdiction on the management and disposition of all lands of the public domain. . .

CHAPTER 2 — The Department Proper

SECTION 8. The Secretary. — The Secretary shall:

. . . .

(3) Promulgate rules, regulations and other issuances necessary in carrying out the Department's mandate, objectives, policies, plans, programs and projects.
(4) Exercise supervision and control over all functions and activities of the Department;
(5) Delegate authority for the performance of any administrative or substantive function to subordinate officials of the Department[.]

Reading these provisions, this Court in *Celestial* held that the Environment Secretary's power to cancel or cause to cancel

mineral agreements is corollary to their power to approve mineral agreements. Thus:

> It is the DENR, through the Secretary, that manages, supervises, and regulates the use and development of all mineral resources of the country. It has exclusive jurisdiction over the management of all lands of public domain, which covers mineral resources and deposits from said lands. It has the power to oversee, supervise, and police our natural resources which include mineral resources. Derived from the broad and explicit powers of the DENR and its Secretary under the Administrative Code of 1987 is the power to approve mineral agreements and necessarily to cancel or cause to cancel said agreements.[111]

This Court also cited in *Celestial* the Environment Secretary's statutory authority based on Section 44 of the implementing rules of Presidential Decree No. 463. It then held that since Section 44 was not repealed by the Philippine Mining Act of 1995, the Environment Secretary retains the authority to cancel mining agreements, thus:

> Sec. 4 of EO 279 provided that the provisions of PD 463 and its implementing rules and regulations, not inconsistent with the executive order, continue in force and effect.
>
> When RA 7942 took effect on March 3, 1995, there was no provision on who could cancel mineral agreements. However, since the aforequoted Sec. 44 of the [Consolidated Mines Administrative Order] implementing PD 463 was not repealed by RA 7942 and DENR AO 96-40, not being contrary to any of the provisions in them, then it follows that Sec. 44 serves as basis for the DENR Secretary's authority to cancel mineral agreements.
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> Since the DENR Secretary had the power to approve and cancel mineral agreements under PD 463, and the power to cancel them under the [Consolidated Mines Administrative Order] implementing PD 463, EO 211, and EO 279, then there was no recall of the power of the DENR Secretary under RA 7942. Historically, the DENR Secretary has the express power to approve mineral agreements or contracts and the implied power to cancel said agreements.

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[111] Id. at 493.

It is a well-established principle that in the interpretation of an ambiguous provision of law, the history of the enactment of the law may be used as an extrinsic aid to determine the import of the legal provision or the law. History of the enactment of the statute constitutes prior laws on the same subject matter. Legislative history necessitates review of "the origin, antecedents and derivation" of the law in question to discover the legislative purpose or intent. It can be assumed "that the new legislation has been enacted as continuation of the existing legislative policy or as a new effort to perpetuate it or further advance it."

We rule, therefore, that based on the grant of implied power to terminate mining or mineral contracts under previous laws or executive issuances like PD 463, EO 211, and EO 279, RA 7942 should be construed as a continuation of the legislative intent to authorize the DENR Secretary to cancel mineral agreements on account of violations of the terms and conditions thereof.[112] (Citation omitted)

This Court then briefly discussed in *Celestial* the Environment Secretary's authority in relation to the Mines and Geosciences Bureau's functions. It held that under the Philippine Mining Act, the Environment Secretary's power of control and supervision over the Mines and Geosciences Bureau "to cancel or recommend cancellation of mineral rights clearly demonstrates the authority of the [Environment] Secretary to cancel or approve the cancellation of mineral agreements."[113] It further explained:

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[112] Id. at 495-496.

[113] Id. at 496 citing Republic Act No. 7942 (1995), sec. 9, which provides:

SECTION 9. *Authority of the Bureau*. — The Bureau shall have direct charge in the administration and disposition of mineral lands and mineral resources and shall undertake geological, mining, metallurgical, chemical, and other researches as well as geological and mineral exploration surveys. The Director shall recommend to the Secretary the granting of mineral agreements to duly qualified persons and shall monitor the compliance by the contractor of the terms and conditions of the mineral agreements. The Bureau may confiscate surety, performance and guaranty bonds posted through an order to be promulgated by the Director. The Director may deputize, when necessary, any member or unit of the Philippine National Police, barangay, duly registered nongovernmental organization (NGO) or any qualified person to police all mining activities.

> Corollary to the power of the MGB Director to recommend approval of mineral agreements is his power to cancel or recommend cancellation of mining rights covered by said agreements under Sec. 7 of DENR AO 96-40, containing the revised Implementing Rules and Regulations of RA 7942. . .
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> . . . .
>
> It is explicit from the foregoing provision that the DENR Secretary has the authority to cancel mineral agreements based on the recommendation of the MGB Director. As a matter of fact, the power to cancel mining rights can even be delegated by the DENR Secretary to the MGB Director. Clearly, it is the Secretary, not the POA, that has authority and jurisdiction over cancellation of existing mining contracts or mineral agreements.[114]

Nevertheless, *Celestial* did not clearly delineate the authority between the Environment Secretary and the Mines and Geosciences Bureau. In that case, the issue was who between the Environment Secretary and the Panel of Arbitrators had the authority to cancel mineral agreements. In ruling that the Environment Secretary rightfully possessed the authority, this Court cited the Mines and Geosciences Bureau's power to cancel mineral agreements under Section 7 of Administrative Order 96-40. It then concluded that as the Mines and Geosciences Bureau is under the Environment Secretary's supervision, "the logical conclusion is that it is the [Environment] Secretary who can cancel the mineral agreements and not the [Panel of Arbitrators]."[115]

Here, the question is not who are the persons authorized to cancel, but on the proper procedure for cancellation. The primary issue is whether the Environment Secretary can cancel a mineral agreement without a recommendation from the Mines and Geosciences Bureau Director.

We find that the Environment Secretary has the statutory authority to cancel mineral agreements even without the recommendation of the Mines and Geosciences Bureau Director.

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[114] Id. at 496-497.

[115] Id. at 498.

First, a review of how our mining laws developed shows that the Environment Secretary was originally conferred the authority to cancel mineral agreements upon showing that the licensee failed to comply with the terms of the agreement. This authority is not qualified by a prior recommendation from the Mines and Geosciences Bureau Director.

Commonwealth Act No. 137, or the Mining Act of 1936, was the first mining law enacted in the Philippines, and had been in force until 1974.[116] It mandated the then Department of Agriculture and Commerce Secretary to cancel mineral lease contracts when the lessee fails to comply with the law. Its Section 84 provided:

> SECTION 84. Whenever the lessee fails to comply with any provisions of this Act or the rules and regulations promulgated thereunder, or with any of the provisions of the lease contract, *the lease may be forfeited and cancelled by the Secretary of Agriculture and Commerce or by appropriate proceeding in a court of competent jurisdiction*, if necessary, and the lessee shall be liable for all unpaid rentals and royalties due the Government on the lease up to the time of its cancellation. (Emphasis supplied)

In 1974, Presidential Decree Nos. 461 and 463 were passed. Under Presidential Decree No. 461, the Bureau of Mines was transferred under the Department of Natural Resources. On the other hand, Presidential Decree No. 463 amended Commonwealth Act No. 137 with respect to the administration and disposition of mineral lands.

In implementing Presidential Decree No. 463, the Consolidated Mines Administrative Order was issued. Section 44 of this Order provides:

> SECTION 44. Procedure for Cancellation. — Before any mining lease contract is cancelled for any cause enumerated in Section 43 above, the mining lessee shall first be notified in writing of such

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[116] Mines and Geosciences Bureau, *MGB: More than a century of championing sustainability in mining and geosciences*, <http://www.mgb.gov.ph/about-us/brief-history> (last accessed on November 9, 2020).

cause or causes, and shall be given an opportunity to be heard, and to show cause why the lease shall not be cancelled.

If, upon investigation, the Secretary shall find the lessee to be in default, the former may warn the lessee, suspend his operations or cancel the lease contract. (Emphasis supplied)

Presidential Decree Nos. 1385 and 1677, which subsequently amended Presidential Decree No. 463, were silent as to the procedure for canceling mineral agreements.

Finally, Republic Act No. 7942 was enacted, and its implementing rule, Administrative Order No. 40-96, was subsequently issued.

It is clear that none of these subsequent laws repealed Presidential Decree No. 463. It follows that the Environment Secretary's authority under Commonwealth Act No. 137 and Presidential Decree No. 463 was neither removed nor amended through subsequent laws and eventually with the enactment of Republic Act No. 9742.

Second, the Environment Secretary has direct control and supervision "over the exploration, development, utilization, and conservation of the country's natural resources."[117] The Environment Secretary is mandated to regulate the disposition, extraction, and exploration of mineral resources,[118] to "[a]ssume responsibility for the assessment, development, protection, licensing and regulation" of all energy and natural resources,[119] and to regulate and monitor "service contractors, licensees, lessees, and permit for the extraction, exploration, development and use of natural resources products[.]"[120]

Given the broad and explicit power and functions, the Environment Secretary, as the head of the Department of Environment and Natural Resources, can monitor and determine

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[117] Executive Order No. 292 (1987), Book IV, Title XIV, Ch. 1, sec. 2 (2).

[118] Executive Order No. 292 (1987), Book IV, Title XIV, Ch. 1, sec. 4 (12).

[119] Executive Order No. 292 (1987), Book IV, Title XIV, Ch. 1, sec. 4 (13).

[120] Executive Order No. 292 (1987), Book IV, Title XIV, Ch. 1, sec. 4 (13).

whether a licensee violated any provision of the mineral agreement. The Environment Secretary need not wait for a recommendation from the Mines and Geosciences Bureau Director to cancel the agreement.

Thus, in this case, Secretary Atienza's cancellation order cannot be annulled solely because it lacks a recommendation from the Mines and Geosciences Bureau Director. While Section 7 (e) of Administrative Order No. 40-96 authorizes the Mines and Geosciences Bureau to cancel and to recommend the cancellation of mineral agreements, this does not prohibit the Environment Secretary to make their own determination and, if warranted, order the cancellation of a mineral agreement.

IV

The doctrine of primary administrative jurisdiction precludes courts from resolving matters that are within an administrative body's exclusive jurisdiction.[121] A court cannot "arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence."[122] In *Ligtas v. People*:[123]

> Findings of fact of administrative agencies in the exercise of their quasi-judicial powers are entitled to respect if supported by substantial evidence. This court is not tasked to weigh again "the evidence submitted before the administrative body and to substitute its own judgment [as to] the sufficiency of evidence."[124] (Citations omitted)

Nevertheless, this Court may reverse administrative decisions if it finds that these decisions are tainted with grave of abuse of discretion. In *Director of Lands v. Court of Appeals*:[125]

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[121] *Department of Finance v. Dela Cruz, Jr.*, 767 Phil. 611 (2015) [Per J. Carpio, Second Division].

[122] Id. at 651 citing *Catipon, Jr., v. Japson*, 761 Phil. 205 (2015) [Per J. Del Castillo, Second Division].

[123] 766 Phil. 750 (2015) [Per J. Leonen, Second Division].

[124] Id. at 768.

[125] 272 Phil. 50 (1991) [Per J. Sarmiento, Second Division].

The Court has consistently held that "acts of an administrative agency must not casually be overturned by a court, and a court should as a rule not substitute its judgment for that of the administrative agency acting within the parameters of its own competence," unless "there be a clear showing of arbitrary action or palpable and serious error."[126] (Citations omitted)

Hence, this Court's judicial review will "not go as far as evaluating the evidence as the basis of their determinations, but is confined to issues of jurisdiction or grave abuse of discretion[.]"[127]

In this case, we find that Secretary Atienza's cancellation of the Agreement was not tainted with grave abuse of discretion. His cancellation order and finding of violations was supported by substantial evidence.

In his cancellation order, Secretary Atienza noted how the Department of Environment and Natural Resources has verified that, indeed, respondent has not applied to renew the exploration period of the Agreement since it expired in 2000, in violation of Section 5.1 of the Agreement. Respondent also failed to submit the Declaration of Mining Project Feasibility during the exploration period from 1998 to 2000 and other required reports, violating Sections 5.5 and 5.6 of the Agreement.[128]

Faced with these findings, respondent argues that it was excused from complying with its obligations under the Agreement due to *force majeure*. In so claiming, he cites Section 16.4 of the Agreement, which states:

16.4 Suspension of Obligation

a. Any failure or delay on the part of any party in the performance of its obligation or duties hereunder shall be excused to the extend attributable to Force Majeure.

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[126] Id. at 56.

[127] *Alejandro v. Court of Appeals*, 269 Phil. 736, 747 (1990) [Per J. Sarmiento, Second Division].

[128] *Rollo*, p. 319.

b. <u>If Mining Operations are delayed, curtailed, or prevented by such Force Majeure causes, then the time for enjoying the rights and carrying out the obligations thereby affected, the terms of this Agreement and all rights and obligations hereunder shall be extended for a period equal to the period involved</u>.

c. The party whose ability to perform its obligation shall promptly give Notice to the other hand in writing of any such delay or failure of performance, the expected duration thereof, and its anticipated effect on the Party expected to perform and shall use its efforts to remedy such delay, except that neither Party shall be under any obligation to settle a labor dispute.[129] (Emphasis in the original)

The contention is untenable.

Under Article 1174 of the New Civil Code, *force majeure* refers to those extraordinary events that "could not be foreseen, or which, though foreseen, were inevitable."

To successfully invoke *force majeure*, the following requisites must concur:

(a) the cause of the unforeseen and unexpected occurrence, or the failure of the debtors to comply with their obligations, must have been independent of human will; (b) the event that constituted the [*force majeure*] must have been impossible to foresee or, if foreseeable, impossible to avoid; (c) the occurrence must have been such as to render it impossible for the debtors to fulfill their obligation in a normal manner; and (d) the obligor must have been free from any participation in the aggravation of the resulting injury to the creditor.[130] (Citation omitted)

When the event is found to be partly the result of a party's participation—whether by active intervention, neglect, or failure to act—the incident is humanized and removed from the ambit of *force majeure*.[131] Hence, there must be no human

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[129] Id. at 927.

[130] *Lea Mer Industries, Inc. v. Malayan Insurance Co., Inc.*, 508 Phil. 656, 665 (2006) [Per J. Panganiban, Third Division].

[131] *Asset Privatization Trust v. T.J. Enterprises*, 605 Phil. 563, 571-572 (2009) [Per J. Tinga, Second Division].

intervention[132] that caused or aggravated the event, or at the very least, it must be beyond the obligor's will.[133]

In this case, respondent failed to avail of the remedies to resolve its dispute with the surface owners. Under Section 76 of the Agreement, respondent can ensure that it would be allowed entry to the areas by posting a bond, which would answer any damage that may be caused to the surface owners' properties. Moreover, respondent disregarded the Mines and Geosciences Bureau's recommendation[134] to bring the dispute before the Panel of Arbitrators to determine the reasonable compensation rate and right-of-way charges to be paid to the surface owners.

Respondent cannot claim that the dispute with the surface owners is a *force majeure*, as it failed to implement recommendations and available remedies to immediately resolve the dispute. The dispute partly resulted from respondent's neglect and failure to remedy the situation. Its persistent inaction and refusal to employ the remedies provided in the Agreement operate against it. Mining companies should endeavor to deal with surface owners by utilizing various remedies available to them; after all, in such disputes, the surface owners stand to suffer the most.

Accordingly, the automatic period extension under Section 16.4 of the Agreement does not apply. Since respondent failed to comply with the reportorial requirements and to apply for extension, which constitute violations of the Agreement, there is nothing arbitrary and erroneous in Secretary's Atienza's cancellation order.

V

Under the principle of non-estoppel of the government, the State cannot be estopped by the mistakes or errors of its officials

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[132] *Mindex Resources Development v. Morillo*, 428 Phil. 934, 945 (2002) [Per J. Panganiban, Third Division].

[133] *Tugade v. Court of Appeals*, 174 Phil. 475 (1978) [Per J. Fernando, Second Division].

[134] *Rollo*, p. 504.

or agents.[135] *Republic v. Sandiganbayan*[136] clarified that this immunity refers "to acts and mistakes of its officials, especially those which are irregular[.]"[137] Nevertheless, while estoppel against the State is not a favored policy, it may still be invoked in extraordinary circumstances, thus:

> Estoppel against the public are (sic) little favored. They should not be invoked except in rare and unusual circumstances and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations . . . , the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals.[138] (Citation omitted)

Here, petitioner avers that Secretary Atienza is not estopped by the contrary findings of previous Secretaries and officials of the Mines and Geosciences Bureau. He concludes that the previous Secretaries' findings that there was *force majeure*, as well as their orders extending the Agreement, may be overturned by Secretary Atienza.

We find that the previous finding of *force majeure* by then Secretary Gozun was correctly overturned by Secretary Atienza. As discussed, the earlier finding of *force majeure* is flawed because respondent's inaction contributed to the persistence of the dispute with the surface owners. It is also notable that then Secretary Defensor's Order does not state any evaluation of the Agreement with respondent.

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[135] *Republic v. Court of Appeals*, 361 Phil. 319, 330 (1999) [Per J. Panganiban, Third Division].

[136] 297 Phil. 348 (1993) [Per J. Melo, En Banc].

[137] Id. at 360.

[138] *Republic v. Court of Appeals*, 361 Phil. 319, 329 (1999) [Per J. Panganiban, Third Division].

In sum, nothing shows that Secretary Atienza's cancellation of the Agreement was tainted with grave abuse of discretion. He acted within his authority and without arbitrariness, and for that, this Court will not interfere with his actions. Again, the Agreement's cancellation was an administrative agency's exercise of judgment, which is executive in nature. Absent grave abuse of discretion, this Court will not interfere with the findings of the Department of Environment and Natural Resources.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The August 6, 2011 Decision and February 2, 2012 Resolution in CA-G.R. SP No. 114553 are **REVERSED**.

SO ORDERED.

Hernando, Delos Santos, and *Rosario, JJ.*, concur.

Inting, J., on official leave.

THIRD DIVISION

[G.R. No. 209755. November 9, 2020]

I-REMIT, INC. (FOR ITSELF AND ON BEHALF OF JPSA GLOBAL SERVICES, CO., JTKC EQUITIES, INC. AND SUREWELL EQUITIES, INC.), *Petitioner*, *v.* **COMMISSIONER OF INTERNAL REVENUE,** *Respondent*.

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); PERCENTAGE TAXES; EACH SALE OF SHARES OF STOCK IN CLOSELY HELD CORPORATIONS THROUGH INITIAL PUBLIC OFFERING IS TAXED; TYPES OF SALES INVOLVED.— A plain reading of Section 127(B) shows that tax is imposed on "*every sale*, barter, exchange or other disposition through initial public offering of shares of stock in closely held corporations": . . .

The word "every" precedes the word "sale." The use of such word is clear and leaves no room for interpretation. *Each sale* of shares of stock in closely held corporations through initial public offering is taxed under Section 127(B).

The tax on every sale under Section 127 (B) is in turn based on the "gross selling price or gross value in money of shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing."

Since tax is imposed on every sale of shares of stock, there is a need to determine which sales are covered in the sale of shares through initial public offering. On this score, the second paragraph of Section 127(B) precisely provides for the types of sales involved: sale by the issuing corporation in primary offering, and sale by each of the corporation's shareholders in secondary offering: . . .

Thus, every sale in Section 127(B) is referenced to the seller, *i.e.*, the issuing corporation in case of primary offering,

and each of the selling shareholders of the corporation in case of secondary offering. The sale contemplated is not a lone, lump sum sale, as suggested by the petitioner, since more than one sale may transpire under Section 127(B).

2. ID.; ID.; ID.; ID.; THE "SHARES" CONTEMPLATED UNDER SECTION 127(B) IS NOT LUMP SUM IN THAT IT INCLUDES ALL THE SHARES SOLD DURING THE INITIAL PUBLIC OFFERING; STATUTORY CONSTRUCTION; A STATUTE MUST BE SO CONSTRUED AS TO HARMONIZE AND GIVE EFFECT TO ALL OF ITS PROVISIONS.— In arguing that Section 127(B) provides for a joint computation of tax on sale of shares in primary and secondary offerings, I-Remit focuses only on the phrase "shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing." It chooses to disregard the rest of the provision, contrary to the principle that "[a] statute must be so construed as to harmonize and give effect to all its provisions whenever possible."

Yet even this oft-quoted phrase of petitioner indicates the intent to differentiate the computation of tax on sale of shares in primary and secondary offerings. The word "total" is used to describe the outstanding shares after the listing (or the divisor in the computation), while the same word is noticeably not used in describing the "shares" offered during the initial public offering (or the dividend in the computation). Obviously, the "shares" contemplated is not lump sum in that it includes all the shares sold during the initial public offering, otherwise the word "total" would have also been used to describe it.

3. ID.; ID.; ID.; ID.; WHILE THE TAX ON SALE OF SHARES IN PRIMARY OFFERING SHOULD BE FILED AND PAID BY THE ISSUING CORPORATION WITHIN THIRTY (30) DAYS FROM THE DATE OF LISTING, THE TAX ON SALE OF SHARES IN SECONDARY OFFERING SHOULD BE COLLECTED AND REMITTED BY THE STOCK BROKER WITHIN FIVE (5) BANKING DAYS FROM THE DATE OF COLLECTION THEREOF.— [T]he distinction is readily apparent from a reading of Section 127 (C) of the NIRC, which expressly provides for a separate time and manner of payment of tax in primary and secondary offerings as well as the party liable to pay the corresponding tax: . . .

While the tax on sale of shares in primary offering should be filed and paid by the *issuing corporation* within *thirty (30) days from the date of listing* of the shares of stock in the local stock exchange, the tax on sale of shares in secondary offering should be collected and remitted by the *stock broker* within *five (5) banking days from the date of collection* thereof.

It cannot be any clearer from the foregoing that the sale of shares in primary offering is treated separately from the sale in secondary offering. Necessarily, the corresponding tax for every sale is likewise computed separately.

4. ID.; ID.; ID.; REVENUE REGULATION (RR) 06-2008 OF THE COMMISSIONER OF INTERNAL REVENUE; IN ILLUSTRATING HOW THE PERCENTAGE TAX IS COMPUTED FOR SHARES OFFERED IN PRIMARY AND SECONDARY OFFERINGS, SECTION 6(C) OF RR 06-2008 IS CONSISTENT WITH SECTION 127(B) OF THE NIRC.— To implement Section 127(B), RR 06-2008 was issued by the CIR on April 22, 2008, months *after* petitioner's initial public offering on October 17, 2007. Section 6(C) illustrates how the tax under Section 127 (B) shall be *separately* computed for shares offered in primary and secondary offerings. . . .

Petitioner argues that the illustration in Section 6(C) is a departure from Section 127(B). It contends that an administrative rule such as RR 06-2008 may not supplant nor modify the law it seeks to implement.

However, Section 6(C) did *not* supplant or modify Section 127(B). As discussed above, Section 127(B) is clear in requiring a separate computation of tax on shares offered in primary and secondary offerings. Thus, Section 6(C), in illustrating how the tax should be computed separately, is consistent with Section 127(B).

5. ID.; ID.; ID.; THE PERCENTAGE TAX RETURN FOR TRANSACTIONS UNDER SECTION 127(B) REQUIRES A SEPARATE COMPUTATION.— There should be no confusion as to the separate computation. Aside from the clarity of Section 127(B), it is also clear from the Percentage Tax Return for transactions under Section 127(B) that a separate computation of the tax due is required. Bureau of Internal Revenue (BIR) Form No. 2552 (July 1999 version) provides separate fields

for computation of tax on sale of shares in primary and secondary offerings. . . .

Interestingly, when petitioner used the same form to report the tax on its sale of shares during the October 17, 2007 initial public offering, petitioner used the fields in primary offering to compute for the tax on sale of shares in *both* primary and secondary offerings. It deliberately ignored the fields for secondary offering. . . .

Given the specificity of BIR Form No. 2552, petitioner should not have jointly computed the tax on sale of shares in primary and secondary offerings.

6. ID.; ID.; ID.; AN ERRONEOUS INTERPRETATION OF SECTION 127(B) CANNOT BE A SOURCE OF ANY VESTED RIGHT.— I-Remit argues that it has the right to rely on the favorable pronouncement of the CTA Second Division in its May 23, 2011 Decision. To recall, the Second Division of the Tax Court stated that "a joint computation, using the total number of shares sold during the IPO, should determine the IPO tax rate to be used." However, the pronouncement was an erroneous interpretation of Section 127(B) from which no vested right may arise. Thus, it cannot be the source of any vested right in favor of petitioner — more so in this case where the said pronouncement was reversed and reconsidered by the same court in its August 18, 2011 Resolution.

In fine, we rule that the tax on sale of shares of stock in closely held corporations sold or exchanged through initial public offering under Sec. 127 (B) is *separately* computed as to shares offered in primary and secondary offerings.

APPEARANCES OF COUNSEL

Tan Venturanza Valdez for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review[1] assails the April 16, 2013 Decision[2] and October 30, 2013 Resolution[3] of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in CTA EB No. 822.

In its assailed Decision, the CTA *En Banc* dismissed the Petition for Review filed by petitioner I-Remit, Inc. (I-Remit) for refund of excess taxes from respondent Commissioner of Internal Revenue (CIR).[4] In its assailed Resolution, the CTA *En Banc* denied petitioner's Motion for Reconsideration for lack of merit.[5]

This case involves the interpretation of Section 127 (B) of the National Internal Revenue Code (NIRC), specifically on the computation of tax on sale of shares of stock sold or exchanged through initial public offering. Section 127 (B) provides:

SEC. 127. Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering. —

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(B) ***Tax on Shares of Stock Sold or Exchanged Through Initial Public Offering.*** — There shall be levied, assessed and collected on every sale, barter, exchange or other disposition through initial public

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[1] *Rollo*, pp. 22-53.

[2] *Id.* at 55-65; penned by Associate Justice Amelia R. Cotangco-Manalastas and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla. Associate Justice Ma. Belen M. Ringpis-Liban penned a Dissenting Opinion; Presiding Justice Roman G. Del Rosario, on leave.

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

[4] *Id.* at 22-53; 61.

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

offering of shares of stock in closely held corporations, as defined herein, a tax at the rates provided hereunder based on the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing in the local stock exchange:

Up to twenty-five percent (25%)	4%
Over twenty-five percent (25%) but not over thirty-three and one third percent (33 1/3%)	2%
Over thirty-three and one third percent (33 1/3%)	1%

The tax herein imposed shall be paid by the issuing corporation in primary offering or by the seller in secondary offering.

x x x x x x x x x

Petitioner argues that the tax on sale of shares of stock sold or exchanged through initial public offering should be *jointly* computed for both sale of shares in *primary* offering, where the shares are offered by the issuing corporation, and in *secondary* offering, where the shares are offered by the selling shareholders of the corporation.[6]

Respondent CIR counters that the tax should be *separately* computed for the sale for shares in the primary and secondary offerings.[7]

The antecedents.

Petitioner I-Remit is a domestic corporation listed with the Philippine Stock Exchange.[8] It is principally engaged in the business of fund transfer and remittance services.[9]

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[6] *Id.* at 28-32.

[7] *Id.* at 246-257.

[8] *Id.* at 23.

[9] *Id.* at 108-109.

JPSA Global Services Co. (JPSA), JTKC Equities, Inc. (JTKC), and Surewell Equities, Inc. (Surewell), all constituted under the laws of the Philippines, are shareholders of petitioner and have constituted the latter as their attorney-in-fact for their claim for refund.[10]

Respondent CIR is vested with the authority to decide, approve and/or grant refund of national internal revenue taxes.[11]

On October 17, 2007, petitioner offered to the public 140,604,000 shares by way of an initial public offering at the offer price of ₱4.68 each share.[12] Of these shares, 107,417,000 shares were offered in primary offering by petitioner as the issuing corporation, and 33,187,000 shares were offered in secondary offering by JTKC, JPSA, and Surewell, as selling shareholders of petitioner.[13]

On November 19, 2007, in compliance with Section 127 (B) requiring payment of tax in accordance with the "shares of stock sold, bartered, exchanged or otherwise disposed" in proportion to the "total outstanding shares of stock after the listing," petitioner paid the tax in the amount of ₱26,321,069.00, computed as follows:[14]

Tax Base	=	Shares of stock sold, bartered, exchanged or otherwise disposed / Total outstanding shares of stock after listing
	=	140,604,000
	=	562,417,000
	=	24.999%
Tax	=	4% (Corresponding tax rate to 24.999%

[10] *Id.* at 23.

[11] *Id.*

[12] *Id.* at 24.

[13] *Id.*

[14] *Id.* at 25.

Rate		based on the schedule in Section 127 (B)[15])
Amount of Tax	=	(Shares of stock sold, bartered, exchanged or otherwise disposed) (Offer Price) (Tax Rate)
	=	(₱140,604,000) (₱4.68) (4%)
	=	₱26,321,069.00

The dividend used by I-Remit in arriving at the corresponding tax rate of 4% was 140,604,000, which was the *total* amount of shares sold to the public in *both* primary and secondary offerings.[16] The divisor used was 562,417,000, which was obtained after adding 50,000 treasury shares to petitioner's 562,367,000 outstanding shares of stock.[17]

On April 18, 2008, petitioner filed a claim for refund with the Revenue District Office No. 43 of Pasig City, and thereafter with the respondent.[18] Petitioner believed that there was an overpayment in the amount of ₱13,160,534.06 resulting from the use of the 4% tax rate, which was in turn due to the addition of the 50,000 treasury shares to the 562,367,000 outstanding shares of stock.[19] By excluding the 50,000 treasury shares from the divisor, the resulting tax rate would only be 2%.[20]

On November 13, 2009, petitioner filed a Petition for Review before the CTA after the respondent failed to act on the claim for refund and in order to toll the running of the prescriptive period.[21] Petitioner argued that the treasury shares should be

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[15] The schedule provides:

Up to twenty-five percent (25%)	4%
Over twenty-five percent (25%) but not over thirty-three and one third percent (33 1/3%)	2%
Over thirty-three and one third percent (33 1/3%)	1%

[16] *Rollo*, p. 25.

[17] *Id.*

[18] *Id.* at 25-26.

[19] *Id.* at 57.

[20] *Id.*

[21] *Id.* at 26.

excluded from the divisor.[22] Further, petitioner stated that the tax under Section 127 (B) should be based on the *total* shares sold in primary and secondary offerings in proportion to the total outstanding shares of stock of the corporation after listing.[23]

Ruling of the CTA Second Division:

In its May 23, 2011 Decision,[24] the CTA Second Division agreed with petitioner that the 50,000,000 treasury shares should have been excluded from the divisor, which ruling settled the issue on the exclusion of the treasury shares.[25] Nevertheless, the CTA Second Division still denied the Petition for Review for petitioner's failure to prove its status of being a closely held corporation.[26]

Notably, the CTA Second Division affirmed petitioner's position that the dividend should be the *total* number of shares sold during the initial public offering, **regardless of whether they are offered in primary or secondary offering**:[27]

> Petitioner alleges that in determining the tax rate to be used, Section 127 of the NIRC does not distinguish whether the shares of stocks sold or otherwise disposed of is covered by primary or secondary offering. The law is clear that the tax rate shall depend on the proportion of shares of stock sold, bartered or exchanged to the total outstanding shares of stock after listing, or based on the following formula: shares of stock sold, bartered or otherwise disposed divided by the total outstanding shares of stock after the listing in the local stock exchange. While the law provides a distinction on who shall pay the IPO tax (i.e., issuing corporation in 'primary offering' and selling shareholder in 'secondary offering'), it does not provide for separate computations

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[22] CTA Second Division records, p. 6.

[23] *Id.*

[24] *Rollo*, pp. 108-119; penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla.

[25] *Id.* at 116.

[26] *Id.* at 117-118.

[27] *Id.* at 116-117.

for the taxes to be paid and the tax rates to be used for each type of taxpayer or 'offering' during the same IPO. Thus, a joint computation, using the total number of shares sold during the IPO, should determine the IPO tax rate to be used.[28] (Emphasis retained)

The dispositive portion of the May 23, 2011 Decision of the CTA Second Division reads:

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.[29]

On June 10, 2011, petitioner filed a Motion for Reconsideration, essentially arguing that Section 127 (B) does not require petitioner to prove that it is a closely held corporation before it can be entitled to the refund of tax in question.[30]

In its August 18, 2011 Resolution,[31] the CTA Second Division reconsidered and reversed its earlier ruling that petitioner needed to prove that it was a closely held corporation.[32] **Nevertheless, it still denied the claim for refund on the basis of Section 6 (C) of Revenue Regulations (RR) No. 06, series of 2008**[33] **(RR 06-2008) which provided an illustration on how the tax should be *separately* computed for shares in primary and secondary offerings**.[34] The CTA Second Division deemed it proper to apply RR 06-2008 retroactively pursuant to the

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[28] *Id.*

[29] *Id.* at 118.

[30] *Id.* at 120-131.

[31] *Id.* at 133-144; penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla.

[32] *Id.* at 135-138.

[33] Consolidated Regulations Prescribing The Rules On The Taxation Of Sale, Barter, Exchange Or Other Disposition Of Shares Of Stock Held As Capital Assets (2008).

[34] *Rollo*, pp. 139-144.

principle that an administrative rule interpretative of a statute and not declarative of certain rights and corresponding obligations, is given retroactive effect as of the date of effectivity of the statute.[35]

The dispositive portion of the August 18, 2011 Resolution reads:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.[36]

Unsatisfied with the August 18, 2011 Resolution, petitioner elevated the matter to the CTA *En Banc* through a Petition for Review.[37]

Ruling of the CTA *En Banc*:

In its assailed Decision, the CTA *En Banc*, by a majority vote, dismissed the Petition for Review and held that the tax on sale of shares in primary offering should be separately computed from the tax on sale of shares in secondary offering.[38] The dispositive portion of the assailed Decision reads:

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit.[39]

Petitioner moved for reconsideration, which was, however, denied for lack of merit by the CTA *En Banc* in its assailed Resolution.[40]

Hence, this Petition.

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[35] *Id.* at 141-142.

[36] *Id.* at 144.

[37] *Id.* at 145-163.

[38] *Id.* at 55-61.

[39] *Id.* at 61.

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

Issue

The sole issue in this case is whether the tax on sale of shares of stock sold or exchanged through initial public offering under Section 127 (B) is *separately* computed for shares in primary and secondary offerings.

Our Ruling

We rule in the affirmative.

Every sale of shares under Section 127 (B) taxed.

A plain reading of Section 127 (B) shows that tax is imposed on "*every sale*, barter, exchange or other disposition through initial public offering of shares of stock in closely held corporations":

SEC. 127. ***Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering***. —

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(B) Tax on Shares of Stock Sold or Exchanged Through Initial Public Offering. — There shall be levied, assessed and collected on **every sale, barter, exchange or other disposition through initial public offering of shares of stock in closely held corporations**, as defined herein, a tax at the rates provided hereunder based on the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing in the local stock exchange:

Up to twenty-five percent (25%)	4%
Over twenty-five percent (25%) but not over thirty-three and one third percent (33 1/3%)	2%
Over thirty-three and one third percent (33 1/3%)	1%

The word "every" precedes the word "sale." The use of such word is clear and leaves no room for interpretation. *Each sale*

of shares of stock in closely held corporations through initial public offering is taxed under Section 127 (B).

The tax on every sale under Section 127 (B) is in turn based on the "gross selling price or gross value in money of shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing."

Since tax is imposed on every sale of shares of stock, there is a need to determine which sales are covered in the sale of shares through initial public offering. On this score, the second paragraph of Section 127 (B) precisely provides for the types of sales involved: sale by the issuing corporation in primary offering, and sale by each of the corporation's shareholders in secondary offering:

> The tax herein imposed shall be paid by the issuing corporation in primary offering or by the seller in secondary offering.

Thus, every sale in Section 127 (B) is referenced to the seller, *i.e.*, the issuing corporation in case of primary offering, and each of the selling shareholders of the corporation in case of secondary offering. The sale contemplated is not a lone, lump sum sale, as suggested by the petitioner, since more than one sale may transpire under Section 127 (B).

In arguing that Section 127 (B) provides for a joint computation of tax on sale of shares in primary and secondary offerings, I-Remit focuses only on the phrase "shares of stock sold, bartered, exchanged or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged or otherwise disposed to the total outstanding shares of stock after the listing." It chooses to disregard the rest of the provision, contrary to the principle that "[a] statute must be so construed as to harmonize and give effect to all its provisions whenever possible."[41]

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[41] *Blay v. Baña*, G.R. No. 232189, March 7, 2018, citing *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 200-201 (2012).

Yet even this oft-quoted phrase of petitioner indicates the intent to differentiate the computation of tax on sale of shares in primary and secondary offerings. The word "total" is used to describe the outstanding shares after the listing (or the divisor in the computation), while the same word is noticeably not used in describing the "shares" offered during the initial public offering (or the dividend in the computation). Obviously, the "shares" contemplated is not lump sum in that it includes all the shares sold during the initial public offering, otherwise the word "total" would have also been used to describe it.

Further, the distinction is readily apparent from a reading of Section 127 (C) of the NIRC, which expressly provides for a separate time and manner of payment of tax in primary and secondary offerings as well as the party liable to pay the corresponding tax:

(C) Return on Capital Gains Realized from Sale of Shares of Stocks. —

(1) Return on Capital Gains Realized from Sale of Shares of Stock Listed and Traded in the Local Stock Exchange. - It shall be the duty of every stock broker who effected the sale subject to the tax imposed herein to collect the tax and remit the same to the Bureau of Internal Revenue within five (5) banking days from the date of collection thereof and to submit on Mondays of each week to the secretary of the stock exchange, of which he is a member, a true and complete return which shall contain a declaration of all the transactions effected through him during the preceding week and of taxes collected by him and turned over to the Bureau of Internal Revenue.

(2) Return on Public Offerings of Shares of Stock. - In case of primary offering, the corporate issuer shall file the return and pay the corresponding tax within thirty (30) days from the date of listing of the shares of stock in the local stock exchange. In the case of secondary offering, the provision of Subsection (C) (1) of this Section shall apply as to the time and manner of the payment of the tax. (Emphasis supplied)

While the tax on sale of shares in primary offering should be filed and paid by the *issuing corporation* within *thirty (30) days from the date of listing* of the shares of stock in the local

stock exchange,[42] the tax on sale of shares in secondary offering should be collected and remitted by the *stock broker* within *five (5) banking days from the date of collection* thereof.[43]

It cannot be any clearer from the foregoing that the sale of shares in primary offering is treated separately from the sale in secondary offering. Necessarily, the corresponding tax for every sale is likewise computed separately.

Section 6 (C) of RR 06-2008 is consistent with Section 127(B).

To implement Section 127 (B), RR 06-2008 was issued by the CIR on April 22, 2008, months *after* petitioner's initial public offering on October 17, 2007. Section 6 (C) illustrates how the tax under Section 127 (B) shall be *separately* computed for shares offered in primary and secondary offerings:

SEC. 6. SALE, BARTER OR EXCHANGE, OR ISSUANCE OF SHARES OF STOCK THROUGH IPO. — There shall be levied, assessed and collected on every sale, barter, exchange or other disposition through initial public offering (IPO) of shares of stock in closely held corporations, as defined in Sec. 2(q) hereof, under the following rules:

x x x x x x x x x

(c) Determination of the Persons Liable to Pay the Tax. —

(c.1) Primary Offering. — The tax herein imposed shall be paid by the issuer corporation with respect to the Shares of Stock corresponding to the Primary Offering.

(c.2) Secondary Offering. — The tax herein imposed shall be paid by the selling shareholder(s) with respect to the Shares of Stock corresponding to the Secondary Offering.

(c.3) Illustration. — RFB Corporation, a closely-held corporation, has an authorized capital stock of 100,000,000 shares with par value of Php1.00/share as of January 1, 2008.

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[42] NATIONAL INTERNAL REVENUE CODE (1997), Sec. 127 (C) (2).

[43] NATIONAL INTERNAL REVENUE CODE (1997), Sec. 127 (C) (2) in relation to Sec. 127 (C) (1).

Of the 100,000,000 authorized shares, 25,000,000 thereof is subscribed and fully paid up by the following stockholders:

Mr. Estoy B. Zabala	5,000,000
Mrs. Rowena V. Posadas	5,000,000
Mr. Conrado G. Cruz	5,000,000
Mr. Benedict O. Sison	5,000,000
Mrs. Linda O. Evangelista	5,000,000
Total Shares Outstanding	**25,000,000**

RFB Corporation finally decides to conduct an IPO and initially offers 25,000,000 of its unissued shares to the investing public. After the IPO in March 2008, RFB Corporation's total issued shares increased from 25,000,000 to 50,000,000 shares.

At the IPO, one of the existing stockholders, Mrs. Linda O. Evangelista, has likewise decided to sell her entire 5,000,000 shares to the public. Thus, 25,000,000 shares have been offered in the primary offering and 5,000,000 shares in the secondary offering.

Computation of the percentage to be used. —

(i) Total Number of Shares Outstanding

Number of Shares issued by RFB prior to IPO	25,000,000 shares
Add: Number of Additional Shares Through Primary Offering for IPO	25,000,000 shares
Total Shares Outstanding after Listing at the Stock Exchange or IPO	**50,000,000 shares**

(ii) Computation of Percentage Ratio to the Total Outstanding Shares

(ii.a) For Primary Offering:

Number of Shares offered by RFB Corporation to the public	25,000,000 shares
Divide by the number of shares outstanding after the Listing at the Stock Exchange	50,000,000 shares
Ratio of Percentage	**50%**

Percentage Ratio is 50% which is over 33 1/3% so the Rate of Tax to be used for Primary Offering (IPO) of shares is 1%.

(ii.b) For Secondary Offering:

Number of Shares offered by existing Stockholder of RFB Corporation to the public	5,000,000 shares
Divide by the number of shares outstanding after the Listing at the Stock Exchange	50,000,000 shares
Ratio of Percentage	**10%**

Percentage Ratio is 10% which is under 25% so the Rate of Tax to be used for Secondary Offering (IPO) of shares is 4%.

(iii) Computation of the Tax

(iii.a) RFB Corporation newly issued shares
(25,000,000 shares x Php1.50/share x 1%) = Php375,000

(iii.b) Mrs. Linda O. Evangelista's shares
(5,000,000 shares x Php1.50/share x 4%) = Php300,000

If in June 2008, RFB Corporation again decides to increase capitalization by offering another 30,000,000 of unissued shares to the public at Php2.00/share consequently bringing the total issued shares to 80,000,000 shares, such follow-on/follow-through sale which are shares issued subsequent to IPO shall no longer be taxed pursuant to Section 6 hereof. The transaction, however, is subject to Documentary Stamp Tax similar to the transaction covered by Primary Offering as well as Secondary Offering of shares of stock.

Nonetheless, in case another existing shareholder decides to offer his existing shares to the public subsequent to IPO, as in the above illustration, if Mr. Benedict O. Sison ever decides to sell his 5,000,000 shares to the public at Php2.00 per share (for the Php10,000,000 he received as consideration for the shares he sold), he shall be taxed pursuant to Section 127(A) of the Tax Code as implemented by Sec. 5 of these Regulations which is ½ of 1% of the gross selling price or Php50,000 (*i.e.*, 5,000,000 shares x Php2.00/share = Php10,000,000 x ½ of 1%).

Petitioner argues that the illustration in Section 6 (C) is a departure from Section 127 (B).[44] It contends that an

[44] *Rollo*, pp. 36-39.

administrative rule such as RR 06-2008 may not supplant nor modify the law it seeks to implement.[45]

However, Section 6 (C) did *not* supplant or modify Section 127 (B). As discussed above, Section 127 (B) is clear in requiring a separate computation of tax on shares offered in primary and secondary offerings. Thus, Section 6 (C), in illustrating how the tax should be computed separately, is consistent with Section 127 (B).

We also find as misplaced petitioner's argument that RR 06-2008 may not be applied retroactively when it will affect vested rights.[46] While the CTA Second Division indeed applied RR 06-2008 retroactively in its August 18, 2011 Resolution, a reading of the CTA *En Banc*'s assailed Decision shows that the CTA *En Banc* did not apply RR 06-2008 in deciding petitioner's case.[47] Its ruling was anchored on the clarity of Section 127 (B) in that the tax on sale of shares in primary and secondary offerings shall be separately computed.[48] Since it is the CTA *En Banc*'s assailed Decision which is the subject of the instant Petition, petitioner's argument on retroactive application fails.

RR No. 03, series of 1995[49] (RR 03-1995) considers as separate transactions the sale of shares in primary and secondary offerings.

We now look at RR 03-1995, the implementing rule of Section 124-A of the old Tax Code from which Section 127

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[45] *Id.* at 38.

[46] *Id.* at 39.

[47] *Id.* at 58-61.

[48] *Id.*

[49] Implementing Republic Act No. 7717, An Act Imposing a Tax on the Sale, Barter or Exchange of Shares of Stock Listed and Traded Through the Local Stock Exchange or Through Initial Public Offering, Amending for the Purpose the National Internal Revenue Code, as Amended, by Inserting a New Section and Repealing Certain Subsections Thereof.

of the NIRC was lifted. RR 03-1995 was the prevailing rule during petitioner's initial public offering on October 17, 2007. It is apparent from a plain reading of RR 03-1995 that the sale of shares in primary and secondary offerings are separately treated. Section 7, in relation to Section 5 (b),[50] provides:

SECTION 7. Transactions Covered. —

(a) Sale, barter or exchange or other disposition of shares of stock listed and traded through the local stock exchange;

(b) Sale, barter or exchange or other disposition of shares of stock in closely-held corporations through **initial/primary public offering** (IPO); and

(c) Sale, barter or exchange or other disposition of shares of stock in closely-held corporations through **secondary offering**. (Emphasis supplied)

By expressly differentiating between the sale of shares in primary and secondary offerings, RR 03-1995 made it clear that the corresponding tax shall also be separately computed. Thus, even during the effectivity of the old Tax Code and RR 03-1995, the tax on sale of shares in primary and secondary offerings have always been separately computed.

The Percentage Tax Return corresponding to Section 127 (B) requires a separate computation.

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[50] RR 03-1995, Sec. 5. It reads:

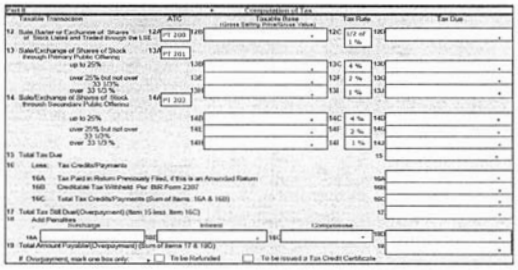
SECTION 5. Imposition of the Tax. —

x x x x x x x x x

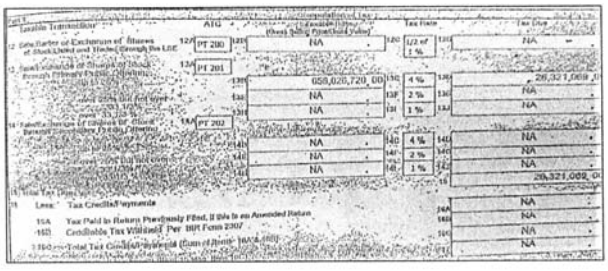
(b) On sales of shares of stock in a closely-held corporation by the issuing corporation, through initial public offering (IPO) or by the seller in secondary offering. — A tax at the rates provided hereunder based on the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged, or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged, or otherwise disposed in accordance with the proportion of shares of stock sold, bartered, exchanged, or otherwise disposed to the total outstanding shares to stock after the listing in the local stock exchange[.]

x x x x x x x x x

There should be no confusion as to the separate computation. Aside from the clarity of Section 127 (B), it is also clear from the Percentage Tax Return for transactions under Section 127 (B) that a separate computation of the tax due is required. Bureau of Internal Revenue (BIR) Form No. 2552 (July 1999 version)[51] provides separate fields for computation of tax on sale of shares in primary and secondary offerings:



Interestingly, when petitioner used the same form to report the tax on its sale of shares during the October 17, 2007 initial public offering, petitioner used the fields in primary offering to compute for the tax on sale of shares in *both* primary and secondary offerings.[52] It deliberately ignored the fields for secondary offering, as can be seen below:



[51] The January 2018 version of BIR Form No. 2552 adopted the separate computation of tax on sale of shares in primary and secondary offerings.

[52] CTA *En Banc* records, p. 79.

Given the specificity of BIR Form No. 2552, petitioner should not have jointly computed the tax on sale of shares in primary and secondary offerings.

A vested right may not spring from a wrong construction of law.

Finally, I-Remit argues that it has the right to rely on the favorable pronouncement of the CTA Second Division in its May 23, 2011 Decision.[53] To recall, the Second Division of the Tax Court stated that "a joint computation, using the total number of shares sold during the IPO, should determine the IPO tax rate to be used."[54]

However, the pronouncement was an erroneous interpretation of Section 127 (B) from which no vested right may arise.[55] Thus, it cannot be the source of any vested right in favor of petitioner — more so in this case where the said pronouncement was reversed and reconsidered by the same court in its August 18, 2011 Resolution.

In fine, we rule that the tax on sale of shares of stock in closely held corporations sold or exchanged through initial public offering under Sec. 127 (B) is *separately* computed as to shares offered in primary and secondary offerings.

WHEREFORE, the Petition for Review is **DENIED**. The April 16, 2013 Decision and October 30, 2013 Resolution of the CTA *En Banc* in CTA EB No. 822 are hereby **AFFIRMED**.

SO ORDERED.

Leonen (Chairperson), Delos Santos, and *Rosario, JJ.*, concur.

Inting, J., on official leave.

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[53] *Rollo*, p. 35.

[54] *Id.* at 117.

[55] *Hilado v. Collector of Internal Revenue*, 100 Phil. 288, 295 (1956); *see Zapata Marine Services, Ltd., S.A. v. Court of Tax Appeals*, G.R. No. 80046, April 18, 1988.

THIRD DIVISION

[G.R. No. 218277. November 9, 2020]

THE PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **XXX,**[1] *Accused-Appellant*.

SYLLABUS

1. CRIMINAL LAW; QUALIFIED RAPE; ELEMENTS THEREOF.— The elements of Qualified Rape are: "(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under [eighteen] years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim."

2. ID.; ID.; FATHER'S MORAL ASCENDANCY OVER A RAPE VICTIM; THE MORAL ASCENDANCY OR INFLUENCE OF A FATHER OVER THE VICTIM SUBSTITUTES FOR VIOLENCE AND INTIMIDATION.— Accused-appellant, who admitted that he is AAA's father, sexually took advantage of her without her consent, likely relying on the authority he holds over her. Relevantly, "when the offender is the victim's father, as in this case, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter, who was also a minor at the time of the commission of the offenses, his moral ascendancy or influence over the latter substitutes for violence and intimidation." Undoubtedly, accused-appellant's relationship with the victim should be considered in assessing his criminal liability.

3. ID.; ID.; QUALIFYING CIRCUMSTANCES; MINORITY; RELATIONSHIP; REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT TO BE INFORMED OF THE NATURE AND CAUSE

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[1] Initials were used to identify accused-appellant pursuant to Amended Administrative Circular No. 83-15 dated September 5, 2017 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.

OF ACCUSATION; AN ERRONEOUS DESIGNATION OF A FELONY IN THE INFORMATION DOES NOT VIOLATE THE ACCUSED'S RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION.— It is important to emphasize that although the Information designated the felony as Statutory Rape and not Qualified Rape, "this omission is not fatal so as to violate his right to be informed of the nature and cause of accusation against him. Indeed, what controls is not the title of the Information or the designation of the offense, but the actual facts recited in the information constituting the crime charged.

. . .

The Information specifically alleged that accused-appellant sexually assaulted "his own daughter, a minor, 9 years old, by then and there undressing her and inserting his [penis into] her vagina against her will and without her consent." Thus, with supporting proof, these allegations in the Information were adequately proven which in turn effectively qualified the rape even if the term "Statutory Rape" was provided in the caption instead of "Qualified Rape.". . . The crime was Qualified Rape precisely because of the concurrence of **both** the *minority* of the victim *and* the *relationship* of the parties, *i.e.*, as father and daughter.

4. ID.; ID.; REMEDIAL LAW; EVIDENCE; RECANTATIONS; SINCE A RECANTATION IS VIEWED UNFAVORABLY ESPECIALLY IN RAPE CASES, THE CIRCUMSTANCES IN WHICH IT WAS MADE MUST BE THOROUGHLY EXAMINED BEFORE THE EVIDENCE OF RETRACTION CAN BE GIVEN ANY WEIGHT.— The records showed that both BBB and AAA made written recantations dated May 28, 2010. . . .

. . . [T]he Court cannot give such statements any weight, as these recantations were presented two years after the criminal case was filed and three months after accused-appellant completed his testimony on February 19, 2010. If, as BBB and AAA now claim, their accusations were all made up, then why did AAA subject herself to medical examination and endure all the rigorous questioning in open court? Why did accused-appellant or his counsel not insist on dropping the case before the RTC promulgated its Decision when they had ample time

to do so? Moreover, We earlier noted that AAA's testimony was clear and consistent and did not show badges of rehearsal or coercion. Indeed, "[r]ecantations are viewed unfavorably especially in rape cases. Circumstances in which the recantation was made are thoroughly examined before the evidence of retraction can be given any weight." Likewise, the Court noted that even the trial court did not consider, much less take note of, these recantations before rendering its ruling.

5. ID.; ID.; ID.; ID.; CREDIBILITY OF WITNESSES; THE TESTIMONIES OF CHILD VICTIMS ARE GIVEN FULL WEIGHT AND CREDIT, FOR YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH AND SINCERITY.— "[T]estimonies of child victims are given full weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity."

. . . [T]he Court reiterates that "a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction."

6. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; THE DEFENSES OF DENIAL AND ALIBI CANNOT STAND AGAINST THE VICTIM'S POSITIVE IDENTIFICATION OF THE ACCUSED AS THE PERPETRATOR.— Since AAA positively identified her father as the perpetrator, his denial and alibi without adequate proof cannot stand. Accused-appellant did not even bother to further elucidate on why he could not have been at the scene of the crime at the time the incident happened. Furthermore, the defense failed to present the testimony of accused-appellant's friend with whom he supposedly spent time in order to corroborate his version of the story.

7. ID.; ID.; CREDIBILITY OF WITNESSES; QUESTIONS ON THE CREDIBILITY OF WITNESSES SHOULD BE BEST ADDRESSED TO THE TRIAL COURT BECAUSE OF ITS UNIQUE POSITION TO OBSERVE THE WITNESSES' DEPORTMENT ON THE STAND WHILE TESTIFYING, WHICH IS DENIED TO THE APPELLATE COURT.—

> "[J]urisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should be best addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate courts." Thus, the testimonies of the witnesses for the prosecution should be favored given that the RTC placed more confidence therein. We therefore see no reason to depart from the RTC's findings that accused-appellant had carnal knowledge of AAA, as charged in the Information, absent any badge of error on the part of the trial court when it assessed the evidence before it.

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.*:

This appeal assails the June 26, 2014 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05315, which affirmed the November 11, 2011 Decision[3] of the Regional Trial Court (RTC), Quezon City, Branch 106, in Crim. Case No. Q-08-151411, finding accused-appellant XXX (accused-appellant) guilty of Statutory Rape.

The Antecedents

In an Information[4] dated March 26, 2008, accused-appellant was charged with Statutory Rape, the accusatory portion of which reads:

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[2] *Rollo*, pp. 2-17; penned by Associate Justice Victoria Isabel A. Paredes and concurred in by Associate Justices Isaias P. Dicdican and Michael P. Elbinias.

[3] CA *rollo*, pp. 11-23; penned by then Presiding Judge, now Associate Justice of the Court of Appeals, Angelene Mary W. Quimpo-Sale.

[4] *Records*, pp. 1-2.

That on or about the 22nd day of March 2008, in Quezon City, Philippines, the said accused, with force and intimidation, did then and there, [willfully], unlawfully commit acts of sexual assault upon the person of [AAA],[5] his own daughter, a minor, 9 years old, by then and there undressing her and inserting his [penis into] her vagina against her will and without her consent, to the damage and prejudice of the said offended party.

Contrary to law.[6]

During his arraignment, accused-appellant entered a plea of "not guilty."[7]

Version of the Prosecution:

At around 6:00 p.m. on March 22, 2008, the victim, AAA, was at home with her two brothers, her grandmother and her father, herein accused-appellant. BBB,[8] her mother, was out selling barbecue. Thereafter, while AAA's brothers were at the basketball court, her father instructed AAA to go up to the bedroom. Subsequently, he ordered her to remove her shorts. After AAA complied, accused-appellant inserted his penis into her vagina which caused her pain. AAA shouted and pleaded, "*wag na, tama na po*." Accused-appellant stopped but threatened her not to tell her mother about what happened. When BBB returned home that night, AAA did not report anything as she feared that her father might do something to her mother.

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[5] "The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation, and for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004." (*People v. Dumadag*, 667 Phil. 664, 669 [2011]).

[6] *Records*, p. 1.

[7] Id. at 17.

[8] *Supra,* note 5.

The day after, accused-appellant banished BBB from their house during their quarrel. Traumatized by her husband's constant verbal and physical abuse against her, BBB tearfully bade goodbye to her children. Afraid that her mother would leave her, AAA whispered to her mother that she needed to tell her something. Alone in the bedroom, AAA disclosed to her mother what her father had done to her. AAA likewise revealed that it was not the first time it happened since her father has been sexually assaulting her since she was five years old. Unfortunately, AAA could no longer remember how many times her father molested her. Consequently, BBB and AAA reported the matter to the authorities which eventually led to accused-appellant's arrest. Afterwards, AAA gave her statement to the police and then underwent medical examination.[9]

In her *Salaysay*,[10] AAA stated that her father has been sexually molesting her since she was around six years old and that she did not tell her mother about it since he threatened to kill BBB if she did. AAA asserted that she finally told her mother the truth out of fear that her mother would leave her since her father was sending BBB away already.

Similarly, BBB averred in her *Salaysay*[11] that after a huge fight with her husband, she was driven out of their house but AAA tearfully asked her not to leave. BBB eventually revealed that her husband has been sexually assaulting her during those times when BBB would leave the house to make a living. After this revelation, BBB and AAA reported the matter to the authorities.

The prosecution presented AAA's birth certificate[12] which confirmed that she was born on July 8, 1998 and that she was only nine years old when her father allegedly raped her on March 22, 2008.

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[9] *Rollo*, p. 4; CA *rollo*, pp. 12-13.

[10] Records, pp. 6-7.

[11] Id. at 8-9.

[12] Id. at 58-58 (1).

The prosecution also established that AAA submitted herself to a medical examination wherein the attending medico-legal officer, Police Chief Inspector (PCI) Jesille C. Baluyot (PCI Baluyot), found that there was a recent and previous blunt force to the labia minora and the hymen. This was affirmed by the Initial Medico-Legal Report[13] dated March 23, 2008 and the subsequent Medico-Legal Report No. R08-669[14] dated April 14, 2008.

During her testimony, AAA recalled her ordeal at the hands of her father. She likewise confirmed that she was born on July 8, 1998.[15] She described in detail the rape incident on March 22, 2008 as follows:

Q During that time and date could you tell this court if there was [an] unusual incident that happened?
A Yes, sir.

Q Could you tell us what is that incident that happened to you?
A My father told me to go inside the room.

Q What did you do when your father told you to go inside the room?
A [H]e told me to remove my dress.

Q Did you undress as told to you by your father?
A I removed my shorts.

Q After you removed your shorts what other things transpired?
A He inserted his penis inside my vagina.

Q What did you do when your father [did] that to you?
A I was shouting then.

Q What other things did you do aside from shouting, did you do anything?
A Yes, sir.

Q What was that?
A I said 'Wag na, tama na po.'

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[13] Id. at 11.

[14] Id. at 67.

[15] TSN, September 5, 2008, p. 3.

Q What did your father tell you if any?
A He told me not to tell the matter to my mother.

Q While your father was doing that what did you feel?
A It [was] painful.[16]

AAA testified that it was not the first time that her father took advantage of her, as he has been molesting her since she was five years old. However, she could no longer recall how many times it occurred.[17] She even averred that her classmates in school teased her about the incident which made her feel ashamed.[18]

On cross-examination, AAA asserted that sometimes, her father would spank her and her siblings and would hurt her mother whenever they fought.[19] She likewise admitted that their grandmother lived with them and that she (grandmother) took care of her (AAA's) siblings. Supposedly, her grandmother was downstairs while the incident occurred upstairs in the room.[20] AAA related that she informed BBB of the ordeal for fear that her mother would leave her or that her father might do something to her mother.[21] Although she answered during the cross-examination that it was her father who removed her shorts,[22] she averred that she did not fight back because she was terrified of her father.[23]

PCI Baluyot testified that based on her examination of AAA's genital area, there was redness on both sides of the labia minora and the hymen was swollen which could have been caused by

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[16] Id. at 6-7.

[17] Id. at 7-8.

[18] Id. at 9-10.

[19] Id. at 10-11.

[20] Id. at 13-14.

[21] Id. at 15.

[22] Id.

[23] Id. at 16.

an erect penis, a finger or a blunt object.[24] On cross-examination, however, PCI Baluyot averred that it was more probable that a finger was inserted due to the difference in force between a hand and a penis.[25] She added that during the genital examination, the hymen was intact and had no laceration which could be caused by an erect penis.[26] Nevertheless, she clarified that it is still possible that the injury could have been caused by a penis which did not actually penetrate the vagina but only reached the opening.[27]

Version of the Defense:

Conversely, the defense averred that on March 22, 2008, accused-appellant was at home with his two sons while AAA and BBB were at their neighbor's house. Allegedly, he and BBB had an ongoing fight which started the day before (March 21, 2008) when they arrived from the grotto in Bulacan. At that time, their verbal argument turned physical when he pushed BBB, who stumbled and almost fell against the wall of the house. Shortly after, BBB threw something at him but he was able to evade it. BBB then took a knife and tried to hurt him but he evaded again. Eventually, BBB packed her things and left. Their three children trailed behind BBB up to the house of their neighbor. He followed and ordered his children to come home but only the two boys obeyed him. The next day or on March 22, 2008, AAA and BBB did not return so he took care of the two boys on his own. That night, he went to a friend's house with the two boys and stayed thereat until 2:00 a.m. of March 23, 2008 before finally calling it a night. Upon reaching the house, he found that AAA and BBB were already there. He then went to sleep.[28]

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[24] Id. at 8.

[25] Id. at 9.

[26] Id. at 10.

[27] Id. at 11.

[28] *Rollo*, pp. 6-7; CA *rollo*, p. 14.

When he woke up the following morning, he prepared breakfast and invited AAA and BBB to join him but they declined. At around lunchtime, he knocked on the bedroom door and again invited AAA and BBB to eat with him. Afterwards, he told BBB not to involve AAA in their squabble but BBB hit him in the face instead. Incensed, he slammed the door which caused the hinges to break and fall on AAA, hurting her. After fifteen minutes, AAA left with BBB. Barangay and police officers arrived shortly to question and arrest him. He insisted that BBB concocted the rape allegations in order to exact revenge against him.[29]

At the trial, the parties stipulated on the following: a) the fact of arrest of the accused; b) authenticity of the affidavit of arrest but not the contents thereof; c) that one of the intended witnesses (BPSO Diosdado Garbin) has no personal knowledge of the facts stated in the Information; and d) that there was no warrant of arrest issued for him as he was only invited for questioning by the arresting officers.[30]

The Ruling of the Regional Trial Court:

In a Decision[31] dated November 11, 2011, the RTC ruled that the victim's testimony established the existence of all the elements of Rape under Article 266-A, paragraph (1) of the Revised Penal Code (RPC), as amended. It found that AAA's testimony directly and positively demonstrated that accused-appellant succeeded in having carnal knowledge of her.[32]

The RTC appreciated the qualifying circumstances of minority and relationship, ruling that the felony should be denominated as Incestuous Rape which is punishable by death. Even if the caption of the Information charged Statutory Rape, the trial court noted that the victim's age and her relationship with the accused were alleged in the body thereof. Thus, it

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[29] Id., id. at 15.

[30] *Records*, p. 42.

[31] CA *rollo*, pp. 11-23.

[32] Id. at 16-20.

held that the allegation of facts in the Information should be controlling.[33] Nonetheless, the RTC ruled that in view of the prohibition on the imposition of the death penalty, accused-appellant should instead suffer the penalty of *reclusion perpetua* without eligibility for parole.[34] Hence, the dispositive portion of the RTC's Decision reads:

> **IN VIEW WHEREOF**, accused [XXX] is found **guilty** of the crime of **rape qualified by minority and relationship** and is hereby sentenced to suffer the **penalty of *reclusion perpetua*, without eligibility for parole**.
>
> The accused is further ordered to pay private complainant the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 as exemplary damages.
>
> **SO ORDERED.**[35] (Emphasis in the original)

Aggrieved, accused-appellant appealed[36] before the CA and assigned this sole error:

> THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[37]

The Ruling of the Court of Appeals:

The CA, in its assailed June 26, 2014 Decision,[38] held that accused-appellant is guilty beyond reasonable doubt of Statutory Rape given that the prosecution established the victim's minority as well as the identity of her father as the perpetrator.[39] It ruled

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[33] Id. at 21-22.

[34] Pursuant to Republic Act (RA) No. 9346, An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[35] CA *rollo*, p. 23.

[36] Id. at 26-28.

[37] Id. at 48.

[38] *Rollo*, pp. 2-17.

[39] Id. at 8-9.

that AAA, a child victim whose testimony should be given weight and credit, categorically and positively stated that her father inserted his penis inside her vagina.[40] Furthermore, it held that any penetration of the female organ by the male organ, however slight, is sufficient to support the claim of rape. This is in addition to the statement of PCI Baluyot that there is a possibility that the redness in the labia minora was caused by a male organ.[41]

The appellate court also rejected accused-appellant's defenses of denial and alibi, as he failed to show that it was physically impossible that both he and the victim were at the *locus criminis* at the time of the commission of the crime.[42] Similarly, it found untenable his imputation of ill motive since it is unimaginable that the young and innocent victim would concoct a story and file a rape case against her father knowing that it may bring shame to her and her family.[43] Hence, the appellate court explained that:

> [H]aving sufficiently established the elements of statutory rape and the qualifying circumstance of relationship between accused-appellant and AAA, We find no reason to depart from the ruling of the RTC finding accused-appellant guilty beyond reasonable doubt of the crime of statutory rape. The imposition of the penalty of *reclusion perpetua*, instead of death, on accused-appellant, who shall not be eligible for parole under the Indeterminate Sentence Law, is in order, in light of RA 9346 or the Anti-Death Penalty Law, which prohibits the imposition of the death penalty.[44]

The dispositive portion of the assailed CA Decision provides:

> **WHEREFORE**, premises considered, the instant Appeal is **DENIED**. The Decision dated November 11, 2011 of the Regional Trial Court, Branch 106, Quezon City, in Criminal Case No. Q-08-151411, finding

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[40] Id. at 11.

[41] Id. at 11-12.

[42] Id. at 13.

[43] Id. at 14-15.

[44] Id. at 15-16.

accused-appellant [XXX] guilty beyond reasonable doubt of statutory rape is hereby **AFFIRMED**.

SO ORDERED.[45] (Emphasis in the original)

Discontented, accused-appellant appealed[46] his case before Us.

Issue

The main issue is whether or not accused-appellant is guilty beyond reasonable doubt of the felony of Statutory Rape.

Accused-appellant argues that AAA's testimony does not deserve full credit since there is doubt as to her motive, considering that he was known to be a stern disciplinarian who usually spanked her and hit her mother. Thus, the victim, for fear that she would be left behind with him if her mother left, invented a story in order to escape further harm.[47] Moreover, he contends that the prosecution failed to prove beyond reasonable doubt the fact of carnal knowledge, the central element in the crime of Rape.[48] He emphasizes that AAA did not respond to material questions such as: "(1) why she did not immediately tell her mother about the incident; (2) what was [he] doing while in the act of penetrating her; and (3) x x x why she was afraid of [him]."[49] He adds that AAA's testimony bore inconsistencies which invited uncertainty as to the veracity of her statements.[50]

He further avers that the physical evidence, specifically the medical findings of PCI Baluyot, did not corroborate AAA's testimony as supposedly, the possibility that a penis might have caused trauma in the vagina was ruled out.[51] In the same way,

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[45] Id. at 16.

[46] Id. at 18-19.

[47] CA *rollo*, pp. 49-50.

[48] Id. at 51-53.

[49] Id. at 53.

[50] Id. at 54.

[51] Id. at 54-55.

he asserts that he should be presumed innocent until the contrary is proved, given that an accusation is not synonymous with guilt.[52]

The People counters that AAA's straightforward testimony was corroborated by PCI Baluyot's testimony who stated that "there was redness on both sides of the labia minora, while the hymen was swollen or 'maga' which [may] have been caused by a blunt trauma, or by an object that is not sharp."[53] PCI Baluyot testified that it is possible that a penis did not penetrate the vagina but only stayed at the opening. The People argues that mere touching of the labia of the female organ already consummates the crime of rape, even if the hymen is still intact.[54] It asserts that although accused-appellant claims that AAA's credibility and motives are doubtful, her statements should not be discounted given that people react differently to a situation involving a startling occurrence. Additionally, it opines that the testimony of a child-witness is normally given full weight, and the trial court's evaluation of the credibility of a witness should be considered as it had the opportunity to directly observe the testimonies of the witnesses.[55]

Our Ruling

The appeal lacks merit.

Article 266-A, paragraph (1) of the RPC describes how rape is committed 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:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

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[52] Id. at 56.

[53] Id. at 98.

[54] Id. at 99-100.

[55] Id. at 101-102.

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.[56] (Emphasis supplied)

Rape shall be qualified and the death penalty shall be imposed under paragraph 1 of Article 266-B of the RPC if it is committed by a parent against his child who is below eighteen (18) years old, *viz.*:

ART. 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim;[57] x x x

We entertain no doubt that accused-appellant is guilty of raping AAA. However, there is a need to correct the nomenclature of the crime committed.

The elements of Qualified Rape are: "(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under [eighteen] years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim."[58] In this case, AAA was below eighteen years old when the crime was committed against

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[56] REVISED PENAL CODE, Article 266-A, as amended by Republic Act No. 8353 (1997).

[57] REVISED PENAL CODE, Article 266-B, as amended by Republic Act No. 8353 (1997).

[58] *People v. Salaver*, G.R. No. 223681, August 20, 2018 citing *People v. Colentava*, 753 Phil. 361, 372-373 (2015).

her, which was verified by her birth certificate. Accused-appellant, who admitted that he is AAA's father, sexually took advantage of her without her consent, likely relying on the authority he holds over her. Relevantly, "when the offender is the victim's father, as in this case, there need not be actual force, threat or intimidation because when a father commits the odious crime of rape against his own daughter, who was also a minor at the time of the commission of the offenses, his moral ascendancy or influence over the latter substitutes for violence and intimidation."[59] Undoubtedly, accused-appellant's relationship with the victim should be considered in assessing his criminal liability.

It is important to emphasize that although the Information designated the felony as Statutory Rape and not Qualified Rape, "this omission is not fatal so as to violate his right to be informed of the nature and cause of accusation against him. Indeed, what controls is not the title of the Information or the designation of the offense, but the actual facts recited in the information constituting the crime charged.[60] The Court clarified in *Quimvel v. People*[61] that:

> Jurisprudence has already set the standard on how the requirement is to be satisfied. Case law dictates that the allegations in the Information must be in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged and enable the court to know the proper judgment. The Information must allege clearly and accurately the **elements** of the crime charged. The facts and circumstances necessary to be included therein are determined by reference to the definition and elements of the specific crimes.
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> The main purpose of requiring the elements of a crime to be set out in the Information is to enable the accused to suitably prepare

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[59] *People v. Bentayo*, 810 Phil. 263, 269 (2017) citing *People v. Fragante*, 657 Phil 577, 592 (2011).

[60] *People v. Molejon*, G.R. No. 208091, April 23, 2018 citing *People v. Ursua*, 819 Phil. 467 (2017).

[61] *Quimvel v. People*, 808 Phil. 889, 912-913 (2017).

his defense because he is presumed to have no independent knowledge of the facts that constitute the offense. The allegations of facts constituting the offense charged are substantial matters and the right of an accused to question his conviction based on facts not alleged in the information cannot be waived. As further explained in *Andaya v. People*:

> No matter how conclusive and convincing the evidence of guilt may be, an accused cannot be convicted of any offense unless it is charged in the information on which he is tried or is necessarily included therein. To convict him of a ground not alleged while he is concentrating his defense against the ground alleged would plainly be unfair and underhanded. The rule is that a variance between the allegation in the information and proof adduced during trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights. (Emphasis supplied; citations omitted.)

The Information specifically alleged that accused-appellant sexually assaulted "his own daughter, a minor, 9 years old, by then and there undressing her and inserting his [penis into] her vagina against her will and without her consent."[62] Thus, with supporting proof, these allegations in the Information were adequately proven which in turn effectively qualified the rape even if the term "Statutory Rape" was provided in the caption instead of "Qualified Rape." Also, We note that the appellate court erroneously referred to accused-appellant's crime as Statutory Rape. Although it correctly affirmed his guilt, the CA erred in stating in its ratio and disposition that he is guilty beyond reasonable doubt of Statutory Rape, as this is actually different from Qualified Rape, which is the felony committed as correctly held by the RTC. The crime was Qualified Rape precisely because of the concurrence of **both** the *minority* of the victim *and* the *relationship* of the parties, *i.e.*, as father and daughter. Even if the CA erroneously denominated the crime as Statutory Rape instead of Qualified Rape, it nonetheless imposed the appropriate penalty of *reclusion perpetua* without eligibility of parole.

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[62] *Records*, p. 1.

Another point. The records showed that both BBB[63] and AAA[64] made written recantations dated May 28, 2010. BBB claimed that she filed the case out of anger towards accused-appellant. However, she regretted what she had done since the children were already longing for their father and she cannot act as both the mother and father to them. Furthermore, BBB admitted that she coached AAA to say that her father raped her in order to exact revenge. She added that accused-appellant had already changed for the better especially while experiencing life in prison. In the same vein, AAA stated that she filed a case against her father because the latter was always hurting her mother. Moreover, she asserted that BBB was having a hard time raising all of the children and that her father was the only one who could help her (BBB) do so.

Considering these, however, the Court cannot give such statements any weight, as these recantations were presented two years after the criminal case was filed and three months after accused-appellant completed his testimony on February 19, 2010. If, as BBB and AAA now claim, their accusations were all made up, then why did AAA subject herself to medical examination and endure all the rigorous questioning in open court? Why did accused-appellant or his counsel not insist on dropping the case before the RTC promulgated its Decision when they had ample time to do so? Moreover, We earlier noted that AAA's testimony was clear and consistent and did not show badges of rehearsal or coercion. Indeed, "[r]ecantations are viewed unfavorably especially in rape cases. Circumstances in which the recantation was made are thoroughly examined before the evidence of retraction can be given any weight."[65] Likewise, the Court noted that even the trial court did not consider, much less take note of, these recantations before rendering its ruling.

Moreover, "testimonies of child victims are given full weight and credit, because when a woman, more so if she is a minor,

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[63] Id. at 84-85.

[64] Id. at 86.

[65] *People v. ZZZ*, G.R. No. 229862, June 19, 2019.

says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity."[66] Since AAA positively identified her father as the perpetrator, his denial and alibi without adequate proof cannot stand.[67] Accused-appellant did not even bother to further elucidate on why he could not have been at the scene of the crime at the time the incident happened. Furthermore, the defense failed to present the testimony of accused-appellant's friend with whom he supposedly spent time in order to corroborate his version of the story.

Accused-appellant's imputation of ill motive on the part of the victim is equally unconvincing and rather shallow when compared to the consequences upon the victim by reporting a rape incident especially since it involves her dignity and reputation. Juxtaposed with the victim's testimony, accused-appellant's claim failed to convince Us otherwise. Withal, the Court reiterates that "a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction."[68]

Furthermore, "[j]urisprudence is replete with cases where the Court ruled that questions on the credibility of witnesses should be best addressed to the trial court because of its unique position to observe that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying which is denied to the appellate courts."[69] Thus, the testimonies of the witnesses for the prosecution should be favored given that

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[66] *People v. Salaver*, G.R. No. 223681, August 20, 2018 citing *People v. Vergara*, 724 Phil. 702 (2014).

[67] *People v. Alberca*, 810 Phil. 896, 909 (2017) citing *People v. Barberan*, 788 Phil. 103 (2016).

[68] *People v. Salaver*, G.R. No. 223681, August 20, 2018 citing *People v. Dalipe*, 633 Phil. 428 (2010).

[69] *People v. Roy*, G.R. No. 225604, July 23, 2018 citing *People v. Barcela*, 734 Phil. 332 (2014).

the RTC placed more confidence therein. We therefore see no reason to depart from the RTC's findings that accused-appellant had carnal knowledge of AAA, as charged in the Information, absent any badge of error on the part of the trial court when it assessed the evidence before it.

With regard to the penalties, the CA correctly affirmed the penalty of *reclusion perpetua* in light of the prohibition on the imposition of the death penalty as mandated by Republic Act No. 9346. However, pursuant to recent jurisprudence, the awards for civil indemnity, moral damages and exemplary damages should all be increased to ₱100,000.00 each.[70] Additionally, the said monetary awards should be subject to the interest rate of six percent (6%) per *annum* from the finality of the Decision until fully paid.[71]

WHEREFORE, the instant appeal is hereby **DISMISSED**. The assailed Decision dated June 26, 2014 rendered by the Court of Appeals in CA-G.R. CR-HC No. 05315, is hereby **AFFIRMED with MODIFICATIONS** in that accused-appellant XXX is **GUILTY** beyond reasonable doubt of one count of Qualified or Incestuous Rape and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. Moreover, the awards for civil indemnity, moral damages and exemplary damages are increased to ₱100,000.00 each. Lastly, all amounts due shall earn a legal interest of six percent (6%) per *annum* from the date of the finality of this Decision until full payment.

SO ORDERED.

Leonen (Chairperson), Delos Santos, and *Rosario, JJ.*, concur.

Inting, J., on official leave.

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[70] *People v. Jugueta*, 783 Phil. 806, 854 (2016).

[71] *People v. Colentava*, 753 Phil. 361, 381 (2015) citing *People v. Vitero*, 708 Phil. 49 (2013).

SECOND DIVISION

[G.R. No. 221384. November 9, 2020]

MARVIN A. GALACGAC, *Petitioner*, *v.* **REYNALDO BAUTISTA,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; KEY JURISDICTIONAL FACTS THAT MUST BE ALLEGED AND PROVED IN A COMPLAINT FOR UNLAWFUL DETAINER.— A complaint for unlawful detainer must sufficiently allege and prove the following key jurisdictional facts, to wit: (1) initially, possession of property by the defendant was by contract with **or by tolerance** of the plaintiff; (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.

2. ID.; ID.; ID.; POSSESSION BY TOLERANCE; EVIDENCE; ADMISSIBILITY OF EVIDENCE; THE TESTIMONY ON ANY MATTER OF FACT OCCURRING BEFORE THE DEATH OF A SUPPOSED POSSESSOR BY TOLERANCE IS INADMISSIBLE; AN ACTION FOR UNLAWFUL DETAINER MAY BE DISMISSED FOR LACK OF CAUSE OF ACTION WHEN THE PLAINTIFF'S SUPPOSED ACTS OF TOLERANCE WAS NOT PRESENT RIGHT FROM THE START OF THE DEFENDANT'S POSSESSION.— [A] person who occupies the land of another at the latter's permission or tolerance, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which, a summary action for ejectment may be filed against him. However, it is essential in ejectment cases of this kind that the plaintiff's supposed acts of tolerance must have been present right from the start of the possession which is later sought to be recovered. This is where Benigno's cause of action fails.

> Here, the complaint for unlawful detainer alleged that Benigno permitted Saturnino to occupy the 180-square meter portion of Lot No. 10973. . . .
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> . . .
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> Nonetheless, the supposed permission or tolerance was unsubstantiated. Foremost, Saturnino died before the filing of the case and testimony on any matter of fact occurring before his death is inadmissible. Also, Saturnino was the caretaker of Lot No. 10973 and he occupied the land based on Cirila, *et al.'s* express permission. Corollarily, Saturnino has no reason to ask permission from Benigno. More importantly, Benigno did not extend the purported tolerance to Reynaldo. . . .
>
> Taken together, the facts proved do not sustain the alleged cause of action. As such, the complaint may be dismissed for lack of cause of action which is usually made after questions of fact have been resolved on the basis of the evidence presented.

3. ID.; ID.; ID.; ID.; THE USE OF THE WORD "TOLERANCE" WITHOUT SUFFICIENT ALLEGATIONS OR EVIDENCE TO SUPPORT IT CANNOT DEPRIVE A DEFENDANT OF POSSESSION THROUGH A SUMMARY PROCEEDING. — [W]e are in full agreement with the conclusions of the CA and the MTCC in dismissing the complaint since evidence is wanting to establish Benigno's supposed permission or tolerance from the time Reynaldo started occupying the property. It is dangerous to deprive Reynaldo of possession over the land by means of a summary proceeding just because Benigno used the word "tolerance" without sufficient allegations or evidence to support it.

4. ID.; ID.; ID.; EVIDENCE ON OWNERSHIP MAY BE ADMITTED IN EJECTMENT PROCEEDINGS, BUT ONLY FOR THE PURPOSE OF DETERMINING THE ISSUE OF POSSESSION. — [W]e stress that the only issue in ejectment proceedings is who between the parties is entitled to physical or material possession of the premises; that is, to possession *de facto*, not possession *de jure*. Issues as to the right of possession or ownership are not involved in the action; evidence thereon is not admissible, except only for the purpose of determining the issue of possession.

5. ID.; ID.; ID.; REGISTERED OWNERS OF A REAL PROPERTY CANNOT SIMPLY WREST POSSESSION FROM ITS ACTUAL POSSESSOR, ESPECIALLY WHERE THE OCCUPATION OF THE PROPERTY WAS NOT OBTAINED THROUGH THE MEANS CONTEMPLATED BY THE RULES ON SUMMARY EJECTMENT.— [I]t is settled that even the registered owner of a real property cannot simply wrest possession from whoever is in its actual possession. This is especially true where the occupation of the property was not obtained through the means, or held under the circumstances contemplated by the rules on summary ejectment. We reiterate that in giving recognition to ejectment suits, the purpose of the law is to protect the person who in fact has actual possession, and in case of a controverted proprietary right, the law requires the parties to preserve the status quo until one or the other sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership.

APPEARANCES OF COUNSEL

Yvette N. Convento-Leynes for petitioner.
Emilio Edgar V. Doloroso, Jr. for respondent.

R E S O L U T I O N

LOPEZ, *J.*:

The court may dismiss a complaint for unlawful detainer based on lack of cause of action if the plaintiff's supposed act of tolerance is not present right from the start of the defendant's possession. This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Court of Appeals (CA) Decision[2] dated May 18, 2015 and Resolution[3] dated September 28, 2015 in CA-G.R. SP No. 131043.

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[1] *Rollo*, pp. 12-29.

[2] *Id*. at 32-45; penned by Associate Justice Fernanda Lampas-Peralta, with the concurrence of Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando (now a Member of this Court).

[3] *Id*. at 47-48.

ANTECEDENTS

In 2012, Benigno M. Galacgac (Benigno) filed against Reynaldo Bautista (Reynaldo) an action for unlawful detainer over a 180-square meter portion of Lot No. 10973 before the Municipal Trial Court in Cities (MTCC) of Laoag City, Branch 02. Allegedly in 1993, the heirs of Ines Mariano, namely: Cirila Dannug-Martin, Maxima Dannug-Dannug (Maxima), Arcadia Dannug-Pedro (Arcadia), and Isabel Dannug-Bulos (Cirila, *et al.*), partitioned and adjudicated the disputed area in favor of Benigno pursuant to a contingency fee agreement in consideration of his legal services in a civil case involving the property. On the same year, Benigno allowed Cirila, *et al.*'s caretaker, Saturnino Bautista (Saturnino), to occupy the land on condition that he will construct a house of light materials and will surrender its possession when needed. Later, Benigno learned that Saturnino's son, Reynaldo, started building a house of strong materials. Accordingly, Benigno sent demand letters to Reynaldo asking to defer the construction and to vacate the premises.[4]

On the other hand, Reynaldo claimed ownership of the disputed portion and averred that Maxima and Arcadia sold to him their shares over Lot No. 10973. Also, Reynaldo argued that the adjudication of the property to Benigno is void because he is prohibited from acquiring properties in litigation. Lastly, the contingency fee agreement and the partition were not recorded in the Register of Deeds and could not affect third persons.[5]

On June 29, 2012, the MTCC dismissed the complaint and ruled that Reynaldo's authority to possess the land emanated from the heirs of Ines Mariano and not from Benigno,[6] to wit:

> The insistence of plaintiff of an alleged agreement with the father of the defendant respecting the latter's possession in the land cannot be seriously taken with much weigh[t] by the court in view of the denial by the defendant that such ever existed, and in the absence of

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[4] CA *rollo*, pp. 37-43.

[5] *Id.* at 44-51.

[6] *Rollo*, pp. 59-69.

any written contract to support such claim, and corollary to the principle on dead man's statute or the survivorship disqualification rule. By all indication, the father of the defendant, Saturnino Bautista, was the care taker of the Dannug sisters for a long time even before the start of litigation relative to the land suit, and was in fact been living in a house erected at the southern portion of the lot. **Hence, the court find[s] no reason for the latter to ask plaintiff's permission to possess the lot because, first of all, he was already in possession [of] the lot under the authority of the Dannug sisters, heirs of the declared owner Ines Mariano. Thus, there can be no implied tolerance to speak of in so far as defendant is concerned that calls for an implied promise to vacate upon demand precisely because [the] defendant have *[sic]* no contract with the plaintiff whatsoever in regard with his possession on the lot in suit. To reiterate, defendant's authority to possess the land, from the evidence presented, emanates not from the plaintiff but from the heirs of the late Ines Mariano, the Dannug sisters, Maxima D. Dannug and Arcadia Dannug-Pedro, by virtue of the public documents executed**. x x x.

x x x x x x x x x

Accordingly, there being no termination of any express or implied contract that eventually leads to unlawfully withholding possession of the land that is present in the instant case, this summary action for the ejectment of the defendant from the premises cannot be given due course by the Court.

WHEREFORE, premises considered, this case is hereby ordered DISMISSED.

No pronouncement as to cost.

SO ORDERED.[7] (Emphasis supplied.)

Dissatisfied, Benigno appealed to the Regional Trial Court (RTC). However, Benigno died and was substituted by his heir Marvin A. Galacgac (Marvin). On May 30, 2013, the RTC reversed the MTCC's findings and ordered Reynaldo to surrender the possession of the lot. The RTC noted that Cirila, *et al.*, had not impugned the validity of the deed of partition

[7] *Id.* at 67-69.

and adjudication while Reynaldo cannot raise its illegality because he is not a party to the instrument. Moreover, the RTC held that Benigno has a better right because the land was adjudicated to him long before the sale in favor of Reynaldo,[8] *viz.*:

> WHEREFORE, the Decision of the Municipal Trial Court in Cities, Branch II, Laoag City is reversed and set aside as judgment is hereby rendered in favor of plaintiff-appellant Benigno M. Galacgac. Defendant-appellee Reynaldo Bautista including his heirs, assigns, agents, representatives and any person acting in his behalf, is therefore directed to vacate the southwestern portion consisting of 180 square meters of Lot No. 10973, Laoag Cadastre, and immediately deliver possession thereof to plaintiff-appellant.
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> Costs against defendant-appellee.
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> SO ORDERED.[9]

Unsuccessful at a reconsideration, Reynaldo elevated the case to the CA on the ground that the RTC erred in upholding Benigno's possession over the lot. On May 18, 2015, the CA reinstated the MTCC's decision dismissing the complaint and explained that Benigno failed to prove his supposed act of tolerance from the start of Reynaldo's occupation,[10] thus:

> **Record bears that respondents failed to prove that petitioner's possession of the subject property was merely based on the alleged tolerance of respondent Benigno M. Galacgac**. Although it was alleged in the complaint that respondent Benigno M. Galacgac allowed petitioner's father to occupy the disputed land in 1993, there was no allegation that the same accommodation was extended to petitioner. **It was not even made clear when petitioner obtained the alleged permission of respondent Benigno M. Galacgac to occupy the land**, which only bolstered petitioner's contention that he derived his title over the land from Maxima D. Dannug and Arcadia Dannug-Pedro, heirs of Ines Mariano, not from respondent Benigno M. Galacgac.

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[8] *Id.* at 49-57.

[9] *Id.* at 57.

[10] *Supra* note 2.

Notably, in support of petitioner's claim that his possession of the disputed property was in the concept of an owner, not by the mere tolerance of respondents or their predecessor respondent Benigno M. Galacgac, petitioner presented before the MTCC a Confirmation of Sale dated March 12, 2012 signed by Maxima D. Dannug and Arcadia Dannug-Pedro, confirming the sale made on September 10, 2000 of the latter's respective undivided 90 square-meter shares over Lot No. 10973 in favor of petitioner. x x x:

x x x x x x x x x

Since petitioner's possession of the subject premises is in the concept of his claim of ownership and not by mere tolerance of respondent Benigno M. Galacgac, respondents cannot simply oust petitioner from possession through the summary procedure of an ejectment proceeding. Respondents must resort to the appropriate judicial action and cannot simply invoke the unregistered "Deed of Adjudication with Disposition and Partition" in the summary procedure for the ouster of petitioner. Again, the Court's determination of the issue of ownership in the present case is merely provisional for the purpose only of resolving the question of possession, and does not bar an appropriate action for the determination of legal ownership over the property.

WHEREFORE, the Regional Trial Court's Decision dated May 30, 2013 and Order dated July 5, 2013 are REVERSED and SET ASIDE. Consequently, the MTCC Decision dated June 29, 2012 dismissing the complaint for ejectment is REINSTATED.

SO ORDERED.[11] (Emphases supplied.)

Marvin sought reconsideration but was denied.[12] Hence, this recourse. Marvin maintains that his father, Benigno, alleged and proved the elements of an action for unlawful detainer.

RULING

The petition is unmeritorious.

A complaint for unlawful detainer must sufficiently allege and prove the following key jurisdictional facts, to wit: (1)

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[11] *Supra* at 38-44.

[12] *Supra* note 3, *rollo*, pp. 47-48.

initially, possession of property by the defendant was by contract with **or by tolerance** of the plaintiff; (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[13]

Specifically, a person who occupies the land of another at the latter's permission or tolerance, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which, a summary action for ejectment may be filed against him.[14] However, it is essential in ejectment cases of this kind that the plaintiff's supposed acts of tolerance must have been present right from the start of the possession which is later sought to be recovered.[15] This is where Benigno's cause of action fails.

Here, the complaint for unlawful detainer alleged that Benigno permitted Saturnino to occupy the 180-square meter portion of Lot No. 10973, thus:

> 6) That sometime in 1993, after the cession of that southwestern portion of the land, the late Saturnino Bautista, father of the defendant, approached the undersigned plaintiff and asked if they could occupy his share above-mentioned by constructing a bodega or building where he and his family could stay in the meantime until they shall have bought a portion of the lot above-mentioned. He likewise promised the undersigned plaintiff that they shall pay the realty taxes of the whole lot if allowed to stay in that lot. The undersigned plaintiff gave his consent to the proposal provided that the bodega should be

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[13] *Zacarias v. Anacay*, 744 Phil. 201, 208-209 (2014), citing *Cabrera v. Getaruela*, 604 Phil. 59, 66 (2009).

[14] *Rivera v. Rivera*, 453 Phil. 404, 411 (2003), citing *Spouses Pengson v. Ocampo, Jr.*, 412 Phil. 860, 866 (2001). See also *Spouses Refugia v. CA*, 327 Phil. 982, 1010 (1996).

[15] *Spouses Valdez, Jr. v. CA*, 523 Phil. 39, 48-50 (2006), citing *Ten Forty Realty and Development Corp. v. Cruz*, 457 Phil. 603, 610 (2003); and *Go, Jr. v. CA*, 415 Phil. 172, 185 (2001).

constructed with light materials only, and provided further that should herein plaintiff needs the lot or the condition agreed upon be violated, herein plaintiff shall have the right to demand for them to vacate the premises. Unfortunately, his son, herein defendant, is constructing a building of strong materials without herein plaintiff's permission and consent over the mentioned portion ceded to him as above-stated, violating the agreement between the plaintiff and the defendant's father[.][16]

Nonetheless, the supposed permission or tolerance was unsubstantiated. Foremost, Saturnino died before the filing of the case and testimony on any matter of fact occurring before his death is inadmissible.[17] Also, Saturnino was the caretaker of Lot No. 10973 and he occupied the land based on Cirila, *et al.*'s express permission. Corollarily, Saturnino has no reason to ask permission from Benigno. More importantly, Benigno did not extend the purported tolerance to Reynaldo. Admittedly, Benigno and Reynaldo have no agreement on the disputed area and even asserted opposing claims over its ownership. Benigno insisted that Cirila, *et al.*, partitioned and adjudicated the portion in his favor. On the other hand, Reynaldo maintained that Maxima and Arcadia sold to him their shares over the land.

Taken together, the facts proved do not sustain the alleged cause of action. As such, the complaint may be dismissed for lack of cause of action which is usually made after questions of fact have been resolved on the basis of the evidence presented.[18] Here, we are in full agreement with the conclusions of the CA

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[16] CA *rollo*, p. 40.

[17] RULES OF COURT, Rule 130, Sec. 13, provides: SEC. 23. *Disqualification by reason of death or insanity of adverse party*. — Parties or assignor of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind.

[18] *Habagat Grill v. DMC-Urban Property Developer, Inc.*, 494 Phil. 603, 611 (2005); *Dabuco v. CA*, 379 Phil. 939, 949 (2000); and *The Manila Banking Corp. v. University of Baguio, Inc.*, 545 Phil. 268, 275-276 (2007).

and the MTCC in dismissing the complaint since evidence is wanting to establish Benigno's supposed permission or tolerance from the time Reynaldo started occupying the property. It is dangerous to deprive Reynaldo of possession over the land by means of a summary proceeding just because Benigno used the word "tolerance" without sufficient allegations or evidence to support it.[19] As early as the 1960s, in *Sarona v. Villegas*,[20] this Court explained that a case for unlawful detainer alleging tolerance must definitely establish its existence from the start of possession. Otherwise, a case for forcible entry can mask itself as an action for unlawful detainer and permit it to be filed beyond the required one-year prescription period from the time of forcible entry, *viz.*:

> A close assessment of the law and the concept of the word "tolerance" confirms our view heretofore expressed that such tolerance must be present right from the start of possession sought to be recovered, to categorize a cause of action as one of unlawful detainer — not of forcible entry. **Indeed, to hold otherwise would espouse a dangerous doctrine. And for two reasons:** *First*. Forcible entry into the land is an open challenge to the right of the possessor. Violation of that right authorizes the speedy redress — in the inferior court — provided for in the rules. If one year from the forcible entry is allowed to lapse before suit is filed, then the remedy ceases to be speedy; and the possessor is deemed to have waived his right to seek relief in the inferior court. *Second*. If a forcible entry action *in the inferior court* is allowed after the lapse of a number of years, then the result may well be that no action of forcible entry can really prescribe. **No matter how long such defendant is in physical possession, plaintiff will merely make a demand, bring suit in the inferior court — upon a plea of tolerance to prevent prescription to set in — and summarily throw him out of the land.** Such a conclusion is unreasonable. Especially if we bear in mind the postulates that proceedings of forcible entry and unlawful detainer are summary in nature, and that the one-year time-bar to the suit is but in pursuance of the summary nature of the action.[21] (Emphases supplied.)

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[19] *Jose v. Alfuerto*, 699 Phil. 307, 321 (2012).

[20] 131 Phil. 365 (1968).

[21] *Id*. at 373.

Lastly, we stress that the only issue in ejectment proceedings is who between the parties is entitled to physical or material possession of the premises; that is, to possession *de facto*, not possession *de jure*. Issues as to the right of possession or ownership are not involved in the action; evidence thereon is not admissible, except only for the purpose of determining the issue of possession.[22] Given the dismissal of the complaint for lack of cause of action, there is no need to discuss the parties' respective claim of ownership. Besides, it is settled that even the registered owner of a real property cannot simply wrest possession from whoever is in its actual possession. This is especially true where the occupation of the property was not obtained through the means, or held under the circumstances contemplated by the rules on summary ejectment.[23] We reiterate that in giving recognition to ejectment suits, the purpose of the law is to protect the person who in fact has actual possession, and in case of a controverted proprietary right, the law requires the parties to preserve the status quo until one or the other sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership.[24]

FOR THESE REASONS, the petition is **DENIED**. The Court of Appeals Decision dated May 18, 2015 in CA-G.R. SP No. 131043 is **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Gesmundo, Lazaro-Javier, and *Rosario,*[*] *JJ.*, concur.

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[22] *Pitargue v. Sorilla*, 92 Phil. 5, 13 (1952).

[23] *Sarmiento v. CA*, 320 Phil. 146, 156 (1995).

[24] *Dizon v. Concina*, 141 Phil. 589, 593 (1969). See also *Manlapaz v. CA*, 270 Phil. 15, 24 (1990).

[*] Designated additional Member *per* Special Order No. 2797 dated November 5, 2020.

SECOND DIVISION

[G.R. No. 229408. November 9, 2020]

CENTRAL REALTY AND DEVELOPMENT CORPORATION, *Petitioner*, *v.* **SOLAR RESOURCES, INC. AND THE REGISTER OF DEEDS OF THE CITY OF MANILA,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A DIRECT RECOURSE TO THE SUPREME COURT UNDER RULE 45 IS THE PROPER MODE OF APPEAL WHEN ONLY QUESTIONS OF LAW REMAIN TO BE ADDRESSED; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— There is a question of law when the doubt or difference arises as to what the law is on certain state of facts and which does not call for an existence of the probative value of the evidence presented by the parties-litigants. In a case involving a question of law, the resolution of the issue rests solely on what the law provides on the given set of circumstances. On the other hand, a question of fact exists when a doubt or difference arises as to the truth or falsity of alleged facts. If the query requires a re-evaluation of the credibility of witnesses or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual.

. . . When only questions of law remain to be addressed, a direct recourse to the Court under Rule 45 is the proper mode of appeal.

2. ID.; ID.; JUDGMENT ON THE PLEADINGS; A JUDGMENT ON THE PLEADINGS IS BASED EXCLUSIVELY ON THE ALLEGATIONS IN THE PLEADINGS AND THE ANNEXES, AND IT IS APPROPRIATE WHEN THE ANSWER FAILS TO TENDER ANY ISSUE.— Section 1, Rule 34 of the Revised Rules of Court defines judgment on pleadings, . . .

When the Answer fails to tender any issue, that is, if it does not deny the material allegations in the complaint or admits

said material allegations of the adverse party's pleadings by admitting the truthfulness thereof and/or omitting to deal with them at all, a judgment on the pleadings is appropriate.

In fine, where a motion for judgment on the pleadings is filed, the essential question is whether there are issues generated by the pleadings. In a proper case for judgment on the pleadings, there is no ostensible issue at all because of the failure of the defending party's answer to raise an issue. The answer would fail to tender an issue, of course, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by confessing the truthfulness thereof and/or omitting to deal with them at all. Judgment on the pleadings is, therefore, based exclusively upon the allegations appearing in the pleadings of the parties and the annexes, if any, without consideration of any evidence *aliunde*.

3. ID.; ID.; SUMMARY JUDGMENT; POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS; A SUMMARY JUDGMENT RENDERED *MOTU PROPRIO*, SANS ANY MOTION AND HEARING, MUST BE SET ASIDE FOR BEING VIOLATIVE OF DUE PROCESS.— [T]he trial court did not err when it denied Central's motion for judgment on the pleadings citing as ground that Solar asserted affirmative defenses even though it practically admitted all the material allegations in the petition. Indeed, Solar's opposition which is the functional equivalent of an answer did tender an issue in refutation of Central's factual allegations for cancellation of Solar's annotation of adverse claim. . . .

Even then, the trial court, on its own[,] found another way of disposing of the case on the merits *via* summary judgment, . . .

On this score, we refer to Rule 35 of the Rules of Court on summary judgment: . . .

These provisions speak of one common requisite: a motion for summary judgment ought to be filed.

Here, the trial court rendered summary judgment *motu proprio*, sans any motion from either of the parties. In ***Calubaquib v. Republic***, the Court set aside the summary judgment for being rendered without any motion filed by either of the parties, . . .

The assailed summary judgment here ought to be set aside, as well, for being itself violative of the rules on summary judgment and relevant jurisprudence. For not only was the requisite motion conspicuously absent, the parties were not even heard on the propriety of rendering a summary judgment in the case, thus, violating their right to due process.

. . .

True, Section 70 of PD 1529 speaks of speedy hearing in a petition for cancellation of adverse claim. . . .

But speedy hearing should not be done with undue haste, let alone, in violation of due process and utter disregard of the rules.

4. ID.; ID.; ID.; ID.; ID.; ID.; ID.; A DECISION IS VOID FOR LACK OF DUE PROCESS IF A PARTY IS DEPRIVED OF THE OPPORTUNITY OF BEING HEARD.— [T]he trial court here acted with undue haste, nay, unprocedural tact, when it lumped altogether, in one single stroke, its dispositions on the pending incidents and summary judgment through its assailed omnibus resolution. None of the parties sought summary judgment in the case; nor did they seem to expect it to be rendered *motu proprio* and at the time when several incidents had yet to be resolved by the court. This equates to denial of due process resulting in the nullity of the summary judgment. A decision is void for lack of due process if, as a result, a party is deprived of the opportunity of being heard. The rules of procedure are designed to ensure a fair, orderly and expeditious disposition of cases; however, the rules are not meant to allow hasty judgments at the price of grave injustice.

5. ID.; ID.; ACTIONS; CONSOLIDATION OF ACTIONS; REQUISITES THEREOF; CIVIL LAW; PROPERTY; ADVERSE CLAIM TO A PROPERTY; A PETITION FOR THE CANCELLATION OF AN ADVERSE CLAIM MAY BE CONSOLIDATED WITH OTHER CASES INVOLVING CLOSELY RELATED ISSUES AFFECTING THE SAME PARTIES AND PROPERTY.— Section 1, Rule 31 of the Rules of Court allows consolidation of actions involving a common question of fact or law, . . .

. . .

In ***Deutsche Bank AG v. Court of Appeals***, the Court citing ***Steel Corporation of the Philippines v. Equitable PCI Bank, Inc.*** laid down the requisites for consolidation of actions, *viz.*:

> . . . "[I]t is a time honored principle that **when two or more cases involve the same parties and affect closely related subject matters, they must be consolidated and jointly tried, in order to serve the best interests of the parties and to settle expeditiously the issues involved**. In other words, **consolidation is proper wherever the subject matter involved and relief demanded in the different suits make it expedient for the court to determine all of the issues involved and adjudicate the rights of the parties by hearing the suits together**."

As heretofore shown, the petition for cancellation of adverse claim in Civil Case No. P-14-0163 and Civil Case No. 13-130626 involve closely related issues affecting the same parties and property. Hence, consolidation of these cases is proper for judicious and expedient disposition.

APPEARANCES OF COUNSEL

Serge Mario C. Iyog for petitioner.
Divina Law for respondent Solar Resources, Inc.

D E C I S I O N

LAZARO-JAVIER, *J.*:

ANTECEDENTS

Pursuant to a Deed of Sale dated December 15, 1989, the Philippine National Bank sold to petitioner Central Realty and Development Corporation (Central) a parcel of land located in Binondo, Manila covered by Original Certificate of Title (OCT) No. 10964 with an area of seven thousand three hundred fifty (7,350) square meters.[1] OCT No. 10964 was cancelled

[1] *Rollo*, pp. 123-125.

and Transfer Certificate of Title (TCT) No. 198996 was issued to Central.[2]

In May 2010, Dolores V. Molina (Molina) caused the annotation of a notice of adverse claim on TCT No. 198996.[3] She claimed that Central sold the property to her sometime in 1993.

On February 4, 2011, Central filed with the Regional Trial Court (RTC) of Manila a case entitled *In Re: Petition for Cancellation of Adverse Claim on Transfer of Certificate of Title No. 198996, Central Realty and Development Corporation v. Dolores V. Molina and the Register of Deeds of Manila*, docketed Civil Case No. P-11-726/LRC No. N-86/LRC REC No. N-60545. Central disputed the alleged sale of the property to Molina, claiming that its board of directors did not actually meet to confirm the alleged sale.[4] The case was raffled to Branch 4.

While the petition pended, Central, on September 23, 2011, entered into a joint venture agreement with Federal Land for the construction of a high rise residential condominium project on the property. The Housing and Land Use Regulatory Board (HLURB) granted them a permit to construct and to sell the condominium project.[5]

Meantime, by Letter dated March 26, 2012, Molina demanded that Central cause the issuance of a new title in her name and to deliver the possession of the property to her, free from any liens and encumbrances.[6] Her demand though went unheeded.

Consequently, on September 10, 2013, she filed with RTC-Manila a complaint for specific performance and declaration of nullity of real estate mortgage with injunctive relief entitled

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[2] *Id.* at 126-133.

[3] *Id.* at 1206.

[4] *Id.* at 9-11.

[5] *Id.* at 9.

[6] *Id.* at 1206.

Dolores V. Molina, represented by her attorney-in-fact, Rebecca M. Ubas vs. Central Realty and Development Corporation and Federal Land, Inc. It was docketed as Civil Case No. 13-130626[7] and raffled to Branch 6.

On December 18, 2013, Solar purchased the property from Molina.[8]

Back to Civil Case No. P-11-726/LRC No. N-86/LRC REC No. N-60545, Branch 4 rendered its Decision dated April 11, 2014 ordering the Register of Deeds of Manila to cancel the notice of adverse claim inscribed on TCT No. 198996. It ruled that Central was able to prove that it did not sell the property to any third party. Thus, Molina's adverse claim had no basis at all and Central remained to be the owner of the property, *viz.*:[9]

> x x x In this case, petitioner Central Realty has aptly proven that the adverse claim made as Entry No. 1515 on the subject title has no leg to stand on. Through documentary evidence presented and the testimony of Atty. Serge Mario C. Iyog, Central Realty has proven that no Deed of Sale or no conveyance of ownership was made in favor of any third party. Petitioner has consistently, up to the present, exercised acts of ownership and administration over the subject property as readily shown by the payment of real property taxes on the property and entering into a Joint Venture Agreement with Federal Land, Inc. (Exhibit "RR").
>
> x x x x x x x x x
>
> Summarily, petitioner has sufficiently shown that the adverse claim annotated on the title by Dolores V. Molina under Entry No. 1515 has no basis and should be cancelled. Subject entry should not burden the property any further as it is undisputed that petitioner Central Realty remains to be the owner of the subject property.
>
> WHEREFORE, premises considered, the Register of Deeds of Manila is hereby ordered, upon payment of the prescribed fees, to cancel from

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[7] *Id.* at 1326-1333.

[8] *Id.* at 1271-1275.

[9] *Id.* at 1122-1124.

Transfer Certificate of Title No. 198996 the Notice of Adverse Claim inscribed thereon under Entry No. 1515/Vol. 145/T-198996 provided that no document or transaction registered or pending registration in his office shall be adverse (sic) affected thereby.

x x x x x x x x x

SO ORDERED.

On June 9, 2014, Solar annotated its notice of adverse claim on TCT No. 198996.[10] When Molina died in 2014, Solar moved to be substituted in Civil Case No. 13-130626 as party-plaintiff. The court granted the motion, albeit,[11] the Court of Appeals (CA) subsequently reversed in its Decision[12] dated May 11, 2018 in CA-G.R. SP No. 151032, entitled *Central Realty and Development Corporation and Federal Land, Inc. vs. Hon. Jansen R. Rodriguez, in his capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 6, and Solar Resources, Inc.* Solar's subsequent motion for reconsideration has yet to be resolved by the Court of Appeals.

Meanwhile, Central initiated another petition, this time, seeking the cancellation of Solar's notice of adverse claim on TCT No. 198996 *via In Re: Petition for Cancellation of Adverse Claim on Transfer of Certificate of Title No. 198996, Central Realty and Development Corporation v. Solar Resources, Inc. and the Register of Deeds of Manila*, docketed as Civil Case No. P-14-0163. The case went to RTC-Manila, Branch 16. Central alleged:[13]

x x x x x x x x x

4. Solar's Adverse Claim must be immediately cancelled.

4.1 Solar's Adverse Claim is already ripe for cancellation because the 30-day period has already lapsed.

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[10] *Id.* at 1286.

[11] *Id.* at 1207.

[12] Penned by Associate Justice Stephen C. Cruz and concurred in by Presiding Justice Romeo F. Barza and Associate Justice Carmelita Salandanan Manahan, *id.* at 1577-1586.

[13] *Id.* at 378-408.

4.2 Solar's Adverse Claim is procedurally defective. It is based on Molina's Adverse Claim, which has already been cancelled. Solar's Adverse Claim is in effect Molina's second adverse claim, which is prohibited under Section 70 of PD 1529. Furthermore, the annotation of an adverse claim is improper since other remedies exist.

4.3 Solar's Adverse Claim is utterly, completely and absolutely baseless. Several government agencies have already ruled that Molina's claim over the Property (the sole basis of Solar's claim) is false. Records show that Central Realty is the absolute and registered true owner of the Property. Since Solar's Adverse Claim stems only from Molina's claim, Solar's claim is equally fraudulent and baseless.

4.4 Solar cannot pretend to be an innocent purchaser for value. It has long been aware of the falsity and impropriety of Molina's claims. The circumstances of the case demonstrate that Solar and its counsel, Ponce Enrile and Manalastas Law Offices ("PECABAR"), are in fact, Molina's co-conspirators in extortion against Central Realty.

x x x x x x x x x

Solar opposed and refuted Central's allegations as follows:

1. The lapse of the 30-day period does not *ipso facto* result in the cancellation of Solar's adverse claim.
2. Solar's adverse claim is separate and distinct from Dolores Molina's adverse claim.
3. Solar has a legitimate claim over the subject property.
4. The trial court is precluded from resolving the issue of ownership of the subject property which is being litigated in a separate case pending before RTC-Manila, Branch 6.
5. Solar's adverse claim cannot be cancelled pending resolution of the separate case involving the ownership over the property.

Central, thereafter, moved to render judgment on the pleadings, *viz.*:[14]

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[14] *Id.* at 436-444.

x x x x x x x x x

2. Solar admitted all the material allegations of Central Realty in its Petition. Solar's Opposition and Central Realty's Petition and Reply demonstrates that Solar made the following admissions:

Central Realty's Material Allegations		**Solar's Admission/s**
(1)	Solar purchased the Subject Property from Molina. (*See* Par. 3 of the Petition)	Par. 5 of the Opposition states: x x x "The mere fact that Solar purchased the Subject Property from Molina does not render Solar's adverse claim as Molina's second adverse claim." x x x
(2)	Solar has no other basis for its claim other than its supposed purchase of the Subject Property from Molina. (*See* Par. 3 of the Petition)	Par. 5 of the Opposition states: x x x "On the other hand, Solar's adverse claim is based on the Deed of Absolute Sale dated December 18, 2013 executed by and between Molina and Solar." x x x
(3)	Central Realty appears as the registered owner of the Subject Property on the face of TCT No. 198996. (*See* Par. 10 of the Petition)	Par. 13 of the Opposition states: "Molina further presented Solar with an owner's duplicate of TCT No. 198996 and explained that Central Realty prevailed upon her to leave the title under its name." x x x
(4)	Central Realty has been in full possession of the Subject Property since its purchase from Philippine National Bank ("PNB"). (*See* Pars. 13.1, 44.1, and 59 (2) of the Petition)	Implied admission for Solar's failure to deny or respond to this issue.
(5)	As owner and possessor, Central Realty has been paying the realty taxes over the Subject Property since 1991, has leased-out several portions thereof, has mortgaged the same, and even entered into a Joint Venture Agreement with Federal Land, Inc. ("FLI"). (*See*	Implied admission for Solar's failure to deny or respond to this issue.

	for *Payment of Realty Taxes* — Pars. 13.2 and 45.4 of the Petition; *Leasing out the Subject Property* — Par. 13.3 of the Petition; *Mortgage of the Subject Property* — Par. 45.2 of the Petition; *Joint Venture Agreement with FLI* — Par. 13.4 of the Petition)	
(6)	Molina's documents have been declared as fake and falsified by the Office of the City Prosecutor of Manila. (*See* Par. 23 of the Petition)	Implied admission for Solar's failure to deny or respond to this issue.
(7)	Molina's title has been declared as falsified by the National Bureau of Investigation's Questioned Documents Division ("NBI-QDD") and the Land Registration Authority ("LRA"). (*See* Par. 25.1 of the Petition)	Implied admission for Solar's failure to deny or respond to this issue.
(8)	The Securities and Exchange Commission ("SEC") has issued several Certificates of Corporate Filing stating that Dolores V. Molina was never an officer or a director of Central Realty. (*See* Par. 20.1 of the Petition)	Implied admission for Solar's failure to deny or respond to this issue.
(9)	Solar never verified with Molina or any government agency or conducted any ocular inspection to determine whether Molina is the owner of the Subject Property. (*See* Pars. 44.1 and 44.2 of the Petition)	Implied admission for Solar's failure to deny or respond to this issue.
(10)	Solar's lawyers are the same lawyers of Molina during the investigation by the NBI-QDD. (*See* Pars. 46 and 46.1 of the Petition)	Implied admission for Solar's failure to deny or respond to this issue.
(11)	Solar has been aware that Molina's documents have already been declared fake. (*See* Pars. 45.3, 46, 46.2 of the Petition)	Implied admission for Solar's failure to deny or respond to this issue.
(12)	The Honorable Court has already issued a Decision dated 11 April 2014 cancelling	Par. 11 of the Opposition: "As will be discussed below,

	Molina's previous Adverse Claim. (*See* Par. 34 of the Petition)	this Honorable Court's pronouncement in the Molina adverse claim case that Central Realty is the rightful owner of the Subject Property was rendered outside of its limited jurisdiction." x x x

x x x x x x x x x

5. This case is ripe for a judgment on the pleadings because proceedings for the cancellation of adverse claim are resolved after a "speedy hearing." Here, a hearing was already conducted, where Central Realty proved its compliance on jurisdictional requirements and Solar asked for time to file its Opposition. x x x

x x x x x x x x x

8. Based on the express and implied admissions, it is clear that what only remains are mere questions of law that may be resolved through a judgment on the pleadings. x x x

Solar then filed its Opposition with Motion to Dismiss[15] on ground of *litis pendentia*, thus:

1. Judgment on the pleadings was improper as Solar raised factual matters, and thus ostensible issue, to dispute the material allegations of the Petition, *viz.*: (1) its adverse claim is separate and distinct from Dolores Molina's adverse claim, (2) Solar is an innocent purchaser for value, (3) Molina presented to Solar proofs that she had interest over the property, and (4) the deed of sale between Molina and Central has not been declared void or defective.

2. The petition should be dismissed as the issue of ownership is under litigation in a separate case pending before Manila RTC-Branch 6.

Central opposed the motion to dismiss on the ground that it was filed beyond the prescribed period and Solar was already estopped from claiming *litis pendentia*.

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[15] *Id.* at 445-458.

Pending resolution of the parties' respective motions, Central and Solar caused the marking of their respective exhibits, *viz.*:[16]

Central's Exhibits	Solar's Exhibits
A – Certified True Copy of TCT No. 198996	1 – Adverse Claim of Raymundo Alonzo dated 21 May 2014
B – Affidavit of Adverse Claim dated 21 May 2014	2 – TCT No. 198996 from Registry of Deed *(common exhibit)*
C – Deed of Absolute Sale dated 18 December 2013 (provisional marking)	3 – Deed of Absolute Sale dated 07 September 1993
D – Amended Articles of Incorporation of Central Realty (provisional marking)	4 – certified true copy of Secretary's Affidavit dated 27 August 1993 *(common exhibit)*
E – Articles of Incorporation of Solar Resources, Inc. (provisional marking)	5 – Board Resolution dated 07 September 1993 *(common exhibit)*
F – Deed of Absolute Sale dated 15 December 1989 between PNB and Central Realty (provisional marking)	6 – reserved marking
G – Original CTC No. 10964 (provisional marking)	7 – Letter of Dr. Jose Ventura dated 07 September 2010 of the City of Manila
H to H-6 were reserved for certain documents	8 – Joint Venture Agreement *(common exhibit)*
I to I-39 Tax Receipts (provisional marking) and I-40 on Certification dated 23 February 2011 issued by the Office of the City Treasurer	9 – Deed of Absolute Sale between SOLAR and Dolores Molina
J – Contract of Lease dated 13 June 2007 between Central Realty and Mary Go	10 – reserved marking
K – Joint Venture Agreement dated 23 September 2011 (provisional marking)	11 – certified true copy of the Certification dated 16 November 2012 *(provisional marking)*
L – Affidavit of Adverse Claim (provisional marking)	12 – Resolution dated 02 June 2014 issued by RTC-Manila, Branch 6
M – Decision dated 11 April 2014 rendered by RTC-Manila, Branch 4	
R – Molina's Deed of Absolute Sale dated 07 September 1993	
S – Molina's Secretary's Affidavit dated 27 August 1993	
T – Molina's Board Resolution dated 07 September 1993	

[16] *Id.* at 84-86, 92-96.

U – Molina's Duplicate Copy of TCT No. 198996	
V – Resolution dated 25 June 2012 issued by the Office of the City Prosecutor, Manila	
W – NBI-QDD Report No. 388-1012 *(with sub-markings)*	
Y – Deed of Absolute Sale between Dolores Molina and Pedro Yulo	
Z – Joint Venture Agreement between Dolores Molina and Raymundo Alonzo representing Solar Resources, Inc.	
AA – Deed of Absolute Sale between Dolores Molina and North Lander Real Estate and Development, Inc. dated 07 October 2012	
CC – Certified True Copy of the Resolution dated 09 June 2014 issued by RTC-Manila, Branch 6 in Civil Case No. 13-130626	
DD – Certification issued by RTC-Manila, Branch 4 *(with submarking)*	
EE – Minutes of the Meeting dated 29 January 1993	
FF – Judicial Affidavit of Atty. Serge Mario Iyog *(with submarkings)*	
GG – Secretary's Certificate dated 05 August 2014 *(provisional marking)*	
HH – Deed of Release of Property from Indenture Lien and Cancellation of Mortgage dated 07 September 2012 *(provisional marking)*	
II – Judicial Affidavit of Engr. Ernesto Santos *(with sub markings)*	
JJ – Order dated 21 September 2012	
KK – Entry of Appearance filed by Ponce Enrile Reyes & Manalastas Law Office dated 03 May 2012 and KK-1 Motion for Reconsideration and Comment/Manifestation dated 12 May 2014	
LL – Development Permit issued by the Housing and Land Use Regulatory Board	

MM – Building permit issued by the City of Manila	
NN – Judicial Affidavit of Dominic Perez *(with submarking)*	
OO-OO-7 – Billing Statement *(with submarkings)*	
PP-PP-4 – Official receipts *(with submarking)*	
QQ – Schedule of Outstanding Accounts from 01 October 2010 to 31 January 2015 *(with submarkings)*	
RR – Judicial Affidavit of Antonio Magbohos *(with submarkings)*	
SS – Resume of Antonio Magbohos	
TT – Letter dated 06 November 2012 *(with submarking)*	
UU – Order dated 25 July 2012	
VV – Copy of Transfer Certificate of Title No. 198996 submitted by CENTRAL to NBI-QDD *(with submarkings)*	
WW – Oath of Duty of Antonio Magbohos	
XX – Entry of Appearance	
YY – Manifestation and Motion to Dismiss	

Central then filed a motion to admit amended judicial affidavits of its witnesses, namely, Atty. Segre Mario C. Iyog, Mr. Antonio R. Magbohos, Engr. Ernesto P. Santos and Dominic Perez, which the trial court granted.[17]

Solar, on the other hand, moved for additional time to file its judicial affidavits, which Central opposed. Pending resolution of its motion, Solar filed the judicial affidavits of Rebecca M. Ubas and Theodore R. Sarmiento.[18]

By Resolution dated February 4, 2016, the trial court granted Solar's motion and admitted the judicial affidavits of its witnesses. Central moved to reconsider.

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[17] *Id.* at 97.

[18] *Id.* at 98.

On May 30, 2016, Branch 16 issued its assailed Omnibus Resolution,[19] thus:

> **WHEREFORE**, in view of the foregoing discussions, summary judgment is hereby rendered **DISMISSING** the instant complaint.
>
> Let the Affidavit of Adverse Claim dated 21 May 2014 remain as annotated in Transfer Certificate of Title No. 198996 pending adjudication of Civil Case No. 13-130626 entitled *Dolores V. Molina vs. Central Realty & Development Corporation* for Specific Performance with Damages and Declaration of Nullity of Real Estate Mortgage before the Regional Trial Court of Manila, Branch 6.
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> The resolution on the pending Motion for Reconsideration filed by petitioner CENTRAL is considered moot and academic.
>
> The Pre-Trial Conference on 15 June 2016 is hereby ordered cancelled.
>
> SO ORDERED.[20]

The court ruled that Central's motion for judgment on the pleadings was improper. For while Solar admitted the allegations in the petition, it also raised affirmative defenses thereto. The court likewise denied Solar's motion to dismiss on ground of *litis pendentia*, there being allegedly no common cause of action between the petition for cancellation of adverse claim and the separate action for specific performance. Acting as a land registration court, it could not rule on the issue of ownership which is the main issue in the latter case.

In the same omnibus resolution, the trial court also rendered summary judgment in the case. It held that a full-blown trial was no longer necessary where the only issue was the validity of the adverse claim, hence, there was no need for the court to pass upon the parties' respective claims of ownership over the property, the same being the subject of another case. Based on the recitals in the Affidavit of Adverse Claim, it found sufficient basis to sustain the annotation of Solar's adverse claim, flowing as it did from the deed of sale it had with Molina.

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[19] *Id.* at 81-110.

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

Central's motion for partial reconsideration was denied under the assailed Resolution dated January 3, 2017.[21]

PRESENT PETITION

Petitioner justifies its direct recourse to the Court *via* Rule 45, alleging that it raises pure questions of law: (1) May the trial court render summary judgment *motu proprio*? (2) Did the trial court judiciously act when it denied to render judgment on the pleadings despite Solar's supposed admission of all the material allegations in the petition for cancellation of Solar's adverse claim? and (3) Is Solar's adverse claim barred by *res judicata* and Presidential Decree No. 1529 (PD 1529)?

As part of the relief sought, petitioner urges the Court to declare it as the true and lawful owner of the property in order to finally dismiss all pending related cases affecting the subject property, *viz.*:

1. Civil Case No. 13-130626 (specific performance case originally filed by Molina) entitled Solar Resources, Inc. v. Central Realty & Dev't. Corp. and Federal Land, pending before RTC-Manila, Branch 6.
2. Civil Case No. 12-129163 entitled North Lander Real Estate and Development, Inc. v. Federal Land, Inc., et al. consolidated with the aforesaid specific performance case.
3. HLURB Case No. REM-100515-15793/O.P. Case No. 16-K-226 entitled Solar Resources, Inc. v. Central Realty and Federal Land.
4. CA-G.R. SP No. 129625 entitled North Lander Real Estate and Development, Inc. v. Judge Mislos-Loja, et al.
5. CA-G.R. SP No. 129133 entitled Federal Land, Inc. v. North Lander Real Estate and Development, Inc.

Petitioner also prays for injunctive relief to enjoin Solar and all other persons from claiming any rights over the property.

In response, Solar faults petitioner's direct resort to the Court. The issues pertaining to the dismissal of petitioner's action for

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[21] *Id.* at 111-115.

cancellation of Solar's adverse claim, ownership of the property, propriety of rendering judgment on the pleadings in the case, among others, are allegedly not pure questions of law for the same also involve questions of fact requiring the evaluation of evidence which the Court does not do under Rule 45.

Solar further defends the summary judgment rendered by the trial court *motu proprio*. For the Rules of Court is merely suppletory in its application to land registration cases under PD 1529. It likewise defends the denial of Central's motion for judgment on the pleadings considering the fact that it has pleaded affirmative defenses to Central's petition to cancel its adverse claim.

Solar asserts its right as the new owner of the property emanating from the deed of sale executed by Molina in its favor. Being an innocent purchaser for value, its adverse claim is not at all affected by the cancellation of Molina's adverse claim as its claim over the property is separate and entirely distinct from Molina's.

Solar, too, asserts that Central is guilty of forum shopping as it likewise prays for the Court to direct other courts and tribunals to dismiss all pending cases involving the same property.

The Court **formulates** the **issues** for resolution.

I

Does the petition raise pure questions of law? If so, is direct resort to the Court warranted?

II

What are the legal implications of the Omnibus Resolution dated May 30, 2016 to Central's petition for cancellation of Solar's adverse claim on TCT No. 198996, Solar's opposition with motion to dismiss, and Central's motion for judgment on the pleadings?

III

May the Court in this proceeding make a declaration of ownership in favor of Central?

RULING

The petition raises pure questions of law

Section 2, Rule 41 of the Rules of Court provides:

Section 2. *Modes of appeal*. —

(a) *Ordinary appeal*. — The appeal to the Court of Appeals in the cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari*. — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

In ***Heirs of Garcia v. Spouses Burgos***,[22] the Court explained that when only questions of law is raised, the mode of appeal is under Rule 41 (c) in relation to Rule 45, thus:

> The first mode of appeal, the ordinary appeal under Rule 41 of the Rules of Court, is brought to the CA from the RTC, in the exercise of its original jurisdiction, and resolves questions of fact or mixed questions of fact and law. The second mode of appeal, the petition for review under Rule 42 of the Rules of Court, is brought to the CA from the RTC, acting in the exercise of its appellate jurisdiction, and resolves questions of fact or mixed questions of fact and law. The third mode of appeal, the appeal by *certiorari* under Rule 45 of the Rules of Court, is brought to the Supreme Court and resolves only questions of law.

There is a question of law when the doubt or difference arises as to what the law is on certain state of facts and which does

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[22] G.R. No. 236173, March 4, 2020.

not call for an existence of the probative value of the evidence presented by the parties-litigants. In a case involving a question of law, the resolution of the issue rests solely on what the law provides on the given set of circumstances. On the other hand, a question of fact exists when a doubt or difference arises as to the truth or falsity of alleged facts. If the query requires a re-evaluation of the credibility of witnesses or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual.[23]

Was the denial of petitioner's motion for judgment on the pleadings correct? Is Solar's action for specific performance barred by *res judicata*? Is summary judgment in the case proper? These are precisely the questions being raised here. The resolution of these questions rests solely on what the law or the rules provides on the given set of circumstances. In other words, the Court ought to look only into whether the trial court correctly applied the law or rules in the case. These are pure questions of law which do not require the examination of evidence. Hence, Central's direct resort to the Court is justified. When only questions of law remain to be addressed, a direct recourse to the Court under Rule 45 is the proper mode of appeal.[24]

While Central also raises the issue that Solar is not an innocent purchaser for value which is a factual issue beyond the province of this Court under Rule 45,[25] the same, as correctly noted by the trial court, is deemed subsumed and pending determination in Civil Case No. 13-130626 for specific performance and declaration of nullity of real estate mortgage with injunctive relief involving the same parties and subject matter, and pending before Branch 6. Precisely, the trial court here avoided ruling on the issue of ownership or the presence of good or bad faith in relation to the petition for cancellation of adverse claim pending before it as it rightly pronounced that these issues ought to be threshed out in the said case pending with Branch 6.

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[23] *Samson v. Gabor*, 739 Phil. 429, 437 (2014).

[24] *Daswani v. Banco De Oro Universal Bank*, 765 Phil. 88, 97 (2015).

[25] *Sps. Peralta v. Heirs of Bernardina Abalon*, 737 Phil. 310, 331 (2014).

Notably, the only issue to be resolved in a petition for cancellation of adverse claim is the propriety of the adverse claim. ***Torbela v. Spouses Rosario***[26] teaches, *viz.*:

> The reason why the law provides for a hearing where the validity of the adverse claim is to be threshed out is **to afford the adverse claimant an opportunity to be heard, providing a venue where the propriety of his claimed interest can be established or revoked, all for the purpose of determining at last the existence of any encumbrance on the title arising from such adverse claim**. x x x (Emphasis ours)

The Omnibus Resolution dated May 30, 2016 vis-a-vis the parties' respective pleadings motions and pleadings

We quote anew Central's motion for judgment on the pleadings, *viz.*:

x x x x x x x x x

2. Solar admitted all the material allegations of Central Realty in its Petition. Solar's Opposition and Central Realty's Petition and Reply demonstrates that Solar made the following admissions:

	Central Realty's Material Allegations	**Solar's Admission/s**
(1)	Solar purchased the Subject Property from Molina. (*See* Par. 3 of the Petition)	Par. 5 of the Opposition states: x x x "The mere fact that Solar purchased the Subject Property from Molina does not render Solar's adverse claim as Molina's second adverse claim." x x x
(2)	Solar has no other basis for its claim other than its supposed purchase of the Subject Property from Molina. (*See* Par. 3 of the Petition)	Par. 5 of the Opposition states: x x x "On the other hand, Solar's adverse claim is based on the Deed of Absolute Sale dated December 18, 2013 executed by and between Molina and Solar." x x x
(3)	Central Realty appears as the registered owner of the Subject	Par. 13 of the Opposition states:

[26] 678 Phil. 1, 51 (2011).

	Property on the face of TCT No. 198996. (*See* Par. 10 of the Petition)	"Molina further presented Solar with an owner's duplicate of TCT No. 198996 and explained that Central Realty prevailed upon her to leave the title under its name." x x x
(4)	Central Realty has been in full possession of the Subject Property since its purchase from Philippine National Bank ("PNB"). (*See* Pars. 13.1, 44.1, and 59 (2) of the Petition)	Implied admission for Solar's failure to deny or respond to this issue.
(5)	As owner and possessor, Central Realty has been paying the realty taxes over the Subject Property since 1991, has leased-out several portions thereof, has mortgaged the same, and even entered into a Joint Venture Agreement with Federal Land, Inc. ("FLI"). (*See* for *Payment of Realty Taxes* – Pars. 13.2 and 45.4 of the Petition; *Leasing out the Subject Property* – Par. 13.3 of the Petition; *Mortgage of the Subject Property* – Par. 45.2 of the Petition; *Joint Venture Agreement with FLI* – Par. 13.4 of the Petition)	Implied admission for Solar's failure to deny or respond to this issue.
(6)	Molina's documents have been declared as fake and falsified by the Office of the City Prosecutor of Manila. (*See* Par. 23 of the Petition)	Implied admission for Solar's failure to deny or respond to this issue.
(7)	Molina's title has been declared as falsified by the National Bureau of Investigation's Questioned Documents Division ("NBI-QDD") and the Land Registration Authority ("LRA"). (*See* Par. 25.1 of the Petition)	Implied admission for Solar's failure to deny or respond to this issue.
(8)	The Securities and Exchange Commission ("SEC") has issued several Certificates of Corporate Filing stating that Dolores V.	Implied admission for Solar's failure to deny or respond to this issue.

	Molina was never an officer or a director of Central Realty. (*See* Par. 20.1 of the Petition)	
(9)	Solar never verified with Molina or any government agency or conducted any ocular inspection to determine whether Molina is the owner of the Subject Property. (*See* Pars. 44.1 and 44.2 of the Petition)	Implied admission for Solar's failure to deny or respond to this issue.
(10)	Solar's lawyers are the same lawyers of Molina during the investigation by the NBI-QDD. (*See* Pars. 46 and 46.1 of the Petition)	Implied admission for Solar's failure to deny or respond to this issue.
(11)	Solar has been aware that Molina's documents have already been declared fake. (*See* Pars. 45.3, 46, 46.2 of the Petition)	Implied admission for Solar's failure to deny or respond to this issue.
(12)	The Honorable Court has already issued a Decision dated 11 April 2014 cancelling Molina's previous Adverse Claim. (*See* Par. 34 of the Petition)	Par. 11 of the Opposition: "As will be discussed below, this Honorable Court's pronouncement in the Molina adverse claim case that Central Realty is the rightful owner of the Subject Property was rendered outside of its limited jurisdiction." x x x

x x x x x x x x x

5. This case is ripe for a judgment on the pleadings because proceedings for the cancellation of adverse claim are resolved after a "speedy hearing." Here, a hearing was already conducted, where Central Realty proved its compliance on jurisdictional requirements and Solar asked for time to file its Opposition. x x x

x x x x x x x x x

8. Based on the express and implied admissions, it is clear that what only remains are mere questions of law that may be resolved through a judgment on the pleadings. x x x

Section 1, Rule 34 of the Revised Rules of Court defines judgment on pleadings, *viz.*:

SECTION 1. *Judgment on the pleadings*. — Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. x x x

When the Answer fails to tender any issue, that is, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by admitting the truthfulness thereof and/or omitting to deal with them at all, a judgment on the pleadings is appropriate.[27]

In fine, where a motion for judgment on the pleadings is filed, the essential question is whether there are issues generated by the pleadings. In a proper case for judgment on the pleadings, there is no ostensible issue at all because of the failure of the defending party's answer to raise an issue. The answer would fail to tender an issue, of course, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by confessing the truthfulness thereof and/or omitting to deal with them at all.[28] Judgment on the pleadings is, therefore, based exclusively upon the allegations appearing in the pleadings of the parties and the annexes, if any, without consideration of any evidence *aliunde*.[29]

Here, the trial court did not err when it denied Central's motion for judgment on the pleadings citing as ground that Solar asserted affirmative defenses even though it practically admitted all the material allegations in the petition. Indeed, Solar's opposition which is the functional equivalent of an answer did tender an issue in refutation of Central's factual allegations for cancellation of Solar's annotation of adverse claim. Thus, the trial court correctly ordained:

Records show that both parties have presented different juxtapositioning *[sic]* of their opposing allegations in their respective Petition and Opposition. From the foregoing, this Court notes that

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[27] *Basbas v. Sayson*, 671 Phil. 662, 682 (2011).

[28] *Tan v. De la Vega*, 519 Phil. 515, 522 (2006).

[29] *Philippine National Bank v. Aznar*, 664 Phil. 461, 473 (2011).

while SOLAR practically admitted all the material allegations in the Petition, it nevertheless asserted affirmative defense such as, among others:

1) Solar is an innocent purchaser for value;
2) Solar's adverse claim is separate and distinct from Dolores Molina's adverse claim; and
3) There is no decision or order from any competent court declaring the *Deed of Absolute Sale* dated September 7, 1993, in favor of Molina as void or defective.

As issues arise from these affirmative defenses, ***this Court rules that a judgment on the pleadings is improper and unwarranted in this case***.[30]

Even then, the trial court, on its own found another way of disposing of the case on the merits *via* summary judgment, *viz.*:

This Court, however, will render a Summary Judgment.

Summary Judgment is proper when there is clearly no genuine issue as to any material fact in the action, and if there is no question or controversy upon any question of fact. x x x[31]

x x x x x x x x x

While respondent SOLAR has raised issues, those issues do not call for the presentation of evidence in a full-blown trial considering that the instant case is confined only as to the determination of the validity of the adverse claim and not the declaration of the rights of the parties over the disputed property.

Now, the summary judgment.[32]

x x x x x x x x x

It is likewise the contention of petitioner CENTRAL that the Affidavit of Adverse Claim dated 21 May 2014 is but a second adverse claim of the first Affidavit of Adverse Claim dated 01 May 2010. This contention is not tenable.

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[30] *Rollo*, p. 103.

[31] *Id.*

[32] *Id.* at 105.

x x x x x x x x x

A scrutiny of the two (2) Affidavits of Adverse Claim reveals that they are two (2) entirely separate adverse claims. The Affidavit of Adverse Claim dated 01 May 2010 is dependent on the Deed of Sale allegedly executed between *CENTRAL REALTY & DEVELOPMENT CORPORATION, represented by its President, MANUEL G. ABELLO and DOLORES V. MOLINA* while the Affidavit of Adverse Claim dated 21 May 2014 has its basis on the Deed of Absolute Sale dated 18 December 2013 allegedly executed between *DOLORES V. MOLINA and SOLAR RESOURCES, INC.*[33]

On this score, we refer to Rule 35 of the Rules of Court on summary judgment:

SECTION 1. *Summary judgment for claimant*. — A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

SEC. 2. *Summary judgment for defending party*. — A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits, depositions or admissions for a summary judgment in his favor as to all or any part thereof.

SEC. 3. *Motion and proceedings thereon*. — The motion shall be served at least ten (10) days before the time specified for the hearing. **The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that**, except as to the amount of damages, **there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.** (Emphasis supplied)

These provisions speak of one common requisite: a motion for summary judgment ought to be filed.

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[33] *Id.* at 107-108.

Here, the trial court rendered summary judgment *motu proprio*, sans any motion from either of the parties. In ***Calubaquib v. Republic***,[34] the Court set aside the summary judgment for being rendered without any motion filed by either of the parties, thus:

> In determining the genuineness of the issues, and hence the propriety of rendering a summary judgment, the court is obliged to carefully study and appraise, not the tenor or contents of the pleadings, but the facts alleged under oath by the parties and/or their witnesses in the affidavits that they submitted ***with the motion and the corresponding opposition***. Thus, it is held that, even if the pleadings on their face appear to raise issues, a summary judgment is proper so long as "the affidavits, depositions, and admissions ***presented by the moving party*** show that such issues are not genuine."
>
> The filing of a motion and the conduct of a hearing on the motion are therefore important because these enable the court to determine if the parties' pleadings, affidavits and exhibits in support of, or against, the motion are sufficient to overcome the opposing papers and adequately justify the finding that, as a matter of law, the claim is clearly meritorious or there is no defense to the action. **The non-observance of the procedural requirements of filing a motion and conducting a hearing on the said motion warrants the setting aside of the summary judgment.** (Emphasis ours)

The assailed summary judgment here ought to be set aside, as well, for being itself violative of the rules on summary judgment and relevant jurisprudence. For not only was the requisite motion conspicuously absent, the parties were not even heard on the propriety of rendering a summary judgment in the case, thus, violating their right to due process.

In ***Diona v. Balangue***,[35] citing ***Development Bank of the Philippines v. Teston***,[36] the Court ruled that there was non-observance of due process when a relief was granted by the trial court which was not being sought by the parties, thus:

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[34] *Calubaquib v. Republic*, 667 Phil. 653, 662-663 (2011).

[35] 701 Phil. 19, 31-33 (2013).

[36] 569 Phil. 137 (2008).

It is settled that courts cannot grant a relief not prayed for in the pleadings or in excess of what is being sought by the party. They cannot also grant a relief without first ascertaining the evidence presented in support thereof. Due process considerations require that judgments must conform to and be supported by the pleadings and evidence presented in court. In *Development Bank of the Philippines v. Teston*, this Court expounded that:

> Due process considerations justify this requirement. It is improper to enter an order which exceeds the scope of relief sought by the pleadings, absent notice which affords the opposing party an opportunity to be heard with respect to the proposed relief. The fundamental purpose of the requirement that allegations of a complaint must provide the measure of recovery is to prevent surprise to the defendant.
>
> x x x x x x x x x
>
> In the case at bench, the award of 5% monthly interest rate is not supported both by the allegations in the pleadings and the evidence on record. The Real Estate Mortgage executed by the parties does not include any provision on interest. When petitioner filed her Complaint before the RTC, she alleged that respondents borrowed from her "the sum of FORTY-FIVE THOUSAND PESOS (₱45,000.00), with interest thereon at the rate of 12% per annum" and sought payment thereof. She did not allege or pray for the disputed 5% monthly interest. Neither did she present evidence nor testified thereon. Clearly, the RTC's award of 5% monthly interest or 60% per annum lacks basis and disregards due process. **It violated the due process requirement because respondents were not informed of the possibility that the RTC may award 5% monthly interest. They were deprived of reasonable opportunity to refute and present controverting evidence as they were made to believe that the complainant [petitioner] was seeking for what she merely stated in her Complaint.** (Emphasis supplied)

In ***Macias v. Macias***,[37] the Court declared that there was failure to observe due process in the course of the proceeding of the case when the trial court, after denying the motion to dismiss, immediately proceeded to allow the presentation of evidence *ex parte* and resolved the case with undue haste even

[37] 457 Phil. 463, 470 (2003).

when under the Rules, answer can still be filed by the other party.

As in ***Diona and Macias***, the trial court here acted with undue haste, nay, unprocedural tact, when it lumped altogether, in one single stroke, its dispositions on the pending incidents and summary judgment through its assailed omnibus resolution. None of the parties sought summary judgment in the case; nor did they seem to expect it to be rendered *motu proprio* and at the time when several incidents had yet to be resolved by the court. This equates to denial of due process resulting in the nullity of the summary judgment. A decision is void for lack of due process if, as a result, a party is deprived of the opportunity of being heard.[38] The rules of procedure are designed to ensure a fair, orderly and expeditious disposition of cases; however, the rules are not meant to allow hasty judgments at the price of grave injustice.[39]

True, Section 70 of PD 1529 speaks of speedy hearing in a petition for cancellation of adverse claim, thus:

> Section 70. *Adverse Claim.* — Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Decree for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed.
>
> The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of said period, ***the annotation of adverse claim may be cancelled upon filing of a verified petition therefor by the party in interest:*** *Provided, however*, that after cancellation, no second

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[38] *Id.* at 471.

[39] *Bahia Shipping Services v. Mosquera*, 467 Phil. 766, 768 (2004).

adverse claim based on the same ground shall be registered by the same claimant.

Before the lapse of thirty days aforesaid, ***any party in interest may file a petition in the Court of First Instance where the land is situated for the cancellation of the adverse claim, and the court shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall render judgment as may be just and equitable. If the adverse claim is adjudged to be invalid, the registration thereof shall be ordered cancelled.*** If, in any case, the court, after notice and hearing, shall find that the adverse claim thus registered was frivolous, it may fine the claimant in an amount not less than one thousand pesos nor more than five thousand pesos, in its discretion. Before the lapse of thirty days, the claimant may withdraw his adverse claim by filing with the Register of Deeds a sworn petition to that effect. (Emphasis ours)

But speedy hearing should not be done with undue haste, let alone, in violation of due process and utter disregard of the rules.

The Court has no jurisdiction to declare petitioner here and now as the lawful owner of the property.

Petitioner invokes the Court's jurisdiction to finally settle the long standing issue of ownership over the property by declaring it as its true owner. This is for the purpose of putting a closure to all the pending cases involving conflicting ownership claims allegedly emanating from Molina's dispositions.

The argument utterly lacks basis. As petitioner itself asserts, various cases are pending before different courts on conflicting ownership claims over the property. These courts have acquired jurisdiction over these cases and this jurisdiction stays with them until these cases shall have been finally terminated. For sure, the Court cannot, by petitioner's plea, simply wrest this jurisdiction from the lower courts. For jurisdiction is vested by law alone.

The petition for cancellation of adverse claim should be consolidated with the main case involving the issue of ownership

Section 1, Rule 31 of the Rules of Court allows consolidation of actions involving a common question of fact or law, thus:

> SECTION 1. *Consolidation*. — When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

In ***Deutsche Bank AG v. Court of Appeals***,[40] the Court citing ***Steel Corporation of the Philippines v. Equitable PCI Bank, Inc.***[41] laid down the requisites for consolidation of actions, *viz.*:

> Similarly, jurisprudence has laid down the requisites for consolidation. In the recent case of Steel Corporation of the Philippines v. Equitable PCI Bank, Inc. the Court held that "it is a time-honored principle that **when two or more cases involve the same parties and affect closely related subject matters, they must be consolidated and jointly tried, in order to serve the best interests of the parties and to settle expeditiously the issues involved.** In other words, **consolidation is proper wherever the subject matter involved and relief demanded in the different suits make it expedient for the court to determine all of the issues involved and adjudicate the rights of the parties by hearing the suits together**."

As heretofore shown, the petition for cancellation of adverse claim in Civil Case No. P-14-0163 and Civil Case No. 13-130626 involve closely related issues affecting the same parties and property. Hence, consolidation of these cases is proper for judicious and expedient disposition.

ACCORDINGLY, the petition is **PARTIALLY GRANTED**. The Omnibus Resolution dated May 30, 2016 and Resolution dated January 3, 2017 in Civil Case No. P-14-0163 are affirmed except for the summary judgment borne therein which is reversed and set aside. The case is **ORDERED REMANDED** to the

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[40] 683 Phil. 80, 91 (2012).

[41] 649 Phil. 692 (2010).

Regional Trial Court-Manila, Branch 16 for **CONSOLIDATION** with Civil Case No. 13-130626 before the Regional Trial Court-Manila, Branch 6.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Gesmundo, Lopez, and *Rosario,*[*] *JJ.*, concur.

[*] Designated as additional member per S.O. No. 2797 dated November 5, 2020.

SECOND DIVISION

[G.R. No. 229429. November 9, 2020]

NOEL M. MANRIQUE, *Petitioner*, *v.* **DELTA EARTHMOVING, INC., ED ANYAYAHAN AND IAN HANSEN,** *Respondents*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATIONS; NATIONAL LABOR RELATIONS COMMISSION (NLRC) RULES OF PROCEDURE; APPEALS; APPEAL BOND; POSTING OF AN APPEAL BOND IS INDISPENSABLE FOR PERFECTING AN APPEAL FROM THE LABOR ARBITER'S MONETARY AWARD.— Article 229 [formerly Article 223] of the Labor Code governs the appeal in labor cases: . . .

The indispensable nature of the posting of a bond in appeals from the LA to the NLRC is further highlighted in Section 4 (b) Rule VI of the 2011 NLRC Rules of Procedure, which states that: "*A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal*." The posting by the employer of a cash or surety bond is mandatory to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. The requirement was designed to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employees' just and lawful claims.

2. ID.; ID.; ID.; ID.; A MOTION TO REDUCE BOND BASED ON MERITORIOUS GROUNDS AND ACCOMPANIED BY THE POSTING OF AN APPEAL BOND OF REASONABLE AMOUNT STOPS THE RUNNING OF THE PERIOD FOR PERFECTING AN APPEAL.— Delta Earth's appeal was filed with a motion to reduce appeal bond, accompanied by the posting of ten percent (10%) of the judgment award as appeal bond. In *McBurnie v. Ganzon*, the Court explained that in order to stop the running of the period to perfect an appeal, a motion to reduce bond must comply with two conditions: (1) that the

motion to reduce bond shall be based on meritorious grounds; and (2) a reasonable amount of bond in relation to the monetary award is posted by the appellant. This is allowed under Section 6, Rule VI of the 2011 NLRC Rules of Procedure. The "*meritorious ground*" takes into account the respective rights of the parties and the attending circumstances and could pertain to either the appellant's lack of financial capability to pay the full amount of the bond, the merits of the main appeal, the absence of an employer-employee relationship, prescription of claims, and other similarly valid issues that are raised in the appeal.

3. ID.; ID.; ID.; ID.; THE DETERMINATION OF THE PRESENCE OF A MERITORIOUS GROUND TO GRANT A MOTION TO REDUCE THE APPEAL BOND IS WITHIN THE DISCRETION OF THE NLRC.— The NLRC in this case made a preliminary determination that Delta Earth has a valid claim in that there is no illegal dismissal to justify the award. For this reason, the CA could not be faulted when it sustained the NLRC's approval of the motion to reduce the appeal bond, especially since the determination of the presence of a "*meritorious ground*" is a matter fully within the discretion of the NLRC.

4. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES FOR THE DISMISSAL OF AN EMPLOYEE; LOSS OF TRUST AND CONFIDENCE; REQUISITES FOR VALID DISMISSAL BASED ON LOSS OF TRUST AND CONFIDENCE.— An employer cannot be compelled to retain an employee who is guilty of acts inimical to its interests, particularly one who has committed willful breach of trust under Article 297(c). This is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. However, to justify a valid dismissal based on loss of trust and confidence, the concurrence of two (2) conditions must be satisfied: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.

The first requisite is present in this case. The parties admit that Manrique is a managerial employee, thus holds a position of trust and confidence.

5. ID.; ID.; ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; QUANTUM OF PROOF; A LESS STRINGENT DEGREE OF PROOF IS REQUIRED IN TERMINATING MANAGERIAL EMPLOYEES ON THE GROUND OF LOSS OF TRUST AND CONFIDENCE.— In terminating managerial employees based on loss of trust and confidence, proof beyond reasonable doubt is not required. The mere existence of a basis for believing that such employee has breached the trust of his employer is enough. This degree of proof differs from that of a rank and file employee which requires proof of involvement in the alleged events, and that mere uncorroborated assertions by the employer will be insufficient. Despite the less stringent degree of proof involving managerial employees, jurisprudence is firm that loss of trust and confidence as a ground for dismissal has never been intended to afford an occasion for abuse due to its subjective nature. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith. In this case, the LA quickly identified several markers of bad faith on the part of Delta Earth, which made Manrique's dismissal questionable[.]

6. ID.; ID.; ID.; ID.; ID.; ALLEGED POOR PERFORMANCE OF A MANAGERIAL EMPLOYEE MUST BE CLEARLY AND CONVINCINGLY SUPPORTED BY ESTABLISHED FACTS.— Managerial employees could not simply be dismissed on account of their position and this Court agrees with the incisive findings of the LA that the performance evaluation and the memoranda deserves no merit as these were not even furnished to Manrique. The documents appear to be a belated attempt to justify Manrique's dismissal which was only verbally relayed to him by his on-site supervisor. Delta Earth's allegation of poor performance resulting in loss of trust and confidence was not clearly and convincingly supported by established facts, hence, is not sufficient to warrant Manrique's separation from employment.

7. ID.; ID.; ID.; ID.; ID.; PROCEDURAL DUE PROCESS; TWO-NOTICE RULE; A DISMISSAL WHICH WAS ONLY VERBALLY RELAYED TO AN EMPLOYEE BY THE ON-SITE SUPERVISOR IS A DENIAL OF THE RIGHT TO PROCEDURAL DUE PROCESS.— [T]his Court observes that Delta Earth failed to comply with the two-notice rule under Article 292 (b) of the Labor Code. The first notice must contain

the reasons for the termination affording the employee ample opportunity to be heard and defend himself with the assistance of a representative if he so desires. The second notice must indicate that there are grounds to justify the employee's termination upon due consideration of all the circumstances. None of these notices were given to Manrique as the fact of his termination was only relayed to him by his immediate supervisor in the mining site, upon instructions received from Delta Earth's main office. Manrique's email correspondence with his supervisor even shows that he had to go to Delta Earth's office in Quezon City to verify for himself if his employment was indeed terminated. Clearly, Manrique's dismissal is illegal as he was denied his right to substantive and procedural due process.

APPEARANCES OF COUNSEL

Chenaide Aceret for petitioner.
Ferdinand Rivera for respondents.

D E C I S I O N

LOPEZ, *J.*:

Whether substantial evidence exists to establish loss of trust and confidence as a valid ground for dismissal is the main issue in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Court of Appeals' (CA) Decision[2] dated August 11, 2016 and Resolution[3] dated January 20, 2017 in *CA-G.R. SP No. 140827*.

ANTECEDENTS

The case stemmed from a Complaint[4] for illegal dismissal, reinstatement with full backwages and benefits, non-payment

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[1] *Rollo*, pp. 3-36.

[2] *Id*. at 321-330; penned by Associate Justice Ma. Luisa C. Quijano-Padilla, with the concurrence of Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan (now a Member of this Court).

[3] *Id*. at 367-368.

[4] *Id*. at 78-79.

of salary/wages, 13th month pay, vacation leave and sick leave credits, moral, exemplary and nominal damages and attorney's fees filed by Noel M. Manrique (Manrique) against Delta Earthmoving, Inc. (Delta Earth), Ed Anyayahan (Anyayahan) and Ian Hansen (Hansen). Manrique alleged that on January 2, 2013, he was hired as Assistant Vice President for Mining Services by Delta Earth to take charge of the company's human resources department and to perform other administrative functions. As required, he reported at the mine site located at Didipio, Kasibu, Nueva Vizcaya. Later in June 2013, the company assigned him to work as Officer-in-Charge of the Oceana Gold Philippines, Inc. — Didipio Gold Project to assist in the operations while his immediate supervisor, Hansen, was on roster break. On December 29, 2013, Manrique claimed that he was instructed to pack his things and to not report back to work. Hansen told him that the head office of Delta Earth decided to terminate him. On January 6, 2014, he went to the head office in Quezon City to verify and Anyayahan, who is the Executive Vice President and Chief Operating Officer, confirmed the termination of his employment. Manrique was asked to tender a voluntary resignation but he refused. Instead, he filed the present complaint.

On the other hand, Delta Earth, Anyayahan, and Hansen maintained that Manrique was validly dismissed due to poor performance, resulting in loss of trust and confidence. To prove the just cause for the dismissal, Delta Earth pointed to the Performance Evaluation and various memoranda indicating gross neglect of duty and inefficiency on the part of Manrique, as follows: (1) neglected instructions from his superiors, such as truck hauling and volume studies; (2) failure to improve KM 20 to serve as employees' accommodation; (3) failure to submit 2013 mine operations budget; (4) delay in the submission of cost reports and billings resulting to delayed collection; and (5) failure to perform his duties despite constant reminders. Delta Earth stated that Manrique refused to receive the performance evaluation as he was insisting that he was performing well. Aside from the presence of just cause, the management also complied with procedural due process in

terminating Manrique's employment. Lastly, Delta Earth argued that being a managerial employee, Manrique is not entitled to 13th month pay, as well as vacation leave and sick leave credits since he enjoyed rotation leave.

On September 30, 2014, the Labor Arbiter (LA) found that Manrique was illegally dismissed and ruled that only Delta Earth is liable,[5] thus:

> WHEREFORE, premises considered, judgment is rendered declaring NOEL M. MANRIQUE ILLEGALLY DISMISSED. DELTA EARTH MOVING, INC. is ordered to pay NOEL M. MANRIQUE:
>
> [1] Separation pay equivalent to one month pay per year of service;
>
> [2] Full backwages [excluding site living allowance] from January 16, 2014, both separation pay and full backwages shall be computed up to date of actual payment;
>
> [3] Proportionate 13th month pay from February 2013 up to December 2013.
>
> [4] attorney's fees equivalent to 10% of the monetary award.
>
> Claims for unpaid salaries and leave credits are dismissed without prejudice.
>
> All other claims are dismissed for lack of merit.
>
> The total monetary award is as computed in Annex "A" forming part of this Decision.
>
> SO ORDERED.[6]

Aggrieved, Delta Earth filed an appeal with an urgent motion to reduce appeal bond[7] before the National Labor Relations Commission (NLRC). On March 31, 2015, the NLRC issued a Resolution,[8] granting the prayer for reduction of appeal bond after considering Delta Earth's posting of a bond equivalent to

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[5] *Id*. at 165-168.

[6] *Id*. at 168.

[7] *Id*. at 170-185.

[8] *Id*. at 226-235.

ten percent (10%) of the monetary award to be reasonable and finding the grounds raised in the appeal to be meritorious. On the main issue of whether there was illegal dismissal, the NLRC held in the same Resolution that Manrique was validly dismissed by reason of loss of trust and confidence. Delta Earth received reports of Manrique's failure to perform various tasks and this led to the issuance of six memoranda relative to his work assignments. A performance evaluation was conducted and Manrique failed. The NLRC noted that while Manrique denied these allegations, he did not present any proof that he turned in the required reports, or that he completed the assigned tasks. On the procedural aspect, the NLRC ruled that Manrique was afforded due process as his adamant refusal to submit a written explanation should not be taken against Delta Earth, thus:

> **WHEREFORE**, premises considered, the Urgent Motion to Reduce Appeal Bond filed by respondents is **GRANTED**. The Decision dated September 30, 2014 is hereby **REVERSED and SET ASIDE**. The complaint for illegal dismissal and money claims is **DISMISSED** for lack of merit.
>
> **SO ORDERED**.[9] (Emphases supplied.)

Manrique elevated the matter on *certiorari* to the CA. In its Decision[10] dated August 11, 2016 in *CA-G.R. SP No. 140827*, the CA upheld the NLRC's judgment that there was no substantial evidence of illegal dismissal. Manrique sought reconsideration but this too was denied.[11] Hence, this petition. Manrique claims that Delta Earth's appeal should not have been given due course as there is no meritorious ground that will justify the reduction of the appeal bond. As for his dismissal, Manrique insists that there was no competent evidence to prove the alleged loss of trust and confidence as he was not even apprised of his superiors' alleged dissatisfaction with his performance. He was not given copies of the memoranda and the Performance Management Form and was therefore deprived of the opportunity to submit

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[9] *Id.* at p. 234.

[10] *Supra* note 1.

[11] *Supra* note 2.

his explanation. Conversely, Manrique points to the remarks of his immediate superior Hansen that he did a good job on the mining site. He contends that the NLRC and the CA failed to recognize that Hansen is in a better position to evaluate his work performance than his superiors stationed in the Delta Earth main office as the former worked with him closely on-site.

On the procedural aspect, Manrique alleges that his termination was aggravated by Delta Earth's failure to give the required notices. He was asked by Hansen to leave the company premises after the Christmas break and was told to stop reporting for work upon the instruction from Delta Earth's management. Worse, Anyayahan tried to convince him to execute a letter of voluntary resignation in exchange for payment of one month's salary. Finally, he contends that the alleged abandonment and desire to resign are mere afterthoughts.

RULING

The NLRC has full discretion to determine the existence of meritorious ground in granting a motion to reduce appeal bond.

Article 229 [formerly Article 223] of the Labor Code governs the appeal in labor cases:

> ART. 229. [223] *Appeal*. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x
>
> x x x x x x x x x
>
> In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.
>
> x x x x x x x x x

The indispensable nature of the posting of a bond in appeals from the LA to the NLRC is further highlighted in Section 4

(b), Rule VI of the 2011 NLRC Rules of Procedure, which states that: "*A mere notice of appeal without complying with the other requisites aforestated shall not stop the running of the period for perfecting an appeal*." The posting by the employer of a cash or surety bond is mandatory to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. The requirement was designed to discourage employers from using an appeal to delay, or even evade, their obligation to satisfy their employees' just and lawful claims.[12]

Here, Delta Earth's appeal was filed with a motion to reduce appeal bond, accompanied by the posting of ten percent (10%) of the judgment award as appeal bond. In *McBurnie v. Ganzon*,[13] the Court explained that in order to stop the running of the period to perfect an appeal, a motion to reduce bond must comply with two conditions: (1) that the motion to reduce bond shall be based on meritorious grounds; and (2) a reasonable amount of bond in relation to the monetary award is posted by the appellant. This is allowed under Section 6, Rule VI of the 2011 NLRC Rules of Procedure. The "*meritorious ground*" takes into account the respective rights of the parties and the attending circumstances and could pertain to either the appellant's lack of financial capability to pay the full amount of the bond, the merits of the main appeal, the absence of an employer-employee relationship, prescription of claims, and other similarly valid issues that are raised in the appeal.[14]

The NLRC in this case made a preliminary determination that Delta Earth has a valid claim in that there is no illegal dismissal to justify the award. For this reason, the CA could not be faulted when it sustained the NLRC's approval of the

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[12] *Philux, Inc. v. National Labor Relations Commission*, 586 Phil. 19, 32 (2008), citing *Viron Garments Mftg., Co., Inc. v. National Labor Relations Commission*, G.R. No. 97357, March 18, 1992, 207 SCRA 339, 342.

[13] 719 Phil. 688 (2013) Resolution; and 616 Phil. 629 (2009).

[14] *Pacios v. Tahanang Walang Hagdanan*, G.R. No. 229579, November 14, 2018.

motion to reduce the appeal bond, especially since the determination of the presence of a "*meritorious ground*" is a matter fully within the discretion of the NLRC.[15]

Loss of trust and confidence, as a ground for dismissal, may not be invoked arbitrarily.

Article 297 of the Labor Code enumerates the just causes for the dismissal of an employee:

ART. 297. [282] *Termination by Employer*. — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing. (Emphasis supplied.)

An employer cannot be compelled to retain an employee who is guilty of acts inimical to its interests, particularly one who has committed willful breach of trust under Article 297 (c). This is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. However, to justify a valid dismissal based on loss of trust and confidence, the concurrence of two (2) conditions must be satisfied: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence.[16]

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[15] *Id*.

[16] *SM Development Corp. v. Ang*, G.R. No. 220434, July 22, 2019.

The first requisite is present in this case. The parties admit that Manrique is a managerial employee, thus holds a position of trust and confidence. The CA correctly recognized the intricacy of his position as Assistant Vice President for Mining Services when it held that a great deal of Delta Earth's business relies on the competence of Manrique. His main duty consists of the management of the establishment, or of a department or a subdivision thereof.[17] Next, we discuss the second requisite.

In terminating managerial employees based on loss of trust and confidence, proof beyond reasonable doubt is not required. The mere existence of a basis for believing that such employee has breached the trust of his employer is enough. This degree of proof differs from that of a rank and file employee which requires proof of involvement in the alleged events, and that mere uncorroborated assertions by the employer will be insufficient. Despite the less stringent degree of proof involving managerial employees, jurisprudence is firm that loss of trust and confidence as a ground for dismissal has never been intended to afford an occasion for abuse due to its subjective nature. It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith.[18] In this case, the LA quickly identified several markers of bad faith on the part of Delta Earth, which made Manrique's dismissal questionable, thus:

> The **Performance Evaluation is suspect**. First, the date of evaluation and period covered are not indicated. Second, Gaddi, the one who conducted the same is not competent to conduct the evaluation since he was not the immediate supervisor of Complainant. Third, it was **not shown that the copy of the same was given to Complainant**. If Complainant really refused to receive the same, Respondents should have sent a copy of the same to Complainant by registered mail. Being so, we conclude that the Performance Evaluation is a mere afterthought to justify the termination of Complainant due to alleged poor performance. On the other hand, the January 11, 2014 email of individual respondent x x x, Complainant's immediate

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[17] *Casco v. National Labor Relations Commission (Sixth Div.)*, G.R. No. 200571, February 19, 2018.

[18] *Id*.

supervisor and Project Manager of the Didipio Gold Project is quite telling. Complainant was commended by his immediate supervisor Hansen for all the good work he has done at Didipio Gold Project. x x x Meanwhile, the **memorandums submitted by Respondents as Annexes "1" to "6" to their Rejoinder directing Complainant to explain in writing certain acts of negligence are discredited**. It was **not shown that the same were served on Complainant**. We could only conclude that the same were concocted by Respondents x x x to strengthen their position. Respondents should have instead submitted records of Complainant's delayed costings, billings, budget and the resulting prejudice to the company. There being no poor performance, gross negligence and inefficiency on the part of the Complainant, there is no basis for [the] alleged loss of trust and confidence on Complainant. x x x Respondents were not able to discharge the burden to prove that Complainant was dismissed for just and/or authorized cause. x x x (Emphasis supplied.)[19]

Managerial employees could not simply be dismissed on account of their position and this Court agrees with the incisive findings of the LA that the performance evaluation and the memoranda deserves no merit as these were not even furnished to Manrique. The documents appear to be a belated attempt to justify Manrique's dismissal which was only verbally relayed to him by his on-site supervisor. Delta Earth's allegation of poor performance resulting in loss of trust and confidence was not clearly and convincingly supported by established facts, hence, is not sufficient to warrant Manrique's separation from employment.

Moreover, this Court observes that Delta Earth failed to comply with the two-notice rule under Article 292 (b)[20] of the Labor

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[19] *Rollo*, p. 167.

[20] ART. 292 [277]. *Miscellaneous Provisions.* — x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to

Code. The first notice must contain the reasons for the termination affording the employee ample opportunity to be heard and defend himself with the assistance of a representative if he so desires. The second notice must indicate that there are grounds to justify the employee's termination upon due consideration of all the circumstances.[21] None of these notices were given to Manrique as the fact of his termination was only relayed to him by his immediate supervisor in the mining site, upon instructions received from Delta Earth's main office. Manrique's email correspondence[22] with his supervisor even shows that he had to go to Delta Earth's office in Quezon City to verify for himself if his employment was indeed terminated. Clearly, Manrique's dismissal is illegal as he was denied his right to substantive and procedural due process.

We remind employers that the misdeed attributed to the employee must be a genuine and serious breach of the established expectations required by the exigencies of the position regardless of its designation, and not a mere distaste, apathy, or petty misunderstanding. What is at stake are the employee's reputation, good name, and source of livelihood, at the very least. Employment and tenure cannot be bargained away for the convenience of attaching blame and holding one accountable when no such accountability exists.[23]

FOR THESE REASONS, the petition is **GRANTED**. The Court of Appeals' Decision and Resolution in *CA-G.R. SP No. 140827* are **REVERSED** and **SET ASIDE**. The

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guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. x x x.

[21] *Punongbayan and Araullo (P & A) v. Lepon*, G.R. No. 174115, November 9, 2015, 772 Phil. 311, 334-335 (2015).

[22] *Rollo*, p. 131.

[23] *Casco v. National Labor Relations Commission (Sixth Div.)*, *supra* note 15.

Decision dated September 30, 2014 of the Labor Arbiter is **REINSTATED**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), *Gesmundo, Lazaro-Javier,* and *Rosario,*[*] *JJ.*, concur.

[*] Designated as additional Member per Special Order No. 2797 dated November 5, 2020.

SECOND DIVISION

[G.R. No. 233068. November 9, 2020]

REPUBLIC OF THE PHILIPPINES, *Petitioner*, *v.* **MERLE M. MALIGAYA, also known as "MERLY M. MALIGAYA-SARMIENTO,"** *Respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY; THE PROCEEDINGS MAY BE SUMMARY IF THE CORRECTION PERTAINS TO CLERICAL MISTAKES AND ADVERSARY IF IT INVOLVES SUBSTANTIAL ERRORS. — [R]ule 108 applies when the person is seeking to correct clerical and innocuous mistakes in his or her documents with the civil register. It also governs the correction of substantial errors affecting the civil status, citizenship, and nationality of a person. As such, the proceedings may either be summary, if the correction pertains to clerical mistakes, or adversary, if it involves substantial errors. Also, the petition must be filed before the RTC which sets a hearing and directs the publication of its order in a newspaper of general circulation. Afterwards, the RTC may grant or dismiss the petition and serve a copy of its judgment to the Civil Registrar.

2. ID.; ID.; ID.; TERM "SUBSTANTIAL," DEFINED; CORRECTIONS OR CHANGES AFFECTING THE CIVIL STATUS, SEX, OR CITIZENSHIP OF A PERSON ARE SUBSTANTIAL IN CHARACTER.— Ordinarily, the term "*substantial*" means consisting of or relating to substance, or something that is important or essential. In relation to change or correction of an entry in the birth certificate, substantial refers to that which establishes, or affects the substantive right of the person on whose behalf the change or correction is being sought. Thus, changes which may affect the civil status from legitimate to illegitimate, as well as sex, civil status, or citizenship of a person are substantial in character.

3. ID.; ID.; ID.; THE CORRECTION OF A PERSON'S DATE OF BIRTH IS SUBSTANTIAL THAT REQUIRES A JUDICIAL ORDER, AS IT INVOLVES AN ALTERATION IN AGE.— [T]he correction of Merly's date of birth is substantial because

changing the month, day and year from "*February 15, 1959*" to "*November 26, 1958*" will alter her age. As discussed earlier, the law expressly provides that the correction of clerical or typographical error must not involve a change in the age of the petitioner. Otherwise, the petition must be denied. The law's unmistakable intent is to characterize the correction of age as substantial that necessitates a judicial order. Indeed, the age of a person is a matter of public concern and an essential component of one's status in law. A change in a person's date of birth, in which an alteration in his age is a necessary consequence, significantly affects his status with regard to matters, such as marriage and family relations, obligations and contracts, and the exercise of legal rights. Corollarily, the substantial error in Merly's date of birth may be corrected only through the appropriate adversary proceedings. Thus, Merly correctly filed a petition for cancellation and/or correction of the entries before the RTC under Rule 108 of the Rules of Court.

4. ID.; ID.; ID.; PROCEDURAL REQUIREMENTS FOR THE CORRECTION OF SUBSTANTIAL ERRORS; REQUIRED NOTICES TO POTENTIAL OPPOSITORS; INTERESTED PARTIES MUST BE IMPLEADED IN A PETITION FOR CORRECTION OF A PERSON'S DATE OF BIRTH.— [W]e find that Merly failed to observe the required procedures under Sections 3, 4, and 5 of the Rule 108, . . .

Verily, the rules require two sets of notices to potential oppositors — one is given to persons named in the petition and another served to persons who are not named in the petition but nonetheless may be considered interested or affected parties. Consequently, the petition for a substantial correction must implead the civil registrar and other persons who have or claim to have any interest that would be affected. In this case, Merly only impleaded the local civil registrar but not her parents who are in the best position to establish the correct date of her birth as well as her siblings, if any.

5. ID.; ID.; ID.; ID.; ID.; THE LOCAL CIVIL REGISTRAR AND ALL AFFECTED AND INTERESTED PARTIES MUST BE NOTIFIED OF THE PETITION FOR SUBSTANTIAL CORRECTION; MERE PUBLICATION OF THE PETITION IS NOT SUFFICIENT NOTICE; EXCEPTIONS.— [T]he phrase "*and all persons who have or claim any interest which would be affected thereby*" in the title of the petition and the

publication of the petition are not sufficient notice to all interested parties. In *Tan v. Office of the Local Civil Registrar of the City of Manila*, we ruled that impleading and notifying only the local civil registrar and the publication of the petition are not sufficient compliance with the procedural requirements. However, the subsequent publication of a notice of hearing may cure the failure to implead and notify the affected or interested parties, such as when: (a) earnest efforts were made by petitioners in bringing to court all possible interested parties; (b) the parties themselves initiated the corrections proceedings; (c) there is no actual or presumptive awareness of the existence of the interested parties; or (d) when a party is inadvertently left out.

None of these exceptions are present in this case.

6. ID.; ID.; ID.; ID.; FAILURE TO STRICTLY COMPLY WITH THE PROCEDURAL REQUIREMENTS RENDERS VOID THE PROCEEDINGS FOR THE CORRECTION OF SUBSTANTIAL ERRORS.— There was no earnest effort on the part of Merly to bring to court her parents and siblings, if any, and other parties who may have an interest in the petition. Also, these indispensable parties are not the ones who initiated the proceedings and Merly cannot possibly claim that she was not aware, actually or presumptively, as to the existence or whereabouts of these interested parties. Likewise, it does not appear that the indispensable parties were inadvertently and unintentionally left out when Merly filed the petition. Taken together, the failure to strictly comply with the requirements under Rule 108 renders the proceedings void for the correction of substantial errors.

7. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 9048, AS AMENDED BY REPUBLIC ACT NO. 10172; UNDER R.A. NO. 9048, CLERICAL OR TYPOGRAPHICAL ERRORS IN THE CIVIL REGISTRY ENTRY OR CHANGES IN THE FIRST NAME OR NICKNAME, AND PATENT TYPOGRAPHICAL ERROR OR MISTAKE IN THE ENTRY OF THE DAY AND MONTH IN THE DATE OF BIRTH OR THE SEX OF A PERSON MAY BE CORRECTED WITHOUT A JUDICIAL ORDER.— In 2001, RA No. 9048 amended Rule 108 and authorized the local civil registrars, or the Consul General, as the case may be, to correct clerical or typographical errors in

the civil registry, or make changes in the first name or nickname, without need of a judicial order. The law provided an administrative recourse for the correction of clerical or typographical errors, essentially leaving substantial corrections to Rule 108. In 2012, RA No. 10172 amended RA No. 9048 expanding the authority of local civil registrars and the Consul General to make changes in the day and month in the date of birth, as well as in the recorded sex of a person, when it is patently clear that there was a typographical error or mistake in the entry.

8. ID.; ID.; ID.; CLERICAL OR TYPOGRAPHICAL ERROR, DEFINED; THE CORRECTION OF CLERICAL OR TYPOGRAPHICAL ERROR MUST NOT INVOLVE A CHANGE OF NATIONALITY, AGE, OR STATUS.— RA No. 9048, as amended by RA No. 10172, defines a clerical or typographical error as a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth, mistake in the entry of day and month in the date of birth or the sex of the person or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing record or records. However, the correction must not involve the change of nationality, age, or status of the petitioner. Otherwise, the petition must be denied.

9. ID.; ID.; ID.; A MISSPELLED FIRST NAME MAY BE CORRECTED UNDER R.A. NO. 9048 BY REFERRING TO OTHER EXISTING RECORD.— [T]he correction of Merly's first name from "*MERLE*" to "*MERLY*" refers to a clerical or typographical error. It merely rectified the erroneous spelling through the substitution of the second letter "E" in "MERLE" with the letter "Y", so it will read as "*MERLY*." To be sure, the documentary evidence satisfactorily show that Merly's first name is not "*MERLE*" as incorrectly indicated in her birth certificate. More importantly, the correction will neither affect nor prejudice any substantial rights. The innocuous errors in Merly's first name may be corrected or changed under RA No. 9048 by referring to related documents.

10. ID.; ID.; ID.; RA NO. 9048, AS AMENDED, DID NOT DIVEST THE TRIAL COURTS OF JURISDICTION OVER PETITIONS FOR CORRECTION OF CLERICAL OR TYPOGRAPHICAL

ERRORS IN A BIRTH CERTIFICATE. — [W]e sustain the correction of clerical mistake in Merly's first name through the filing of a petition under Rule 108. Ideally, Merly should have filed the petition with the local registrar. Only when the petition is denied can the RTC take cognizance of the case. We emphasize that RA No. 9048, as amended by RA No. 10172, did not divest the trial courts of jurisdiction over petitions for correction of clerical or typographical errors in a birth certificate. The local civil registrars' administrative authority to change or correct similar errors is only primary but not exclusive.

11. **ID.; ID.; ID.; DOCTRINE OF PRIMARY ADMINISTRATIVE JURISDICTION; REMEDIAL LAW; SPECIAL PROCEEDINGS; CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY; MULTIPLE CORRECTIONS OR CANCELLATIONS OF ENTRIES IN CIVIL RECORDS MAY BE FILED IN A SINGLE ACTION UNDER RULE 108 OF THE RULES OF COURT RATHER THAN TWO SEPARATE PETITIONS BEFORE THE REGIONAL TRIAL COURT AND THE LOCAL CIVIL REGISTRAR TO AVOID MULTIPLICITY OF SUITS.—** [T]he doctrine of primary administrative jurisdiction is not absolute and may be dispensed with for reasons of equity. In this case, Merly had presented testimonial and documentary evidence which the RTC had evaluated and found sufficient. To require Merly to file a new petition with the local civil registrar and start the process all over again would not be in keeping with the purpose of RA No. 9048 of giving people an option to have the erroneous entries in their civil records corrected through an administrative proceeding that is less expensive and more expeditious. It will be more prudent for Merly, and other persons similarly situated, to allow multiple corrections and/or cancellations of entries in a single action under Rule 108 rather than two separate petitions before the RTC and the local civil registrar. This will avoid multiplicity of suits and further litigation between the parties, which is offensive to the orderly administration of justice.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Diosomito & Diosomito Law Office for respondent.

D E C I S I O N

LOPEZ, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Decision[2] dated December 14, 2016 of the Regional Trial Court (RTC) in Special Proceedings No. NC-2016-2599 which granted the correction of entries in the birth certificate referring to the first name and date of birth.

ANTECEDENTS

In 2016, Merly Maligaya (Merly) filed a petition for correction of entries in her birth certificate under Rule 108 of the Rules of Court before the RTC docketed as Special Proceedings No. NC-2016-2599. In her petition, Merly prayed to change her first name from "*MERLE*" to "*MERLY*" and her date of birth from "*February 15, 1959*" to "*November 26, 1958*."[3] As supporting evidence, Merly presented the original and certified original copies of her SSS Member's Data E-4 Form, Voter's Registration Record, Voter's Certification, Voter's Identification Card, Police Clearance and National Bureau of Investigation (NBI) Clearance. After finding the petition sufficient in form and substance, the RTC ordered the publication of the petition in a newspaper of general circulation once a week for three consecutive weeks. Trial then ensued.

On December 14, 2016, the RTC granted the petition to reflect Merly's accurate personal circumstances and to avoid confusion on her public and private documents, thus:

> **WHEREFORE**, premises considered, the instant petition for correction of entries are hereby GRANTED. Ordering the Local Civil Registry of Magallanes, Cavite to correct the date of birth of petitioner from February 15, 1959 to November 26, 1958 and further ordered to correct the first name of said petitioner from Merle to Merly.

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[1] *Rollo*, pp. 3-20.

[2] *Id.* at 21-22; penned by Judge Lerio C. Castigador.

[3] *Id.* at 23-25.

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SO ORDERED.[4]

The Office of the Solicitor General (OSG) moved for a reconsideration.[5] Yet, the RTC denied the motion.[6] Hence, this petition.[7] The OSG argues that the RTC has no jurisdiction to rectify the error in Merly's first name because the mistake is clerical that must be corrected through administrative proceedings under Republic Act (RA) No. 9048, as amended by RA No. 10172. As to the date of birth, Merly properly filed a petition under Rule 108 of the Rules of Court but she failed to comply with the requirements of Section 3, Rule 108 to implead all persons who have a claim or any interest in the proceedings. On the other hand, Merly maintains that the correction of her first name and date of birth under Rule 108 is appropriate, and that the filing of separate petitions will result in circuitous proceedings and unjustified delay. Moreover, Merly claims that the correction of such entries is clerical and strict observance with Rule 108 is not required. Lastly, the publication of the petition cured the failure to implead the indispensable parties.[8]

RULING

The petition is partly meritorious.

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[4] *Id.* at 31.

[5] *Id.* at 30-40.

[6] *Id.* at 27-29.

[7] *Id.* at 7. The Office of the Solicitor General raised the following issues:

(I) THE REGIONAL TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN, DESPITE NOT WITHIN ITS PRIMARY JURISDICTION, IT ORDERED THE CORRECTION OF [MERLY'S] FIRST NAME IN HER BIRTH CERTIFICATE; and

(II) THE REGIONAL TRIAL COURT COMMITTED REVERSIBLE ERROR IN ORDERING THE CORRECTION OF [MERLY'S] DATE OF BIRTH IN HER BIRTH CERTIFICATE, DESPITE FAILURE TO IMPLEAD ALL INDISPENSABLE PARTIES.

[8] *Id.* at 45-57.

The issues hinge on the RTC's jurisdiction to order the correction of Merly's birth certificate under the provisions of Rule 108 of the Rules of Court as regards the erroneous entries in her first name from *"MERLE"* to *"MERLY"* and her date of birth from "*February 15, 1959*" to "*November 26, 1958*." Thus, we find it necessary to discuss first the scope of the rule.

Foremost, Rule 108 applies when the person is seeking to correct clerical and innocuous mistakes in his or her documents with the civil register. It also governs the correction of substantial errors affecting the civil status, citizenship, and nationality of a person. As such, the proceedings may either be summary, if the correction pertains to clerical mistakes, or adversary, if it involves substantial errors. Also, the petition must be filed before the RTC which sets a hearing and directs the publication of its order in a newspaper of general circulation. Afterwards, the RTC may grant or dismiss the petition and serve a copy of its judgment to the Civil Registrar.[9]

In 2001, RA No. 9048 amended Rule 108 and authorized the local civil registrars, or the Consul General, as the case may be, to correct clerical or typographical errors in the civil registry, or make changes in the first name or nickname, without need of a judicial order. The law provided an administrative recourse for the correction of clerical or typographical errors, essentially leaving substantial corrections to Rule 108.[10] In 2012, RA No. 10172[11] amended RA No. 9048[12] expanding the authority

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[9] *Republic v. Gallo*, 823 Phil. 1090, 1108 (2018).

[10] *Republic v. Tipay*, 826 Phil. 88, 94-95 (2018).

[11] AN ACT FURTHER AUTHORIZING THE CITY OR MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL TO CORRECT CLERICAL OR TYPOGRAPHICAL ERRORS IN THE DAY AND MONTH IN THE DATE OF BIRTH OR SEX OF A PERSON APPEARING IN THE CIVIL REGISTER WITHOUT NEED OF A JUDICIAL ORDER, AMENDING FOR THIS PURPOSE REPUBLIC ACT NUMBERED NINETY FORTY-EIGHT; approved on August 15, 2012.

[12] AN ACT AUTHORIZING THE CITY OR MUNICIPAL CIVIL REGISTRAR OR THE CONSUL GENERAL TO CORRECT A CLERICAL OR TYPOGRAPHICAL ERROR IN AN ENTRY AND/OR

of local civil registrars and the Consul General to make changes in the day and month in the date of birth, as well as in the recorded sex of a person, when it is patently clear that there was a typographical error or mistake in the entry.[13]

Applying these precepts, we now determine whether the errors that Merly seeks to correct in her birth certificate are substantial or clerical. Ordinarily, the term *"substantial"* means consisting of or relating to substance, or something that is important or essential.[14] In relation to change or correction of an entry in the birth certificate, substantial refers to that which establishes, or affects the substantive right of the person on whose behalf the change or correction is being sought. Thus, changes which may affect the civil status from legitimate to illegitimate, as well as sex, civil status, or citizenship of a person are substantial in character. On the other hand, RA No. 9048, as amended by RA No. 10172, defines a clerical or typographical error as a mistake committed in the performance of clerical work in writing, copying, transcribing or typing an entry in the civil register that is harmless and innocuous, such as misspelled name or misspelled place of birth, mistake in the entry of day and month in the date of birth or the sex of the person or the like, which is visible to the eyes or obvious to the understanding, and can be corrected or changed only by reference to other existing

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CHANGE OF FIRST NAME OR NICKNAME IN THE CIVIL REGISTER WITHOUT NEED OF A JUDICIAL ORDER, AMENDING FOR THIS PURPOSE ARTICLES 376 AND 412 OF THE CIVIL CODE OF THE PHILIPPINES; approved on March 22, 2001.

[13] Section 1 of RA No. 9048, as amended, reads:

SEC. 1. *Authority to Correct Clerical or Typographical Error and Change of First Name or Nickname*. — **No entry in a civil register shall be changed or corrected without a judicial order, except for clerical or typographical errors and change of first name or nickname, the day and month in the date of birth or sex of a person where it is patently clear that there was a clerical or typographical error or mistake in the entry**, which can be corrected or changed by the concerned city or municipal civil registrar or consul general in accordance with the provisions of this Act and its implementing rules and regulations. (Emphasis supplied.)

[14] Merriam-Webster Dictionary.

record or records. However, the correction must not involve the change of nationality, age, or status of the petitioner.[15] Otherwise, the petition must be denied.[16]

Here, the correction of Merly's first name from *"MERLE"* to *"MERLY"* refers to a clerical or typographical error. It merely rectified the erroneous spelling through the substitution of the second letter "E" in *"MERLE"* with the letter "Y," so it will read as "*MERLY*." To be sure, the documentary evidence satisfactorily show that Merly's first name is not *"MERLE"* as incorrectly indicated in her birth certificate. More importantly, the correction will neither affect nor prejudice any substantial rights. The innocuous errors in Merly's first name may be corrected or changed under RA No. 9048 by referring to related documents. In *Republic v. Mercadera*,[17] we ruled that the correction of petitioner's misspelled first name from *"MARILYN"* to *"MERLYN"* involves only a clerical mistake. The Court then cited several cases pertaining to similar errors, *viz.*:

> Indeed, there are decided cases involving mistakes similar to Mercadera's case which recognize the same a harmless error. In *Yu v. Republic* it was held that "to change 'Sincio' to 'Sencio' which merely involves the substitution of the first vowel 'i' in the first name into the vowel 'e' amounts merely to the righting of a clerical error. In *Labayo-Rowe v. Republic*, it was held that the change of petitioner's name from "Beatriz Labayo/Beatriz Labayu" to "Emperatriz Labayo" was a mere innocuous alteration wherein a summary proceeding was appropriate. In *Republic v. Court of Appeals, Jaime B. Caranto and Zenaida P. Caranto*, the correction involved the substitution of the letters "ch" for the letter "d," so that what

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[15] RA No. 10172, Sec. 2 (3).

[16] SEC. 5.8.4 of the Implementing Rules and Regulations of RA No. 9048 states the following:

> 5.8. Deny the petition for correction of clerical or typographical error based on any of the following grounds:
>
> x x x x x x x x x
>
> 5.8.4. The petition involves the change of the status, sex, **age** or nationality of the petitioner or of any person named in the document. (Emphasis supplied.)

[17] 652 Phil. 195 (2010).

appears as "Midael" as given name would read "Michael." In the latter case, this Court, with the agreement of the Solicitor General, ruled that the error was plainly clerical, such that, "changing the name of the child from 'Midael C. Mazon' to 'Michael C. Mazon' cannot possibly cause any confusion, because both names can be read and pronounced with the same rhyme (*tugma*) and tone (*tono, tunog, himig*).[18]

Meanwhile, the correction of Merly's date of birth is substantial because changing the month, day and year from *"February 15, 1959"* to *"November 26, 1958"* will alter her age. As discussed earlier, the law expressly provides that the correction of clerical or typographical error must not involve a change in the age of the petitioner. Otherwise, the petition must be denied. The law's unmistakable intent is to characterize the correction of age as substantial that necessitates a judicial order. Indeed, the age of a person is a matter of public concern and an essential component of one's status in law. A change in a person's date of birth, in which an alteration in his age is a necessary consequence, significantly affects his status with regard to matters, such as marriage and family relations, obligations and contracts, and the exercise of legal rights.[19] Corollarily, the substantial error in Merly's date of birth may be corrected only through the appropriate adversary proceedings.[20] Thus, Merly correctly filed a petition for cancellation and/or correction

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[18] *Id.* at 212.

[19] In *Silverio v. Republic*, 562 Phil. 953 (2007), the Court defined "status" as the circumstances affecting the legal situation (that is, the sum total of capacities and incapacities) of a person in view of his age, nationality and his family membership. The status of a person in law includes all his personal qualities and relations, more or less permanent in nature, not ordinarily terminable at his own will, such as his being legitimate or illegitimate, or his being married or not. The comprehensive term status includes such matters as the beginning and end of legal personality, capacity to have rights in general, family relations, and its various aspects, such as birth, legitimation, adoption, emancipation, marriage, divorce, and sometimes even succession. *Id.* at 969.

[20] See *Onde v. Office of the Local Civil Registrar of Las Piñas City* (Resolution), 742 Phil. 691, 696 (2014).

of the entries before the RTC under Rule 108 of the Rules of Court. Nevertheless, we find that Merly failed to observe the required procedures under Sections 3, 4, and 5 of Rule 108, to wit:

> SEC. 3. *Parties*. — When cancellation or correction of an entry in the civil register is sought, **the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties** to the proceeding.
>
> SEC. 4. *Notice and publication*. — Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable **notice thereof to be given to the persons named in the petition**. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.
>
> SEC. 5. *Opposition*. — The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, **within fifteen (15) days from notice of the petition**, or from the last date of publication of such notice, file his opposition thereto. (Emphases supplied.)

Verily, the rules require two sets of notices to potential oppositors — one is given to persons named in the petition and another served to persons who are not named in the petition but nonetheless may be considered interested or affected parties. Consequently, the petition for a substantial correction must implead the civil registrar and other persons who have or claim to have any interest that would be affected.[21] In this case, Merly only impleaded the local civil registrar but not her parents who are in the best position to establish the correct date of her birth as well as her siblings, if any. In *Labayo-Rowe v. Republic*,[22]

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[21] *Almojuela v. Republic* (Resolution), 793 Phil. 780, 787-788 (2016).

[22] 250 Phil. 300 (1988). In this case, aside from seeking to change her name from "*Beatriz Labayo/Beatriz Labayu*" to "*Emperatriz Labayo*," the petitioner also sought the correction of her civil status in her daughter's birth certificate from "*married*" to "*single*" and the date and place of marriage to "*no marriage*." The trial court granted the petition although indispensable parties were not impleaded. In overruling the trial court, we held that the Office of the Solicitor General and all other indispensable parties should have been made respondents.

we emphasized the necessity of impleading indispensable parties, thus:

> Aside from the Office of the Solicitor General, **all other indispensable parties should have been made respondents. They include not only the declared father of the child but the child as well, together with the paternal grandparents, if any, as their hereditary rights would be adversely affected thereby. All other persons who may be affected by the change should be notified or represented.** The truth is best ascertained under an adversary system of justice.[23] (Emphasis supplied; citations omitted.)

Also, the phrase *"and all persons who have or claim any interest which would be affected thereby"* in the title of the petition and the publication of the petition are not sufficient notice to all interested parties. In *Tan v. Office of the Local Civil Registrar of the City of Manila*,[24] we ruled that impleading and notifying only the local civil registrar and the publication of the petition are not sufficient compliance with the procedural requirements. However, the subsequent publication of a notice of hearing may cure the failure to implead and notify the affected or interested parties, such as when: (a) earnest efforts were made by petitioners in bringing to court all possible interested parties; (b) the parties themselves initiated the corrections proceedings; (c) there is no actual or presumptive awareness of the existence of the interested parties; or (d) when a party is inadvertently left out.[25]

None of these exceptions are present in this case. There was no earnest effort on the part of Merly to bring to court her parents and siblings, if any, and other parties who may have an interest in the petition. Also, these indispensable parties are not the ones who initiated the proceedings and Merly cannot possibly claim that she was not aware, actually or presumptively, as to the existence or whereabouts of these interested parties. Likewise, it does not appear that the indispensable parties were

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[23] *Id.* at 308.

[24] G.R. No. 211435, April 10, 2019.

[25] *Id.*

inadvertently and unintentionally left out when Merly filed the petition.[26] Taken together, the failure to strictly comply with the requirements under Rule 108 renders the proceedings void for the correction of substantial errors.[27]

Notwithstanding, we sustain the correction of clerical mistake in Merly's first name through the filing of a petition under Rule 108. Ideally, Merly should have filed the petition with the local civil registrar. Only when the petition is denied can the RTC take cognizance of the case.[28] We emphasize that RA No. 9048, as amended by RA No. 10172, did not divest the trial courts of jurisdiction over petitions for correction of clerical or typographical errors in a birth certificate. The local civil registrars' administrative authority to change or correct similar errors is only primary but not exclusive.[29] As aptly held in *Republic of the Philippines v. Charlie Mintas Felix a.k.a. Shirley Mintas Felix*,[30] with the advent of RA No. 9048, as amended by RA No. 10172, the RTCs are not divested of their jurisdiction to hear and decide petitions for correction of entries and that even the failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court.[31]

At any rate, the doctrine of primary administrative jurisdiction is not absolute and may be dispensed with for

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[26] See *Republic v. Coseteng-Magpayo*, 656 Phil. 550 (2011).

[27] *Almojuela v. Republic* (Resolution), *supra* at 789-790.

[28] *Republic v. Gallo*, *supra* note 9, at 1111, citing *Republic v. Sali*, 808 Phil. 343 (2017).

[29] It is worth noting that the deliberations on RA No. 9048 did not mention that petitions for correction of clerical errors can no longer be filed with the regular courts, though the grounds upon which the administrative process before the local civil registrar may be availed of are limited under the law. *(Re: Final Report on the Judicial Audit Conducted at the Regional Trial Court, Br. 67, Paniqui, Tarlac, Adm. Matter No. 06-7-414-RTC, October 19, 2007.*)

[30] G.R. No. 203371, June 30, 2020.

[31] *Republic v. Charlie Mintas Felix a.k.a. Shirley Mintas Felix*, G.R. No. 203371, June 30, 2020.

reasons of equity.[32] In this case, Merly had presented testimonial and documentary evidence which the RTC had evaluated and found sufficient. To require Merly to file a new petition with the local civil registrar and start the process all over again would not be in keeping with the purpose of RA No. 9048 of giving people an option to have the erroneous entries in their civil records corrected through an administrative proceeding that is less expensive and more expeditious. It will be more prudent for Merly, and other persons similarly situated, to allow multiple corrections and/or cancellations of entries in a single action under Rule 108 rather than two separate petitions before the RTC and the local civil registrar. This will avoid multiplicity of suits and further litigation between the parties, which is offensive to the orderly administration of justice.

FOR THESE REASONS, the petition is **PARTLY GRANTED**. The Regional Trial Court's Decision dated December 14, 2016 in Special Proceedings No. NC-2016-2599 is **AFFIRMED** with respect to the correction of first name from "*MERLE*" to "*MERLY*." On the other hand, the correction of date of birth from "*February 15, 1959*" to "*November 26, 1958*" is **SET ASIDE**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Gesmundo, Lazaro-Javier, and *Rosario,*[*] *JJ.*, concur.

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[32] In *Republic v. Gallo*, *supra*, we held that for reasons of equity, in cases where jurisdiction is lacking, failure to raise the issue of non-compliance with the doctrine of primary administrative jurisdiction at an opportune time may bar a subsequent filing of a motion to dismiss based on that ground by way of laches. Thus, we allowed that the corrections of clerical errors sought by the petitioner, such as his first name from "Michael" to "Michelle"; her biological sex from "male" to "female"; the entry of her middle name as "Soriano"; middle name of her mother as "Angangan"; middle name of her father as "Balingao"; and, the date of her parents' marriage as "May 23, 1981," despite the filing of a petition under Rule 108, considering the failure of the Office of the Solicitor General to raise the doctrine of primary jurisdiction at the first instance.

[*] Designated as additional member per Special Order No. 2797 dated November 5, 2020.

THIRD DIVISION

[G.R. No. 235573. November 9, 2020]

REYNALDO VALENCIA *y* VIBAR, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; THE FACTUAL FINDINGS OF LOWER COURTS ARE FINAL, BINDING, OR CONCLUSIVE ON THE PARTIES AND UPON THE SUPREME COURT EXCEPT WHEN, *INTER ALIA*, THEY ARE GROUNDED ENTIRELY ON SPECULATIONS, SURMISES, OR CONJECTURES.— Review of appeals filed before the Court is "not a matter of right, but of sound judicial discretion[.]" Only questions of law may be raised in a Rule 45 petition as this Court is not a trier of facts, and factual findings are "final, binding, or conclusive on the parties and upon this court when supported by substantial evidence." However, exceptions to the general rule exist and the Court may pass upon the findings of fact of the lower courts in the following instances:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures (Joaquin v. Navarro, 93 Phil. 257 [1953]); . . . .

A careful review of the records convinces this Court that an exception to the general rule exists in this case, particularly the first exception, or "[w]hen the conclusion is a finding grounded entirely on speculation, surmises or conjectures."

2. CRIMINAL LAW; RECKLESS IMPRUDENCE; ELEMENTS THEREOF.— As punished in Article 365 of the Revised Penal Code, reckless imprudence . . . has the following elements:

(1) that the offender does or fails to do an act; (2) that the doing or the failure to do that act is voluntary; (3) that it be without malice; (4) that material damage results from the reckless imprudence; and (5) that there is inexcusable lack of precaution on the part of the offender, taking into consideration his employment or occupation, degree of intelligence, physical condition, and other circumstances regarding persons, time and place.

3. ID.; ID.; MOTORIST'S LIABILITY FOR NEGLIGENCE; THE DIRECT CAUSAL CONNECTION BETWEEN THE NEGLIGENCE AND THE INJURIES OR DAMAGES COMPLAINED OF MUST BE ESTABLISHED BY THE PROSECUTION.— *Gonzaga v. People* states that to establish a motorist's liability for negligence, the prosecution must show the "direct causal connection between such negligence and the injuries or damages complained of." *Gonzaga* then stressed that mere negligence in driving a vehicle is not enough to constitute reckless driving. Rather, it must be shown that the motorist acted willfully and wantonly, in utter disregard of the consequence of his or her action as it is the "inexcusable lack of precaution or conscious indifference to the consequences of the conduct which supplies the criminal intent and brings an act of mere negligence and imprudence under the operation of the penal law[.]"

4. REMEDIAL LAW; EVIDENCE; QUANTUM OF PROOF; PROOF BEYOND REASONABLE DOUBT; POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; CONVICTION IN A CRIMINAL CASE REQUIRES PROOF BEYOND REASONABLE DOUBT OR MORAL CERTAINTY, FOR AN ACCUSED ENJOYS THE PRESUMPTION OF INNOCENCE.— No one testified as to the manner by which petitioner was driving before he supposedly hit Jaquilmo, or of personally witnessing the jeepney hit Jaquilmo.

. . .

The prosecution was able to prove that Jaquilmo died on the bridge, but it failed to prove beyond reasonable doubt that petitioner's imprudence in driving the jeepney was the proximate cause of his death.

Conviction in a criminal case requires proof beyond reasonable doubt or moral certainty. Rule 133, Section 2 of the Revised Rules on Evidence defines moral certainty as "that degree of proof which produces conviction in an unprejudiced mind."

The quantum of proof demanded in criminal cases has constitutional basis as an accused enjoys the presumption of innocence; thus, the prosecution holds the immense responsibility of establishing the accused's guilt beyond reasonable doubt.

. . .

> Here, the prosecution failed to prove beyond reasonable doubt that petitioner's inexcusable lack of precaution in driving the jeepney was the proximate cause of Jaquilmo's death. . . .
>
> With the prosecution's failure to prove all the elements of reckless imprudence resulting to homicide beyond reasonable doubt, and an eyewitness testimony corroborating petitioner's assertion that he did not run over Jaquilmo, petitioner must consequently be acquitted of the charge against him.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

The prosecution must show the direct causal connection between a motorist's negligence and the injuries sustained to substantiate a charge for reckless imprudence resulting to homicide. Further, mere negligence will not suffice because it is the motorist's willful and wanton act done in utter disregard of the consequence of his or her action, which criminalizes an imprudent or negligent act.

This resolves an appeal from the Court of Appeals Decision[1] affirming the Regional Trial Court Judgment[2] convicting Reynaldo V. Valencia (Valencia) of reckless imprudence resulting to homicide.

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[1] *Rollo*, pp. 28-40. The February 17, 2017 Decision docketed as CA-G.R. CR No. 37847 was penned by Associate Justice Pedro B. Corales and was concurred in by Associate Justices Sesinando E. Villon (Chairperson) and Rodil V. Zalameda of the Eleventh Division, Court of Appeals, Manila.

[2] Id. at 58-77. The June 1, 2015 Judgment in Criminal Case No. 12251 was penned by Judge Elmer M. Lanuzo of Branch 6, Regional Trial Court, Legazpi City.

An Information for reckless imprudence resulting to homicide was filed against Valencia, the pertinent portions of which read:

> The undersigned Associate City Prosecutor, City of Legazpi hereby accuses REYNALDO VALENCIA y VIBAR, of the crime of RECKLESS IMPRUDENCE RESULTING IN HOMICIDE defined and penalized under Article 365 of the Revised Penal Code, committed as follows:
>
> That on or about the 25th day of November 2011, in the City of Legazpi, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously drive and operate a passenger jeepney in a reckless and imprudent manner without taking the necessary precaution to prevent and/or avoid accident and without regard to traffic rules and regulations, causing as a result of his recklessness and imprudence the said vehicle he was driving to bump one CELEDONIO JAQUILMO y LACEDA thereby causing his untimely death and that the said accused after bumping the said CELEDONIO JAQUILMO y LACEDA failed to lend him on the spot assistance, to the damage and prejudice of his heirs.
>
> CONTRARY TO LAW.[3]

Valencia was arrested but posted bail. Upon arraignment, he pleaded not guilty to the crime charged.[4]

The prosecution evidence showed that on November 25, 2011, Valencia was driving a passenger jeepney at around 4:30 a.m. While he was traversing Sagumayon Bridge, the jeepney suddenly shook and the passengers at the back of the jeepney, namely Reymer Añonuevo (Añonuevo) and Richard Nicerio (Nicerio), heard a loud thud, as if the jeep hit something solid.[5]

The jeepney stopped, and when Añonuevo and Nicerio looked out towards the road, they saw a person lying face down. They informed Valencia that he hit a man; but instead of helping, Valencia backed the jeepney up, continued driving, and told his passengers that he would tell the police about the incident.[6]

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[3] Id. at 59.

[4] Id. at 30.

[5] Id. at 28-31.

[6] Id.

Añonuevo noted down the jeepney's plate number when he alighted and reported the incident to the police.[7]

Another prosecution witness, Aurelio Macinas, Jr. (Macinas) testified that he was near the Department of the Interior and Local Government office when he heard a loud thud and heard someone inside a jeepney shout "may nabangga[!]" Macinas further testified that he saw the jeepney stop and backtrack, leaving the victim lying on the road. He also claimed that he had a good look at the jeepney driver.[8]

Senior Police Officer 1 Gary Amaranto (SPO1 Amaranto), PO1 Jaime Puto and SPO3 Ramon Reolo were part of the investigating team dispatched to the scene of the crime. They testified that when they arrived at Sagumayon Bridge, they found Celedonio Jaquilmo (Jaquilmo) lying near the pavement with bloodstains around him. SPO1 Amaranto then called for an ambulance to bring Jaquilmo to the hospital.[9]

Moises Jaquilmo (Moises), the victim's son, testified that he met with Valencia at the police station about two weeks after Jaquilmo's death[10] due to "severe traumatic head injury secondary to [a] vehicular accident."[11]

Furthermore, Moises testified that Valencia offered to give their family the proceeds of the jeepney insurance to prevent litigation. Moises and his siblings refused the offer.[12] Police Inspector Anthony Mark Ferwelo corroborated his testimony of Valencia's attempt at a settlement. The police officer also testified that Valencia offered him part of the insurance proceeds on the condition that no criminal case would be filed.[13]

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[7] Id. at 31.

[8] Id.

[9] Id.

[10] Id. at 32.

[11] Id. at 29.

[12] Id. at 32.

[13] Id. at 73-74.

For the defense, Valencia admitted driving a jeepney and passing through Sagumayon Bridge, but denied running over Jaquilmo. He claimed that the loud thud heard by his passengers came from a manhole that the jeepney drove over.[14]

Valencia also admitted seeing a person lying on the road, but claimed that he did not stop to help because there were people milling around the body and he had passengers aboard his jeepney.[15]

Moreover, Valencia testified that he did have a confrontation with Jaquilmo's heirs at the police station, but denied that he offered to settle the case with them.[16]

Lorenzo Mirandilla (Mirandilla), the passenger seated beside Valencia in front of the jeepney, corroborated Valencia's testimony that a man was already lying on the road near Sagumayon Bridge, when Valencia's jeepney passed by on its way to Legazpi City.[17]

Police Officer 2 Jonell Abinion (PO2 Abinion) testified that while he was overseeing the flow of traffic at the rotonda on Quezon Avenue Extension, Valencia, who was then driving a jeepney, drove up to him to report a vehicular accident near Saint Agnes. PO2 Abinion asked Valencia to accompany him to report the incident, but Valencia refused because he still had passengers on board the jeepney.[18]

The Regional Trial Court found the testimonies of the prosecution witnesses to be categorical and straightforward in pointing to Valencia as the person driving the jeepney that hit Jaquilmo, eventually leading to his death.[19]

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[14] Id. at 32.

[15] Id.

[16] Id.

[17] Id.

[18] Id. at 32-33.

[19] Id. at 70-71.

On the other hand, the Regional Trial Court found defense witness Mirandilla to be an unreliable witness. The Regional Trial Court stated that Mirandilla's testimony is unworthy of belief, as he was "glib in his testimony persistently embellishing his answers to the questions with impertinent and irrelevant matters not called for by the questions propounded by the defense counsel[.]"[20]

In discussing the elements of reckless imprudence resulting to homicide, the Regional Trial Court pointed out that as the driver of a passenger jeepney, a common carrier, Valencia was tasked to observe extraordinary diligence, both in driving his jeepney and in dealing with his passengers. It concluded that Valencia failed to see the victim walking in front of or beside the jeepney because the accident happened very early in the morning and Valencia had probably just woken up, making him not yet fully alert and ready to drive a passenger jeepney.[21]

The Regional Trial Court likewise appreciated the qualifying circumstance of failing to lend assistance to the victim against Valencia.[22]

The dispositive of the Regional Trial Court June 1, 2015 Judgment[23] read:

> WHEREFORE, in the [sic] light of the foregoing ratiocinations, the Court hereby renders judgment finding the accused-Reynaldo Valencia y Vibar **GUILTY** beyond reasonable doubt of the culpable felony of **RECKLESS IMPRUDENCE RESULTING IN HOMICIDE** defined and penalized under Article 365 of the Revised Penal Code qualified by failing to lend on the spot to the victim such help as may be in the hands of the accused to give. Consequently, accused Reynaldo Valencia y Vibar is hereby sentenced to undergo an indeterminate prison sentence of **FOUR (4) YEARS[,] TWO (2) MONTHS and ONE (1) DAY as the MINIMUM to SIX (6) YEARS, ONE (1) MONTH AND ELEVEN (11) DAYS** as the **MAXIMUM[.]**

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[20] Id.

[21] Id. at 74-75.

[22] Id. at 75.

[23] Id. at 58-77.

As civil liability, the accused Reynaldo Valencia y Vibar is hereby ordered to pay the heirs of Celedonio Jaquilmo the following amounts, to wit:

(1) **[₱]50,000.00** as civil indemnity;
(2) **[₱]58,000.00** as actual/compensatory damages/burial expenses;
(3) **[₱]168,394.64** for loss of earning capacity; and
(4) **[₱]50,000.00** for moral and exemplary damages.

Finally, the Branch Clerk of Court is directed to issue the necessary MITIMUS for the immediate commitment of the accused to the National Penitentiary, Bureau of Corrections, Muntinlupa City.

Costs against the accused.

SO ORDERED.[24]

Valencia appealed[25] the judgment against him, but on February 17, 2017, the Court of Appeals[26] denied his appeal and affirmed the Regional Trial Court's Decision with modifications.

The Court of Appeals stated that the prosecution duly proved Valencia's negligence in driving the jeepney, since two (2) of the prosecution witnesses testified that they had to inform Valencia that he hit a person when the jeepney shook and a loud thud was heard. The Court of Appeals also concluded that Valencia must have been driving at high speed before hitting the victim.[27]

The dispositive of the Court of Appeals Decision read:

WHEREFORE, the instant appeal is **DENIED**. The June 1, 2015 Judgment of the Regional Trial Court, Branch 6, Legazpi City in Crim. Case No. 12251 is hereby **AFFIRMED** with the following **MODIFICATIONS**: (1) accused-apellant Reynaldo Valencia y Vibar is sentenced to suffer the indeterminate penalty of two (2) years and four (4) months of *prision correccional* as minimum to six (6) years of *prision correccional* as maximum; (2) the award for loss of earning

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[24] Id. at 76-77.

[25] Id. at 45-57.

[26] Id. at 28-40.

[27] Id. at 36.

capacity is increased to ₱170,193.99; (3) the moral and exemplary damages should be ₱50,000.00 each; and (4) all monetary awards in favor of the Heirs of Celedonio Jaquilmo shall earn 6% interest *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.[28]

In his Petition for Review on Certiorari,[29] petitioner maintains that his guilt was not proven beyond reasonable doubt because the prosecution failed to prove all the elements of the crime charged. He insists that none of the prosecution witnesses testified to seeing the jeepney he was driving actually run over the victim and that their testimonies are circumstantial at best.[30]

Petitioner also points out that SPO1 Amaranto's testimony—that the bloodstain was in the middle of the road—further supports his assertions of innocence, since the jeepney he was driving was traversing the right lane of the road going to Legaspi. Hence, if he did hit the victim, the bloodstain should have been on the right lane as well.[31]

Petitioner then emphasizes that Mirandilla corroborated his testimony that Jaquilmo was already lying on the ground when the jeepney traversed the bridge.[32]

In its Comment,[33] respondent People of the Philippines asserts that the Court of Appeals did not err in affirming petitioner's conviction for reckless imprudence resulting in homicide.[34] Respondent opines that petitioner's reckless and negligent act of talking to a passenger while driving his jeepney was the proximate cause of Jaquilmo's death, as petitioner failed to

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[28] Id. at 39.

[29] Id. at 11-25.

[30] Id. at 19-20.

[31] Id. at 21.

[32] Id. at 21-22.

[33] Id. at 104-119.

[34] Id. at 106-107.

pay attention to the road which led to him hitting and running over Jaquilmo.[35]

In his Reply,[36] petitioner reiterates that respondent failed to prove that his negligence led to Jaquilmo's death and that it only managed to prove that he was driving a jeepney. He underscores that the prosecution witnesses failed to testify that they saw the jeepney hit the victim. Further, Mirandilla, a disinterested witness, confirmed that Jaquilmo was already lying prostrate on the ground even before the jeepney passed the bridge.[37]

The sole issue for this Court's resolution is whether or not the Court of Appeals erred in upholding petitioner's guilt for the crime of reckless imprudence resulting to homicide.

Review of appeals filed before the Court is "not a matter of right, but of sound judicial discretion[.]"[38] Only questions of law may be raised in a Rule 45 petition[39] as this Court is not a trier of facts, and factual findings are "final, binding, or conclusive on the parties and upon this court when supported by substantial evidence."[40] However, exceptions to the general rule exist and the Court may pass upon the findings of fact of the lower courts in the following instances:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures (Joaquin v. Navarro, 93 Phil. 257 [1953]); (2) When the inference made is manifestly mistaken, absurd or impossible (Luna v. Linatok, 74 Phil. 15 [1942]); (3) Where there is a grave abuse of discretion (Buyco v. People, 95 Phil. 453 [1955]); (4) When the judgment is based on a misapprehension of

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[35] Id. at 113-114.

[36] Id. at 134-139.

[37] Id. at 135.

[38] RULES OF COURT, Rule 45, Sec. 6.

[39] RULES OF COURT, Rule 45, Sec. 1.

[40] *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per *J.* Leonen, Second Division].

facts (Cruz v. Sosing, L-4875, Nov. 27, 1953); (5) When the findings of fact are conflicting (Casica v. Villaseca, L-9590 Ap. 30, 1957; unrep.); (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 (Evangelista v. Alto Surety and Insurance Co., 103 Phil. 401 [1958]); (7) The findings of the Court of Appeals are contrary to those of the trial court (Garcia v. Court of Appeals, 33 SCRA 622 [1970]; Sacay v. Sandiganbayan, 142 SCRA 593 [1986]); (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) 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 (Salazar v. Gutierrez, 33 SCRA 242 [1970]).[41]

A careful review of the records convinces this Court that an exception to the general rule exists in this case, particularly the first exception, or "[w]hen the conclusion is a finding grounded entirely on speculation, surmises or conjectures."

As punished in Article 365 of the Revised Penal Code, reckless imprudence:

[C]onsists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.[42]

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

[42] REV. PEN. CODE, Art. 365 provides:

ARTICLE 365. Imprudence and Negligence. — Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of *arresto mayor* in its maximum period to *prisión correccional* in its medium period; if it would have constituted a less grave felony, the penalty of *arresto mayor* in its minimum and medium periods shall be imposed.

Any person who, by simple imprudence or negligence, shall commit an act which would otherwise constitute a grave felony, shall suffer the penalty

Furthermore, it has the following elements:

(1) that the offender does or fails to do an act; (2) that the doing or the failure to do that act is voluntary; (3) that it be without malice; (4) that material damage results from the reckless imprudence; and (5) that there is inexcusable lack of precaution on the part of the offender, taking into consideration his employment or occupation, degree of intelligence, physical condition, and other circumstances regarding persons, time and place.[43] (Citation omitted)

Gonzaga v. People[44] states that to establish a motorist's liability for negligence, the prosecution must show the "direct causal

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of *arresto mayor* in its medium and maximum periods; if it would have constituted a less serious felony, the penalty of *arresto mayor* in its minimum period shall be imposed.

When the execution of the act covered by this article shall have only resulted in damage to the property of another, the offender shall be punished by a fine ranging from an amount equal to the value of said damages to three times such value, but which shall in no case be less than 25 pesos.

A fine not exceeding 200 pesos and censure shall be imposed upon any person who, by simple imprudence or negligence, shall cause some wrong which, if done maliciously, would have constituted a light felony.

In the imposition of these penalties, the court shall exercise their sound discretion, without regard to the rules prescribed in article 62.

The provisions contained in this article shall not be applicable:

1. When the penalty provided for the offense is equal to or lower than those provided in the first two paragraphs of this article, in which case the court shall impose the penalty next lower in degree than that which should be imposed, in the period which they may deem proper to apply.
2. When, by imprudence or negligence and with violation of the Automobile Law, the death of a person shall be caused, in which case the defendant shall be punished by *prisión correccional* in its medium and maximum periods.

Reckless imprudence consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.

Simple imprudence consists in the lack of precaution displayed in those cases in which the damage impending to be caused is not immediate nor the danger clearly manifest.

[43] *Cabugao v. People*, 740 Phil. 9, 21-22 (2014) [Per J. Peralta, Third Division].

[44] 751 Phil. 218 (2015) [Per J. Perlas-Bernabe, First Division].

connection between such negligence and the injuries or damages complained of."[45] *Gonzaga* then stressed that mere negligence in driving a vehicle is not enough to constitute reckless driving. Rather, it must be shown that the motorist acted willfully and wantonly, in utter disregard of the consequence of his or her action as it is the "inexcusable lack of precaution or conscious indifference to the consequences of the conduct which supplies the criminal intent and brings an act of mere negligence and imprudence under the operation of the penal law[.]"[46]

Here, both the Regional Trial Court and the Court of Appeals found petitioner liable for reckless imprudence resulting to homicide, even if the prosecution failed to present substantial testimony of petitioner's negligent or imprudent act, which led to Jaquilmo's death.

Two (2) prosecution witnesses testified that they heard a thud, felt the jeepney tilt, and saw a man lying flat on the ground; thus, they concluded that the jeepney petitioner was driving hit the man. Another prosecution witness testified to hearing a loud thud and then hearing some passengers inside a jeepney shout that someone got hit. The same witness also testified that he saw a man lying on the ground near the jeepney.[47]

No one testified as to the manner by which petitioner was driving before he supposedly hit Jaquilmo, or of personally witnessing the jeepney hit Jaquilmo.

The Regional Trial Court surmised that because of the early hour, petitioner was probably not yet fully alert when he drove the jeepney; thus, he failed to notice Jaquilmo cross the street:

> Recall that the time and place of the accident was at 4:30 A.M. at the bridge near DILG; *at this time of the day it was still dark and the accused in all probability had just woken up from a night's sleep, thus, was not yet fully alert and a hundred percent ready and able to begin a day's work as a driver of a passenger jeepney*. The very

[45] Id. at 227.

[46] Id. at 228.

[47] *Rollo*, p. 31.

early time of the day likewise presupposes that the streets are not yet occupied by a number of vehicles. Hence, the accused as a driver of a passenger jeep in the light of the circumstances obtaining with regards to the time, place and his physical condition should have employed extraordinary care and diligence in operating the passenger jeepney that he was driving. Yet at the time of the accident and per testimonies of Reymer T. Añonuevo and Richard Nicerio, these two (2) passengers of the jeepney had to tell and remind the accused at that time that he had in fact bumped and hit a person when the jeepney shook and thudded after the accident leading this Court to conclude that the accused as driver of the jeepney did not in fact see the victim — Celedonio Jaquilmo — who was either walking or crossing the street at the very moment of the impact when the jeepney hit and ran over the victim. *In other words, the driver was not paying full attention to the front of his vehicle if there was a person walking or crossing the street that early morning of November 25, 2011.*[48] (Emphasis supplied)

The Court of Appeals likewise concluded that petitioner must have been driving "at a high speed"[49] because prosecution witnesses felt the jeepney tilt and thud before they spotted the victim lying on the road:

Negligence was likewise shown by [Valencia's] failure to pay full attention to the road while driving. As aptly observed by the RTC, Reymer and Richard had to tell and remind [Valencia] that he had in fact hit a person when the jeepney shook and there was a thudding sound. This leads to no other conclusion than that [Valencia] did not in fact see [Jaquilmo] who was either walking or crossing the street at the very moment of the impact. Had [Valencia] exercised due diligence, he could have easily spotted the victim from afar and then slacken his speed considering that the Sagumayon bridge was well-lighted and it was already daybreak. *The fact that the jeepney shook and slightly tilted as it hit the victim show [sic] that [Valencia] was driving at a high speed and not exercising due care under the existing circumstances and conditions at the time.*[50] (Emphasis supplied)

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[48] Id. at 75.

[49] Id. at 36.

[50] Id.

The prosecution was able to prove that Jaquilmo died on the bridge, but it failed to prove beyond reasonable doubt that petitioner's imprudence in driving the jeepney was the proximate cause of his death.

Conviction in a criminal case requires proof beyond reasonable doubt or moral certainty. Rule 133, Section 2 of the Revised Rules on Evidence defines moral certainty as "that degree of proof which produces conviction in an unprejudiced mind."

The quantum of proof demanded in criminal cases has constitutional basis as an accused enjoys the presumption of innocence; thus, the prosecution holds the immense responsibility of establishing the accused's guilt beyond reasonable doubt. *People v. Ganguso*[51] expounds:

> An accused has in his favor the presumption of innocence which the Bill of Rights guarantees. Unless his guilt is shown beyond reasonable doubt, he must be acquitted. This reasonable doubt standard is demanded by the due process clause of the Constitution which protects the accused from conviction except upon proof beyond reasonable doubt of every fact necessary to constitute the crime with which he is charged. The burden of proof is on the prosecution, and unless it discharges that burden the accused need not even offer evidence in his behalf, and he would be entitled to an acquittal. Proof beyond reasonable doubt does not, of course, mean such degree of proof as excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. The conscience must be satisfied that the accused is responsible for the offense charged.[52] (Citations omitted)

Here, the prosecution failed to prove beyond reasonable doubt that petitioner's inexcusable lack of precaution in driving the jeepney was the proximate cause of Jaquilmo's death. In fact, the lower courts had diverging opinions on petitioner's imprudent act, with the Regional Trial Court stating that petitioner was probably sleepy when he drove the jeepney, and the Court of

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[51] 320 Phil. 324 (1995) [Per *J.* Davide, Jr., First Division].

[52] Id. at 335.

Appeals concluding that petitioner was driving the jeepney too fast.

With the prosecution's failure to prove all the elements of reckless imprudence resulting to homicide beyond reasonable doubt, and an eyewitness testimony corroborating petitioner's assertion that he did not run over Jaquilmo, petitioner must consequently be acquitted of the charge against him.

WHEREFORE, the Petition is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. CR No. 37847 is **REVERSED** and **SET ASIDE**. Petitioner Reynaldo V. Valencia is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. If detained, he is ordered immediately **RELEASED**, unless he is confined for any other lawful cause. Any amount paid by way of a bailbond is ordered **RETURNED**. Let entry of judgment be issued immediately.

SO ORDERED.

Hernando, Delos Santos, and *Rosario, JJ.*, concur.

Inting, J., on official leave.

SECOND DIVISION

[G.R. No. 244295. November 9, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **LEO ILAGAN *y* GARCIA @ "LEO,"** *Accused-Appellant*.

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS; A PRE-OPERATION REPORT PREPARED BEFORE THE ACTUAL BUY-BUST OPERATION CONTAINING THE NAME OF THE ACCUSED NEGATES THE CLAIM OF MISTAKEN IDENTITY.— Accused-appellant claims that there was no actual sale of drugs as the alleged buy-bust operation did not transpire. It was his main defense that he was mistakenly identified as "Gerard," the person who was the target of the buy-bust team. This Court is not convinced. The record shows that the name of accused-appellant was duly reflected as "@Leo Ilagan and cohorts" in the Pre-Operation Report of the Calamba City Police Station and the Certificate of Coordination issued by the PDEA. As pointed out by the trial court, these documents were prepared before the actual buy-bust operation and both contained the name of the accused-appellant. Sure enough, this circumstance negates accused-appellant's contention of mistaken identity.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE SUBSTANCE RECOVERED FROM AN ACCUSED MUST BE THE SAME SUBSTANCE OFFERED IN COURT; LINKS IN THE CHAIN OF CUSTODY.— As regards the *corpus delicti* in Illegal Sale and Possession of Dangerous Drugs, the fact of existence of the contraband itself is vital to a judgment of conviction. Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court. Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking, if practicable, of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover

of the specimen to the forensic chemist for examination; and (4) the submission of the item by the forensic chemist to the court. Here, the records reveal a broken chain of custody.

3. ID.; ID.; ID.; ID.; REQUIRED WITNESSES; THE ABSENCE OF THE INSULATING WITNESSES IN THE CONDUCT OF THE INVENTORY AND PHOTOGRAPH OF THE SEIZED DRUGS WITHOUT SUFFICIENT EXPLANATION CREATES A HUGE GAP IN THE CHAIN OF CUSTODY, CASTING DOUBT ON THE INTEGRITY OF THE CONFISCATED ITEMS.— [T]he absence of a representative of the National Prosecution Service (NPS) or the media as an insulating witness to the inventory and photograph of the seized item puts serious doubt as to the integrity of the first link. We emphasized that the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs. . . .

. . .

Here, the first link that involves the marking and inventory of the seized items already displays infirmities. The heat-sealed plastic sachet containing the *shabu* subject of the buy-bust was marked by PO1 Malate only in front of Councilor Hinggan. Also, the pictures taken during the physical inventory and the *Receipt/Inventory for Property Seized* showed that only one witness was present — Councilor Hinggan. The police officers did not give a sufficient explanation for their failure to summon a media representative or one from the NPS at the place of arrest. Instead, the prosecution simply claimed that the media representative went straight to the police station. However, there is no showing that a media representative indeed arrived at the police station, not even at that time when the accused-appellant was already brought there for investigation and booking procedures. This is an utter disregard of the required procedure laid down in Section 21, Article II of RA No. 9165 which created a huge gap in the chain of custody.

4. ID.; ID.; ID.; ID.; THE ABSENCE OF PROOF OF TRANSFER OF THE SEIZED DRUG FROM THE CUSTODY OF THE APPREHENDING OFFICER TO THE INVESTIGATING OFFICER FOR DOCUMENTATION AND TO THE FORENSIC CHEMIST FOR EXAMINATION INDICATES GAPS IN THE CHAIN OF CUSTODY. The records likewise indicate gaps on the other links.

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. This is necessary in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for developing the criminal case. To be able to do so, the investigating officer must have possession of the illegal drugs for the preparation of the required documents. In this case, the investigator or Officer on Case is PO3 Ernesto Reyes (PO3 Reyes) as shown in these documents: the *Salaysay* of PO1 Malate, the Request for Laboratory Examination and Request for Drug Test. However, a perusal of the Chain of Custody Form shows that PO3 Reyes' name and signature are not reflected therein. This means that that seized items were not transferred to the investigating officer. It behooves this Court to now question how PO3 Reyes could have properly performed his investigation without having the *corpus delicti* on hand. The second link is missing, and this certainly casts doubts on the integrity of the seized items.

The same is true with the third link which involves the delivery by the investigating officer of the illegal drug to the forensic chemist, who will then test and verify the nature of the substance. Going over the Chain of Custody Form, one would notice that there are only two entries — one indicates the name of the arresting officer PO1 Malate and the other pertains to the Duty Desk Officer of the Crime Laboratory, PO3 Legaspi. Notably, there is no information on how PO3 Legaspi handled the seized items and when these items were transferred to the custody of the forensic chemist.

5. ID.; ID.; ID.; ID.; DISPENSATION OF THE FORENSIC CHEMIST'S TESTIMONY; THE STIPULATIONS IN LIEU OF THE FORENSIC CHEMIST'S TESTIMONY MUST STATE THE PRECAUTIONS TAKEN IN THE SAFEKEEPING OF THE DRUGS SEIZED TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE THEREOF.— With regard to the fourth link, the Court observed that after marking the *Chemistry Report No. D-072-17* submitted by the Forensic Chemist, Police Chief Inspector Donna Villa P. Huelgas (Forensic Chemist Huelgas), the prosecution opted to dispense with her testimony. . . .

. . .

In *People v. Cabuhay*, the Court stressed that in case the parties agreed to dispense with testimony of the forensic chemist, the stipulation on what the latter would have testified should include that he/she had taken the precautionary steps required to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he/she released it after examination of the content; and (3) that he/she placed his/her own marking on the same to ensure that it could not be tampered with pending trial. Unfortunately, the stipulations made in lieu of the testimony of Forensic Chemist Huelgas failed to state the precautions taken in safekeeping the seized drugs; hence, did not produce the desired result in the matter pertaining to the last link in the chain of custody.

6. ID.; ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES IS DESTROYED WHEN THE PERFORMANCE OF DUTY IS TAINTED WITH IRREGULARITIES.— [I]t must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent, and it cannot by itself constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable, and cannot be regarded as binding truth. Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.

7. ID.; ID.; ID.; ID.; THE PROSECUTION'S FAILURE TO PROVE AN UNBROKEN CHAIN OF CUSTODY WARRANTS THE ACQUITTAL OF AN ACCUSED FOR VIOLATION OF R.A. NO. 9165.— We reiterate that the provisions of Section 21, Article II of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. This Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, accused-appellant must be acquitted of the charges against him given the prosecution's failure to prove an unbroken chain of custody.

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

LOPEZ, *J.*:

Assailed in this appeal is the *Decision*[1] dated August 28, 2018 of the Court of Appeals (CA) in *CA-G.R. CR HC No. 09790*, which affirmed the Regional Trial Court's (RTC) *Judgment*,[2] convicting accused-appellant Leo Ilagan *y* Garcia (accused-appellant) of violation of Sections 5[3] and 11,[4] Article II of Republic Act (RA) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

ANTECEDENTS

Based on an information received from a confidential agent, the Intelligence Section of the Calamba City Police Station planned a buy-bust operation against accused-appellant, who is allegedly involved in the sale of drugs. On January 14, 2017, upon coordination with the Philippine Drug Enforcement Agency (PDEA) Calabarzon, the buy-bust team went to the residential apartment of the accused-appellant in Barangay (Brgy.) Lawa, Calamba City. The designated *poseur-buyer*, PO1 Julian B. Malate III (PO1 Malate), boarded a motorcycle with the informant, while the rest of the team trailed behind in a gray Mitsubishi Lancer. Once there, the informant knocked at the door. Accused-appellant peeked to ask PO1 Malate how much will he buy. PO1 Malate replied ₱500.00 only, while handing over the amount of ₱500.00. Accused-appellant reached into his right pocket to get a small plastic sachet containing the suspected *shabu* (methamphetamine hydrochloride), which he

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[1] CA *rollo*, pp. 112-124; penned by Associate Justice Edwin D. Sorongon, with the concurrence of Associate Justices Sesinando E. Villon and Marie Christine Azcarraga-Jacob.

[2] Records, Vol. 2, pp. 51-66; penned by Presiding Judge Caesar C. Buenagua.

[3] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.*

[4] SEC. 11. *Possession of Dangerous Drugs*.

gave to PO1 Malate. Thereafter, PO1 Malate placed the plastic sachet in his left pocket and immediately informed accused-appellant that he is a police officer. Just then, the other members of the buy-bust team, who were positioned about seven meters away from the gate of the house, rushed into the scene, together with Brgy. Councilor Teodora Hinggan (Councilor Hinggan). There was no media representative present as the latter allegedly went straight to the police station. PO1 Malate apprised accused-appellant of his rights under the Miranda doctrine. PO1 Malate took out the plastic sachet containing the suspected *shabu* from his left pocket and marked it "PNP-BB-1-14-17" in the presence of Councilor Hinggan.

PO1 Malate also conducted a preventive search on the person of accused-appellant, and he was able to recover the ₱500.00-marked money and another heat-sealed plastic sachet which he marked as LI-1. Likewise recovered on accused-appellant's bed were two (2) aluminum strips, an improvised tooter, and a disposable lighter, marked as LI-2 to LI-4. The items were seized, and photographs were taken during the physical inventory conducted by PO1 Malate in the presence of accused-appellant and the brgy. official. After giving a copy of the inventory to accused-appellant and the brgy. official, the seized items were placed by PO1 Malate in a plastic evidence bag with zip lock, before keeping the same in his empty handbag. The team first brought accused-appellant to Jose P. (JP) Rizal Hospital for a medical examination before proceeding to the police station. Upon arrival at the police station, the investigator prepared a request for drug testing and laboratory examination. The seized items were then brought by PO1 Malate to the Regional Crime Laboratory and these were received by the officer on duty, PO3 Randy Legaspi (PO3 Legaspi).[5]

After the qualitative examination, the two heat-sealed plastic sachets containing white crystalline substance gave positive results for the presence of *shabu*, a dangerous drug.[6] Accused-

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[5] Records, Vol. 1, pp. 5-7; Salaysay dated January 16, 2017.

[6] *Id.* at 8, Chemistry Report No. D-072-17.

appellant was then indicted for Illegal Sale and Illegal Possession of Dangerous Drugs in two (2) Informations, filed before the RTC, Branch 37 of Calamba City, Laguna:

[*Crim. Case No. 28711-17-C*]

That on January 14, 2017, in the City of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there, willfully, unlawfully and feloniously sell to a poseur buyer a quantity of methamphetamine hydrochloride, otherwise known as shabu, a dangerous drug, having a total weight of 0.05 gram/s, in violation of the aforementioned law.

CONTRARY TO LAW.[7]

[*Crim. Case No. 28712-17-C*]

That on January 14, 2017, in the City of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there, willfully, unlawfully and feloniously possess one (1) plastic sachet of methamphetamine hydrochloride, otherwise known as shabu, a dangerous drug, having a total weight of 0.12 gram/s, in violation of the aforementioned law.

CONTRARY TO LAW.[8]

Accused-appellant denied the charges, and claimed that he was just mistaken for another person. On January 14, 2017, accused-appellant was outside his house cleaning his motorcycle. He was surprised when several men wearing civilian clothes arrived on board five motorcycles. As he stood up, two of the men held his arms and brought him inside his house. After he was made to go on the ground in prone position, a man asked him: "*Ano Gerard, saan mo tinatago ang shabu mo*." At that point, he told the men that his name is not Gerard and showed them his identification (IDs) while begging. One of the men told him to just point to another person in exchange for his

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[7] *Id.* at 1 *(Crim. Case No. 28711-17-C).*

[8] Records, Vol. 2, p. 1 *(Crim. Case No. 28712-17-C).*

freedom. Accused-appellant then saw PO1 Malate arrive wearing a police uniform and heard him say: "*sige, tuluyan na yan tumawag ng barangay*." Accused-appellant was asked to sit on a chair and he saw that there was a crumpled aluminum foil, plastic, and a lighter. After that, he was brought to JP Rizal hospital and then to the police station. Accused-appellant stressed that he did not sell illegal drugs to PO1 Malate and insisted that he only learned of the charges against him when he was already detained.[9]

After trial, the RTC issued the *Judgment* dated August 16, 2017,[10] finding accused-appellant guilty of the offenses of Illegal Sale and Possession of Dangerous Drugs:

> **IN VIEW OF THE FOREGOING**, in Criminal Case No. 28711-2017-C (City), the Court finds accused, **LEO ILAGAN *y* GARCIA @ LEO, GUILTY BEYOND REASONABLE DOUBT** of violation of Section 5, Article II of Republic Act No. 9165. He is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT and to PAY A FINE OF FIVE HUNDRED THOUSAND (Php500,000.) PESOS**.
>
> In Criminal Case No. 28712-2017-C (City), the Court finds accused, **LEO ILAGAN y GARCIA @ LEO, GUILTY BEYOND REASONABLE DOUBT** of violation of Section 11, paragraph 2 (3), Article II, Republic Act No. 9165. He is hereby sentenced to suffer the indeterminate penalty of imprisonment of **TWELVE (12) YEARS AND ONE (1) DAY, as minimum, to FOURTEEN (14) YEARS, as maximum, and to PAY A FINE OF THREE HUNDRED THOUSAND (PhP300,000.00) PESOS**.
>
> The Branch Clerk of Court is hereby ordered to turn-over to the PDEA the methamphetamine hydrochloride (shabu) and paraphernalia submitted in evidence for these cases.
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> **SO ORDERED**.[11]

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[9] TSN, July 27, 2017, p. 7.

[10] Records, Vol. 2, pp. 51-66.

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

The CA affirmed the trial court's ruling.[12] Hence, this appeal. Accused-appellant asserts his innocence, claiming that he was mistaken by the police officers for his neighbor "Gerard." He maintains that the prosecution failed to prove the elements of the offenses charged. He also invites the Court's attention to the irregularities in the marking and inventory of the dangerous drugs allegedly recovered from him. These irregularities affect the integrity of the *corpus delicti*, and result in a broken chain of custody of the seized items.[13]

RULING

We acquit.

Accused-appellant claims that there was no actual sale of drugs as the alleged buy-bust operation did not transpire. It was his main defense that he was mistakenly identified as "Gerard," the person who was the target of the buy-bust team. This Court is not convinced. The record shows that the name of accused-appellant was duly reflected as "@Leo Ilagan and cohorts" in the Pre-Operation Report[14] of the Calamba City Police Station and the Certificate of Coordination[15] issued by the PDEA. As pointed out by the trial court, these documents were prepared before the actual buy-bust operation and both contained the name of the accused-appellant.[16] Sure enough, this circumstance negates accused-appellant's contention of mistaken identity.

As regards the *corpus delicti* in Illegal Sale and Possession of Dangerous Drugs, the fact of existence of the contraband itself is vital to a judgment of conviction.[17] Thus, it is essential to ensure that the substance recovered from the accused is the

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[12] CA *rollo*, pp. 112-124.

[13] *Id.* at 32-56.

[14] Records, Vol. 1, p. 13.

[15] *Id.* at 14.

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

[17] *People v. Partoza*, 605 Phil. 883, 891 (2009).

same substance offered in court.[18] Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking, if practicable, of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and (4) the submission of the item by the forensic chemist to the court.[19] Here, the records reveal a broken chain of custody.

Foremost, the absence of a representative of the National Prosecution Service (NPS) or the media as an insulating witness to the inventory and photograph of the seized item[20] puts serious doubt as to the integrity of the first link. We emphasized that the presence of the insulating witnesses is the first requirement to ensure the preservation of the identity and evidentiary value of the seized drugs.[21] In *People v. Lim*,[22] we explained that in

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[18] *People v. Ismael*, 806 Phil. 21, 30-31 (2017).

[19] *People v. Bugtong*, 826 Phil. 628, 638-639 (2018).

[20] The offenses were allegedly committed on January 14, 2017. Hence, the applicable law is RA No. 9165, as amended by RA No. 10640, which mandated that: "The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items."

[21] *People v. Flores*, G.R. No. 241261, July 29, 2019; *People v. Rodriguez*, G.R. No. 233535, July 1, 2019; and *People v. Maralit*, G.R. No. 232381, August 1, 2018.

[22] G.R. No. 231989, September 4, 2018.

case the presence of any or all the insulating witnesses was not obtained, the prosecution must allege and prove not only the reasons for their absence, but also the earnest efforts made to secure their attendance, thus:

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 [Article II] of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.[23] (Emphasis, underscoring, and italics in the original.)

Later, in *People v. Caray*,[24] we ruled that the *corpus delicti* cannot be deemed preserved absent any acceptable explanation for the deviation from the procedural requirements of the chain of custody rule under Section 21, Article II of RA No. 9165. Similarly, in *Matabilas v. People*,[25] sheer statements of

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[23] *Id.*

[24] G.R. No. 245391, September 11, 2019.

[25] G.R. No. 243615, November 11, 2019.

unavailability of the insulating witnesses, without actual serious attempt to contact them, cannot justify non-compliance.

Here, the first link that involves the marking and inventory of the seized items already displays infirmities. The heat-sealed plastic sachet containing the *shabu* subject of the buy-bust was marked by PO1 Malate only in front of Councilor Hinggan.[26] Also, the pictures[27] taken during the physical inventory and the *Receipt/Inventory for Property Seized*[28] showed that only one witness was present — Councilor Hinggan. The police officers did not give a sufficient explanation for their failure to summon a media representative or one from the NPS at the place of arrest. Instead, the prosecution simply claimed that the media representative went straight to the police station.[29] However, there is no showing that a media representative indeed arrived at the police station, not even at that time when the accused-appellant was already brought there for investigation and booking procedures. This is an utter disregard of the required procedure laid down in Section 21, Article II of RA No. 9165 which created a huge gap in the chain of custody. The records likewise indicate gaps on the other links.

The second link in the chain of custody is the transfer of the seized drugs by the apprehending officer to the investigating officer. This is necessary in the chain of custody because it will be the investigating officer who shall conduct the proper investigation and prepare the necessary documents for developing the criminal case. To be able to do so, the investigating officer must have possession of the illegal drugs for the preparation of the required documents.[30] In this case, the investigator or Officer on Case is PO3 Ernesto Reyes (PO3 Reyes) as shown in these documents: the *Salaysay* of PO1 Malate,[31] the Request

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[26] *Supra* note 5.

[27] Records, Vol. 1, pp. 19-20.

[28] *Id.* at 15.

[29] *Supra* note 5.

[30] *People v. Amorin* (Notice), G.R. No. 224884, December 10, 2019.

[31] *Supra* note 5.

for Laboratory Examination[32] and Request for Drug Test.[33] However, a perusal of the Chain of Custody Form[34] shows that PO3 Reyes' name and signature are not reflected therein. This means that that seized items were not transferred to the investigating officer. It behooves this Court to now question how PO3 Reyes could have properly performed his investigation without having the *corpus delicti* on hand. The second link is missing, and this certainly casts doubts on the integrity of the seized items.[35]

The same is true with the third link which involves the delivery by the investigating officer of the illegal drug to the forensic chemist, who will then test and verify the nature of the substance.[36] Going over the Chain of Custody Form, one would notice that there are only two entries — one indicates the name of the arresting officer PO1 Malate and the other pertains to the Duty Desk Officer of the Crime Laboratory, PO3 Legaspi. Notably, there is no information on how PO3 Legaspi handled the seized items and when these items were transferred to the custody of the forensic chemist.

With regard to the fourth link, the Court observed that after marking the *Chemistry Report No. D-072-17*[37] submitted by the Forensic Chemist, Police Chief Inspector Donna Villa P. Huelgas (Forensic Chemist Huelgas), the prosecution opted to dispense with her testimony. The following stipulations and admissions were entered into by the parties:

1. The qualification of the Forensic Chemist Donna Villa P. Huelgas as an expert witness.

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[32] *Id.* at 10.

[33] *Id.* at 9.

[34] *Id.* at 11.

[35] *People v. Amorin* (Notice), *supra*.

[36] *People v. Del Rosario*, G.R. No. 235658, June 22, 2020.

[37] Records, Vol. 1, p. 8.

2. The existence and due execution of the letter request dated 26 September 2015 with the subject specimen(s) enclosed thereto which was/were delivered and received by the crime laboratory.

3. That said Letter-Request for laboratory examination was duly received by the Regional Crime Laboratory Office.

4. That attached to the said request are two (2) pieces of small heat-sealed plastic sachets containing white crystalline substance marked as "PNP-BB" 1-14-17 and "LI-1[,"] two (2) pieces of aluminum foil strips marked as "LI-2" and "LI-3" and one (1) piece aluminum foil strip (improvised tooter) marked as "LI-4[."]

5. That pursuant to the said letter request, Forensic Chemist Donna Villa P. Huelgas conducted a qualitative examination of the specimen(s) enclosed in the said letter and that the result of the examination was reduced into writing in Chemistry Report No. D-072-17.

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[6.] The existence and due execution of Chemistry Report No. D-072-17.

[7.] The Forensic Chemist has no personal knowledge from whom the specimen subject of her examination was taken/seized.

[8.] That the specimen examined by the Forensic Chemist were the same specimen transmitted to the prosecution which was marked as Exhibits "D", "D-1", "D-2", "D-3", "D-4" and "D-5".[38]

In *People v. Cabuhay*,[39] the Court stressed that in case the parties agreed to dispense with testimony of the forensic chemist, the stipulation on what the latter would have testified should include that he/she had taken the precautionary steps required to preserve the integrity and evidentiary value of the seized item, thus: (1) that the forensic chemist received the seized article as marked, properly sealed, and intact; (2) that he/she resealed it after examination of the content; and (3) that he/she placed his/her own marking on the same to ensure that it could

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[38] *Id.* at 40-41; Order dated June 23, 2017.

[39] G.R. No. 225590, July 23, 2018, 873 SCRA 189.

not be tampered with pending trial.[40] Unfortunately, the stipulations made in lieu of the testimony of Forensic Chemist Huelgas failed to state the precautions taken in safekeeping the seized drugs; hence, did not produce the desired result in the matter pertaining to the last link in the chain of custody. The ruling in *People v. Dahil*[41] is instructive:

> The last link involves the submission of the seized drugs by the forensic chemist to the court when presented as evidence in the criminal case. No testimonial or documentary evidence was given whatsoever as to how the drugs were kept while in the custody of the forensic chemist until it was transferred to the court. **The forensic chemist should have personally testified on the safekeeping of the drugs [,] but the parties resorted to a general stipulation of her testimony**. Although several subpoenae[s] were sent to the forensic chemist, only a brown envelope containing the seized drugs arrived in court. Sadly, instead of focusing on the essential links in the chain of custody, the prosecutor propounded questions concerning the location of the misplaced marked money, which was not even indispensable in the criminal case.
>
> The case of *People v. Gutierrez* also had inadequate stipulations as to the testimony of the forensic chemist. No explanation was given regarding the custody of the seized drug in the interim — from the time it was turned over to the investigator up to its turnover for laboratory examination. The records of the said case did not show what happened to the allegedly seized shabu between the turnover by the investigator to the chemist and its presentation in court. Thus, since there was **no showing that precautions were taken to ensure that there was no change in the condition of that object and no opportunity for someone not in the chain to have possession thereof, the accused therein was likewise acquitted**.[42] (Emphasis supplied.)

Lastly, it must be stressed that while the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent, and it cannot by itself

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[40] *Id.* at 204-205, citing *People v. Pajarin*, 654 Phil. 461, 466 (2011).

[41] 750 Phil. 212 (2015).

[42] *Id.* at 238, citing *People v. Gutierrez*, 614 Phil. 285 (2009).

constitute proof of guilt beyond reasonable doubt. The presumption of regularity is disputable, and cannot be regarded as binding truth.[43] Indeed, when the performance of duty is tainted with irregularities, such presumption is effectively destroyed.[44]

We reiterate that the provisions of Section 21, Article II of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. This Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, accused-appellant must be acquitted of the charges against him given the prosecution's failure to prove an unbroken chain of custody.

FOR THESE REASONS, the appeal is **GRANTED**. The *Decision* dated August 28, 2018 of the Court of Appeals in *CA-G.R. CR HC No. 09790*, affirming the conviction of accused-appellant Leo Ilagan *y* Garcia of violation of Sections 5 and 11, Article II of Republic Act No. 9165 is **REVERSED** and **SET ASIDE**. Accused-appellant Leo Ilagan *y* Garcia is **ACQUITTED** of the offenses charged, and is ordered immediately **RELEASED** from custody unless he is being held for some other lawful cause.

Let a copy of this Resolution be furnished to the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation. The Director is directed to report to this Court the action taken within five days from receipt of this Resolution.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Gesmundo, Lazaro-Javier, and *Rosario,*[*] *JJ.*, concur.

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[43] *Mallillin v. People*, 576 Phil. 576, 593 (2008); and *People v. Cañete*, 433 Phil. 781, 794 (2002).

[44] *People v. Dela Cruz*, 589 Phil. 259, 272 (2008).

[*] Designated as additional member per Special Order No. 2797 dated November 5, 2020.

SECOND DIVISION

[G.R. No. 248929. November 9, 2020]

PEOPLE OF THE PHILIPPINES, *Plaintiff-Appellee*, *v.* **PAULINO DELOS SANTOS, JR.** ***ALIAS*** **"SKYLAB,"** *Accused-Appellant.*

SYLLABUS

1. CRIMINAL LAW; PARRICIDE; ELEMENTS THEREOF; REMEDIAL LAW; EVIDENCE; ADMISSIONS; IN PARRICIDE, THE BIRTH CERTIFICATE OF EITHER THE ACCUSED OR THE VICTIM NEED NOT BE PRESENTED WHEN THE ACCUSED HAS ADMITTED HIS OR HER FILIATION TO THE VICTIM.— Article 246 of the Revised Penal Code defines and penalizes parricide . . . .

Parricide is committed when (1) a person is killed; (2) the accused is the killer; and (3) the deceased is either the legitimate spouse of the accused, or any legitimate or illegitimate parent, child, ascendant or descendant of the accused.

The presence of the third element here is undisputed. Appellant himself admitted and declared under oath that the deceased Paulino, Sr. is his father. He also stipulated this fact during the pre-trial.

That appellant's certificate of live birth was not presented in evidence does not negate his culpability. For oral evidence of the fact of his filial relationship with the victim may be considered. In ***People v. Ayuman***, the accused admitted during the trial that the victim was his son. Although the victim's birth certificate was not presented, the Court considered as competent evidence the accused's admission of his filiation to the victim and convicted him of parricide.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR DETAILS; THE CREDIBILITY OF A WITNESS IS NOT AFFECTED BY THE FAILURE TO TESTIFY ON MATTERS REFERRING TO MINOR DETAILS.— Michael narrated in detail the events that led to the killing of Paulino, Sr., from the time appellant arrived at the scene, drunk and

armed with a knife, up till appellant argued with his brother, warned his father not to interfere, challenged his father to a fight, pushed him, and stabbed him in the upper left chest, causing the latter to fall on the ground and die.

The fact that Michael did not specify which direction the fatal blow came from and the type of bladed weapon used by appellant in stabbing his father does not affect the credibility of this witness since these matters refer only to minor details. What matters is the consistency of the witness in testifying on the essential elements of the crime and his positive and categorical identification of the accused as the offender.

3. ID.; ID.; ID.; THE POSITIVE, CATEGORICAL, AND CREDIBLE TESTIMONY OF A LONE WITNESS IS SUFFICIENT TO SUPPORT A VERDICT OF CONVICTION.— Michael's lone testimony was found by the trial court to be positive, categorical, and credible, hence, it is sufficient to support a verdict of conviction. ***People v. Hillado*** decrees:

Thus, the testimony of a lone eyewitness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a straightforward manner. Witnesses are to be weighed, not numbered. Evidence is assessed in terms of quality and not quantity. **Therefore, it is not uncommon to reach a conclusion of guilt on the basis of the testimony of a lone witness.**

4. ID.; ID.; MOTIVE; MOTIVE IS IRRELEVANT WHEN THE ACCUSED HAS BEEN POSITIVELY IDENTIFIED BY AN EYEWITNESS.— As for appellant's motive to kill his father, Michael testified that on the night in question, appellant appeared to be intoxicated and got into a heated argument with his brother. As a consequence, their father stepped in and prodded appellant to leave. But appellant resented it and warned his father not to interfere. He also challenged his father to a fight. They were pushing each other when appellant suddenly stabbed his father in the chest, causing the latter to fall on the ground. Appellant, therefore, cannot truthfully claim he had no motive to kill his father. In any event, while proof of motive for the commission of the offense does not show guilt, neither does its absence establish the innocence of accused for the crime charged.

In ***People v. Ducabo***, this Court held that motive is irrelevant when the accused has been positively identified by an eyewitness, as in this case. Motive is not synonymous with intent. Motive alone is neither a proof nor an essential element of a crime.

. . . Michael was not shown to have been impelled by any ill will to falsely impute such heinous crime as parricide on appellant. His testimony, therefore, is worthy of belief and credence.

5. ID.; ID.; FLIGHT; FLIGHT MAY BE TAKEN AS EVIDENCE TO ESTABLISH GUILT.— Appellant's flight from the crime scene militates against his claim of innocence. On countless occasions, the Court has held that the flight of an accused may be taken as evidence to establish his guilt. For a truly innocent person would normally take the first available opportunity to defend himself and to assert his innocence.

6. ID.; ID.; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S EVALUATION OF THE CREDIBILITY OF WITNESSES AND THEIR TESTIMONIES IS ACCORDED WITH FINALITY ESPECIALLY WHEN THE SAME CARRY THE FULL CONCURRENCE OF THE COURT OF APPEALS.— Suffice it to state that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grueling examination. Hence, the Court defers and accords finality to the trial court's factual findings especially when the same carry the full concurrence of the Court of Appeals, as in this case.

7. ID.; ID.; DENIAL AND ALIBI; THE DEFENSES OF DENIAL AND ALIBI CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED.— Appellant's denial and alibi cannot prevail over the positive identification of appellant as the perpetrator of the crime. Besides, denial and alibi are self-serving and deserve no weight in law especially when unsubstantiated by any credible evidence, as in this case. At any rate, appellant's admission that he was only six (6) meters away from the crime scene even precludes the impossibility of him getting to the crime scene, committing the crime, and returning to his house thereafter.

8. CRIMINAL LAW; PARRICIDE; PENALTY; THE PHRASE "WITHOUT ELIGIBILITY FOR PAROLE" SHALL BE USED TO QUALIFY THE PENALTY OF *RECLUSION PERPETUA* ONLY IF THE ACCUSED SHOULD HAVE BEEN SENTENCED TO SUFFER THE DEATH PENALTY HAD IT NOT BEEN FOR REPUBLIC ACT NO. 9346.— We affirm appellant's conviction for parricide. The penalty for parricide is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance proven, both the trial court and the Court of Appeals correctly sentenced appellant to *reclusion perpetua.*

Pursuant to A.M. No. 15-08-02, the phrase "*without eligibility for parole*" shall be used to qualify the penalty of *reclusion perpetua* only if the accused should have been sentenced to suffer the death penalty had it not been for Republic Act No. 9346 (RA 9346). Here, appellant was sentenced to *reclusion perpetua* since there is no aggravating circumstance that would have otherwise warranted the imposition of the death penalty were it not for RA 9346. Hence, the phrase "*without eligibility for parole*" need not be borne in the decision to qualify appellant's sentence.

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

LAZARO-JAVIER, *J.*:

The Case

This appeal[1] assails the Decision[2] dated June 28, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08894 entitled

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[1] By Notice of Appeal dated July 16, 2018, *rollo*, pp. 15-16.

[2] Penned by now Supreme Court Associate Justice Henri Jean Paul B. Inting and concurred in by Associate Justices Stephen C. Cruz and Danton Q. Bueser, *id.* at 3-14.

People of the Philippines v. Paulino Delos Santos, Jr., Alias "Skylab" which affirmed the trial court's verdict of conviction against Paulino Delos Santos, Jr. alias "Skylab" (appellant) for parricide. Its dispositive portion reads:

> WHEREFORE, the instant appeal is DENIED.
>
> However, the Decision [dated] September 5, 2016 rendered by Branch 39 of the Regional Trial Court, Daet, Camarines Norte in Criminal Case No. 14834 is hereby MODIFIED in that accused-appellant is ordered to pay legal interest on the monetary awards granted in this case at the rate of six percent (6%) per *annum* from the finality of this Decision until full payment thereof.
>
> SO ORDERED.[3]

The Proceedings before the Trial Court

The Charge

Appellant was charged with parricide under the following Information, *viz.*:

> That on or about 11:30 o'clock *[sic]* in the evening of May 8, 2011 at Purok 2, Brgy. Macolabo Island, Municipality of Paracale, Province of Camarines Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being the son of PAULINO DELOS SANTOS SR., with intent to kill, with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and stab his father, PAULINO DELOS SANTOS SR., using a bladed weapon, thereby inflicting upon the latter mortal wound on his chest that caused his instantaneous death, to the damage and prejudice of the heirs of the victim.
>
> CONTRARY TO LAW.[4]

The case was raffled to the Regional Trial Court-Daet, Camarines Norte, Branch 39 and docketed as Criminal Case No. 14834.

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[3] *Id.* at 13.

[4] *Id.* at 4.

On arraignment, appellant pleaded "not guilty."[5] Trial ensued. Michael L. San Gabriel (Michael), Dr. Virginia B. Mazo (Dr. Mazo) and Police Officer 3 (PO3) Gil V. Obog (PO3 Obog) testified for the prosecution. On the other hand, appellant testified as lone witness for the defense.

The Prosecution's Version

On May 8, 2011, around 11:30 in the evening, Michael was hanging out with Diego, Dante, Hermie and Marcos Delos Santos (Marcos) in the house of his cousin Jovito Libanan (Jovito) in Purok 3, Macolabo Island, Paracale, Camarines Norte. Jovito is the common-law spouse of Liezel Delos Santos, daughter of Paulino Delos Santos, Sr. (Paulino, Sr.).[6]

While Michael, Diego, Dante, Hermie, and Marcos were laughing, singing, and having fun, appellant, armed with a knife, suddenly arrived. He appeared to be intoxicated. He instantly engaged in a heated verbal argument with his brother Marcos. This awakened appellant's father Paulino, Sr. He then prodded appellant to leave but the latter refused. Appellant adamantly warned his father not to interfere and challenged him to a fight. While they were pushing each other, appellant suddenly stabbed Paulino, Sr. in the upper left side of the chest, causing the latter to fall on the ground. Thereupon, appellant immediately fled. Paulino, Sr. died even before he was brought to the hospital.[7]

During the trial, Michael positively identified appellant as the person who stabbed and killed his father Paulino, Sr.[8]

PO3 Obog testified that they received a report about the stabbing incident involving appellant and Paulino, Sr. He and the other police officers immediately went to appellant's residence, but did not find him there. So they proceeded instead

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[5] *Id.*

[6] *Id.* at 5.

[7] *Id.*

[8] *Id.*

to the house of Paulino, Sr. He knew appellant since the latter had been previously incarcerated for other cases.[9]

Dr. Mazo, a Municipal Health Officer of Paracale, Camarines Norte, issued the victim's death certificate indicating that the stab wound was the immediate cause of his death.[10]

The Defense's Version

Appellant told a different story. He denied killing his father. According to him, in the evening of May 8, 2011, he was awakened by a noise coming from the adjacent house of his brother-in-law, Jovito. When he went outside to check, he saw Jovito with blood stains in his hands. He asked Jovito about the blood stains, but the latter did not respond. He then heard someone from inside Jovito's house screaming that his father, Paulino, Sr. was already dead. He tried to get inside Jovito's house but he was told to leave the place or he would be killed next.[11]

The Trial Court's Ruling

By Decision[12] dated September 5, 2016, the trial court found appellant guilty of parricide, *viz.*:

> **WHEREFORE**, all the foregoing premises considered, accused **PAULINO DELOS SANTOS, JR.** alias "**SKYLAB**," is hereby found **GUILTY** beyond reasonable doubt of the crime of **PARRICIDE**. He is hereby sentenced to suffer the penalty of ***Reclusion Perpetua***, without eligibility of parole. He is also ordered to pay the heirs of the victim the amount of PhP75,000.00 as civil indemnity, PhP50,000.00 as moral damages, and PhP30,000.00 as exemplary damages.
>
> **SO ORDERED**.[13]

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[9] *Id.* at 6.

[10] *Id.*; CA *rollo*, p. 32.

[11] *Rollo*, p. 6.

[12] Penned by Judge Winston S. Racoma, CA *rollo*, pp. 31-33.

[13] *Id.* at 33.

It ruled that all the elements of the crime of parricide were duly established. The testimonies of the prosecution witnesses proved that appellant killed his own father, Paulino, Sr., by stabbing him in the upper left side of the chest. Appellant's alibi and denial must necessarily fail in the face of his positive identification as the author of the crime.

The Proceedings before the Court of Appeals

On appeal, appellant faulted the trial court for convicting him of parricide despite the prosecution's alleged failure to prove his guilt beyond reasonable doubt. He essentially argued that the trial court erred in according credence to Michael's testimony because: (1) it was unlikely that he would stab his own father without any apparent reason or motive; (2) Michael failed to provide more specific details of the stabbing incident; and (3) the other witnesses, who were also present in the crime scene, did not testify during the trial.[14]

On the other hand, the Office of the Solicitor General (OSG) through Assistant Solicitor General Ma. Cielo Se-Rondain and Senior State Solicitor Sarah Mae S. Cruz maintained that Michael's straightforward testimony clearly established that appellant killed his father. Lack of motive on the part of appellant and lack of corroborative evidence, such as the testimonies of the other witnesses present in the crime scene do not diminish the weight of appellant's positive identification as the perpetrator of the crime.[15]

The Court of Appeals' Ruling

In its assailed Decision[16] dated June 28, 2018, the Court of Appeals affirmed, with modification. It imposed six percent (6%) interest per annum on the monetary awards from finality of the decision until fully paid.

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[14] *Id.* at 21-29.

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

[16] *Rollo*, pp. 3-14.

The Present Appeal

Appellant now seeks affirmative relief from the Court and prays anew for his acquittal. In compliance with Resolution[17] dated October 16, 2019, both appellant and the People manifested[18] that, in lieu of supplemental briefs, they were adopting their respective briefs filed before the Court of Appeals.

Issue

Did the Court of Appeals err in affirming appellant's conviction for parricide?

Ruling

We affirm with modification.

Article 246 of the Revised Penal Code defines and penalizes parricide, *viz.*:

> Article 246. Parricide. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

Parricide is committed when (1) a person is killed; (2) the accused is the killer; and (3) the deceased is either the legitimate spouse of the accused, or any legitimate or illegitimate parent, child, ascendant or descendant of the accused.[19]

The presence of the third element here is undisputed. Appellant himself admitted and declared under oath that the deceased Paulino, Sr. is his father. He also stipulated this fact during the pre-trial.[20]

That appellant's certificate of live birth was not presented in evidence does not negate his culpability. For oral evidence

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[17] *Id.* at 20-21.

[18] *Id.* at 23-24, 27-29.

[19] *People v. Andaya*, G.R. No. 219110, April 25, 2018.

[20] *Rollo*, p. 12.

of the fact of his filial relationship with the victim may be considered.[21] In ***People v. Ayuman***,[22] the accused admitted during the trial that the victim was his son. Although the victim's birth certificate was not presented, the Court considered as competent evidence the accused's admission of his filiation to the victim and convicted him of parricide.

As for the first and second elements, Michael positively and categorically identified appellant as the person who killed his father, Paulino, Sr., thus:

> [Pros. Apuya]
>
> Q: What did Skylab do when he was being asked to leave by his father?
> A: He was challenging to have a fight.
>
> Q: What exactly, if any, did Skylab say to his father?
> A: He told his father not to interfere because Marcos is his opponent.
>
> Q: What was the reaction of his father, if any?
> A: His father told him to leave because there we have no problem.
>
> Q: What did Skylab do?
> A: His father and Skylab were pushing each other.
>
> Q: What happened next?
> A: Skylab suddenly stood up and stabbed his father.
>
> Q: Was his father hit?
> A: Yes, [M]a'am.
>
> Q: In what part of his body?
> A: Here, [M]a'am.
>
> INTERPRETER:
>
> Witness pointing to his upper left chest.[23]

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[21] *People v. Malabago*, 333 Phil. 20, 27 (1996).

[22] 471 Phil. 167, 180 (2004).

[23] *Rollo*, pp. 11-12.

Both the trial court and the Court of Appeals found Michael's testimony to be straightforward, truthful, and credible, hence, the same deserves full faith and credence. Consider:

First. Michael narrated in detail the events that led to the killing of Paulino, Sr., from the time appellant arrived at the scene, drunk and armed with a knife, up till appellant argued with his brother, warned his father not to interfere, challenged his father to a fight, pushed him, and stabbed him in the upper left chest, causing the latter to fall on the ground and die.

The fact that Michael did not specify which direction the fatal blow came from and the type of bladed weapon used by appellant in stabbing his father does not affect the credibility of this witness since these matters refer only to minor details. What matters is the consistency of the witness in testifying on the essential elements of the crime and his positive and categorical identification of the accused as the offender.[24]

Second. Michael's lone testimony was found by the trial court to be positive, categorical, and credible, hence, it is sufficient to support a verdict of conviction. ***People v. Hillado***[25] decrees:

> **Thus, the testimony of a lone eyewitness, if found positive and credible by the trial court, is sufficient to support a conviction especially when the testimony bears the earmarks of truth and sincerity and had been delivered spontaneously, naturally and in a straightforward manner.** Witnesses are to be weighed, not numbered. Evidence is assessed in terms of quality and not quantity. **Therefore, it is not uncommon to reach a conclusion of guilt on the basis of the testimony of a lone witness.** For although the number of witnesses may be considered a factor in the appreciation of evidence, preponderance is not necessarily with the greatest number and conviction can still be had on the basis of the credible and positive testimony of a single witness. Corroborative evidence is deemed necessary "only when there are reasons to warrant the suspicion that the witness falsified the truth or that his observation had been inaccurate."[26] x x x (Emphases supplied)

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[24] *People v. Pulgo*, 813 Phil. 205, 215 (2017); *People v. Gerola*, 813 Phil. 1055, 1066 (2017).

[25] 367 Phil. 29 (1999).

[26] *Id.* at 45.

More, Michael's testimony conforms with physical evidence. The death certificate issued by Dr. Mazo shows that Paulino, Sr. sustained a single stab wound which caused his death.

Third. As for appellant's motive to kill his father, Michael testified that on the night in question, appellant appeared to be intoxicated and got into a heated argument with his brother. As a consequence, their father stepped in and prodded appellant to leave. But appellant resented it and warned his father not to interfere. He also challenged his father to a fight. They were pushing each other when appellant suddenly stabbed his father in the chest, causing the latter to fall on the ground. Appellant, therefore, cannot truthfully claim he had no motive to kill his father. In any event, while proof of motive for the commission of the offense does not show guilt, neither does its absence establish the innocence of accused for the crime charged.[27]

In ***People v. Ducabo***,[28] this Court held that motive is irrelevant when the accused has been positively identified by an eyewitness, as in this case. Motive is not synonymous with intent. Motive alone is neither a proof nor an essential element of a crime.

Fourth. Michael was not shown to have been impelled by any ill will to falsely impute such heinous crime as parricide on appellant. His testimony, therefore, is worthy of belief and credence.[29]

Fifth. Appellant's flight from the crime scene militates against his claim of innocence. On countless occasions, the Court has held that the flight of an accused may be taken as evidence to establish his guilt.[30] For a truly innocent person would normally take the first available opportunity to defend himself and to assert his innocence.[31]

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[27] *People v. Buenafe*, 792 Phil. 450, 459 (2016).

[28] 560 Phil. 709, 723-724 (2007).

[29] *People v. Callao*, 828 Phil. 372, 386 (2018).

[30] *People v. Pentecostes*, 820 Phil. 823, 839 (2017).

[31] *People v. Lopez*, 830 Phil. 771, 782 (2018).

Sixth. Suffice it to state that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and to note their demeanor, conduct, and attitude under grueling examination.[32] Hence, the Court defers and accords finality to the trial court's factual findings especially when the same carry the full concurrence of the Court of Appeals, as in this case.[33]

Finally. Appellant's denial and alibi cannot prevail over the positive identification of appellant as the perpetrator of the crime. Besides, denial and alibi are self-serving and deserve no weight in law especially when unsubstantiated by any credible evidence, as in this case.[34] At any rate, appellant's admission that he was only six (6) meters away from the crime scene even precludes the impossibility of him getting to the crime scene, committing the crime, and returning to his house thereafter.

Penalty

All told, We affirm appellant's conviction for parricide. The penalty for parricide is *reclusion perpetua* to death.[35] There being no aggravating or mitigating circumstance proven, both the trial court and the Court of Appeals correctly sentenced appellant to *reclusion perpetua*.

Pursuant to A.M. No. 15-08-02,[36] the phrase *"without eligibility for parole"* shall be used to qualify the penalty of *reclusion perpetua* only if the accused should have been sentenced to suffer the death penalty had it not been for Republic Act No. 9346 (RA 9346).[37] Here, appellant was sentenced to

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[32] *Heirs of Villanueva v. Heirs of Mendoza*, 810 Phil. 172, 184 (2017).

[33] *Heirs of Spouses Liwagon, et al. v. Heirs of Spouses Liwagon*, 748 Phil. 675, 689 (2014); *Castillano v. People*, G.R. No. 222210 (Notice), June 20, 2016.

[34] *People v. Callao, supra* note 29, at 388.

[35] Under Article 246 of the Revised Penal Code, as amended by Republic Act (RA) No. 7659.

[36] Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties.

[37] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

reclusion perpetua since there is no aggravating circumstance that would have otherwise warranted the imposition of the death penalty were it not for RA 9346. Hence, the phrase *"without eligibility for parole"* need not be borne in the decision to qualify appellant's sentence.[38]

We further affirm the award of ₱75,000.00 as civil indemnity. In accordance with prevailing jurisprudence,[39] however, the awards of moral and exemplary damages should be increased to ₱75,000.00 each. Temperate damages of ₱50,000.00, in lieu of actual damages, are also granted as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved.[40] Finally, these amounts shall earn six percent (6%) interest per annum from finality of this Decision until fully paid.[41]

ACCORDINGLY, the appeal is **DISMISSED**. The Decision dated June 28, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08894 is **AFFIRMED with MODIFICATION**. Appellant Paulino Delos Santos, Jr. is found **GUILTY** of parricide and sentenced to *reclusion perpetua*. He is required to pay civil indemnity, moral damages, and exemplary damages of ₱75,000.00 each; and temperate damages of ₱50,000.00 to the heirs of Paulino Delos Santos, Sr. These amounts shall earn six percent (6%) interest per annum from finality of this Decision until fully paid.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Gesmundo, Lopez, and *Rosario,*[*] *JJ.*, concur.

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[38] *People v. Saltarin*, G.R. No. 223715, June 3, 2019.

[39] *People v. Jugueta*, 783 Phil. 806 (2016).

[40] *Id.*

[41] *People v. Gonzales*, G.R. No. 217022, June 3, 2019.

[*] Designated as additional member per S.O. No. 2797 dated November 5, 2020.

SECOND DIVISION

[G.R. No. 248941. November 9, 2020]

3M PHILIPPINES, INC., *Petitioner*, *v.* **LAURO D. YUSECO,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* AS AN EXCEPTION, THE SUPREME COURT MAY RESOLVE FACTUAL ISSUES WHEN THE FACTUAL FINDINGS OF THE LOWER TRIBUNALS ARE CONFLICTING.— The Court is not a trier of facts, hence, only questions of law may be raised in a petition for review on *certiorari* under Rule 45. It is not the Court's function to analyze or weigh evidence all over again in view of the corollary legal precept that factual findings of the lower tribunals are conclusive and binding on this Court, especially when the same carry the full concurrence of the Court of Appeals. As an exception, however, the Court may resolve factual issues presented before it, as in this case, when the findings of the Court of Appeals and the labor arbiter, on one hand, are contrary to those of the NLRC, on the other.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; AUTHORIZED CAUSES THEREOF; REDUNDANCY; THERE IS REDUNDANCY WHEN THE SERVICE CAPABILITY OF THE WORKFORCE IS IN EXCESS OF WHAT IS REASONABLY NEEDED TO MEET THE DEMANDS OF THE BUSINESS ENTERPRISE. — Redundancy is one of the authorized causes for the termination of employment provided for in Article 298 of the Labor Code, as amended . . . .

. . .

Redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise. A position is redundant where it had become superfluous. Superfluity of a position or positions may be the outcome of a number of factors such as over-hiring of workers, decrease in volume of business, or

dropping a particular product line or service activity previously manufactured or undertaken by the enterprise.

3. ID.; ID.; ID.; ID.; ID.; VALID REDUNDANCY PROGRAM, REQUISITES OF.— A valid redundancy program must comply with the following requisites: (a) written notice served on both the employees and the DOLE at least one (1) month prior to the intended date of termination of employment; (b) payment of separation pay equivalent to at least one (1) month pay for every year of service; (c) good faith in abolishing the redundant positions; and (d) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished, taking into consideration such factors as (i) preferred status; (ii) efficiency; and (iii) seniority, among others.

4. ID.; ID.; ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; GOOD FAITH IN ABOLISHING REDUNDANT POSITIONS AND COMPLIANCE WITH THE OTHER REQUIREMENTS OF THE LAW MUST BE SUFFICIENTLY ESTABLISHED BY SUBSTANTIAL EVIDENCE.— The Court of Appeals held that the third (3rd) requisite – good faith – was lacking in this case, hence, the redundancy program and respondent's termination by reason thereof were both invalid. It stressed that aside from Chiongbian's affidavit, petitioner did not present any other proof to substantiate its claim that respondent's position had become redundant. Thus, petitioner *"failed to prove, by substantial evidence, the existence of redundancy."*

The Court does not agree.

Chiongbian's Affidavit dated March 31, 2016, Supplemental Affidavit dated April 7, 2016, and Supplemental Affidavit dated June 30, 2016 bore petitioner's innovative thrust to enhance its marketing and sales capability by aligning its business model with some of the 3M subsidiaries in South East Asian Region. Toward this end, petitioner ought to merge its Industrial Business Group and the Safety & Graphics Business Group to maximize the capabilities and efficiency of the workforce and remove their overlapping of functions. The redundancy program had thus become an essential tool for this purpose . . . .

. . .

> Too, petitioner submitted other documentary evidence showing that respondent's employment was terminated due to redundancy . . . .
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> . . .
>
> Records show that the company called respondent to a meeting on November 25, 2015 precisely to inform him of this development, specifically the merger of the Industrial Business Group with the Safety & Graphics Business Groups, one of which he used to be the department head.
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> . . .
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> In sum, petitioner sufficiently proved by substantial evidence that redundancy truly existed and its adoption and implementation conformed with the requirements of the law. . . .
>
> . . .
>
> As for the requirements of notice, separation pay, and fair and reasonable criteria, records bear petitioner's strict compliance.

5. ID.; ID.; ID.; ID.; ID.; EVEN IF A BUSINESS IS DOING WELL, AN EMPLOYER MAY NOT KEEP MORE EMPLOYEES THAN ARE NECESSARY FOR THE OPERATION OF ITS BUSINESS.— [T]he Court holds that respondent's employment was validly terminated on ground of redundancy. Time and again, it has been ruled that an employer has no legal obligation to keep more employees than are necessary for the operation of its business. In fact, even if a business is doing well, an employer can still validly dismiss an employee from the service due to redundancy if that employee's position has already become in excess of what the employer's enterprise requires.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Bulalacao Law Office for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

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. SP No. 149264:

1. Decision[2] dated January 18, 2019 which reversed the decision of the National Labor Relations Commission (NLRC) and declared respondent Lauro D. Yuseco to have been illegally dismissed; and

2. Resolution[3] dated August 14, 2019 which denied petitioner 3M Philippines, Inc.'s motion for reconsideration.

Antecedents

Respondent filed a complaint against petitioner for illegal dismissal, non-payment of salary and service incentive leave, separation pay, and damages.

Respondent's Position[4]

Respondent started working with petitioner in 1997. He was the company's Country Business Leader when he got terminated in 2015. He was paid a monthly salary of ₱271,000.00. He had a flexible work schedule but often rendered more than eight (8) hours of work a day.

On November 25, 2015, around 12 o'clock noon, petitioner's Managing Director, Anthony J. Bolzan (Bolzan) called him to a meeting for an undisclosed agenda. When he went to Bolzan's

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[1] *Rollo* [Vol. 1], pp. 3-44.

[2] Penned by now Supreme Court Associate Justice Samuel H. Gaerlan and concurred in by Associate Justice Celia C. Librea-Leagogo and Associate Justice Pablito A. Perez, *id.* at 51-66.

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

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

office, Human Resource Manager Maria Theresa Chiongbian (Chiongbian) was also there. He got surprised when he was asked to conform to an agreement in which the company was supposedly accepting his so called request to avail of a separation package, effective January 1, 2016. He was also asked to sign a waiver and quitclaim. He refused, hence, Bolzan instructed him not to report for work anymore.

The next day, he was shocked to learn that Bolzan had announced through electronic mail to all the employees of the company that he would already be pursuing other opportunities outside of petitioner. This untruthful and malicious announcement got him embarrassed and humiliated before his co-workers, friends, clients, and relatives. With the help of his counsel, he demanded an explanation of Bolzan's announcement.

On December 1, 2015, he received a letter from the Human Resource Department informing him that his position as Country Business Leader would be considered redundant as of January 1, 2016. He was also asked to indicate his *conforme* to the letter.

Meantime, during a conference with petitioner, the latter offered him a separation package of ₱5,254,402.12. His counter offer was a separation package equivalent to his salary for twenty-five (25) years or the length of time he would have served had he not been illegally terminated.

On January 1, 2016, he was no longer allowed to enter petitioner's premises. Worse, on January 21, 2016, he received a letter from petitioner demanding the return of company properties in his possession.

Petitioner's Position[5]

Petitioner is a subsidiary of 3M Company (3M), an American multinational conglomerate corporation engaged in the manufacture and distribution of products such as adhesives, abrasives, laminates, passive fire protection, dental and medical products, electronic materials, car care products, and optical

[5] *Id.* at 152-181.

films. 3M operates in more than sixty-five (65) countries, including the Philippines.

Initially, its marketing and sales arm was divided into several Business Groups, each headed by Country Business Leader. Each Group was further divided into divisions, each headed by a division head. In 2015, it decided to align its business model with some of the other 3M subsidiaries in South East Asian regions in order to enhance its marketing and sales capabilities. Accordingly, from being a "Business Group" organization, it shifted to being a "Market Focused" organization. It, thereafter, implemented a series of changes in its marketing and sales arm.

One of the changes was the merger of the Industrial Business Group headed by respondent and the Safety & Graphics Business Group headed by Country Business Leader Tommee Lopez (Lopez) into the new Industrial & Safety Market Center to be headed by only one (1) Country Business Leader. For this position, it was a toss between respondent and Lopez.

After a thorough evaluation of their qualifications, work experience, and performance ratings over the past three (3) years, it eventually chose Lopez over respondent. It took into account Lopez's broad work experience traversing both Industrial Division and Safety & Graphics Division. In contrast, respondent's work experience was only confined to the Industrial Division. Also, Lopez had higher performance ratings over the past three (3) years compared to respondent.

But it did not at once terminate respondent's employment on ground of redundancy. It tried to look for other available position for respondent within the company but its effort failed. Thus, in the end, it was constrained to terminate respondent's employment on ground of redundancy effective January 1, 2016.

On November 25, 2015, Chiongbian and Bolzan met with respondent to inform him of this decision. Chiongbian explained to respondent that because he was being let go on ground of redundancy, the company would pay him appropriate separation pay. Also, considering his position and tenure, the company

came up with a special separation package giving him more than what the law requires, thus:

(1) ₱5,173,825.21 as separation pay;
(2) ₱80,576.91 as retirement plan;
(3) ₱1,880,000.00 as additional pay out in consideration of his long service in the company;
(4) Two (2) years extension of his health coverage which included executive check-up, hospitalization, and outpatient reimbursements; and
(5) Two (2) years worth of life insurance coverage.

Chiongbian and Bolzan also reminded respondent that per company practice, the separation of high-ranking officers should be announced through electronic mail to the entire organization. Respondent acknowledged this company practice but requested that he be allowed first to personally inform his team, to which Chiongbian and Bolzan acceded. Meantime, to give respondent time to find a new employment before his actual separation on January 1, 2016, Bolzan gave him an option not to report for work anymore until the day of his actual separation.

After the meeting, respondent approached Chiongbian to clarify some details about his separation pay, particularly its tax implications and whether he still ought to file vacation leave should he chose not to report to office anymore. On that day, too, respondent and Chiongbian exchanged text messages on what respondent should do before his actual separation and what to tell his team.

After informing his team of his separation, respondent gave the go signal to Chiongbian to make the online announcement which the company did on November 26, 2015.

On December 1, 2015, Chiongbian served respondent a formal Notice of Separation due to redundancy. Respondent's additional pay-out was also increased from the gross value of ₱1,880,000.00 to ₱2,350,000.00 to cover his tax liability.

By then, however, respondent had a change of heart. He refused to acknowledge receipt of the notice and to undergo

the clearance process to facilitate the release of his separation package.

Meanwhile, it sent a notice to the Department of Labor and Employment (DOLE) of the separation of respondent and another employee due to redundancy. It thus came as a surprise when it learned that respondent had sued for illegal dismissal.

The Labor Arbiter's Ruling

By Decision dated April 22, 2016,[6] Labor Arbiter Pablo A. Gajardo, Jr. (Labor Arbiter Gajardo, Jr.), ruled in favor of respondent, *viz.*:

> **WHEREFORE**, premises considered, judgment is hereby rendered declaring respondents guilty of illegal dismissal. Accordingly, respondents are ordered to pay jointly and severally complainant as follows:
>
> | | | |
> |---|---|---|
> | 1. | Separation pay (till promulgation only) | ₱5,173,825.21 |
> | 2. | Full backwages (benefits not included and till promulgation only) | ₱1,100,345.55 |
> | 3. | Moral damages | ₱1,000,000.00 |
> | 4. | Exemplary damages | ₱ 500,000.00 |
> | 5. | 10% [a]ttorney's [f]ees | ₱ 777,417.07 |
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[7]

Labor Arbiter Gajardo, Jr. held that petitioner's redundancy program was arbitrary, and its implementation, tainted with bad faith. It was a mere afterthought to justify respondent's termination. Petitioner's November 25, 2015 and December 1, 2015 letters were contradictory. The first said that petitioner was accepting respondent's request for a separation package;

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[6] *Id.* at 411-425.

[7] *Id.* at 424-425.

while the second stated that respondent was being terminated due to redundancy. This inconsistency indicated petitioner's bad faith in effecting its so-called redundancy program.

Labor Arbiter Gajardo, Jr. also held that petitioner had no fair and reasonable criteria in ascertaining which positions were to be declared redundant. It was clear that the criterion used for determining who to retain between respondent and Lopez was pre-determined to favor Lopez. Bolzan was the one who promoted Lopez as Country Business Leader and gave the performance ratings to respondent and Lopez. Clearly, Bolzan favored Lopez over respondent. Also, petitioner failed to present proof that there was indeed a merger between the Industrial Business Group and Safety & Graphics Business Group. It was obvious though that only respondent's position was declared redundant.

The NLRC's Ruling

On petitioner's appeal, the NLRC reversed through its Decision[8] dated October 21, 2016, to wit:

> **WHEREFORE**, premises considered, this instant appeal is hereby **GRANTED**.
>
> The Decision of the Labor Arbiter dated April 22, 2016 is **REVERSED** and **SET ASIDE** and a new one is entered **DISMISSING** the complaint for lack of merit.
>
> **SO ORDERED.**[9]

The NLRC held that respondent's separation was due to redundancy which was carried out only after a serious study. It was foolhardy for petitioner to think of redundancy on the spur of the moment and make drastic changes to its organization without regard to its viability and profitability just so it could get rid of respondent. Petitioner decided to reorganize in order to enhance its marketing and sales capability. The changes

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[8] Penned by Commissioner Erlinda T. Agus and concurred in by Presiding Commissioner Gregorio O. Bilog III, *id.* [Vol. 2], pp. 517-547.

[9] *Id.* at 546.

were inspired by business performances and organizational structures of other 3M subsidiaries in other parts of the South East Asia.

In choosing Lopez over respondent as head of the new group, petitioner considered the work experience and performance ratings of Lopez and respondent. Records showed that Lopez not only had work experience in safety and graphics operations, but also in petitioner's industrial operations having been part of its Industrial Group from 1997 to 2005. Lopez even worked in the company's Electronics and Energy Business Group. Respondent's employment records, on the other hand, showed that he only had work experience in the industrial operations of the company. Respondent's stint in marketing and sales was also relatively shorter than Lopez's. Their respective performance ratings over the past three (3) years yielded a higher rating for Lopez.

In the implementation of its redundancy program, petitioner complied with the notice requirement, giving respondent and the DOLE separate notices one (1) month before its intended implementation. Petitioner also offered a special separation package to respondent.

Contrary to Labor Arbiter Gajardo, Jr.'s findings, the November 25, 2015 and December 1, 2015 letters were not contradictory when read together and in light of what was discussed during the meeting on November 25, 2015. In any case, both letters specifically stated that respondent's separation was due to redundancy.

Lastly, it cannot be said that respondent was not informed of his separation and the reasons therefor prior to the company-wide announcement. The exchange of text messages between respondent and Chiongbian clearly established the fact that the former was already informed of his separation due to redundancy. He even sought advice from Chiongbian on the next steps he should take and a clarification regarding his separation benefits. Respondent never refuted this communication between him and Chiongbian.

Respondent's motion for reconsideration was denied per Resolution[10] dated December 20, 2016.

Proceedings Before the Court of Appeals

Respondent's Position

Respondent charged the NLRC with grave abuse of discretion amounting to lack or excess of jurisdiction when it relied heavily on the text messages between him and Chiongbian from whom he sought advice on what he should do if he opted to accept the company's offer, which by the way Bolzan was already pressuring him to accept. His act of filing the complaint for illegal dismissal effectively repudiated his alleged acceptance of the company's offer.[11]

The November 25, 2015 and the December 1, 2015 letters were suspiciously different. In the former, it was made to appear that he had agreed to avail of the separation package, but in the latter, he was already being terminated on ground of redundancy. Worse, the November 25, 2015 letter which Bolzan already signed was also accompanied by a waiver and quitclaim indicating the company's desire to terminate his employment.[12]

Bolzan had clear intent to terminate his employment. Bolzan harped on his 2014 "poor" rating. In his nineteen (19) years of service, however, it was only in 2014 that he got rated as a "poor" performer. And it was Bolzan, then only a new managing director, who gave him that rating. His performance as Country Business Leader should not have been compared to that of Lopez because the latter was promoted as Country Business Leader only in 2015. Before that, Lopez was a mere Division Head of the Industrial Business Group in charge of only a few divisions way below the number of divisions he was handling. There were, therefore, no practical bases to compare the two (2) of them.[13]

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[10] *Id.* at 597-599.

[11] *Id.* [Vol. 1], pp. 78-79.

[12] *Id.* at 79-80.

[13] *Id.* at 81.

In the merger of the Industrial Business Group and the Safety & Graphics Business Group, petitioner had a preconceived intent to ease him out.[14] In any case, petitioner failed to prove the existence of a valid redundancy program. Petitioner merely informed him that his position was declared redundant without actually proving that redundancy did exist.[15]

In sum, he was terminated from employment without any valid ground. He did not voluntarily avail of or accept any separation package. Also, he did not forge any agreement with the company after he received the second letter because they could not agree on the separation package.[16]

Petitioner's Position

Resort to redundancy is a management prerogative consistently recognized by the Supreme Court. It has been held that whenever an employer decides to reorganize its departments and impose on the employees of one department the duties performed by the employees in another department, the services of the latter may be validly terminated on ground of redundancy.[17]

Petitioner had valid business reasons to merge the Safety & Graphics Business Department and the Industrial Business Department. This shift would improve the efficiency of its operations, enhance its sales and marketing capabilities, and align the company's business in the Philippines with the market growth opportunity in international market.[18]

Contrary to respondent's allegations, the two (2) letters complemented each other. The first letter was presented to respondent after the company had explained to him about the company's restructuring and its effects on him. The second letter, on the other hand, was a mere confirmation of what was

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[14] *Id.* at 82.

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

[16] *Id.* at 84-85.

[17] *Id.* [Vol. 2], p. 621.

[18] *Id.* at 622-623.

discussed during the November 25, 2015 meeting. Too, while respondent was presented with copy of the release waiver and quitclaim during the meeting held on November 25, 2015, he was never asked to sign the same right then and there. These documents were merely presented to him for purposes of discussion. Respondent was never forced or intimidated by the company. In fact, he was given every chance to review the documents, which he did. He even negotiated for additional pay out with Chiongbian right after the meeting.[19]

Petitioner complied with all the requirements for its redundancy program. It adopted reasonable criteria for determining who between respondent and Lopez should stay and should go. The company looked into their relevant work experience and their recent performance ratings. Since the merger concerned the Safety & Graphics Business and the Industrial Business Groups, petitioner needed someone with experience on both fields. Respondent only had experience in the Industrial Business; Lopez, on the other hand, had experience in both fields. Lopez also had higher performance rating than respondent over the past three (3) years.[20]

Further, the abolition of respondent's position was done in good faith. As stated, petitioner's decision to change its market approach justified the organizational restructure.[21]

Respondent's termination was done in accordance with the procedural requirements under the Labor Code, *i.e.*, it sent a written notice to the DOLE regarding the termination of respondent's employment due to redundancy at least one (1) month before the intended date, and approved a generous separation package for him. In order to give respondent ample time to seek new employment, he was no longer required to report for work with pay until the effectivity of his retrenchment.[22]

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[19] *Id.* at 633.

[20] *Id.* [Vol. 2], pp. 626-631.

[21] *Id.*

[22] *Id.* at 634-636.

It cannot be said, therefore, that the termination of respondent's employment was done arbitrarily.[23]

The Court of Appeals' Ruling

On respondent's petition for certiorari, the Court of Appeals reversed by its assailed Decision[24] dated January 18, 2019, *viz.*:

> **WHEREFORE**, premises considered, the petition is **GRANTED**. The Decision and Resolution (dated 21 October 2016 and 20 December 2016, respectively) of the National Labor Relations Commission — Second Division are **SET ASIDE**. In lieu thereof, a new decision is hereby entered declaring petitioner Lauro D. Yuseco's dismissal as **ILLEGAL**. Accordingly, private respondent 3M Philippines, Inc. is directed to **reinstate** petitioner without loss of seniority rights and other privileges, **with full backwages** inclusive of allowances and other benefits, computed from the time he was dismissed on 1 January 2016 up to actual reinstatement.
>
> However, if reinstatement is no longer feasible or practical, petitioner is entitled to **separation pay**, the amount of which is subject to the proper determination of the LA.
>
> In either case, petitioner is entitled to the payment of **attorney's fees** in an amount equivalent to ten percent (10%) of his monetary awards.
>
> Lastly, petitioner's total monetary awards shall earn legal interest at the rate of six percent (6%) *per annum* from finality of this Decision until full satisfaction.
>
> **SO ORDERED.**[25]

The Court of Appeals held that in case of termination due to redundancy, it is not enough for the company to merely declare that it had become overmanned. It must produce adequate proof of such redundancy to justify the dismissal of the affected employees. In respondent's case, however, there was no proof

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[23] *Id.* at 625.

[24] Penned by now Supreme Court Associate Justice Samuel H. Gaerlan and concurred in by Associate Justice Celia C. Librea-Leagogo and Associate Justice Pablito A. Perez, *id.* [Vol. 1], pp. 51-66.

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

of the redundancy other than Chiongbian's affidavit. Although the same explained the reasons for the abolition of respondent's position, this affidavit alone cannot be considered adequate proof of redundancy. Petitioner should have submitted supporting documents of the company's purported decision to adopt a new business and marketing approach.[26]

Petitioner's motion for reconsideration was denied per Resolution[27] dated August 14, 2019.

The Present Petition

Petitioner now seeks affirmative relief from the Court and prays that the dispositions of the Court of Appeals be reversed and set aside.

Petitioner reiterates its arguments below and additionally argues that Chiongbian's affidavit in fact discussed in detail the rationale underlying its redundancy program and the reorganization of its various business groups.[28]

Contrary to the Court of Appeals' ruling, the redundancy program may be proved by evidence other than just a presentation of new staffing patterns or feasibility studies and proposals. In several instances, the Supreme Court declared the admissible affidavits as adequate proof of redundancy. As head of the company's Human Resource Department, Chiongbian has personal knowledge of the circumstances surrounding the redundancy and respondent's employment.

Respondent was well aware of petitioner's redundancy program as shown by the exchange of communications between Chiongbian and the former and the Notice of Separation sent to him and the DOLE. Petitioner also took pains to explain to respondent the company's decision to reorganize and its effect on him.[29]

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[26] *Id.* at 64.

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

[28] *Id.* at 21.

[29] *Id.* at 25-26.

Respondent, on the other hand, insists that he was illegally dismissed. His communication with Chiongbian should not be interpreted to mean he was consenting to his alleged termination on ground of redundancy. He merely exchanged text messages with Chiongbian seeking the latter's advice on what to do in case he opted to accept petitioner's separation package which Bolzan at that time was already pressing him to accept. Deep inside him though, he could not accept the insults and harassment, especially those coming from Bolzan. The pressure being exerted on him to accept petitioner's offer was reinforced by the first letter, together with the attached waiver and quitclaim. It all amounted to forced resignation or illegal dismissal.[30]

Petitioner, together with Bolzan, simply concocted a way to ease him out. The fact of redundancy was not even sufficiently proven. He was, therefore, illegally dismissed, hence, he is entitled to his money claims. Bolzan should also be held solidarily liable with the company for his illegal termination from employment.[31]

Issue

Was respondent legally dismissed on ground of redundancy?

Ruling

The Court is not a trier of facts, hence, only questions of law may be raised in a petition for review on *certiorari* under Rule 45. It is not the Court's function to analyze or weigh evidence all over again in view of the corollary legal precept that factual findings of the lower tribunals are conclusive and binding on this Court, especially when the same carry the full concurrence of the Court of Appeals. As an exception, however, the Court may resolve factual issues presented before it, as in this case, when the findings of the Court of Appeals and the labor arbiter, on one hand, are contrary to those of the NLRC, on the other.[32]

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[30] *Id.* [Vol. 2], pp. 736-738.

[31] *Id.* at 739-745.

[32] *See Status Maritime Corporation, et al. v. Sps. Delalamon*, 740 Phil. 175, 189 (2014).

Both Labor Arbiter Gajardo, Jr. and the Court of Appeals held that petitioner failed to prove the existence of redundancy as ground for the termination of respondent's employment. In contrast, the NLRC held that respondent's employment was validly terminated on ground of redundancy.

Redundancy is one of the authorized causes for the termination of employment provided for in Article 298[33] of the Labor Code, as amended:

Article 298. *Closure of Establishment and Reduction of Personnel*. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise. A position is redundant where it had become superfluous. Superfluity of a position or positions may be the outcome of a number of factors such as over-hiring of workers, decrease in volume of business, or dropping a particular product line or service activity previously manufactured or undertaken by the enterprise.[34]

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[33] Former Article 283 of the Labor Code, as renumbered under DOLE's Department Advisory No. 1, Series of 2015.

[34] *See Soriano, Jr. v. NLRC, et al.*, 550 Phil. 111, 126 (2007).

A valid redundancy program must comply with the following requisites: (a) written notice served on both the employees and the DOLE at least one (1) month prior to the intended date of termination of employment; (b) payment of separation pay equivalent to at least one (1) month pay for every year of service; (c) good faith in abolishing the redundant positions; and (d) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished, taking into consideration such factors as (i) preferred status; (ii) efficiency; and (iii) seniority, among others.[35]

The Court of Appeals held that the third (3rd) requisite — good faith — was lacking in this case, hence, the redundancy program and respondent's termination by reason thereof were both invalid. It stressed that aside from Chiongbian's affidavit, petitioner did not present any other proof to substantiate its claim that respondent's position had become redundant. Thus, petitioner "*failed to prove, by substantial evidence, the existence of redundancy*."[36]

The Court does not agree.

Chiongbian's Affidavit[37] dated March 31, 2016, Supplemental Affidavit[38] dated April 7, 2016, and Supplemental Affidavit[39] dated June 30, 2016 bore petitioner's innovative thrust to enhance its marketing and sales capability by aligning its business model with some of the 3M subsidiaries in South East Asian Region. Toward this end, petitioner ought to merge its Industrial Business Group and the Safety & Graphics Business Group to maximize the capabilities and efficiency of the workforce and remove their overlapping of functions. The redundancy program had thus become an essential tool for this purpose, *viz.*:

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[35] *See Philippine National Bank v. Dalmacio*, 813 Phil. 127, 134 (2017).

[36] *Rollo* [Vol. 1], p. 64.

[37] *Id.* at 182-185.

[38] *Id.* at 216-222.

[39] *Id.* at 493-495.

3. In order to market and sell its products, the Company's marketing and sales arm was initially divided into Business Groups headed by a CBL. Each Business Group, in turn, is composed of major and minor Divisions headed by a Division Head. The number of these Divisions per Business Group varies depending on the number of product types a particular Business Group carries. x x x

4. In 2015, the Company decided to align its business model like some 3M subsidiaries in the South East Asian Region so as to enhance its marketing and sales capabilities. This involved the adoption of a different business and marketing approach which focused more on the demands of the market. Accordingly, from being a "Business Group" organization, the Company shifted to being a "Market Focused" organization. In this regard, the Company conducted a series of changes in its marketing and sales arm.

5. One of the changes effected by the Company was the integration/merging of the Industrial Business Group with the Safety & Graphics Business Group, headed by Mr. Tommee Lopez as CBL, in order to create a market focused group known as the Industrial & Safety Market Center. Notably, the integration/merging not only resulted in the reorganization of both groups, but also of the Divisions within each group.

6. The aforesaid changes, regrettably, resulted to excess manpower and superfluity of certain positions. For instance, since the Industrial Business Group was integrated/merged with the Safety & Graphics Business Group to create a new group known as the Industrial & Safety Market Center, the Company would need only one (1) individual to head the same as the Market Leader and abolish the position of CBL. This meant that the Company had an excess group leader since only one (1) of the two (2) group leaders of the affected groups — Messrs. Yuseco and Lopez — will be chosen to become the Market Leader of the Industrial & Safety Market Center.[40]

Too, petitioner submitted other documentary evidence showing that respondent's employment was terminated due to redundancy, *viz.*:

1) Letter dated November 25, 2015,[41] informing respondent the termination of his service due to redundancy:

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

[41] *Id.* at 379.

Payments are subject to normal taxes and standard wage withholdings, except for your vested retirement benefit, which will be tax-free since this will legally fall under the category of redundancy.

2) The draft Release Waiver and Quitclaim[42] and Separation Benefit Computation[43] presented to respondent during the November 25, 2015 meeting.

3) Letter[44] dated December 1, 2015 serving as the formal one (1) month notice to respondent of the impending termination of his service due to redundancy in accordance with Article 298 of the Labor Code,*viz.*:

As discussed last 25 November 2015, in line with the Company's effort to align its organization with corporate business strategy, economically and operationally, and in the exercise of its management prerogative, the Company conducted a review of its organizational structure, which resulted, among others, in the abolition of your position, Country Business Leader for the Industrial Business Group, because of said local corporate restructuring and change of business direction, which included merging of the Industrial Business Group and the Safety & Graphics Business Group.

As such, your position is considered redundant effective 1 January 2016.

4) Letter[45] dated December 1, 2015 notifying the Director of the DOLE-NCR of respondent's impending termination from work, along with another employee, on ground of redundancy. The letter contained the reasons therefor. This letter was received by the DOLE-NCR as evidenced by the stamp mark receipt of said Office.

5) Print out of text messages between Chiongbian and respondent showing that the latter even sought advice from the former on the steps he should take regarding the impending

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[42] *Id.* at 380-381.

[43] *Id.* at 382.

[44] *Id.* at 188.

[45] *Id.* at 190-193.

termination of his service on ground of redundancy.[46] Notably, respondent never refuted these messages.

Records show that the company called respondent to a meeting on November 25, 2015 precisely to inform him of this development, specifically the merger of the Industrial Business Group with the Safety & Graphics Business Groups, one of which he used to be the department head.[47]

On this score, ***Soriano v. NLRC, et al.***,[48] is apropos, thus:

> In upholding the legality of petitioner's dismissal from work, the NLRC relied on the documents submitted by the respondent PLDT showing compliance with the requirements above stated, to wit: 1) a letter notifying the Director of the DOLE-NCR of the impending termination from work of the petitioner by reason of redundancy and stating the grounds/reasons for the implementation of the redundancy program; 2) a letter apprising the petitioner of his dismissal from employment due to redundancy; 3) a receipt certifying that the petitioner had already received his separation pay from the respondent PLDT; 4) a release/waiver/quitclaim executed by the petitioner in favor of the respondent PLDT; and 5) **affidavits executed by the officers of the respondent PLDT explaining the reasons and necessities for the implementation of the redundancy program**. Petitioner failed to question, impeach or refute the existence, genuineness, and validity of these documents.
>
> **It is clear that the foregoing documentary evidence constituted substantial evidence to support the findings of Labor Arbiter Lustria and the NLRC that petitioner's employment was terminated by respondent PLDT due to a valid or legal redundancy program since substantial evidence merely refers to that amount of evidence which a reasonable mind might accept as adequate to support a conclusion.**
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> x x x x x x x x x

Anent the second issue, petitioner contends that there was no substantial evidence showing that the position of Switchman had

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[46] *Id.* at 186-187.

[47] *Id.* at 183 and 216.

[48] *Supra* note 34, at 122-123, 125-126, 129.

become redundant; that the affidavits of the respondent PLDT's officers have no probative value and should not have been considered by the NLRC because the said officers are not competent to testify on the technical aspects and effects of respondent PLDT's adoption of new technology; that the existence of redundancy was belied by the respondent PLDT's acts of employing outside plant personnel as Switchmen and Framemen, and of hiring contractual employees to perform the functions of Switchmen; and that the respondent PLDT did not present proof of the method and criteria it used in determining the Switchman to be terminated from work.

x x x x x x x x x

The records show that respondent PLDT had **sufficiently established the existence of redundancy** in the position of Switchman. In his affidavit dated 27 September 1999, Roberto D. Lazam (Lazam), Senior Manager of GMM Network Surveillance Division of respondent PLDT, explained:

x x x x x x x x x

It is evident from the foregoing facts that respondent PLDT's utilization of high technology equipment in its operation such as computers and digital switches necessarily resulted in the reduction of the demand for the services of a Switchman since computers and digital switches can aptly perform the function of several Switchmen. Indubitably, the position of Switchman has become redundant.

As to whether Lazam was competent to testify on the effects of respondent PLDT's adoption of new technology vis-à-vis the petitioner's position of Switchman, the records show that Lazam was highly qualified to do so. He is a licensed electrical engineer and has been employed by the respondent PLDT since 1971. He was a Senior Manager for Switching Division in several offices of the respondent PLDT, and had attended multiple training programs on Electronic Switching Systems in progressive countries. He was also a training instructor of Switchmen in the respondent's office. (Emphasis supplied)

In sum, petitioner sufficiently proved by substantial evidence that redundancy truly existed and its adoption and implementation conformed with the requirements of the law. As the NLRC aptly ruled:

Based on the record of this case, We find that the separation of complainant from employment was due to redundancy which was carried out after a serious study. It is difficult to convince Us that the redundancy was thought out on the spur of the moment or only during the meeting of November 25, 2015. It would be foolhardy for the respondent company to have come out with a drastic change in its organization without regard to its viability and profitability, just to get rid of complainant. Precisely, in 2015, the company made a decision to enhance its marketing and sales capabilities, inspired by the business performance of some 3M subsidiaries in the South East Asian Region. The company focused more on the demands of the market. Thus, from being a "Business Group" organization, the company shifted to being a "Market Focused Organization." This led to a series of changes in its marketing and sales arms. One of the changes effected by the company was the integration/merging of the Industrial Business Group with the Safety and Graphics Business Group x x x.[49]

Respondent, however, alleges that petitioner's November 25, 2015 and December 1, 2015 letters to him bore inconsistent contents indicative of the company's scheme to easily oust him from his employment. In the first letter, he had supposedly agreed to avail of the separation package, but in the second letter, he was already being terminated on ground of redundancy.[50]

Petitioner's argument is specious.

The NLRC correctly concluded that the November 25, 2015 and December 1, 2015 letter were actually complementary, not contradictory. The letters must be read together and in the context of what was discussed in the November 25, 2015 meeting between the parties, thus:

x x x The November 25, 2015 [letter] showed the impending dismissal of complainant due to redundancy and the separation package available to complainant incident thereto. The third paragraph of the November 25, 2015 letter stated that "*Payments are subject to normal taxes and standard wage withholdings, except for your vested retirement*

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[49] *Id.* [Vol. 2], pp. 539-540.

[50] *Id.* [Vol. 1], pp. 79-80.

benefit, which will be tax-free since this will legally fall under the category of redundancy." Likewise, the first paragraph of the Release Waiver and Quitclaim given to complainant in tandem with the November 25, 2015 letter, stated that the separation package is "*part of redundancy effective January 1, 2016*."

The December 1, 2015 letter made reference to the meeting held on November 25, 2015 as well as the separation package offered in the same letter of November 25, 2015. The letter dated December 1, 2015 informed complainant that "*as such, your position is considered redundant effective 1 January 2016*." Thus, both letters referred to the redundancy of the position of complainant. x x x[51]

In fine, the alleged contradiction in the two (2) letters is more imagined than real.

As for the requirements of notice, separation pay, and fair and reasonable criteria, records bear petitioner's strict compliance.

Written Notice

As stated, petitioner sent respondent and the DOLE-NCR separate letters both dated December 1, 2015, informing them of respondent's termination from work effective January 1, 2016 on ground of redundancy.

NOTICE TO RESPONDENT

Dear Larry,

As discussed last 25 November 2015, in line with the Company's effort to align its organization with corporate business strategy, economically and operationally, and in the exercise of its management prerogative, the Company conducted a review of its organizational structure, which resulted, among others, in the abolition of your position, Country Business Leader for the Industrial Business Group, because of said local corporate restructuring and change of business direction, which included merging of the Industrial Business Group and the Safety & Graphics Business Group.

As such, your position is considered redundant effective 1 January 2016.

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[51] *Id.* [Vol. 2], pp. 544-545.

During the same meeting on 25 November 2015, you were offered a special package as indicated in the letter dated 25 November 2015. The terms of this separation package is attached to this letter, for your reference. This offer complies with the separation pay requirement under the Philippine Labor Code.

The company will release your salary, separation pay and other payments due to you after you return all company properties and complete the exit clearance process. Upon receipt of these amounts, you will be asked to acknowledge their receipt and to execute a release, waiver and quitclaim in favor of the company.

x x x x x x x x x

NOTICE TO THE DOLE

x x x x x x x x x

In line with the Company's effort to align its organization with corporate business strategy, economically and operationally, and in the exercise of its management prerogative, the Company conducted a review of its organizational structure, which resulted, among others, in the abolition of the positions of Country Business Leader and Abrasives Systems Division Manager for the Industrial Business Group, because their positions have become superfluous.

In light of the foregoing, the Company will effect the separation of the incumbents, Lauro D. Yuseco and Jaime D. Comia, effective close of business hours on December 31, 2015 on the ground of redundancy under Article 283 of the Labor Code, as amended. They have been served 30-day advance notice. Also, please be advised that the affected employees [will] be paid their separation pay in accordance with the Labor Code, along with their accrued salaries and other benefits.

x x x x x x x x x

Separation Pay

Petitioner's Separation Benefit Computation for respondent totalled ₱5,254,402.12, an amount more than what is mandated by law. Petitioner has explained that the amount already covers the respondent's tax payments to the government. Again, respondent has not refuted this. Under this Separation Benefit Computation, respondent would receive the following:

(1) ₱5,173,825.21 as separation pay;

(2) ₱80,576.91 as retirement plan;

(3) ₱1,880,000.00 as additional pay out in consideration of his long service in the company;

(4) Two (2) years extension of his health coverage which included executive check up, hospitalization, and outpatient reimbursements; and

(5) Two (2) years worth of life insurance coverage.

Fair and Reasonable Criteria

Petitioner set the reasonable criteria for determining who between Lopez and respondent should head the newly created office which came about as a result of the merger. Petitioner posits that since there was a merger of two (2) groups or departments, Lopez's extensive and broader experience in the company's Safety & Graphics operations as well as its Industrial operations gave him a big edge over respondent whose experience was limited to Industrial operations only. Their respective employment histories[52] speaks volumes of this disparity.

Another. Their performance ratings also show that over the last three (3) years, Lopez had better ratings than respondent:[53]

Year	Respondent	Lopez
2015	2	3
2014	2	3
2013	3	4

Respondent though accuses the rater Bolzan of bias, and petitioner, of unfairly comparing his experience with that of Lopez, albeit the scopes or ranges of their assignments were allegedly different. Surely, these bare allegations cannot prevail over the records showing petitioner's reasonable assessment

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[52] *Id.* [Vol. 1], pp. 223-224.

[53] *Id.* at 225-226, 30.

of the respective merits of Lopez and respondent. While it may be true that respondent had several awards and achievements over his nineteen (19) years of service in the company, the same is true for Lopez.[54]

All told, the Court holds that respondent's employment was validly terminated on ground of redundancy. Time and again, it has been ruled that an employer has no legal obligation to keep more employees than are necessary for the operation of its business.[55] In fact, even if a business is doing well, an employer can still validly dismiss an employee from the service due to redundancy if that employee's position has already become in excess of what the employer's enterprise requires.[56]

ACCORDINGLY, the petition is **GRANTED**. The Decision dated January 18, 2019 and Resolution dated August 14, 2019 of the Court of Appeals in CA-G.R. SP No. 149264 are **REVERSED** and **SET ASIDE**. The complaint of respondent Lauro D. Yuseco for illegal dismissal is **DISMISSED**.

Petitioner 3M Philippines, Inc. is **ORDERED** to **PAY** Lauro D. Yuseco his separation package in accordance with its Separation Benefit Computation as heretofore shown.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Gesmundo, Lopez, and *Rosario,*[*] *JJ.*, concur.

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[54] *Id.* at 496-500.

[55] *Philippine National Bank v. Dalmacio*, supra note 35, at 134.

[56] *Ocean East Agency Corporation v. Lopez*, 771 Phil. 179, 190 (2015).

[*] Designated as additional member per S.O. No. 2797 dated November 5, 2020.

SECOND DIVISION

[G.R. No. 250477. November 9, 2020]

PRIVATIZATION AND MANAGEMENT OFFICE, *Petitioner*, *v.* **MARIANO A. NOCOM, substituted by MARIANO T. NOCOM, JR., MARCELINO, MANOLITO, HERMOSO, ALBERT all surnamed NOCOM, and CAROLINE N. NG,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF LAW; AN APPEAL WHICH INVOLVES AN INTERPRETATION OF THE TRUE AGREEMENT BETWEEN PARTIES NECESSARILY RAISES A QUESTION OF LAW, AND DIRECT RECOURSE TO THE SUPREME COURT IS ALLOWED.— A question of law arises when there is doubt as to what the law is on a certain state of facts. It must not involve an examination of the probative value of the evidence. Notably, an inquiry into the true intention of the contracting parties is a legal and not a factual issue. An appeal which involved an interpretation of the true agreement between the parties necessarily raises a question of law. In this case, the issue as to the correct expiration date of the amended contract of lease entails an interpretation of the compromise agreement *vis-à-vis* the respective rights of the parties. Hence, direct recourse to this Court is allowed.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTERPRETATION OF CONTRACTS; THE COURT INTERPRETS AN AGREEMENT AS A MATTER OF LAW WHEN THE WRITTEN TERMS THEREOF ARE NOT AMBIGUOUS.— It is a cardinal rule in the interpretation of contracts that *"if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."* The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms

of the contract are not ambiguous and can only be read one way, the court will interpret the agreement as a matter of law.

. . .

Here, there is no ambiguity in the language of the compromise agreement. The parties explicitly provided for an *extension of the lease period*. There is nothing in the agreement showing that the parties intended to renew the contract of lease for another 20 years. Otherwise, they could have expressly done so. Indeed, a fine distinction exists between a stipulation to *renew* a lease and one to *extend* it beyond the original term. . . .

In this case, the compromise agreement did not require the parties to enter into another lease contract. Quite the contrary, the agreement *confirmed, ratified and validated* the existing amended contract of lease. Verily, the compromise agreement leaves no room for equivocation or interpretation. As such, no amount of extraneous sources are necessary in order to ascertain the parties' intent. Relatively, the heirs of Mariano cannot unduly stretch the import of the PMO's letter dated February 24, 2011 beyond its nature as a mere demand to pay the increase in monthly rental. The letter cannot also be taken as detached and isolated from the other acts of the PMO that are incompatible with the theory of renewal. Particularly, PMO's reminder about the expiration of the contract, its refusal to accept rental payment, and demand to peacefully vacate the building, render renewal out of the question. Taken together, the parties to the compromise agreement vividly intended for an extension of the lease period, and not renewal of the contract.

3. ID.; ID.; LEASE; RENEWAL CLAUSE AND EXTENSION CLAUSE, DISTINGUISHED.— A renewal clause creates an obligation to execute a new lease for the additional period. It connotes the cessation of the old agreement and the emergence of a new one. On the other hand, an extension clause operates of its own force to create an additional term. It does not require the execution of a new contract between the parties.

4. ID.; ID.; ID.; A LEASE MADE FOR A DETERMINATE TIME CEASES UPON THE DAY FIXED WITHOUT NEED OF DEMAND, AND COURTS CANNOT BELATEDLY EXTEND OR MAKE A NEW LEASE FOR THE PARTIES UPON THE LAPSE OF THE STIPULATED PERIOD EVEN ON

THE BASIS OF EQUITY.— [T]he amended contract of lease stipulated that it may be renewed for another 20 years upon agreement of the parties, provided, the lessee notifies in writing the lessor within 90 days before its expiration. However, Mariano notified the PMO of the renewal of the contract on September 6, 2016, or three days after its expiration on September 3, 2016. There was no longer any lease which could be renewed. It is settled that if the lease was made for a determinate time, it ceases upon the day fixed, without the need of a demand. Upon the lapse of the stipulated period, courts cannot belatedly extend or make a new lease for the parties, even on the basis of equity. Here, after the lease was terminated on September 3, 2016, without reaching any agreement for its renewal, the PMO can eject the heirs of Mariano from the premises.

5. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS FOR SPECIFIC PERFORMANCE; THE COURT IS NOT EMPOWERED TO ALTER THE TERMS AND CONDITIONS OF THE CONTRACT SOUGHT TO BE ENFORCED OR TO PRESCRIBE ANY OTHER CONDITION NOT PREVIOUSLY AGREED TO BY THE PARTIES.— [I]n an action for specific performance, the terms and conditions of the contract sought to be enforced must be adhered to, and the Court is not empowered to alter them or to prescribe any other condition not previously agreed to, by the parties. It is not the province of a court to alter a contract by construction, or to make a new contract for the parties. Its duty is confined to the interpretation of the one which they have made for themselves, without regard to its wisdom or folly, as the court cannot supply material stipulations or read into the contract words which it does not contain.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Arturo S. Santos for respondents.

D E C I S I O N

LOPEZ, *J.*:

The delineation between renewal of the contract and extension of its period is the core issue in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated June 17, 2019 of the Regional Trial Court (RTC) of Makati City, Branch 135 in Civil Case No. R-MKT-16-03350-CV.

ANTECEDENTS

In 1964, the government reserved lots for the building site of the Reparations Commission (the Commission) in the South Harbor, Port Area, Manila.[3] In 1968, the Commission constructed on the lots a 5-storey building with a floor area of 3,618 square meters. In 1980, the Commission was abolished and its assets and liabilities were placed under the management of the Board of Liquidators (the Board).[4] In 1989, the Board offered the building for lease, and Mariano A. Nocom (Mariano) emerged as the highest bidder.[5]

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[1] *Rollo*, pp. 23-68.

[2] *Id.* at 73-80; penned by Presiding Judge Josephine M. Advento.

[3] PRESIDENTIAL PROCLAMATION NO. 244, entitled "Reserving for Building Site Purposes of the Reparations Commission Certain Parcels of Land of the Private Domain Situated in South Harbor, Port Area, City of Manila"; signed on May 18, 1964.

[4] EXECUTIVE ORDER NO. 629, entitled "Abolishing the Reparations Commission and Transferring its Remaining Activities to the Development Bank of the Philippines"; signed on October 30, 1980, and EXECUTIVE ORDER NO. 635-A, entitled "Authorizing the Retention in the Service of Some Employees of the Reparations Commission (REPACOM) and Directing the Board of Liquidators to Advance their Salaries and Other Operating Expenses Subject to Reimbursement from REPACOM Funds"; signed on December 23, 1980.

[5] Board of Liquidators Resolution No. 671; *rollo*, p. 26.

In 1990, the Board and Mariano executed a lease contract[6] with a right to renovate the building. However, there was a delay in the transfer of the building which halted the rehabilitation works. On October 18, 1991, the Board and Mariano executed an amended contract of lease[7] for a period of 20 years to commence on October 1, 1993, and to end on September 30, 2013. The contract may be renewed for another 20 years upon agreement of the parties provided the lessee notifies in writing the lessor within 90 days before its expiration. They also agreed on a 10% increase in monthly rental every four years.[8] Meantime, the Board was integrated with the National Development Company pursuant to the Office of the President's program to streamline the bureaucracy.[9]

On March 7, 1995, however, the Commission on Audit (COA) disallowed the lease because Mariano did not submit a duly approved construction/rehabilitation plan. On even date, the Board refused to accept rental payments. Mariano appealed to the COA *En Banc* which lifted the disallowance. Thereafter, Mariano filed an action for specific performance against the Board and its officers including the resident auditor before the RTC of Manila, Branch 22, docketed as Civil Case No. 96-

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[6] *Id.* at 139-146.

[7] *Id.* at 148-154. The Amended Contract of Lease provided for a period of 20 years to be counted from the first rental payment but not beyond the 24th month from October 1, 1991. Thus, the lease period started on October 1, 1993, to wit:

> **1. That the lease shall be for a period of twenty (20) years starting from the date the first payment of the rental on the building is made by the LESSEE, but not later than the end of the 24th month from October 1, 1991**, with an **option to renew** [the same] for the same period with the terms and conditions to be agreed upon by both parties, **provided that the LESSEE shall give prior notice in writing to the LESSOR within ninety (90) days before the expiration of the contract**. x x x[;] *id.* at 149. (Emphasis supplied.)

[8] *Id.* at 150. The parties agreed that: **"rental shall be relatively increased by ten (10%) percent every four (4) years starting from the 25th month from October 1, 1991[;]"** *id.* (Emphasis supplied.)

[9] EXECUTIVE ORDER NO. 149, entitled "Streamlining of the Office of the President"; signed on December 28, 1993.

78631-CV. In 1996, the Board's functions were transferred to the Asset Privatization Trust (Asset Privatization) which was then impleaded in the case.[10]

On February 12, 1998, the RTC, Branch 22, approved a Compromise Agreement between Asset Privatization and Mariano where they ratified the amended contract of lease. Moreover, both parties agreed to extend the lease period corresponding to the time covered from refusal to accept rental payments on March 7, 1995, up to the approval of the compromise agreement,[11] *viz.*:

> 1. The Amended Contract of Lease dated October 18, 1991 **is hereby confirmed, ratified and validated**, x x x except as otherwise stipulated x x x in this Compromise Agreement;
>
> 2. All the parties further acknowledge and affirm an **extension of the lease period** of the said Amended Contract of Lease corresponding to the period covered from March 7, 1995 (the date of BOL's refusal to accept rental payments from PLAINTIFF/LESSEE) until the actual date of the Order of the Regional Trial Court of Manila, Branch XXII (before whom the civil case referred to above is pending) approving this Compromise Agreement[.][12] (Emphases supplied.)

In 2001, Asset Privatization's powers and duties were transferred to the Privatization and Management Office (PMO).[13] In a Letter dated February 24, 2011, the PMO demanded from Mariano the payment of the 10% increase in monthly rental,[14] thus:

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[10] EXECUTIVE ORDER NO. 345, "Transferring the Board of Liquidations (BOL) from the National Development Company (NDC) to the Asset Privatization Trust (APT) to Effect its Abolition"; signed on June 14, 1996, and MEMORANDUM ORDER NO. 401, "Directing the Implementation of Executive Order No. 345, Series of 1996"[;] x x x dated October 10, 1996.

[11] *Rollo*, pp. 170-176.

[12] *Id.* at 173.

[13] EXECUTIVE ORDER NO. 323, "Constituting an Inter-Agency Privatization Council (PC) and Creating a Privatization and Management Office (PMO) under the Department of Finance for the Continuing Privatization of Government Assets and Corporations"; signed on December 6, 2000.

[14] *Rollo*, p. 849.

Under the Amended Contract of Lease executed between you and the Board of Liquidators covering Reparations Building x x x, **the monthly rental shall be increased by ten percent (10%) every four (4) years for twenty years starting February 12, 1998**.

Relative thereto, **the third (3rd) round of increase on the monthly rental** x x x **[shall] commence on February 12, 2010**. x x x

In view thereof, may we request for the payment x x x representing the increase in the rental rate for the month of February 2010.[15] (Emphases supplied.)

On August 24, 2016, the PMO sent another letter to Mariano informing him that the contract of lease will expire on September 3, 2016, and reminding him to peacefully vacate the building.[16] The PMO likewise stopped accepting rental payments from Mariano. On September 6, 2016, Mariano replied insisting that the contract is yet to expire on February 11, 2018, and notified PMO that he is exercising his right to renew the contract for another 20 years.[17] Also, Mariano tendered rental payments but was refused.[18] On October 27, 2016, the PMO reiterated its demand for Mariano to vacate the premises.

Aggrieved, Mariano filed an action for injunction with prayer for temporary restraining order (TRO) and writ of preliminary injunction (WPI), specific performance, consignation, and damages against the PMO before the RTC of Makati City, Branch 58, docketed as Civil Case No. R-MKT-16-03350-CV.[19] The RTC, Branch 58, issued a TRO enjoining the PMO from filing an eviction case against Mariano. Later, the RTC, Branch 58, granted a WPI and ordered the clerk of court to accept Mariano's rental payments. After the judicial dispute resolution conference was terminated, without the parties reaching a settlement, the case was raffled to the RTC of Makati City, Branch 135.

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[15] *Id.*

[16] *Id.* at 178.

[17] *Id.* at 179.

[18] *Id.* at 180.

[19] *Id.* at 155-160.

On June 17, 2019, the RTC, Branch 135, ruled that the expiration of the amended contract of lease was on February 11, 2018, and not on September 3, 2016. It ratiocinated that the compromise agreement between PMO and Mariano renewed the 20-year lease period from February 12, 1998 to February 11, 2018. Corollarily, the PMO violated the contract when it prematurely terminated the contract of lease. Lastly, the RTC, Branch 135, ordered the PMO to respect Mariano's right to renew the lease for another 20 years or from February 12, 2018 to February 11, 2038,[20] to wit:

> WHEREFORE, premises considered, this Court hereby orders the following:
>
> 1. Let a Writ of Final Injunction be issued making permanent the Writ of Preliminary Injunction dated July 31, 2017 in favor of plaintiff Mariano A. Nocom, as substituted by his heirs, by RESTRAINING, PROHIBITING and/or ENJOINING defendant Privatization and Management Office and all persons acting on its behalf from filing an eviction case against plaintiff and from committing any acts of dispossession of Repacom Building against plaintiff and ORDERS the Clerk of Court, Regional Trial Court, Makati City to release the consigned amount of Php263,538.00 corresponding to the monthly rentals for the months of September 2016 to June 2017 in favor of the defendant and to release the Injunction Bond in the amount of Php300,000.00 in favor of the plaintiff;
>
> 2. For Defendant to respect plaintiff's right to renew the Amended Contract of Lease for another twenty (20) years from February 12, 2018 or until February 11, 2038;
>
> 3. For Defendant to pay attorney's fees in the amount of Php200,000.00, and costs of suit.
>
> SO ORDERED.[21]

The PMO sought reconsideration but was denied.[22] Hence, this petition. The PMO, through the Office of the Solicitor

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[20] *Id.* at 73-80.

[21] *Id.* at 80.

[22] *Id.* at 81.

General, argues that direct recourse to this Court is warranted since the facts are undisputed and the case refers to interpretation of a contract which involves a question of law. On the merits, the PMO contends that the RTC erred in ruling that the compromise agreement renewed the period of the amended contract of lease from February 12, 1998 to February 11, 2018. The plain language of the compromise agreement only extended the term of the lease corresponding to the time it was suspended from March 7, 1995 to February 12, 1998, or a period of two (2) years, eleven (11) months and three (3) days. Thus, the amended contract of lease expired on September 3, 2016. However, Mariano notified PMO of his intention to renew the lease contract only on September 6, 2016, or three days after the agreement expired.[23]

In contrast, the heirs[24] of Mariano insist that the compromise agreement renewed the lease period for another 20 years from February 12, 1998, and that the correct expiration date of the amended contract of lease is on February 11, 2018. Consequently, Mariano timely notified the PMO on September 6, 2016 of his intention to renew the contract. Lastly, they claim that the PMO's letter dated February 24, 2011, stating that "*the monthly rental shall be increased by ten percent (10%) every four (4) years for twenty years starting February 12, 1998*,"[25] effectively confirmed the intention to renew the lease for another 20 years.

RULING

The petition is meritorious.

A question of law arises when there is doubt as to what the law is on a certain state of facts. It must not involve an

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[23] *Id.* at 23-68.

[24] *Id.* at 34. On April 5, 2019, PMO received a Notice of Substitution notifying the court of the death of Mariano and the substitution of his children and heirs as party to the case, which was subsequently granted by the RTC-Makati, Branch 135 in an Order dated April 8, 2019.

[25] *Id.* at 849.

examination of the probative value of the evidence.[26] Notably, an inquiry into the true intention of the contracting parties is a legal and not a factual issue. An appeal which involved an interpretation of the true agreement between the parties necessarily raises a question of law.[27] In this case, the issue as to the correct expiration date of the amended contract of lease entails an interpretation of the compromise agreement *vis-à-vis* the respective rights of the parties. Hence, direct recourse to this Court is allowed.

It is a cardinal rule in the interpretation of contracts that *"if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control."*[28] The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the agreement as a matter of law.[29] As *Bautista v. Court of Appeals*[30] aptly discussed:

The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. Stated

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[26] *Republic of the Phils. v. Malabanan*, 646 Phil. 631, 637 (2010), citing *Leoncio v. De Vera*, 569 Phil. 512, 516 (2008); and *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 767 (2013), citing *Heirs of Nicolas Cabigas v. Limbaco*, 670 Phil. 274, 285 (2011). See also *Vda. De Formoso v. Philippine National Bank*, 665 Phil. 184, 197 (2011).

[27] *F.F. Cruz & Co., Inc. v. HR Construction Corp.*, 684 Phil. 330, 347 (2012), citing *Phil. National Construction Corp. v. CA*, 541 Phil. 658, 669-670 (2007). See also *Malayan Insurance Co., Inc. v. St. Francis Square Realty Corp.*, G.R. Nos. 198916-17 & 198920-21, July 23, 2018. See also *CE Construction Corp. v. Araneta Center, Inc.*, 816 Phil. 221, 263 (2017).

[28] NEW CIVIL CODE, Art. 1370, first paragraph.

[29] *Abad v. Goldloop Properties, Inc.*, 549 Phil. 641, 654 (2007).

[30] 379 Phil. 386 (2000).

differently, where the language of a written contract is clear and unambiguous, the contract must be taken to mean that which, on its face, it purports to mean, unless some good reason can be assigned to show that the words used should be understood in a different sense. Courts cannot make for the parties better or more equitable agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties, or alter them for the benefit of one party and to the detriment of the other, or by construction, relieve one of the parties from terms which he voluntarily consented to, or impose on him those which he did not.[31] (Emphasis supplied.)

Here, there is no ambiguity in the language of the compromise agreement. The parties explicitly provided for an *extension of the lease period*. There is nothing in the agreement showing that the parties intended to renew the contract of lease for another 20 years. Otherwise, they could have expressly done so. Indeed, a fine distinction exists between a stipulation to *renew* a lease and one to *extend* it beyond the original term. A renewal clause creates an obligation to execute a new lease for the additional period. It connotes the cessation of the old agreement and the emergence of a new one. On the other hand, an extension clause operates of its own force to create an additional term. It does not require the execution of a new contract between the parties.[32] In this case, the compromise agreement did not require the parties to enter into another lease contract. Quite the contrary, the agreement *confirmed, ratified and validated* the existing amended contract of lease. Verily, the compromise agreement leaves no room for equivocation or interpretation. As such, no amount of extraneous sources are necessary in order to ascertain the parties' intent.[33] Relatively, the heirs of Mariano cannot unduly stretch the import of the PMO's letter dated February 24, 2011 beyond its nature as a mere demand to pay the increase in monthly

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[31] *Id.* at 399.

[32] See *Inter-Asia Services Corp. v. Hon. CA Special Fifteenth Div.*, 331 Phil. 708, 720 (1996), citing *Ching v. Hon. Ramolete*, 151-A Phil. 509, 516 (1973). See also *Buce v. CA*, 387 Phil. 897, 905 (2000).

[33] *Abella v. CA*, 327 Phil. 270, 275-276 (1996).

rental. The letter cannot also be taken as detached and isolated from the other acts of the PMO that are incompatible with the theory of renewal. Particularly, PMO's reminder about the expiration of the contract, its refusal to accept rental payment, and demand to peacefully vacate the building, render renewal out of the question. Taken together, the parties to the compromise agreement vividly intended for an extension of the lease period, and not renewal of the contract.

We now determine the correct expiration date of the amended contract of lease. Originally, the lease is for 20 years or from October 1, 1993 to September 30, 2013, and may be renewed for another 20 years upon agreement of the parties. However, the contract was suspended on March 7, 1995, when the COA disallowed the lease and the Board refused to accept rental payment. At that time, the contract had a remaining period of 18 years, 6 months and 21 days. On February 12, 1998, Asset Privatization and Mariano entered into a compromise agreement and ratified the amended contract of lease. They agreed to extend the term of the lease equivalent to the time it was suspended from March 7, 1995 to February 12, 1998, or a period of two (2) years, eleven (11) months and three (3) days. The suspended period when tacked to the original date of expiration (September 30, 2013), results on the date September 3, 2016. Similarly, the remaining period of the contract (18 years, 6 months and 21 days), when added to the date it was ratified (February 12, 1998), falls on the same date September 3, 2016. Clearly, the extended lease period expired on September 3, 2016. Otherwise, to reckon the expiration date on February 11, 2018, will give Mariano a period of possession for more than 20 years which is contrary to the tenor of the compromise agreement which ratified the provisions of the amended contract of lease.

Lastly, the amended contract of lease stipulated that it may be renewed for another 20 years upon agreement of the parties, provided, the lessee notifies in writing the lessor within 90 days before its expiration. However, Mariano notified the PMO of the renewal of the contract on September 6, 2016, or three days after its expiration on September 3, 2016. There was no longer any lease which could be renewed. It is settled that if

the lease was made for a determinate time, it ceases upon the day fixed, without the need of a demand.[34] Upon the lapse of the stipulated period, courts cannot belatedly extend or make a new lease for the parties, even on the basis of equity.[35] Here, after the lease was terminated on September 3, 2016, without reaching any agreement for its renewal, the PMO can eject the heirs of Mariano from the premises.[36]

We reiterate that in an action for specific performance, the terms and conditions of the contract sought to be enforced must be adhered to, and the Court is not empowered to alter them or to prescribe any other condition not previously agreed to, by the parties. It is not the province of a court to alter a contract by construction, or to make a new contract for the parties. Its duty is confined to the interpretation of the one which they have made for themselves, without regard to its wisdom or folly, as the court cannot supply material stipulations or read into the contract words which it does not contain.[37]

FOR THESE REASONS, the petition is **GRANTED**. The Decision dated June 17, 2019 of the Regional Trial Court of Makati City, Branch 135 in Civil Case No. R-MKT-16-03350-CV is **REVERSED** and **SET ASIDE**.

SO ORDERED.

Perlas-Bernabe, S.A.J. (Chairperson), Gesmundo, Lazaro-Javier, and *Rosario,*[*] *JJ.*, concur.

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[34] NEW CIVIL CODE, Art. 1669.

[35] *LL & Co. Dev't. & Agro-Industrial Corp. v. Huang Chao Chun*, 428 Phil. 665, 676 (2002), citing *Gindoy v. Judge Tapucar*, 166 Phil. 34, 44 (1977); and *Yap v. CA*, 406 Phil. 281, 289 (2001).

[36] *Chua v. CA*, 361 Phil. 308, 316 (1999).

[37] *Bank of Commerce v. Manalo*, 517 Phil. 328, 353 (2006), citing *Chua v. CA, id.* at 317; *LL & Co. Dev't. & Agro-Industrial Corp. v. Huang Chao Chun, supra* note 33, at 675-676; and *The Bacolod-Murcia Milling Co., Inc. v. Banco Nacional Filipino*, 74 Phil. 675, 680 (1944).

[*] Designated additional Member per Special Order No. 2797 dated November 5, 2020.

SECOND DIVISION

[G.R. No. 252914. November 9, 2020]

VIRGILIO S. SUELO, JR., *Petitioner*, *v.* **MST MARINE SERVICES (PHILS.), INC., THOME SHIP MANAGEMENT PTE. LTD., and ERNANDO A. RODIO,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS UNDER RULE 43 OF THE RULES OF COURT; APPEAL FROM THE DECISION OR AWARD OF VOLUNTARY ARBITRATORS OR PANEL OF VOLUNTARY ARBITRATORS (VA) TO THE COURT OF APPEALS (CA); PERIOD OF APPEAL; THE PETITION MUST BE FILED WITHIN FIFTEEN DAYS RECKONED FROM THE NOTICE OR RECEIPT OF THE VA'S RESOLUTION ON THE MOTION FOR RECONSIDERATION.— In the recent case of *Chin v. Maersk-Filipinas Crewing, Inc.*, (*Chin*) citing *Guagua National Colleges v. CA*, (*Guagua National Colleges*) the Court categorically declared that the correct period to appeal the decision or award of the Voluntary Arbitrators or Panel of Arbitrators to the CA via a Rule 43 petition for review is the fifteen (15)-day period set forth in Section 4 thereof reckoned from the notice or receipt of the VA's resolution on the motion for reconsideration, and that the ten (10)-day period provided in Article 276 of the Labor Code refers to the period within which an aggrieved party may file said motion for reconsideration . . . .

2. ID.; ID.; ID.; ID.; ID.; EXTENSION OF THE FIFTEEN-DAY REGLEMENTARY PERIOD TO APPEAL; AN ADDITIONAL PERIOD OF FIFTEEN DAYS WITHIN WHICH TO FILE A PETITION MAY BE GRANTED UPON PROPER MOTION AND PAYMENT OF THE FULL DOCKET FEES BEFORE THE EXPIRATION OF THE REGLEMENTARY PERIOD.— [U]nder Section 4, Rule 43 of the Rules of Court, upon proper motion and the payment of the full amount of the docket fees before the expiration of the reglementary period, **the CA may grant an additional period of fifteen (15) days only**

within which to file the petition for review, and no further extension shall be granted except for the most compelling reason and in no case shall it exceed fifteen (15) days.

In this case, records reveal that petitioner received a copy of the VA's Decision denying his motion for reconsideration on **July 12, 2019**. Thus, he had fifteen (15) days therefrom or until **July 27, 2019** within which to file the petition, ***or*** to move for a 15-day extension of time to file the same. Assuming that an extension is granted, he had until **August 11, 2019**, reckoned from the expiration of the reglementary period on July 27, 2019, within which to file his petition.

Indeed, petitioner filed a motion for extension of time to file his Rule 43 Petition within the allowable period or on **July 22, 2019**. Although the Rules allow only for a 15-day extension or until August 11, 2019, he was able to file his petition on **August 9, 2019**, also clearly within the allowable extended period. Hence, in both instances, petitioner filed his pleadings on time.

3. ID.; ID.; ID.; ID.; AFFIDAVIT OF SERVICE; INACCURACY IN THE STATEMENT OF THE MANNER OF SERVICE OF THE PETITION IS INCONSEQUENTIAL WHEN COPIES THEREOF HAD BEEN SERVED ON THE ADVERSE PARTIES. — [P]etitioner's error in the affidavit of service stating that he served copies of the Rule 43 Petition to the adverse parties through personal service instead of registered mail appears to have been an honest mistake. In any case, the inaccuracy in the statement of the manner of service appears inconsequential considering that, after all, he was able to serve copies of the petition to the adverse parties.

APPEARANCES OF COUNSEL

Justiniano Panambo, Jr. for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioner Virgilio S. Suelo, Jr. (petitioner) assailing the Resolutions[2] dated September 3, 2019 and March 6, 2020 of the Court of Appeals (CA) in CA-G.R. SP No. 161699, which dismissed his petition for review under Rule 43 of the Rules of Court (Rules) due to several procedural infirmities.

The Facts

On May 10, 2016, petitioner was hired by respondent MST Marine Services (Phils.), Inc. (respondent) as Second Engineer for a six (6)-month contract on board the vessel "*Janesia Asphalt V*," with a basic monthly package of $1,551.00 as salary, $1,155.00 as overtime pay, and $466.00 vacation leave pay, among others. On May 28, 2016, he boarded the vessel and commenced his duties as Second Engineer.[3]

On October 29, 2016, he was brought to Singapore General Hospital due to severe headache, slurring of speech, neck pain, and a recent history of loss of consciousness. Upon evaluation, he was diagnosed with uncontrolled hypertension. His X-ray results revealed degenerative change at C5-6 and C6-7 levels. Subsequently, he was given medications, declared unfit for all marine duties, and signed off in Singapore on medical grounds. He arrived in the Philippines on November 4, 2016 and immediately flew to his hometown in Iloilo.[4]

On November 7, 2016, he reported to respondent's branch office in Iloilo. He alleged that respondent did not allow him to report to its Manila office and refused to refer him to a

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[1] *Rollo*, pp. 3-39.

[2] Id. at 44-45 and 46-48, respectively. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Pedro B. Corales and Ronaldo Roberto B. Martin, concurring.

[3] CA *rollo*, pp. 42-43.

[4] Id. at 43.

company-designated physician. Instead, respondent allegedly asked him to seek medical treatment subject to reimbursement. However, he averred that when he submitted his request for reimbursement, respondent denied the same.[5] Accordingly, he filed a complaint for permanent and total disability benefits, damages, and attorney's fees before the National Conciliation and Mediation Board (NCMB).

For their part, respondent argued that it was petitioner who refused to undergo treatment with the company-designated physician, thereby forfeiting his right to claim disability benefits and sick wages. Moreover, petitioner was not entitled to sickness allowance, damages, and attorney's fees in the absence of bad faith from respondent's end.[6]

The VA Ruling

In a Decision[7] dated February 18, 2019, the Panel of Voluntary Arbitrators (VA) denied petitioner's claim, rejecting his allegation that respondent asked him to seek medical treatment subject to reimbursement. The VA found that the medical abstract he submitted, which was dated two (2) years from the time of his disembarkation from the vessel, revealed that he sought medical treatment almost a year after such disembarkation, or around August 2017. Moreover, the VA ruled that petitioner cannot claim medical reimbursement since he failed to submit any evidence of his medical expenses. On the other hand, it found that respondent was able to prove through substantial evidence that it was petitioner who actually refused to be referred to a company-designated physician because he believed that his condition was already cured.[8]

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[5] Id.

[6] Id. at 43-44.

[7] Id. at 42-48. Signed by MVA Edgar P. Fernando, MVA Raul T. Aquino, and MVA Rosario C. Cruz.

[8] This was evidenced by a handwritten statement executed and signed by petitioner willingly, wherein he waived his "sick wages, medical and hospitalization at the company's expense, and disability benefits." See *id.* at 161-163.

Aggrieved, petitioner filed a motion for reconsideration,[9] which was denied in a Resolution[10] dated June 28, 2019. Petitioner, through counsel, received the copy of the order of the denial of the MR on **July 12, 2019**. On **July 22, 2019**, petitioner moved for a twenty (20)-day extension within which to file a petition for review before the CA, or until **August 11, 2019**.[11] On **August 9, 2019**, petitioner filed a petition for review under Rule 43 of the Rules (Rule 43 Petition) before the CA.[12]

The CA Ruling

In a Resolution[13] dated September 3, 2019, the CA dismissed the Rule 43 Petition outright citing the following procedural infirmities: *(a)* it was filed two (2) days late, and *(b)* the affidavit of service was inaccurate, since it stated that the service of the copy of the petition upon the adverse parties was done personally, when in fact it was served through registered mail. With respect to the *first* ground, the CA explained that since petitioner received the VA's June 28, 2019 Decision denying his motion for reconsideration on **July 12, 2019**, he only had until **August 7, 2019**, reckoned from July 22, 2019 (or ten [10] days from July 12, 2019), within which to file the Rule 43 Petition before the CA. However, he belatedly filed the same on August 9, 2019 in violation of Section 4, Rule 43 of the Rules of Court. Anent the *second* ground, the CA ruled that the inaccuracy in the affidavit of service was in violation of Section 13, Rule 13 of the same Rules.[14]

Dissatisfied, petitioner moved for reconsideration.[15] He admitted that he had only fifteen (15) days from July 12, 2019, or until July 27, 2019, within which to file the Rule 43 Petition

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[9] Id. at 51-61.

[10] Id. at 49-50.

[11] *Rollo*, p. 46.

[12] CA *rollo*, p. 8.

[13] *Rollo*, pp. 44-45.

[14] Id.

[15] Id. at 216-224.

before the CA. However, believing that he had only ten (10) days to do so, he opted to file a motion for extension of the period to file the Rule 43 Petition, thus asking for an additional twenty (20) days or until August 11, 2019, to file the same. He likewise admitted that he inadvertently stated in his explanation that the copy of the petition was served to the adverse party through personal service.[16]

In a Resolution[17] dated March 6, 2020, the CA denied petitioner's motion for reconsideration, holding that the right to appeal is not a natural right as it is merely a statutory privilege to be exercised only in accordance with the law. Although the law admits exceptions, as the Rules may be relaxed to save litigants from injustice commensurate with his failure to comply with the prescribed rules, the CA found said exception to be wanting in this case. Consequently, the VA's Decision became final and executory, and thus, immutable and unalterable.[18]

Hence, the present petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in dismissing the Rule 43 Petition on procedural grounds.

The Court's Ruling

The appeal is meritorious.

In the recent case of *Chin v. Maersk-Filipinas Crewing, Inc.*,[19] *(Chin)* citing *Guagua National Colleges v. CA*,[20] *(Guagua National Colleges)* the Court categorically declared that the correct period to appeal the decision or award of the Voluntary Arbitrators or Panel of Arbitrators to the CA via a Rule 43

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[16] Id. at 46.

[17] Id. at 46-47.

[18] Id.

[19] See G.R. No. 247338, September 2, 2020.

[20] See G.R. No. 188482, August 28, 2018.

petition for review is the fifteen (15)-day period set forth in Section 4[21] thereof reckoned from the notice or receipt of the VA's resolution on the motion for reconsideration, and that the ten (10)-day period provided in Article 276 of the Labor Code refers to the period within which an aggrieved party may file said motion for reconsideration, *viz.*:

> Hence, the 10-day period stated in Article 276 should be understood as the period within which the party adversely affected by the ruling of the Voluntary Arbitrators or Panel of Arbitrators may file a motion for reconsideration. Only after the resolution of the motion for reconsideration may the aggrieved party appeal to the CA by filing the petition for review under Rule 43 of the *Rules of Court* **within 15 days from notice pursuant to Section 4 of Rule 43**.[22] (Emphasis and underscoring supplied)

Moreover, under Section 4, Rule 43 of the Rules of Court, upon proper motion and the payment of the full amount of the docket fees before the expiration of the reglementary period, **the CA may grant an additional period of fifteen (15) days only within which to file the petition for review**, and no further extension shall be granted except for the most compelling reason and in no case shall it exceed fifteen (15) days.

In this case, records reveal that petitioner received a copy of the VA's Decision denying his motion for reconsideration on **July 12, 2019**. Thus, he had fifteen (15) days therefrom or

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[21] Sec. 4, Rule 43 of the Rules provides:

SEC. 4. *Period of appeal*. — The appeal shall be taken within **fifteen (15) days from notice of the award, judgment, final order or resolution**, or from the date of its last publication, if publication is required by law for its effectivity, or **of the denial of petitioner's motion for new trial or reconsideration** duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, **the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.** (Emphases supplied)

[22] See G.R. No. 247338, September 2, 2020.

until **July 27, 2019** within which to file the petition, ***or*** to move for a 15-day extension of time to file the same. Assuming that an extension is granted, he had until **August 11, 2019**, reckoned from the expiration of the reglementary period on July 27, 2019, within which to file his petition.

Indeed, petitioner filed a motion for extension of time to file his Rule 43 Petition within the allowable period or on **July 22, 2019**. Although the Rules allow only for a 15-day extension or until August 11, 2019, he was able to file his petition on **August 9, 2019**, also clearly within the allowable extended period. Hence, in both instances, petitioner filed his pleadings on time. Moreover, petitioner's error in the affidavit of service stating that he served copies of the Rule 43 Petition to the adverse parties through personal service instead of registered mail appears to have been an honest mistake. In any case, the inaccuracy in the statement of the manner of service appears inconsequential considering that, after all, he was able to serve copies of the petition to the adverse parties.

In sum, the Court finds that the CA erred in dismissing outright the Rule 43 Petition based solely on procedural grounds; therefore, a remand of the case for a resolution on the merits is warranted. Finally, following the Court's recent disposition in *Chin*, the reminder to the Department of Labor and Employment and the NCMB to revise or amend the Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings to reflect the ruling in the *Guagua National Colleges* case is hereby reiterated.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated September 3, 2019 and March 6, 2020 of the Court of Appeals in CA-G.R. SP No. 161699 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the present case is **REMANDED** to the Court of Appeals for resolution on the merits.

SO ORDERED.

Gesmundo, Lazaro-Javier, Lopez, and *Rosario,*[*] *JJ.*, concur.

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[*] Designated Additional Member per Special Order No. 2797 dated November 5, 2020.

EN BANC

[A.C. No. 12079. November 10, 2020]

EDUARDO B. MANALANG, *Complainant*, *v.* **ATTY. CRISTINA BENOSA BUENDIA,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; SUPREME COURT'S AUTHORITY TO DISCIPLINE ERRANT MEMBERS.— This Court's authority to discipline the members of the legal profession arises from its constitutional prerogative to regulate the practice of law. Moreover, the "power to discipline attorneys, who are officers of the court, is an inherent and incidental power in courts of record, and one which is essential to an orderly discharge of judicial functions."

2. ID.; ID.; THE LAWYERS' DUTY TO UPHOLD THE LAW AND PROMOTE RESPECT FOR LAW AND THE LEGAL PROCESSES DEMANDS THAT THEY SHOULD NOT ENGAGE IN UNLAWFUL, DISHONEST, IMMORAL OR DECEITFUL CONDUCT.— The duty of a lawyer to uphold the Constitution, obey the laws of the land, and promote respect for law and legal processes demands that he or she shall "not engage in unlawful, dishonest, immoral or deceitful conduct." *Saladaga v. Astorga* explains:

> Any act or omission that is contrary to, prohibited or unauthorized by, in defiance of, disobedient to, or disregards the law is "unlawful." "Unlawful" conduct does not necessarily imply the element of criminality although the concepts is broad enough to include such element.
>
> To be "dishonest" means the disposition to lie, cheat, deceive defraud or betray; be untrustworthy; lacking in integrity, honest, probity, integrity in principle, fairness and straightforwardness. On the other hand, conduct that is "deceitful" means as follows:
>
> Having the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts,

to the prejudice and damage of the party imposed upon.

3. ID.; ID.; LAWYERS MUST BE HONEST IN DEALING WITH THEIR CLIENTS OR THE PUBLIC AT LARGE.— As members of the legal profession, lawyers are bound to respect and uphold the law at all times. They must be honest with their dealings, especially with respect to their clients. In *Caballero v. Sampana*:

> ". . . Lawyers must conduct themselves beyond reproach at all times, whether they are dealing with their clients or the public at large, and a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment."

4. ID.; ID.; DISBARMENT; A LAWYER MAY BE DISBARRED FOR MISREPRESENTATION AND DECEITFUL ACTS, SUCH AS FABRICATING A COURT DECISION.— This Court will not hesitate to mete out the grave penalty of disbarment if a lawyer is found guilty of misrepresentation and deception of his or her client.

. . .

Here, it is clear that respondent violated her sworn duties under the Lawyer's Oath and the Code of Professional Responsibility when she deliberately misled and deceived her client by fabricating a court decision.

5. ID.; ID.; ID.; NEGLECT IN HANDLING THE CLIENT'S CASE WARRANTS THE PENALTY OF DISBARMENT.— [R]espondent handled the case of complainant. Her denials, assertions, and inconsistencies failed to support her case and overcome the substantial evidence presented against her which shows how she failed to uphold the duties required from a lawyer.

Respondent was dishonest in the performance of her duties and in dealing with her client. She claims that she took care of the client's case when, in truth, she never acted on it. Worse, she deceived the client by saying that his nullity case was already resolved, handing him a fabricated decision and Certificate of Finality. Clearly, she was the lawyer of the complainant and her excuse of being an innocent intermediary appears to be a mere afterthought.

> Furthermore, respondent was negligent in handling the client's case. In many instances, she deliberately failed to update complainant with the status of the case despite complainant's calls and text messages. She even asked that complainant put his trust and confidence in her despite knowing that the nullity case was never filed.
>
> . . .
>
> For her failure to uphold the standards required in the legal profession, respondent no longer deserves to be a member of the bar. Not only did she fail to observe the duties of competence and diligence required from lawyers, she also continuously deceived her client in utter disregard of the duties and obligations required from a member of the legal profession.

6. ID.; ID.; LEGAL FEES; WHEN A LAWYER FAILS TO PROVIDE LEGAL SERVICES TO THE CLIENT, THE LEGAL FEES PAID MUST BE RETURNED TO THE LATTER.— When a lawyer fails to provide legal services to his or her client, such as failure to file the case, the legal fees paid must be returned to the latter. . . .

> Thus, the respondent must return the total amount of ₱270,000.00 paid by the complainant.

APPEARANCES OF COUNSEL

Martinez & Associates Law Office for respondent.

R E S O L U T I O N

PER CURIAM:

Before us is a disbarment complaint against Atty. Cristina Benosa Buendia (Atty. Buendia) for allegedly deceiving complainant Eduardo B. Manalang (Manalang) in connection with the latter's petition for nullity of his marriage.

Sometime in 2011, Manalang engaged the services of Atty. Buendia for the declaration of nullity of his marriage. Atty. Buendia told Manalang that the proceeding usually lasts from one (1) to two (2) years, but with her services, it can be hastened

to six (6) months to one (1) year. Manalang hesitated at first, but Atty. Buendia assured him that everything was legal. Thus, an agreement was made where Manalang would pay legal fees amounting to ₱275,000.00 plus documentation and out of pocket expenses.[1]

On two (2) separate dates, Manalang paid ₱10,000.00 and ₱15,000.00, for the full payment of the acceptance fee. He also made a partial payment for the proceedings amounting to ₱120,000.00. On another date, Manalang met with Atty. Buendia in Chowking at San Juan to pay ₱30,000.00 representing legal fees.[2]

When Manalang followed up on the status of the case sometime in April 2012, Atty. Buendia assured him that everything was going smoothly. At that time, Manalang manifested that if there were problems in expediting the resolution of the case, he was willing to go through the usual process even if it takes longer. However, Atty. Buendia replied: "*Ed, hindi na pwede kasi magbabayad na naman ikaw niyan. Di bale maiksing panahon na lang naman, matatapos na din*." She then told him to put his trust and confidence in her.[3]

From June to September 2012 Manalang tried to contact Atty. Buendia to follow-up his case but she never answered his calls. Manalang also visited Atty. Buendia's office three times but she was always unavailable.[4]

On September 7, 2012, Atty. Buendia eventually agreed to meet Manalang in the office of one Atty. Neil Salazar (Atty. Salazar) located along Visayas Avenue. During the meeting, Manalang learned from Atty. Buendia that Atty. Salazar was actually the one handling his case. He also found out that his case was filed in Ballesteros, Cagayan. Atty. Buendia explained

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[1] *Rollo*, pp. 2-3.

[2] Id. at 3.

[3] Id. at 3-4.

[4] Id. at 4.

that she and Atty. Salazar knew someone in Cagayan who can help them, and that they will get results by November 6, 2012. She also promised that she will update Manalang within 15 days, but never did.[5]

Manalang tried to contact Atty. Buendia from September 22, 2012 to April 2013, to no avail. It was only on April 15, 2013 that Atty. Buendia messaged Manalang to say the annulment case was finally resolved and the decision was already available. However, Manalang remained doubtful of his case being filed because he was never furnished a copy of the decision.[6]

On April 28, 2013, Manalang met Atty. Buendia in her office in Kamuning and asked for a copy of the decision. Atty. Buendia initially refused, but when Manalang insisted, she hesitatingly gave him a copy of a decision rendered by the 33rd Branch of the Regional Trial Court in Ballesteros, Cagayan dated December 28, 2011.[7]

The caption in the decision said that the case is for "Declaration of Nullity" entitled *"Eduardo B. Manalang, Petitioner versus Rosa Brutas-Manalang"* docketed as "Civil Case No. 33-268-2010." Atty. Buendia also gave Manalang a copy of a Certificate of Finality dated February 17, 2012, from the same court.[8]

Afterwards, Atty. Buendia demanded ₱50,000.00 for processing the registration of the nullity with the National Statistics Office, an amount which Manalang deposited to Atty. Buendia's BPI Account on May 10, 2013. By that time, Manalang already paid a total of ₱225,000.00.[9]

When Manalang inspected the decision, he observed that it contained fabricated details regarding his marriage, such as

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[5] Id.

[6] Id. at 5.

[7] Id.

[8] Id.

[9] Id. at 5-6.

physical violence allegedly inflicted on him. He also noticed that the facts therein were different from what he had narrated to Atty. Buendia. These made him doubt the veracity of the documents.[10]

Manalang then contacted Atty. Buendia to clarify the discrepancies in the decision. He made at least 50 phone calls and 40 text messages to Atty. Buendia from May 2013 to January 2014, but she never responded. Manalang also visited Atty. Buendia's office in Kamuning four (4) times, but she never showed up.[11]

This made Manalang grow even more suspicious which is why he took it upon himself to go to Ballesteros, Cagayan to find out the status of his case. There, he learned that there was "absolutely no case filed for the dissolution of [his] marriage."[12] As soon as he found out, he contacted Atty. Buendia but she never responded.[13]

On June 27, 2014, Manalang filed a Complaint[14] against Atty. Buendia before the Integrated Bar of the Philippines.

In her Answer,[15] Atty. Buendia said that she has never handled a nullity case before and for this reason, she referred Manalang to Atty. Neil Tabbu (Atty. Tabbu). She claimed that Manalang insisted on not appearing in the proceedings—something she did not take seriously as she advised Manalang to talk to Atty. Tabbu instead.[16]

Atty. Buendia also alleged that she only agreed to be an intermediary between Manalang and Atty. Tabbu who practices

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[10] Id. at 6.

[11] Id.

[12] Id.

[13] Id.

[14] Id. at 2-7.

[15] Id. at 25-28.

[16] Id. at 25-26.

in Cagayan. She said they also agreed that Atty. Tabbu will handle the case for ₱275,000.00.[17]

Atty. Buendia admitted to receiving the following payments: (a) ₱10,000.00 and ₱15,000.00 acceptance fees; (b) ₱120,000.00 partial payment for nullity proceedings; and (c) ₱30,000.00 legal fees. However, she claimed she only received these as an intermediary and not as the lawyer of Manalang.[18]

Further, Atty. Buendia averred that she updated Manalang of the status of his case, but only as relayed to her by Atty. Tabbu.[19] As to Manalang's allegation that no case was filed, Atty. Buendia stated that she has no knowledge as to the truthfulness of this claim.[20] She further asserted that Manalang long knew that a different lawyer was handling the case.[21]

She also disavowed giving a copy of the decision, and the Certificate of Finality to Manalang.[22] Further, she denied demanding an additional ₱50,000.00 for the registration of the nullity in the National Statistics Office.[23] She averred that no payments accrued to her as the amount formed part of the payment for Atty. Tabbu and it was deposited in her account only because she agreed to be an intermediary.[24]

The Integrated Bar of the Philippines Investigating Commissioner[25] found that Atty. Buendia violated Canon 1, Rule 1.01, and Canon 18, Rules 18.03 and 18.04, of the Code

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[17] Id.

[18] Id. at 26 and 3.

[19] Id.

[20] Id. at 59.

[21] Id. at 26.

[22] Id. at 27.

[23] Id.

[24] Id.

[25] Id. at 52-63. The September 4, 2015 Report and Recommendation was penned by Investigating Commissioner Oscar Leo S. Billena of the Integrated Bar of the Philippines.

of Professional Responsibility and recommended the penalty of disbarment for gross misconduct.

This was adopted by the Integrated Bar of the Philippines Board of Governors[26] which recommended Atty. Buendia's disbarment for her "failure to file a case of annulment of marriage despite receipt of acceptance fee from her client in the amount of ₱270,000.00."[27] In addition, the Board of Governors reasoned that she should be disbarred "for her production of a spurious decision with certificate of finality from the court."[28]

Atty. Buendia moved for reconsideration, but it was denied.[29]

For resolution is the issue of whether or not respondent Atty. Buendia should be disbarred for her misrepresentations and for deceiving her client.

In *Zaldivar v. Sandiganbayan*,[30] this Court explained the burdens ascribed to the practice of law. At all times, members of the legal profession must remain highly ethical and should observe faithful compliance with the rules of the profession. Failure to dispense these duties results in this Court's exercise of its ultimate power of disciplining errant members:

> [T]he practice of law is *a privilege burdened with conditions. Adherence to the rigid standards of mental fitness, maintenance of the highest degree of morality and faithful compliance with the rules of the legal profession are the conditions required for remaining a member of good standing of the bar and for enjoying the privilege to practice law.*
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> The Supreme Court, as guardian of the legal profession, has ultimate disciplinary power over attorneys. This authority to discipline its members is not only a right, but a bounden duty as well. The Court

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[26] Id. at 79-80. The May 28, 2016 Resolution No. XXII-2016-327 was adopted by the Board of Governors of the Integrated Bar of the Philippines.

[27] Id.

[28] Id.

[29] Id. at 77-78.

[30] G.R. Nos. 79690-707, 80578 (1989) [Per J. Campos, Jr., *En Banc*].

cannot, and will not, tolerate any outbursts from its members without running the risk of disorder, chaos and anarchy in the administration of justice. That is why respect and fidelity to the Court is demanded of its members "not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance."[31] (Emphasis supplied)

This Court's authority to discipline the members of the legal profession arises from its constitutional prerogative to regulate the practice of law.[32] Moreover, the "power to discipline attorneys, who are officers of the court, is an inherent and incidental power in courts of record, and one which is essential to an orderly discharge of judicial functions."[33]

Rule 138, Section 27 of the Rules of Court enumerates the grounds for disbarment or suspension of lawyers:

SECTION 27. *Attorneys removed or suspended by Supreme Court on what grounds*. — A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.[34]

In dealing with clients, Canon 1 of the Code of Professional Responsibility states that a lawyer shall uphold the law and promote respect for law and the legal processes. This Canon is comprised of four (4) rules:

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[31] Id.

[32] CONST., Art. VIII, Sec. 5 (5).

[33] *In re: Almacen v. Yaptinchay*, G.R. No. L-27654, February 18, 1970, 31 SCRA 562, 597 [Per *J.* Castro, First Division].

[34] RULES OF COURT, Rule 138, Sec. 27.

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

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

Rule 1.02 - A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Rule 1.03 - A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

Rule 1.04 - A lawyer shall encourage his clients to avoid, end or settle a controversy if it will admit of a fair settlement.[35]

The duty of a lawyer to uphold the Constitution, obey the laws of the land, and promote respect for law and legal processes[36] demands that he or she shall "not engage in unlawful, dishonest, immoral or deceitful conduct."[37] *Saladaga v. Astorga*[38] explains:

> Any act or omission that is contrary to, prohibited or unauthorized by, in defiance of, disobedient to, or disregards the law is "unlawful." "Unlawful" conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element.
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> To be "dishonest" means the disposition to lie, cheat, deceive, defraud or betray; be untrustworthy; lacking in integrity, honesty, probity, integrity in principle, fairness and straightforwardness. On the other hand, conduct that is "deceitful" means as follows:
>
> > Having the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon. In order to be deceitful, the person must either have knowledge of the falsity or acted in reckless and conscious ignorance thereof, especially if the parties are not on equal terms, and was done with the intent that the

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[35] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 1.

[36] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 1.

[37] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 1.01.

[38] 748 Phil. 1 (2014) [Per *J.* Leonardo-de Castro, *En Banc*].

> aggrieved party act thereon, and the latter indeed acted in reliance of the false statement or deed in the manner contemplated to his injury.[39] (Citations omitted)

As members of the legal profession, lawyers are bound to respect and uphold the law at all times. They must be honest with their dealings, especially with respect to their clients. In *Caballero v. Sampana*:[40]

> Rule 1.01 of the Code of Professional Responsibility states that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." As such, membership in the legal profession is a privilege that is bestowed upon individuals who are not only learned in law, but are also known to possess good moral character. Lawyers must conduct themselves beyond reproach at all times, whether they are dealing with their clients or the public at large, and a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment. Thus, while the Court has emphasized that the power to disbar is always exercised with great caution and only for the most imperative reasons or cases of clear misconduct affecting the standing and moral character of the lawyer as an officer of the court and member of the Bar, it has, likewise, underscored the fact that any transgression, whether professional or non-professional, indicating unfitness for the profession justifies disciplinary action, as in the case of the respondent.
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> Section 27, Rule 138 of the Rules of Court provides that 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. Gross misconduct has been defined as any inexcusable, shameful or flagrantly unlawful conduct on the part of the person involved in the administration of justice, conduct that is prejudicial to the rights of the parties, or to the right determination of the cause.[41]

This Court will not hesitate to mete out the grave penalty of disbarment if a lawyer is found guilty of misrepresentation and deception of his or her client.

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[39] Id. at 13.

[40] A.C. No. 10699, October 6, 2020 [*Per Curiam, En Banc*].

[41] Id.

Madria v. Rivera[42] has analogous circumstances to this case. In *Madria*, petitioner obtained the legal services of respondent to help her with the annulment of her marriage. Respondent guaranteed he can obtain the decree of annulment without petitioner appearing in court. Months later, respondent informed petitioner that her petition had been granted and provided her a copy of the decision and a certificate of finality.

Petitioner's husband in that case, however, filed a complaint against her for allegedly fabricating the decision for the annulment of her marriage. It was then that petitioner learned that the decision and the certificate of finality were fabricated. Upon inquiring with the court, she found that her petition for annulment was actually dismissed and the signature in the alleged decision presented by respondent was forged.

In *Madria*, this Court disbarred respondent and explained that his act "not only violates the court and its processes, but also betrays the trust and confidence reposed in him by his client[.]"[43] Therefore, disbarment was meted out for his failure to maintain and uphold the integrity of the Law Profession.[44] In that case this Court held:

> The respondent directly contravened the letter and spirit of Rules 1.01 and 1.02, Canon 1, and Rule 15.07, Canon 15 of the Code of Professional Responsibility[.]
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> . . . . . .
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> The respondent would shift the blame to his client. That a lay person like the complainant could have swayed a lawyer like the respondent into committing the simulations was patently improbable. Yet, even if he had committed the simulations upon the client's prodding, he would be no less responsible. Being a lawyer, he was aware of and was bound by the ethical canons of the Code of Professional Responsibility, particularly those quoted earlier, which would have been enough to deter him from committing the falsification,

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[42] 806 Phil. 774 (2017) [*Per Curiam, En Banc*].

[43] Id. at 777.

[44] Id. at 785-786.

as well as to make him unhesitatingly frustrate her prodding in deference to his sworn obligation as a lawyer to always act with honesty and to obey the laws of the land. Surely, too, he could not have soon forgotten his express undertaking under his Lawyer's Oath to "do no falsehood, nor consent to its commission." Indeed, the ethics of the Legal Profession rightly enjoined every lawyer like him to act with the highest standards of truthfulness, fair play and nobility in the course of his practice of law. As we have observed in one case:

> Public confidence in law and lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Thus, a lawyer should determine his conduct by acting in a manner that would promote public confidence in the integrity of the legal profession. Members of the Bar are expected to always live up to the standards embodied in the Code of Professional Responsibility as the relationship between an attorney and his client is highly fiduciary in nature and demands utmost fidelity and good faith.
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> . . . . . .
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> Falsifying or simulating the court papers amounted to deceit, malpractice or misconduct in office, any of which was already a ground sufficient for disbarment under Section 27, Rule 38 of the Rules of Court. The moral standards of the Legal Profession expected the respondent to act with the highest degree of professionalism, decency, and nobility in the course of their practice of law. That he turned his back on such standards exhibited his baseness, lack of moral character, dishonesty, lack of probity and general unworthiness to continue as an officer of the Court.[45] (Citations omitted)

Similarly, in *Billanes v. Latido*,[46] this Court disbarred a lawyer for similar misrepresentation and deceitful acts.

In *Billanes*, petitioner engaged the services of respondent for the annulment of his marriage with his estranged Filipino wife. About a month later, respondent informed petitioner that the annulment case had been filed and that the judge had rendered

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[45] Id.

[46] A.C. No. 12066, August 28, 2018 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64472> [*Per Curiam, En Banc*].

a decision in his favor. Respondent even showed a copy of the decision to the petitioner.

Believing his marriage was annulled, petitioner married an Australian national and applied for an Australian visa, attaching the purported decision supporting the annulment of his first marriage. The Australian Embassy, however, informed petitioner that the decision was fraudulent and its submission will result in the denial of his visa application. Petitioner then inquired with the court which supposedly rendered the decision. However, that court issued a certification stating that his annulment case was never filed and the documents furnished to him were fake. With these circumstances, respondent was disbarred.[47] This Court explained:

> Rule 1.01, Canon 1 of the CPR instructs that "as officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing." Indubitably, respondent fell short of such standard when he committed the afore-described acts of misrepresentation and deception against complainant. Such acts are not only unacceptable, disgraceful, and dishonorable to the legal profession; they further reveal basic moral flaws that make respondent unfit to practice law.
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> In *Tan v. Diamante*, the Court found the lawyer therein administratively liable for violating Rule 1.01, Canon 1 of the CPR as it was established that he, among others, falsified a court order. In that case, the Court deemed the lawyer's acts to be "so reprehensible, and his violations of the CPR are so flagrant, exhibiting his moral unfitness and inability to discharge his duties as a member of the bar." Thus, the Court disbarred the lawyer.
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> Similarly, in *Taday v. Apoya, Jr.*, promulgated just last July 3, 2018, the Court disbarred the erring lawyer for authoring a fake court decision regarding his client's annulment case, which was considered as a violation also of Rule 1.01, Canon 1 of the CPR. In justifying the imposition of the penalty of disbarment, the Court held that the lawyer "committed unlawful, dishonest, immoral[,] and deceitful conduct, and lessened the confidence of the public in the legal system. Instead of being an advocate of justice, he became a perpetrator of

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[47] Id.

injustice. His reprehensible acts do not merit him to remain in the rolls of the legal profession. Thus, the ultimate penalty of disbarment must be imposed upon him."[48] (Citations omitted)

Here, it is clear that respondent violated her sworn duties under the Lawyer's Oath and the Code of Professional Responsibility when she deliberately misled and deceived her client by fabricating a court decision.

Respondent denies that she was engaged as counsel for complainant's nullity case and alleges she only acted as an intermediary. Yet, respondent failed to present any evidence to support her argument that it was indeed Atty. Tabbu whose services were engaged.

As to the payment for the services, respondent argues that she only received such payments, again, as an intermediary. However, the acknowledgment receipts did not show that she received them on behalf of Atty. Tabbu. Moreover, respondent never rebutted the assertion of complainant that no nullity case was filed yet she claims to have updated complainant on its status as relayed by Atty. Tabbu.

Verily, respondent handled the case of complainant. Her denials, assertions, and inconsistencies failed to support her case and overcome the substantial evidence presented against her which shows how she failed to uphold the duties required from a lawyer.

Respondent was dishonest in the performance of her duties and in dealing with her client. She claims that she took care of the client's case when, in truth, she never acted on it. Worse, she deceived the client by saying that his nullity case was already resolved, handing him a fabricated decision and Certificate of Finality. Clearly, she was the lawyer of the complainant and her excuse of being an innocent intermediary appears to be a mere afterthought.

Furthermore, respondent was negligent in handling the client's case. In many instances, she deliberately failed to update

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[48] Id.

complainant with the status of the case despite complainant's calls and text messages. She even asked that complainant put his trust and confidence in her despite knowing that the nullity case was never filed.

When a lawyer fails to provide legal services to his or her client, such as failure to file the case, the legal fees paid must be returned to the latter. As held in *Pariñas v. Paguinto*:[49]

> Pariñas gave Paguinto [₱]10,000 cash as partial payment of the acceptance fee. Pariñas also gave Paguinto [₱]2,500 for the filing fee. Paguinto led Pariñas to believe that he had filed the annulment case. Paguinto informed Pariñas that the case was filed with the RTC-Manila, Branch 64, before Judge Ricaforte. However, Pariñas later found out that Paguinto never filed the annulment case in court.
>
> Rule 16.01 of the Code of Professional Responsibility ("the Code") provides that a lawyer shall account for all money or property collected for or from the client. ***Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause. Money entrusted to a lawyer for a specific purpose, such as for filing fee, but not used for failure to file the case must immediately be returned to the client on demand***. Paguinto returned the money only after Pariñas filed this administrative case for disbarment.
>
> Paguinto should know that as a lawyer, he owes fidelity to the cause of his client. When a lawyer accepts a case, his acceptance is an implied representation that he possesses the requisite academic learning, skill and ability to handle the case. The lawyer has the duty to exert his best judgment in the prosecution or defense of the case entrusted to him and to exercise reasonable and ordinary care and diligence in the pursuit or defense of the case.[50] (Citations omitted, emphasis supplied)

Thus, the respondent must return the total amount of ₱270,000.00 paid by the complainant.

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[49] 478 Phil. 239 (2004) [Per J. Carpio, First Division]. See also *Lijauco v. Terrado*, 532 Phil. 1 (2006) [Per J. Ynares-Santiago, First Division].

[50] Id. at 244-245.

For her failure to uphold the standards required in the legal profession, respondent no longer deserves to be a member of the bar. Not only did she fail to observe the duties of competence and diligence required from lawyers, she also continuously deceived her client in utter disregard of the duties and obligations required from a member of the legal profession.

WHEREFORE, this Court finds respondent Atty. Cristina Benosa Buendia **GUILTY** of violating Canon 1, Rules 1.01 and 1.02 of the Code of Professional Responsibility. She is hereby **DISBARRED** from the practice of law and her name stricken from the Roll of Attorneys. Respondent is **ORDERED** to return to complainant Eduardo B. Manalang, within 30 days from notice, the sum of ₱270,000.00 with an interest at the rate of six percent (6%) per annum from the date of the promulgation of this Resolution until fully paid.[51] Respondent is further **DIRECTED** to submit to this Court proof of her payment within 10 days therefrom.

Let a copy of this Resolution be furnished to the Office of the Bar Confidant to be attached to Atty. Buendia's personal record. Copies of this Resolution should also be served on the Integrated Bar of the Philippines for its proper disposition, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Carandang, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

Lazaro-Javier, Inting, and *Zalameda, JJ.*, on official leave.

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

EN BANC

[A.C. No. 12702. November 10, 2020]

DIVINE GRACE P. CRISTOBAL, *Complainant*, *v.* **ATTY. JONATHAN A. CRISTOBAL,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; THE LAWYERS' DUTY TO COMPORT THEMSELVES IN A PROFESSIONAL AND RESPECTFUL MANNER APPLIES TO BOTH THEIR PROFESSIONAL ENGAGEMENTS AND PERSONAL LIFE.— Time and again, this Court has emphasized the need to regulate the legal profession with the goal of raising the standards of the legal profession, improving the administration of justice, and efficiently discharging one's public responsibility as an officer of the courts. This Court's power to purge the legal profession of people who do not exemplify the traits of honesty, integrity, and good moral character is necessary to promote the public's faith in the legal profession. Otherwise, the integrity of the judicial system is suspect since lawyers are the bridge between the lay and the courts. "He[/she] is the first one, either as a government lawyer or as a private practitioner, to sit in judgment on every case, and whether the court will be called upon to act depends upon his[/her] decision."

. . .

Therefore, a lawyer's duty to comport one's self in a professional and respectful manner is not only confined to professional engagements but extends to one's personal life. This principle is also embodied in Rule 7.03 of the CPR where "[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." Corollary to this standard of conduct is the proscription against engaging in unlawful, dishonest, immoral, or deceitful conduct under Rule 1.01 of the CPR.

2. ID.; ID.; SUSPENSION OR DISBARMENT; GROUNDS THEREOF; LAWYERS MUST MAINTAIN THE NOBLE IDEAS AND STRICTEST STANDARDS OF MORALITY TO REMAIN

WORTHY OF THE OFFICE AND THE PRIVILEGES WHICH THEIR LICENSE AND THE LAW CONFERS UPON THEM.— Aside from Rules 1.01 and 7.03 and Canon 7 of the CPR, Section 27, Rule 138 of the Rules of Court lists deceit, malpractice, other gross misconduct in the office, grossly immoral conduct, or a violation of the lawyer's oath as grounds for suspension or disbarment. Item no. 29 of the Canons of Professional Ethics directs the reporting of corrupt and dishonest conduct and instructs lawyers to guard against morally deficient candidates. It cannot be gainsaid that the burden imposed on lawyers is in keeping with the Court's objective of obviating the Bar of odious members who tarnish the reputation of and reduce the confidence reposed on the legal profession and the judicial system to which they belong.

. . .

Despite the significant changes made in the realm of legal ethics to adapt to the changing times and countless jurisprudence applying its legal principles, this Court will not waver in rebuking deplorable conduct. Lawyers are always mandated to maintain the noble ideas and strictest standards of morality to remain worthy of the office and the privileges which their license and the law confers upon them.

3. ID.; ID.; ID.; UNLAWFUL AND IMMORAL CONDUCT; REMEDIAL LAW; EVIDENCE; QUANTUM OF PROOF; THE DISMISSAL OF A CRIMINAL CASE ARISING FROM VIOLENT AND ABUSIVE ACTS OF LAWYERS AGAINST THEIR SPOUSES, AS ESTABLISHED BY SUBSTANTIAL EVIDENCE, DOES NOT EXCULPATE THEM FROM THE ADMINISTRATIVE LIABILITY FOR UNLAWFUL AND GROSSLY IMMORAL CONDUCT.— Although acts amounting to gross immorality cannot be delineated, this Court has held that grossly immoral conduct is one that is "willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community." Determining whether one's actions is grossly immoral depends on the attendant circumstances and prevailing norms of conduct.

The instant administrative case is hinged on Atty. Cristobal's violent and abusive behavior towards his wife, Divine. The dismissal of the criminal case filed by Divine against him does

not exculpate him from administrative liability. While We correct Divine's allegation that a preponderance of evidence is needed in administrative cases, this Court nevertheless finds Atty. Cristobal guilty under Rule 1.01 for unlawful conduct based on substantial evidence — that which is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

4. ID.; ID.; ID.; ID.; ID.; ID.; A POLICE BLOTTER THAT IS SUBSTANTIATED BY A MEDICAL CERTIFICATE MAY BE ADMITTED AND CONSIDERED TO PROVE THE FACTS STATED THEREIN.— Entries in police records made by a police officer in the performance of the duty especially enjoined by law are *prima facie* evidence of the fact therein stated, and their probative value may be either substantiated or nullified by other competent evidence. Although police blotters are of little probative value, they are nevertheless admitted and considered in the absence of competent evidence to refute the facts stated therein.

We find that the January 30, 2005 incident, which was entered in the police blotter was substantiated by other competent evidence. The January 30, 2005 blotter was presented in evidence with a medical certificate. On the other hand, the affidavits presented by Atty. Cristobal failed to refute the fact that an altercation occurred on January 30, 2005 resulting in his physically hurting Divine out of anger.

5. ID.; ID.; ID.; ID.; PHYSICAL VIOLENCE IS NEVER A NORMAL OCCURRENCE WHEN COUPLES ARGUE.— Atty. Cristobal's narration of the facts does not inspire belief. Similar to Director Esguerra's observation, Atty. Cristobal's defense is contrary to human experience. One's acts of parrying an offender's blows and driving the latter away is completely different from directly punching the alleged assailant straight to the face. For Divine to receive a black eye, Atty. Cristobal would have had made a boxing motion. It is incredulous that the first and only action he did immediately hit Divine in the eye. He already admitted that he was angry as he "felt his blood rising up" prior to allegedly closing his eyes. Thus, it is more believable that he deliberately boxed Divine. What's more, he admitted seeing Divine with an injury on her eye[;] yet he did not even bother to attend to her wounds. To him, such fight was a normal quarrel between couples.

Let it be stressed that physical violence is never a normal occurrence when couples argue. Violence is violence. To justify the same is egregious and goes against the very essence of a civilized society.

6. ID.; ID.; ID.; ID.; CRIMINAL LAW; SLIGHT PHYSICAL INJURIES; REMEDIAL LAW; EVIDENCE; AFFIDAVIT OF DESISTANCE; THE EXECUTION OF AN AFFIDAVIT OF DESISTANCE THAT RESULTED IN THE DISMISSAL OF A CRIMINAL CASE IS NOT A GROUND FOR ABSOLUTION FROM ADMINISTRATIVE LIABILITY FOR THE PHYSICAL INJURIES INFLICTED UPON ONE'S SPOUSE.— Atty. Cristobal knew, or at least ought to know, that the injury Divine sustained made him liable for slight physical injuries. To trivialize what happened is appalling considering his standing as a lawyer — a person tasked to uphold the law.

Divine's execution of an Affidavit of Desistance in the criminal case — resulting in its dismissal — does not absolve Atty. Cristobal from any administrative liability. The Whereas Clause of the Compromise Agreement categorically stated that its execution was "without admitting liability to each other" and was more for "amicably settl[ing] the civil aspect of the [criminal] case." Divine's desistance in the criminal case did not diminish the veracity of her accusations against Atty. Cristobal.

7. ID.; ID.; ID.; ID.; THE DESISTANCE AND ATTEMPTS OF A LAWYER'S SPOUSE TO RECONCILE DOES NOT ERASE THE LAWYER'S MISCONDUCT.— Atty. Cristobal's violence towards his spouse shows his lack of respect for the sanctity of marriage. It is violative of his legal obligation to respect Divine. Even negating their relationship as husband and wife, Atty. Cristobal's actions may clearly be subject of a criminal proceeding – had it not been for Divine's desistance. Divine's alleged attempts to reconcile with Atty. Cristobal will not erase the fact that Atty. Cristobal did not conduct himself in the manner required of him as a member of the Bar.

8. ID.; ID.; ID.; ID.; MITIGATING CIRCUMSTANCES; PENALTY; A SPOUSE'S ABRASIVE PERSONALITY, PROVOCATION, AND DISRESPECT, AS WELL AS RESPONDENT'S SUPPORT FOR THE FAMILY, MAY BE TAKEN AS MITIGATING CIRCUMSTANCES.— [A]tty. Cristobal's actions

display his unlawful and immoral conduct, in violation of Rule 1.01 of the CPR.

. . .

However, disbarment is too harsh a penalty given the attenuating circumstances in this case.

. . .

Because disbarment proceedings are to be "exercised on the preservative and not on the vindictive principle," the Court, in its discretion, may impose a lower penalty. As in this case, there are mitigating circumstances that militate against the imposition of the extreme penalty of disbarment.

We cannot turn a deaf ear on Atty. Cristobal's claim that Divine is abrasive, boorish, insolent, and disrespectful towards Atty. Cristobal, Atty. Cristobal's relatives, the spouses' household help, their children, the people tasked to renovate their house, and even their children's teachers.

. . .

Also, a meticulous scrutiny of the evidence presented by both parties shows that most of the incidences complained of were caused by Divine's provocation. . . .

Moreover, this Court notes Atty. Cristobal's claim that he has solely provided for their four children's education, sustenance, and support for the past decade. . . .

Given the aforementioned mitigating circumstances, this Court finds a suspension of three (3) months appropriate.

9. ID.; ID.; ID.; ID.; ID.; ID.; THE IMPOSITION OF THE PENALTY OF SUSPENSION INSTEAD OF DISBARMENT AFTER TAKING INTO CONSIDERATION THE MITIGATING CIRCUMSTANCES IS NOT A CONDONATION OR JUSTIFICATION FOR ACTS OF VIOLENCE AGAINST ONE'S SPOUSE.— We emphasize that Our act of reducing the administrative penalty due to Divine's disrespect towards Atty. Cristobal is in no way a condonation or justification for Atty. Cristobal's acts of violence toward Divine. The consideration of these circumstances is only for the purpose of reducing the penalty imposed on Atty. Cristobal from disbarment to suspension.

APPEARANCES OF COUNSEL

Roberto A. San Jose Law Office for complainant.
J.A. Cristobal Law, Accounting & Notarial Office for respondent.

D E C I S I O N

CARANDANG, *J.*:

This case involves a Complaint[1] for disbarment filed by Divine Grace P. Cristobal (Divine) against her husband, Atty. Jonathan A. Cristobal (Atty. Cristobal; collectively, the spouses). Divine accused Atty. Cristobal of violating Canon 7[2] of the Code of Professional Responsibility (CPR) and the lawyer's oath.

Version of the Complainant

Divine and Atty. Cristobal were married on May 1, 1999 and were blessed with four (4) children. They did not encounter any major marital problem during the early years of their married life. However, Atty. Cristobal's behavior changed when he became a lawyer in March 2003. He became abusive and irresponsible towards his family and subjected Divine to verbal, emotional, psychological, and physical abuse. Divine described six (6) particular instances of such abuse.[3]

On January 30, 2005, the spouses had a heated argument over money. In the presence of two (2) of their children, Atty. Cristobal's mother (Araceli), his brother (Jay), his sister (Joyce), and his cousins, Atty. Cristobal choked and pushed Divine, punched her at the back, and shouted "*mayabang ka, akala mo ikaw ang gumgastos [sic] ng lahat!*" Divine reported the incident at the Ilagan Police Station and secured a Medical Certificate on the same day.[4]

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[1] *Rollo*, Vol. I, pp. 1-3.

[2] 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.

[3] *Rollo*, Vol. 1, pp. 1-2.

[4] Id. at 2.

Sometime in April 2006, Atty. Cristobal threw a Red Horse beer bottle at Divine because she protested Atty. Cristobal's payment of his family's utility bills. The argument started when Divine asked for money to buy food but was not given money by Atty. Cristobal because he paid for the said utility bills. It was then that Atty. Cristobal threatened that they separate and uttered, "you may get the car, the house, the children but you can never have me!"[5]

Sometime in April 2007, Divine requested Atty. Cristobal to purchase milk for their son. Atty. Cristobal retorted, "*eh di ikaw ang mag-utos, leche ka!*" He then pulled Divine's hair and punched her back, causing Divine to fall down the stairs. Atty. Cristobal shouted, "*umuwi na kayo! Ayaw ko na kayong makita! Lumayas ka dito! [sic]*" in the presence of their children.[6] Since they were at Araceli's house at the time of the incident, Divine and her children returned to their rented place in Bagumbayan, Ilagan, Isabela. For one month, Atty. Cristobal did not go home to their rented house. Divine went back to Araceli's house with her children when she realized she was solely paying for the rent in addition to the family loan she took out in July 2004.[7]

On May 15, 2009, Divine confronted Atty. Cristobal about her suspicions that he was having an affair with one of his students in St. Ferdinand College. Atty. Cristobal responded, "*lumayas ka na ayaw na kita!*" He then pushed her, causing her to lose her balance and hit her forehead on their house's gate.[8] Pictures of her injury were attached to the instant disbarment complaint.[9]

During a car ride on July 17, 2009, the spouses were with Joyce and three of their children when Atty. Cristobal ordered

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[5] Id.

[6] Id.

[7] Id. at 167.

[8] Id.

[9] Id. at 12.

Divine to step out of the car. He pulled her hair, yelled, "*umuwi ka na sa nanay mo!,*" "*ayaw na kitang makita!,*" and "*papatayin kita!*" Atty. Cristobal then drew out his hand gun and threatened to shoot her.[10]

On December 11, 2009, Atty. Cristobal boxed Divine's right eye. According to Divine, she simply followed Atty. Cristobal to his law office to chat but Atty. Cristobal was hostile and misinterpreted everything Divine said. It was because of this incident that Divine filed with the Office of the Provincial Prosecutor of Ilagan, Isabela a Complaint against Atty. Cristobal for violation of the Anti-Violence Against Women and Their Children Act of 2004 (AVAWC) on December 14, 2009. Pictures of her black (right) eye, the police blotter, and a medico-legal report were attached to the instant disbarment complaint.[11]

Version of the Respondent

In his Answer[12] dated September 8, 2010, Atty. Cristobal denied having a peaceful relationship during the early stages of their marital life as they often quarrelled even before they got married. He described Divine as disrespectful to everyone — his relatives, their children, their children's teachers, their household help, and Divine's officemates.[13]

Atty. Cristobal denied arguing about money because he gave his salary to Divine. His pay checks as the Clerk of Court of the Regional Trial Court of Santiago City, Branch 35 were given to Divine. When he resigned as a Clerk of Court and became the Dean of St. Ferdinand College, his salary from the school was deposited to his Metro Bank account — the bank where Divine worked. Divine had control of his earnings as Dean because she had possession of his ATM card.[14]

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[10] Id. at 3.

[11] Id. at 169.

[12] Id. at 24-36.

[13] Id. at 24-25.

[14] Id. at 26-28.

Atty. Cristobal vehemently denied physically and verbally abusing Divine and explained his version of the events between January 30, 2005 and December 11, 2009.[15]

On January 30, 2005, the spouses were occupying the third floor of Araceli's house. Since it was a Sunday, he went down to Araceli's place at the second floor to take a nap on the sofa located inside the living room. While he was sleeping, Divine suddenly woke him up by repeatedly kicking his legs and feet and angrily said, "*hoy gising!*" Annoyed, Atty. Cristobal responded, "*ang bastos mo naman. Hindi pa ginawa ng papa ko sa akin yan!*" Because of their elevated voices, Araceli, Jay, and Joyce went to them and asked what was going on. When Atty. Cristobal explained that Divine was kicking him to wake up, Araceli asked Divine why the latter needed to resort to such behavior. Divine then denied kicking him. Frustrated over Divine's denial, he lost his composure and pushed Divine back up to the third floor. However, he did not choke or punch her back.[16] This was attested to by Araceli,[17] Jay,[18] and Joyce,[19] in separate affidavits all dated September 6, 2010.

In April 2006, Atty. Cristobal manifested that he was new in private practice and was barely earning enough for the family. However, his earnings as Dean of St. Ferdinand College were at Divine's disposal for food and other expenses. Atty. Cristobal recalled that upon reaching the house after a tennis match with one of his clients, he asked Divine what their breakfast would be. Out of the blue, Divine shouted, "*magbigay ka ng pera mo! Akin na!*" When Atty. Cristobal said he had no money because he paid for his family's electricity bills, she got angry and threatened to leave the house if he didn't give her money. Divine then proceeded to pack her and their children's belongings

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[15] Id. at 26-36.

[16] Id. at 27.

[17] Id. at 39-40.

[18] Id. at 44.

[19] Id. at 40-43.

and pointed at the number of household items she will get. Irked, Atty. Cristobal shouted, "you can have the car, you can have the house, you can have the children but you cannot have me!" However, Atty. Cristobal denied having thrown a beer bottle at Divine as he was not drinking at that time.[20]

As for the April 2007 incident where the spouses allegedly fought over purchasing their child's milk, Atty. Cristobal denied physically hurting and shouting at Divine over such issue. He claimed that Divine's version of what happened is too vague and failed to specify the exact date of the said incident.[21]

Atty. Cristobal averred that it was impossible for them to argue last May 15, 2009 because he attended a court hearing in the morning and proceeded to the Office of the City Prosecutor in the afternoon. Any argument the spouses had over Atty. Cristobal's alleged affairs were fabricated by Divine because of her unjustified fits of jealousy. Atty. Cristobal claimed that Divine would be suspicious of almost anyone — his relatives, clients, students, officemates at the RTC, employees in the law firm, and even a guest at their child's baptism. Divine's pictures of her May 15, 2009 injury were alleged to be digitally altered and new.[22]

Atty. Cristobal gave a lengthy account of what happened on July 17, 2009. On that day, Atty. Cristobal dropped Divine and their youngest child off at Isabela General Hospital and informed Divine that he cannot pick them up because of a testimonial luncheon for new lawyers hosted by the Integrated Bar of the Philippines (IBP) — Isabela Chapter. During the luncheon, Divine would berate Atty. Cristobal *via* text messages and insisted that he pick them up from the hospital. He was forced to leave the luncheon to fetch them and bring them back home.[23] However, Divine ordered him to bring them back to

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[20] Id. at 28-29.

[21] Id. at 30.

[22] Id. at 30-31.

[23] Id. at 32.

the hospital at 4:00 p.m. Anticipating that he would have imbibed a few alcoholic drinks by then, he suggested that any of their two part-time drivers (Franklin or Rolly) bring her and their son to the hospital. Still, Divine insisted that Atty. Cristobal accompany them. Upon returning home at 5:00 p.m., Atty. Cristobal acceded to Divine's demands to bring them back to the hospital despite his earlier advice. It was during this second trip to the hospital that Joyce and three of their children rode the car with the spouses. On the ride to the hospital, Divine was picking fights with Atty. Cristobal and was nagging him about his drinking during the luncheon. At wits' end, Atty. Cristobal stopped the car, took his things, told Divine to drive the car herself, and rode a tricycle to his uncle's house to cool down. Contrary to Divine's allegations, he could not have pulled her hair while they were in the car because Divine was seated in between Joyce and the spouses' daughter at the back seat. He also denied carrying a gun in the car, as attested by Franklin and Rolly.[24]

Atty. Cristobal gave a different version of what transpired on December 11, 2009. On that fateful day, Atty. Cristobal attended seven hearings. Afterwards, he reported for work at St. Ferdinand College until 7:30 p.m. Before heading home for the evening, he passed by his cousin's store where he ate dinner with his daughter.[25] Around 9:00 p.m., he instructed his daughter to return to his law office (located at the third floor of Araceli's residential building) where he and his daughter slept. As he was beginning to feel pain in his right eye, he went to Mercury Drugstore with his cousin's husband to purchase eye drops. Upon entering the gate of their house, Divine was already waiting for him *(nag-aabang)* at the ground floor. She then followed him to the third floor. Atty. Cristobal proceeded to take his glaucoma maintenance medicine and prepare for bed. When he lied down on the bed, Divine sat beside him and asked about his whereabouts on previous days.[26] She told him

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[24] Id. at 33-34.

[25] Id. at 61-62.

[26] Id. at 63-64.

that she saw a piece of scratch paper with scribbles of Atty. Cristobal's paramour in the pocket of Atty. Cristobal's pants. Divine then reached into Atty. Cristobal's shorts, grabbed his crotch, pulled his penis, and said, "*pinalabas na ba nila ito ha? Pinalabas na ba nila?*" Appalled by Divine's behavior, Atty. Cristobal brushed her hand away. Still, Divine placed her right hand on top of Atty. Cristobal's shorts, shook his crotch, and asked the same question. He requested her to stop nagging him. Divine then told one of their sons to bring up their crying child. In the presence of all their children, Divine would accuse Atty. Cristobal of having an affair. Divine also berated him about her labor case with her former employer.[27] Unsatisfied, Divine proceeded to slap Atty. Cristobal and punch his chest. She then put down their youngest child (who she was previously carrying), took Atty. Cristobal's belt and hit him with it. She also scratched Atty. Cristobal's face. Feeling his blood pressure rising, he closed his eyes, shielded his face, and defended himself by extending his arms to parry Divine's blows. When Divine stopped hitting him, he opened his eyes and saw Divine standing by the wall with an injury on her eye. Atty. Cristobal said, "*ayan kasi eh, sinabi ko ng tama na, nasaktan ka tuloy,*" Divine vindictively uttered, "*wala na talagang mangyayari sa atin. Kaya hintayin mo ang bawi ko, tingnan mo magmakaawa ka din sa akin! Aalis na ako!*" Atty. Cristobal did not bother going to the hospital for his bruises as they were only minor injuries and were the result of a normal quarrel between spouses.[28]

Atty. Cristobal then questioned the credibility of Divine's pictures evidencing Divine's black eye from the December 11, 2009 incident. He pointed out that these pictures were never presented in the criminal case filed against him, thus, alleging that these pictures were new and the injury shown in the pictures were digitally produced.[29]

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[27] Id. at 65-67.

[28] Id. at 68.

[29] Id. at 26.

Ruling of the Integrated Bar of the Philippines

In his Report and Recommendation[30] dated January 12, 2016, Investigating Commissioner Mario V. Andres (Commissioner Andres) recommended the dismissal of the administrative complaint for lack of merit.[31]

Commissioner Andres agreed with Atty. Cristobal and held that domestic squabbles cannot be a ground for disciplinary action when such squabbles are not scandalous in nature and would not affect the integrity or perception of the legal profession. The evidence presented by Divine failed to prove that Atty. Cristobal's actions merit the penalty of disbarment. Commissioner Andres noted that Divine's allegations are self-serving and ill motivated. Commissioner Andres ruled that Atty. Cristobal cannot be administratively sanctioned for the December 11, 2009 incident in the absence of a conviction in the criminal case filed by Divine against Atty. Cristobal.[32]

In Resolution No. XXI-2014-790[33] dated October 11, 2014, the IBP-Board of Governors (IBP-BOG) reversed the Report and Recommendation. The IBP-BOG recommended Atty. Cristobal's disbarment and his name stricken off the Roll of Attorneys. Pursuant to the IBP-BOG's Resolution, an Extended Resolution[34] dated January 12, 2016 was then submitted by Director Ramon S. Esguerra (Director Esguerra) on behalf of the IBP-BOG.[35]

Citing *In Re: Query of Atty. Silverio-Buffe*,[36] Director Esguerra explained that a lawyer may still be held administratively liable

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[30] Id. at 3-8.

[31] Id. at 6.

[32] Id. at 7-8.

[33] Id. at 1.

[34] Id. at 9-17. In the said Extended Resolution, Director Ramon S. Esguerra explained that such was belatedly submitted because previous Directors were not able to submit any such Resolution.

[35] Id.

[36] 613 Phil. 1 (2009).

despite the absence of any criminal intent. Atty. Cristobal's acts of physical violence were found to be prohibited, immoral, and scandalous behavior, thus, violating Canons 1 and 7 of the CPR. Director Esguerra noted Atty. Cristobal's admission that there were verbal altercations between the spouses, which led to physical violence. However, Director Esguerra did not believe that the injuries inflicted on Divine by Atty. Cristobal were accidental because Atty. Cristobal's version of the events were contrary to human experience. Atty. Cristobal cannot utilize domestic squabbles as an excuse for his conduct because violence and abuse are norms eschewed by society — much more by the legal profession.[37]

With Atty. Cristobal's failure to refute and disprove Divine's allegations, coupled with a pending criminal case filed against him, the IBP-BOG found him guilty of violating Canons 1 and 7 of the CPR and recommended Atty. Cristobal's disbarment.[38]

Atty. Cristobal filed a Motion for Reconsideration[39] dated February 18, 2016. He claimed that the IBP-BOG grossly misappreciated the facts and questioned the probative value of Divine's police blotter, medical certificate, and pictures. Atty. Cristobal manifested the dismissal of the criminal case filed by Divine against him *via* an Order dated October 5, 2015, concluding that the allegations made against him were specious and unsubstantiated.[40] On the slight physical injury caused by Atty. Cristobal on December 11, 2009,[41] Atty. Cristobal averred that disbarment is too harsh a penalty to be imposed on him for such act, especially since he has full custody of three of their children and shoulders all their expenses.[42] Also, Atty. Cristobal has not been remiss in sending his financial support to Divine

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[37] *Rollo*, Vol. II, pp. 14-17.

[38] Id. at 17.

[39] Id. at 18-35.

[40] Id. at 28.

[41] Inadvertently cited by Atty. Cristobal as December 9, 2009.

[42] *Rollo*, Vol. II, pp. 29-30.

for the monthly expenses of his youngest child, in accordance with the Compromise Agreement[43] dated September 19, 2014 executed by the spouses in connection with the criminal case filed by Divine against him.[44]

Atty. Cristobal disclosed subsequent text messages sent to him by Divine from October 14, 2014 to August 14, 2015 manifesting Divine's love for him and her desire to reunite their family.[45]

In her Comment/Opposition to the Motion for Reconsideration,[46] Divine asserted that her desistance to the criminal case does not merit the dismissal of the administrative case — the latter being *sui generis* and requiring only preponderant evidence. Thus, she prayed that Atty. Cristobal's motion for reconsideration be denied.[47]

In Resolution No. XXII-2017-1174[48] dated June 17, 2017, the IBP-BOG denied Atty. Cristobal's motion for reconsideration. This prompted Atty. Cristobal to file another Motion for Reconsideration[49] dated November 18, 2017. Atty. Cristobal raised the same issues as those in his first motion for reconsideration.[50]

Ruling of the Court

Time and again, this Court has emphasized the need to regulate the legal profession with the goal of raising the standards of the legal profession, improving the administration of justice, and efficiently discharging one's public responsibility as an

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[43] Id. at 36-38.

[44] Id.

[45] Id. at 32-34.

[46] Id. at 45-48.

[47] Id. at 45-47.

[48] *Rollo*, Vol. III, p. 1.

[49] Id. at 2-21.

[50] Id.

officer of the courts.[51] This Court's power to purge the legal profession of people who do not exemplify the traits of honesty, integrity, and good moral character is necessary to promote the public's faith in the legal profession.[52] Otherwise, the integrity of the judicial system is suspect since lawyers are the bridge between the lay and the courts. "He[/she] is the first one, either as a government lawyer or as a private practitioner, to sit in judgment on every case, and whether the court will be called upon to act depends upon his[/her] decision."[53]

Citing U.S. jurisprudence,[54] this Court in *In Re: Cunanan*[55] succinctly explained:

> The relation of the bar to the courts is a peculiar and intimate relationship. The bar is an attaché of the courts. The quality of justice dispensed by the courts depends in no small degree upon the integrity of the bar. An unfaithful bar may easily bring scandal and reproach to the administration of justice and bring the courts themselves to disrepute.[56]

Therefore, a lawyer's duty to comport one's self in a professional and respectful manner is not only confined to professional engagements but extends to one's personal life. This principle is also embodied in Rule 7.03 of the CPR where "[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." Corollary to this standard of conduct is the proscription against engaging in unlawful, dishonest, immoral, or deceitful conduct under Rule 1.01 of the CPR.

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[51] *See In Re: Integration of the Bar of the Philippines*, 151 Phil. 132, 134 (1973).

[52] *Jimenez v. Atty. Francisco*, 749 Phil. 551, 566 (2014).

[53] Agpalo (2009), *Legal and Judicial Ethics*, 8th ed., p. 4, citing *Ruckenbrod v. Mullins*, 133 2d. 325, 144 ALR 839 (1943).

[54] *State v. Canon*, 240 NW 441 (1932).

[55] 94 Phil. 534 (1954).

[56] Id. at 546.

Aside from Rules 1.01 and 7.03 and Canon 7 of the CPR, Section 27, Rule 138 of the Rules of Court lists deceit, malpractice, other gross misconduct in the office, grossly immoral conduct, or a violation of the lawyer's oath as grounds for suspension or disbarment. Item no. 29 of the Canons of Professional Ethics directs the reporting of corrupt and dishonest conduct and instructs lawyers to guard against morally deficient candidates. It cannot be gainsaid that the burden imposed on lawyers is in keeping with the Court's objective of obviating the Bar of odious members who tarnish the reputation of and reduce the confidence reposed on the legal profession and the judicial system to which they belong.

In the 1923 case of *In Re: Pelaez*,[57] Justice Malcolm — likewise a noted authority in legal ethics — pointed out the following principle:

> [A]s a general rule, a court will not assume jurisdiction to discipline one of its officers for misconduct alleged to have been committed in his private capacity. But this is a general rule with many exceptions. The courts sometimes stress the point that the attorney has shown, through misconduct outside of his professional dealings, a want of such professional honesty as render him unworthy of public confidence, and an unfit and unsafe person to manage the legal business of others.

Despite the significant changes[58] made in the realm of legal ethics to adapt to the changing times and countless jurisprudence applying its legal principles, this Court will not waver in rebuking deplorable conduct. Lawyers are always mandated to maintain the noble ideas and strictest standards of morality to remain worthy of the office and the privileges which their license and the law confers upon them.[59]

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[57] 44 Phil. 567 (1923).

[58] From only having Sections 13-37, Chapter II of Act No. 190 or an Act Providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands in 1901 to today's Rule 138-139 of the Rules of Court, Code of Professional Responsibility, and Code of Professional Ethics (adopted from the American Bar Association's Code of Professional Ethics in 1917).

[59] Supra note 57.

As against this legal philosophy, this Court is now tasked to determine — for the first time — whether domestic squabbles involving a lawyer and his/her spouse are proper subjects of a disbarment proceeding.

We rule, *pro hac vice*, in the positive. Atty. Cristobal's actions fall short of the exacting moral standard required of the noble profession of law.

Although acts amounting to gross immorality cannot be delineated, this Court has held that grossly immoral conduct is one that is "willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community."[60] Determining whether one's actions is grossly immoral depends on the attendant circumstances and prevailing norms of conduct.[61]

The instant administrative case is hinged on Atty. Cristobal's violent and abusive behavior towards his wife, Divine. The dismissal of the criminal case filed by Divine against him does not exculpate him from administrative liability. While We correct Divine's allegation that a preponderance of evidence is needed in administrative cases, this Court nevertheless finds Atty. Cristobal guilty under Rule 1.01 for unlawful conduct based on substantial evidence — that which is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Note that in *Reyes v. Atty. Nieva*,[62] this Court finally wrote *finis* to the issue of determining the quantum of proof in administrative cases. After perusing through this Court's history of cases, We clarified in *Reyes* that "the evidentiary threshold of substantial evidence — as opposed to preponderance of evidence — is more in keeping with the primordial purpose of and essential consideration attending this type of cases." As

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[60] *Obusan v. Obusan, Jr.,* 213 Phil. 437 (1984).

[61] *See Inocente v. St. Vincent Foundation for Children and Aging, Inc.*, 788 Phil. 62, 78 (2016).

[62] 796 Phil. 360 (2016).

against this jurisprudential dictum, We find Atty. Cristobal's acts wanting in the professional conduct expected of him.

Of the incidences reported by Divine against Atty. Cristobal, those that happened on January 30, 2005; May 15, 2009; and December 11, 2009 were accompanied by substantial evidence that Atty. Cristobal became physically violent with Divine. While we do not necessarily dismiss the other allegations of abuse, the evidence presented in the abovementioned three instances are sufficient to merit disciplinary action.

Atty. Cristobal never denied hurting Divine on January 30, 2005. Although Atty. Cristobal denied choking and punching her, he admitted pushing her after he "[lost] his composure." The affidavits of his mother, brother, and sister prove that they witnessed Atty. Cristobal pushing Divine. Atty. Cristobal and his witnesses claimed that he merely did so because of Divine's provocation. Furthermore, Atty. Cristobal merely attacks the probative value of Divine's police blotter[63] and medical certificate,[64] stating that the blotter has no probative value and that the medical certificate is a sham for failure to indicate the name of the physician.

Entries in police records made by a police officer in the performance of the duty especially enjoined by law are *prima facie* evidence of the fact therein stated, and their probative value may be either substantiated or nullified by other competent evidence. Although police blotters are of little probative value, they are nevertheless admitted and considered in the absence of competent evidence to refute the facts stated therein.[65]

We find that the January 30, 2005 incident, which was entered in the police blotter was substantiated by other competent evidence. The January 30, 2005 blotter was presented in evidence with a medical certificate. On the other hand, the affidavits presented by Atty. Cristobal failed to refute the fact that an

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[63] *Rollo*, Vol. 1, p. 10.

[64] Id. at 11.

[65] *Lao v. Standard Insurance Co., Inc.*, 456 Phil. 227, 234 (2003).

altercation occurred on January 30, 2005 resulting in his physically hurting Divine out of anger.

On May 15, 2009, in an argument between the spouses about Atty. Cristobal's alleged affair, Atty. Cristobal again pushed Divine. This caused Divine to lose her balance and hit the gate of their house. Pictures of Divine's head injuries were attached to the complaint.

Atty. Cristobal's defense is a denial that a confrontation occurred on that day. He makes much ado about the absence of proof that he was with another woman or was seen in a scandalous situation with another woman. Instead, Atty. Cristobal claims that the incident was merely fabricated because of Divine's obsessive jealousy. While Divine's jealous behavior is outside the ambit of the instant administrative complaint, what is undisputed is Atty. Cristobal's violent reaction during their argument.

The December 11, 2009 incident, which became the cause for Divine's filing of a criminal case against Atty. Cristobal, also remained unrefuted. As against Divine's four (4) pictures showing her black eye, the police blotter,[66] and the Medico-Legal Report[67] (both dated December 15, 2009), Atty. Cristobal simply attached the Counter-Affidavit[68] he submitted in the criminal case. Again, the police blotter was given weight because the same was presented in evidence with a Complaint for violation of AVAWC, pictures of Divine's black (right) eye, and a medico-legal report. Moreover, Atty. Cristobal admitted that he hit Divine on December 11, 2009, although he claimed that it was merely in an act of self-defense.

Atty. Cristobal alleged in his Counter-Affidavit that although he attempted to brush aside Divine's aggressive behavior (*i.e.*, her tirades about his womanizing, her holding his penis and shouting "*pinalabas na ba nila ito ha? Pinalabas na ba nila?*"

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[66] *Rollo*, p. 14.

[67] Id. at 15.

[68] Id. at 58-77.

and her accusation that Atty. Cristobal caused her to resign from her previous job), he accidentally hit her when he closed his eyes and "move[d] his extended arms forward to parry the complainant's blows and to drive her away."[69] Upon opening his eyes, he "saw complainant standing [by] the wall with an injury marked [on] her eyes."[70] According to him, he did not bother to go to the hospital despite the wounds caused by Divine's aggression and did nothing further.

Atty. Cristobal's narration of the facts does not inspire belief. Similar to Director Esguerra's observation, Atty. Cristobal's defense is contrary to human experience. One's acts of parrying an offender's blows and driving the latter away is completely different from directly punching the alleged assailant straight to the face. For Divine to receive a black eye, Atty. Cristobal would have had made a boxing motion. It is incredulous that the first and only action he did immediately hit Divine in the eye. He already admitted that he was angry as he "felt his blood rising up" prior to allegedly closing his eyes. Thus, it is more believable that he deliberately boxed Divine. What's more, he admitted seeing Divine with an injury on her eye yet he did not even bother to attend to her wounds. To him, such fight was a normal quarrel between couples.

Let it be stressed that physical violence is never a normal occurrence when couples argue. Violence is violence. To justify the same is egregious and goes against the very essence of a civilized society.

Atty. Cristobal knew, or at least ought to know, that the injury Divine sustained made him liable for slight physical injuries. To trivialize what happened is appalling considering his standing as a lawyer — a person tasked to uphold the law.

Divine's execution of an Affidavit of Desistance[71] in the criminal case — resulting in its dismissal — does not absolve

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[69] Id.

[70] Id.

[71] *Rollo*, Vol. II, p. 39.

Atty. Cristobal from any administrative liability. The Whereas Clause of the Compromise Agreement[72] categorically stated that its execution was "without admitting liability to each other" and was more for "amicably settl[ing] the civil aspect of the [criminal] case." Divine's desistance in the criminal case did not diminish the veracity of her accusations against Atty. Cristobal.

Therefore, Atty. Cristobal's actions display his unlawful and immoral conduct, in violation of Rule 1.01 of the CPR.

Atty. Cristobal's violence towards his spouse shows his lack of respect for the sanctity of marriage. It is violative of his legal obligation to respect Divine.[73] Even negating their relationship as husband and wife, Atty. Cristobal's actions may clearly be subject of a criminal proceeding — had it not been for Divine's desistance. Divine's alleged attempts to reconcile with Atty. Cristobal will not erase the fact that Atty. Cristobal did not conduct himself in the manner required of him as a member of the Bar.

However, disbarment is too harsh a penalty given the attenuating circumstances in this case.

In *Alitagtag v. Atty. Garcia*,[74] this Court warned against the immediate disbarment of errant lawyers, to wit:

> Indeed, the power to disbar must be exercised with great caution, and may be imposed only in a clear case of misconduct that seriously affects the standing and the character of the lawyer as an officer of the Court and as a member of the bar. Disbarment should never be decreed where any lesser penalty could accomplish the end desired. Without doubt, a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment. However, the said penalties are imposed with great caution, because they are the most severe forms of disciplinary action and their consequences are beyond repair.[75]

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[72] Id. at 36-38.

[73] FAMILY CODE OF THE PHILIPPINES, Art. 68.

[74] 451 Phil. 420 (2003).

[75] Id. at 426.

Because disbarment proceedings are to be "exercised on the preservative and not on the vindictive principle," the Court, in its discretion, may impose a lower penalty. As in this case, there are mitigating circumstances that militate against the imposition of the extreme penalty of disbarment.

We cannot turn a deaf ear on Atty. Cristobal's claim that Divine is abrasive, boorish, insolent, and disrespectful towards Atty. Cristobal, Atty. Cristobal's relatives, the spouses' household help, their children, the people tasked to renovate their house, and even their children's teachers.

Atty. Cristobal's mother, Araceli, attested that Divine was always disrespectful to her and never held back in speaking ill of her. Divine would brand Araceli as a *pakialamera* (meddlesome) and even cursed her and wished her dead. Even the workers who did some construction work at Araceli's house heard Divine shout at Araceli, "*putang ina mo na matanda ka.*"

Atty. Cristobal's sister, Joyce, described Divine as someone who (1) would insist on berating Atty. Cristobal — even in the presence of Atty. Cristobal's notarial clients — rather than stepping away from an argument to cool off; (2) would bad mouth Atty. Cristobal and constantly yelled at him, "*letche ka!*;" (3) did not care about her child's wellbeing when she was angry with Atty. Cristobal; and (4) was proud that she once threatened Atty. Cristobal with a knife, which she hid under her pillow. Even Joyce and the spouses' household help were not spared from Divine's bad temper. Divine would shout at them and call them stupid. Divine once threw a tantrum by throwing pots and pans when Joyce did not immediately answer her calls to go to her (Divine). Joyce, along with Atty. Cristobal's cousin (Jerocelyn), and Jerocelyn's husband noted how Divine was physically violent with her children — particularly the spouses' third child.

Jerocelyn helped the spouses during the times that they did not have any household help. She recalled how Divine accused her of stealing Divine's jewelry. Divine punched her and threw a pillow at her in an attempt to make Jerocelyn confess to the crime.

Ronald Pascual, one of the construction workers assigned to Araceli's house, revealed that Divine loved to curse and humiliate them. He also recalled how Divine once destroyed plates in a fit of anger over a punchbowl.

Antonio Apostol, another cousin of Atty. Cristobal, recounted how, on December 23, 2008, he and three of the spouses' children were happily preparing *buko* salad when he heard the spouses arguing. He then saw Divine pick up an empty, opened tin can and hurl the same at Atty. Cristobal. Divine then grabbed a knife and was about to throw it at Atty. Cristobal but retracted when her son shouted, "*huwag!*"

In an Incident Report[76] dated September 23, 2010, Jocelyn M. Claravall (Jocelyn), St. Ferdinand College's elementary principal, narrated how Divine punched the face of her son's Grade 1 adviser (Leticia) during a closed door meeting between Divine, Leticia, and Jocelyn. Divine tried to punch Leticia a second time but was successfully stopped by Jocelyn. The Incident Report also disclosed how Divine called Leticia *gaga* (crazy) in front of grade 1 students just because Leticia texted Divine the day before requesting Divine to bring her son to Atty. Cristobal's house (as the spouses already lived separately at that time).

Also, a meticulous scrutiny of the evidence presented by both parties shows that most of the incidences complained of were caused by Divine's provocation. *First*, Atty. Cristobal pushed Divine to go up to their house on the third floor because Divine denied kicking Atty. Cristobal while the latter was peacefully sleeping on Araceli's sofa. *Second*, the spouses' altercation in April 2006 was because of Divine's sudden demand for Atty. Cristobal to give her money. Her displeasure over: (1) Atty. Cristobal's payment of Araceli's utility bills; and (2) his failure to give her more money prompted her to pack her belongings and point to several items in their house that she will be getting — all while shouting at Atty. Cristobal. *Third*, the spouses' heated argument on May 15, 2009 was caused by

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[76] *Rollo*, pp. 197-198.

Divine's fits of jealousy. *Fourth*, what happened on July 17, 2009 stemmed from Divine's persistent demand that Atty. Cristobal be the one to bring Divine and their son to and fro the hospital twice despite: (1) knowing that Atty. Cristobal had a prior engagement; (2) being offered to be driven by Franklin or Rolly; and (3) being offered by Joyce to accompany her. Her incessant nagging and bad-mouthing of Atty. Cristobal in the presence of their children and Joyce led Atty. Cristobal to leave the car and ride a tricycle to his uncle's house to cool off. *Fifth*, the events that transpired on December 11, 2009 began when Divine impudently confronted Atty. Cristobal about his suspected affair. Notwithstanding Atty. Cristobal's pleas to rest after an exhausting week, Divine continued to harass Atty. Cristobal — even going so far as to pull his penis, punch his chest, slap him, hit him with his belt, and scratch his face. One of Atty. Cristobal's part-time drivers, Rolly, recalled how he met with Atty. Cristobal the following day and saw the latter's bruises and scratches on his hands. In spite of Atty. Cristobal's detailed account of the aforementioned instances, Divine never refuted Atty. Cristobal's allegations.

Moreover, this Court notes Atty. Cristobal's claim that he has solely provided for their four children's education, sustenance, and support for the past decade. Of their four children, their first three children have been living with Atty. Cristobal from the time Divine left the conjugal abode on December 9, 2009. Their youngest son, although within Divine's custody, is supported by Atty. Cristobal *via* monthly financial support in accordance with the spouses' Compromise Agreement.

Given the aforementioned mitigating circumstance, this Court finds a suspension of three (3) months appropriate.

We emphasize that Our act of reducing the administrative penalty due to Divine's disrespect towards Atty. Cristobal is in no way a condonation or justification for Atty. Cristobal's acts of violence toward Divine. The consideration of these circumstances is only for the purpose of reducing the penalty imposed on Atty. Cristobal from disbarment to suspension.

WHEREFORE, premises considered, respondent Atty. Jonathan A. Cristobal is found **GUILTY** of violating Rules 1.01 and 7.03 of the Code of Professional Responsibility, and is hereby **SUSPENDED** for a period of three (3) months from the practice of law, with a **WARNING** that a repetition of the same or similar offense will warrant a more severe penalty.

Let copies of this Decision be furnished all courts, the Office of the Bar Confidant and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is **DIRECTED** to append a copy of this Decision to respondent's record as a member of the Bar.

Respondent Atty. Jonathan A. Cristobal is **DIRECTED** to inform the Court of the date of his receipt of this Decision, so that the Court could determine the reckoning point when his suspension shall take effect.

This Decision is immediately executory.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Caguioa, Gesmundo, Hernando, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

Leonen, J., concurs with the findings but dissents as to the penalty, see separate opinion.

Lazaro-Javier, Inting, and *Zalameda, JJ.*, on official leave.

SEPARATE OPINION

LEONEN, *J.*:

Indeed, imposing sanctions in disciplinary cases is discretionary upon this Court. Nonetheless, in meting out the appropriate penalty, a lawyer's blatant display of immorality cannot be ignored. To perpetrate violence against women, let alone one's own wife, is to disregard the sanctity of marriage and the dignity of women. Certainly, this warrants a penalty more severe than the three-month suspension imposed by the majority.

Divine Grace P. Cristobal (Divine) filed this disbarment complaint against her husband, Atty. Jonathan A. Cristobal (Atty. Cristobal), alleging that the lawyer violated Canon 7 of the Code of Professional Responsibility and the Lawyer's Oath.[1] In her Complaint, Divine illustrated six occasions showing that Atty. Cristobal committed verbal, emotional, psychological, and physical abuse against her.[2]

Of the six instances, the majority recognized three to be supported by preponderant evidence, meriting disciplinary action.[3]

The first of these occurred on January 30, 2005.[4] Divine narrated that she and Atty. Cristobal were allegedly arguing about money in front of their children and her husband's mother, siblings, and cousins, when things heated up. Atty. Cristobal choked Divine and punched her, shouting, "*Mayabang ka, akala mo ikaw ang gumagastos (sic) ng lahat!*" Divine reported this to the police and secured a medical certificate.[5]

The second instance happened in 2009. Divine had been suspecting that Atty. Cristobal was having an affair with his student. When she confronted him about it on May 15, 2009, Atty. Cristobal pushed her while shouting, "*Lumayas ka na ayaw na kita!*" Divine fell and hit her forehead on their house gate. She submitted pictures of her injuries.[6]

The third instance happened on December 11, 2009. Divine allegedly visited Atty. Cristobal in his office only for her husband to greet her with hostility and misinterpret her intentions, punching her in her right eye. Again, Divine reported this to the police, and had the black eye she sustained documented.[7]

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[1] Ponencia, p. 1.

[2] Id. at 2-4.

[3] Id. at 16.

[4] Id. at 16-17.

[5] Id. at 2.

[6] Id. at 3.

[7] Id. at 3-4.

Divine recounted other instances, though she failed to substantiate them. These involved Atty. Cristobal throwing a beer bottle at her,[8] pulling her hair, punching her, and shouting at her as their children watched.[9] On another occasion, Divine said that her husband threatened her with a gun and forced her to alight from their car in front of their children and her sister-in-law.[10]

Atty. Cristobal denied Divine's allegations and rejected the imputation of grossly immoral conduct against him. He asserted that Divine was a difficult person who disrespected everyone, but even then, he never physically or verbally abused her.[11]

According to him, on January 30, 2005, he was asleep on his mother's couch when Divine started kicking him. Startled, he said, "*Ang bastos mo naman. Hindi pa ginawa ng papa ko sa akin yan!*" He denied choking or punching his wife, a claim that was corroborated by his mother, sister, and brother, whom he said were present in the incident.[12] He also claimed that there could have been no argument about money since he would give Divine his salary and access to his bank accounts.[13]

Atty. Cristobal also claimed that the May 15, 2009 altercation never occurred and that the photos presented were fabricated. He also denied having any affair, saying that Divine would just be suspicious of anyone, manifesting "her unjustified fits of jealousy."[14]

Atty. Cristobal likewise denied Divine's recounting of the events on December 11, 2009. He said that after a full day of running errands, he arrived at their house where Divine

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[8] Id. at 2.

[9] Id. at 3.

[10] Id.

[11] Id. at 4-5.

[12] Id. at 5.

[13] Id. at 4.

[14] Id. at 6.

aggressively interrogated him on his whereabouts and supposed paramour. She even harassed him by grabbing his crotch to force an answer out of him, as well as hitting him and scratching his face. To defend himself, Atty. Cristobal closed his eyes and stretched his arms to block Divine's punches but accidentally hit her in the eye in the process.[15]

The Investigating Commissioner recommended the complaint's dismissal, stating that domestic issues are not grounds for disciplinary action when these are not scandalous.[16] This was reversed by the Board of Governors, which recommended Atty. Cristobal's disbarment after finding that his acts were "prohibited, immoral, and scandalous behavior" in violation of Canons 1 and 7 of the Code of Professional Responsibility.[17] Atty. Cristobal sought reconsideration, but his motion was denied.[18]

The majority has affirmed the Board of Governors' findings, holding that Atty. Cristobal was guilty of grossly immoral conduct. It declared that "Atty. Cristobal's actions fall short of the exacting moral standard required of the noble profession of law."[19] It held:

> The instant administrative case is hinged on Atty. Cristobal's violent and abusive behavior towards his wife, Divine. The dismissal of the criminal case filed by Divine against him does not exculpate him from administrative liability. What is required to hold a member of the Bar administratively liable is preponderant proof or evidence on one side "that is, as a whole, superior to or has greater weight than that of the other." It necessitates "evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto."

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[15] Id. at 7-9.

[16] Id. at 9.

[17] Id. at 10.

[18] Id. at 12.

[19] Id. at 15.

Of the incidences reported by Divine against Atty. Cristobal, those that happened on January 30, 2005; May 15, 2009; and December 11, 2009 are accompanied by preponderant evidence that Atty. Cristobal became physically violent with Divine. While we do not necessarily dismiss the other allegations of abuse, the evidence presented in the abovementioned 3 instances are sufficient to merit disciplinary action.

. . . .

Therefore, Atty. Cristobal's actions display his unlawful and immoral conduct, in violation of Rule 1.01 of the CPR.

Atty. Cristobal's violence towards his spouse shows his lack of respect for the sanctity of marriage. It is violative of his legal obligation to respect Divine. Even negating their relationship as husband and wife, Atty. Cristobal's actions may clearly be subject of a criminal proceeding – had it not been for Divine's desistance. Divine's alleged attempts to reconcile with Atty. Cristobal will not erase the fact that Atty. Cristobal did not conduct himself in the manner required of him as a member of the bar.[20] (Citations omitted)

However, the majority went on to say that disbarment is too harsh a penalty for Atty. Cristobal. Thus, it proceeded to impose a much lighter penalty instead:

Because disbarment proceedings are to be "exercised on the preservative and not on the vindictive principle," the Court, in its discretion, may impose a lower penalty. As in this case, there are mitigating circumstances that militate against the imposition of the extreme penalty of disbarment.

We cannot turn a deaf ear on Atty. Cristobal's claim that Divine is abrasive, boorish, insolent, and disrespectful towards Atty. Cristobal, Atty. Cristobal's relatives, the spouses' household help, their children, the people tasked to renovate their house, and even their children's teachers.

. . . .

Moreover, this Court notes Atty. Cristobal's claim that he has solely provided for their four children's education, sustenance, and support for the past decade. Of their four children, their first three

[20] Id. at 16-20.

children have been living with Atty. Cristobal from the time Divine left the conjugal abode on December 9, 2009. Their youngest son, although within Divine's custody, is supported by Atty. Cristobal via monthly financial support in accordance with the spouses' Compromise Agreement.

Given the aforementioned mitigating circumstances, this Court finds a suspension of three (3) months appropriate.[21]

I disagree.

A three-month suspension, as the majority has determined, is too light a consequence for the physical, emotional, and verbal abuse that Atty. Cristobal committed against Divine. I do not agree that since disbarment proceedings are "exercised on the preservative and not on the vindictive principle," a lower penalty may be imposed.

In deciding the appropriate sanction in disciplinary proceedings, this Court must ensure that its lawyers are competent, honorable, and worthy of the confidence reposed in them by their clients and the public.[22] As *Tiong v. Florendo*[23] teaches, all lawyers must display the utmost degree of morality, not only to get admitted to the profession, but throughout their careers as members of the Bar:

> It has been consistently held by the Court that possession of good moral character is not only a condition for admission to the Bar but is a continuing requirement to maintain one's good standing in the legal profession. It is the bounden duty of law practitioners to observe the highest degree of morality in order to safeguard the integrity of the Bar. Consequently, any errant behaviour on the part of a lawyer, be it in his public or private activities, which tends to show him deficient in moral character, honesty, probity or good demeanor, is sufficient to warrant his suspension or disbarment.[24]

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[21] Id. at 20-25.

[22] *Advincula v. Macabata*, 546 Phil. 431, 439-440 (2007) [Per J. Chico-Nazario, Third Division].

[23] 678 Phil. 195 (2011) [Per J. Perlas-Bernabe, Third Division].

[24] Id. at 199-200 citing *Advincula v. Macabata*, 546 Phil. 431 (2007) [Per J. Chico-Nazario, Third Division].

This Court has the duty to demand the highest standard from its officers, even if it means imposing penalties that may be seen as harsh. In *Advincula v. Macabata*,[25] this Court explained that while caution is generally exercised in meting out sanctions, serious misconduct still deserves graver penalties:

> The power to disbar or suspend ought always to be exercised on the preservative and not on the vindictive principle, with great caution and only for the most weighty reasons and only on clear cases of misconduct which seriously affect the standing and character of the lawyer as an officer of the court and member of the Bar. Only those acts which cause loss of moral character should merit disbarment or suspension, while those acts which neither affect nor erode the moral character of the lawyer should only justify a lesser sanction unless they are of such nature and to such extent as to clearly show the lawyer's unfitness to continue in the practice of law. The dubious character of the act charged as well as the motivation which induced the lawyer to commit it must be clearly demonstrated before suspension or disbarment is meted out. The mitigating or aggravating circumstances that attended the commission of the offense should also be considered.[26] (Citation omitted)

Doubtless, Atty. Cristobal's actions were immoral, illegal, and unbecoming of an officer of this Court. His actions revealed not only his disregard for the sanctity of marriage, but also his blatant disrespect for his own wife and children. These acts were similar, if not worse than, extramarital affairs, which this Court has consistently held to be deserving of at least one-year suspension to the ultimate penalty of disbarment.[27] As highlighted in *Valdez v. Dabon, Jr.*:[28]

> In the case at bench, Atty. Dabon's intimate relationship with a woman other than his wife showed his moral indifference to the opinion

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[25] 546 Phil. 431 (2007) [Per J. Chico-Nazario, Third Division].

[26] Id. at 447-448.

[27] *Panagsagan v. Panagsagan*, A.C. No. 7733, October 1, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65811> [Per Curiam, En Banc].

[28] 773 Phil. 109 (2015) [Per Curiam, En Banc].

of the good and respectable members of the community. It manifested his disrespect for the laws on the sanctity of marriage and for his own marital vow of fidelity. It showed his utmost moral depravity and low regard for the fundamental ethics of his profession. Indeed, he has fallen below the moral bar. Such detestable behavior warrants a disciplinary sanction. Even if not all forms of extramarital relations are punishable under penal law, sexual relations outside of marriage are considered disgraceful and immoral as they manifest deliberate disregard of the sanctity of marriage and the marital vows protected by the Constitution and affirmed by our laws.[29] (Citation omitted)

If the depravity and immorality that attend illicit affairs while a marriage is subsisting merit severe penalties for the sheer mockery it makes of a marriage, the same principle must apply to the commission of violent acts against one's spouse. We have suspended and disbarred colleagues in the profession for far less.

In imposing a three-month suspension, the majority considered Divine's abrasive personality, as corroborated by Atty. Cristobal's relatives, household help, and even the teachers of the spouses' children.[30] Yet, such provocation can never be answered with violence. In no instance can this be excused or condoned. That Divine may be uncouth or ill-mannered should not obviate the consequences of Atty. Cristobal's actions.

Ostensibly, the three-month suspension is not commensurate to the grossly immoral nature of Atty. Cristobal's actions. His lack of remorse for what he has done to his wife displays his utter disregard for the dignity of women. The violence he had brazenly inflicted on Divine, in the presence of his family and children no less, shows that he did not meet the standards of morality required by the legal profession.

Nonetheless, I recognize that Atty. Cristobal is the sole breadwinner of the family, which the majority has likewise deemed a mitigating circumstance.[31] Thus, the penalty should

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[29] Id. at 126-127.

[30] Ponencia, p. 21.

[31] Id. at 25.

instead be a suspension of at least two years. While his actions justify perpetual disqualification from the Bar, a two-year suspension will allow him an opportunity to redeem himself by providing for his children and ensuring their future.

ACCORDINGLY, I vote that respondent Atty. Jonathan A. Cristobal be **SUSPENDED** for two (2) years, with a **WARNING** that a repetition of the same or similar acts in the future shall be dealt with more severely.

EN BANC

[A.C. No. 12833. November 10, 2020]

SALVACION C. ROMO, *Complainant*, *v.* **ATTY. ORHEIM T. FERRER,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; DUTY TO RENDER AN ACCOUNTING OF CLIENT'S MONEY AND PROPERTY; FAILURE TO RENDER A PROPER ACCOUNTING OF A CLIENT'S MONEY OR PROPERTY DESPITE DEMAND AMOUNTS TO MISAPPROPRIATION.— A lawyer shall account for all money or property collected or received for or from the client. The duty to render an accounting is absolute. The failure to do so upon demand amounts to misappropriation which is a ground for disciplinary action not to mention the possible criminal prosecution. Here, convincing evidence exists that Atty. Ferrer represented Salvacion in a criminal case and that he received funds for her in the total amount of ₱375,000.00. However, Atty. Ferrer remitted only ₱80,000.00 and unjustifiably refused to return the balance of ₱295,000.00, despite repeated demands. The special power of attorney, acknowledgment receipts, the memorandum of agreement and the demand letters established these findings. In stark contrast, Atty. Ferrer did not disprove these evidence but merely argued that he gave the amounts to Salvacion's daughter. Yet, Atty. Ferrer failed to substantiate this theory. We stress that bare assertion is not evidence.

2. ID.; ID.; ID.; ID.; FAILURE TO RENDER A PROMPT AND PROPER ACCOUNTING OF CLIENT'S FUNDS UPON DEMAND IS A BREACH OF THE CLIENT'S TRUST AND A GROSS VIOLATION OF GENERAL MORALITY AND PROFESSIONAL ETHICS.— Atty. Ferrer breached Salvacion's trust when he failed to render an account of her funds upon demand.

. . .

We remind that all lawyers, as trustees of their clients' funds and properties, must render a prompt and proper accounting, thus:

> The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality, as well as of professional ethics.

3. ID.; ID.; ID.; ID.; MITIGATING CIRCUMSTANCES; PENALTY; BEING THE RESPONDENT'S FIRST INFRACTION AND RESPONDENT'S WILLINGNESS TO PAY THE OBLIGATION MAY BE APPRECIATED AS MITIGATING CIRCUMSTANCES. — 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.

> In several instances, we penalized lawyers for violating their duty to account the funds or properties of their clients despite demand. . . . Considering that this is Atty. Ferrer's first infraction and that he manifested to pay his obligation, we deem it proper to impose the penalty of suspension from the practice of law for a period of six months.

APPEARANCES OF COUNSEL

Enriquez Capin & Gaugano Law Offices for complainant.
Manigos Law Office for respondent.

R E S O L U T I O N

LOPEZ, *J.*:

A lawyer is a trustee of all client's funds and properties, which may come into his possession. The failure to render an accounting upon demand deserves administrative sanctions.

ANTECEDENTS

In 2006, Salvacion Romo (Salvacion) engaged the legal services of Atty. Orheim Ferrer (Atty. Ferrer) in prosecuting an action for violation of Batas Pambansa Bilang (BP) 22 against Amada Yu (Amada).[1] Thereafter, Amada settled the case and gave a total amount of ₱375,000.00 to Atty. Ferrer on different dates, to wit: (a) ₱50,000.00 on March 6, 2006;[2] (b) ₱50,000.00 on March 15, 2006;[3] (c) ₱20,000.00 on June 6, 2006;[4] (d) ₱50,000.00 on October 6, 2006;[5] (e) ₱5,000.00 on November 16, 2006;[6] (f) ₱10,000.00 on December 9, 2006;[7] (g) ₱50,000.00 on December 18, 2006;[8] (h) ₱10,000.00 on January 10, 2007;[9] (i) ₱10,000.00 on February 19, 2007;[10] and (j) ₱120,000.00 on March 15, 2007.[11]

Yet, Atty. Ferrer remitted only ₱80,000.00 to Salvacion. As such, Salvacion demanded from Atty. Ferrer the balance of

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[1] *Rollo*, p. 9.

[2] *Id*. at 15.

[3] *Id*. at 14.

[4] *Id*.

[5] *Rollo*, p. 13.

[6] *Id*.

[7] *Rollo*, p. 12.

[8] *Id*.

[9] *Rollo*, p. 11.

[10] *Id*.

[11] *Rollo*, p. 15.

₱295,000.00.[12] Atty. Ferrer agreed to pay his obligation on or before October 15, 2012 and promised to deliver a land title as collateral.[13] However, Atty. Ferrer did not comply with his undertakings. Salvacion sent a final demand letter[14] to Atty. Ferrer but was ignored. Thus, Salvacion filed an administrative complaint against Atty. Ferrer for failure to account the funds entrusted to him docketed as Commission on Bar Discipline (CBD) Case No. 13-3782.[15] As supporting evidence, Salvacion submitted the special power of attorney, acknowledgment receipts signed by Atty. Ferrer, the memorandum of agreement and the demand letters.

On the other hand, Atty. Ferrer countered that he remitted ₱120,000.00 to Salvacion, and not only ₱80,000.00. The other payments from Amada were given personally to Salvacion's daughter. Atty. Ferrer did not issue receipts because he trusted Salvacion and her daughter. Moreover, Atty. Ferrer claimed that the acknowledgement receipts showing various amounts that he allegedly received from Amada were fabricated. Atty. Ferrer likewise argued that he signed the memorandum of agreement because Salvacion threatened him with the filing of a disbarment suit. As evidence, Atty. Ferrer presented the affidavits[16] of his employees in the law office. Lastly, Atty. Ferrer manifested to return the funds and humbly asked to settle the amounts in partial periodic payments.[17]

On March 15, 2017, the Commission on Bar Discipline (the Commission) of the Integrated Bar of the Philippines (IBP) recommended to suspend Atty. Ferrer from the practice of law for a period of two years. The Commission noted that Atty. Ferrer abused his client's confidence, with evident intent to

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[12] *Id*. at 10.

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

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

[15] *Id*. at 1 and 4-8.

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

[17] *Id*. at 86-88.

misappropriate the funds. Atty. Ferrer admitted that he received ₱295,000.00 from Amada but failed to substantiate his claim that he remitted the money to Salvacion's daughter. The Commission also found that Atty. Ferrer voluntarily signed the memorandum of agreement and cannot later assail it on the ground of threat or intimidation,[18] to wit:

> **Complainant has overwhelming *[sic]* shown that Respondent has received the various amounts from Amada Yu the total amount of P375,000.00. With the admission by herein Complainant that she only received the amount of Php80,000.00, Respondent is still under obligation to remit the amount of Php295,000.00 to the Complainant.**
>
> Respondent however raised the defense that the amount of Php295,000.00 has already been collected by Complainant and/or the latter's daughter at the Office of the Respondent.
>
> We are not persuaded by the Respondent's claim. **Respondent has shown no document that the amount of Php295,000.00 had in fact been remitted to the Complainant.** In fact, in the Memorandum of Agreement, which Respondent has voluntarily executed, Respondent has clearly admitted that the amount of Php295,000.00 remains unremitted. In fact, Respondent has promised to pay said amount on or before October 15, 2012. **We have absolutely no doubt that Respondent's claim depicts his evident intention to misappropriate his client's funds. Incidentally, with the admission by Respondent of his failure to turn over the funds to herein Complainant, Respondent's insinuation that the acknowledgment receipts presented by Complainant as fabricated or manufactured is baseless, if not a clear evidence of bad faith and a gross violation of the trust and confidence reposed upon by complainant to his lawyer**, herein Respondent.
>
> x x x x
>
> As a lawyer, Respondent knows or ought to know that Complainant's threat of a disbarment case against him is not a legal ground to prove that he was unduly influenced, forced or intimidated into signing the Memorandum of Agreement. x x x **"A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent."**

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[18] *Id*. at 151-165.

x x x x

Other than Respondent's bare claim and that of his witnesses x x x, **no document or sufficient proof has been presented or shown by the Respondent that indeed complainant had received such amounts**. x x x This simply means that Respondent has tried to evade the obligation of remitting the amount he received from Amada Yu to the Complainant. **Respondent's conduct of first, initially denying having received from Amada Yu; second, of admitting the receipt after being confronted with the acknowledgment receipt; and thirdly, after convincing complainant to agree to a settlement, Respondent thereafter assailed the Memorandum of Agreement which he freely executed** x x x. Moreover, in his Counter-Affidavit, Respondent's defenses are clearly contradictory. **While Respondent is humbly asking Complainant to pay in partial periodic installments the amounts which he has misappropriated, Respondent is also claiming that the acknowledgment receipts which Amada Yu has provided to herein Complainant, have been manufactured or fabricated. These actions of herein Respondent depict the moral depravity of herein Respondent.** x x x.

x x x x

Respondent's plain abuse of the confidence reposed in him by complainant rendered him liable for violations of Rule 1.01, Canon 16, Rules 16.1, 16.02 and 16.03 and Canon 17 of the Code of Professional Responsibility x x x.

x x x x

In this case however, considering that this administrative case is the first offense of the Respondent and is humbly asking for the payment of amount misappropriated in periodic installments and considering further that there may still be a room for the reformation of the Respondent's actuations, it is respectfully recommended that a two (2) year suspension from the practice of law may be the appropriate penalty for the Respondent instead of the harsh penalty of disbarment.

x x x x

WHEREFORE, premises considered, this Commission hereby respectfully recommends that Respondent ATTY. ORHEIM T. FERRER be suspended for two (2) years from the practice of law, with a stern warning that similar violations in the future shall be dealt with more severely.

It is further recommended that Respondent be further ordered to return to Complainant the total amount of Php295,000.00 which he has unjustly misappropriated with 6% interest from demand on November 16, 2012.

RESPECTFULLY SUBMITTED.[19] (Emphases supplied.)

On September 28, 2017, the IBP Board of Governors adopted the Commission's factual findings and recommendations,[20] *viz.*:

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner to impose upon the Respondent the penalty of ***SUSPENSION from the practice of law for a period of two (2) years and Ordered to Return the amount of ₱295,000.00*** *with 6% interest from demand.*[21] (Emphasis and italics in the original.)

RULING

The Court adopts the IBP's findings with modification as to the penalty.

A lawyer shall account for all money or property collected or received for or from the client.[22] The duty to render an accounting is absolute. The failure to do so upon demand amounts to misappropriation which is a ground for disciplinary action not to mention the possible criminal prosecution.[23] Here, convincing evidence exists that Atty. Ferrer represented Salvacion in a criminal case and that he received funds for her in the total amount of ₱375,000.00. However, Atty. Ferrer remitted only ₱80,000.00 and unjustifiably refused to return the balance of ₱295,000.00, despite repeated demands. The special power of attorney, acknowledgment receipts, the memorandum of agreement and the demand letters established these findings. In stark contrast, Atty. Ferrer did not disprove

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[19] *Id*. at 158-165.

[20] *Id*. at 149-150.

[21] *Id*. at 149.

[22] THE CODE OF PROFESSIONAL RESPONSIBILITY, Rule 16.0.

[23] Eldrid C. Antiquiera, Comments on Legal and Judicial Ethics, Second Edition (2018), p. 90.

these evidences but merely argued that he gave the amounts to Salvacion's daughter. Yet, Atty. Ferrer failed to substantiate this theory. We stress that bare assertion is not evidence.[24] As the IBP aptly observed, Atty. Ferrer should know the law better than his client, and there is no other person to blame but him for not requiring receipts. At any rate, Atty. Ferrer admitted his obligation and promised to return the funds on a specific date. The acknowledgment of debt is voluntary and Salvacion's supposed threat to file a disbarment case to enforce her legal claim against Atty. Ferrer does not vitiate his consent to the agreement. Atty. Ferrer even subsequently offered to pay his obligation on installment basis.

Verily, Atty. Ferrer breached Salvacion's trust when he failed to render an account of her funds upon demand. 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.[25]

In several instances, we penalized lawyers for violating their duty to account the funds or properties of their clients despite demand. In *Campos, Jr. v. Atty. Estebal*,[26] the respondent did not secure the tourist visas on behalf of the clients and failed to return their money.[27] In *Medina v. Atty. Lizardo*,[28] the

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[24] See *Dra. Dela Llana v. Biong*, 722 Phil. 743, 762 (2013).

[25] *Ting-Dumali v. Torres*, 471 Phil. 1 (2004).

[26] 792 Phil. 542 (2016).

[27] *Id*. at 543.

[28] A.C. No. 10533, January 31, 2017.

respondent refused to surrender the clients' certificates of title. In *Yuzon v. Atty. Agleron*,[29] the respondent received money from his client for the purchase of a house and lot. The respondent failed to return the money after the sale did not materialize. In *Ong v. Meris*,[30] the respondent did not return the money entrusted for the transfer and registration of real property in his client's name. In all these cases, the respondents were suspended from the practice of law for a period of one year. Considering that this is Atty. Ferrer's first infraction and that he manifested to pay his obligation, we deem it proper to impose the penalty of suspension from the practice of law for a period of six months.

We remind that all lawyers, as trustees of their clients' funds and properties, must render a prompt and proper accounting, thus:

> The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality, as well as of professional ethics.[31]

FOR THESE REASONS, Atty. Orheim T. Ferrer is **SUSPENDED** from the practice of law for a period of six months which shall take effect immediately upon receipt of this Resolution. He is **DIRECTED** to immediately file a manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel. He is likewise **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

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[29] A.C. No. 10684, January 24, 2018.

[30] *Ong v. Meris*, A.C. No. 9702 (Notice), April 4, 2018.

[31] *Egger v. Atty. Duran*, 795 Phil. 9, 17 (2016).

Atty. Orheim T. Ferrer is also **ORDERED** to return to complainant within ten (10) days from notice the sum of ₱295,000.00 with interest of six percent (6%) *per annum* from receipt of this Resolution until the full amount is satisfied. Atty. Orheim T. Ferrer shall submit to the Court proof of restitution within ten (10) days from payment. Failure to comply with this directive shall warrant the imposition of a more severe penalty.[32]

Let a copy of this Resolution be furnished to the Office of the Bar Confidant to be entered into Atty. Orheim T. Ferrer'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, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

Lazaro-Javier, Inting, and *Zalameda, JJ.*, on official leave.

[32] *Gabriel v. Sempo*, A.C. No. 12423, March 26, 2019. See also *Caballero v. Pilapil*, A.C. No. 7075, January 21, 2020.

EN BANC

[A.M. No. RTJ-00-1535. November 10, 2020]

OFFICE OF THE COURT ADMINISTRATOR, *Complainant*, *v.* **FORMER PRESIDING JUDGE OWEN B. AMOR, REGIONAL TRIAL COURT, BRANCH 41, DAET, CAMARINES NORTE,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; JUDGES; RESIGNATION; RESIGNATION DOES NOT RENDER A PENDING ADMINISTRATIVE CASE MOOT AND ACADEMIC.— Section 6, Article VIII of the 1987 Constitution grants the Supreme Court administrative supervision over all courts and their personnel. This grant empowers the Supreme Court to oversee the judges' and court personnel's administrative compliance with all laws, rules and regulations, and to take administrative actions against them if they violate these legal norms.

. . .

Thus, even with the resignation of respondent, the instant administrative complaint continues, and will not render this case moot and academic. Cessation from office by reason of resignation, death or retirement is not a ground to dismiss the case filed against him at the time that he was still in the public service.

2. ID.; ID.; ID.; RESIGNATION DOES NOT WARRANT THE DISMISSAL OF AN ADMINISTRATIVE COMPLAINT.— [E]ven with Judge Amor's resignation, it does not preclude the finding of any administrative liability to which he shall still be answerable. Moreso, as his administrative liability was by virtue of his eventual conviction before the Sandiganbayan. It must be emphasized anew that cessation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught

with injustices and pregnant with dreadful and dangerous implications.

3. ID.; ID.; REMEDIAL LAW; EVIDENCE; QUANTUM OF EVIDENCE IN ADMINISTRATIVE PROCEEDINGS; AN ADMINISTRATIVE PROCEEDING IS INDEPENDENT FROM A CRIMINAL PROCEEDING, ALTHOUGH BOTH MAY ARISE FROM THE SAME ACT.— In resolving this case, we reiterate that an administrative proceeding is independent from a criminal proceeding, although both may arise from the same act or omission. Given the differences in the quantum of evidence required, the procedure observed, the sanctions imposed, as well as the objective of the two proceedings, the findings and conclusions in one should not necessarily be binding on the other. Thus, as a rule, exoneration in the administrative case is not a bar to a criminal prosecution for the same or similar acts which were the subject of the administrative complaint or vice-versa.

In this case, respondent's actuations constituting solicitation of money should be weighed in the same manner as other acts classified as offenses under Rule 140 of the Rules of Court should be evaluated—through substantial evidence. The evidence to support a conviction in a criminal case is not necessary in an administrative proceeding like the present case.

4. ID.; ID.; ID.; ID.; ID.; GUIDING PRINCIPLES IN ADMINISTRATIVE PROCEEDINGS.— [I]n administrative proceedings, the following are important considerations which must be taken into account: ***first***, the finding of administrative guilt is independent of the results of the criminal charges; ***second***, the respondent in an administrative proceeding stands scrutiny and treated not as an accused in a criminal case, but as a respondent court officer; ***third***, the Supreme Court, in taking cognizance of this administrative case, acts not as a prosecutor, but as the administrative superior specifically tasked to discipline its Members and personnel; ***fourth***, the quantum of proof required for a finding of administrative guilt remains to be substantial evidence; and ***fifth***, the paramount interest sought to be protected in an administrative case is the preservation of the Constitutional mandate that a public office is a public trust.

Thus, following the above-cited guiding principles, the instant administrative case should not have dragged on for years since

an investigation and evaluation of the complained acts of respondent could and should have proceeded independently from the criminal cases filed against him.

5. ID.; ID.; UNLAWFUL SOLICITATION; A JUDGE WHO SOLICITS AND ACCEPTS MONEY FROM PARTY-LITIGANTS IN EXCHANGE FOR THE DISMISSAL OF THEIR CASES IS GUILTY OF UNLAWFUL SOLICITATION AND VIOLATION OF THE CODE OF JUDICIAL CONDUCT.— Section 7 (d) of Republic Act No. 6713 entitled "*An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees* . . ." provides:

. . .

In the instant case, the Decision of the Sandiganbayan finding respondent guilty of violation of Section 7 (d) of R.A. 6713 for having solicited and accepted directly from complainant Manzano the amount of Four Hundred Thousand Pesos (₱400,000.00) in exchange for the dismissal of his cases which were pending in the sala of respondent is enough to establish the required degree of evidence in administrative proceedings, *i.e.*, substantial evidence.

. . .

While the resolution of the criminal cases against respondent is independent from that of the administrative complaint against him, the findings of guilt on the criminal cases, however, may be considered as substantial evidence by itself from which his administrative liability may arise.

. . .

. . . [W]e concur with the OCA's conclusion that considering the fact that respondent was found guilty of unlawful solicitation, he also violated Rule 1.01, Canon 1, and Rule 2.01, Canon 2 of the Code of Judicial Conduct[.]

6. ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY ON THE ASSESSMENT OR APPRECIATION OF THE TESTIMONIES OF WITNESSES, ARE ACCORDED GREAT WEIGHT AND RESPECT.— [I]t is undisputed that respondent was apprehended in an entrapment operation by the members of the Presidential Anti-

Organized Crime Task Force *(PAOCTF)* while in the act of receiving marked money co-mingled with boodle money from P/Supt. Danilo C. Manzano. . . .

. . .

. . . [I]t is elementary that the factual findings of the trial court, especially on the assessment or appreciation of the testimonies of witnesses, are accorded great weight and respect. Moreso, when we find nothing to show that the ruling of the court was tainted with malice of bad faith, or with grave abuse of discretion.

7. ID.; ID.; ID.; ID.; ID.; DENIAL; UNSUBSTANTIATED DENIAL CANNOT BE GIVEN GREATER EVIDENTIARY VALUE THAN THE POSITIVE TESTIMONIES OF WITNESSES.— [R]espondent was likewise unable to establish any motive on the part of P/Supt. Manzano, which would compel him to falsely testify against him. Neither will a mere denial from respondent, if unsubstantiated by clear and convincing evidence, be given greater evidentiary value than the testimonies of witnesses who have testified in the affirmative.

8. ID.; ID.; ID.; SERIOUS MISCONDUCT; A JUDGE WHO EXTORTS MONEY FROM A PARTY-LITIGANT WHO HAS A CASE BEFORE THE COURT COMMITS A SERIOUS MISCONDUCT.— The people's confidence in the judicial system is founded not only on the competence and diligence of the members of the bench, but also on their integrity and moral uprightness. A Judge who extorts money from a party-litigant who has a case before the court commits a serious misconduct. This Court condemns such act in the strongest possible terms. Particularly because it has been committed by one charged with the responsibility of administering the law and rendering justice, it quickly and surely corrodes respect for law and the courts.

9. ID.; ID.; ID.; IMPROPER SOLICITATION FROM LITIGANTS IS A GRAVE OFFENSE THAT CARRIES A PENALTY OF DISMISSAL FROM SERVICE.— All court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness. Clearly, respondent's act of soliciting money from the complainant hardly meets the foregoing standard. Improper solicitation from litigants is a grave offense that carries an equally grave penalty.

Considering the nature of respondent's transgressions, we find the imposition of the supreme administrative penalty of dismissal to be appropriate.

10. ID.; ID.; ID.; PENALTY IN CASE OF THE RESIGNATION OF A DISCIPLINED JUDGE; ACCESSORY PENALTIES ARE IMPOSED IN LIEU OF DISMISSAL FROM SERVICE. — [F]or his unlawful solicitation, the Court imposes upon respondent the penalty of dismissal from service with forfeiture of all retirement benefits, except his accrued leave credits, and with prejudice to re-employment in the government, including government-owned or controlled corporations. However, considering respondent's resignation pending the resolution of the instant case, the penalty of dismissal from service can no longer be imposed. Thus, in *lieu* of the penalty of dismissal from the service for his gross misconduct, We, instead, impose the accessory penalties of dismissal from the service, *i.e.*, forfeiture of retirement benefits, **except** accrued leave credits, and disqualification from re-employment in any branch or service of the government, including government-owned and controlled corporations.

R E S O L U T I O N

***PER CURIAM*:**

For resolution is an Administrative Complaint dated February 10, 2000[1] filed by P/Supt. Danilo C. Manzano *(complainant)* against Judge Owen B. Amor *(respondent)*, then Presiding Judge, Branch 4, Regional Trial Court *(RTC)*, Daet, Camarines Norte for violation of Section 3 (e) of Republic Act No. (*R.A.*) 3019, or the *Anti-Graft and Corrupt Practices Act*.[2]

The facts are as follows:

On January 26, 2000, three (3) criminal charges were filed against respondent before the Sandiganbayan, docketed as Criminal Cases Nos. 25796-98. The Informations read:

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[1] *Rollo*, pp. 1 and 2.

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

Criminal Case No. 25796 — Violation of Sec. 3 (e) of R.A. 3019:

That on or about January 24, 2000 or for sometime prior thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being then the Presiding Judge of the Regional Trial Court, Branch 41, Daet, Camarines Norte, committing the offense in relation to his office, while in the discharge of his judicial functions through evident bad faith, did then and there willfully, unlawfully and feloniously cause undue delay to P/Supt. Danilo C. Manzano to wit: by then and there demanding from P/Supt. Danilo C. Manzano the amount of FOUR HUNDRED THOUSAND PESOS (₱400,000.00), Philippine currency, in exchange for the dismissal of his cases in Crim. Case Nos. 9200 for Robbery and 9201 for Viol. of Sec. 3 (e) of R.A. 3019, both which are pending in the sala of the said accused but he was apprehended by elements of the Presidential Anti-Organized Crime Task Force while in the act of receiving the marked money co-mingled with boodle money from P/Supt. Danilo C. Manzano, to the damage and prejudice of the latter.

CONTRARY TO LAW.[3]

Criminal Case No. 25797 — Violation of Sec. 7 (d) of R.A. 6713:

That on or about January 24, 2000 or for sometime prior thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being then the Presiding Judge of the Regional Trial Court, Branch 41, Daet, Camarines Norte, committing the offense in relation to his office, did then and there willfully, unlawfully and feloniously solicit and accept directly from P/Supt. Danilo C. Manzano the amount of FOUR HUNDRED THOUSAND [PESOS] (₱400,000.00), Philippine currency, in exchange for the dismissal of his cases in Crim. Cases Nos. 9200 for Robbery and 9201 for Viol. of Sec. 3 (e) of R.A. 3019, both of which are pending in the sala of the said accused but he was apprehended by elements of the Presidential Anti-Organized Crime Task Force while in the act of receiving [the] marked money co-mingled with boodle money from P/Supt. Danilo C. Manzano, to the damage and prejudice of the latter.

CONTRARY TO LAW.[4]

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[3] *Id.* at 3.

[4] *Id.* at 55.

Criminal Case No. 25798 — Direct Bribery:

That on or about January 24, 2000 or for sometime prior thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being then the Presiding Judge of the Regional Trial Court, Branch 41, Daet, Camarines Norte, committing the offense in relation to his office, did then and there willfully, unlawfully and feloniously agree to dismiss the cases for Robbery and Viol. of Sec. 3 (e) of R.A. 3019 filed against P/Supt. Danilo C. Manzano, both of which are pending in the sala of the said accused in exchange for the amount of FOUR HUNDRED THOUSAND PESOS (₱400,000.00), Philippine currency, an act which is connected with the performance of his official duties but constituting a Violation of Section 3 (e) of R.A. 3019, but he was not able to perform said act as he was apprehended by elements of the Presidential Anti-Organized Crime Task Force while actually receiving [the] marked money co-mingled with boodle money from P/Supt. Danilo C. Manzano, to the damage and prejudice of the latter.

CONTRARY TO LAW.[5]

On March 6, 2000, the Court resolved to: (1) require respondent to comment on the complaint against him, and (2) suspend respondent from office, until further orders from this Court.[6]

Subsequently, in a Resolution[7] dated April 12, 2000, the Court referred the instant administrative case to the Office of the Court Administrator *(OCA)* for evaluation, report and recommendation.

In a Resolution[8] dated October 4, 2000, the Court resolved to defer any action on the instant administrative case until Criminal Cases Nos. 25796-98, all entitled "*People of the Philippines v. Judge Owen Amor y Ballon, RTC, Branch 41, Daet, Camarines Norte*" pending with the Sandiganbayan are decided with finality.

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[5] *Id.* at 7.

[6] *Id.* at 9 and 10.

[7] *Id.* at 47.

[8] *Id.* at 95.

On October 24, 2001, pending resolution of this case and the criminal cases against him, respondent tendered his irrevocable resignation.[9] Thus, in a Memorandum[10] dated December 3, 2001 to the Court, the OCA recommended that respondent's resignation be accepted without prejudice to the continuance of the instant administrative case against him. On March 19, 2002, the Court noted the OCA's recommendation, and required it to terminate the investigation of the administrative case and submit its report and recommendation.[11]

Inasmuch as the instant administrative case against respondent was initiated as a consequence of the criminal cases filed with the Sandiganbayan, in a Memorandum[12] dated March 26, 2002, the OCA recommended that any action on the instant administrative complaint against respondent be deferred until Criminal Case Nos. 25796-98 which were then pending before the Sandiganbayan be terminated with finality.

On April 23, 2002, the Court resolved to defer anew any action on the instant administrative case until Criminal Cases Nos. 25796-98, pending before the Sandiganbayan are terminated with finality.[13]

On March 15, 2010,[14] the Court resolved to require the Sandiganbayan to submit a status report of Criminal Cases Nos. 25796-98.

In a Resolution dated February 18, 2019,[15] the Court directed the Division Executive Clerk of Court of the Sandiganbayan to submit a status report on Criminal Case Nos. 25796-98.

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[9] *Id.* at 107.

[10] *Id.* at 115-117.

[11] *Id.* at 118.

[12] *Id.* at 120-121.

[13] *Id.* at 122.

[14] *Id.* at 134.

[15] *Id.* at 160.

On May 28, 2019, Atty. Anna Marie D. Crespillo, Executive Clerk of Court III, Second Division, Sandiganbayan, informed the Court of the following:[16]

(a) in a Decision dated March 31, 2011, the Sandiganbayan granted the Demurrer to Evidence of the accused, herein respondent former Presiding Judge Owen B. Amor, Branch 41, RTC, Daet, Camarines Norte, with respect to Criminal Case Nos. 25796 and 25798;

(b) in a Decision dated December 1, 2015, in Criminal Case No. 25797, the Sandiganbayan convicted respondent former Presiding Judge Amor as charged in the Information, and denied his motion for reconsideration;

(c) in a Resolution dated January 10, 2017, the Sandiganbayan granted the application for probation of respondent former Judge Amor;

(d) in a Resolution dated May 31, 2017, the Sandiganbayan ordered the suspension of respondent's sentence and placed him on probation for six (6) months; and

(e) in an Order dated January 4, 2018 of Branch 53, RTC, Sorsogon City, Sorsogon, the court discharged from probation, accused, former Judge Amor, and all civil rights were restored to him and his criminal liability as to the offense for which the probation was granted was totally extinguished.

In a Resolution dated August 5, 2019,[17] the Court resolved to refer the instant administrative matter to the OCA for evaluation, report and recommendation.

On November 22, 2019, the OCA recommended that respondent former Presiding Judge Owen B. Amor be found guilty of violation of Section 7 (d) of Republic Act No. 6713 and Canon 2, Section 2 of the New Code of Judicial Conduct for the Philippine Judiciary. It further recommended that in *lieu* of dismissal from the service, respondent former Judge Amor be penalized with a fine in the amount of One Hundred Thousand Pesos (₱100,000.00), with forfeiture of his retirement

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[16] *Id.* at 166.

[17] *Id.* at 167.

benefits except leave credits, and disqualification from reinstatement/reappointment to any public office, including government-owned or government-controlled corporations.[18]

We adopt the findings of the OCA.

Separation from office does not render a pending administrative charge moot and academic.

Section 6, Article VIII of the 1987 Constitution grants the Supreme Court administrative supervision over all courts and their personnel. This grant empowers the Supreme Court to oversee the judges' and court personnel's administrative compliance with all laws, rules and regulations, and to take administrative actions against them if they violate these legal norms.[19]

As we held in *Gallo v. Cordero*:[20]

> ***The jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof.*** A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. . . . If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.

Thus, even with the resignation of respondent, the instant administrative complaint continues, and will not render this

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[18] *Id.* at 169-172.

[19] *Office of the Court Administrator v. Judge Ruiz*, 780 Phil. 133, 150 (2016).

[20] 315 Phil. 210, 220 (1995), citing *Zarate v. Judge Romanillos*, 312 Phil. 679, 693 (1995), citing *People v. Hon. Valenzuela, et al.*, 220 Phil. 385, 390-391 (1985) and *Atty. Perez v. Judge Abiera*, 159-A Phil. 575, 580-581 (1975). (Emphases ours)

case moot and academic. Cessation from office by reason of resignation, death or retirement is not a ground to dismiss the case filed against him at the time that he was still in the public service.[21]

An administrative case is independent from the criminal action, although both arose from the same act or omission.

In resolving this case, we reiterate that an administrative proceeding is independent from a criminal proceeding, although both may arise from the same act or omission. Given the differences in the quantum of evidence required, the procedure observed, the sanctions imposed, as well as the objective of the two proceedings, the findings and conclusions in one should not necessarily be binding on the other. Thus, as a rule, exoneration in the administrative case is not a bar to a criminal prosecution for the same or similar acts which were the subject of the administrative complaint or vice-versa.[22]

In this case, respondent's actuations constituting solicitation of money should be weighed in the same manner as other acts classified as offenses under Rule 140 of the Rules of Court should be evaluated— through substantial evidence. The evidence to support a conviction in a criminal case is not necessary in an administrative proceeding like the present case.[23]

To emphasize, in administrative proceedings, the following are important considerations which must be taken into account: ***first***, the finding of administrative guilt is independent of the results of the criminal charges; ***second***, the respondent in an administrative proceeding stands scrutiny and treated not as an accused in a criminal case, but as a respondent court officer; ***third***, the Supreme Court, in taking cognizance of this administrative case, acts not as a prosecutor, but as the

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[21] See *OCA v. Grageda*, 706 Phil. 15, 21 (2013).

[22] *Jaca v. People of the Philippines, et al.*, 702 Phil. 210, 250 (2013).

[23] *In Re: Special Report on the Arrest of Rogelio M. Salazar, Jr., Sheriff, RTC, Boac, Marinduque*, A.M. No. 15-05-136-RTC, December 4, 2018.

administrative superior specifically tasked to discipline its Members and personnel; ***fourth***, the quantum of proof required for a finding of administrative guilt remains to be substantial evidence; and ***fifth***, the paramount interest sought to be protected in an administrative case is the preservation of the Constitutional mandate that a public office is a public trust.[24]

Thus, following the above-cited guiding principles, the instant administrative case should not have dragged on for years since an investigation and evaluation of the complained acts of respondent could and should have proceeded independently from the criminal cases filed against him.

Respondent's actuations constituting as administrative offense.

Section 7 (d) of Republic Act No. 6713 entitled "*An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees . . .*" provides:

x x x x

(d) *Solicitation or acceptance of gifts.* — Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

In the instant case, the Decision of the Sandiganbayan finding respondent guilty of violation of Section 7 (d) of R.A. 6713 for having solicited and accepted directly from complainant Manzano the amount of Four Hundred Thousand Pesos (₱400,000.00) in exchange for the dismissal of his cases which were pending in the sala of respondent is enough to establish the required degree of evidence in administrative proceedings, *i.e.*, substantial evidence.

Moreover, it is undisputed that respondent was apprehended in an entrapment operation by the members of the Presidential

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[24] *Id.*

Anti-Organized Crime Task Force *(PAOCTF)* while in the act of receiving marked money co-mingled with boodle money from P/Supt. Danilo C. Manzano. The pertinent portion of the Decision reads:

x x x x

On January 24, 2000, Manzano was with his poseur-wife at the lobby of the Sulu Hotel when Judge Amor arrived at around three o'clock in the afternoon. From the lobby, they proceeded to the parking area where ***P/Insp. Cheryl Botones handed the entrapment money to Manzano who in turn handed the enveloped money to Judge Amor, saluted and walked away***. The salute was the pre-arranged signal for the PAOCTF operatives to arrest the accused.

Immediately after his arrest, Judge Amor was brought to the PAOCTF office where he was subjected to ultraviolet examination. ***The result of said examination showed the accused positive for the presence of fluorescent powder that could only come from contact with the entrapment money***.

The above proceedings were captured on video, as contained in the Video Home System (VHS) copy and a Digital Video Disc (DVD) presented in evidence by the prosecution.

From the testimony of complainant Manzano, as well as his sworn statements (Exhibits "D", "G" and "J"), ***it is undeniable that accused Judge Amor asked for money from complainant for the dismissal of his two criminal cases for Robbery and Violation of Section 3 (e) of R.A. 3019 which were then pending before the accused. The demand was eloquently relayed to the complainant on several occasions after the hearings of his cases and on several other meetings which they had, and the complainant readily understood it. The accused likewise knew that the complainant understood it because when the complainant bargained for a discounted amount, the accused agreed, but cautioned that the same should not be lower than ₱300,000.00.***

x x x"[25]

While the resolution of the criminal cases against respondent is independent from that of the administrative complaint against

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[25] *Rollo*, pp. 151-152. (Italics ours; citations omitted)

him, the findings of guilt on the criminal cases, however, may be considered as substantial evidence by itself from which his administrative liability may arise. Further, it is elementary that the factual findings of the trial court, especially on the assessment or appreciation of the testimonies of witnesses, are accorded great weight and respect.[26] Moreso, when we find nothing to show that the ruling of the court was tainted with malice of bad faith, or with grave abuse of discretion. In any case, respondent was likewise unable to establish any motive on the part of P/Supt. Manzano, which would compel him to falsely testify against him. Neither will a mere denial from respondent, if unsubstantiated by clear and convincing evidence, be given greater evidentiary value than the testimonies of witnesses who have testified in the affirmative.[27]

In light of these findings, we concur with the OCA's conclusion that considering the fact that respondent was found guilty of unlawful solicitation, he also violated Rule 1.01, Canon 1, and Rule 2.01, Canon 2 of the Code of Judicial Conduct, which provide that:

> Canon 1 — A judge should uphold the integrity and independence of the judiciary.
>
> Rule 1.01 — A judge should be the embodiment of competence, integrity, and independence.
>
> Canon 2 — A judge should avoid impropriety and the appearance of impropriety in all activities.
>
> Rule 2.01 — A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

Needless to say, all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness. Clearly, respondent's act of soliciting money from the complainant hardly meets the foregoing standard. Improper

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[26] *Napoles v. Sandiganbayan*, G.R. No. 224162, November 7, 2017.

[27] See *Security and Sheriff Division, Sandiganbayan v. Cruz*, 813 Phil. 555, 564 (2017).

solicitation from litigants is a grave offense that carries an equally grave penalty.[28]

Penalty

Considering the nature of respondent's transgressions, we find the imposition of the supreme administrative penalty of dismissal to be appropriate. The people's confidence in the judicial system is founded not only on the competence and diligence of the members of the bench, but also on their integrity and moral uprightness.[29] A Judge who extorts money from a party-litigant who has a case before the court commits a serious misconduct. This Court condemns such act in the strongest possible terms. Particularly because it has been committed by one charged with the responsibility of administering the law and rendering justice, it quickly and surely corrodes respect for law and the courts.[30]

In *Tuvillo v. Laron*,[31] the Court held that Judge Laron's act of asking money from a litigant constitutes gross misconduct. Respondent was meted the penalty of dismissal from the service.

In *Office of the Court Administrator v. Alinea*,[32] respondent judge was found to have extorted money from complainants, in exchange for a favorable decision. He was found guilty of gross misconduct, and was meted the penalty of dismissal from the service.

Thus, following the foregoing prevailing jurisprudence, for his unlawful solicitation, the Court imposes upon respondent the penalty of dismissal from service with forfeiture of all retirement benefits, except his accrued leave credits, and with prejudice to re-employment in the government, including

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[28] *Villaros v. Orpiano*, 459 Phil. 1, 7 (2003).

[29] *Office of the Court Administrator v. Judge Ruiz*, *supra* note 19, at 160.

[30] *Atty. Velez v. Judge Flores*, 445 Phil. 54, 64 (2003).

[31] 797 Phil. 449 (2016).

[32] A.M. No. MTJ-05-1574, November 7, 2017.

government-owned or controlled corporations. However, considering respondent's resignation pending the resolution of the instant case, the penalty of dismissal from service can no longer be imposed. Thus, in *lieu* of the penalty of dismissal from the service for his gross misconduct, We, instead, impose the accessory penalties of dismissal from the service, *i.e.*, forfeiture of retirement benefits, **except** accrued leave credits, and disqualification from re-employment in any branch or service of the government, including government-owned and controlled corporations.

Finally, even with Judge Amor's resignation, it does not preclude the finding of any administrative liability to which he shall still be answerable. Moreso, as his administrative liability was by virtue of his eventual conviction before the Sandiganbayan. It must be emphasized anew that cessation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic.[33] The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications.[34]

WHEREFORE, the Court finds respondent Judge Owen B. Amor, former Presiding Judge of Branch 41, Regional Trial Court, Daet, Camarines Norte, **GUILTY** of gross misconduct. In *lieu* of dismissal from the service which the Court can no longer impose, Judge Amor's retirement benefits are instead declared **FORFEITED** as penalty for his offense, except accrued leave credits. He is, likewise, barred from re-employment in any branch or instrumentality of government, including government-owned or controlled corporations.

This Resolution is immediately **EXECUTORY**.

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[33] *Pagano v. Nazarro, Jr.*, 560 Phil. 96, 106 (2007).

[34] *Office of the Ombudsman v. Dechavez*, 721 Phil. 124, 134 (2013).

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Carandang, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

Lazaro-Javier, Inting, and *Zalameda, JJ.*, on wellness leave.

EN BANC

[A.M. No. RTJ-17-2506. November 10, 2020]

OFFICE OF THE COURT ADMINISTRATOR, *Complainant*, *v.* **JUDGE ANTONIO C. REYES, REGIONAL TRIAL COURT, BRANCH 61, BAGUIO CITY, BENGUET,** *Respondent*.

SYLLABUS

1. LEGAL ETHICS; JUDGES; IN ADMINISTRATIVE PROCEEDINGS FOR DISCIPLINARY SANCTIONS AGAINST JUDGES, THE QUANTUM OF PROOF NECESSARY IS SUBSTANTIAL EVIDENCE.— In administrative proceedings for disciplinary sanctions against judges, the quantum of proof necessary is substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. A review of the records of this case leads Us to rule that there is substantial evidence in holding respondent judge administratively liable. As such, this Court see no compelling reason to deviate from the findings of the OCA.

2. ID.; ID.; GROSS IGNORANCE OF THE LAW; TO BE ADMINISTRATIVELY LIABLE FOR GROSS IGNORANCE OF THE LAW, IT MUST BE SHOWN THAT THE JUDGE HAD BEEN MOTIVATED BY BAD FAITH, FRAUD, DISHONESTY, OR CORRUPTION.— Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. To be administratively liable, it must be shown that the judge had been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law.

Respondent judge has been designated as the presiding judge of RTC of Baguio City, Branch 61, which handles drug cases. It is presumed, even expected[,] that he is well-versed and well-informed of the rules of procedure and the provisions of the law, especially R.A. 9165. Thus, his penchant for disregarding rules show that he was motivated by bad faith and corruption.

3. ID.; ID.; ID.; LAWS ARE PRESUMED CONSTITUTIONAL UNTIL DECLARED BY THE COURT AS UNCONSTITUTIONAL, AND JUDGES ARE EXPECTED TO ABIDE BY THE SAME REGARDLESS OF THEIR PERSONAL CONVICTION OR OPINION.— Section 23 of R.A. 9165 prohibits plea bargaining regardless of the imposable penalty. The provision is so straightforward such that violation of the same is inexcusable. Respondent judge reasoned that this Court already declared such provision as unconstitutional. . . . [T]he ruling of this Court in *Estipona, Jr. v. Hon. Lobrigo* does not shield respondent judge for his numerous violation of the law. Be it noted that the ruling of *Estipona* was promulgated only on August 15, 2017[;] [w]hile the Orders executed by respondent judge allowing and entertaining plea bargaining were issued years before Estipona. It is well-settled that laws are presumed constitutional until declared by the court as unconstitutional. Abidance with the law is mandatory, and . . . judge[s] [are] expected to abide by the same regardless of their personal conviction or opinion.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; *MOTU PROPRIO* DISMISSAL OF A CASE, GROUNDS THEREOF; *MOTU PROPRIO* DISMISSAL OF NUMEROUS CASES EVEN BEFORE THE PROSECUTION RESTED ITS CASE AND EVEN PENDING THE CONTINUATION OF THE DIRECT TESTIMONIES OF THE PROSECUTION WITNESSES CONSTITUTES A VIOLATION OF SECTION 23, RULE 119 OF THE RULES OF COURT.— Section 23, Rule 119 of the Rules of Court allows the judge, after the prosecution rested its case, to *motu proprio* dismiss the case on the ground of insufficiency of evidence, provided that the prosecution was given the opportunity to be heard.

. . .

In this case, respondent judge *motu proprio* dismissed numerous cases even before the prosecution rested its case and even pending the continuation of the direct testimony of the prosecution witness. Respondent judge alleged that his *motu proprio* dismissal does not violate Section 23, Rule 119 of the Rules of Court since the prosecution has already rested its case because the prosecution has already presented its testimonial evidence. He claimed that after considering the testimonial evidence, the same were incredible and unbelievable such that it fell short of the required quantum of proof for conviction.

The explanation of respondent judge is incredulous and goes against the basic and well-settled principle that only after the prosecution has filed its formal offer of evidence and the court has ruled on the same can the prosecution be considered to have rested its case. Also, considering that the prosecution was not given the opportunity to file its formal offer of evidence, the respondent judge could not have validly considered any evidence because as provided in Section 34, Rule 132 of the Rules of Court, the court shall consider no evidence which has not been formally offered. These are basic principles that its repeated violation clearly constitutes gross ignorance of the law.

5. ID.; ID.; CIVIL PROCEDURE; SECOND MOTION FOR RECONSIDERATION; HASTY ACQUITTAL OF THE ACCUSED AND DISMISSAL OF CASES ON SECOND MOTION FOR RECONSIDERATION IS VIOLATIVE OF THE PROVISION THAT NO SECOND MOTION FOR RECONSIDERATION OF A JUDGMENT OR FINAL RESOLUTION BY THE SAME PARTY SHALL BE ENTERTAINED.— Section 2, Rule 52 of the Rules of Court mandates that no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. Despite this provision, respondent judge still entertained the second motion for reconsideration in Criminal Case No. 32499-R, and even acquitted the accused. He claimed that respondent judge took a second hard look on the case and saw that the arrest was a mere afterthought. The greater interest of justice was the driving force of the respondent judge. This circumstance was suspect because if indeed respondent judge adhered to a swift application of justice as can be seen in his hasty dismissal of criminal cases, if indeed he saw that there is no cause for the accused' confinement, he should have at the first instance acquitted the accused, or even reversed his conviction on the first motion for reconsideration. Presumption therefore is created that accused was not able to timely provide the payment for his acquittal.

6. LEGAL ETHICS; JUDGES; GROSS MISCONDUCT; FOR MISCONDUCT TO BE CONSIDERED GROSS, THE ELEMENTS OF CORRUPTION, CLEAR INTENT TO VIOLATE THE LAW, OR FLAGRANT DISREGARD OF ESTABLISHED RULE MUST BE PRESENT.— Misconduct is a transgression of some established and definite rule of action,

more particularly, unlawful behaviour or gross negligence by the public officer. To be considered gross, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be present. To constitute an administrative charge, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer.

7. ID.; ID.; ID.; REMEDIAL LAW; EVIDENCE; HEARSAY EVIDENCE; AFFIDAVITS AND REPORTS REGARDING THE ILLEGAL DEALINGS OF A JUDGE MAY BE CONSIDERED HEARSAY EVIDENCE, BUT MAY BE TREATED AS SUBSTANTIAL EVIDENCE.— A judge is a visible representation of the law and justice. He should be beyond reproach and must conduct himself with the highest integrity. Even a suspicion of illegal dealings concerning the judge loses the public's faith and confidence to the judiciary. The inclusion of respondent judge to the President's narco-list is a cause of concern for the judiciary. More so when such allegations are supported by the affidavits of numerous persons and confirmed by the judicial audit and investigation conducted by the OCA.

Respondent judge denied the affidavits executed by numerous persons as being highly dubious and questionable. The information from the anonymous BJMP personnel saying that respondent judge used Norma as "bag woman" is unverified and merely hearsay. However, such affidavits and reports cannot simply be brushed aside and for this Court to turn a blind eye. While it may be considered as hearsay, such information and statements can be considered as substantial evidence.

8. ID.; ID.; ID.; A JUDGE WHO DEMANDS MONEY IN EXCHANGE FOR THE ACCUSED'S ACQUITTAL IS ADMINISTRATIVELY LIABLE FOR GROSS MISCONDUCT AND FOR VIOLATION OF THE NEW CODE OF JUDICIAL CONDUCT.—The allegation that respondent judge demands money in exchange for acquittal is supplemented and corroborated by the judicial audit and investigation conducted by the OCA and with the affidavits of numerous persons as to circumstances when respondent judge demanded money through his "bag woman" and other staff. Clearly, respondent judge should be held administratively liable for gross misconduct, since there is evident presence of corruption.

. . .

All the allegations against respondent judge and the results of the judicial audit clearly show that he violated the . . . Canons of Judicial Conduct. Respondent judge was remiss in the discharge of his judicial functions and with the allegation of corruption, damaged the integrity of the Judiciary which he represents.

9. ID.; ID.; EFFECT OF RETIREMENT ON A PENDING ADMINISTRATIVE COMPLAINT; THE COMPULSORY RETIREMENT OF A RESPONDENT JUDGE CANNOT RENDER THE ADMINISTRATIVE COMPLAINT MOOT; IN LIEU OF THE PENALTY OF DISMISSAL FROM SERVICE, ALL THE RETIREMENT BENEFITS OF THE RESPONDENT JUDGE, EXCEPT ACCRUED LEAVE CREDITS, ARE FORFEITED.— [T]his Court finds respondent Judge administratively liable for gross ignorance of the law, gross misconduct and violations of Canons 1, 2, and 3 of the New Code of Judicial Conduct, as such, respondent Judge should be meted the ultimate penalty of dismissal from service. However, during the pendency of the administrative complaint, respondent Judge compulsorily retired on November 20, 2017, thus dismissal from service can no longer be effected. Nevertheless, such compulsory retirement cannot render this case moot, since it is still proper to order the forfeiture of all his benefits, except accrued leave credits, with perpetual disqualification from employment to any public office, including government-owned and controlled corporations.

D E C I S I O N

***PER CURIAM*:**

This resolves the administrative charge for gross ignorance of the law, gross misconduct and flagrant violation of the Canons of the New Code of Judicial Conduct against Judge Antonio C. Reyes (respondent judge), Presiding Judge of the Regional Trial Court (RTC) of Baguio City, Branch 61.

Factual Antecedents

On August 7, 2016, President Rodrigo Roa Duterte (President Duterte) publicly named seven (7) judges who were allegedly involved in illegal drugs. Only four (4) of the named judges were sitting judges at the time of the announcement, Judge Exequil L. Dagala, Judge Adriano S. Savillo, Judge Domingo L. Casiple, Jr., and herein respondent Judge.[1]

Due to the public announcement of President Duterte, this Court designated Retired Justice Roberto A. Abad (Justice Abad) as the sole investigator of the fact-finding investigation against the four (4) judges.[2] On November 7, 2016, Justice Abad rendered a report regarding Judges Dagala, Casiple and Savillo finding no evidence linking them to illegal drugs. Thus, this Court on December 6, 2016, issued a Resolution terminating the fact-finding investigation against the three (3) judges because there is no evidence linking them to the use, proliferation, trade or involvement in illegal drugs.[3]

As regards the respondent judge, Justice Abad submitted his report on February 16, 2017, recommending the institution of an administrative case against the respondent judge.[4] On February 21, 2017, this Court issued a Resolution accepting the report of Justice Abad and directing the Office of the Court Administrator (OCA) to proceed with the inventory of cases decided by the respondent judge, to investigate the driver of the respondent judge and to request the National Bureau of Investigation to locate the witnesses identified in the report of Justice Abad.[5]

In a Memorandum[6] dated August 14, 2017, the OCA submitted its report and praying that the same be considered as its formal

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[1] *See* Notice of Resolution dated December 6, 2016; *rollo*, Vol. I, p. 1.

[2] Id. at 2.

[3] Id. at 21.

[4] *See* Report of Justice Roberto A. Abad; id. at 1-3.

[5] *See* Notice of Resolution dated February 21, 2017; id. at 1-3.

[6] *See* Memorandum dated August 14, 2017; id. at 1-14.

charge for gross ignorance of the law, gross misconduct and flagrant violation of the Canons of the New Code of Judicial Conduct against the respondent judge.[7]

Upon investigation, at the instance of the OCA, the office secured the affidavit of the following persons, namely, Paul Black, Melchora Nagen (Melchora), Charito Zsa Zsa Valbuena Oliva (Oliva), Edmar Buscagan (Buscagan), and Atty. Lourdes Maita Cascolan Andres (Atty. Andres). Further, there are anonymous letter and interviews from a BJMP personnel, court employees as well as practicing lawyers based in Baguio City who requested anonymity.[8]

It was found that a certain Paul Black submitted an Affidavit dated October 26, 2007 stating that he gave Norma Domingo (Norma) ₱50,000.00 for the respondent judge in exchange for the acquittal of the charge against his wife, Marina Black. Also, Melchora executed an Affidavit dated December 10, 2007 stating that Norma visited her offering to work for her release for ₱100,000.00 to be paid to the respondent judge. Melchora's family bargained for ₱50,000.00 and gave the said amount to Norma. Thereafter, Melchora was acquitted from her criminal charge. Norma requested Melchora to accompany her in delivering to the respondent judge the amount of ₱300,000.00 paid by Richard Lagunilla in consideration of the acquittal of the criminal charge of the wife. An anonymous letter was also sent to Justice Abad stating that four (4) lawyers who are close with the respondent judge obtained acquittals for their client. These allegations were confirmed by the judicial audit since cases of Marina Black, Norma Domingo, Melchora Nagen and Wilhelmina Lagunilla were all acquitted of their criminal charges.[9]

Another former staff, Charito Oliva also executed an Affidavit that sometime 2008, the respondent judge pointed to her a woman,

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[7] Id. at 14.

[8] Id. at 9-10.

[9] Id. at 8-11.

later known to be Norma, who was standing across the street in front of the Justice Hall Building. Respondent judge ordered her to get something from Norma. On the way back, Oliva glanced inside the paper bag given by Norma and saw an Iphone cellular phone. Thereafter, Oliva handed the same to respondent judge.[10]

Edmar Buscagan *y* Camarillo (Buscagan), the accused in Criminal Case Nos. 33559-R and 33560-R charged for violation of Sections 11 and 12 of Republic Act No. (R.A.) 9165, also executed an Affidavit. He stated that he was convicted by respondent judge. Sometime in 2014, after the hearing on the presentation of the prosecution evidence, a certain "Jun Alejandro" a staff of the RTC of Baguio City, Branch 61 approached him and asked Buscagan if he wanted to fix his case. The latter replied in the affirmative. Thereafter, Jun Alejandro then asked ₱150,000.00. When Buscagan said that the amount was too high, Jun Alejandro replied "*Sandali, kausapin ko si judge.*"[11] When Jun Alejandro returned, the amount was lowered to ₱100,000.00. Buscagan still considered the same as too high. Jun Alejandro went inside the judge's chambers. The amount was then further lowered to ₱70,000.00. Since Buscagan refused to pay the fee, he was convicted by the respondent judge. Thereafter, a certain Pastora "Paz" Putungan, a bondswoman and known fixer in RTC of Baguio City, Branch 61 demanded ₱300,000.00 in exchange for reversal of his conviction. Buscagan failed to pay the amount. Then, when he saw Putungan last February 2017, the latter chided "*Kung binigay mo nalang sana kay judge yung bail mo e di sana naayos na yan. Wala namang ibang makakapag reverse niyan kung hindi si Judge Reyes*."[12]

Atty. Lourdes Maita Cascolan-Andres (Atty. Andres) executed her Affidavit attesting to that fact that she was approached by Edward Fangonil asking her if she was willing to have the decision reversed. When she asked if it was possible, Edward

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[10] Id. at 9-10.

[11] *See* Letter dated March 16, 2016; id. at 4.

[12] Id.

Fangonil replied yes so long as ₱300,000.00 was given to the respondent judge. As her clients were not able to raise the said money, their convictions were not reversed.[13]

Apparently, it is well-known in the legal circle in Baguio City the corrupt dealings of the respondent judge. The price of acquittals and dismissal of drug cases ranges from ₱200,000.00 to ₱300,000.00. The alleged *modus operandi* of respondent judge was that he will prepare two (2) decisions — one for acquittal and one for conviction. Norma would then approach the family of the accused to ask for money in exchange for an acquittal. If payment was given on time, the decision for acquittal will be the one rendered. If the accused was not able to give the money before the decision was promulgated, the accused will be convicted. However, if the accused will file a motion for reconsideration together with the money, the conviction will be reversed and the accused will be acquitted.

The judicial audit conducted by the OCA found questionable acquittals and dismissals of the cases against the accused. One such questionable acquittal was the case of accused Jericho Cedo in Criminal Case No. 32499-R where the accused was acquitted on his second motion for reconsideration.[14]

There were also numerous *motu proprio* dismissals even before the prosecution rested its case. In Criminal Case No. 37928-R, in spite of an order resetting the direct testimony of Agent Karizze Joy Cariño on April 20, 2016 because the public prosecutor was not feeling well, respondent judge hastily dismissed the case on April 18, 2016 for the reason that "even if they have yet to testify, this court thinks that the evidence for [these] cases' dismissal cannot be reversed after the testimony of Agent Bansag x x x."[15] Also, in Criminal Case No. 36973-R, despite the issuance of an Order dated October 26, 2015 ordering the prosecution to file its Formal Offer of Evidence, respondent

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[13] Id. at 6.

[14] Id. at 9.

[15] *See* Memorandum dated June 6, 2017; id. at 8.

judge on the same date issued an Order dismissing the case by virtue of Section 23, Rule 119 of the Rules of Court on the ground of insufficiency of evidence.[16] Further, in Criminal Case No. 33790-R, where respondent judge issued an Order dated January 12, 2015 setting the continuation of the presentation of the prosecution's evidence on March 2, 2015, but suddenly the next day, respondent judge issued an Order dismissing the case.[17] The same happened in Criminal Case Nos. 33246-R and 33209-R.[18]

Further, years before this Court in *Estipona v. Lobrigo*[19] declared Section 23 of R.A. 9165 unconstitutional, respondent judge had the propensity in accommodating plea bargaining in drug cases in numerous cases to the effect that the accused was only rehabilitated in a government facility.[20]

Investigation with the BJMP and PDEA who agreed to be interviewed but requested not to be named, claimed that Norma served as the "bag woman" of respondent judge and frequently visits detainees who had pending cases in the RTC of Baguio City, Branch 61 and asked money in exchange for acquittal. It was also learned that respondent judge used numerous "bag men" and one of them was his driver.[21]

In his Comment,[22] respondent judge denied all the charges against him, that there is no factual or legal basis for any administrative charge against him. On the charge of gross ignorance of the law, he claimed that the prohibition on plea bargaining has already been declared unconstitutional by this

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[16] Id. at 18.

[17] Id.

[18] Id. at 19.

[19] 816 Phil. 789 (2017).

[20] Id. at 796.

[21] Memorandum dated August, 2017; *rollo*, pp. 8-9.

[22] On September 26, 2017, this Court issued a Resolution directing the respondent judge to file his Comment on the charges against him and directing the preventive suspension of respondent judge.

Court in *Estipona, Jr. v. Hon. Lobrigo*. He alleged that he only entertained plea bargaining and allowed the amendment of the criminal charge from Illegal possession of dangerous drugs to use of dangerous drugs considering that *first*, the confiscated drugs were miniscule. As such, it may be inferred that the same was only for personal consumption. *Second*, the accused tested positive after drug testing. *Third*, the motion to amend information is a matter of right before arraignment. *Fourth*, it was the prosecution who filed the motion to amend information after finding good grounds to rehabilitate the accused. Lastly, respondent judge conducted his own independent evaluation and assessment of the records.[23]

As to the alleged violation of Section 23, Rule 119[24] of the Rules of Court, respondent judge claimed that he did not violate such rule. The *motu proprio* dismissals were made after the prosecution had rested its case and after the prosecution was given the opportunity to be heard. Even if the prosecution had not formally offered its documentary and object evidence, the

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[23] *See* Comment dated November 24, 2017; *rollo*, Vol. II, pp. 2-3.

[24] **Section 23. *Demurrer to evidence.* — After the prosecution rests its case, the court may dismiss the action on the ground of insufficiency of evidence (1) on its own initiative after giving the prosecution the opportunity to be heard or (2) upon demurrer to evidence filed by the accused with or without leave of court.**
If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.
The motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case. The prosecution may oppose the motion within a non-extendible period of five (5) days from its receipt. If leave of court is granted, the accused shall file the demurrer to evidence within a non-extendible period of ten (10) days from notice. The prosecution may oppose the demurrer to evidence within a similar period from its receipt. The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment.

testimonial evidence of the prosecution were completed and all fell short of the required quantum of evidence for conviction.[25]

As to his violation on granting a second motion for reconsideration, he claimed that the greater interest of justice was the driving force and the compelling reason why he granted the second motion for reconsideration. He alleged that he took a second hard look on the case and discovered that the arrest of the accused in Criminal Case No. 32499-R was a mere afterthought when the police officers failed to arrest the main target of the operation.[26]

On the charge of gross misconduct, respondent judge stated that the same were merely sweeping statements which are mere conjectures and surmises. He claimed that he is steadfastly against any form of corruption and even filed an administrative case against a former staff when he learned that the latter was using respondent judge's name to extort money. Respondent judge claimed that there is no evidence whatsoever that showed that he received monetary considerations in exchange of his alleged repeated disregard of the rules and the law.[27]

As to the affidavits executed by numerous persons as to the alleged demand of money in exchange for acquittals, respondent judge denied in the strongest terms the allegations stated in their affidavits.[28]

In a Memorandum dated June 14, 2019, the OCA found that all the allegations levelled against respondent judge constitutes gross ignorance of the law, gross misconduct and violation of Canons 1, 2, and 3 of the New Code of Judicial Conduct. Since respondent judge compulsorily retired on November 27, 2017, the OCA recommended forfeiture of all his benefits, except accrued leave credits, with perpetual disqualification from

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[25] *Rollo*, Vol. II, pp. 7-11.

[26] Id. at 12-13.

[27] Id. at 13.

[28] Id. at 28-31.

employment to any public office, including government-owned and controlled corporations.

Issue

Whether respondent judge is administratively liable for gross ignorance of the law, gross misconduct and violation of Canons 1, 2, and 3 of the New Code of Judicial Conduct.

Ruling of the Court

In administrative proceedings for disciplinary sanctions against judges, the quantum of proof necessary is substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[29] A review of the records of this case leads Us to rule that there is substantial evidence in holding respondent judge administratively liable. As such, this Court see no compelling reason to deviate from the findings of the OCA.

Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. To be administratively liable, it must be shown that the judge had been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law.[30]

Respondent judge has been designated as the presiding judge of RTC of Baguio City, Branch 61, which handles drug cases. It is presumed, even expected that he is well-versed and well-informed of the rules of procedure and the provisions of the law, especially R.A. 9165. Thus, his penchant for disregarding rules show that he was motivated by bad faith and corruption.

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[29] *Biado v. Hon. Brawner-Cualing*, 805 Phil. 694 (2017).

[30] *Department of Justice v. Judge Mislang*, A.M. No. RTJ-14-2369, July 26, 2016.

Section 23[31] of R.A. 9165 prohibits plea bargaining regardless of the imposable penalty. The provision is so straightforward such that violation of the same is inexcusable. Respondent judge reasoned that this Court already declared such provision as unconstitutional. The ruling of this Court in *Estipona, Jr. v. Hon. Lobrigo* does not shield respondent judge for his numerous violations of the law. Be it noted that the ruling of *Estipona* was promulgated only on August 15, 2017. While the Orders executed by respondent judge allowing and entertaining plea bargaining were issued years before *Estipona*. It is well-settled that laws are presumed constitutional until declared by the court as unconstitutional. Abidance with the law is mandatory and judges are expected to abide by the same regardless of their personal conviction or opinion.

Section 23, Rule 119 of the Rules of Court allows the judge, after the prosecution rested its case, to *motu proprio* dismiss the case on the ground of insufficiency of evidence, provided that the prosecution was given the opportunity to be heard.

In Criminal Case No. 37928-R, despite issuing an order resetting the direct testimony of Agent Karizze Joy Cariño on April 20, 2016 because the public prosecutor was not feeling well, the respondent judge hastily dismissed the case on April 18, 2016 for the reason that "even if they have yet to testify, this court thinks that the evidence for [these] cases' dismissal cannot be reversed after the testimony of Agent Bansag x x x." Clearly, the prosecution has not rested its case since the direct testimony of the prosecution witness was still ongoing. Also, in Criminal Case No. 36973-R, despite the issuance of an Order dated October 26, 2015 ordering the prosecution to file its Formal Offer of Evidence, the respondent judge on the same date issued an Order dismissing the case. Further, in Criminal Case No. 33790-R, where the respondent judge issued an Order dated January 12, 2015 setting the continuation of the presentation

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[31] Section 23. *Plea-Bargaining Provision*. — Any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.

of the prosecution's evidence on March 2, 2015, but suddenly the next day, respondent judge issued an Order dismissing the case. The same happened in Criminal Case Nos. 33246-R and 33209-R.

In this case, respondent judge *motu proprio* dismissed numerous cases even before the prosecution rested its case and even pending the continuation of the direct testimony of the prosecution witness. Respondent judge alleged that his *motu proprio* dismissal does not violate Section 23, Rule 119 of the Rules of Court since the prosecution has already rested its case because the prosecution has already presented its testimonial evidence. He claimed that after considering the testimonial evidence, the same were incredible and unbelievable such that it fell short of the required quantum of proof for conviction.

The explanation of respondent judge is incredulous and goes against the basic and well-settled principle that only after the prosecution has filed its formal offer of evidence and the court has ruled on the same can the prosecution be considered to have rested its case.[32] Also, considering that the prosecution was not given the opportunity to file its formal offer of evidence, the respondent judge could not have validly considered any evidence because as provided in Section 34, Rule 132 of the Rules of Court, the court shall consider no evidence which has not been formally offered. These are basic principles that its repeated violation clearly constitutes gross ignorance of the law.

Section 2, Rule 52 of the Rules of Court mandates that no second motion for reconsideration of a judgment or final resolution by the same party shall be entertained. Despite this provision, respondent judge still entertained the second motion for reconsideration in Criminal Case No. 32499-R, and even acquitted the accused. He claimed that respondent judge took a second hard look on the case and saw that the arrest was a mere afterthought. The greater interest of justice was the driving force of the respondent judge. This circumstance was suspect

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[32] *Cabador v. People*, 617 Phil. 974 (2009).

because if indeed respondent judge adhered to a swift application of justice as can be seen in his hasty dismissal of criminal cases, if indeed he saw that there is no cause for the accused's confinement, he should have at the first instance acquitted the accused, or even reversed his conviction on the first motion for reconsideration. Presumption therefore is created that accused was not able to timely provide the payment for his acquittal.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behaviour or gross negligence by the public officer.[33] To be considered gross, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be present. To constitute an administrative charge, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer.[34]

A judge is a visible representation of the law and justice.[35] He should be beyond reproach and must conduct himself with the highest integrity. Even a suspicion of illegal dealings concerning the judge loses the public's faith and confidence to the judiciary. The inclusion of respondent judge to the President's narco-list is a cause of concern for the judiciary. More so when such allegations are supported by the affidavits of numerous persons and confirmed by the judicial audit and investigation conducted by the OCA.

Respondent judge denied the affidavits executed by numerous persons as being highly dubious and questionable. The information from the anonymous BJMP personnel saying that respondent judge used Norma as "bag woman" is unverified and merely hearsay. However, such affidavits and reports cannot simply be brushed aside and for this Court to turn a blind eye. While it may be considered as hearsay, such information and statements can be considered as substantial evidence. In the

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[33] *Tolentino-Genilo v. Pineda*, 819 Phil. 588 (2017).

[34] Id.

[35] *Reyes v. Duque*, 645 Phil. 253 (2010).

case of *Re: Verified Complaint dated July 13, 2015 of Umali, Jr. v. Hernandez*,[36] this Court held that:

> The relaxation of the hearsay rule in disciplinary administrative proceedings against judges and justices where bribery proceedings are involved is not a novel thought in this 'Court; it has been advocated in the Separate Concurring Opinion of Justice Arturo D. Brion in the administrative case of Justice Ong before this Court. The Opinion essentially maintained that the Court could make a conclusion that bribery had taken place *when the circumstances — including those derived from hearsay evidence sufficiently prove its occurrence*. It was emphasized that to satisfy the substantial evidence requirement for administrative cases, hearsay evidence should necessarily be supplemented and corroborated by other evidence that are not hearsay.[37]

The allegation that respondent judge demands money in exchange for acquittal is supplemented and corroborated by the judicial audit and investigation conducted by the OCA and with the affidavits of numerous persons as to circumstances when respondent judge demanded money through his "bag woman" and other staff. Clearly, respondent judge should be held administratively liable for gross misconduct since there is evident presence of corruption.

The New Code of Judicial Conduct provides:

> Canon 1 x x x
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> Section 1 — Judges shall exercise the judicial function independently on the basis of their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.
>
> Canon 2 x x x
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> Section 1 — Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

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[36] 781 Phil. 375 (2016).

[37] Id.

Section 2 — The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Canon 3 x x x

Section 1 — Judges shall perform their judicial duties without favor, bias or prejudice.

All the allegations against respondent judge and the results of the judicial audit clearly show that he violated the above-cited Canons of Judicial Conduct. Respondent judge was remiss in the discharge of his judicial functions and with the allegation of corruption, damaged the integrity of the Judiciary which he represents. Judges are strictly mandated to abide by the law, the Code of Judicial Conduct and existing administrative policies in order to maintain the faith of our people in the administration of justice. Any act which falls short of the exacting standard for public office, especially on the part of those expected to preserve the image of the judiciary, shall not be countenanced.[38]

Thus, in view of all the foregoing, this Court finds respondent Judge administratively liable for gross ignorance of the law, gross misconduct and violations of Canons 1, 2, and 3 of the New Code of Judicial Conduct, as such, respondent Judge should be meted the ultimate penalty of dismissal from service. However, during the pendency of the administrative complaint, respondent Judge compulsorily retired on November 20, 2017, thus dismissal from service can no longer be effected. Nevertheless, such compulsory retirement cannot render this case moot, since it is still proper to order the forfeiture of all his benefits, except accrued leave credits, with perpetual disqualification from employment to any public office, including government-owned and controlled corporations.

In *Re: Judicial audit conducted on Branch 64, Regional Trial Court, Guihulngan City, Negros Oriental, Presided by Hon. Mario O. Trinidad*,[39] the Court stated that "[f]inally, let this be

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[38] *Lastimosa-Dalawampu v. Yrastorza, Sr.*, 466 Phil. 600 (2004).

[39] A.M. No. 20-07-96-RTC, September 1, 2020.

a reminder to all the incumbent judges that the Court has adopted rules, circulars, and guidelines for judges to follow in order to expedite the resolution of cases. These are intended to render fair, just, and swift justice to give meaning to the very purpose of the existence of the Court as dispenser of justice. In this regard, even with Judge Trinidad's retirement, it did not stop the Court from imposing the proper penalty to those found to be in discord with the Court's policies."

WHEREFORE, this Court finds respondent Judge Antonio C. Reyes **GUILTY** of Gross Ignorance of the Law, Gross Misconduct, and violation of Canons 1, 2, and 3 of the New Code of Conduct for the Philippine Judiciary. Considering that respondent Judge Antonio C. Reyes already reached the compulsory retirement age during the pendency of this administrative case, his retirement benefits, except accrued leave credits are hereby **FORFEITED**. Respondent Judge Antonio C. Reyes is also **DISQUALIFIED** from re-employment or appointment to any public office, including government-owned and controlled corporations.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Carandang, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

Lazaro-Javier, Inting, and *Zalameda, JJ.*, on official leave.

EN BANC

[A.M. No. RTJ-20-2593. November 10, 2020]
[Formerly: OCA IPI No. 20-5067-RTJ]

PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, *Complainant*, *v.* **HON. JESUS B. MUPAS, Presiding Judge Branch 112, Regional Trial Court, Pasay City,** *Respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; JUDGES SHOULD BE DILIGENT IN KEEPING ABREAST WITH DEVELOPMENTS IN LAW AND JURISPRUDENCE.— Our conception of good judges has been, and is, of men who have a mastery of the principles of law, who discharge their duties in accordance with law. Judges are the visible representations of law and justice, from whom the people draw the will and inclination to obey the law. They are expected to be circumspect in the performance of their tasks, for it is their duty to administer justice in a way that inspires confidence in the integrity of the justice system. Judges should exhibit more than just a cursory acquaintance with the statutes and procedural rules, and should be diligent in keeping abreast with developments in law and jurisprudence. For a judge who is plainly ignorant of the law taints the noble office and great privilege vested in him.

2. ID.; ID.; ID.; A PATENT DISREGARD OF SIMPLE, ELEMENTARY, AND WELL-KNOWN RULES CONSTITUTES GROSS IGNORANCE OF THE LAW.—While judges should not be disciplined for inefficiency on account merely of occasional mistakes or errors of judgments, it is highly imperative that they should be conversant with fundamental and basic legal principles in order to merit the confidence of the citizenry. A patent disregard of simple, elementary and well-known rules constitutes gross ignorance of the law. To constitute gross ignorance of the law, the acts complained of must not only be contrary to existing law and jurisprudence, but were also motivated by bad faith, fraud, dishonesty, and corruption. When the law is sufficiently basic, a judge owes it to his office to

know and to simply apply it. Anything less would be constitutive of gross ignorance of the law.

3. ID.; ID.; ID.; THE COURT IS DUTY-BOUND TO STERNLY WIELD A CORRECTIVE HAND TO DISCIPLINE ITS ERRANT EMPLOYEES AND SHOVE AWAY THE UNDESIRABLE ONES.— The Court does not take lightly the complaints against Judge Mupas. A review of his disciplinary record does not paint a rosy picture.

In *Mina v. Judge Mupas*, he was found guilty of undue delay in rendering an order and was fined the amount of ₱10,000.00.

In *Giganto v. Judge Mupas*, he was admonished "to be mindful of his actions so as to avoid the appearance of impropriety."

More recently, in *Yu v. Judge Mupas*, he was found guilty of gross ignorance of the law and fined the amount of ₱35,000.00.

The instant case shall be resolved not just on the weight of the allegations of PNCC, but also in light of the previous infractions of Judge Mupas for which he had already been warned and penalized for by the Court. After all, the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and shove away the undesirable ones.

4. ID.; ID.; ID.; THE RULES ON THE ISSUANCE OF INJUNCTIVE RELIEFS AND SUMMARY PROCEDURE ARE ELEMENTARY TO THE EXTENT THAT NON-OBSERVANCE AND LACK OF KNOWLEDGE ON THEM CONSTITUTE GROSS IGNORANCE OF THE LAW.—A cursory perusal of the reasons advanced by Judge Mupas show that nowhere in any of the . . . Orders did he make a pronouncement on the presence of all of the requisites for the issuance of a TRO and WPI. Judge Mupas merely discussed the supposed irreparable damage or injury that may result should he not issue the injunctive reliefs prayed for. It bears stressing, however, that although a trial court judge is given a latitude of discretion, he or she cannot grant a TRO or a WPI if there is no clear legal right materially and substantially breached from a *prima facie* evaluation of the evidence of the complainant.

. . .

Moreover, Judge Mupas had already admitted that he took cognizance of Civil Case No. R-PSY-19-03785-CV notwithstanding

the fact that a petition for *certiorari* is prohibited by Section 19 (g) of the Rules on Summary Procedure. This prohibition is plain enough, and its further exposition is unnecessary verbiage.

The rules on the issuance of injunctive reliefs and summary procedure are elementary to the extent that non-observance and lack of knowledge on them constitute gross ignorance of the law, especially for judges who are supposed to exhibit more than just a cursory acquaintance with the procedural rules. For these reasons, the Court finds Judge Mupas guilty of three counts of gross ignorance of the law.

5. ID.; ID.; ID.; PENALTY; THE MULTIPLE INFRACTIONS OF A RESPONDENT JUDGE, WHEN VIEWED TOGETHER, INSTEAD OF AS SEPARATE AND ISOLATED FACTS, WARRANT THE IMPOSITION OF THE EXTREME PENALTY OF DISMISSAL FROM THE SERVICE AND ALL THE ACCESSORY PENALTIES APPURTENANT THERETO.— Gross Ignorance of the law "is classified as a serious charge, [and] punishable by a fine of more than ₱20,000.00 but not exceeding ₱40,000.00, and suspension from office for more than three but not exceeding six months, without salary and other benefits, or dismissal from service."

In *Office of the Court Administrator v. Judge Villarosa* the Court ruled that "[i]f the respondent judge or justice of the lower court is found guilty of multiple offenses under Rule 140 of the Rules of Court, the Court shall impose separate penalties for each violation."

For the first two counts of gross ignorance of the law, the Court hereby imposes against Judge Mupas a fine in the amount of ₱50,000.00 and ₱75,000.00, respectively, or a total of ₱125,000.00.

As to the third count of gross ignorance of the law, the same is warranted, considering Judge Mupas' checkered past. The multiple infractions of Judge Mupas, especially when viewed together instead of as separate and isolated facts, show that he is unfit to discharge the duties and functions of a judge so as to warrant the imposition of the extreme penalty of dismissal from the service and all the accessory penalties appurtenant thereto.

6. ID.; ID.; ID.; A JUDGE WHO DISPLAYS AN UTTER LACK OF FAMILIARITY WITH THE RULES ERODES THE PUBLIC'S CONFIDENCE IN THE COMPETENCE OF COURTS.— No less than the Constitution states that a member of the judiciary "must be a person of proven competence, integrity, probity and independence." It is, therefore, highly imperative that a judge should be conversant with basic legal principles. When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts. Judge Mupas failed to live up to the exacting standards of his office. The magnitude of his transgressions, taken collectively, casts a heavy shadow on his moral, intellectual and attitudinal competence and rendered him unfit to don the judicial robe and to perform the functions of a magistrate. The administration of justice cannot be entrusted to one like him who would readily ignore and disregard the laws and policies enacted by the Court to guarantee justice and fairness for all.

D E C I S I O N

***PER CURIAM*:**

Before this Court is an administrative case against respondent Hon. Jesus B. Mupas (Judge Mupas), Presiding Judge of Branch 112 of the Regional Trial Court (RTC) of Pasay City. The case stems from a letter[1] dated September 27, 2019, filed by the corporate officers of complainant Philippine National Construction Corporation (PNCC), informing this Court of the alleged irregular issuances by Judge Mupas of the injunctive reliefs of Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI).

Factual Antecedents

PNCC, a government-owned and/or controlled corporation (GOCC), is the owner of the Financial Center Area (FCA), a 12.9-hectare property located at Macapagal Boulevard, Pasay

[1] *Rollo*, pp. 2-5.

City.[2] Parts of the FCA were leased to different entities which include, among others, Ley Construction and Development Corporation (LCDC) and John Richard Real, doing business under the name and style of Jecar Enterprises (Jecar).[3]

When the lease contracts covering the FCA expired on May 31, 2018, PNCC decided not to renew the same. However, several lessees including LCDC and Jecar refused to vacate the property. Thus, PNCC filed separate cases for ejectment against them.[4]

PNCC's unlawful detainer case against Jecar, docketed as Civil Case No. M-PSY-19-00813-CV, was raffled to Branch 46 of the Metropolitan Trial Court (MTC) of Pasay City under the sala of Judge Rechie N. Ramos-Malabanan (Judge Ramos-Malabanan). On August 27, 2019, Judge Ramos-Malabanan rendered an Order[5] directing the issuance of a Writ of Preliminary Mandatory Injunction[6] (WPMI) against Jecar. Under the said WPI, Jecar was enjoined to restore in favor of PNCC the possession of the portion of the FCA that it was leasing. As evidenced by a Certificate of Delivery of Premises[7] dated September 17, 2019, PNCC was able to take possession of the same.

Seeking the annulment of the MTC's Order granting the WPI, Jecar filed a Rule 65 petition for *certiorari* with the RTC. This case was docketed as Civil Case No. R-PSY-19-03785-CV. On September 17, 2019 Judge Mupas issued an Order[8] granting Jecar's prayer for a TRO to enjoin the MTC's implementation of the WPMI. Judge Mupas likewise set a hearing for Jecar's prayer for WPI.[9]

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[2] Id. at 2.

[3] Id.

[4] Id. at 2-3.

[5] Id. at 17.

[6] Id. at 15-16.

[7] Id. at 14.

[8] Id. at 19-21.

[9] Id. at 21.

Aggrieved, PNCC was constrained to report Judge Mupas' actions to the Court.

PNCC argues, in the main, that Judge Mupas enjoined an act that had already been accomplished. Moreover, in taking cognizance of Civil Case No. R-PSY-19-03785-CV, Judge Mupas directly contravened Section 19 (g)[10] of the Rules on Summary Procedure. Simply put, Jecar's petition should not have been given due course.[11]

In addition to excoriating the procedural validity of Judge Mupas' actions, PNCC found it suspicious when, upon the filing of its Position Paper on the propriety of the TRO before the RTC at 4:00 p.m. of September 17, 2019, Judge Mupas was able to cause the service of the said TRO to PNCC at 5:00 p.m. of the very same day.[12]

PNCC likewise points the Court's attention to Judge Mupas' similar actions in Civil Case No. R-PSY-18-3000-CV entitled "*Ley Construction and Development Corporation v. Philippine National Construction Corporation*," for Injunction/Damages. In this case, Judge Mupas issued a TRO[13] and a WPI[14] to enjoin PNCC "from carrying out and implementing its demand, as contained in its letter dated April 26, 2018, for plaintiff Ley Construction and Development Corporation to vacate the leased premises; or from taking steps to evict or cause the eviction of plaintiff, or from taking possession of the Leased Premises, until further orders x x x."[15]

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[10] Sec. 19. *Prohibited pleadings and motions*. — The following pleadings, motions or petitions shall not be allowed in the cases covered by this Rule:
x x x x
(g) Petition for *certiorari*, *mandamus*, or prohibition against any interlocutory order issued by the court. x x x x

[11] Id. at 4.

[12] Id.

[13] Id. at 10-12.

[14] Id. at 6-9.

[15] Id. at 9.

In his comment[16] dated October 11, 2019 to PNCC's letter, Judge Mupas insisted that the subject injunctive reliefs were issued in accordance with procedural rules and in the spirit of liberality. With regard to the injunctive reliefs in Civil Case No. R-PSY-18-30000-CV, he claimed that he was swayed by the employees who would lose their jobs if PNCC was allowed to evict its lessees.[17] Judge Mupas also mentioned PNCC's participation in the mediation proceedings which, in his view, meant that the parties were open to an amicable settlement of the case.[18]

As to Civil Case No. R-PSY-19-03785-CV, Judge Mupas admitted that a petition for *certiorari* is indeed not allowed under the Rules on Summary Procedure. However, he defended himself by invoking the tenets of the liberal application of the rules of procedure on affording the parties the opportunity to be heard. Judge Mupas further claimed that he was not informed by the parties that the action sought to be enjoined by LCDC had already been rendered moot, and that he had no hand on the service of the TRO to LCDC.[19]

Findings of the Office of the Court Administrator

The Office of the Court Administrator (OCA) submitted a Memorandum[20] dated August 13, 2020 recommending that Judge Mupas be held administratively liable for gross ignorance of the law.

The OCA found Judge Mupas' invocation of the principle of liberality to be a mere subterfuge to evade responsibility for his transgressions. *First*, Judge Mupas issued the injunctive reliefs in favor of LCDC in Civil Case No. R-PSY-18-30000-CV without any legal basis. Nowhere in his orders did he mention

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[16] Id. at 22-25.

[17] Id. at 22.

[18] Id. at 23.

[19] Id. at 23-24.

[20] Id. at 70-78.

that LCDC a "clear and unmistakable right to be protected," as required by the rules because, in truth and in fact, LCDC's lease contract with PNCC had already expired. *Second*, Judge Mupas blatantly ignored Section 19 (g) of the Rules on Summary Procedure when he took cognizance of Civil Case No. R-PSY-19-03785-CV. *And third*, Judge Mupas violated anew the basic tenets on the issuance of injunctive reliefs when he issued a TRO in favor of Jecar, whose contract of lease had also expired, to enjoin an act that had already been accomplished.[21]

As to the timing of the service of the TRO on September 17, 2019, the OCA found no irregularity on the part of Judge Mupas, considering the inherent probability of having a TRO issued and served to PNCC within the span of one hour because of the court *a quo*'s close proximity to the FCA.[22]

In view of these circumstances, the OCA recommended as follows:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

a. the instant matter be **RE-DOCKETED** as a regular administrative matter against Hon. Jesus B. Mupas, Presiding Judge, Branch 112, Regional Trial Court, Pasay City;

b. Judge Jesus B. Mupas be found **GUILTY** of three (3) counts of Gross Ignorance of the Law for issuing (1) a temporary restraining order in Civil Case No. R-PSY-18-3000-CV, (2) taking cognizance of the petition for certiorari in Civil Case No. R-PSY-19-03785-CV in violation of Section 19 (g) of the Rules of Summary Procedure, and for (3) issuing a temporary restraining order also in Civil Case No. R-PSY-19-03785-CV; and

c. Judge Mupas be **FINED** in the amount of ₱50,000.00 for the first count, **FINED** in the amount of ₱75,000.00 for the second count, and **DISMISSED FROM THE SERVICE**, with forfeiture of all his retirement benefits, except his accrued leave

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[21] Id. at 76.

[22] Id. at 76.

credits, and with perpetual disqualification for re-employment in any branch, agency or instrumentality of the government, including government-owned or controlled corporation for the third count of Gross Ignorance of the Law.[23]

Ruling of the Court

The Court fully adopts the findings and recommendations of the OCA.

Our conception of good judges has been, and is, of men who have a mastery of the principles of law, who discharge their duties in accordance with law.[24] Judges are the visible representations of law and justice,[25] from whom the people draw the will and inclination to obey the law.[26] They are expected to be circumspect in the performance of their tasks, for it is their duty to administer justice in a way that inspires confidence in the integrity of the justice system.[27] Judges should exhibit more than just a cursory acquaintance with the statutes and procedural rules, and should be diligent in keeping abreast with developments in law and jurisprudence.[28] For, a judge who is plainly ignorant of the law taints the noble office and great privilege vested in him.[29]

While judges should not be disciplined for inefficiency on account merely of occasional mistakes or errors of judgments, it is highly imperative that they should be conversant with fundamental and basic legal principles in order to merit the confidence of the citizenry.[30] A patent disregard of simple, elementary and well-known rules constitutes gross ignorance

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[23] Id. at 78.

[24] *State Prosecutor Comilang v. Judge Belen*, 689 Phil. 134, 148 (2012).

[25] *Alcaraz v. Judge Lindo*, 471 Phil. 39, 40 (2004).

[26] *Spouses Jacinto v. Judge Vallarta*, 493 Phil. 255, 264 (2005).

[27] *Victorio v. Judge Rosete*, 603 Phil. 68, 79 (2009).

[28] *Conquilla v. Judge Bernardo*, 657 Phil. 289, 299-300 (2011).

[29] *Salcedo v. Judge Bollozos*, 637 Phil. 27, 44 (2010).

[30] *Sps. Monterola v. Judge Caoibes, Jr.*, 429 Phil. 59, 67 (2002).

of the law.[31] To constitute gross ignorance of the law, the acts complained of must not only be contrary to existing law and jurisprudence, but were also motivated by bad faith, fraud, dishonesty, and corruption.[32] When the law is sufficiently basic, a judge owes it to his office to know and to simply apply it. Anything less would be constitutive of gross ignorance of the law.[33]

In *Enriquez v. Judge Caminade*,[34] the Court declared:

> Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. In all good faith, they must know the laws and apply them properly. Judicial competence requires no less. Where the legal principle involved is sufficiently basic and elementary, lack of conversance with it constitutes gross ignorance of the law.[35]

In *Department of Justice v. Judge Mislang*,[36] the Court further elaborated:

> Gross ignorance of the law is the disregard of basic rules and settled jurisprudence. A judge may also be administratively liable if shown to have been motivated by bad faith, fraud, dishonesty or corruption in ignoring, contradicting or failing to apply settled law and jurisprudence. Though not every judicial error bespeaks ignorance of the law and that, if committed in good faith, does not warrant administrative sanction, the same applies only in cases within the parameters of tolerable misjudgment. Such, however, is not the case with Judge Mislang. Where the law is straightforward and the facts so evident, failure to know it or to act as if one does not know it constitutes gross ignorance of the law. A judge is presumed to have acted with regularity and good faith in the performance of judicial functions. But a blatant disregard of the clear and unmistakable provisions of a statute, as well as Supreme Court circulars enjoining

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[31] *Daka Benito v. Judge Balindong*, 599 Phil. 196, 201 (2009).

[32] *Suarez-De Leon v. Judge Estrella*, 503 Phil. 34, 40 (2005).

[33] *Atty. Cabili v. Judge Balindong*, 672 Phil. 398, 412 (2011).

[34] 519 Phil. 781 (2006).

[35] Id. at 783.

[36] 791 Phil. 219 (2016).

their strict compliance, upends this presumption and subjects the magistrate to corresponding administrative sanctions.

For liability to attach for ignorance of the law, the assailed order, decision or actuation of the judge in the performance of official duties must not only be found erroneous but, most importantly, it must also be established that he was moved by bad faith, dishonesty, hatred, or some other like motive. Judges are expected to exhibit more than just cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in all good faith. Judicial competence requires no less. Thus, unfamiliarity with the rules is a sign of incompetence. Basic rules must be at the palm of his hand. When a judge displays utter lack of familiarity with the rules, he betrays the confidence of the public in the courts. Ignorance of the law is the mainspring of injustice. Judges owe it to the public to be knowledgeable, hence, they are expected to have more than just a modicum of acquaintance with the statutes and procedural rules; they must know them by heart. When the inefficiency springs from a failure to recognize such a basic and elemental rule, a law or a principle in the discharge of his functions, a judge is either too incompetent undeserving of the position and the prestigious title he holds or he is too vicious that the oversight or omission was deliberately done in bad faith, and in grave abuse of judicial authority. In both cases, the judge's dismissal will be in order.[37]

The Court does not take lightly the complaints against Judge Mupas. A review of his disciplinary record does not paint a rosy picture.

In *Mina v. Judge Mupas*,[38] he was found guilty of undue delay in rendering an order and was fined the amount of ₱10,000.00.[39]

In *Giganto v. Judge Mupas*,[40] he was admonished "to be mindful of his actions so as to avoid the appearance of impropriety."[41]

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[37] Id. at 227-228.

[38] 578 Phil. 41 (2008).

[39] Id. at 48.

[40] A.M. No. RTC-15-2430, July 20, 2015.

[41] *Rollo*, p. 48.

More recently, in *Yu v. Judge Mupas*,[42] he was found guilty of gross ignorance of the law and fined the amount of ₱35,000.00.[43]

The instant case shall be resolved not just on the weight of the allegations of PNCC, but also in light of the previous infractions of Judge Mupas for which he had already been warned and penalized for by the Court. After all, the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and shove away the undesirable ones.[44]

Judge Mupas is guilty of gross ignorance of the law

In issuing the injunctive reliefs in question, Judge Mupas offered the following ratiocinations:

1. Order dated June 14, 2018 granting TRO against PNCC in Civil Case No. R-PSY-18-3000-CV

> x x x the directive to vacate the property should clearly be restrained since it would result to undue injury to the government in the amount of 61 million pesos for the months of June to December 2018. In the PNCC 1st Quarter report dated May 10, 2018, the management itself of herein defendant recommended to the Board of Directors that the Lease Contract be extended in order to prevent any loss of income to the government pending the finalization or approval of any concrete plan on what to do with the property.[45]

2. Order dated July 4, 2018 granting WPI against PNCC, also in Civil Case No. R-PSY-18-3000-CV

> The testimonies of plaintiff's witnesses show that this Court's intervention is urgently needed as it would suffer grave and irreparable injury if it is evicted.

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[42] A.M. No. RTJ-17-2491, July 4, 2018, 870 SCRA 391.

[43] Id. at 404.

[44] *Calaunan v. Madolaria*, 657 Phil. 1, 10 (2011).

[45] *Rollo*, pp. 11-12.

In essence, therefore, the Court is swayed to order the maintenance of the status quo and direct the issuance of the writ of preliminary injunction by the fact that if plaintiff is immediately evicted, both the government and employers and employees and several private sectors as well as their family dependents will surely be damaged and irreparably injured.[46]

3. Order dated September 17, 2019 granting TRO against PNCC in Civil Case No. R-PSY-19-03785-CV

Settled is the rule that a writ of preliminary injunction may be issued to prevent threatened or continuous irremediable injury to parties before the case can be resolved on its merits, provided that the applicant satisfies the following requisites for injunctive relief: (a) the invasion of the right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is urgent and paramount necessity for the writ to prevent serious damage. x x x

Based on the preliminary review of the factual antecedents and the documents attached to the amended complaint as well as the testimony of petitioner and guided by the foregoing jurisprudential guidelines on the issuance of injunctive relief, the Court finds it proper to issue a Temporary Restraining Order.[47]

A cursory perusal of the reasons advanced by Judge Mupas show that nowhere in any of the foregoing Orders did he make a pronouncement on the presence of all of the requisites for the issuance of a TRO and WPI. Judge Mupas merely discussed the supposed irreparable damage or injury that may result should he not issue the injunctive reliefs prayed for. It bears stressing, however, that although a trial court judge is given a latitude of discretion, he or she cannot grant a TRO or a WPI if there is no clear legal right materially and substantially breached from a *prima facie* evaluation of the evidence of the complainant.[48]

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[46] Id. at 8-9.

[47] Id. at 20-21.

[48] *DPWH v. City Advertising Ventures Corp.*, 799 Phil. 47, 66 (2016).

In *Dr. Sunico v. Judge Gutierrez*,[49] the Court found a judge guilty of gross ignorance of the law for issuing a WPI without stating the presence of the applicant's clear legal right which was sought to be protected. Thus:

> It must likewise be emphasized that Dr. Sunico indeed elevated the assailed orders of respondent judge before the CA in CA-G.R. SP No. 130529. In fact, the appellate court already ruled that respondent judge committed grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing the subject injunctive writ against CCP for having no basis in fact or in law. The pertinent discussion in the decision of the CA is noteworthy, to wit:
>
> > In the present case, we find that private respondent Espiritu is not entitled to a writ of preliminary mandatory injunction since there is no showing that he has a clear and unmistakable right that must be protected.
> >
> > It is a deeply ingrained doctrine in Philippine remedial law that a preliminary injunctive writ under Rule 58 issues only upon a showing of the applicant's "clear legal right" being violated or under threat of violation by the defendant. "Clear legal right," within the meaning of Rule 58, contemplates a right "clearly founded in or granted by law." Any hint of doubt or dispute on the asserted legal right precludes the grant of preliminary relief. . . These procedural barriers to the issuance of a preliminary injunctive writ are rooted on the equitable nature of such relief, preserving the *status quo* while, at the same time, restricting the course of action of the defendants even before adverse judgment is rendered against them.
> >
> > x x x x
> >
> > ***The initial evidence presented by private respondent Espiritu before the public respondent in the preliminary injunction incident do not show the presence of the requisites for his entitlement to a writ of preliminary mandatory injunction. Ergo, public respondent committed grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing a writ of preliminary mandatory injunction against petitioner CCP which has no basis in fact or in law.*** The only evidence

[49] 806 Phil. 94 (2017).

> needed by (public respondent) to justify the issuance of the writ, if indeed there was a need to issue one, was the lease contract itself which. ***Though evidentiary in nature, would have shown, at first glance, that (private respondent Espiritu) was not entitled to the writ, even without a full-blown trial. The situation before the Court is . . . a consequence of the parties' stipulation of a determinate period for (the lease contract's) expiration. The possibility of irreparable damage without proof of actual existing right is not a ground/or injunction.*** Where the complainant's right is doubtful or disputed, injunction is not proper. Absent a clear legal right, the issuance of the injunctive relief constitutes grave abuse of discretion. A finding that the applicant for preliminary mandatory injunction may suffer damage not capable of pecuniary estimation does not suffice to support an injunction, where it appears that the right of the applicant is unclear or dispute.[50] (Emphasis in the original)

Based on the foregoing, respondent judge manifested ignorance as to the propriety or impropriety of issuing a writ of preliminary injunction. The evidence presented in the application for preliminary injunction do not show the presence of the requisites for Espiritu's entitlement to a writ of preliminary mandatory injunction. Indeed, the expired lease contract itself would have easily shown that Espiritu was not entitled to the writ. In fact, the initial attempts by Espiritu to get an injunction against CCP were denied in the Orders dated June 27, 2012 and July 3, 2012, respectively, in the same case.[48] It should be pointed out also that Espiritu filed a motion for reconsideration which the CA rejected anew. Thus, without basis in fact and in law, respondent judge's issuance of the writ of preliminary injunction shows manifest gross ignorance of the law. (Emphasis included)

Moreover, Judge Mupas had already admitted that he took cognizance of Civil Case No. R-PSY-19-03785-CV notwithstanding the fact that a petition for *certiorari* is prohibited by Section 19 (g) of the Rules on Summary Procedure. This prohibition is plain enough, and its further exposition is unnecessary verbiage.[51]

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[50] Id. at 106-107.

[51] *Rep. of the Phils. v. Sunvar Realty Development Corp.*, 688 Phil. 616, 631-632 (2012).

The rules on the issuance of injunctive reliefs and summary procedure are elementary to the extent that non-observance and lack of knowledge on them constitute gross ignorance of the law, especially for judges who are supposed to exhibit more than just a cursory acquaintance with the procedural rules.[52] For these reasons, the Court finds Judge Mupas guilty of three counts of gross ignorance of the law.

The penalty to be imposed

Gross Ignorance of the law "is classified as a serious charge, [and] punishable by a fine of more than ₱20,000.00 but not exceeding ₱40,000.00, and suspension from office for more than three but not exceeding six months, without salary and other benefits, or dismissal from service."[53]

In *Office of the Court Administrator v. Judge Villarosa*[54] the Court ruled that "[i]f the respondent judge or justice of the lower court is found guilty of multiple offenses under Rule 140 of the Rules of Court, the Court shall impose separate penalties for each violation."[55]

For the first two counts of gross ignorance of the law, the Court hereby imposes against Judge Mupas a fine in the amount of ₱50,000.00 and ₱75,000.00, respectively, or a total of ₱125,000.00.

As to the third count of gross ignorance of the law, the same is warranted, considering Judge Mupas' checkered past. The multiple infractions of Judge Mupas, especially when viewed together instead of as separate and isolated facts, show that he is unfit to discharge the duties and functions of a judge so as to warrant the imposition of the extreme penalty of dismissal

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[52] *Sps. Crisologo v. Judge Omelio*, 696 Phil. 30, 63 (2012).

[53] *Department of Justice v. Judge Mislang*, 791 Phil. 219, 231 (2016).

[54] A.M. No. RTJ-20-2578, January 28, 2020.

[55] Id.

from the service[56] and all the accessory penalties appurtenant thereto.

A final note

No less than the Constitution states that a member of the judiciary "must be a person of proven competence, integrity, probity and independence."[57] It is, therefore, highly imperative that a judge should be conversant with basic legal principles.[58] When a judge displays an utter lack of familiarity with the rules, he erodes the public's confidence in the competence of our courts.[59] Judge Mupas failed to live up to the exacting standards of his office. The magnitude of his transgressions, taken collectively, casts a heavy shadow on his moral, intellectual and attitudinal competence and rendered him unfit to don the judicial robe and to perform the functions of a magistrate.[60] The administration of justice cannot be entrusted to one like him who would readily ignore and disregard the laws and policies enacted by the Court to guarantee justice and fairness for all.[61]

WHEREFORE, respondent Judge Jesus B. Mupas is found **GUILTY** of three counts of Gross Ignorance of the Law. He is accordingly **FINED** the total amount of ₱125,000.00 and is **DISMISSED** from the service with **FORFEITURE** of his retirement and other benefits, except accrued leave credits. He is **PERPETUALLY DISQUALIFIED** from re-employment in any government agency or instrumentality, including any government-owned and controlled corporation or government financial institution.

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[56] *Felongco v. Judge Dictado*, 295 Phil. 767, 793 (1993).

[57] Article VIII, Section 7 (3), 1987 CONSTITUTION.

[58] *Radomes v. Judge Jakosalem*, 378 Phil. 187, 192 (1999).

[59] *Bago v. Judge Pagayatan*, 602 Phil. 459, 473 (2009).

[60] *Judge Español v. Judge Toledo-Mupas*, 626 Phil. 110, 120 (2010).

[61] *Office of the Court Administrator v. Judge Yu*, 800 Phil. 307, 417 (2016).

Let a copy of this decision be furnished to the Office of the Court Administrator for its information and guidance.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Carandang, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

Lazaro-Javier, Inting, and *Zalameda, JJ.*, on official leave.

EN BANC

[G.R. No. 197878. November 10, 2020]

GEMMA C. DELA CRUZ, FIDEL E. AMOYO, VIOLETA M. CRUZ, ZENAIDA C. MANGUNDAYAO, ANDRES M. COMIA, MARJORIE N. PABLO, MARIA TERESITA R. CANON, JOEL JULIUS A. MARASIGAN, GINALYN V. CACALDA, BABY LYNN E. TAGUPA, LYDIA B. RAYOS, JESUS R. PUENTE, JACINTO R. RICAPLAZA, FLORENTINO MARTINEZ, MARIE AMELITA R. MICIANO, LYDIA R. MICIANO, ARMANDO P. PADILLA, MA. LOURDES U. LACSON, JUAN CARLOS C. GAON, MA. BLEZIE C. GAON, AUREA A. PARAS, REMEDIOS Z. MORENO, MARIA JUANA N. CARRION, ALICIA K. KATIGBAK, JEDEDIA M. TUMALE, VICENTA M. MORALES, REYNALDO G. MARQUEZ, MARIA LUISA V. GORDON, NOEMI M. GOMEZ, MARIA CHRISTINA D. RIVERA, CATHERINE D. ROMERO-SALAS, MERCEDITA O. BELGADO, REV. FR. EDWIN EUGENIO MERCADO, MA. CONCEPCION M. YABUT, ANGELO D. SULIT, ALFREDO A. GLORIA, JR., MICHAEL L. DE JESUS, JUSTIN MARC CHIPECO, KAREN HAZEL GANZON, and JIMMY FAMARANCO, *Petitioners*, *v.* **MANILA ELECTRIC COMPANY (MERALCO), BARANGAY CHAIRMAN CESAR S. TOLEDANES, in his capacity as Barangay Chairman of Barangay 183, Zone 20, Villamor, Pasay City, BARANGAY COUNCIL OF BARANGAY 183, ZONE 20, VILLAMOR AIR BASE, PASAY CITY, RUTH M. CORTEZ, RICARDO R. DIMAANO, LEONARDO A. ABAD, NORMITA CASTILLO and AMANTE C. CACACHO, in their capacity as Members of the Barangay Council of Barangay 183, Zone 20, Villamor, Pasay City, and MANILA INTERNATIONAL AIRPORT AUTHORITY (MIAA), represented by its General Manager, MELVIN MATIBAG,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE FOR ENVIRONMENTAL CASES; FORUM SHOPPING; A CERTIFICATION AGAINST FORUM SHOPPING IS REQUIRED TO BE ATTACHED TO THE PETITION FOR THE ISSUANCE OF A WRIT OF *KALIKASAN*. — Forum shopping is "[repetitively availing oneself] of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." Forum shopping is prohibited to prevent abuse of court processes and the unnecessary burdening of court dockets.

While Rule 7, Section 17 of the Rules of Procedure for Environmental Cases allows the filing of separate civil, criminal, or administrative actions despite the pendency of an action for issuance of a writ of *kalikasan*, Section 17 assumes that the actions mentioned have a "different objective" from that of the petition for the issuance of the writ of *kalikasan*. Rule 7, Section 17 does not, in any way, condone forum shopping.

Hence, Rule 7, Section 2(e) of the Rules of Procedure for Environmental Cases still requires a certification against forum shopping to be attached to a petition for the issuance of the writ of *kalikasan*[.]

2. ID.; ID.; ID.; ELEMENTS THAT MUST CONCUR FOR FORUM SHOPPING TO EXIST. — There is forum shopping when the following exist: (a) "identity of parties, or at least such parties as represent the same interest in both actions"; (b) "identity of rights asserted and relief prayed for, the relief being founded on the same facts"; and (c) "the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata*."

3. ID.; ID.; ID.; ID.; IDENTITY OF PARTIES; WHEN THERE IS NO SUBSTANTIAL IDENTITY OF PARTIES BETWEEN THE EARLIER CASE (FOR PROHIBITORY INJUNCTION) AND THE PRESENT CASE (FOR ISSUANCE OF A WRIT OF *KALIKASAN*), NO FORUM SHOPPING IS COMMITTED. — On the identity of parties, only substantial identity is required,

not absolute. Community of interest between the parties in the first and second cases is sufficient for there to be identity of parties.

Here, there is no identity of parties between the earlier filed case for prohibitory injunction and the present case for issuance of a writ of *kalikasan*. There are no common petitioners in the cases. Although both cases were filed based on the right to health, community of interest cannot be assumed just because some of the parties share a common barangay. It was likewise not shown that the petitioners in the earlier-filed prohibitory injunction case were acting for the benefit of all the residents of Barangay 183. Hence, any decision on the prohibitory injunction case cannot operate as *res judicata* on the other residents of Barangay 183.

There being no identity of parties, petitioners in the writ of *kalikasan* case did not commit forum shopping.

4. ID.; ID; WRIT OF *KALIKASAN*; NATURE THEREOF. — A suit for the issuance of the writ of *kalikasan* is a special civil action. The writ of *kalikasan* is extraordinary in nature and is issued not only when there is actual violation of the constitutional right to a balanced and healthful ecology. Threat of violation through an unlawful act is enough, whether the threat be committed by a natural or juridical person, or a public or private person or entity.

5. ID.; ID.; ID.; QUESTIONS OF FACT MAY BE RAISED IN APPEALING THE DECISIONS IN WRIT OF *KALIKASAN* CASES. — [U]nlike in ordinary appeals from Court of Appeals decisions where only questions of law may be raised, questions of fact may be raised before this Court in appealing Court of Appeals decisions in writ of *kalikasan* cases. This is an exception to the general rule that this Court is not a trier of facts, further reinforcing the extraordinary nature of the writ.

6. ID.; ID.; ID.; REPRESENTATIVE SUITS; CONSIDERING THAT NO SPECIFIC QUANTUM OF EVIDENCE FOR THE ISSUANCE OF A WRIT OF *KALIKASAN* IS REQUIRED AND THAT REPRESENTATIVE SUITS ARE ALLOWED, THE PETITION IS EXAMINED ON A CASE-TO-CASE BASIS. — It must be emphasized, however, that nothing in the Rules of Procedure for Environmental Cases provides for the quantum of evidence required for the issuance of a writ of *kalikasan*. This is in contrast with civil cases, which require

preponderance of evidence; criminal cases, which require proof beyond reasonable doubt; and administrative cases, which require substantial evidence.

Furthermore, a petition for the issuance of a writ of *kalikasan* may be brought "on behalf of persons whose constitutional right to a balanced and healthful ecology is violated," an exception to the rule that the party bringing suit must be the real party in interest, or one who stands to be benefited or injured by the judgment in the suit. Since this Court's promulgation of *Oposa v. Factoran*, it has allowed representative suits brought on behalf of "minors and generations yet unborn" in environmental cases.

Given that no specific quantum of evidence is required in writ of *kalikasan* cases, and that representative suits are generally allowed in environmental advocacy, petitions for issuance of a writ of *kalikasan* must be examined on a case-to-case basis.

7. ID.; ID.; ID.; REQUISITES FOR THE PRIVILEGE OF A WRIT OF *KALIKASAN* TO BE GRANTED. — In order for this Court to grant the privilege of a writ of *kalikasan*, three requisites must be satisfied.

First, the petitioner must sufficiently allege and prove "the actual or threatened violation of the constitutional right to a balanced and healthful ecology."

Second, "the actual or threatened violation [must arise] from an unlawful act or omission of a public official or employee, or private individual or entity."

Third, "the actual or threatened violation [must involve] or [must be shown to lead to] an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces."

8. ID.; ID.; ID.; ID.; CONSTITUTIONAL LAW; RIGHT TO HEALTH; RIGHT TO A BALANCED HEALTHFUL ECOLOGY; THE RIGHT TO HEALTH IS INTRINSIC IN THE RIGHT TO A BALANCED AND HEALTHFUL ECOLOGY PROTECTED BY THE WRIT OF *KALIKASAN*. — Article II, Sections 15 and 16 of the Constitution provide for the right to health and the right to a balanced healthful ecology: . . .

The[se] rights . . . are actionable in and of themselves, and while appearing in separate constitutional provisions, the rights

to health and to a balanced and healthful ecology are inextricably linked. This Court in *Oposa v. Factoran* characterized the rights as "united." While in *Laguna Lake Development Authority v. Court of Appeals*, the rights were described as "in consonance."

This characterization is consistent with the nature of the writ of *kalikasan* as a remedy against "environmental damage of such magnitude as to prejudice the [rights to] life, health or property." It is likewise consistent with the concept of the "indivisibility of human rights and environmental rights."

As further stated in the Rationale to the Rules of Procedure for Environmental Cases, "[a] clean, healthy environment is integral to the enjoyment of many other human rights such as the right to life, the right to health and food, and the right to adequate housing." In other words, a petition for the issuance of a writ of *kalikasan* may be brought if actual or threatened violation to the right to health may be proved.

9. ID.; ID.; ID.; ID.; IMPLEMENTING RULES OF THE CODE ON SANITATION; PHILIPPINE ELECTRICAL CODE; THE UNLAWFUL ACTS OF RESPONDENTS MUST BE ESTABLISHED. — Petitioners, however, failed to satisfy the second requisite: they failed to prove any unlawful act on the part of respondents.

By constructing high-tension transmission lines in Barangay 183, a residential area, respondent MERALCO allegedly violated Section 7.3.1 of the Implementing Rules of the Code on Sanitation.

. . .

This Court finds that contrary to petitioners' claim, respondent MERALCO complied with the implementing rules.

To reiterate, the Philippine Electrical Code provides that the horizontal clearance, or the distance of an electrical wire from any building, should be at least 2.87 meters. With respect to the vertical clearance, or the distance of the electrical wires from the ground or structural level directly below it, the Code states that it should be at least 22.6 meters.

The Court of Appeals found that respondent MERALCO's transmission lines have a horizontal clearance of 3 meters and a vertical clearance between 27.4 and 32 meters, figures which exceed the minimum required by the Philippine Electrical Code.

Although petitioners presented photographs of what seemed to be transmission lines near houses, there is no showing that these transmission lines were those installed by MERALCO or that those were their houses.

. . .

Petitioners contend that apart from the Implementing Rules of the Code on Sanitation, respondents also violated Section 27 of the Local Government Code on the requirement of prior consultation. However, this Court finds that the Local Government Code provision is not covered by the writ of *kalikasan*.

10. ID.; ID.; ID.; ID.; FOR A PETITION FOR A WRIT OF *KALIKASAN* TO PROSPER, THE ENVIRONMENTAL DAMAGE MUST BE SHOWN TO BE OF POTENTIALLY EXPONENTIAL NATURE AND LARGE-SCALE. — The magnitude of environmental damage is the "condition *sine qua non* for the issuance of a [w]rit of *[k]alikasan*." The ecological threats addressed by the writ of *kalikasan* must be of "potentially exponential nature" and "large-scale," which, if not prevented, may result in "an actual or imminent environmental catastrophe."

Here, the environmental damage alleged was neither shown to be potentially exponential in nature; nor was it shown to be large-scale. As alleged by respondent MERALCO, this case involves "a narrow strip, of between one (1) to ten (10) meters, running between two barangays[.]"

In terms of potential adverse effects, the installation of transmission lines would only affect residents of this narrow strip, and the damage, if any, can hardly be considered exponential. It is only incidental, perhaps, to satisfy the requisite of "two or more cities or provinces," that some residents of the adjacent barangays of Barangay 183 in Pasay City and Barangay Magallanes in Makati City joined in filing their Petition for Issuance of a Writ of *Kalikasan*. Nevertheless, they failed to show the magnitude of environmental damage required for the grant of the privilege of a writ of *kalikasan*.

Considering that petitioners failed to satisfy all the requisites for the grant of the privilege of a writ of *kalikasan*, the Court of Appeals did not err in denying the Petition.

11. ID.; ID.; ID.; PRECAUTIONARY PRINCIPLE; THE PRINCIPLE DOES NOT APPLY WHEN THE CAUSAL LINK BETWEEN

AN ACTION AND THE ENVIRONMENTAL DAMAGE CAN BE ESTABLISHED. — The precautionary principle under Rule 1, Section 4(d) of the Rules of Procedure for Environmental Cases provides that "when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat."

Petitioners concede that at present, "the exact causal link [between childhood leukemia and exposure to high-tension wires] cannot be determined," yet claim that there is an associated risk between leukemia and exposure to high-tension wires. The precautionary principle, petitioners argue, requires this Court to stop the installation works in Barangay 183 so as to avoid or at least diminish the possibility of causing cancer.

The precautionary principle does not apply here.

. . .

In *Mosqueda v. Philippine Banana Growers*, this Court said that there must be uncertainty for the precautionary principle to apply. As a "principle of last resort," the precautionary principle has no application "where the threat is relatively certain, or that the causal link between an action and environmental damage can be established, or the probability of occurrence can be calculated[.]" Moreover, the precautionary principle "does not sanction a suspension of judicial rules with respect to evidence, reason, and legal interpretation."

12. ID.; ID.; ID.; ID.; WEAK AND STRONG VERSIONS OF PRECAUTIONARY PRINCIPLE, DISTINGUISHED. — Reading Rule 20 and its interpretation in *Mosqueda*, it appears that our jurisdiction adopts the weak version of the precautionary principle, as opposed to its strong version.

In his article, *The Paralyzing Principle*, Professor Cass Sunstein (Prof. Sunstein) defined the weak version of the precautionary principle to mean '"that a lack of decisive evidence of harm should not be a ground for refusing to regulate." On the other hand, the strong version of the precautionary principle requires governmental regulation "whenever there is a possible risk to health, safety, or the environment, even if the supporting evidence is speculative and even if the economic costs of regulation are high."

Prof. Sunstein warns that applying the strong version of the precautionary principle may "[forbid] all courses of action, including inaction," to the point that society is "deprive[d] . . . of significant benefits, and for that reason produce risks and even deaths that would otherwise not occur."

13. ID.; ID.; ID.; ID.; THE PRECAUTIONARY PRINCIPLE DOES NOT APPLY WHEN REGULATORY PRECAUTIONS HAVE ALREADY BEEN TAKEN. — [T]his Court rules that the precautionary principle does not apply precisely because *regulatory precautions have already been taken*. It is *not* uncertain that exposure to high-frequency electromagnetic fields has health effects, with some studies even claiming that electromagnetic fields cause leukemia in children. Other possible explanations for this association, however, have not yet been ruled out.

. . .

. . . Administrative Order No. 003-07 set the reference levels for general public exposure to 83.33 μT or 833.33 mG. Respondent MERALCO's transmission lines were found to emit electromagnetic fields within these limits. Thus, no unlawful act or omission can be attributed to it.

To prohibit the installation works in Barangay 183 is to disrupt air travel to and from Manila. Stopping the installation works would be a regulatory policy too costly to implement, considering that "the operation of international airport terminals is an undertaking imbued with public interest.'' This, adding the lack of proof of the magnitude of the environmental damage that might be caused by the installation works in Barangay 183, renders this Court unable to grant any of the remedies under the writ of *kalikasan*.

APPEARANCES OF COUNSEL

Roque and Butuyan Law Offices for petitioners.

Giovani Palma for respondent MIAA.

Angara Abello Concepcion Regala & Cruz for respondent MERALCO.

Raul Coralde & Louie Mark Roño, collaborating counsel for respondent MERALCO.

Solis Medina Limpingco & Fajardo for C.S. Toledanes & R.R. Dimaano.

D E C I S I O N

LEONEN, *J.*:

Intrinsic in the right to a balanced and healthful ecology is the right to health. Therefore, the right to health may be invoked in a petition for issuance of a writ of *kalikasan* so long as the magnitude of environmental damage is sufficiently demonstrated.

This Court resolves a Petition for Review on Certiorari[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals in CA-G.R. SP No. 116742-UDK.

The Court of Appeals denied for lack of merit the Petition for Issuance of a Writ of *Kalikasan*[4] against the excavation works and installation of poles and transmission lines along 10th, 12th, and 27th Streets in Barangay 183, Zone 20, Villamor, Pasay City. It held that petitioners failed to demonstrate how transmitting high-voltage electric current through the transmission lines would violate their constitutional right to a balanced and healthful ecology.

This case involves the supply of electricity to the Ninoy Aquino International Airport Terminal III (NAIA III). In 2001, the terminal's former operator, the Philippine International Air Terminals Co., Inc. (PIATCO), applied for electric service with the Manila Electric Company (MERALCO).[5]

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[1] *Rollo*, pp. 3-52.

[2] Id. at 53-76. The January 20, 2011 Decision was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Isaias P. Dicdican and Franchito N. Diamante of the Former Seventeenth Division, Court of Appeals, Manila.

[3] Id. at 77-78. The July 14, 2011 Resolution was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Isaias P. Dicdican and Franchito N. Diamante of the Seventeenth Division, Court of Appeals, Manila.

[4] Id. at 133-168.

[5] Id. at 2021, Memorandum for respondent MIAA.

To fully operate, NAIA III required the construction of a nearby power substation, as well as the installation of transmission lines, to carry electricity to the substation. MERALCO determined that the most feasible route for the transmission lines would be through 10th and 11th Streets in Barangay 183, Zone 20, Villamor, Pasay City.[6]

Construction of the power substation was then commenced and was completed in 2002.[7] As for the poles and transmission lines, MERALCO commenced excavation works along 10th Street in Barangay 183, Zone 20, Villamor, Pasay City on September 10, 2009.[8]

However, the excavation works were suspended on December 3, 2009 when, upon the complaint of some residents of Barangay 183, the City Engineering Office of Pasay issued a cease and desist order.[9]

In addition to their complaint with the City Engineering Office, some residents of Barangay 183[10] filed a Petition for Issuance of a Writ of Prohibitory Injunction before the Regional Trial Court of Pasay on December 4, 2009.[11] They claimed that the

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[6] Id. at 2116, Memorandum for respondent MERALCO.

[7] Id. at 2115.

[8] Id. at 2121.

[9] Id. at 2121.

[10] Id. at 1040-1057. These residents were Evangeline M. Biocarles, Shirley P. Natividad, Victoria R. Reyes, Melania B. Hembra, Loreta T. Sampaga, PCSupt. Domingo Balitaan (Ret.), Alexander Lopez, Rosita Palomo, Cecilia S. Taliman, Lt. Buhay P. Driz (Ret.), Zozima A. Driz, Olimpia M. Dol, Ma. Charito C. Cadiz, Maria M. Rancudo, Eddie S. Salud, Lt. Ruben T. Querido (Ret.), Heidi L. Tagulao, Rechilda T. Bermido, Teresita A. Laoan, Lt. Santiago S. Rollo, Esmelda B. Hermitanio, Gloria T. Tampoco, Consolacion C. Mindanao, Maritess L. Cabilin, Lt. Rogelio T. Pula (Ret.), Raymundo S. Tagulao, Consolacion A. Belen, Lt. Crispin L. Rosario (Ret.), Glory M. Mamasyon, Corazon S. Cayabyab, Nenita Grace A. Galimba, Jean R. Foz, Rigg O. San Juan, Soledad H. Fetalino, Melinda A. Imperial, Jocelyn G. Pagaduan, Cecilia R. Aquino, Julita L. Cayabyab, Beatriz S. Blas, Lt. Cornelio C. Largo (Ret.), Emily Alberto, and Teresita L. Lambio, all represented by Arthur B. Diaz.

[11] *Rollo*, pp. 1026-1039. *See also rollo*, p. 57, Court of Appeals Decision.

installation of transmission lines near their residences "impinged"[12] on their right to health under Section 15,[13] Article II of the Constitution. The prohibitory injunction case was then raffled to Branch 111 of the trial court.

Meanwhile, Manila International Airport Authority (MIAA), the new operator of NAIA III, filed its own Petition for Injunction to lift the cease and desist order issued by the City Engineering Office.[14] Thereafter, in its July 23, 2010 Order,[15] Branch 118 of the Regional Trial Court of Pasay City issued a writ of preliminary mandatory injunction commanding the City Engineering Office to lift its cease and desist order. Subsequently, on August 31, 2010, Branch 111 declared the prohibitory injunction case moot and academic considering Branch 118's grant of the writ of preliminary mandatory injunction.[16]

With the grant of the writ of preliminary mandatory injunction, MERALCO thus resumed the installation works in Barangay 183. The transmission lines, which carried 115 kilovolts of electricity to the NAIA III power substation, were completely installed along 10th, 12th, and 27th Streets in Barangay 183 on November 19, 2010.[17]

Gemma Dela Cruz (Dela Cruz), another resident of Barangay 183, wrote Punong Barangay Cesar S. Toledanes and the members of the sangguniang barangay of Barangay 183 (Punong Barangay Toledanes, et al.).[18] She appealed for the recall of

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[12] Id. at 1046.

[13] CONST., Art. II, Sec. 15 provides:

SECTION 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

[14] *Rollo*, pp. 1062-1075.

[15] Id. at 1076-1085. The July 23, 2010 Order was issued by Presiding Judge Pedro B. Corales.

[16] Id. at 1061. The August 31, 2010 Order was issued by Presiding Judge Wilhelmina B. Jorge-Wagan.

[17] Id. at 2124.

[18] Id. at 120, Annex "F" of the Petition for Review on Certiorari.

the barangay working permit and barangay council resolution that allowed the installation of transmission lines in Barangay 183. Dela Cruz's letter, however, was not acted upon.[19]

Dela Cruz, this time with the other residents of Barangay 183[20] and of the adjacent Magallanes Village in Makati City (Dela Cruz, et al.),[21] filed before the Court of Appeals a Petition for the Issuance of a Writ of *Kalikasan* with prayer for issuance of a temporary environmental protection order.[22]

Impleading MERALCO, MIAA, and Punong Barangay Toledanes, et al., Dela Cruz, et al., claimed that the installation of the transmission lines near their homes endangered their health and safety.[23] Further, MERALCO's barangay working permit was allegedly issued without prior public consultation.[24]

After the filing of Comments, the Court of Appeals called the parties into a preliminary conference on December 13, 2010.[25] The parties were directed to file their respective memoranda to argue on the following issues:

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[19] Id. at 2048, Memorandum for Petitioners.

[20] Id. at 135. The other petitioners from Barangay 183 were Fidel E. Amoyo, Violeta M. Cruz, Zenaida C. Mangundayao, Andres M. Comia, Marjorie N. Pablo, Maria Teresita R. Canon, Joel Julius A. Marasigan, Ginalyn V. Cacalda, Baby Lynn E. Tagupa, Lydia B. Rayos, Jesus R. Puente, Jacinto R. Ricaplaza, and Armando P. Padilla.

[21] Id. The petitioners from Barangay Magallanes were Florentino Martinez, Marie Amelita R. Miciano, Lydia R. Miciano, Ma. Lourdes U. Lacson, Juan Carlos C. Gaon, Ma. Blezie C. Gaon, Aurea A. Paras, Remedios Z. Moreno, Maria Juana N. Carrion, Alicia K. Katigbak, Jededia M. Tumale, Vicenta M. Morales, Reynaldo G. Marquez, Maria Luisa V. Gordon, Noemi M. Gomez, Maria Christina D. Rivera, Catherine D. Romero-Salas, Mercedita O. Belgado, Rev. Fr. Edwin Eugenio Mercado, Ma. Concepcion M. Yabut, Reynaldo Z. Santayana, Angelo D. Sulit, Alfredo A. Gloria, Jr., Michael L. De Jesus, Justin Marc Chipeco, Karen Hazel Ganzon, and Jimmy Famaranco.

[22] Id. at 133-168.

[23] Id. at 143-152.

[24] Id. at 152-156.

[25] Id. at 60, Court of Appeals January 20, 2011 Decision.

WHETHER OR NOT THE PRESENT PETITION IS THE PROPER ACTION TO ADDRESS PETITIONERS' HEALTH-RELATED CONCERNS ABOUT THE CONSTRUCTION, INSTALLATION, ENERGIZATION AND/OR ACTIVATION OF MERALCO'S POWER LINES;

WHETHER OR NOT THE HIGH-TENSION WIRES POSE DANGER TO THE ENVIRONMENT AND TO THE LIVES, HEALTH AND PROPERTIES OF THE RESIDENTS OF BARANGAY 183 OF PASAY CITY AND MAGALLANES VILLAGE OF MAKATI CITY;

WHETHER OR NOT THE CONSTRUCTION, INSTALLATION, ENERGIZATION AND/OR ACTIVATION OF THE HIGH-TENSION WIRES VIOLATE THE CONSTITUTIONAL RIGHT OF PETITIONERS TO A BALANCED AND HEALTHFUL ECOLOGY.[26]

On the first issue, the Court of Appeals held that Dela Cruz, et al., erred in filing a Petition for Issuance of a Writ of Kalikasan to protect their right to health. According to the Court of Appeals, the Rules of Procedure for Environmental Cases is clear that a writ of *kalikasan* only covers the right to a balanced and healthful ecology, an entirely different right from the right to health.[27]

Further, it stated that the writ of *kalikasan* "relates primarily to the protection of the environment under the precept that the destruction of the environment redounds to the destruction of the people's life, property, and/or health."[28] Hence, the Rules require that a petition for issuance of a writ of *kalikasan* contain an allegation of the environmental laws allegedly violated, or are threatened to be violated.[29]

On the second issue, the Court of Appeals held that Dela Cruz, et al., failed to discharge their burden of proving that the installation of high-tension wires endangered their life and health. It found that the studies cited by Dela Cruz, et al., which claimed

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[26] Id. at 60-61.

[27] Id. at 63.

[28] Id.

[29] Id. at 64.

that electromagnetic fields generated by transmission lines cause leukemia in children had inconclusive, if not unreliable results.[30]

It found that in any case, MERALCO complied with the relevant environmental laws. Under Administrative Order No. 033-07 amending the Implementing Rules of the Code on Sanitation, the general public may be exposed to magnetic fields not exceeding 83.33 microTesla (μT) or 833 milliGauss (mG). As certified by the Department of Health, the electromagnetic fields generated by MERALCO's transmission lines do not exceed 16.7 mG, hence, safe and below the limit prescribed by law.[31]

Further, the Philippine Electrical Code requires that the horizontal clearance (the distance of an electrical wire from any building) be at least 2.87 meters; and that the vertical clearance (the distance of the electrical wires from the ground or structural level directly below it) be at least 22.6 meters.[32]

In view of these requirements, the Court of Appeals found that the horizontal and vertical clearances of the transmission lines carrying electricity to the NAIA III power substation were 90 feet and 105 feet, or 27.432 meters and 32.004 meters, respectively — figures that are way above those required under the Philippine Electrical Code.[33]

The Court of Appeals also observed that the earlier filed Petition for Issuance of a Writ of Prohibitory Injunction had parties, subject matters, and causes of action identical to those of the Petition for the issuance of a Writ of *Kalikasan*. Both Petitions were filed by residents of Barangay 183, assailing the electrical installation works in Barangay 183 for endangering their health. Thus, the Court of Appeals declared that Dela Cruz, et al., committed forum shopping.[34]

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[30] Id. at 65-70.

[31] Id. at 70-71.

[32] Id. at 71.

[33] Id. at 71-72.

[34] Id. at 72-74.

On the third issue, the Court of Appeals held that Dela Cruz, et al., failed to show any causal link between the installation of transmission lines and the environmental effect it allegedly has. Therefore, there was no showing of any violation of Dela Cruz, et al.'s right to a balanced and healthful ecology.[35]

For these reasons, the Court of Appeals denied Dela Cruz, et al.'s Petition for Issuance of a Writ of *Kalikasan* in its January 20, 2011 Decision.[36] It likewise denied Dela Cruz, et al.'s Motion for Reconsideration in its July 14, 2011 Resolution.[37]

Dela Cruz, et al., then filed their Petition for Review on Certiorari[38] on August 16, 2011. Upon the directive of this Court,[39] MERALCO, MIAA, and Punong Barangay Toledanes, et al., filed their respective Comments,[40] to which Dela Cruz, et al., filed their Reply, in turn.[41]

The parties were then ordered[42] to file their respective memoranda,[43] and the case was deemed submitted for decision.

Petitioners argue that they did not commit forum shopping, despite the earlier filed Petition for Issuance of a Writ of Prohibitory Injunction. According to them, the reliefs of prohibitory injunction and writ of *kalikasan* are different.

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[35] Id. at 74-75.

[36] Id. at 53-76.

[37] Id. at 77-78.

[38] Id. at 3-52.

[39] Id. at 739-740, Resolution dated September 6, 2011.

[40] Id. at 776-794, Comment of respondents Toledanes and members of the sangguniang barangay of Barangay 183; 795-812, Comment of respondent MIAA; and 825-950, Comment of respondent MERALCO.

[41] Id. at 1908-1928.

[42] Id. at 1947-1948, Resolution dated October 23, 2012.

[43] Id. at 1972-1992 Memorandum for respondents Toledanes and members of the sangguniang barangay of Barangay 183; 2020-2035 Memorandum for respondent MIAA; and 2108-2226 Memorandum for respondent MERALCO.

Further, Rule 7, Section 17 of the Rules of Procedure for Environmental Cases[44] allows for the filing of civil, criminal, or administrative actions separate from the action for issuance of a writ of *kalikasan*.[45]

Citing *Oposa v. Factoran*[46] and *Laguna Lake Development Authority v. Court of Appeals*,[47] petitioners argue that the constitutional right to a balanced and healthful ecology "is but an offshoot"[48] of the right to health. They claim that "the concomitant obligation to protect the environment emanates from the State's duty to promote and protect the health of its constituents."[49] Therefore, the writ of *kalikasan*, which protects the right to a balanced and healthful ecology, necessarily covers violations of the right to health.[50]

Due to respondents MERALCO and MIAA's installation of transmission lines in Barangay 183, along with respondents Punong Barangay Toledanes, et al.'s acquiescence, the right of the residents were allegedly violated. These transmission lines, petitioners claim, produce a prolonged exposure to electromagnetic fields, which have been found to increase the risk of developing leukemia and other cancer-related disorders in children.[51]

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[44] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 17 provides:

SECTION 17. *Institution of Separate Actions*. — The filing of a petition for the issuance of a writ of *kalikasan* shall not preclude the filing of separate civil, criminal, or administrative actions.

[45] *Rollo*, pp. 2070-2072.

[46] 296 Phil. 694 (1993) [Per J. Davide, Jr., En Banc].

[47] 301 Phil. 299 (1994) [Per J. Romero, Third Division].

[48] *Rollo*, p. 2055.

[49] Id.

[50] Id. at 2051-2057.

[51] Id. at 2072-2081.

Given that the studies[52] cited by petitioners could not determine—because of limitations in methodology—the exact causal link between exposure to electromagnetic fields and the development of cancer in children, they pray that this Court apply the precautionary principle. Under Rule 20, Section 1 of the Rules of Procedure for Environmental Cases on the application of the precautionary principle as a rule of evidence,

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[52] A. Ahlbom, N. Day, M. Feychting, E. Roman, J. Skinner, J. Dockerty, M. Linet, M. McBride, J. Michaelis, J.H. Olsen, T. Tynes, and P.K. Verkasalo. *A pooled analysis of magnetic fields and leukaemia*. BRITISH JOURNAL OF CANCER 2000; 83; 692-698 (Annex "U" of the Petition for Review on *Certiorari*).

Gerald Draper, Tim Vincent, Mary E. Kroll, and John Swanson. *Childhood cancer in relation to distance from high voltage power lines in England and Wales; a case-control study*. BMJ 2005; 330; 1290-1294 (Annex "V" of the Petition for Review on *Certiorari*).

R.M. Lowenthal, D.M. Tuck, and I.C. Bray. *Residential exposure to electric power transmission lines and risk of lymphoproliferative and myeloproliferative disorders: a case-control study*. INTERNAL MEDICINE JOURNAL 2007. (Annex "W" of the Petition for Review on *Certiorari*).

Denis L. Hershaw. NRPB Consultation Document Issue 1 May 2003, *Proposals for Limiting Exposure to Electromagnetic Fields.* (Annex "X" of the Petition for Review on *Certiorari*).

Kabuto, M., Nitta, H., Yamamoto, S., Yamaguchi, N., Eboshida, A., Yamazaki, S., Sokejima, S., Kurokawa, Y., Kubo, O., *Childhood leukemia and magnetic fields in Japan: a case-control study of childhood leukemia and residential power frequency magnetic fields in Japan*, INTERNATIONAL JOURNAL OF CANCER 2006, 119 (3), 643-650.

Feizi, AA, Arabi, MA, *Acute childhood leukemias and exposure to magnetic fields generated by high voltage overhead powerlines — a risk factor in Iran*, ASIAN PACIFIC JOURNAL OF CANCER PREVENTION 2007, 8 (1), 69-72.

Kheifets, I., Ahlblom A., Crespi, CM, Draper, G., Hagihara, J., Lowenthal RM, Mezei, G., Oksuzyan, S., Shüz, J., Swanson, J., Tittarelli, A., Vinceti M, Wünsch-Filho, V., BRITISH JOURNAL OF CANCER 2010, 103 (7), 1128-1135.

Abdul Rahman HI, Shah SA, Alias H, Ibrahim HM, *A case-control study between environmental factors and occurrence of acute leukemia among children in Klang Valley, Malaysia*, ASIAN PACIFIC JOURNAL OF CANCER PREVENTION 2008, 9 (4), 649-652.

Michael D. Green, D. Michael Freedman, and Leon Gordis. *Reference Guide on Epidemiology. Reference Manual on Scientific Evidence*; 333-400.

Nadine Wu. *Regulating Power Line EMF Exposure*. ENVIRONMENTAL LAW CENTRE.

the constitutional right to a balanced and healthful ecology should be given the benefit of the doubt, and that a lack of full scientific certainty in establishing a causal link between human activity and environmental effect should be resolved in favor of protecting the environment.[53]

Arguing that Department of Health Administrative Order No. 033-07[54] did not repeal Section 7.3.1 of the old Implementing Rules of the Code on Sanitation, petitioners claim that environmental laws have been violated in this case. Given that respondent MERALCO installed high-tension transmission lines in a residential area—allegedly in violation of Section 7.3.1. of the Implementing Rules of the Code of Sanitation of the Philippines[55]—petitioners disagree with the Court of Appeals' ruling in favor of respondent MERALCO's actions.[56]

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[53] *Rollo*, pp. 2081-2084.

[54] DOH Administrative Order No. 033-07, sec. 7.3 partly provides:
SECTION 7. Par. 7.3.1a, 7.3.1b and 7.3.3 of Subsection 7.3. — Electric and Electronic Industries are hereby amended, to read as follows:
7.3.1a All overhead and underground transmission and distribution lines shall conform with the appropriate provision of the latest edition of the Philippine Electrical Code.
7.3.1b All overhead and underground transmission and distribution lines shall not exceed the reference levels of exposure as shown in the table below:*
Table 1. *Reference levels for occupation exposure to time-varying electric and magnetic fields (unperturbed rms values)**

Frequency (f), [Hz]	*E-field strength, [V/m]*	*H-field strength, [A/m]*	*B-field, [ÂµT]*
60	8,333.33	333.33	416.67

Table 2. *Reference levels for general public exposure to time-varying electric and magnetic fields (unperturbed rms values)**

Frequency (f), [Hz]	*E-field strength, [V/m]*	*H-field strength, [A/m]*	*B-field, [ÂµT]*
60	4,166.67	66.67	83.33

[55] Implementing Rules of the Code on Sanitation, sec. 7.3.1. provides:
SECTION 7. *Specific Provisions*. —
. . . .
7.3 *Electric and Electronic Industries*
7.3.1 High-tension transmission lines shall never pass overhead or underground of residential areas.

[56] *Rollo*, pp. 2057-2064.

Furthermore, respondent MERALCO allegedly disregarded the height and distance requirements for installing high-tension transmission lines. With Alasdair and Jean Philips' The Powerwatch Handbook as basis, petitioners computed the horizontal clearance, or the minimum distance a 115-kilovolt transmission line must have from a building or structure to be 87 meters.[57] They allege that some of the transmission lines in Barangay 183 were dangerously close to their houses, with one of the transmission lines having a horizontal clearance of 0.9 meter.[58]

Lastly, petitioners maintain that in violation of Section 27 of the Local Government Code,[59] there were no prior consultations before the barangay permits were issued to respondent MERALCO.

Countering petitioners' arguments, respondent MERALCO submits that the present Petition failed to state a cause of action. In its view, a writ of *kalikasan* does not cover the right to health as it is an independent and separate constitutional right from the right to a balanced and healthful ecology.[60] Consequently, the privilege of the writ of *kalikasan* should not be granted.

In addition, respondent MERALCO points out that petitioners allegedly committed forum shopping. The Petition for the Issuance of a Writ of *Kalikasan* and the earlier filed Petition for Issuance of a Writ of Prohibitory Injunction had identical parties, subject matters, and causes of action. In both Petitions,

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[57] Id. at 2066-2067.

[58] Id. at 2067-2068.

[59] LOCAL GOVERNMENT CODE, sec. 27 provides:

SECTION 27. *Prior Consultations Required*. — No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the sangguniang concerned is obtained: *Provided*, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites shall have been provided, in accordance with the provisions of the Constitution.

[60] *Rollo*, pp. 2031-2034.

residents of Barangay 183 opposed the installation of transmission lines in Barangay 183, because the transmission lines generated electromagnetic fields which endangered their health and life.[61]

Lastly, respondent MERALCO argues that it complied with all the legal requirements to complete the electrical installation works for the NAIA III power substation. Government agencies, specifically, the Department of Environment and Natural Resources and the Department of Health, certified that the installation works were safe for the environment. The studies petitioners cited, which claimed that exposure to electromagnetic fields generated by transmission lines cause childhood leukemia, allegedly have no medical or scientific basis.[62]

For its part, respondent MIAA contends that the construction of NAIA III is imbued with public interest. NAIA III is a government flagship project and the whole of Ninoy Aquino International Airport is "the principal gateway"[63] to and from the Philippines. Failure to provide the required electricity to fully operate NAIA III would, in the words of respondent MIAA, "constrict the growth of aviation and tourism in the country."[64]

Supporting respondent MERALCO, respondent MIAA argues that no environmental law was violated in this case. Respondent MERALCO complied with the requirements under the Environmental Impact System, and was issued environmental compliance certificates by the Department of Environment and Natural Resources. This means that respondent MERALCO undertook the necessary precautions to protect the environment.[65]

As for respondents Punong Barangay Toledanes, et al., they contend that the working permit clearance granted to respondent MERALCO was validly issued. Citing Section 389 of the Local

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[61] Id. at 2178-2192.

[62] Id. at 2160-2178.

[63] Id. at 2025.

[64] Id. at 2026.

[65] Id. at 2026-2030.

Government Code,[66] respondent Punong Barangay Toledanes argues that he had the authority to issue the working permit, even without the ratification of the members of the sangguniang barangay. Further, no law was violated when Barangay Council Resolution No. 40-S-2009, which supports the installation works in Barangay 183, was passed after the issuance of the working permit. The Resolution merely signifies the assent of the members of the sangguniang barangay to the issuance of the working permit.[67]

Respondents Punong Barangay Toledanes, et al., deny that no prior consultations were conducted before the issuance of the barangay permit.[68] Admittedly, there were oppositions from some of the residents. Nevertheless, the re-election of respondent Punong Barangay Toledanes in 2010, despite these oppositions, allegedly means that the majority of the barangay residents support the installation works in Barangay 183.[69]

Similar to respondents MERALCO and MIAA, respondents Punong Barangay Toledanes, et al., contend that no writ of *kalikasan* could issue here. They argue that a writ of *kalikasan* is an extraordinary remedy, issued only if there is

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[66] LOCAL GOVERNMENT CODE, sec. 389 partly provides:
Section 389. Chief Executive: Powers, Duties, and Functions. —
(a) The punong barangay, as the chief executive of the barangay government, shall exercise such powers and perform such duties and functions, as provided by this Code and other laws.
(b) For efficient, effective and economical governance, the purpose of which is the general welfare of the barangay and its inhabitants pursuant to Section 16 of this Code, the punong barangay shall:
(1) Enforce all laws and ordinances which are applicable within the barangay;
(2) Negotiate, enter into, and sign contracts for and in behalf of the barangay, upon authorization of the sangguniang barangay;
. . . .
(9) Enforce laws and regulations relating to pollution control and protection of the environment[.]

[67] *Rollo*, pp. 1980-1982.

[68] Id. at 1979-1980.

[69] Id. at 1979.

a threat of "widespread dimension of destruction"[70] to the environment. Although the Petition was technically filed by residents in two cities—Barangay 183 in Pasay City and Barangay Magallanes in Makati City—these are just two adjacent barangays incidentally located in two different cities. The requirement of "widespread dimension of destruction" was therefore not complied with.[71]

The issues for this Court's resolution are the following:

First, whether or not petitioners committed forum shopping;

Second, whether or not the installation of transmission lines in Barangay 183 violated petitioners' right to a balanced and healthful ecology, entitling petitioners to any of the reliefs granted under a writ of *kalikasan*; and,

Lastly, whether or not the precautionary principle applies in this case.

This Petition must be denied.

I

Forum shopping is "[repetitively availing oneself] of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court."[72] Forum shopping is prohibited to prevent abuse of court processes[73] and the unnecessary burdening of court dockets.[74]

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[70] Id. at 1985.

[71] Id. at 1984-1988.

[72] *Asia United Bank v. Goodland Company, Inc.*, 660 Phil. 504, 514 (2011) [Per J. Del Castillo, First Division].

[73] *Huibonhoa v. Concepcion*, 529 Phil. 554, 562 (2006) [Per J. Tinga, Third Division].

[74] Id.

While Rule 7, Section 17[75] of the Rules of Procedure for Environmental Cases allows the filing of separate civil, criminal, or administrative actions despite the pendency of an action for issuance of a writ of *kalikasan*, Section 17 assumes that the actions mentioned have a "different objective"[76] from that of the petition for the issuance of the writ of *kalikasan*. Rule 7, Section 17 does not, in any way, condone forum shopping.

Hence, Rule 7, Section 2 (e) of the Rules of Procedure for Environmental Cases still requires a certification against forum shopping to be attached to a petition for the issuance of the writ of *kalikasan*:

> SECTION 2. *Contents of the Petition*. — The verified petition shall contain the following:
>
> . . . .
>
> (e) The certification of petitioner under oath that: (1) petitioner has not commenced any action or filed any claim involving the same issues in any court, tribunal, tribunal or quasi-judicial agency, and no such other action or claim is pending therein; (2) if there is such other pending action or claim, a complete statement of its present status; (3) if petitioner should learn that the same or similar action or claim has been filed or is pending, petitioner shall report to the court that fact within five (5) days therefrom[.]

There is forum shopping when the following exist: (a) "identity of parties, or at least such parties as represent the same interest in both actions";[77] (b) "identity of rights asserted and relief prayed for, the relief being founded on the same facts";[78] and

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[75] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 17 provides:
SECTION 17. *Institution of Separate Actions*. — The filing of a petition for the issuance of the writ of *kalikasan* shall not preclude the filing of separate civil, criminal or administrative actions.

[76] Annotation to the Rules of Procedure for Environmental Cases, p. 140.

[77] *Young v. Spouses Sy*, 534 Phil. 246, 264 (2006) [Per J. Austria-Martinez, First Division].

[78] Id.

(c) "the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata*."[79]

On the identity of parties, only substantial identity is required, not absolute. Community of interest between the parties in the first and second cases is sufficient for there to be identity of parties.[80]

Here, there is no identity of parties between the earlier filed case for prohibitory injunction and the present case for issuance of a writ of *kalikasan*. There are no common petitioners in the cases. Although both cases were filed based on the right to health, community of interest cannot be assumed just because some of the parties share a common barangay. It was likewise not shown that the petitioners in the earlier-filed prohibitory injunction case were acting for the benefit of all the residents of Barangay 183.[81] Hence, any decision on the prohibitory injunction case cannot operate as *res judicata* on the other residents of Barangay 183.

There being no identity of parties, petitioners in the writ of *kalikasan* case did not commit forum shopping.

II

Rule 7, Section 1 of the Rules of Procedure for Environmental Cases on the nature of the writ of *kalikasan* provides:

Section 1. *Nature of the writ*. — The writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to

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[79] Id.

[80] *Sps. Santos, et al. v. Heirs of Dominga Lustre*, 583 Phil. 118, 127 (2008) [Per J. Nachura, Third Division].

[81] Id. at 128.

prejudice the life, health or property of inhabitants in two or more cities or provinces.

A suit for the issuance of the writ of *kalikasan* is a special civil action.[82] The writ of *kalikasan* is extraordinary[83] in nature and is issued not only when there is actual violation of the constitutional right to a balanced and healthful ecology. Threat of violation through an unlawful act is enough, whether the threat be committed by a natural or juridical person, or a public or private person or entity.

Moreover, unlike in ordinary appeals from Court of Appeals decisions where only questions of law may be raised,[84] questions of fact may be raised before this Court in appealing Court of Appeals decisions in writ of *kalikasan* cases.[85] This is an exception to the general rule that this Court is not a trier of facts,[86] further reinforcing the extraordinary nature of the writ.

It must be emphasized, however, that nothing in the Rules of Procedure for Environmental Cases provides for the quantum of evidence required for the issuance of a writ of *kalikasan*. This is in contrast with civil cases, which require preponderance of evidence;[87] criminal cases, which require proof beyond

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[82] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Part III.

[83] *LNL Archipelago Minerals, Inc. v. AGHAM Party List*, 784 Phil. 295 (2016) [Per J. Carpio, En Banc]; and *Paje v. Casiño*, 752 Phil. 498, 538 (2015) [Per J. Del Castillo, En Banc].

[84] RULES OF COURT, Rule 45, sec. 1.

[85] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 16 provides:
SECTION 16. *Appeal*. — Within fifteen (15) days from the date of notice of the adverse judgment or denial of motion for reconsideration, any party may appeal to the Supreme Court under Rule 45 of the Rules of Court. The appeal may raise questions of fact.

[86] *See Pascual v. Burgos*, 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

[87] RULES OF COURT, Rule 133, sec. 1 provides:
SECTION 1. *Preponderance of evidence, how determined*. — In civil

reasonable doubt;[88] and administrative cases, which require substantial evidence.[89]

Furthermore, a petition for the issuance of a writ of *kalikasan* may be brought "on behalf of persons whose constitutional right to a balanced and healthful ecology is violated,"[90] an exception to the rule that the party bringing suit must be the real party in interest, or one who stands to be benefited or injured by the judgment in the suit.[91] Since this Court's promulgation of *Oposa v. Factoran*,[92] it has allowed representative suits brought on

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cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

[88] RULES OF COURT, Rule 133, sec. 2 provides:

Section 2. *Proof beyond reasonable doubt*. — In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof, excluding possibility of error, produces absolute certainly. Moral certainly only is required, or that degree of proof which produces conviction in an unprejudiced mind.

[89] *See Montemayor v. Bundalian*, 453 Phil. 158 (2003) [Per J. Puno, Third Division], *citing Lorena v. Encomienda*, 362 Phil. 248 (1999) [Per J. Panganiban, Third Division] and *Cortes v. Agcaoili*, 355 Phil. 848 (1998) [Per J. Panganiban, En Banc].

[90] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, Sec. 1.

[91] RULES OF COURT, Rule 3, sec. 2 provides:

Sec. 2. *Parties in interest*. — A real party in interest 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. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

[92] 296 Phil. 694 (1993) [Per J. Davide, Jr., En Banc].

behalf of "minors and generations yet unborn" in environmental cases.[93]

Given that no specific quantum of evidence is required in writ of *kalikasan* cases, and that representative suits are generally allowed in environmental advocacy, petitions for issuance of a writ of *kalikasan* must be examined on a case-to-case basis. This was highlighted in *Abogado v. Department of Environment and Natural Resources*:[94]

> [A] writ of kalikasan is an extraordinary remedy that "covers environmental damages the magnitude of which transcends both political and territorial boundaries." The damage must be caused by an unlawful act or omission of a public official, public employee, or private individual or entity. It must affect the inhabitants of at least two (2) cities or provinces.
>
> In civil, criminal, and administrative cases, parties are clear as to the quantum of evidence necessary to prove their case. Civil cases require a preponderance of evidence, or "evidence which is of greater weight, or more convincing, that which is offered in opposition to it[.]" Administrative cases require substantial evidence, or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise." Criminal cases require proof beyond reasonable doubt, or "that degree of proof which produces conviction in an unprejudiced mind." In petitions for the issuance of a writ of *kalikasan*, however, the quantum of evidence is not specifically stated.
>
> Other special civil actions such as *certiorari*, prohibition, and *mandamus* must be filed by a party that is directly injured or will be injured by the act and omission complained of. However, a petition for the writ of *kalikasan* may be filed on behalf of those

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[93] However, *see* J. Leonen, Concurring Opinion in *Arigo v. Swift*, 743 Phil. 8 (2014) [Per J. Villarama, Jr., En Banc], where he suggests the judicious application, if not total abandonment, of the *Oposa* doctrine because it precludes future generations from asserting rights and claims appropriate for their circumstances, infringing on their autonomy.

[94] G.R. No. 246209, September 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65756> [Per J. Leonen, En Banc].

whose right is violated. The Rules of Procedure for Environmental Cases only requires that the public interest group is duly accredited. Filing through representation is also allowed for other extraordinary writs such as *habeas corpus*, *amparo*, and *habeas data*.

This Court explained that "the Rules [of Procedure for Environmental Cases] do[es] not define the exact nature or degree of environmental damage but only that it must be sufficiently grave, in terms of the territorial scope of such damage[.]" Every petition, therefore, must be examined on a case-to-case basis. . . .[95] (Citations omitted)

Once a writ of *kalikasan* is issued, this Court may grant any of the following reliefs as provided in Rule 7, Section 15 of the Rules of Procedure for Environmental Cases:

SECTION 15. *Judgment*. — Within sixty (60) days from the time the petition is submitted for decision, the court shall render judgment granting or denying the privilege of the writ of *kalikasan*.

The reliefs that may be granted under the writ are the following:

(a) Directing respondent to permanently cease and desist from committing acts or neglecting the performance of a duty in violation of environmental laws resulting in environmental destruction or damage;

(b) Directing the respondent public official, government agency, private person or entity to protect, preserve, rehabilitate or restore the environment;

(c) Directing the respondent public official, government agency, private person or entity to monitor strict compliance with the decision and orders of the court;

(d) Directing the respondent public official, government agency, or private person or entity to make periodic reports on the execution of the final judgment; and

(e) Such other reliefs which relate to the right of the people to a balanced and healthful ecology or to the protection, preservation, rehabilitation or restoration of the environment, except the award of damages to individual petitioners.

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[95] *Id.*

In order for this Court to grant the privilege of a writ of *kalikasan*, three requisites must be satisfied.[96]

First, the petitioner must sufficiently allege and prove "the actual or threatened violation of the constitutional right to a balanced and healthful ecology."[97]

Second, "the actual or threatened violation [must arise] from an unlawful act or omission of a public official or employee, or private individual or entity."[98]

Third, "the actual or threatened violation [must involve] or [must be shown to lead to] an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces."[99]

As will be shown below, petitioners failed to discharge the required burden of proof. Specifically, they only complied with the first requisite for the issuance of a writ of *kalikasan*, and failed to satisfy the second and third requisites.

II(A)

Article II, Sections 15 and 16 of the Constitution provide for the right to health and the right to a balanced healthful ecology:

ARTICLE II

Declaration of Principles and State Policies
Principles

SECTION 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

SECTION 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

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[96] *LNL Archipelago Minerals, Inc. v. AGHAM Party List*, 784 Phil. 456 (2016) [Per J. Carpio, En Banc].

[97] Id. at 470.

[98] Id.

[99] Id.

The rights provided in Sections 15 and 16 are actionable in and of themselves,[100] and while appearing in separate constitutional provisions, the rights to health and to a balanced and healthful ecology are inextricably linked. This Court in *Oposa v. Factoran*[101] characterized the rights as "united." While in *Laguna Lake Development Authority v. Court of Appeals*,[102] the rights were described as "in consonance."[103]

This characterization is consistent with the nature of the writ of *kalikasan* as a remedy against "environmental damage of such magnitude as to prejudice the [rights to] life, health or property."[104] It is likewise consistent with the concept of the "indivisibility of human rights and environmental rights."[105]

As further stated in the Rationale to the Rules of Procedure for Environmental Cases, "[a] clean, healthy environment is integral to the enjoyment of many other human rights such as the right to life, the right to health and food, and the right to adequate housing."[106] In other words, a petition for the issuance of a writ of *kalikasan* may be brought if actual or threatened violation to the right to health may be proved.

In arguing that the electromagnetic fields emitted by high-tension wires allegedly cause leukemia in children, petitioners allege a threatened violation of the right to health of the children in their barangays. As discussed, the right to health is intrinsic in the right to a balanced and healthful ecology protected by

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[100] *See Oposa v. Factoran*, 296 Phil. 694 (1993) [Per J. Davide, Jr., En Banc].

[101] 296 Phil. 604 (1993) [Per J. Davide, Jr., En Banc].

[102] 301 Phil. 299 (1994) [Per J. Romero, Third Division].

[103] Id. at 314.

[104] RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, Rule 7, sec. 1.

[105] A.M. No. 09-6-8-SC (2010), Rationale to the Rules of Procedure for Environmental Cases, p. 56.

[106] Id.

the writ of *kalikasan*. Therefore, petitioners satisfied the first requisite of "actual or threatened violation of the constitutional right to a balanced and healthful ecology."

II(B)

Petitioners, however, failed to satisfy the second requisite: they failed to prove any unlawful act on the part of respondents.

By constructing high-tension transmission lines in Barangay 183, a residential area, respondent MERALCO allegedly violated Section 7.3.1 of the Implementing Rules of the Code on Sanitation.

The Implementing Rules of the Code on Sanitation was promulgated in the exercise of the Secretary of Health's rule-making power under Section 4 of the Code on Sanitation.[107] Section 7.3.1 of the Implementing Rules originally provided:

SECTION 7. *Specific Provisions*. —

. . . .

7.3 *Electric and Electronic Industries*

7.3.1 High-tension transmission lines shall never pass overhead or underground of residential areas.

However, Section 7.3 was amended by Section 7 of the Department of Health's Administrative Order No. 0033-07 and now reads:

SECTION 7. *Par. 7.3.1a, 7.3.1b and 7.3.3 of Subsection 7.3*. — Electric and Electronic Industries are hereby amended, to read as follows:

7.3.1a All overhead and underground transmission and distribution lines shall conform with the appropriate provision of the latest edition of the Philippine Electrical Code.

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[107] CODE ON SANITATION, sec. 4 provides:

SECTION 4. *Authority of the Secretary*. — In addition to the powers and authority of the Secretary which are provided by law, he is likewise empowered to promulgate rules and regulations for the proper implementation and enforcement of the provisions of this Code.

7.3.1b All overhead and underground transmission and distribution lines shall not exceed the reference levels of exposure as shown in the table below:*

Table 1. *Reference levels for occupation exposure to time-varying electric and magnetic fields (unperturbed rms values)**

Frequency (f),	*E-field strength, [Hz]*	*H-field strength, [V/m]*	*B-field, [ÂµT] [A/m]*
60	8,333.33	333.33	416.67

Table 2. *Reference levels for general public exposure to time-varying electric and magnetic fields (unperturbed rms values)**

Frequency (f),	*E-field strength, [Hz]*	*H-field strength, [V/m]*	*B-field, [ÂµT] [A/m]*
60	4,166.67	66.67	83.33

. . . . (Emphasis supplied)

This Court finds that contrary to petitioners' claim, respondent MERALCO complied with the implementing rules.

To reiterate, the Philippine Electrical Code provides that the horizontal clearance, or the distance of an electrical wire from any building, should be at least 2.87 meters.[108] With respect to the vertical clearance, or the distance of the electrical wires from the ground or structural level directly below it, the Code states that it should be at least 22.6 meters.[109]

The Court of Appeals found that respondent MERALCO's transmission lines have a horizontal clearance of 3 meters and a vertical clearance between 27.4 and 32 meters, figures which exceed the minimum required by the Philippine Electrical Code.[110] Although petitioners presented photographs of what

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[108] *Rollo*, p. 71. Court of Appeals Decision *citing* Philippine Electrical Code, Table 3.4.5.3 (a) (1).

[109] Id. Court of Appeals Decision *citing* Philippine Electrical Code, Table 3.4.5.3 (a) (1).

[110] Id. at 1724-1725, Judicial Affidavit of Engr. Wilfredo P. Bernardo.

seemed to be transmission lines near houses, there is no showing that these transmission lines were those installed by MERALCO or that those were their houses.[111]

The reference levels provided in Administrative Order No. 003-07 were likewise considered by respondent MERALCO in installing the transmission lines in Barangay 183. As certified by the Bureau of Health Devices and Technology under the Department of Health, the transmission lines emitted "extremely low frequency"[112] electromagnetic fields "within the International Commission on Non-Ionizing Radiation Protection limits of exposure to the general public."[113]

In setting 83.33 μT or 833.3 mG as the reference levels for general public exposure to electromagnetic fields, the Department of Health in Administrative Order No. 003-07 adopted the limits provided in the Guidelines of the International Commission on Non-Ionizing Radiation Protection.[114] Petitioners failed to present any counterevidence to this finding. Further, petitioners failed to present evidence that the transmission lines passed overhead or underground of Barangay 183.

Petitioners contend that apart from the Implementing Rules of the Code on Sanitation, respondents also violated Section 27 of the Local Government Code on the requirement of prior consultation. However, this Court finds that the Local Government Code provision is not covered by the writ of *kalikasan*.

Moreover, even assuming noncompliance with the provision, "no reasonable connection can be made to an actual or threatened violation of the right to a balanced and healthful ecology of the magnitude contemplated under the Rules [of Procedure for Environmental Cases]."[115] The alleged lack of prior consultation

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[111] Id. at 698-701.

[112] Id. at 1014. Certification dated February 1, 2007.

[113] Id.

[114] Id. at 1614-1615, Judicial Affidavit of Mr. Robinson Uy.

[115] *Paje v. Casiño*, 752 Phil. 498, 543 (2015) [Per J. Del Castillo, En Banc].

is "not reasonably connected with environmental damage, but, rather, it is an affront to the local autonomy of the [local government unit]."[116]

In any case, respondent MERALCO sufficiently proved that it conducted prior consultations in Barangay 183 on various dates before commencing installation works, as evidenced by the Notices and Attendance Sheets corresponding to the meeting dates.[117] The meeting on March 9, 2002 was even attended by one of the petitioners, Fidel Amoyo.[118]

II(C)

Petitioners did not prove the third requisite as well. They failed to demonstrate the magnitude of the actual or threatened environmental damage as to prejudice the life, health, or property of inhabitants in two or more cities or provinces.

The magnitude of environmental damage is the "condition *sine qua non* for the issuance of a [w]rit of [*k*]*alikasan*."[119] The ecological threats addressed by the writ of *kalikasan* must be of "potentially exponential nature"[120] and "large-scale,"[121] which, if not prevented, may result in "an actual or imminent environmental catastrophe."[122]

Here, the environmental damage alleged was neither shown to be potentially exponential in nature; nor was it shown to be

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[116] Id.

[117] *Rollo*, pp. 1621-1662.

[118] Id. at 1629.

[119] *LNL Archipelago Minerals, Inc. v. AGHAM Party List*, 784 Phil. 456, 474 (2016) [Per J. Carpio, En Banc].

[120] *Paje v. Casiño*, 752 Phil. 498, 538 (2015) [Per J. Del Castillo, En Banc] *citing* the Annotation to the Rules of Procedure for Environmental Cases, pp. 78-79.

[121] Id.

[122] *See* J. Leonen's Concurring Opinion in *International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, 774 Phil. 508, 722 (2015) [Per J. Villarama, En Banc].

large-scale. As alleged by respondent MERALCO, this case involves "a narrow strip, of between one (1) to ten (10) meters, running between two barangays[.]"[123]

In terms of potential adverse effects, the installation of transmission lines would only affect residents of this narrow strip, and the damage, if any, can hardly be considered exponential. It is only incidental, perhaps, to satisfy the requisite of "two or more cities or provinces," that some residents of the adjacent barangays of Barangay 183 in Pasay City and Barangay Magallanes in Makati City joined in filing their Petition for Issuance of a Writ of *Kalikasan*. Nevertheless, they failed to show the magnitude of environmental damage required for the grant of the privilege of a writ of *kalikasan*.

Considering that petitioners failed to satisfy all the requisites for the grant of the privilege of a writ of *kalikasan*, the Court of Appeals did not err in denying the Petition.

III

Nevertheless, petitioners argue that the precautionary principle applies here. The precautionary principle under Rule 1, Section 4 (d) of the Rules of Procedure for Environmental Cases provides that "when human activities may lead to threats of serious and irreversible damage to the environment that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that threat."

Petitioners concede that at present, "the exact causal link [between childhood leukemia and exposure to high-tension wires] cannot be determined,"[124] yet claim that there is an associated risk between leukemia and exposure to high-tension wires.[125] The precautionary principle, petitioners argue, requires this Court to stop the installation works in Barangay 183 so as to avoid or at least diminish the possibility of causing cancer.

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[123] *Rollo*, p. 2141.

[124] Id. at 2083.

[125] Id. at 2072.

The precautionary principle does not apply here.

Rule 20 of the Rules of Procedure for Environmental Cases provides for the applicability and standards for application of the precautionary principle as a rule of evidence:

RULE 20
Precautionary Principle

SECTION 1. *Applicability*. — When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it.

The constitutional right of the people to a balanced and healthful ecology is given the benefit of the doubt.

SECTION 2. *Standards for Application*. — In applying the precautionary principle, the following factors, among others, may be considered: (1) threats to human life or health; (2) inequity to present or future generations; or (3) prejudice to the environment without legal consideration of the environmental rights of those affected.

The formulation of the precautionary principle in Rule 20 is similar to Principle 15 of the 1992 Rio Declaration on Environment and Development:

Principle 15 (Precautionary principle): "In order to protect the environment, the precautionary approach shall be widely applied by the States according to their capabilities. Where there are threats of serious and irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." (Emphasis supplied)

In *Mosqueda v. Philippine Banana Growers*,[126] this Court said that there must be uncertainty for the precautionary principle to apply. As a "principle of last resort,"[127] the precautionary principle has no application "where the threat is relatively certain, or that the causal link between an action and environmental

[126] 793 Phil. 17 (2016) [Per J. Bersamin, En Banc].

[127] Annotation to the Rules of Procedure for Environmental Cases, p. 158.

damage can be established, or the probability of occurrence can be calculated[.]"[128] Moreover, the precautionary principle "does not sanction a suspension of judicial rules with respect to evidence, reason, and legal interpretation."[129]

Reading Rule 20 and its interpretation in *Mosqueda*, it appears that our jurisdiction adopts the weak version of the precautionary principle, as opposed to its strong version.

In his article, *The Paralyzing Principle*,[130] Professor Cass Sunstein (Prof. Sunstein) defined the weak version of the precautionary principle to mean "that a lack of decisive evidence of harm should not be a ground for refusing to regulate."[131] On the other hand, the strong version of the precautionary principle requires governmental regulation "whenever there is a possible risk to health, safety, or the environment, even if the supporting evidence is speculative and even if the economic costs of regulation are high."[132]

Prof. Sunstein warns that applying the strong version of the precautionary principle may "[forbid] all courses of action, including inaction," to the point that society is "deprive[d] . . . of significant benefits, and for that reason produce risks and even deaths that would otherwise not occur."[133] He said:

> If [the precautionary principle] is taken for all that it is worth, it leads to no direction at all. The reason is that risks of one kind or another are on all sides of regulatory choices, and it is therefore

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[128] *Mosqueda v. Pilipino Banana Growers & Exporters Association, Inc.*, 793 Phil. 17, 81 (2016) [Per J. Bersamin, En Banc].

[129] Justice Leonen, Concurring and Dissenting Opinion in *Social Justice Society (SJS) Officers v. Lim*, 748 Phil. 25, 115 (2014) [Per J. Perez, En Banc].

[130] Cass R. Sunstein, *The Paralyzing Principle*, REGULATION (Winter 2002-2003) available at <http://object.cato.org/sites/cato.org/files/serials/files/regulation/2002/12/v25n4-9.pdf> (Last visited on September 28, 2019).

[131] Id. at 33.

[132] Id.

[133] Id. at 34.

impossible, in most real-world cases, to avoid running afoul of the principle. Frequently, risk regulation creates a (speculative) risk from substitute risks or from foregone risk-reduction opportunities. And because of the (speculative) mortality and morbidity effects of costly regulation, any regulation — if it is costly — threatens to run afoul of the Precautionary Principle.[134]

Indeed, prohibiting an activity comes with benefits and costs. While the precautionary principle may ensure that no risk of harm to the environment will directly result from the activity being avoided, the *costs* that come with foregoing the activity—though not obvious, are equally important. Hence, the public may be deprived of benefits from undertaking the activity.

An example is the "drug lag[,]" where "precaution" delayed the production of new medicines that would have cured certain illnesses early on.[135] National incomes may be reduced if regulating the activity is too costly.[136] In other words, protecting the environment is not as simple as applying the precautionary principle at face value. The precautionary principle must not be "taken for all that it is worth"[137] and paralyze us into inaction by prohibiting "potentially hazardous activities . . . until they are shown to be safe."[138] For there to be any growth and progress, taking risks is necessary.

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[134] Id. at 37.

[135] *See* Cass R. Sunstein, *Irreversible and Catastrophic*, 91 CORNELL L. REV. 841, 851 (2006) available at <http://scholarship.law.cornell.edu/clr/vol91/iss4/2> (Last accessed on June 22, 2017). *See also* Cass R. Sunstein, *The Paralyzing Principle*, REGULATION 34 (Winter 2002-2003) available at <http://object.cato.org/sites/cato.org/files/serials/files/regulation/2002/12/v25n4-9.pdf> (Last accessed on June 22, 2017).

[136] *See* Cass R. Sunstein, *The Paralyzing Principle*, REGULATION 34-35 (Winter 2002-2003) <http://object.cato.org/sites/cato.org/files/serials/files/regulation/2002/12/v25n4-9.pdf> (Last accessed on June 22, 2017).

[137] Id. at 37.

[138] *See* Cass R. Sunstein, *Irreversible and Catastrophic*, 91 Cornell L. Rev. 841, 849 (2006) available at <http://scholarship.law.cornell.edu/clr/vol91/iss4/2> (Last accessed on June 22, 2017).

In sum, this Court rules that the precautionary principle does not apply precisely because *regulatory precautions have already been taken*. It is *not* uncertain that exposure to high-frequency electromagnetic fields has health effects, with some studies even claiming that electromagnetic fields cause leukemia in children. Other possible explanations for this association, however, have not yet been ruled out.[139]

At any rate, in addressing this associated risk, the Department of Health set in Administrative Order No. 003-07 the reference levels or limits for general public exposure to time-varying electric and magnetic fields. The reference levels are based on the figures set by the International Commission on Non-Ionizing Radiation Protection as the minimum amount of electromagnetic field to which humans can be safely exposed. Transmission lines emitting electromagnetic fields greater than those set in Administrative Order No. 003-07 are not allowed.

As previously discussed, Administrative Order No. 003-07 set the reference levels for general public exposure to 83.33 μT or 833.33 mG. Respondent MERALCO's transmission lines were found to emit electromagnetic fields within these limits. Thus, no unlawful act or omission can be attributed to it.

To prohibit the installation works in Barangay 183 is to disrupt air travel to and from Manila. Stopping the installation works would be a regulatory policy too costly to implement, considering that "the operation of international airport terminals is an undertaking imbued with public interest."[140] This, adding the lack of proof of the magnitude of the environmental damage that might be caused by the installation works in Barangay 183, renders this Court unable to grant any of the remedies under the writ *kalikasan*.

WHEREFORE, the Petition for Review on Certiorari dated August 8, 2011 is **DENIED**.

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[139] *Rollo*, p. 1015.

[140] *Agan v. Philippine International Air Terminals Co., Inc.*, 450 Phil. 744, 837 (2003) [Per J. Puno, En Banc].

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Caguioa, Gesmundo, Hernando, Carandang, Lopez, Delos Santos, Gaerlan, and Rosario, JJ., concur.

Lazaro-Javier, Inting, and Zalameda, JJ., on official leave.

EN BANC

[G.R. No. 200418. November 10, 2020]

CONFEDERATION FOR UNITY, RECOGNITION AND ADVANCEMENT OF GOVERNMENT EMPLOYEES [COURAGE], represented by its National President FERDINAND GAITE, SOCIAL WELFARE EMPLOYEES ASSOCIATION OF THE PHILIPPINES [SWEAP-DSWD], represented by its National President RAMON FELIPE E. LOZA, NATIONAL FEDERATION OF EMPLOYEES ASSOCIATIONS IN THE DEPARTMENT OF AGRICULTURE [NAFEDA], represented by its National President SANTIAGO Y. DASMARIÑAS, JR. AND DEPARTMENT OF AGRARIAN REFORM EMPLOYEES ASSOCIATION [DAREA], represented by its National President ANTONIA H. PASCUAL, *Petitioners*, *v.* **FLORENCIO B. ABAD, in his capacity as the Secretary of the DEPARTMENT OF BUDGET AND MANAGEMENT and CORAZON J. SOLIMAN, in her capacity as Secretary of the DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT,** *Respondents*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT'S JURISDICTION; REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR CERTIORARI AND PROHIBITION; THE SUPREME COURT HAS ORIGINAL JURISDICTION OVER PETITIONS FOR CERTIORARI AND PROHIBITION ASSAILING ACTS DONE IN THE EXERCISE OF JUDICIAL, QUASI-JUDICIAL, OR MINISTERIAL FUNCTIONS. — The Constitution [Art. VIII, Section 5(1)] itself confers upon this Court original jurisdiction over petitions for certiorari, prohibition, mandamus, *quo warranto*, and *habeas corpus*. In this regard, Rule 65 of the Rules of Court enumerates the requisites of a petition for certiorari and prohibition. The rules require that the acts to be

assailed were done in the exercise of judicial, quasi-judicial, or ministerial functions[.]

2. ID.; ID.; ID.; ID.; ID.; ID.; QUASI-JUDICIAL FUNCTIONS DISTINGUISHED FROM QUASI-LEGISLATIVE FUNCTIONS. — Quasi-judicial or adjudicatory functions refer to "the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law." Quasi-legislative or rule-making functions refer to "the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers."

3. ID.; ID.; ID.; ID.; ID.; ID.; ID.; THE NATURE OF THE GOVERNMENTAL FUNCTIONS AFFECTS THE AVAILABLE REMEDIES TO ASSAIL AN ACT. — The nature of the governmental functions affects the available remedies of those who seek to assail an act. Rule 65 specifies that the remedy of certiorari assails acts in the exercise of judicial and quasi-judicial functions, with the addition of ministerial functions for the remedy of prohibition.

In several cases, this Court has dismissed petitions for certiorari and prohibition for being the wrong remedy to assail the issuance of an executive order, department order, and a republic act, as these were not done in the exercise of judicial or quasi-judicial functions.

4. ID.; ID.; ID.; POWER OF JUDICIAL REVIEW; GRAVE ABUSE OF DISCRETION; THE SUPREME COURT MAY EXERCISE THE POWER OF JUDICIAL REVIEW TO CORRECT GRAVE ABUSES OF DISCRETION REGARDLESS OF THE NATURE OF THE ASSAILED GOVERNMENTAL FUNCTION. — [T]he power of judicial review in Article VIII, Section 1 of the Constitution contemplates the correction, by way of petitions for certiorari and prohibition, of grave abuses of discretion by any governmental branch or instrumentality. This may lie even if no judicial, quasi-judicial, or ministerial function was exercised.

. . .

Thus, if any governmental branch or instrumentality is shown to have gravely abused its discretion amounting to lack or excess of jurisdiction, and has overstepped the delimitations of its powers, courts may "set right, undo, or restrain" such act by way of certiorari and prohibition.

5. ID.; ID.; ID.; ID.; REQUISITES OF JUSTICIABILITY; ONLY CONCRETE CONTROVERSIES MAY BE THE SUBJECT OF JUDICIAL REVIEW. — But even as this Court is vested with judicial power, it does not follow that we should resolve every question we may have the authority to answer. The Constitution grants the Judiciary the power to mediate the boundaries of the government's powers, but this mediation is circumscribed by the will of the people, in whom sovereignty resides, as expressed by their representatives in the executive and legislative branches. This Court's place in the constitutional order requires that we "decide on legal principle only in concrete controversies": . . .

For this reason, the requisites of justiciability, long established in our jurisprudence, must be present in the cases this Court resolves:

> As a rule, "the constitutionality of a statute will be passed on only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned." A controversy is said to be justiciable if: first, there is an actual case or controversy involving legal rights that are capable of judicial determination; second, the parties raising the issue must have standing or locus standi to raise the constitutional issue; third, the constitutionality must be raised at the earliest opportunity; and fourth, resolving the constitutionality must be essential to the disposition of the case.

6. ID.; ID.; ID.; ID.; ID.; ACTUAL CASE; JUDICIAL REVIEW REQUIRES THE EXISTENCE OF AN ACTUAL CASE OR CONTROVERSY INVOLVING RIGHTS WHICH ARE LEGALLY DEMANDABLE AND ENFORCEABLE. — An actual case exists "when the act being challenged has had a direct adverse effect on the individual challenging it." Thus, actual case means the presence of that concrete adverseness that can be drawn from the allegations raised by the parties in their pleadings:

. . .

Laws are general in nature. The courts' constitutional duty is "to settle actual controversies involving rights which are legally demandable and enforceable[.]" Courts cannot and will not decide hypothetical issues, render advisory opinions, or engage academic questions. The parties must present concrete facts that demonstrate the problems vis-à-vis a legal provision. The parties represented must show the contradicting considerations as a result of the alleged facts. Absent such actual case anchored on concrete adverseness, no factual basis exists for giving a petition due course.

7. ID.; ID.; ID.; ID.; ID.; REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; REPRESENTATIVE PARTIES; LEGAL STANDING; AN ORGANIZATION INTENDING TO ACT ON BEHALF OF ITS MEMBERS MUST CONVINCINGLY SHOW THAT SUCH REPRESENTATION WOULD BE MORE EFFICIENT THAN JUST SOME OF THE MEMBERS SUING AND DEFENDING ON BEHALF OF ALL THE MEMBERS. — Legal standing means "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." That the party must present a personal stake in the case ensures the presence of concrete adverseness:

. . .

Nearly all of the petitioners here are organizations purporting to act on behalf of other organizations. Generally, representative parties such as organizations cannot be surrogates for the real party in interest suffering the actual injury. Should they desire to act as such, they must convincingly show that their representation through one voice would be more efficient than just some of the members suing and defending on behalf of all the members.

8. ID.; ID.; ID.; ID.; ID.; ID.; LABOR ORGANIZATIONS HAVE THE RIGHT TO REPRESENT ITS MEMBERS IN COLLECTIVE BARGAINING AND OTHER ACTIVITIES BENEFICIAL TO THEM. — [L]abor organizations occupy a unique position in that they have the constitutional [Article XIII, Section 3 of the Constitution] and statutory right and duty to represent the workers within their membership.

. . .

Article 242 of the Labor Code, as amended, provides that a labor organization has the right to represent its members in collective bargaining, and to undertake all activities to benefit the organization and its members:

. . .

Labor organizations also ensure that workers participate in decision-making processes that affect their rights, duties, and welfare.

9. ID.; ID.; ID.; ID.; ID.; ID.; AN ORGANIZATION OF GOVERNMENT EMPLOYEES HAS LEGAL STANDING TO REPRESENT ITS MEMBERS AND TO ASSAIL ISSUANCES THAT MAY JEOPARDIZE THEIR INTERESTS. — [T]hough not to the same extent as private employees, the right to self-organize is likewise granted to government employees. Petitioner SWEAP-DSWD is one such organization. It may act to protect its members' interests in CNAs, which includes acting to contest issuances that may jeopardize these interests. It has the legal standing to bring their Petition to this Court.

10. ID.; ID.; ID.; ID.; ID.; RIPENESS OF THE CASE; THE CHALLENGED GOVERNMENTAL ACT SHOULD BE A COMPLETED GOVERNMENTAL ACTION THAT HAS A DIRECT, CONCRETE, AND ADVERSE EFFECT ON THE PETITIONER. — As for the third requisite: "A case is ripe for adjudication when the challenged governmental act is a completed action such that there is a direct, concrete, and adverse effect on the petitioner."

Closely linked with the requisite of an actual case, ripeness pertains to the challenged governmental act having reached the state where it is neither anticipatory nor too late, but rather, necessary for the Judiciary to intervene[.]

11. ID.; ID.; ID.; ID.; ID.; ID.; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; ALL THE ADMINISTRATIVE REMEDIES MUST FIRST BE EXHAUSTED BEFORE COMING TO COURT. — Ripeness must be viewed in light of the doctrine on exhaustion of administrative remedies. Before judicial intervention, the challenged act must fulfill the prerequisite that another

governmental branch or instrumentality has already performed the act; the petitioner has immediately suffered or is threatened to suffer injury due to the act; and no more succor is found in another branch or instrumentality. The doctrine "does not warrant a court to arrogate unto itself the authority to resolve, or interfere in, a controversy the jurisdiction over which is lodged initially with an administrative body"; rather, it is anchored on comity, respect, and convenience:

. . .

Our Constitution should also be read by the executive branch. The doctrine demands deference to co-equal departments, allowing the appropriate authorities the opportunity "to act and correct the errors committed in the administrative forum."

Petitioners here failed to exhaust all the administrative remedies before coming to this Court.

Aside from Budget Circular No. 2011-5, petitioners also question the constitutionality of the January 20, 2012 Memorandum signed by Assistant Secretary David-Casis. The Memorandum does not show any signature of approval or conforme by respondent Secretary Soliman.

Petitioners should have allowed the administrative process to run its course by first questioning the validity of the Memorandum, along with the Assistant Secretary's authority, before respondent Secretary Soliman. The Secretary's action may, in turn, be appealed to the Office of the President.

True, the doctrine on exhaustion of administrative remedies does not apply when the assailed act was done in the exercise of quasi-legislative or rule-making functions. Yet, the January 20, 2012 Memorandum, which directs the refund of excess CNA incentive, cannot be an exercise of quasi-legislative functions only when it created an imperative obligation upon the affected employees.

This Court has dismissed petitions, explaining that "liberality and the transcendental doctrine cannot trump blatant disregard of procedural rules," more so when "the petitioner had other available remedies[.]"

The mere issuance of a regulation does not justify an immediate resort to this Court. Petitioner DSWD-SWEAP could

have availed of administrative remedies before respondent Secretary Soliman, and then before the Office of the President.

12. ID.; ID.; ID.; ID.; ID.; *LIS MOTA* REQUIREMENT; THE CONSTITUTIONAL ISSUE MUST BE THE *LIS MOTA* OF THE CASE. — When the unconstitutionality of a governmental act is raised as a ground for judicial review, the constitutional issue must be properly presented, and its resolution must be necessary for a complete determination of the case. In other words, the constitutional question must be the *lis mota* of the case; otherwise, the issues may be resolved and reliefs may be granted on some other ground.

13. ID.; ID.; ID.; DOCTRINE OF HIERARCHY OF COURTS; EVERY LEVEL OF THE JUDICIARY MUST BE ABLE TO FOCUS ON PERFORMING ITS DESIGNATED FUNCTIONS WITHIN THE JUDICIAL SYSTEM. — The regional trial courts, the Court of Appeals, and this Court all have original jurisdiction to issue writs of certiorari and prohibition. The doctrine on hierarchy of courts ensures that every level of the Judiciary can focus on effectively and efficiently performing its designated functions within the judicial system: Territorially organized trial courts weigh evidence and rule on factual issues; the Court of Appeals reviews these findings as a collegiate body; and this Court leads the Judiciary by resolving constitutional questions and promulgating doctrinal devices.

14. ID.; ID.; ID.; ID.; EXCEPTIONS TO THE DOCTRINE OF HIERARCHY OF COURTS; DIRECT RESORT TO THE SUPREME COURT REQUIRES IMPORTANT REASONS, SUCH AS JUDICIAL ECONOMY. — Nevertheless, exceptions exist. This Court can exercise its discretionary power and assume jurisdiction over petitions filed directly before it when warranted. For one, a direct resort to this Court requires the existence of serious and important reasons:

. . .

These important reasons include the following: "(1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case."

This Court has allowed petitions raising genuine issues of constitutionality against actions done by other branches of government and constitutional bodies. It has also assumed jurisdiction over cases of first impression and those of transcendental interest.

Benefits awarded to government employees come from public funds. The challenged Budget Circular No. 2011-5 affects all government employees with valid CNAs, allowing the grant of CNA incentives.

Concededly, no facts are disputed in this case that would burden this Court with the task of exhaustively examining evidentiary matters, for which it is ill-equipped. In the interest of judicial economy, preventing further delay in the disposition of this case, we consider the merits.

15. ID.; ID.; BILL OF RIGHTS; RIGHT TO SELF-ORGANIZATION; THE RIGHT OF GOVERNMENT EMPLOYEES TO SELF-ORGANIZE IS NOT AS EXTENSIVE AS IN THE PRIVATE SECTOR. — The 1987 Constitution [declares] that "[t]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged." The State "shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law." Article IX-B on the Civil Service Commission also states that "[t]he right to self-organization shall not be denied to government employees."

Nonetheless, in the 1990 case of *Arizala v. Court of Appeals*, this Court reiterated that the right of government employees to self-organize is not as extensive as in the private sector:

. . .

Employees in the private sector have the right to self-organize for purposes of collective bargaining, among others. The Labor Code governs collective bargaining for private employees. Collective bargaining agreements include grants of employee benefits.

Employees in the public sector also have the right to self-organize. Executive Order No. 180 governs their right to organize

"for the furtherance and protection of their interests." However, collective negotiation agreements include employment terms and conditions not fixed by law[.]

16. ID.; ID.; ID.; ID.; RIGHT TO COLLECTIVE NEGOTIATION IN THE PUBLIC SECTOR; GUIDELINES ON THE BASIC CONCEPT OF COLLECTIVE NEGOTIATIONS AGREEMENT (CNA). — The following guidelines on the basic concept of CNA negotiations take into account the relevant provisions of the Constitution, statutes, their implementing rules and regulations, as well as jurisprudence on the matter:

a) The right to collective negotiation in the public sector is a constitutionally protected right subject to the conditions stated in the Constitution and as may be provided supplementarily by law;
b) All CNAs negotiated must be consistent with law and implementing regulations;
c) The flexibilities of government agencies are limited by law. Wage benefits are subject to the Salary Standardization Law. Non-wage benefits are subject to regulations issued by the Civil Service Commission;
d) The grant of wage benefits is also subject to the constitutional and statutory authorizations for the use of appropriations and savings;
e) Unlike in the private sector, negotiations in the public sector must always consider the public interest and take the governmental role of the agency or office into primordial concern;
f) All employees are public officers and are thus subject to public trust and statutory limitations on matters including their conduct;
g) Incumbent heads of offices are temporary; and
h) Members of Congress, representing their constituents, including union members, can change the law.

17. ID.; ID.; ID.; ID.; ID.; CNA INCENTIVES; THE ₱25,000 CNA INCENTIVES CEILING IN DEPARTMENT OF BUDGET AND MANAGEMENT (DBM) CIRCULAR NO. 2011-5 CIRCULAR IS IN CONSONANCE WITH LAWS AND EXISTING RULES. — [W]e consider the relevant laws and regulations on government employees' right to organize and negotiate, specifically for CNA incentives.

Executive Order No. 180 created the PSLMC as the body to implement and administer government employees' right to organize. Section 15 provides for its creation, stating that the PSLMC "shall promulgate the necessary rules and regulations to implement this Executive Order."

. . .

The Department of Budget and Management recognizes that Administrative Order No. 135, issued in 2005, merely "confirmed the grant of the CNA Incentive in strict compliance with the said PSLMC Resolutions[.]"

Pursuant to Section 15 of Executive Order No. 180, PSLMC issued several resolutions including PSLMC Resolution No. 4, series of 2002.

PSLMC Resolution No. 4 recognized this Court's ruling in *Social Security System*, which prohibited the grant of signing bonus by stating that, "during the negotiation, the parties may agree on some other kinds and forms of incentive to those who have contributed either in productivity or cost savings which are referred herein as CNA Incentive."

PSLMC Resolution No. 4 clearly limited the sources of the CNA incentive such that "only savings generated after the signing of the CNA may be used" for it. . . .

PSLMC Resolution No. 4 also provides that CNA incentives "can be paid every year that savings are generated during the life of the CNA." If the grant of CNA Incentive is disallowed, "the management shall be held personally responsible for the payment thereof."

Thus, Section 3.2 of Budget Circular No. 2011-5 — which limits the sources of CNA incentives "solely from agency savings from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review, limited to the MOOE Items in 3.3 hereof, still valid for obligation during the same year, subject to the following conditions" — is consistent with PSLMC Resolution No. 4.

. . .

Notably, the ₱25,000.00 ceiling amount under Section 3.5 of Budget Circular No. 2011-5 cannot be found in PSLMC

Resolution No. 4. On this score, respondent Secretary Abad cites three laws as basis for the ceiling amount. . . .

. . .

Section 6 of Administrative Order No. 135, for its part, authorizes the grant of CNA incentives:

. . .

Following the mandate of Administrative Order No. 135, the Department of Budget and Management issued Budget Circular No. 2006-1, Circular Letter No. 2011-9, and the assailed Budget Circular No. 2011-5.

Respondent Secretary Abad adds that a CNA incentive ceiling is consistent with Administrative Order No. 135 by guarding against tendencies to manipulate the budget to accumulate savings:

. . .

This Court agrees. The ₱25,000.00 CNA incentive ceiling in Budget Circular No. 2011-5 is in consonance with law and existing rules.

18. ID.; ID.; ID.; ID.; ID.; ID.; THE DBM HAS AUTHORITY TO IMPOSE A BUDGET CEILING FOR CNA INCENTIVES UNDER THE LAW AND EXISTING RULES. — Executive Order No. 180 vested PSLMC with the power to promulgate rules to implement it. This, however, did not deprive the Department of Budget and Management of its power to issue rules on compensation as a result of collective negotiations between government employees' organizations and their employers.

As the governmental body that administers the national government's compensation and position classification system, the Department of Budget and Management controls the payment of compensation to all appointive and elective positions in government, including government-owned or controlled corporations and government financial institutions. . . .

Administrative Order No. 135 authorizes the grant of CNA incentives to "national government agencies (NGAs), local government units (LGUs), state universities and colleges (SUCs), government-owned or controlled corporations (GOCCs), and

government financial institutions (GFIs), if provided in their respective CNAs and supplements thereto executed between the management and employees' organization accredited by the Civil Service Commission[.]" Its Section 6 grants the power to issue the policy and procedural guidelines to the Department of Budget and Management:

. . .

Clearly, in imposing a ₱25,000.00 budget ceiling for CNA incentives, the Department of Budget and Management acted within its authority granted by law and existing rules.

19. ID.; ID.; ID.; ID.; ADMINISTRATIVE LAW; EXECUTIVE ORDER NO. 180 (E.O. NO. 180); PUBLIC SECTOR LABOR MANAGEMENT COUNCIL (PSLMC); THE PSLMC's WORK ENHANCES THE PROTECTION OF GOVERNMENT EMPLOYEES' RIGHT TO ORGANIZE; THE DESIGNATION OF THE CIVIL SERVICE COMMISSIONER CHAIR AS PSLMC CHAIR IS CONSTITUTIONAL. — Section 15 of Executive Order No. 180, which designated the Civil Service Commission Chair as the PSLMC Chair, seemingly conflicts with the prohibitions imposed upon members of constitutional bodies designed to protect their independence. If such designation is unconstitutional, it puts into serious doubt the legality of PSLMC's acts.

For this reason, this Court resolves and confirms the validity of the designation of the Chair of the Civil Service Commission as the Chair of the PSLMC for being consistent with the Constitution.

The Civil Service Commission is an independent constitutional body governed by Article IX-B of the Constitution. It is composed of a Chairperson and two Commissioners, appointed by the President with the consent of the Commission on Appointments.
. . .

In *Funa v. Chairman, Civil Service Commission*, this Court held that Article IX-A, Section 2 of the Constitution must be read in conjunction with Article IX-B, Section 7, paragraph 2[.]

. . .

Read together, the two constitutional provisions mean that the appointment of a member of a constitutional commission to any governing body must depend on the functions of the government entity on which that member sits. For the Civil Service Commission Chair, it must involve the career development, employment status, rights, privileges, and welfare of government officials and employees. . . .

Executive Order No. 180, which creates the PSLMC, and is reiterated in Book V, Title I, Chapter 6, Section 45 of the Administrative Code of 1987, is a law within the contemplation of the phrase "otherwise allowed by law or the primary functions of his position" in Article IX-B, Section 7, paragraph 2 of the Constitution. Book V, Title I-A, Chapter 3, Section 14 of the Administrative Code of 1987, as upheld in *Funa*, states that the Civil Service Commission Chair may be appointed to "governing bodies of government entities whose functions affect the career development, employment status, rights, privileges, and welfare of government officials and employees, . . . and such other similar boards as may be created by law."

Section 15 of Executive Order No. 180 envisioned a coordination body, considering its composition of Civil Service Commission Chair, along with the Secretaries of the Department of Labor and Employment, Department of Finance, Department of Justice, and Department of Budget and Management. Coordination between a constitutional commission and departments of the executive branch, so long as the coordination is not controlled by the executive branch, is not proscribed. With the Civil Service Commission Chair as PSLMC Chair, the PSLMC is not subordinated to the executive branch, and the independence of the Civil Service Commission is not undermined.

Moreover, the work of the PSLMC, through guidelines and other resolutions that implement Executive Order No. 180, enhances the protection of government employees' right to self-organize. Its mandate is well within the Civil Service Commission's primary functions, which encompass "the career development, employment status, rights, privileges, and welfare of government officials and employees" as contemplated in *Funa*. Since these primary functions are exercised through the Civil Service Commission Chair, the designation as PSLMC Chair, to oversee the implementation of Executive Order No. 180,

does not violate Article IX-A, Section 2 in relation to Article IX-B, Section 7 of the Constitution.

20. ID.; APPROPRIATIONS; PROHIBITION AGAINST THE TRANSFER OF APPROPRIATIONS; SECTION 5, PSLMC RESOLUTION NO. 4; POWER OF THE PRESIDENT TO AUGMENT APPROPRIATIONS. — This case also raised the question of whether Section 5 of PSLMC Resolution No. 4 violated Article VI, Section 25(5) of the Constitution, which proscribes the transfer of appropriations. . . .

. . .

The proviso [in Article VI, Section 25(5), of the Constitution] that the enumerated persons "may, *by law*, be authorized to augment" means that their discretion to augment appropriations may be limited by law. Thus, Section 55 of the General Appropriations Act of 2012, on the "Rules in the Realignment of Savings for the Payment of Collective Negotiation Agreement Incentives," validly limits the President's discretion[.]

21. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO COLLECTIVE BARGAINING AND NEGOTIATIONS; COLLECTIVE NEGOTIATIONS AGREEMENT (CNA) INCENTIVES; DBM BUDGET CIRCULAR NO. 2011-5; CONCEPT OF "VESTED RIGHTS" AS USED IN CASES ON EMPLOYEE BENEFITS; GOVERNMENT EMPLOYEES HAVE NO VESTED RIGHTS TO CNA INCENTIVES. — This Court rules that petitioners have no vested rights to CNA incentives. . . .

. . .

The concept of "vested right" has been used in cases on employee benefits. In *Boncodin v. NAPOCOR Employees Consolidated Union*, which involved salary step increments, this Court discussed:

> A vested right is one that is absolute, complete and unconditional; to its exercise, no obstacle exists; and it is immediate and perfect in itself and not dependent upon any contingency. To be vested, a right must have become a title — legal or equitable — to the present of future enjoyment of property.

Labor cases have held that "where there is an established employer practice of regularly, knowingly and voluntarily granting benefits to employees over a significant period of time, despite the lack of a legal or contractual obligation on the part of the employer to do so, the grant of such benefits ripens into a vested right of the employees and can no longer be unilaterally reduced or withdrawn by the employer."

22. ID.; ID.; ID.; ID.; ID.; CNA INCENTIVE IS LINKED WITH AGENCY PERFORMANCE AND PRODUCTIVITY INTENDED TO BE CHARGED AGAINST AVAILABLE SAVINGS, AND ITS GRANT IS CONDITIONED ON THE APPLICABLE LAWS, RULES, AND REGULATIONS. — Petitioners now invoke their CNA, raising the non-impairment clause under the Constitution.

As contracts create the law between the parties, they produce binding juridical rights and obligations. The power of private individuals to enter into contracts is protected by their autonomy implicit in the constitutional guarantee of due process, among others, but subject to reasonable limitations by valid law.

This case involves the CNA incentive. CNA incentive is not compensation since Congress passed Republic Act No. 6758. It is not a signing bonus, since *Social Security System v. Commission on Audit* disallowed the grant of signing bonuses for government employees. It is not an award for service excellence since Civil Service Commission Memorandum No. 01, series of 2001, established the Program on Awards and Incentives for Service Excellence (PRAISE).

PSLMC Resolution No. 4 provides that "CNA Incentive is linked with agency performance and productivity," "intended to be charged against free unencumbered savings of the agency, which are no longer intended for any specific purpose." It is an incentive to produce efficiently by meeting targets and generating savings.

Thus, a CNA incentive is not per se vested. Its grant is conditioned on the applicable laws, rules, and regulations that govern it, including the assailed Budget Circular No. 2011-5 insofar as its provisions are consistent with PSLMC resolutions implementing Executive Order No. 180. For one, PSLMC Resolution No. 4 requires the existence of "savings generated after the signing of the CNA." Savings also depend on constitutional prerogatives.

23. ID.; ID.; ID.; ID.; ID.; WHEN THE CEILING ON CNA INCENTIVES WAS IMPOSED AFTER SUCH BENEFIT HAD BEEN RELEASED AND RECEIVED BY THE EMPLOYEES, THE ORDER TO RETURN THE EXCESS IS VOID. — [W]e agree with petitioners' position against the retroactive application of Budget Circular No. 2011-5 to CNA incentives already released to the employees.

While the Department of Budget and Management can generally impose conditions for the grant of CNA incentives, in this case, the conditions were imposed after the benefits had already been released and received by the employees. The Department had not put in place a ceiling on CNA incentives when the ₱30,000.00 CNA incentive—the total amount from the October 26, 2011 and December 3, 2011 memoranda issued by respondent Secretary Soliman—was granted. Budget Circular No. 2011-5, which contains the ₱25,000.00 ceiling, was issued only on December 26, 2011 and published only on February 25, 2012. Thus, the benefits had already been vested in the employees' behalf.

Likewise, we confirm petitioners' argument that the January 20, 2012 Memorandum directing the refund of CNA incentives paid violated Section 43 of the General Appropriations Act of 2011.

. . .

As petitioners had argued, the list of allowable salary deductions in the General Appropriations Act does not include excess CNA incentives. We also note that the Memorandum should not have been authorized only by the Assistant Secretary, but must also bear the signature of approval and conforme of respondent Secretary Soliman.

Thus, the January 20, 2012 Memorandum, which required employees of the Department of Social Welfare and Development to refund the ₱5,000.00 excess through deductions from their salaries, is void.

APPEARANCES OF COUNSEL

National Union of People's Lawyers for petitioners.
The Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

The grant of benefits to government employees under collective negotiation agreements is conditioned on all applicable laws, rules and regulations, including those issued by the Department of Budget and Management and the Public Sector Labor-Management Council.

This Court resolves a Petition for Certiorari/Prohibition with Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary/Mandatory Injunction[1] seeking to declare Department of Budget and Management Circular No. 2011-5 as unconstitutional, and to enjoin Social Welfare and Development Secretary Corazon Soliman (Secretary Soliman) from enforcing the Circular in her department.

The Circular in question had placed a ₱25,000.00 ceiling on the amount of the Collective Negotiations Agreement (CNA) incentive for 2011. The Department of Social Welfare and Development initially authorized the payment of CNA incentives in two tranches for 2011, totaling ₱30,000.00. It later issued a January 20, 2012 Memorandum directing its employees to refund the excess, prompting this Petition's filing.[2]

Petitioners before this Court pray that upon the filing of the Petition, a temporary restraining order and/or writ of preliminary injunction be issued enjoining the implementation of Budget Circular No. 2011-5, the January 20, 2012 Memorandum, and other issuances to enforce the Circular. They seek that, after notice and hearing, the Circular, as with the Memorandum, be declared void for being unconstitutional, contrary to law, or issued with grave abuse of discretion.[3]

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[1] Id. at 3-38. This Petition was filed under Rule 65 of the Rules of Court.

[2] *Rollo*, pp. 10-11.

[3] Id. at 33-34.

Among the petitioners is the Social Welfare Employees Association of the Philippines (SWEAP-DSWD) which, on November 16, 2007, entered into a CNA with the Department of Social Welfare and Development's Management. This CNA would last for three years or until a new agreement is signed.[4] Article XI, Section 1 of the CNA grants a yearly cash incentive, pursuant to Budget Circular No. 2006-1,[5] which states:

> SECTION 1. The DEPARTMENT and the ASSOCIATION shall jointly institute cost-cutting measures to generate savings for the grant of yearly Collective Negotiation Agreement (C.N.A.) Cash Incentives in accordance with the provisions of Budget Circular No. 2006-1 dated February 1, 2006. For this purpose, the parties herein shall work together to generate savings and aim to *save at least 10%* of its MOOE from the regular programs/projects/activities of the Department.[6] (Emphasis supplied)

On September 29, 2011, the Department of Budget and Management issued Circular Letter 2011-9, with subject "Reminder on the Observance of the Guidelines on the Grant of the Collective Negotiation Agreement (CNA) Incentive."[7] Its Section 3.0 reiterates Budget Circular No. 2006-1 by mentioning the Senate and the House of Representatives' Joint Resolution No. 4, series of 2009, approving the grant of CNA incentives to both management and rank-and-file employees:

> 3.0. Pursuant to item (4)(h)(ii)(aa) of the Senate and House of Representatives Joint Resolution No. 4, s. 2009, the CNA Incentive may be granted to *both management and rank-and-file employees* of agencies with approved and successfully implemented CNAs in recognition of their joint efforts in accomplishing performance targets at lesser cost, and in attaining more efficient and viable operations

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[4] Id. at 111, Comment by respondent Secretary Florencio B. Abad; and *rollo*, p. 142, Comment by respondent Secretary Corazon J. Soliman.

[5] Id. at 111.

[6] Id. at 53. A copy of the CNA is attached as Annex B of the Petition.

[7] Id. at 111. *See* copy of the Circular Letter on <https://www.dbm.gov.ph/wp-content/uploads/Issuances/2011/Circular%20Letter/CL2011-9/cl2011-9.pdf> (last accessed on November 10, 2020).

through cost-cutting measures and systems improvement. (Emphasis supplied)

On October 26, 2011, Secretary Soliman issued a Memorandum authorizing the CNA incentive grant of ₱10,000.00, "to be paid to existing regular, contractual and casual employees" and released not later than October 28, 2011.[8] On December 3, 2011, she issued another Memorandum for a second tranche of CNA incentive, worth ₱20,000.00, to be released on or before the third week of December 2011.[9]

On December 26, 2011, the Department of Budget and Management issued the assailed Budget Circular No. 2011-5, which provides the supplemental policy and procedural guidelines for the grant of CNA incentives.[10] Among others, it set a ₱25,000.00 ceiling on the amount of the CNA incentives for 2011:

> 3.5 The CNA Incentive for FY 2011 shall be determined based on the amount of savings generated by an agency following the guidelines herein, but not to exceed ₱25,000 per qualified employee.

On December 28, 2011, Social Welfare and Development Assistant Secretary Ma. Chona O. David-Casis (Assistant Secretary David-Casis) issued a Memorandum directing every employee to refund the CNA incentive received in excess of ₱25,000.00 through salary deductions.[11] Subsequently, she issued the assailed January 20, 2012 Memorandum, which directed the employees to refund the ₱5,000.00 received in excess, and to sign the conforme form consenting to the refund, made through monthly salary deductions of ₱500.00 for 10 months beginning February 2012.[12]

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[8] Id. at 57.

[9] Id. at 58.

[10] Id. at 60-62. *See* copy of the Budget Circular at <https:www.dbm.gov.ph/wp-content/uploads/2012/03/BC-2011-5pdf> (last accessed on November 10, 2020).

[11] Id. at 59.

[12] Id. at 63.

Aggrieved, the associations filed this Petition[13] on February 21, 2012.

On March 28, 2012, petitioners filed an Urgent Motion for the Issuance of a Temporary Restraining Order/Writ of Preliminary Injunction (with Compliance to the Resolution dated February 28, 2012).[14] They cite cases[15] on the requisites of Rule 58, Section 3 of the Rules of Court for the issuance of a writ of preliminary injunction.[16]

In the same pleading, petitioners attached a copy of the Commission on Audit's March 14, 2002 Audit Observation Memorandum, where it had been observed that the ₱35,500.00 worth of CNA incentives paid to employees of the Protected Areas and Wildlife Bureau exceeded the ₱25,000.00 ceiling amount prescribed in Budget Circular No. 2011-5.[17]

In his Comment to the Urgent Motion, respondent Secretary Florencio Abad (Secretary Abad) of the Department of Budget and Management discussed that CNAs create no vested rights, and the grant of 2011 CNA incentives suffers from irregularities.[18] He submits that Budget Circular No. 2011-5 enjoys the presumption of regularity, and that this did not cause petitioners irreparable injury.[19]

Respondent Secretary Soliman manifested that she adopts her Comment to the Petition, which she says has extensively discussed the grounds to deny the prayer for injunctive relief. She reiterates the irrelevance of the refund in the attached Audit

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[13] Id. at 3-40.

[14] Id. at 70.

[15] The Urgent Motion cited cases including *Salting v. Velez*, 654 Phil. 117 (2011) [Per *J.* Nachura, Second Division].

[16] *Rollo*, pp. 71-75.

[17] Id. at 79-80.

[18] Id. at 186-191.

[19] Id. at 191-196.

Memorandum, since the Protected Areas and Wildlife Bureau is not a party to this case.[20]

This Court noted respondents' respective comments to the Petition[21] and the Urgent Motion.[22] Petitioners' Consolidated Reply[23] and the parties' respective memoranda[24] were likewise noted.

In a February 10, 2015 Resolution,[25] this Court included issues to be addressed for a complete resolution of the case, and the parties filed the required supplemental memoranda.[26]

The issues for this Court's resolution are the following:

First, whether or not petitioners have legal standing;

Second, whether or not petitioners violated the doctrine on the hierarchy of courts;

Third, whether or not petitioners availed the proper remedy, considering: (a) the doctrine on exhaustion of administrative remedies; (b) the requisites for availing the writs of certiorari and prohibition; (c) the requisites when invoking transcendental interest;

Fourth, whether or not the issuance of Budget Circular No. 2011-5 is within the jurisdiction and authority of respondent Secretary Abad;

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[20] Id. at 168.

[21] Id. at 173.

[22] Id. at 173 and 200.

[23] Id. at 231.

[24] Id. at 275, 309, and 358. Respondent Secretary Soliman's Memorandum dated July 9, 2013 was noted in the July 30, 2013 Resolution. Respondent Secretary Abad's Memorandum dated July 29, 2013 was noted in the August 27, 2013 Resolution. Petitioners' Memorandum dated July 10, 2014 was noted in the July 22, 2014 Resolution.

[25] Id. at 402-404.

[26] Id. at 417-442 and 445-493.

Fifth, whether or not Budget Circular No. 2011-5's provisions limiting the source and amount of the CNA incentive are contrary to, or improperly amend, Administrative Order No. 135, series of 2005;

Sixth, whether or not Budget Circular No. 2011-5 modifies or nullifies provisions of validly executed CNAs and violates the constitutional provision on the non-impairment of obligations;

Seventh, whether or not petitioners have a vested right to CNA incentives;

Eighth, whether or not the January 20, 2012 Memorandum directing the refund violates Section 43 of the General Appropriations Act of 2011, which enumerates the allowed deductions from employees' salaries;

Ninth, whether or not Section 5 of Public Sector Labor-Management Council (PSLMC) Resolution No. 4, series of 2002, as well as subsequent issuances implementing this provision, is unconstitutional for violating Article VI, Section 25 (5) of the Constitution by:

a. authorizing the PSLMC to declare where savings are to be allocated; and/or

b. authorizing government agencies, instrumentalities, and offices other than the President, the Senate President, the House of Representatives Speaker, the Supreme Court Chief Justice, and the heads of constitutional commissions, to allocate savings by contract or collective negotiation agreements; and

Tenth, whether or not Section 15 of Executive Order No. 180, series of 1987, which created the PSLMC, is unconstitutional in that:

a. it subsumes the Civil Service Commission or its Chair under the executive branch to implement this law, in violation of Article IX-A, Section 1 of the Constitution; or

b. it grants the Civil Service Commission or its Chair powers other than those enumerated under Article IX-B of the Constitution.

I

Any determination of whether this Court may answer a question posed to it begins with the issue of jurisdiction. Jurisdiction is the authority to hear and decide a case as conferred by the Constitution. Similarly, the Constitution grants Congress the power to "define, prescribe, and apportion"[27] the jurisdiction of various courts.[28]

The Constitution itself confers upon this Court original jurisdiction over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.[29] In this regard, Rule 65 of the Rules of Court enumerates the requisites of a petition for *certiorari* and prohibition. The rules require that the acts to be assailed were done in the exercise of judicial, quasi-judicial, or ministerial functions:

SECTION 1. *Petition for certiorari*.— When any tribunal, board or officer ***exercising judicial or quasi-judicial functions*** has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. ...

SECTION 2. *Petition for prohibition*.— When the proceedings of any tribunal, corporation, board, officer or person, whether ***exercising judicial, quasi-judicial or ministerial functions***, are without or in excess of its or his jurisdiction, or with grave abuse of discretion

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[27] CONST., art. VIII, Sec. 2.

[28] *First Sarmiento Property Holdings, Inc. v. Philippine Bank of Communications*, G.R. No. 202836, June 19, 2018, 866 SCRA 438 [Per J. Leonen, En Banc].

[29] CONST., art. VIII, sec. 5 (1).

amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require[.] (Emphasis supplied)

Quasi-judicial or adjudicatory functions refer to "the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law."[30] Quasi-legislative or rule-making functions refer to "the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers."[31]

The nature of the governmental functions affects the available remedies of those who seek to assail an act. Rule 65 specifies that the remedy of certiorari assails acts in the exercise of judicial and quasi-judicial functions, with the addition of ministerial functions for the remedy of prohibition.

In several cases, this Court has dismissed petitions for certiorari and prohibition for being the wrong remedy to assail the issuance of an executive order,[32] department order,[33] and a

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[30] *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 156 (2003) [Per J. Ynares-Santiago, First Division].

[31] *Holy Spirit Homeowners Association, Inc. v. Secretary Defensor*,529 Phil. 573, 585 (2006) [Per J. Tinga, En Banc] citing *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 155 (2003) [Per J. Ynares-Santiago, First Division].

[32] *See Galicto v. Aquino III*, 683 Phil. 141 (2012) [Per J. Brion, En Banc]; *See also La Liga ng mga Barangay National v. City Mayor of Manila*, 465 Phil. 529 (2004) [Per C.J. Davide, En Banc].

[33] *See Dacudao v. Secretary of Justice*, 701 Phil. 96 (2013) [Per J. Bersamin, En Banc].

republic act,[34] as these were not done in the exercise of judicial or quasi-judicial functions.

Here, respondent Secretary Abad was exercising rule-making functions when he issued Budget Circular No. 2011-5. Several laws enumerating the Department of Budget and Management's powers and functions include providing guidelines for allowance grants to government employees.[35] Yet, petitioners filed a petition for certiorari and prohibition.

Nonetheless, beyond the conception of certiorari and prohibition under Rule 65 of the Rules of Court, the power of judicial review in Article VIII, Section 1 of the Constitution contemplates the correction, by way of petitions for certiorari and prohibition, of grave abuses of discretion by any governmental branch or instrumentality. This may lie even if no judicial, quasi-judicial, or ministerial function was exercised.[36]

Article VIII, Section 1 of the Constitution states:

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.

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[34] *See Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010) [Per J. Carpio Morales, En Banc].

[35] *Such as* Presidential Decree No. 985 (1976), sec. 17 (g). It states:
SECTION 17. Powers and Functions. — The Budget Commission, principally through the OCPC shall, in addition to those provided under other Sections of this Decree, have the following powers and functions:
. . . .
(g) Provide the required criteria and guidelines, in consultation with agency heads as may be deemed necessary and subject to the approval of the Commissioner of the Budget, for the grant of all types of allowances and additional forms of compensation to employees in all agencies of the government.

[36] *SPARK v. Quezon City*, 815 Phil. 1067 (2017) [Per J. Perlas-Bernabe, En Banc].

In *Kilusang Mayo Uno v. Aquino*:[37]

This Court has discussed in several cases how the 1987 Constitution has expanded the scope of judicial power from its traditional understanding. As such, courts are not only expected to "settle actual controversies involving rights which are legally demandable and enforceable[,]" but are also empowered to determine if any government branch or instrumentality has acted beyond the scope of its powers, such that there is grave abuse of discretion.

This development of the courts' judicial power arose from the use and abuse of the political question doctrine during the martial law era under former President Ferdinand Marcos. In *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, this Court held:

> In *Francisco v. The House of Representatives*, we recognized that this expanded jurisdiction was meant "to ensure the potency of the power of judicial review to curb grave abuse of discretion by 'any branch or instrumentalities of government.'" Thus, the second paragraph of Article VIII, Section 1 engraves, for the first time in its history, into black letter law the "expanded *certiorari* jurisdiction" of this Court, whose nature and purpose had been provided in the sponsorship speech of its proponent, former Chief Justice Constitutional Commissioner Roberto Concepcion[:]
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> . . . . . .
>
> The first section starts with a sentence copied from former Constitutions. It says:
>
> The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
>
> I suppose nobody can question it.
>
> The next provision is new in our constitutional law. I will read it first and explain.
>
> Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not

[37] G.R. No. 210500, April 2, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per J. Leonen, En Banc].

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.

Fellow Members of this Commission, this is actually a product of our experience during martial law. As a matter of fact, it has some antecedents in the past, but the role of the judiciary during the deposed regime was marred considerably by the circumstance that in a number of cases against the government, which then had no legal defense at all, the solicitor general set up the defense of political question and got away with it. As a consequence, certain principles concerning particularly the writ of *habeas corpus*, that is, the authority of courts to order the release of political detainees, and other matters related to the operation and effect of martial law failed because the government set up the defense of political question. And the Supreme Court said: "Well, since it is political, we have no authority to pass upon it." The Committee on the Judiciary feels that this was not a proper solution of the questions involved. It did not merely request an encroachment upon the rights of the people, but it, in effect, encouraged further violations thereof during the martial law regime.

. . . .

Briefly stated, courts of justice determine the limits of power of the agencies and offices of the government as well as those of its officers. In other words, the judiciary is the final arbiter on the question whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction, or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction or lack of jurisdiction. This is not only a judicial power but a duty to pass judgment on matters of this nature.

This is the background of paragraph 2 of Section 1, which means that the courts cannot hereafter evade the duty to settle matters of this nature, by claiming that such matters constitute a political question. (Emphasis in the original, citations omitted)

Rule 65, Sections 1 and 2 of the Rules of Court provides remedies to address grave abuse of discretion by any government branch or instrumentality, particularly through petitions for certiorari and prohibition:

. . . .

While these provisions pertain to a tribunal's, board's, or an officer's exercise of discretion in judicial, quasi-judicial, or ministerial functions, Rule 65 still applies to invoke the expanded scope of judicial power. In Araullo v. Aquino III, this Court differentiated certiorari from prohibition, and clarified that Rule 65 is the remedy to "set right, undo[,] and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial[,] or ministerial functions."

This Court further explained:

> The present Rules of Court uses two special civil actions for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. These are the special civil actions for certiorari and prohibition, and both are governed by Rule 65. . . .
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> The ordinary nature and function of the writ of certiorari in our present system are aptly explained in Delos Santos v. Metropolitan Bank and Trust Company:
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> . . . .
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> > The sole office of the writ of certiorari is the correction of errors of jurisdiction, which includes the commission of grave abuse of discretion amounting to lack of jurisdiction. In this regard, mere abuse of discretion is not enough to warrant the issuance of the writ. The abuse of discretion must be grave, which means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.

Although similar to prohibition in that it will lie for want or excess of jurisdiction, certiorari is to be distinguished from prohibition by the fact that it is a corrective remedy used for the re-examination of some action of an inferior tribunal, and

is directed to the cause or proceeding in the lower court and not to the court itself, while prohibition is a preventative remedy issuing to restrain future action, and is directed to the court itself. The Court expounded on the nature and function of the writ of prohibition in Holy Spirit Homeowners Association, Inc. v. Defensor:

> A petition for prohibition is also not the proper remedy to assail an IRR issued in the exercise of a quasi-legislative function. Prohibition is an extraordinary writ directed against any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. Prohibition lies against judicial or ministerial functions, but not against legislative or quasi-legislative functions. Generally, the purpose of a writ of prohibition is to keep a lower court within the limits of its jurisdiction in order to maintain the administration of justice in orderly channels. Prohibition is the proper remedy to afford relief against usurpation of jurisdiction or power by an inferior court, or when, in the exercise of jurisdiction in handling matters clearly within its cognizance the inferior court transgresses the bounds prescribed to it by the law, or where there is no adequate remedy available in the ordinary course of law by which such relief can be obtained. Where the principal relief sought is to invalidate an IRR, petitioners' remedy is an ordinary action for its nullification, an action which properly falls under the jurisdiction of the Regional Trial Court. In any case, petitioners' allegation that "respondents are performing or threatening to perform functions without or in excess of their jurisdiction" may appropriately be enjoined by the trial court through a writ of injunction or a temporary restraining order.

With respect to the Court, however, the remedies of certiorari and prohibition are necessarily broader in scope and reach, and the writ of certiorari or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal,

> corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, . . .
>
> Thus, petitions for certiorari and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.[38] (Citations omitted)

Thus, if any governmental branch or instrumentality is shown to have gravely abused its discretion amounting to lack or excess of jurisdiction, and has overstepped the delimitations of its powers, courts may "set right, undo, or restrain" such act by way of certiorari and prohibition.

But even as this Court is vested with judicial power, it does not follow that we should resolve every question we may have the authority to answer. The Constitution grants the Judiciary the power to mediate the boundaries of the government's powers, but this mediation is circumscribed by the will of the people, in whom sovereignty resides,[39] as expressed by their representatives in the executive and legislative branches.[40] This Court's place in the constitutional order requires that we "decide on legal principle only in concrete controversies":

> This court is not the venue to continue the brooding and vociferous political debate that has already happened and has resulted in legislation. Constitutional issues normally arise when the right and obligations become doubtful as a result of the implementation of the statute. This forum does not exist to undermine the democratically deliberated results coming from the Congress and approved by the President. Again, there is no injury to a fundamental right arising

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[38] *Id*.

[39] CONST., art. II, sec. 1.

[40] *Angara v. Electoral Commission*,63 Phil. 139 (1936) [Per J. Laurel, En Banc].

from concrete facts established with proof. Rather, the pleadings raise grave moral and philosophical issues founded on facts that have not yet happened. They are the product of speculation by the petitioners.

To steeled advocates who have come to believe that their advocacy is the one true moral truth, their repeated view may seem to them as the only factual possibility. Rabid advocacy of any view will be intolerant of the nuanced reality that proceeds from conscious and deliberate examination of facts.

This kind of advocacy should not sway us.

Our competence is to decide on legal principle only in concrete controversies. We should jealously and rigorously protect the principle of justiciability of constitutional challenges. We should preserve our role within the current constitutional order. We undermine the legitimacy of this court when we participate in rulings in the abstract because there will always be the strong possibility that we will only tend to mirror our own personal predilections. We should thus adopt a deferential judicial temperament especially for social legislation.[41] (Citation omitted)

For this reason, the requisites of justiciability, long established in our jurisprudence, must be present in the cases this Court resolves:

As a rule, "the constitutionality of a statute will be passed on only if, and to the extent that, it is directly and necessarily involved in a justiciable controversy and is essential to the protection of the rights of the parties concerned." A controversy is said to be justiciable if: first, there is an actual case or controversy involving legal rights that are capable of judicial determination; second, the parties raising the issue must have standing or *locus standi* to raise the constitutional issue; third, the constitutionality must be raised at the earliest opportunity; and fourth, resolving the constitutionality must be essential to the disposition of the case.[42] (Citations omitted)

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[41] J. Leonen, Dissenting Opinion in *Imbong v. Ochoa*,732 Phil. 1, 559-560 (2014) [Per J. Mendoza, En Banc].

[42] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 98 [Per J. Leonen, En Banc].

I(A)

An actual case exists "when the act being challenged has had a direct adverse effect on the individual challenging it."[43] Thus, actual case means the presence of that concrete adverseness that can be drawn from the allegations raised by the parties in their pleadings:

> Jurisprudence provides that an actual case or controversy is one which "involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute." In other words, *"[t]here must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence."* Related to the requirement of an actual case or controversy is the requirement of "ripeness," meaning that the questions raised for constitutional scrutiny are already ripe for adjudication. "A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. 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." "*Withal, courts will decline to pass upon constitutional issues through advisory opinions, bereft as they are of authority to resolve hypothetical or moot questions*."[44] (Emphasis supplied, citations omitted)

Laws are general in nature. The courts' constitutional duty is "to settle actual controversies involving rights which are legally demandable and enforceable[.]"[45] Courts cannot and will not decide hypothetical issues, render advisory opinions, or engage academic questions.[46] The parties must present concrete facts

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[43] *LAMP v. Secretary of Budget and Management*,686 Phil. 357, 369 (2012) [Per J. Mendoza, En Banc] citing *Lozano v. Nograles*, 607 Phil. 334, 341 (2009) [Per C.J. Puno, En Banc] citing *Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 427-428 (1998) [Per J. Panganiban, First Division].

[44] *Belgica v. Executive Secretary*,721 Phil. 416, 519-520 (2013) [Per J. Perlas-Bernabe, En Banc].

[45] CONST., art. VIII, sec. 1.

[46] *Guingona, Jr. v. Court of Appeals*,354 Phil. 415, 426 (1998) [Per J. Panganiban, First Division].

that demonstrate the problems vis-à-vis a legal provision.[47] The parties represented must show the contradicting considerations as a result of the alleged facts. Absent such actual case anchored on concrete adverseness, no factual basis exists for giving a petition due course.

In *Falcis v. Civil Registrar General*:[48]

> This Court's constitutional mandate does not include the duty to answer all of life's questions. No question, no matter how interesting or compelling, can be answered by this Court if it cannot be shown that there is an "actual and an antagonistic assertion of rights by one party against the other in a controversy wherein judicial intervention is unavoidable."
>
> This Court does not issue advisory opinions. We do not act to satisfy academic questions or dabble in thought experiments. We do not decide hypothetical, feigned, or abstract disputes, or those collusively arranged by parties without real adverse interests. If this Court were to do otherwise and jump headlong into ruling on every matter brought before us, we may close off avenues for opportune, future litigation. We may forestall proper adjudication for when there are actual, concrete, adversarial positions, rather than mere conjectural posturing:
>
> > Even the expanded jurisdiction of this Court under Article VIII, Section 1 does not provide license to provide advisory opinions. An advisory opinion is one where the factual setting is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. In other words, for there to be a real conflict between the parties, there must exist actual facts from which

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[47] *See discussion on actual case or controversy in* J. Leonen, Dissenting Opinion in *Imbong v. Ochoa*,732 Phil. 1, 554-666 (2014) [Per J. Mendoza, En Banc].

[48] G.R. No. 217910, September 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65744>[Per J. Leonen, En Banc].

courts can properly determine whether there has been a breach of constitutional text. ...

As this Court makes "final and binding construction[s] of law[,]" our opinions cannot be mere counsel for unreal conflicts conjured by enterprising minds. Judicial decisions, as part of the legal system, bind actual persons, places, and things. Rulings based on hypothetical situations weaken the immense power of judicial review.[49] (Citations omitted)

I(B)

Legal standing means "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."[50] That the party must present a personal stake in the case ensures the presence of concrete adverseness:

In public or constitutional litigations, the Court is often burdened with the determination of the *locus standi* of the petitioners due to the ever-present need to regulate the invocation of the intervention of the Court to correct any official action or policy in order to avoid obstructing the efficient functioning of public officials and offices involved in public service. It is required, therefore, that the petitioner must have a personal stake in the outcome of the controversy, for, as indicated in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*:

> ***The question on legal standing is whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."*** Accordingly, it has been held that the interest of a person assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger

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[49] Id.

[50] *Galicto v. Aquino III*,683 Phil. 141 (2012) [Per J. Brion, En Banc] citing *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452 (2010) [Per J. Carpio Morales, En Banc].

> of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of.[51] (Emphasis supplied)

Here, respondent Secretary Soliman submits that petitioners Confederation for Unity, Recognition, and Advancement of Government Employees (COURAGE),National Federation of Employees Associations in the Department of Agriculture (NAFEDA),and Department of Agrarian Reform Employees Association (DAREA) should all be dropped as parties for having no legal standing.[52] She, however, concedes that petitioner SWEAP-DSWD has legal standing.[53]

Petitioners counter that COURAGE, NAFEDA, and DAREA "represent hundreds of government employees unions and associations, composing of hundreds of thousands of employees in the civil service, whose validly executed CNAs have been infringe[d] by the impugned budget circular."[54]

Nearly all of the petitioners here are organizations purporting to act on behalf of other organizations. Generally, representative parties such as organizations cannot be surrogates for the real party in interest suffering the actual injury. Should they desire to act as such, they must convincingly show that their representation through one voice would be more efficient than just some of the members suing and defending on behalf of all

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[51] *Araullo v. Aquino III*, 752 Phil. 716 (2014) [Per J. Bersamin, En Banc] citing *De Castro v. Judicial and Bar Council*, 629 Phil. 629 (2010) [Per J. Bersamin, En Banc]. *See also Galicto v. Aquino III*, 683 Phil. 141, 170 (2012) [Per J. Brion, Second Division] citing *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 472 (2010) [Per J. Carpio Morales, En Banc].

[52] *Rollo*,p. 256.

[53] Id.at 255.

[54] Id.at 344.

the members.[55] In *National Federation of Hog Farmers, Inc. v. Board of Investments*:[56]

> For organizations to become real parties in interest, the following criteria must first be met so that actions may be allowed to be brought on behalf of third parties:
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> > [F]irst, "the [party bringing suit] must have suffered an 'injury-in-fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute"; second, "the party must have a close relation to the third party"; and third, "there must exist some hindrance to the third party's ability to protect his or her own interests."
>
> Organizations may possess standing to sue on behalf of their members if they sufficiently show that "the results of the case will affect their vital interests" and that their members have suffered or will stand to suffer from the application of the assailed governmental acts. The petition must likewise show that a hindrance exists, preventing the members from personally filing the complaint.
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> In *White Light Corporation v. City of Manila*, hotel and motel operators protested the implementation of the City of Manila's Ordinance No. 7774, which prohibited short-time admission, or the admittance of guests for less than 12 hours in motels, inns, hotels, and similar establishments within the city. The petitioners argued, among others, that the Ordinance violated their clients' right to privacy, freedom of movement, and equal protection of the laws.
>
> In *White Light*, the petitioners were allowed to represent their clients based on third-party standing. This Court noted the close relationship between hotel and motel operators and their clients, as the former "rely on the patronage of their customers for their continued viability." On the requirement of hindrance, this Court stated that "[t]he relative silence in constitutional litigation of such special interest groups in our nation such as the American Civil Liberties Union in the United

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[55] *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018, 872 SCRA 98 [Per J. Leonen, En Banc]; *Acosta v. Ochoa*, G.R. No. 211559, October 15, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/docmonth/Oct/2019/1> [Per J. Leonen, En Banc].

[56] G.R. No. 205835, June 23, 2020, [Per J. Leonen, En Banc].

States may also be construed as a hindrance for customers to bring suit."[57] (Citations omitted)

The Petition does not allege whether petitioners COURAGE, NAFEDA, and DAREA have existing CNAs, nor does it allege the amount granted to them as CNA incentives. The Petition fails to show that these three petitioners "sustained or will sustain direct injury" from the issuance of Budget Circular No. 2011-5. Not all government employees are similarly situated. Some have existing CNAs, while others do not. Some government offices have year-end savings resulting from efficiency and lesser costs, but this may not be true for all. Decisions cannot cut across different contexts. Those who fail to raise an actual case should not be covered by a decision that considered the factual milieu alleged by those with legal standing.

Nonetheless, labor organizations occupy a unique position in that they have the constitutional and statutory right and duty to represent the workers within their membership.

Article XIII, Section 3 of the Constitution states:

SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

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[57] Id.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth. (Emphasis supplied)

Article 242 of the Labor Code, as amended, provides that a labor organization has the right to represent its members in collective bargaining, and to undertake all activities to benefit the organization and its members:

ARTICLE 242. Rights of legitimate labor organizations. — A legitimate labor organization shall have the right:

a. To act as the representative of its members for the purpose of collective bargaining;

b. To be certified as the exclusive representative of all the employees in an appropriate bargaining unit for purposes of collective bargaining;

c. To be furnished by the employer, upon written request, with its annual audited financial statements, including the balance sheet and the profit and loss statement, within thirty (30) calendar days from the date of receipt of the request, after the union has been duly recognized by the employer or certified as the sole and exclusive bargaining representative of the employees in the bargaining unit, or within sixty (60) calendar days before the expiration of the existing collective bargaining agreement, or during the collective bargaining negotiation;

d. To own property, real or personal, for the use and benefit of the labor organization and its members;

e. To sue and be sued in its registered name; and

f. To undertake all other activities designed to benefit the organization and its members, including cooperative, housing, welfare and other projects not contrary to law.

Notwithstanding any provision of a general or special law to the contrary, the income and the properties of legitimate labor organizations, including grants, endowments, gifts, donations and contributions they may receive from fraternal and similar organizations, local or foreign, which are actually, directly and exclusively used for their lawful purposes, shall be free from taxes, duties and other

assessments. The exemptions provided herein may be withdrawn only by a special law expressly repealing this provision. (Emphasis supplied)

Labor organizations also ensure that workers participate in decision-making processes that affect their rights, duties, and welfare. In *Samahan ng Manggagawa sa Hanjin Shipyard v. Bureau of Labor Relations*:[58]

As Article 246 (now 252) of the Labor Code provides, the right to self-organization includes the right to form, join or assist labor organizations for the purpose of collective bargaining through representatives of their own choosing and to engage in lawful concerted activities for the same purpose for their mutual aid and protection. This is in line with the policy of the State to foster the free and voluntary organization of a strong and united labor movement as well as to make sure that workers participate in policy and decision-making processes affecting their rights, duties and welfare.

The right to form a union or association or to self-organization comprehends two notions, to wit: (a) the liberty or freedom, that is, the absence of restraint which guarantees that the employee may act for himself without being prevented by law; and (b) the power, by virtue of which an employee may, as he pleases, join or refrain from joining an association.

In view of the revered right of every worker to self-organization, the law expressly allows and even encourages the formation of labor organizations. A labor organization is defined as "any union or association of employees which exists in whole or in part for the purpose of collective bargaining or of dealing with employers concerning terms and conditions of employment." A labor organization has two broad rights: (1) to bargain collectively and (2) to deal with the employer concerning terms and conditions of employment. To bargain collectively is a right given to a union once it registers itself with the DOLE. Dealing with the employer, on the other hand, is a generic description of interaction between employer and employees concerning grievances, wages, work hours and other terms and conditions of employment, even if the employees' group is not registered with the DOLE.

A union refers to any labor organization in the private sector organized for collective bargaining and for other legitimate purpose,

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[58] 771 Phil. 365 (2015) [Per J. Mendoza, Second Division].

while a workers' association is an organization of workers formed for the mutual aid and protection of its members or for any legitimate purpose other than collective bargaining.

Many associations or groups of employees, or even combinations of only several persons, may qualify as a labor organization yet fall short of constituting a labor union. While every labor union is a labor organization, not every labor organization is a labor union. The difference is one of organization, composition and operation.

Collective bargaining is just one of the forms of employee participation. Despite so much interest in and the promotion of collective bargaining, it is incorrect to say that it is the device and no other, which secures industrial democracy. It is equally misleading to say that collective bargaining is the end-goal of employee representation. Rather, the real aim is employee participation in whatever form it may appear, bargaining or no bargaining, union or no union. Any labor organization which may or may not be a union may deal with the employer. This explains why a workers' association or organization does not always have to be a labor union and why employer-employee collective interactions are not always collective bargaining.[59] (Citations omitted)

As discussed above, though not to the same extent as private employees, the right to self-organize is likewise granted to government employees. Petitioner SWEAP-DSWD is one such organization. It may act to protect its members' interests in CNAs, which includes acting to contest issuances that may jeopardize these interests. It has the legal standing to bring their Petition to this Court.

I(C)

As for the third requisite: "A case is ripe for adjudication when the challenged governmental act is a completed action such that there is a direct, concrete, and adverse effect on the petitioner."[60]

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[59] Id. at 380-382.

[60] *Kilusang Mayo Uno v. Aquino*, G.R. No. 210500, April 2, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per J. Leonen, En Banc].

Closely linked with the requisite of an actual case, ripeness pertains to the challenged governmental act having reached the state where it is neither anticipatory nor too late, but rather, necessary for the Judiciary to intervene:

> Both these concepts relate to the timing of the presentation of a controversy before the Court — ripeness relates to its prematurity, while mootness relates to a belated or unnecessary judgment on the issues. The Court cannot preempt the actions of the parties, and neither should it (as a rule) render judgment after the issue has already been resolved by or through external developments.
>
> The importance of timing in the exercise of judicial review highlights and reinforces the need for an actual case or controversy — an act that may violate a party's right. Without any completed action or a concrete threat of injury to the petitioning party, the act is not yet ripe for adjudication. It is merely a hypothetical problem. The challenged act must have been accomplished or performed by either branch or instrumentality of government before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action.[61]

Ripeness must be viewed in light of the doctrine on exhaustion of administrative remedies. Before judicial intervention, the challenged act must fulfill the prerequisite that another governmental branch or instrumentality has already performed the act; the petitioner has immediately suffered or is threatened to suffer injury due to the act; and no more succor is found in another branch or instrumentality.[62] The doctrine "does not warrant a court to arrogate unto itself the authority to resolve, or interfere in, a controversy the jurisdiction over which is lodged initially with an administrative body";[63] rather, it is anchored on comity, respect, and convenience:

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[61] *AMCOW v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 146 (2016) [Per J. Brion, En Banc].

[62] *Kilusang Mayo Uno v. Aquino*, G.R. No. 210500, April 2, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65208> [Per J. Leonen, En Banc].

[63] *Garcia v. Court of Appeals*, 411 Phil. 25, 36 (2001) [Per J. Vitug, Third Division] citing *Paat v. Court of Appeals*, 334 Phil. 146 (1997) [Per J. Torres, Jr., Second Division].

This Court has also said in a number of cases that —

When an adequate remedy may be had within the Executive Department of the government, but nevertheless, a litigant fails or refuses to avail himself of the same, the judiciary shall decline to interfere. This traditional attitude of the courts is based not only on convenience but likewise on respect: convenience of the party litigants and respect for a coequal office in the government. If a remedy is available within the administrative machinery, this should be resorted to before the resort can be made to (the) courts.[64]

Our Constitution should also be read by the executive branch. The doctrine demands deference to co-equal departments, allowing the appropriate authorities the opportunity "to act and correct the errors committed in the administrative forum."[65]

Petitioners here failed to exhaust all the administrative remedies before coming to this Court.

Aside from Budget Circular No. 2011-5, petitioners also question the constitutionality of the January 20, 2012 Memorandum signed by Assistant Secretary David-Casis.[66] The Memorandum does not show any signature of approval or conforme by respondent Secretary Soliman.[67]

Petitioners should have allowed the administrative process to run its course by first questioning the validity of the Memorandum, along with the Assistant Secretary's authority, before respondent Secretary Soliman. The Secretary's action may, in turn, be appealed to the Office of the President.[68]

True, the doctrine on exhaustion of administrative remedies does not apply when the assailed act was done in the exercise

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[64] Id. at 39 citing *Abe-abe vs. Manta*,179 Phil. 417 (1979) [Per J. Aquino, Second Division].

[65] Id. at 43.

[66] *Rollo*,p. 34.

[67] Id. at 63.

[68] *See* Administrative Order No. 22 (2011) entitled Prescribing Rules and Regulations Governing Appeals to the Office of the President of the Philippines.

of quasi-legislative or rule-making functions.[69] Yet, the January 20, 2012 Memorandum, which directs the refund of excess CNA incentive, cannot be an exercise of quasi-legislative functions only when it created an imperative obligation upon the affected employees.

This Court has dismissed petitions, explaining that "liberality and the transcendental doctrine cannot trump blatant disregard of procedural rules," more so when "the petitioner had other available remedies[.]"[70]

The mere issuance of a regulation does not justify an immediate resort to this Court. Petitioner DSWD-SWEAP could have availed of administrative remedies before respondent Secretary Soliman, and then before the Office of the President.

I(D)

When the unconstitutionality of a governmental act is raised as a ground for judicial review, the constitutional issue must be properly presented, and its resolution must be necessary for a complete determination of the case.[71] In other words, the constitutional question must be the *lis mota* of the case; otherwise, the issues may be resolved and reliefs may be granted on some other ground.[72]

In *Parcon-Song v. Song*:[73]

The requirement that a constitutional issue seasonably raised should be the *lis mota* of the case is an aspect of judicial review that is

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[69] *Holy Spirit Homeowners Association, Inc. v. Secretary Defensor*, 529 Phil. 573, 585 (2006) [Per J. Tinga, En Banc] citing *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 157 (2003) [Per J. Ynares-Santiago, First Division].

[70] *Galicto v. Aquino III*, 683 Phil. 141, 169 (2012) [Per J. Brion, Second Division] citing *Concepcion v. Commission on Elections*, 609 Phil. 201 (2009) [Per J. Brion, En Banc].

[71] *See Laude v. Hon. Ginez-Jabalde*, 773 Phil. 490 (2015) [Per J. Leonen, En Banc].

[72] *See Griffith v. Court of Appeals*, 428 Phil. 878 (2002) [Per J. Quisumbing, Second Division].

[73] G.R. No. 199582, July 7, 2020 [Per J. Leonen, En Banc].

rooted on two constitutional principles. First, the principle of deference. Second, the principle of reasonable caution in striking down an act by a co-equal political branch of government.

Article VIII, Section 1 of the Constitution which now specifies that this Court may now act on any grave abuse of discretion by any organ or department or branch of government, should never be interpreted as providing license for the Court to issue advisory opinions. Apart from an actual case or controversy, the Court must satisfy itself that the reliefs prayed for by the parties requires the resolution of a constitutional issue. The exceptions are (i) when a facial review of the statute is allowed as in cases of actual or clearly imminent violation of the sovereign rights to free expression and its cognate rights, or (ii) when there is a clear and convincing showing that a fundamental constitutional right has been actually violated in the application of a statute, which are of transcendental interest. That is, that the violation is so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance.

The facts constituting the demonstrable and egregious violation of a fundamental constitutional right must either be uncontested or established in a trial court for this court to take cognizance of the constitutional issue and rule upon it. The basis for ruling on the Constitutional issue must also be clearly alleged and traversed by the parties.

The relief of the party in this case can be granted simply by examining the statute applicable. It has not pleaded nor demonstrably shown a constitutional violation that is so urgently egregious that it should outweigh our reasonable policy of deference to the two other constitutional branches of government.[74]

I(E)

On the alleged violation of the rule on hierarchy of courts raised by respondents,[75] petitioners take exception by invoking transcendental importance of the constitutional questions involved.[76]

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[74] Id.

[75] *Rollo*, pp. 257-260 and 289.

[76] Id. at 344.

The regional trial courts, the Court of Appeals, and this Court all have original jurisdiction to issue writs of certiorari and prohibition.[77] The doctrine on hierarchy of courts ensures that every level of the Judiciary can focus on effectively and efficiently performing its designated functions within the judicial system: Territorially organized trial courts weigh evidence and rule on factual issues; the Court of Appeals reviews these findings as a collegiate body; and this Court leads the Judiciary by resolving constitutional questions and promulgating doctrinal devices.[78]

Nevertheless, exceptions exist. This Court can exercise its discretionary power and assume jurisdiction over petitions filed directly before it when warranted. For one, a direct resort to this Court requires the existence of serious and important reasons:

> **The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition**. It cannot and should not be burdened with the task of dealing with causes in the first instance. **Its original jurisdiction to issue the so-called extraordinary writs should be exercised only where absolutely necessary or where serious and important reasons exist therefor.** Hence, that jurisdiction should generally be exercised relative to actions or proceedings before the Court of Appeals, or before constitutional or other tribunals, bodies or agencies whose acts for some reason or another are not controllable by the Court of Appeals. **Where the issuance of an extraordinary writ is also within the competence of the Court of Appeals or a Regional Trial Court, it is in either of these courts that the specific action for the writ's procurement must be presented. This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe**.[79] (Emphasis in the original)

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[77] Batas Pambansa Blg. 129 (1981), as amended, secs. 2 and 9; CONST., art. VIII, sec. 5 (1).

[78] *Diocese of Bacolod v. COMELEC*, 751 Phil. 301 (2014) [Per J. Leonen, En Banc].

[79] *Bañez, Jr. v. Concepcion*, 693 Phil. 399, 412 (2012) [Per J. Bersamin, First Division] citing *Vergara, Sr. v. Suelto*, 240 Phil. 719 (1987) [Per J. Narvasa, First Division].

These important reasons include the following: "(1) when dictated by the public welfare and the advancement of public policy; (2) when demanded by the broader interest of justice; (3) when the challenged orders were patent nullities; or (4) when analogous exceptional and compelling circumstances called for and justified the immediate and direct handling of the case."[80]

This Court has allowed petitions raising genuine issues of constitutionality against actions done by other branches of government[81] and constitutional bodies.[82] It has also assumed jurisdiction over cases of first impression[83] and those of transcendental interest.[84]

Benefits awarded to government employees come from public funds. The challenged Budget Circular No. 2011-5 affects all government employees with valid CNAs, allowing the grant of CNA incentives.

Concededly, no facts are disputed in this case that would burden this Court with the task of exhaustively examining evidentiary matters, for which it is ill-equipped.[85] In the interest

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[80] *Dy v. Hon. Bibat-Palamos*, 717 Phil. 776, 783 (2013) [Per J. Mendoza, Third Division] citing *Republic of the Philippines v. Caguioa*, 704 Phil. 315 (2013) [Per J. Brion, Second Division].

[81] *See Review Center Association of the Philippines v. Executive Secretary*, 602 Phil. 342 (2009) [Per J. Carpio, En Banc].

[82] *See Arroyo v. DOJ, COMELEC*, 695 Phil. 302 (2012) [Per J. Peralta, En Banc]. *See also Diocese of Bacolod v. COMELEC*, 751 Phil. 301 (2014) [Per J. Leonen, En Banc].

[83] *See Government of the United States of America v. Purganan*, 438 Phil. 417 (2002) [Per J. Panganiban, En Banc].

[84] *See Kulayan v. Governor Tan*, 690 Phil. 72 (2012) [Per J. Sereno, En Banc]; *See also Chavez v. PEA-Amari*, 433 Phil. 506, 524 (2002) [Per J. Carpio, En Banc] citing *Chavez v. PCGG*,360 Phil. 133 (1998) [Per J. Panganiban, First Division]. *See also Gamboa v. Finance Secretary*, 668 Phil. 1 (2011) [Per J. Carpio, En Banc].

[85] *See Falcis v. Civil Registrar General*, G.R. No. 217910, September 3, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65744> [Per J. Leonen, En Banc].

of judicial economy,[86] preventing further delay in the disposition of this case,[87] we consider the merits.

II

To put in context the substantive issues, a recall of the history of collective negotiations in the public sector is needed.

The Constitution and applicable laws, evolving through the years, provide the right of government employees to self-organize and engage in collective negotiation.

As early as 1953, Republic Act No. 875 or the Industrial Peace Act stated that employment terms and conditions of those in government service are governed by law:

> SECTION 11. *Prohibition Against Strikes in the Government.* — The terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof, are governed by law and it is declared to be the policy of this Act that employees therein shall not strike for the purpose of securing changes or modification in their terms and conditions of employment. Such employees may belong to any labor organization which does not impose the obligation to strike or to join in strike: Provided, however, That this section shall apply only to employees employed in governmental functions and not to those employed in proprietary functions of the Government including but not limited to government corporations.

The 1983 case of *Alliance of Government Workers v. Minister of Labor and Employment*[88] raised whether the requirement under Presidential Decree No. 851 for employers "to pay all their employees receiving a basic salary of not more than ₱1,000.00 a month, a thirteenth (13th) month pay not later than December 24 of every year" included government employees.[89]

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[86] *See Salud v. The Court of Appeals*, 303 Phil. 397 (1994) [Per J. Puno, Second Division].

[87] *See People v. Hon. Dela Torre*, 698 Phil. 471 (2012) [Per J. Abad, En Banc].

[88] 209 Phil. 1 (1983) [Per J. Gutierrez, Jr., En Banc].

[89] Id. at 9.

This Court dismissed the petition. It found that Section 3 of the Implementing Rules and Regulations, which excluded government employers from the coverage, was the correct interpretation of the decree. This Court then distinguished between private and public employees insofar as taking collective action as bargaining power in seeking concessions:

> The workers in the respondents institutions have not directly petitioned the heads of their respective offices nor their representatives in the Batasang Pambansa. They have acted through a labor federation and its affiliated unions. In other words, the workers and employees of these state firms, college, and university are taking collective action through a labor federation which uses the bargaining power of organized labor to secure increased compensation for its members.
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> Under the present state of the law and pursuant to the express language of the Constitution, this resort to concerted activity with the ever present threat of a strike can no longer be allowed.
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> The general rule in the past and up to the present is that "the terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof are governed by law" (Section 11, the Industrial Peace Act, R.A. No. 875, as amended and Article 277, the Labor Code, P.D. No. 442, as amended). *Since the terms and conditions of government employment are fixed by law, government workers cannot use the same weapons employed by workers in the private sector to secure concessions from their employers*. The principle behind labor unionism in private industry is that industrial peace cannot be secured through compulsion by law. Relations between private employers and their employees rest on an essentially voluntary basis. Subject to the minimum requirements of wage laws and other labor and welfare legislation, the terms and conditions of employment in the unionized private sector are settled through the process of collective bargaining. In government employment, however, it is the legislature and, where properly given delegated power, the administrative heads of government which fix the terms and conditions of employment. And this is effected through statutes or administrative circulars, rules and regulations, not through collective agreements.[90] (Emphasis supplied)

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[90] Id. at 15.

The 1973 Constitution included in its declaration of principles and state policies that "[t]he State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work."[91]

In 1974, Presidential Decree No. 442, or the Labor Code of the Philippines, was signed into law. It excluded "government employees, including employees of government-owned and/or controlled corporations" from the right to self-organization for purposes of collective bargaining.[92] Even the employment terms and conditions for government-owned and controlled corporations' employees are governed by the Civil Service Law, rules and regulations:

> ARTICLE 276. *Government employees.* — The terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations, shall be governed by the Civil Service Law, rules and regulations. Their salaries shall be standardized by the National Assembly as provided for in the new constitution. However, there shall be no reduction of existing wages, benefits and other terms and conditions of employment being enjoyed by them at the time of the adoption of this Code.[93]

Further qualification for employees of government corporations was made in 1986 when former President Corazon C. Aquino (President Aquino) issued Executive Order No. 111. In amending the Labor Code, it granted employees "of government corporations established under the Corporation Code . . . the right to organize and to bargain collectively with their respective employers."[94]

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[91] 1973 CONST., art. II, sec. 9.

[92] *Arizala v. Court of Appeals*, 267 Phil. 615, 624 (1990) [Per J. Narvasa, First Division] citing LABOR CODE, art. 243; IMPLEMENTING RULES AND REGULATIONS, Book V, Rule 11, sec. 1.

[93] Presidential Decree No. 442 (1974), sec. 276.

[94] *Arizala v. Court of Appeals*, 267 Phil. 615, 624 (1990) [Per J. Narvasa, First Division] citing LABOR CODE, art. 244; IMPLEMENTING RULES AND REGULATIONS, book V, rule 11, sec. 1.

The 1987 Constitution followed, stating that "[t]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged."[95] The State "shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law."[96] Article IX-B on the Civil Service Commission also states that "[t]he right to self-organization shall not be denied to government employees."[97]

Nonetheless, in the 1990 case of *Arizala v. Court of Appeals*,[98] this Court reiterated that the right of government employees to self-organize is not as extensive as in the private sector:

> However, the concept of the government employees' right of self-organization differs significantly from that of employees in the private sector. The latter's right of self-organization, i.e., "to form, join or assist labor organizations for purposes of collective bargaining," admittedly includes the right to deal and negotiate with their respective employers in order to fix the terms and conditions of employment and also, to engage in concerted activities for the attainment of their objectives, such as strikes, picketing, boycotts. But the right of government employees to "form, join or assist employees organizations of their own choosing" under Executive Order No. 180 is not regarded as existing or available for "purposes of collective bargaining," but simply "for the furtherance and protection of their interests."
>
> In other words, the right of Government employees to deal and negotiate with their respective employers is not quite as extensive as that of private employees. Excluded from negotiation by government employees are the "terms and conditions of employment . . . that are fixed by law," it being only those terms and conditions not otherwise fixed by law that "may be subject of negotiation between the duly recognized employees' organizations and appropriate government

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[95] CONST., art. III, sec. 8.

[96] CONST., art. XIII, sec. 3.

[97] CONST., art. IX-B, sec. 2 (5).

[98] 267 Phil. 615 (1990) [Per J. Narvasa, First Division].

authorities." And while EO No. 180 concedes to government employees, like their counterparts in the private sector, the right to engage in concerted activities, including the right to strike, the executive order is quick to add that those activities must be exercised in accordance with law, i.e., are subject both to "Civil Service Law and rules" and "any legislation that may be enacted by Congress," that "the resolution of complaints, grievances and cases involving government employees" is not ordinarily left to collective bargaining or other related concerted activities, but to "Civil Service Law and labor laws and procedures whenever applicable"; and that in case "any dispute remains unresolved after exhausting all available remedies under existing laws and procedures, the parties may jointly refer the dispute to the (Public Sector Labor-Management) Council for appropriate action." What is more, the Rules and Regulations implementing Executive Order No. 180 explicitly provide that since the "terms and conditions of employment in the government, including any political subdivision or instrumentality thereof and government-owned and controlled corporations with original charters are governed by law, the employees therein shall not strike for the purpose of securing changes thereof."

On the matter of limitations on membership in labor unions of government employees, Executive Order No. 180 declares that "high level employees whose functions are normally considered as policy making or managerial, or whose duties are of a highly confidential nature shall not be eligible to join the organization of rank-and-file government employees.["] A "high level employee" is one "whose functions are normally considered policy determining, managerial or one whose duties are highly confidential in nature. A managerial function refers to the exercise of powers such as: 1. To effectively recommend such managerial actions; 2. To formulate or execute management policies and decisions; or 3. To hire, transfer, suspend, lay off, recall, dismiss, assign or discipline employees."[99] (Citations omitted)

Exercising her legislative powers,[100] on June 1, 1987, then President Aquino issued Executive Order No. 180, entitled *Providing Guidelines for the Exercise of the Right to Organize*

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[99] Id. at 629-631.

[100] CONST., art. XVIII, sec. 6.

of Government Employees, Creating a Public Sector Labor-Management Council and for Other Purposes.[101]

Executive Order No. 180 created a Public Sector Labor-Management Council (PSLMC), which was composed of officers who shall implement Executive Order No. 180:

> SECTION 15. A Public Sector Labor-Management Council, hereinafter referred to as the Council, is hereby constituted to be composed of the following:
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> | | | |
> |---|---|---|
> | 1) | Chairman, Civil Service Commission | Chairman |
> | 2) | Secretary, Department of Labor and Employment | Vice-Chairman |
> | 3) | Secretary, Department of Finance | Member |
> | 4) | Secretary, Department of Justice | Member |
> | 5) | Secretary, Department of Budget and Management | Member |
>
> The Council shall implement and administer the provisions of this Executive Order. For this purpose, ***the Council shall promulgate the necessary rules and regulations to implement this Executive Order***. (Emphasis supplied)

Subsequently, PSLMC issued the Implementing Rules and Regulations of Executive Order No. 180.[102]

On November 14, 2002, PSLMC issued Resolution No. 4, series of 2002, entitled *Grant of Collective Negotiation Agreement (CNA) Incentive for National Government Agencies, State Universities and Colleges and Local Government Units*. It also issued Resolution No. 2, series of 2003, entitled *Grant of Collective Negotiation Agreement (CNA) Incentive for Government Owned or Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs)*.[103]

PSLMC Resolution No. 4, which covers national government agencies, provides that "CNA Incentive can be paid every year

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[101] *Rollo*, pp. 140, 248, and 280.

[102] Available at <http://www.csc.gov.ph/2014-02-21-08-28-23/pdf-files/category/65-irr-of-e-o-180.html> (last accessed on November 10, 2020).

[103] Available at <http://www.csc.gov.ph/2014-02-21-08-28-23/pdf-files/category/107-pslmc-resolution-no-2,-s-2003-re-grant-of-cna-incentive-for-goccs-and-gfis> (last visited on November 10, 2020).

that savings are generated during the life of the CNA,"[104] and "[s]hould the grant of CNA Incentive be disallowed by the Commission on Audit, the management shall be held personally responsible for the payment thereof."[105] The Resolution defined "savings,"[106] and provided for its apportionment as follows:

> SECTION 5. Total Savings, as defined in Section 3 and net of the priorities in Section 4, generated after the signing of the CNA shall be apportioned, as follows:
>
> Fifty percent (50%) for CNA Incentive.
>
> Thirty percent (30%) for improvement of working conditions and other programs and/or to be added as part of the CNA Incentive, as may be agreed upon in the CNA.
>
> Twenty percent (20%) to be reverted to the General Fund for the national government agencies or to the General Fund of the constitutional commissions, state universities and colleges, and local government units concerned, as the case may be.

On August 31, 2004, former President Gloria Macapagal-Arroyo (President Arroyo) issued Administrative Order No. 103, entitled *Directing the Continued Adoption of Austerity Measures in the Government*.CNA incentive falls under the exceptions from the direction to suspend grants of new or additional benefits:

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[104] PSLMC Resolution No. 4 (2002), sec. 7.

[105] PSLMC Resolution No. 4 (2002), sec. 8.

[106] PSLMC Resolution No. 4 (2002), sec. 3 provides:

SECTION 3. Savings refer to such balances of the agency's released allotment for the year, free from any obligation or encumbrance and which are no longer intended for specific purpose/s:
(a) After completion of the work/activity for which the appropriation is authorized;
(b) Arising from unpaid compensation and related costs pertaining to vacant positions; or
(c) Realized from the implementation of the provisions of the CNA which resulted in improved systems and efficiencies thus enabled the agency to meet and deliver the required or planned targets, programs and services approved in the annual budget at a lesser cost.

SECTION 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from Salary Standardization Law or not, are hereby directed to:

. . . .

(b) Suspend the grant of new or additional benefits to full-time officials and employees and officials, except for (i) Collective Negotiation Agreement (CNA) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor-Management Council Resolutions No. 04, s. 2002 and No. 2, s. 2003, and (ii) those expressly provided by presidential issuance[.]

On September 28, 2004, PSLMC issued Resolution No. 2, series of 2004, entitled *Approving and Adopting the Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize*.[107] The amended rules and regulations lists CNA incentive under negotiable matters:

RULE XII
COLLECTIVE NEGOTIATIONS

SECTION 1. Subject of negotiation. — Terms and conditions of employment or improvements thereof, except those that are fixed by law, may be the subject of negotiation.

SECTION 2. Negotiable matters. — The following concerns may be the subject of negotiation between the management and the accredited employees' organization:

. . . .

(m) CNA incentive pursuant to PSLMC Resolution No. 4, s. 2002 and Resolution No. 2, s. 2003;[108] and,

(n) such other concerns which are not prohibited by law and CSC rules and regulations. (Emphasis supplied)

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[107] Available at <http://www.csc.gov.ph/2014-02-21-08-28-23/pdf-files/category/103-pslmc-resolution-no-2,-s-2004-re-approving-and-adopting-the-amended-rules-and-regulations.html> (last accessed on November 10, 2020).

[108] PSLMC Resolution No. 2 (2003), entitled *Grant of Collective Negotiation Agreement (CNA) Incentive for Government Owned or Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs)*, May 19, 2003.

. . . .

SECTION 5. Other matters. — Nothing herein shall be construed to prevent any of the parties from submitting proposals regarding other matters to Congress and the proper authorities to improve the terms and conditions of their employment.

On December 27, 2005, President Arroyo issued Administrative Order No. 135, authorizing the grant of CNA incentives to government employees and mandating the Department of Budget and Management to issue its implementing guidelines.[109] This reads:

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

SECTION 1. Grant of Incentive. — The grant of the Collective Negotiation Agreement (CNA) incentive to national government agencies (NGAs), local government units (LGUs), state universities and colleges (SUCs),government-owned or controlled corporations (GOCCs), and government financial institutions (GFIs), if provided in their respective CNAs and supplements thereto executed between the management and employees' organizations accredited by the Civil Service Commission, is hereby authorized.

Furthermore, the grant of the CNA incentive pursuant to CNAs entered into on or after the effectivity of PSLMC Resolution No. 4, series of 2002, and PSLMC Resolution No. 2, series of 2003, and in strict compliance therewith, is confirmed.

SECTION 2. Limitation. — The CNA incentive shall be granted only to rank-and-file employees. The existing CNA incentive shall be rationalized to simplify its administration and to preclude duplication with incentives granted through the Program on Awards and Incentives for Service Excellence (PRAISE).

SECTION 3. Cost-Cutting Measures and Systems Improvement. — The management and the accredited employees' organization shall identify in the CNA the cost-cutting measures and systems improvement to be jointly undertaken by them so as to achieve effective service delivery and agency targets at lesser costs.

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[109] *Rollo*, p. 7.

SECTION 4. Savings as Source. — The CNA Incentive shall be sourced only from the savings generated during the life of the CNA.

SECTION 5. Release of Incentive. — The CNA Incentive may be paid every year that savings are generated during the life of the CNA.

SECTION 6. Implementation. — The Department of Budget and Management shall issue the policy and procedural guidelines to implement this Administrative Order.

SECTION 7. Effectivity. — This Administrative Order shall take effect immediately.

DONE in the City of Manila, this 27th day of December in the year of Our Lord, Two Thousand Five.

Following this, on February 1, 2006, the Department of Budget and Management issued Budget Circular No. 2006-1, which provided the policy and procedural guidelines in the grant and funding of CNA incentive. Under these guidelines, the incentive shall be paid as a one-time benefit after the end of the year; it shall be sourced solely from savings from released Maintenance and Other Operating Expenses allotments, subject to conditions; and the amount of CNA incentive shall not be pre-determined in the CNA.[110]

Arizala discussed Executive Order No. 180 on the scope of government employees' constitutional right to self-organization:

> However, the concept of the government employees' right to self-organization differs significantly from that of employees in the private sector. The latter's right of self-organization, i.e.,"to form, join or assist labor organizations *for purposes of collective bargaining*," admittedly includes the right to deal and negotiate with their respective employers in order to fix the terms and conditions of employment and also, to engage in concerted activities for the attainment of their objectives, such as strikes, picketing, boycotts. But the right of government employees to "form, join or assist employees organizations of their own choosing" under Executive Order No. 180 is not regarded as existing or available for "purposes of collective bargaining," but simply "for the furtherance and protection of their interests."

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[110] *Rollo*, pp. 109-111 and 142.

In other words, the right of Government employees to deal and negotiate with their respective employers is not quite as extensive as that of private employees. ***Excluded from negotiation by government employees are the "terms and conditions of employment ...that are fixed by law,"*** it being only those terms and conditions not otherwise fixed by law that "may be subject of negotiation between the duly recognized employees' organizations and appropriate government authorities."[111] (Emphasis supplied)

Laws fixing employment terms and conditions include Republic Act No. 6758, or the Salary Standardization Law.

In *Social Security System v. Commission on Audit*,[112] this Court affirmed the Commission on Audit decision disallowing the payment of ₱5,000.00 as signing bonus to Social Security System employees pursuant to their CNA.

This Court cited Executive Order No. 180, Republic Act No. 6758, and *Philippine Ports Authority v. Commission on Audit*[113] for its ruling that "no financial or non-financial incentive could be awarded to employees of government owned and controlled corporations aside from benefits which were being received by incumbent officials and employees as of 1 July 1989."[114] This Court discussed:

On the basis of the foregoing pronouncement, we do not find the signing bonus to be a truly reasonable compensation. The gratuity was of course the SSC's gesture of good will and benevolence for the conclusion of collective negotiations between SSC and ACCESS, as the CNA would itself state, but for what objective? Agitation and propaganda which are so commonly practiced in private sector labor-management relations have no place in the bureaucracy and that only a peaceful collective negotiation which is concluded within a reasonable

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[111] *Arizala v. Court of Appeals*, 267 Phil. 615, 629 (1990) [Per J. Narvasa, First Division].

[112] 433 Phil. 946 (2002) [Per J. Bellosillo, En Banc].

[113] 289 Phil. 266 (1992) [Per J. Gutierrez, Jr., En Banc].

[114] *Social Security System v. Commission on Audit*, 433 Phil. 946, 959 (2002) [Per J. Bellosillo, En Banc].

time must be the standard for interaction in the public sector. This desired conduct among civil servants should not come, we must stress, with a price tag which is what the signing bonus appears to be.[115]

In 2012, this Court decided *Manila International Airport Authority v. Commission on Audit*,[116] which also involved the grant of CNA "contract signing bonus" worth ₱30,000.00.

The grant was found to be in the nature of a signing bonus, and thus, an illegal disbursement. This Court noted that "even assuming that the subject benefit is a CNA Incentive, [Manila International Airport Authority]'s non-compliance with the requirements under PSLMC Resolution No. 2 and DBM Budget Circular No. 2006-1 rendered the same illegal[.]"[117] This Court then discussed that Budget Circular No. 2006-1 is consistent with and germane to the purpose of PSLMC Resolution No. 2 and Administrative Order No. 135:

> Interestingly, MIAA claimed that the subject benefit is a CNA Incentive but refused to comply with DBM Budget Circular No. 2006-1, raising the unconstitutionality thereof as the reason for its non-submission of its COB for the DBM's approval and the release of the benefit prior to the end of 2003. Allegedly, there is a conflict between DBM Budget Circular No. 2006-1 and A.O. No. 135 as there is nothing in the latter, which requires the COB to be submitted for DBM's validation and the payment of the CNA Incentive at the end of the year.
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> However, the said conflict is more imagined than real. A cursory reading of DBM Budget Circular No. 2006-1 shows that its provisions are consistent with those of PSLMC Resolution No. 2 and A.O. No. 135. There is no clear showing that the former secretary of DBM transcended the demarcations fixed by A.O. No. 135 in the exercise of her rule-making power.
>
> Particularly, the requirement that the COB should be submitted to the President through the DBM for approval is already a pre-existing requirement under Section 4, PSLMC Resolution No. 2. Such

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[115] Id. at 963.

[116] 681 Phil. 644 (2012) [Per J. Reyes, En Banc].

[117] Id. at 663.

requirement is likewise consistent with Section 5, Presidential Decree No. 1597 and Memorandum Order No. 20 dated June 25, 2001 mentioned in the 5th and 6th Whereas Clauses of A.O. No. 135. With respect to the requirement that the CNA Incentive be released after the end of the year, this does not contravene any provision of A.O. No. 135 and PSLMC Resolution No. 2. By specifying the time when the CNA Incentive may be released to the rank-and-file employees, the former DBM Secretary was merely supplying a detail necessary for the proper implementation of A.O. No. 135. *The assailed provisions of DBM Budget Circular No. 2006-1 are germane to the purposes and objectives of A.O. No. 135 and PSLMC Resolution No. 2 and not much is required to appreciate its rationale: to ensure that the CNA Incentive will be paid only if the actual operating income meets or exceeds the target fixed in COB and will be funded by the savings generated from cost-reducing measures and no other*. Without further extrapolation, these amounts remain to be mere approximations until the end of the year.[118] (Emphasis supplied, citation omitted)

The following guidelines on the basic concept of CNA negotiations take into account the relevant provisions of the Constitution, statutes, their implementing rules and regulations, as well as jurisprudence on the matter:

a) The right to collective negotiation in the public sector is a constitutionally protected right subject to the conditions stated in the Constitution and as may be provided supplementarily by law;

b) All CNAs negotiated must be consistent with law and implementing regulations;

c) The flexibilities of government agencies are limited by law. Wage benefits are subject to the Salary Standardization Law. Non-wage benefits are subject to regulations issued by the Civil Service Commission;

d) The grant of wage benefits is also subject to the constitutional and statutory authorizations for the use of appropriations and savings;

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[118] Id. at 665-666.

e) Unlike in the private sector, negotiations in the public sector must always consider the public interest and take the governmental role of the agency or office into primordial concern;

f) All employees are public officers and are thus subject to public trust and statutory limitations on matters including their conduct;

g) Incumbent heads of offices are temporary; and

h) Members of Congress, representing their constituents, including union members, can change the law.

III

Here, petitioners assail Budget Circular No. 2011-5 for constituting legislation.[119] They say that respondent Secretary Abad has no power to "issue guidelines, to disallow [or] set limit or conditions in the grant of [CNA incentives]."[120]

Petitioners submit that Sections 3.2,[121] 3.3,[122] and 3.4[123] of the Circular are unconstitutional for limiting the sources of the

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[119] *Rollo*, p. 334.

[120] Id. at 336 and 345-347.

[121] Budget Circular No. 2011-5 (2011), sec. 3.2 states:
3.2 The CNA Incentive shall be sourced solely from agency savings from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review, limited to the MOOE items in 3.3 hereof, still valid for obligation during the same year, subject to the following conditions:
3.2.1 The savings were generated out of the improvement/streamlining of systems and procedures and cost-cutting measures identified in the CNA;
3.2.2 The savings shall be net of the priorities in the use thereof such as, augmentation of the amounts set aside for compensation, year-end bonus and cash gift, retirement gratuity, terminal leave benefits, old-age pension of veterans, and other personnel benefits authorized by law, and those expenditure items authorized in agency special provisions and in other sections of the General Provisions of the FY 2011 GAA; and
3.2.3 The specific expenditure item to be used as source of the CNA Incentive should not be augmented from other items under Personal Services, MOOE, or Capital Outlay.
See copy of the Circular Letter on <https://www.dbm.gov.ph/wp-content/uploads/Issuances/2011/Circular%20Letter/CL2011-9/cl2011-9.pdf> (last accessed on November 10, 2020).

CNA incentive. This, they contend, makes the Circular contrary to and effectively amending Section 4 of Administrative Order No. 135, which neither limits the source of the savings nor fixes a maximum amount of CNA incentive.[124]

Respondent Secretary Abad counters that the Circular is valid and consistent with laws and jurisprudence.[125]

He cites provisions of Presidential Decree No. 985, the Administrative Code, and Republic Act No. 6758 in support of the argument that the Department of Budget and Management "has the sole power and discretion to administer the Compensation and Position Classification System of the National Government, which includes the rules on the grant of CNA incentive."[126] Administrative Order No. 135 also specifically

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[122] Budget Circular No. 2011-5 (2011), sec. 3.3 states:
3.3 Savings from only the following MOOE items may be used as fund source of the CNA Incentive, subject to the provisions of item 3.4 hereof:
3.3.1 Traveling Expenses
3.3.2 Communication Expenses
3.3.3 Repair and Maintenance
3.3.4 Transportation and Delivery Expenses
3.3.5 Supplies and Materials
3.3.6 Utility Expenses
See copy of the Circular Letter on <https://www.dbm.gov.ph/wp-content/uploads/Issuances/2011/Circular%20Letter/CL2011-9/cl2011-9.pdf> (last accessed on November 10, 2020).

[123] Budget Circular No. 2011-5 (2011), sec. 3.4 states:
Savings generated from the following circumstances are not allowed to be used as fund source of the CNA Incentive:
3.4.1 Portions or balances of allotments for discounted or deferred P/A/Ps;
3.4.2 Savings from released allotments intended for the acquisition of goods and services that will be distributed/delivered to, or to be used by the agency's clients; and
3.4.3 Savings from released allotments from Special Purpose Funds such as, E-Government Fund, International Commitments Fund, etc.
See copy of the Circular Letter on <https://www.dbm.gov.ph/wp-content/uploads/Issuances/2011/Circular%20Letter/CL2011-9/cl2011-9.pdf> (last accessed on November 10, 2020).

[124] *Rollo*, p. 338.

[125] Id. at 286.

[126] Id. at 290-291.

authorizes the Department to issue the policy and procedural guidelines on the grant of CNA incentives.[127]

Respondent Secretary Abad adds that the Circular is consistent with the policy and principles of Administrative Order No. 135, quoting this Court's ruling in *Manila International Airport Authority*.[128] The ₱25,000.00 cap, he says, "ensure[s] that the planned targets, programs and projects are not hampered by the observed perverse tendency of agencies of scrimping on vital expenditures or bloating their budgets just so as to accumulate savings for payment of the CNA incentive."[129]

For her part, respondent Secretary Soliman argues that the circular's issuance is a lawful exercise of executive and administrative power.[130] She quotes *Blaquera v. Alcala*,[131] which differentiated private from government employees in that the latter's employment terms and conditions are "effected through statutes or administrative circulars, rules and regulations, not through collective bargaining agreements."[132] She adds that the Budget Secretary, as the President's alter ego, has rule-making powers to issue policies and procedural guidelines to implement Administrative Order No. 135.[133]

To rule on this issue, we consider the relevant laws and regulations on government employees' right to organize and negotiate, specifically for CNA incentives.

Executive Order No. 180 created the PSLMC as the body to implement and administer government employees' right to organize. Section 15 provides for its creation, stating that the

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[127] *Id*. at 291.

[128] 681 Phil. 644 (2012) [Per J. Reyes, En Banc]. See *rollo*, p. 292.

[129] *Rollo*, p. 293.

[130] Id. at 261.

[131] 356 Phil. 678 (1998) [Per J. Purisima, En Banc].

[132] *Rollo*, p. 263.

[133] Id. at 264-265.

PSLMC "shall promulgate the necessary rules and regulations to implement this Executive Order."[134]

Former President Aquino issued Executive Order No. 180 on June 1, 1987, after the 1987 Constitution had been ratified but before the first Congress convened. Thus, this order is in the nature of a statute.

The Department of Budget and Management recognizes that Administrative Order No. 135, issued in 2005, merely "confirmed the grant of the CNA Incentive in strict compliance with the said PSLMC Resolutions[.]"[135]

Pursuant to Section 15 of Executive Order No. 180, PSLMC issued several resolutions including PSLMC Resolution No. 4, series of 2002.

PSLMC Resolution No. 4 recognized this Court's ruling in *Social Security System*, which prohibited the grant of signing bonus by stating that, "during the negotiation, the parties may agree on some other kinds and forms of incentive to those who have contributed either in productivity or cost savings which are referred herein as CNA Incentive."[136]

PSLMC Resolution No. 4 clearly limited the sources of the CNA incentive such that "only savings generated after the signing of the CNA may be used" for it.[137] The Resolution defined "savings" as "such balances of the agency's released allotment for the year, free from any obligation or encumbrance and which are no longer intended for specific purpose/s[.]"[138] It even provided for its apportionment as follows:

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[134] Executive Order No. 180 (1987), sec. 15.

[135] Budget Circular No. 2006-1 (2006), sec. 1, available at <https://www.dbm.gov.ph/wp-content/uploads/2012/03/BC-2006-1.pdf> (last visited on November 10, 2020).

[136] PSLMC Resolution No. 4 (2002), whereas clauses.

[137] PSLMC Resolution No. 4 (2002), sec. 1.

[138] PSLMC Resolution No. 4 (2002), sec. 3.

Section 3. Savings refer to such balances of the agency's released allotment for the year, free from any obligation or encumbrance and which are no longer intended for specific purpose/s:

Section 5. Total Savings, as defined in Section 3 and net of the priorities in Section 4, generated after the signing of the CNA shall be apportioned, as follows:

Fifty percent (50%) for CNA Incentive.

Thirty percent (30%) for improvement of working conditions and other programs and/or to be added as part of the CNA Incentive, as may be agreed upon in the CNA.

Twenty percent (20%) to be reverted to the General Fund for the national government agencies or to the General Fund of the constitutional commissions, state universities and colleges, and local government units concerned, as the case may be.[139]

PSLMC Resolution No. 4 also provides that CNA incentives "can be paid every year that savings are generated during the life of the CNA."[140] If the grant of CNA Incentive is disallowed, "the management shall be held personally responsible for the payment thereof."[141]

Thus, Section 3.2 of Budget Circular No. 2011-5—which limits the sources of CNA incentives "solely from agency savings from released Maintenance and Other Operating Expenses (MOOE) allotments for the year under review, limited to the MOOE Items in 3.3 hereof, still valid for obligation during the same year, subject to the following conditions"[142] —is consistent with PSLMC Resolution No. 4.

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a. After completion of the work/activity for which the appropriation is authorized;
b. Arising from unpaid compensation and related costs pertaining to vacant positions; or
c. Realized from the implementation of the provisions of the CNA which resulted in improved systems and efficiencies thus enabled the agency to meet and deliver the required or planned targets, programs and services approved in the annual budget at a lesser cost.

[139] PSLMC Resolution No. 4 (2002), sec. 5.

[140] PSLMC Resolution No. 4 (2002), sec. 7.

[141] PSLMC Resolution No. 4 (2002), sec. 8.

[142] Budget Circular No. 2011-5 (2011), sec. 3.2.

Incidentally, Budget Circular No. 2006-1 is also consistent with PSLMC Resolution No. 4. It limited the sources of CNA incentives such that the amount "[s]hall not be pre-determined in the CNAs or in the supplements thereto since it is dependent on savings generated from cost-cutting measures and systems improvement, and also from improvement of productivity and income in [government-owned and controlled corporations] and [government financial institutions.]"[143] It also provided that CNA incentives "[m]ay vary every year during the term of the CNA, at rates depending on the savings generated after the signing and ratification of the CNA[.]"[144] It even included the apportionments of savings in Section 5 of PSLMC Resolution No. 4.[145]

Notably, the ₱25,000.00 ceiling amount under Section 3.5 of Budget Circular No. 2011-5 cannot be found in PSLMC Resolution No. 4. On this score, respondent Secretary Abad cites three laws as basis for the ceiling amount. Section 17 of Presidential Decree No. 985[146] states:

> SECTION 17. Powers and Functions. — The Budget Commission, principally through the OCPC shall, in addition to those provided under other Sections of this Decree, have the following powers and functions:
>
> a. Administer the compensation and position classification system established herein and revise it as necessary; (as amended by Republic Act No. 6758)
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> . . . .
>
> g. Provide the required criteria and guidelines, in consultation with agency heads as may be deemed necessary and subject to the approval of the Commissioner of the Budget, for the grant of

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[143] Budget Circular No. 2006-1 (2006), sec. 5.6.1.

[144] Budget Circular No. 2006-1 (2006), sec. 5.6.3.

[145] Budget Circular No. 2006-1 (2006), sec. 6.1.3.

[146] Presidential Decree No. 985 (1976) entitled *A Decree Revising the Position Classification and Compensation Systems in the National Government, and Integrating the Same.*

all types of allowances and additional forms of compensation to employees in all agencies of the government;

Meanwhile, Book IV, Title XVII, Chapter 1, Section 3 of the Administrative Code of 1987 provides the Department of Budget and Management's powers and functions:

SECTION 3. Powers and Functions. — The Department of Budget and Management shall assist the President in the preparation of a national resources and expenditures budget, preparation, execution and control of the National Budget, preparation and maintenance of accounting systems essential to the budgetary process, achievement of more economy and efficiency in the management of government operations, administration of compensation and position classification systems, assessment of organizational effectiveness and review and evaluation of legislative proposals having budgetary or organizational implications.

Section 6 of Administrative Order No. 135, for its part, authorizes the grant of CNA incentives:

SECTION 6. Implementation. — The Department of Budget and Management shall issue the policy and procedural guidelines to implement this Administrative Order.

Following the mandate of Administrative Order No. 135,[147] the Department of Budget and Management issued Budget Circular No. 2006-1, Circular Letter No. 2011-9, and the assailed Budget Circular No. 2011-5.

Respondent Secretary Abad adds that a CNA incentive ceiling is consistent with Administrative Order No. 135 by guarding against tendencies to manipulate the budget to accumulate savings:

Indeed, a delegated authority to issue guidelines must not go beyond the limits of the authority given. In all the issuances i.e., the pertinent PSLMC issuances and AO No. 135, the driving force in the grant of the CNA Incentive is the recognition of the joint efforts of labor and management to achieve all planned targets, programs and services approved in the budget of the agency at a lesser cost. Consistent

[147] Administrative Order No. 135 (2005), sec. 6.

therewith, the provisions of Budget Circular No. 2011-5 were crafted along this policy consideration, thus, the need to put a cap on the grant of CNA Incentive, as with other forms of compensation and benefits.

To elucidate, the necessary and logical consequence of implementing this policy of efficiency is to provide limitations such as the identification of specific MOOE items and the ₱25,000 cap per entitled employee. Moreover, the funding source for the CNA Incentive is the savings generated from cost-efficiency measures adopted by the labor and management. Unlike basic salary which is provided in the national budget, the payment of CNA Incentive is dependent on the amount of allowable agency savings. *If there are no limits, both as to the savings that may be utilized as well as to the amount of incentive to be granted, public funds originally intended for programs and projects which for one reason or the other was not implemented, would be fully spent as payment of incentive without said funds being the byproduct of efficiency in agency operations, the very heart and soul in the grant of CNA Incentive*. Hence, the need for DBM to be circumspect and reflect these policy considerations through the guidelines.

. . . .

On the other hand, *the provision of the ₱25,000 cap per employee is to ensure that the planned targets, programs and projects are not hampered by the observed perverse tendency of agencies of scrimping on vital expenditures or bloating their budgets just so as to accumulate savings for payment of the CNA Incentive*. These factors — scrimping on vital expenditures or bloating of budgets — if present run counter to the policy behind the grant of CNA Incentive *i.e.*, recognizing the efforts of efficient use of government resources by labor and management of the different government agencies.[148] (Emphasis supplied)

This Court agrees. The ₱25,000.00 CNA incentive ceiling in Budget Circular No. 2011-5 is in consonance with law and existing rules.

Indeed, Executive Order No. 180 vested PSLMC with the power to promulgate rules to implement it. This, however, did

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[148] *Rollo*, pp. 292-293.

not deprive the Department of Budget and Management of its power to issue rules on compensation as a result of collective negotiations between government employees' organizations and their employers.

As the governmental body that administers the national government's compensation and position classification system,[149] the Department of Budget and Management controls the payment of compensation to all appointive and elective positions in government, including government-owned or controlled corporations and government financial institutions.[150] In *Commission on Human Rights Employees Association v. Commission on Human Rights*:[151]

> This power to "administer" is not purely ministerial in character as erroneously held by the Court of Appeals. The word to administer means to control or regulate in behalf of others; to direct or superintend the execution, application or conduct of; and to manage or conduct public affairs, as to administer the government of the state.
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> The regulatory power of the DBM on matters of compensation is encrypted not only in law, but in jurisprudence as well. In the recent case of *Philippine Retirement Authority (PRA) v. Jesusito L. Buñag*, this Court, speaking through Mr. Justice Reynato Puno, ruled that compensation, allowances, and other benefits received by PRA officials and employees without the requisite approval or authority of the DBM are unauthorized and irregular. In the words of the Court —

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[149] Republic Act No. 6758 (1989), sec. 2 states:

SECTION 2. Statement of Policy. — It is hereby declared the policy of the State 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. In determining rates of pay, due regard shall be given to, among others, prevailing rates in the private sector for comparable work. For this purpose, the Department of Budget and Management (DBM) is hereby directed to establish and administer a unified Compensation and Position Classification System, hereinafter referred to as the System, as provided for in Presidential Decree No. 985, as amended, that shall be applied for all government entities, as mandated by the Constitution.

[150] Republic Act No. 6758 (1989), sec. 4.

[151] 486 Phil. 509 (2004) [Per J. Chico-Nazario, Second Division].

> Despite the power granted to the Board of Directors of PRA to establish and fix a compensation and benefits scheme for its employees, the same is subject to the review of the Department of Budget and Management. However, in view of the express powers granted to PRA under its charter, the extent of the review authority of the Department of Budget and Management is limited. As stated in Intia, the task of the Department of Budget and Management is simply to review the compensation and benefits plan of the government agency or entity concerned and determine if the same complies with the prescribed policies and guidelines issued in this regard. The role of the Department of Budget and Management is supervisorial in nature, its main duty being to ascertain that the proposed compensation, benefits and other incentives to be given to PRA officials and employees adhere to the policies and guidelines issued in accordance with applicable laws.

In *Victorina Cruz v. Court of Appeals*, we held that the DBM has the sole power and discretion to administer the compensation and position classification system of the national government.

In *Intia, Jr. v. Commission on Audit*, the Court held that although the charter of the Philippine Postal Corporation (PPC) grants it the power to fix the compensation and benefits of its employees and exempts PPC from the coverage of the rules and regulations of the Compensation and Position Classification Office, by virtue of Section 6 of P.D. No. 1597, the compensation system established by the PPC is, nonetheless, subject to the review of the DBM. This Court intoned:

> It should be emphasized that the review by the DBM of any PPC resolution affecting the compensation structure of its personnel should not be interpreted to mean that the DBM can dictate upon the PPC Board of Directors and deprive the latter of its discretion on the matter. Rather, the DBM's function is merely to ensure that the action taken by the Board of Directors complies with the requirements of the law, specifically, that PPC's compensation system "conforms as closely as possible with that provided for under R.A. No. 6758."[152] (Citations omitted)

Administrative Order No. 135 authorizes the grant of CNA incentives to "national government agencies (NGAs), local

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[152] Id. at 527-529.

government units (LGUs), state universities and colleges (SUCs), government-owned or controlled corporations (GOCCs), and government financial institutions (GFIs), if provided in their respective CNAs and supplements thereto executed between the management and employees' organization accredited by the Civil Service Commission[.]"[153] Its Section 6 grants the power to issue the policy and procedural guidelines to the Department of Budget and Management:

> SECTION 6. Implementation. — The Department of Budget and Management shall issue the policy and procedural guidelines to implement this Administrative Order.

In this regard, as pointed out by Associate Justice Estela Perlas-Bernabe in her Separate Concurring Opinion, government appropriations acts have over the years included provisions that limited approved CNA incentives to reasonable rates as determined by the Department of Budget and Management.[154]

Republic Act No. 10155, or the General Appropriations Act of 2012, states:

> SECTION 56. Rules in the Realignment of Funds. — Realignment of funds from one allotment class to another shall require prior approval of the DBM.
>
> Departments, agencies and offices are authorized to augment any item of expenditure within Personal Services and MOOE except confidential and intelligence funds which require prior approval of the President of the Philippines. However, realignment of funds among objects of expenditures within Capital Outlays shall require prior approval of the DBM.
>
> Notwithstanding the foregoing, realignment of any savings for the payment of magna carta benefits authorized under Section 41 hereof shall require prior approval of the DBM. Moreover, the use of savings for the payment of Collective Negotiation Agreement (CNA) incentives by agencies with approved and successfully implemented CNAs pursuant to DBM Budget Circular No. 2006-1 dated February

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[153] Administrative Order No. 135 (2005), sec. 1.

[154] J. Perlas-Bernabe, Separate Opinion.

1, 2006 shall be limited to such reasonable rates as may be determined by the DBM.

Republic Act No. 10352, or the General Appropriations Act of 2013, states:

SECTION 55. Rules in the Realignment of Savings for the Payment of Collective Negotiation Agreement Incentives. — Savings from allowable MOOE allotments generated out of cost-cutting measures identified in the Collective Negotiation Agreements (CNAs) and supplements thereto may be used for the grant of CNA incentive by agencies with duly executed CNAs: PROVIDED, That the one-time annual payment of CNA incentives must be made through a written resolution signed by representatives of both labor and management, and approved by the agency head: PROVIDED, FURTHER, That the funding sources and amount of CNA incentives shall, in all cases, be limited to the allowable MOOE allotments and rates determined by the DBM, respectively.

Implementation of this provision shall be governed by DBM Budget Circular Nos. 2006-1 and 2011-5 and such other issuances that may be issued by the DBM for the purpose.

Republic Act No. 10633, or the General Appropriations Act for 2014, states:

SECTION 71. Rules in the Realignment of Savings for the Payment of Collective Negotiation Agreement Incentives. — Savings from allowable MOOE allotments, generated out of cost-cutting measures undertaken by the agencies of the government and their respective personnel, which are identified in their respective Collective Negotiation Agreements (CNAs) and supplements thereto may be used for the grant of CNA Incentives by agencies with duly executed CNAs: PROVIDED, That the one-time annual payment of CNA Incentive shall be made through a written resolution signed by agency representatives from both labor and management, and approved by the agency head: PROVIDED, FURTHER, That the funding sources and amount of CNA Incentive shall in all cases be limited to the allowable MOOE allotments and rates determined by the DBM, respectively: PROVIDED, FINALLY, That the realignment of savings from the allowable MOOE allotments shall be subject to approval by the DBM.

Implementation of this provision shall be subject to guidelines issued by the DBM.

Clearly, in imposing a ₱25,000.00 budget ceiling for CNA incentives, the Department of Budget and Management acted within its authority granted by law and existing rules.

IV

The issues raised by the parties opened questions on the validity of Section 15 of Executive Order No. 180, which created the PSLMC, and the effect of this issue on PSLMC's acts and issuances, such as PSLMC Resolution No. 4, series of 2002.

In their Supplemental Memorandum, respondents discussed that Executive Order No. 180 was issued when then President Aquino could lawfully exercise legislative powers.[155] As such, respondents submit that "she may delegate to the PSLMC the power to fill in the details in the execution, enforcement or administration of Executive Order No. 180, including the power to issue guidelines for the exercise of public sector unionism and to determine the apportionment of incentives to government employees, as provided in Resolution No. 4 series of 2002."[156] The Administrative Code[157] reiterates, under the umbrella of the Civil Service Commission, PSLMC's role in the exercise of the government employees' right to organize.[158]

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[155] *Rollo*, p. 469.

[156] Id. at 469-470.

[157] Executive Order No. 292 (1987), Book V, Title I, Ch. 6, sec. 45 provides:
SECTION 45. *The Public Sector Labor-Management Council.* — A Public Sector Labor-Management Council is hereby constituted to be composed of the following: The Chairman of the Civil Service Commission, as Chairman; the Secretary of Labor and Employment, as Vice-Chairman; and the Secretary of Finance, the Secretary of Justice and the Secretary of Budget and Management, as members. The Council shall implement and administer the provisions of this Chapter. For this purpose, the Council shall promulgate the necessary rules and regulations to implement this Chapter.

[158] *Rollo*, p. 475.

Respondents contend that the details in PSLMC Resolution No. 4 are "guideposts germane to the objective of the Constitution, Executive Order No. 180 and the Administrative Code of 1987 to promote and improve the terms and conditions of employment of government employees, *subject only to the limitations that are already fixed by law*."[159]

Respondents submit that as the government's central personnel agency, the Civil Service Commission's role "necessarily includes the power to ensure that the statutory provisions relating to the terms and conditions of employment of civil servants are implemented."[160] This means that when Executive Order No. 180 designated the Civil Service Commission Chair as PSLMC Chair, the Civil Service Commission "was simply performing its mandate to 'perform all functions properly belonging to a central personnel agency and *such other functions as may be provided by law*.'"[161]

Moreover, respondents note that Section 15 of Executive Order No. 180 did not subsume the Civil Service Commission under the executive branch, but even strengthened its independence as a constitutional commission by empowering its Chair and other PSLMC members to set the guidelines for government employees' right to organize.[162] Neither did Executive Order No. 180 grant the Commission powers other than those in Article IX-B of the Constitution, considering the proviso that it "shall perform . . . such other functions as may be provided by law." Such law includes Section 45 of the Administrative Code.[163] In other words, respondents argue that the PSLMC issuances implement and detail the broad policies in the Constitution and laws on the government employees' right to self-organization.[164]

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[159] Id. at 471.

[160] Id. at 477.

[161] Id.

[162] Id.

[163] Id. at 478.

[164] Id.

This Court reiterates that for a constitutional question to be traversed, the alleged violation "must be so demonstrably and urgently egregious that it outweighs a reasonable policy of deference in such specific instance."[165] Nonetheless, Section 15 of Executive Order No. 180, which designated the Civil Service Commission Chair as the PSLMC Chair, seemingly conflicts with the prohibitions imposed upon members of constitutional bodies designed to protect their independence. If such designation is unconstitutional, it puts into serious doubt the legality of PSLMC's acts.

For this reason, this Court resolves and confirms the validity of the designation of the Chair of the Civil Service Commission as the Chair of the PSLMC for being consistent with the Constitution.

The Civil Service Commission is an independent[166] constitutional body governed by Article IX-B of the Constitution. It is composed of a Chairperson and two Commissioners,[167] appointed by the President with the consent of the Commission on Appointments.[168] Section 3 provides its powers and functions:

> 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.[169]

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[165] *Parcon-Song v. Song*, G.R. No. 199582, July 7, 2020 [Per J. Leonen, En Banc].

[166] CONST., art. IX-A, sec. 1.

[167] CONST., art. IX-B, sec. 1.

[168] CONST., art. IX-B, sec. 2.

[169] CONST., art. IX-B, sec. 3.

In *Funa v. Chairman, Civil Service Commission*,[170] this Court held that Article IX-A, Section 2 of the Constitution must be read in conjunction with Article IX-B, Section 7, paragraph 2:

> The underlying principle for the resolution of the present controversy rests on the correct application of Section 1 and Section 2, Article IX-A of the 1987 Constitution, which provide:
>
> > Section 1. The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.
> >
> > Section 2. No Member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.
>
> Section 1, Article IX-A of the 1987 Constitution expressly describes all the Constitutional Commissions as "independent." Although their respective functions are essentially executive in nature, they are not under the control of the President of the Philippines in the discharge of such functions. Each of the Constitutional Commissions conducts its own proceedings under the applicable laws and its own rules and in the exercise of its own discretion. Its decisions, orders and rulings are subject only to review on *certiorari* by the Court as provided by Section 7, Article IX-A of the 1987 Constitution. To safeguard the independence of these Commissions, the 1987 Constitution, among others, imposes under Section 2, Article IX-A of the Constitution certain inhibitions and disqualifications upon the Chairmen and members to strengthen their integrity, to wit:
>
> > (a) Holding any other office or employment during their tenure;
> >
> > (b) Engaging in the practice of any profession;

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[170] 748 Phil. 169 (2014) [Per J. Bersamin, En Banc].

(c) Engaging in the active management or control of any business which in any way may be affected by the functions of his office; and

(d) Being financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies or instrumentalities, including government-owned or – controlled corporations or their subsidiaries.

The issue herein involves the first disqualification abovementioned, which is the disqualification from holding any other office or employment during Duque's tenure as Chairman of the CSC. The Court finds it imperative to interpret this disqualification in relation to Section 7, paragraph (2), Article IX-B of the Constitution and the Court's pronouncement in *Civil Liberties Union v. Executive Secretary*.

Section 7, paragraph (2),Article IX-B reads:

Section 7. ...

Unless otherwise allowed by law or the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

In *Funa v. Ermita*, where petitioner challenged the concurrent appointment of Elena H. Bautista as Undersecretary of the Department of Transportation and Communication and as Officer-in-Charge of the Maritime Industry Authority, the Court reiterated the pronouncement in *Civil Liberties Union v. The Executive Secretary* on the intent of the Framers on the foregoing provision of the 1987 Constitution, to wit:

Thus, while all other appointive officials in the civil service are allowed to hold other office or employment in the government during their tenure when such is allowed by law or by the primary functions of their positions, members of the Cabinet, their deputies and assistants may do so only when expressly authorized by the Constitution itself. In other words, Section 7, Article IX-B is meant to lay down the general rule applicable to all elective and appointive public officials and employees, while Section 13, Article VII is meant to be the exception applicable only to the President, the Vice-President, Members of the Cabinet, their deputies and assistants.

. . . .

> Since the evident purpose of the framers of the 1987 Constitution is to impose a stricter prohibition on the President, Vice-President, members of the Cabinet, their deputies and assistants with respect to holding multiple offices or employment in the government during their tenure, the exception to this prohibition must be read with equal severity. On its face, the language of Section 13, Article VII is prohibitory so that it must be understood as intended to be a positive and unequivocal negation of the privilege of holding multiple government offices or employment. Verily, wherever the language used in the constitution is prohibitory, it is to be understood as intended to be a positive and unequivocal negation. The phrase "unless otherwise provided in this Constitution" must be given a literal interpretation to refer only to those particular instances cited in the Constitution itself, to wit: the Vice-President being appointed as a member of the Cabinet under Section 3, par. (2), Article VII; or acting as President in those instances provided under Section 7, pars. (2) and (3), Article VII; and, the Secretary of Justice being ex-officio member of the Judicial and Bar Council by virtue of Section 8 (1), Article VIII.
>
> Being an appointive public official who does not occupy a Cabinet position (i.e., President, the Vice-President, Members of the Cabinet, their deputies and assistants), Duque was thus covered by the general rule enunciated under Section 7, paragraph (2), Article IX-B. He can hold any other office or employment in the Government during his tenure if such holding is allowed by law or by the primary functions of his position.[171] (Citations omitted)

Read together, the two constitutional provisions mean that the appointment of a member of a constitutional commission to any governing body must depend on the functions of the government entity on which that member sits. For the Civil Service Commission Chair, it must involve the career development, employment status, rights, privileges, and welfare of government officials and employees. *Funa* elaborates:

> Section 3, Article IX-B of the 1987 Constitution describes the CSC as the central personnel agency of the government and is

[171] Id. at 183-187.

principally mandated to establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service; to strengthen the merit and rewards system; to integrate all human resources development programs for all levels and ranks; and to institutionalize a management climate conducive to public accountability. Its specific powers and functions are as follows:

(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 investigation 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 when necessary;

(16) Delegate authority for the performance of any functions to departments, agencies and offices where such functions 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.

On the other hand, enumerated below are the specific duties and responsibilities of the CSC Chairman, namely:

(1) Direct all operations of the Commission;

(2) Establish procedures for the effective operations of the Commission;

(3) Transmit to the President rules and regulations, and other guidelines adopted by the Chairman which require Presidential attention including annual and other periodic reports;

(4) Issue appointments to, and enforce decisions on administrative discipline involving officials and employees of the Commission;

(5) Delegate authority for the performance of any function to officials and employees of the Commission;

(6) Approve and submit the annual supplemental budget of the Commission; and

(7) Perform such other functions as may be provided by law.

Section 14, Chapter 3, Title I-A, Book V of EO 292 is clear that the CSC Chairman's membership in a governing body is dependent on the condition that the functions of the government entity where he will sit as its Board member must affect the career development, employment status, rights, privileges, and welfare of government officials and employees. Based on this, the Court finds no irregularity in Section 14, Chapter 3, Title I-A, Book V of EO 292 because matters affecting the career development, rights and welfare of government employees are among the primary functions of the CSC and are consequently exercised through its Chairman. The CSC Chairman's membership therein must, therefore, be considered to be derived from his position as such. Accordingly, the constitutionality of Section 14, Chapter 3, Title I-A, Book V of EO 292 is upheld.[172] (Citations omitted)

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[172] Id. at 188-191.

Executive Order No. 180, which creates the PSLMC, and is reiterated in Book V, Title I, Chapter 6, Section 45 of the Administrative Code of 1987, is a law within the contemplation of the phrase "otherwise allowed by law or the primary functions of his position" in Article IX-B, Section 7, paragraph 2 of the Constitution. Book V, Title I-A, Chapter 3, Section 14 of the Administrative Code of 1987, as upheld in *Funa*, states that the Civil Service Commission Chair may be appointed to "governing bodies of government entities whose functions affect the career development, employment status, rights, privileges, and welfare of government officials and employees, ... and such other similar boards as may be created by law."

Section 15 of Executive Order No. 180 envisioned a coordination body, considering its composition of Civil Service Commission Chair, along with the Secretaries of the Department of Labor and Employment, Department of Finance, Department of Justice, and Department of Budget and Management.[173] Coordination between a constitutional commission and departments of the executive branch, so long as the coordination is not controlled by the executive branch, is not proscribed. With the Civil Service Commission Chair as PSLMC Chair, the PSLMC is not subordinated to the executive branch, and the independence of the Civil Service Commission is not undermined.

Moreover, the work of the PSLMC, through guidelines and other resolutions that implement Executive Order No. 180, enhances the protection of government employees' right to self-organize. Its mandate is well within the Civil Service Commission's primary functions, which encompass "the career development, employment status, rights, privileges, and welfare of government officials and employees"[174] as contemplated in *Funa*. Since these primary functions are exercised through the Civil Service Commission Chair, the designation as PSLMC Chair, to oversee the implementation of Executive Order No.

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[173] Executive Order No. 180 (1987), sec. 15.

[174] *Funa v. Chairman, Civil Service Commission*, 748 Phil. 169, 190 (2014) [Per J. Bersamin, En Banc].

180, does not violate Article IX-A, Section 2 in relation to Article IX-B, Section 7 of the Constitution.

V

This case also raised the question of whether Section 5 of PSLMC Resolution No. 4 violated Article VI, Section 25 (5) of the Constitution, which proscribes the transfer of appropriations. Respondents claim:

> The apportionment of government savings is not included in said proscription because *this money has not been "realigned" from its intended use, as envisioned under Article VI, Section 25 (5) of the 1987 Constitution, but had already been set apart from the public treasury by Congress* as unutilized funds, through the General Appropriations Act (GAA). To be sure, Republic Act No. 10352 or the General Appropriations Act of 2012 allows the utilization of savings, including payment of CNA incentives, subject only to compliance with certain conditions. The pertinent provisions of Republic Act No. 10352 states:
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> . . . .
>
> Considering that the savings is a particular fund that was already set apart from the public treasury as unutilized funds, the President, in the performance of the mandate to faithfully execute the laws, had sufficient discretion to fill in the details as regards its execution, enforcement or administration. Specifically, in issuing Executive Order No. 180 authorizing the PSLMC the power to determine where savings should be allocated (which is now under Administrative Code of 1987), the President was not just exercising legislative power but her executive power to ensure that the laws are faithfully executed. This power necessarily includes the power to administer laws, which means carrying them into practical operation and enforcing their due observance. It is a power borne by the President's duty to preserve and defend the Constitution and execute the laws. Stated otherwise, under the Faithful Execution Clause, the President has the power to take "necessary and proper steps" to carry into execution the law. Truly, once the appropriations bill is signed into law, its implementation becomes the exclusive function of the President.[175] (Emphasis supplied, citations omitted)

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[175] *Rollo*, pp. 472 and 475.

Article VI, Section 25 (5) of the Constitution reads:

(5) No law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions ***may, by law,*** be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations. (Emphasis supplied)

The proviso that the enumerated persons "may, *by law*, be authorized to augment" means that their discretion to augment appropriations may be limited by law. Thus, Section 55 of the General Appropriations Act of 2012, on the "Rules in the Realignment of Savings for the Payment of Collective Negotiation Agreement Incentives," validly limits the President's discretion:

SECTION 53. *Meaning of Savings and Augmentation*. — Savings refer to portions or balances of any programmed appropriation in this Act free from any obligation or encumbrance which are: (i) still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized; (ii) from appropriation balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriation balances realized from the implementation of measures resulting in improved systems and efficiencies and thus enabled agencies to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost.

Augmentation implies the existence in this Act of a program, activity, or project with an appropriation, which upon implementation or subsequent evaluation of needed resources, is determined to be deficient. In no case shall a non-existent program, activity, or project, be funded by augmentation from savings or by the use of appropriations otherwise authorized in this Act.

SECTION 54. *Rules in the Realignment of Savings.*— Realignment of Savings from one allotment class to another shall require prior approval of the DBM.

Departments, bureaus and offices, including SUCs, are authorized to augment any item of expenditure within Personal Services and MOOE, except intelligence funds which require prior approval from

the President of the Philippines. However, realignment of savings among objects of expenditures within Capital Outlays shall require prior approval of the DBM.

Notwithstanding the foregoing, realignment of any savings for the payment of magna carta benefits authorized under Section 41 hereof shall require prior approval of the DBM.

SECTION 55. ***Rules in the Realignment of Savings for the Payment of Collective Negotiation Agreement Incentives***.— Savings from allowable MOOE allotments generated out of cost-cutting measures identified in the Collective Negotiation Agreements (CNAs) and supplements thereto may be used for the grant of CNA incentive by agencies with duly executed CNAs: PROVIDED, That the ***one-time annual payment*** of CNA incentives must be made through a ***written resolution*** signed by representatives of both labor and management, and approved by the agency head: PROVIDED, FURTHER, That the funding sources and amount of CNA incentives shall, in all cases, be ***limited to the allowable MOOE allotments and rates determined by the DBM***, respectively.

Implementation of this provision shall be ***governed by DBM Budget Circular Nos. 2006-1 and 2011-5 and such other issuances that may be issued by the DBM for the purpose***.[176] (Emphasis supplied)

However, those with political functions, such as the President, should be distinguished from those with fiscal autonomy[177] and governed by separate constitutional provisions.

Article VI, Section 25 (5) must be interpreted in light of the provisions for those that enjoy fiscal autonomy. Article VIII, Section 3 of the Constitution, for example, provides for the Judiciary's fiscal autonomy in that its appropriations "may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released."[178] This provision is unique to the

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[176] Id. at 473-475.

[177] CONST., art. VI, sec. 25 (5) only states "heads of Constitutional Commissions," yet there are other constitutional bodies that enjoy fiscal autonomy, such as the Commission on Human Rights and the Office of the Ombudsman, but this awaits the proper case.

[178] CONST., art. VIII, sec. 3.

Judiciary, and creates a different scenario for its budget and any consequent savings.

VI

Petitioners argue that Budget Circular No. 2011-5 modifies and altogether nullifies specific provisions of validly executed CNAs in violation of the constitutional provision on non-impairment of obligations.[179] They discuss that the Constitution guarantees the right of government employees to collective bargaining and negotiation, and that these government employees have vested rights in validly consummated CNAs.[180]

Respondents counter that no vested rights to CNA incentives exist. For respondent Secretary Abad, these incentives depend on several conditions such as the generation of savings,[181] and are different from collective bargaining agreements in that government employees have no right to bargain collectively.[182] Respondent Secretary Soliman submits that a CNA grant "is not a contract within the purview of the non-impairment clause";[183] instead, it depends on compliance with budget policies and guidelines.[184]

This Court rules that petitioners have no vested rights to CNA incentives. Nonetheless, under the circumstances of this case, the order to return the excess ₱5,000.00 received by the affected employees was erroneous.

As early as 1928, *Balboa v. Farrales*[185] defined "vested right" as "some right or interest in property which has become fixed and established and is no longer open to doubt or controversy."[186]

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[179] *Rollo*, p. 339.

[180] Id. at 348.

[181] Id. at 294-295.

[182] Id. at 297.

[183] Id. at 267.

[184] Id. at 268.

[185] 51 Phil. 498 (1928) [Per J. Johnson, En Banc].

[186] Id. at 502.

In 1956, *Benguet Consolidated Mining Company v. Pineda*[187] discussed that "[t]he right must be absolute, complete, and unconditional, independent of a contingency, and a mere expectancy of future benefit, or a contingent interest in property founded on anticipated continuance of existing laws, does not constitute a vested right."[188]

Several factors may be considered in determining when rights "vest." We consider the source of the right—the Constitution, a statute, or a regulation. The right must have a legal basis. The nature of the prestation must also be examined. The right must be absolute; otherwise, conditional rights vest once compliance with all conditions is shown. The prestation should also be clear; it cannot be broad, or subject to further implementation or clarification. As to the effect of the right, public good outweighs private interest. In any event, laws generally only create expectations.

The concept of "vested right" has been used in cases on employee benefits. In *Boncodin v. NAPOCOR Employees Consolidated Union*,[189] which involved salary step increments, this Court discussed:

> A vested right is one that is absolute, complete and unconditional; to its exercise, no obstacle exists; and it is immediate and perfect in itself and not dependent upon any contingency. To be vested, a right must have become a title — legal or equitable — to the present of future enjoyment of property.[190] (Citations omitted)

Labor cases have held that "where there is an established employer practice of regularly, knowingly and voluntarily granting benefits to employees over a significant period of time, despite the lack of a legal or contractual obligation on the part of the employer to do so, the grant of such benefits ripens into

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[187] 98 Phil. 711 [Per J. J.B.L. Reyes, En Banc].

[188] Id. at 722.

[189] 534 Phil. 741 (2006) [Per C.J. Panganiban, En Banc].

[190] Id. at 757.

a vested right of the employees and can no longer be unilaterally reduced or withdrawn by the employer."[191]

Government Service Insurance System v. Montesclaro[192] discussed:

> In a pension plan where employee participation is mandatory, the prevailing view is that employees have contractual or vested rights in the pension where the pension is part of the terms of employment. ...
>
> Thus, where the employee retires and meets the eligibility requirements, he acquires a vested right to benefits that is protected by the due process clause.[193]

Employees in the private sector have the right to self-organize for purposes of collective bargaining, among others.[194] The Labor Code governs collective bargaining for private employees. Collective bargaining agreements include grants of employee benefits.

Employees in the public sector also have the right to self-organize.[195] Executive Order No. 180 governs their right to organize "for the furtherance and protection of their interests."[196] However, collective negotiation agreements include employment terms and conditions not fixed by law:

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[191] *Metropolitan Bank and Trust Company v. NLRC*, 607 Phil. 359, 373 (2009) [Per J. Leonardo-de Castro, First Division]. *See*, for example, *Oceanic Pharmacia Employees Union v. Inciong*,182 Phil. 597 (1979) [Per J. Abad Santos, Second Division]; *Davao Integrated Port Services, Inc. v. Abarquez*, 292-A Phil. 302 (1993) [Per J. Romero, Third Division]; *Republic Planters Bank v. NLRC*, 334 Phil. 124 (1997) [Per J. Bellosillo, First Division] and *Manila Electric Company v. Quisumbing*, 361 Phil. 845 (1999) [Per J. Martinez, First Division].

[192] 478 Phil. 573 (2004) [Per J. Carpio, En Banc].

[193] Id. at 584.

[194] CONST., art. XIII, sec. 3; LABOR CODE, Book V, Rule II, sec. 1.

[195] CONST., art. XIII, sec. 3; art. IX-B, sec. 2 (5).

[196] Executive Order No. 180 (1987), sec. 2.

SECTION 13. Terms and conditions of employment or improvements thereof, *except those that are fixed by law*, may be the subject of negotiations between duly recognized employees' organizations and appropriate government authorities.[197] (Emphasis supplied)

Thus, it is "the legislative and — when properly given delegated power — the administrative heads of government that fix the terms and conditions of employment through statutes or administrative circulars, rules and regulations."[198] Also, "the process of collective negotiations in the public sector does not encompass terms and conditions of employment requiring the appropriation of public funds."[199]

Petitioners now invoke their CNA, raising the non-impairment clause under the Constitution.[200]

As contracts create the law between the parties,[201] they produce binding juridical rights and obligations. The power of private individuals to enter into contracts is protected by their autonomy implicit in the constitutional guarantee of due process,[202] among others, but subject to reasonable limitations by valid law.

This case involves the CNA incentive. CNA incentive is not compensation since Congress passed Republic Act No. 6758.[203] It is not a signing bonus, since *Social Security System v.*

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[197] Executive Order No. 180 (1987), sec. 13.

[198] *Boncodin v. NAPOCOR Employees Consolidated Union*, 534 Phil. 741, 757-758 (2006) [Per C.J. Panganiban, En Banc] citing *Alliance of Government Workers v. Minister of Labor*, 209 Phil. 1 (1983) [Per J. Gutierrez, Jr., En Banc].

[199] *Social Security System v. Commission on Audit*, 433 Phil. 946, 957 (2002) [Per J. Bellosillo, En Banc].

[200] CONST., art. III, sec. 10. No law impairing the obligation of contracts shall be passed.

[201] *TSPIC Corporation v. TSPIC Employees Union*, 568 Phil. 774, 783 (2008) [Per J. Velasco, Second Division].

[202] CONST., art. III, sec. 1.

[203] Republic Act No. 6758 (1989).

Commission on Audit[204] disallowed the grant of signing bonuses for government employees. It is not an award for service excellence since Civil Service Commission Memorandum No. 01, series of 2001, established the Program on Awards and Incentives for Service Excellence (PRAISE).[205]

PSLMC Resolution No. 4 provides that "CNA Incentive is linked with agency performance and productivity,"[206] "intended to be charged against free unencumbered savings of the agency, which are no longer intended for any specific purpose."[207] It is an incentive to produce efficiently by meeting targets and generating savings.

Thus, a CNA incentive is not per se vested. Its grant is conditioned on the applicable laws, rules and regulations that govern it, including the assailed Budget Circular No. 2011-5 insofar as its provisions are consistent with PSLMC resolutions implementing Executive Order No. 180. For one, PSLMC Resolution No. 4 requires the existence of "savings generated after the signing of the CNA."[208] Savings also depend on constitutional prerogatives.

However, we agree with petitioners' position against the retroactive application of Budget Circular No. 2011-5 to CNA incentives already released to the employees.[209]

While the Department of Budget and Management can generally impose conditions for the grant of CNA incentives, in this case, the conditions were imposed after the benefits had already been released and received by the employees. The Department had not put in place a ceiling on CNA incentives when the ₱30,000.00 CNA incentive—the total amount from

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[204] 433 Phil. 946 (2002) [Per J. Bellosillo, En Banc].

[205] *See* Budget Circular No. 2006-1 (2006), sec. 5.4.2.

[206] PSLMC Resolution No. 4 (2002), sec. 6.

[207] PSLMC Resolution No. 4 (2002), whereas clauses.

[208] PSLMC Resolution No. 4 (2002), sec. 1.

[209] *Rollo*, p. 350.

the October 26, 2011 and December 3, 2011 memoranda issued by respondent Secretary Soliman—was granted. Budget Circular No. 2011-5, which contains the ₱25,000.00 ceiling, was issued only on December 26, 2011 and published only on February 25, 2012.[210] Thus, the benefits had already been vested in the employees' behalf.

Likewise, we confirm petitioners' argument that the January 20, 2012 Memorandum directing the refund of CNA incentives paid violated Section 43 of the General Appropriations Act of 2011.[211]

Section 43 enumerates the authorized deductions from employees' salaries as follows:

> SECTION 43. Authorized Deductions. — Deductions from salaries, emoluments or other benefits accruing to any government employee chargeable against the appropriations for Personal Services may be allowed for the payment of individual employee's contributions or obligations due the following:
>
> (a) The BIR, GSIS, HDMF and PHILHEALTH;
>
> (b) Mutual benefits associations, thrift banks and non-stock savings and loan associations duly operating under existing laws which are managed by and/or for the benefit of government employees;
>
> (c) Associations/cooperatives/provident funds organized and managed by government employees for their benefit and welfare;
>
> (d) Duly licensed insurance companies accredited by national government agencies; and
>
> (e) Organizations or companies such as banks, non-bank financial institutions, financing companies and other similar entities that have authority to engage in lending and mutual benefits or mutual aid system as stated in their respective constitutions and by-laws approved by government regulating bodies such as the Securities and Exchange Commission (SEC), Insurance Commission (IC), Bangko Sentral ng Pilipinas (BSP) and Cooperative Development Authority (CDA).

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[210] Id.

[211] Id. at 341.

PROVIDED, That such deductions shall not reduce the employee's monthly net take home pay to an amount lower than Three Thousand Pesos (₱3,000),after all authorized deductions: PROVIDED, FURTHER, That in the event total authorized deductions shall reduce net take home pay to less than Three Thousand Pesos (₱3,000),authorized deductions under item (a) shall enjoy first preference, those under item (b) shall enjoy second preference, and so forth.

As petitioners had argued, the list of allowable salary deductions in the General Appropriations Act does not include excess CNA incentives. We also note that the Memorandum should not have been authorized only by the Assistant Secretary, but must also bear the signature of approval and conforme of respondent Secretary Soliman.

Thus, the January 20, 2012 Memorandum, which required employees of the Department of Social Welfare and Development to refund the ₱5,000.00 excess through deductions from their salaries, is void.

VII

Unlike private sector employees whose employment terms and conditions are governed by collective bargaining agreements entered by labor federations through collective bargaining,[212] the employment terms and conditions of public sector employees are fixed through statutes, rules and regulations.[213] The right of government employees to organize is only "for the furtherance and protection of their interests."[214]

It is true that Republic Act No. 6758, or the Salary Standardization Law, applies to "all positions, appointive or elective, on full or part-time basis, now existing or hereafter created in the government, including government-owned or controlled corporations and government financial

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[212] CONST., art. XIII, sec. 3; LABOR CODE, Book V, Rule II, sec. 1.

[213] *Boncodin v. NAPOCOR Employees Consolidated Union*, 534 Phil. 741, 757-758 (2006) [Per C.J. Panganiban, En Banc] citing *Alliance of Government Workers v. Minister of Labor*, 209 Phil. 1 (1983) [Per J. Gutierrez, Jr., En Banc]. *See also* LABOR CODE, art. 277.

[214] Executive Order No. 180 (1987), sec. 2.

institutions."[215] Nevertheless, not all government employees are similarly situated or share the same interest.

Traditional classifications distinguish between governmental functions and proprietary functions.[216] The Philippine Charity Sweepstakes Office, for example, can engage in profit-oriented activities as "the principal government agency for raising and providing for funds for health programs, medical assistance and services, and charities of national character[.]"[217] Government-owned and controlled corporations perform both governmental and proprietary functions.[218] Developments in modern society later rendered such distinctions outdated.[219]

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[215] Republic Act No. 6758 (1989), sec. 4 provides:
SECTION 4. Coverage. — The Compensation and Position Classification System herein provided shall apply to all positions, appointive or elective, on full or part-time basis, now existing or hereafter created in the government, including government-owned or controlled corporations and government financial institutions.
The term "government" refers to the Executive, the Legislative and the Judicial Branches and the Constitutional Commissions and shall include all, but shall not be limited to, departments, bureaus, offices, boards, commissions, courts, tribunals, councils, authorities, administrations, centers, institutes, state colleges and universities, local government units, and the armed forces. The term "government-owned or controlled corporations and financial institutions" shall include all corporations and financial institutions owned or controlled by the National Government, whether such corporations and financial institutions perform governmental or proprietary functions.

[216] *See Alliance of Government Workers v. Minister of Labor*, 209 Phil. 1 (1983) [Per J. Gutierrez, Jr., En Banc].

[217] Republic Act No. 1169 (1954), as amended, sec. 1.

[218] Presidential Decree No. 2029 (1986), *Defining Government Owned or Controlled Corporations and Identifying Their Role in National Development*, provides:
SECTION 2. A government-owned or controlled corporation is a stock or non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by a special law or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, to the extent of at least a majority or its outstanding capital stock or if its outstanding voting capital stock.

[219] *See Alliance of Government Workers v. Minister of Labor*, 209 Phil. 1 (1983) [Per J. Gutierrez, Jr., En Banc].

Even within a government body, its employees are not necessarily similarly situated. The University of the Philippines Charter grants its Board of Regents the power "to receive and appropriate all sums as may be provided by law for the support of the national university to the ends specified by law, and all other sums in the manner it may, in its discretion, determine to carry out the purposes and functions of the national university[.]"[220] Those holding academic positions such as faculty members have different interests and opportunities from those holding non-academic positions.

There are also those that enjoy fiscal autonomy, such as the constitutional commissions.[221]

Perhaps, lobbying before Congress and the proper authorities for more benefits, such as compensation increase, may be the better course for those in the public sector.[222] For other labor matters not fixed by law, government employees can course their concerns through their labor organization with members sharing similar interests.

WHEREFORE, the Petition is **PARTIALLY GRANTED**. The January 20, 2012 Memorandum requiring employees of the Department of Social Welfare and Development to refund the ₱5,000.00 excess through deductions from their salaries is **VOID**.

SO ORDERED.

Peralta, C.J., Gesmundo, Hernando, Carandang, Lopez, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

Perlas-Bernabe, J., see separate concurring opinion.

Caguioa, J., see concurring opinion.

Lazaro-Javier, Inting, and *Zalameda, JJ.*, on official leave.

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[220] Republic Act No. 9500 (2008), sec. 13 (n).

[221] CONST, art. IX, sec. 5; Exec. Order No. 292, Book II, Chapter 5, Sec. 26 (1987).

[222] *See* Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize (2004), Rule XII, Sec. 5, available at <http://web.csc.gov.ph/cscsite2/2014-02-21-08-28-23/pdf-files/file/777-irr-of-e-o-180> (last visited on November 10, 2020).

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur. The ₱25,000.00 ceiling under paragraph 3.5 of Department of Budget and Management (DBM) Budget Circular No. 2011-5[1] on collective negotiation agreement (CNA) incentives for the year 2011 is valid as the same was imposed by the DBM in accordance with its rule-making authority pursuant to existing laws. For reference, the assailed budgetary provision reads:

> 3.5 The CNA Incentive for FY 2011 shall be determined based on the amount of savings generated by an agency following the guidelines herein, but not to exceed [₱25,000.00] per qualified employee.

Irrefragably, Congress has, by law,[2] conferred to the DBM "**the sole power and discretion to <u>administer</u> the compensation**

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[1] Subject: Supplemental Guidelines on the Grant of Collective Negotiation Agreement (CNA) Incentive for Fiscal Year (FY) 2011, issued on December 26, 2011.

[2] See Section 17 (a) of Presidential Decree No. (PD) 985, entitled "A DECREE REVISING THE POSITION CLASSIFICATION AND COMPENSATION SYSTEMS IN THE NATIONAL GOVERNMENT, AND INTEGRATING THE SAME" (August 22, 1976), as amended by Section 14 of Republic Act No. (RA) 6758, entitled "AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES," otherwise known as the "COMPENSATION AND POSITION CLASSIFICATION ACT OF 1989" (July 1, 1989), which now reads:

> Section 17. *Powers and Functions*. – The Budget Commission, principally through the OCPC shall, in addition to those provided under other Sections of this Decree, have the following powers and functions:
>
> a. **Administer the compensation and position classification system** established herein and **revise it as necessary**. (Emphasis supplied)

Notably, the term "Budget Commission" in the foregoing provision now refers to the Department of Budget and Management (DBM), as per Section 15 of RA 6758.

and position classification system [(CPCS)] of the national government"[3] **and** "**revise it as necessary**."[4] Pursuant to Presidential Decree Nos. 985[5] and 1597,[6] and more recently, Republic Act No. 6758,[7] the CPCS covers the payment of **compensation**[8] to "all positions, appointive or elective x x x in the government, including government-owned or controlled corporations and government financial institutions."[9]

According to jurisprudence, the DBM's power to "administer" the CPCS is not to be regarded as "purely ministerial in character";rather, "it means to ***control or regulate*** x x x; *to* ***direct or superintend*** *the execution, application or conduct of*; x x x *to* ***manage or conduct*** x x x."[10] Equally, its rule-making authority anent the CPCS is clearly expressed in statute.[11] Cogent

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[3] *Cruz v. Court of Appeals*, 322 Phil. 649, 659-660 (1996); emphasis supplied.

[4] PD 985, Section 17 (a), as amended by RA 6758, Section 14 (a); emphasis supplied.

[5] See note 2.

[6] Entitled "FURTHER RATIONALIZING THE SYSTEM OF COMPENSATION AND POSITION CLASSIFICATION IN THE NATIONAL GOVERNMENT" (June 11, 1978).

[7] See note 2.

[8] *Intia, Jr. v. Commission on Audit*, 366 Phil. 273, 288 (1999), where the Court observed that, under PD 985, the term **"compensation" includes salaries, wages, allowances, and other benefits accruing to government employees**.

[9] RA 6758, Section 4.

[10] *Commission on Human Rights Employees' Association v. Commission on Human Rights*, 486 Phil. 509, 527 (2004).

[11] Paragraphs (g) and (i), Section 17 of PD 985 read:

> Section 17. *Powers and Functions*. — **The Budget Commission**, principally through the OCPC shall, in addition to those provided under other Sections of this Decree, **have the following powers and functions**:
>
> x x x x
>
> g. **Provide the required criteria and guidelines**,in consultation with agency heads as may be deemed necessary and subject to

therewith, the DBM is authorized to determine **any additional compensation which may be received by the government employees apart from their standardized salaries**.[12]

At its core, CNA incentives are a form of **additional compensation**[13] paid to government employees "***in recognition***

> the approval of the Commissioner of the Budget, for the **grant of all types of allowances and additional forms of compensation to employees in all agencies of the government**;
>
> x x x x
>
> i. **Promulgate rules and regulations for the implementation of the provisions of this Decree** which, upon approval by the Commissioner of the Budget shall be known as Budget Commission Rules and Regulations on Compensation and Position Classification. (Emphases and underscoring supplied)

Notably, the foregoing provisions remain effective pursuant to Section 21 of RA 6758, which states: "**[a]ll provisions of Presidential Decree No. 985**, as amended by Presidential Decree No. 1597, which are not inconsistent with this Act and are not expressly modified, revoked or repealed in this Act **shall continue to be in full force and effect**" (emphases and underscoring supplied). It should also be observed that paragraphs (g) and (i), Section 17 of PD 985 were reiterated, *in essence*, by Congressional Joint Resolution No. 4, entitled "JOINT RESOLUTION AUTHORIZING THE PRESIDENT OF THE PHILIPPINES TO MODIFY THE COMPENSATION AND POSITION CLASSIFICATION SYSTEM OF CIVILIAN PERSONNEL AND THE BASE PAY SCHEDULE OF MILITARY AND UNIFORMED PERSONNEL IN THE GOVERNMENT, AND FOR OTHER PURPOSES," approved on June 17, 2009, which provides:

> (17) Functional Responsibilities — (a) In addition to the powers and functions provided in the pertinent items of this Joint Resolution and Presidential Decree No. 985, as amended by Presidential Decree No. 1597, Republic Act No. 6758, and Senate and House of Representatives Joint Resolution No. 01, s. 1994, **the DBM shall**:
>
> **(i) Prepare and issue the guidelines, rules and regulations necessary to implement the modified Compensation and Position Classification System** for all government personnel herein established consistent with the executive orders to be issued by the President[.] (Emphasis and underscoring supplied)

[12] See RA 6758, Section 12.

[13] As defined, the term "compensation" is broadly construed to include "all financial and non-financial rewards and entitlements arising from [an] employment relationship (Paragraph 3.2.1, DBM Manual on Position

of their efforts in accomplishing performance targets at lesser cost [and] in attaining more efficient and viable operations through cost-cutting measures and systems improvement."[14] For clarity, the term "compensation" is broadly construed to include "all financial and non-financial rewards and entitlements **arising from [an] employment relationship**."[15] This term therefore includes CNA incentives which are considered as cash compensation items granted to employees. More particularly, CNA incentives fall within the same class as productivity incentives,[16] since both are rewards for exceeding an agency's financial and operational performance targets, and intended to motivate employee efforts toward higher productivity.

While CNA incentives are an offshoot of collective negotiations pursuant to the limited right of government

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Classification and Compensation, published on February 2007 and disseminated by Circular Letter No. 2007-6 dated February 19, 2007). This includes CNA incentives as cash compensation items which are granted to employees based on certain qualifications or rendition of special services. Particularly, CNA incentives are treated in the same class as productivity incentives, as both are rewards for exceeding agency financial and operational performance targets, and to motivate employee efforts toward higher productivity. See Paragraph 4 (h) (ii) of Congressional Joint Resolution No. 4; Section 3 of Administrative Order No. 103, entitled "DIRECTING THE CONTINUED ADOPTION OF AUSTERITY MEASURES IN THE GOVERNMENT," approved on August 31, 2004; Administrative Order No. 135, entitled "AUTHORIZING THE GRANT OF COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVE TO EMPLOYEES IN GOVERNMENT AGENCIES" (December 27, 2005); and Chapter 3 of the DBM Manual on Position Classification and Compensation.

[14] Congressional Joint Resolution No. 4, Paragraph 4 (h) (ii) (aa); emphasis supplied. See also Section 1 of Public Sector Labor-Management Council (PSLMC) Resolution No. 4, series of 2002, entitled "GRANT OF COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVE FOR NATIONAL GOVERNMENT AGENCIES, STATE UNIVERSITIES AND COLLEGES AND LOCAL GOVERNMENT UNITS," approved on November 14, 2002, which states that these amounts are given "[i]n recognition of the joint efforts of labor and management to achieve all planned targets, programs and services approved in the budget of the agency at a lesser cost x x x."

[15] DBM Manual on Position Classification and Compensation, Paragraph 3.2.1; emphasis supplied.

[16] See note 13.

employees to self-organization, which, in turn, fall within the purview of the Public Sector Labor-Management Council (PSLMC), still, because of their nature as compensation, they are not removed from the DBM's authority to administer. After all, the CNA incentives constitute the payment of public funds to public employees which are to be sourced from the government's own coffers. In fact, this is the reason why despite the general confirmation of the grant of CNA incentives pursuant to CNAs entered into on or before the effectivity of PSLMC Resolution No. 4, series of 2002 and PSLMC Resolution No. 2, series of 2003,[17] **Administrative Order No. 135, series of 2005**[18] **(AO 135)**, **specifically states that** "**[t]he [DBM] shall issue the policy and procedural guidelines to implement this Administrative Order**."[19] AO 135 notably provides for, among others, the parameters to rationalize CNA incentives so as to avoid duplication with PRAISE[20] incentives, as well as considerations for cost-cutting measures and systems improvement, and release.[21] Hence, pursuant to AO 135, the imposition of CNA incentive rates is well within the DBM's rule-making power.

In any event, Congress itself has confirmed the DBM's power to set ceilings on CNA incentives by specifically providing for the same in each of the annual general appropriations laws from the year 2012 to the present. In particular, the provisions of the General Appropriations Act (GAA) throughout the years consistently state that **the approved CNA incentives shall be limited to such reasonable rates as may be determined by the DBM**:

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[17] Entitled "GRANT OF COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVE FOR GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS (GOCCs) AND GOVERNMENT FINANCIAL INSTITUTIONS (GFIs)," approved on May 19, 2003.

[18] See note 13.

[19] AO 135, Section 6; emphasis supplied.

[20] "PRAISE" stands for "Program on Awards and Incentives for Service Excellence."

[21] AO 135, Sections 2, 3, and 5.

Section 56. *Rules in the Realignment of Funds*.— x x x.

x x x x

x x x Moreover, the use of savings for the payment of Collective Negotiation Agreement (CNA) incentives by agencies with approved and successfully implemented CNAs pursuant to DBM Budget Circular No. 2006-1 dated February 1, 2006 **shall be limited to such reasonable rates as may be determined by the DBM**.[22] (Emphasis supplied)

Section 55. *Rules in the Realignment of Savings for the Payment of Collective Negotiation Agreement Incentives*. — x x x **amount of CNA incentives shall, in all cases, be limited to** the allowable MOOE allotments and **rates determined by the DBM**, respectively.

Implementation of this provision shall be governed by **DBM Budget Circular** Nos. 2006-1 and **2011-5** and such other issuances that may be issued by the DBM for the purpose.[23] (Emphases and underscoring supplied)

Section 71. *Rules in the Realignment of Savings, for the Payment of Collective Negotiation Agreement Incentives*. — x x x That the funding sources and **amount of CNA Incentive shall in all cases be limited** to the allowable MOOE allotments and **rates determined by the DBM**, respectively: PROVIDED, FINALLY, That the realignment of savings from the allowable MOOE allotments shall be subject to approval by the DBM.

Implementation of this provision shall be subject to guidelines issued by the DBM.[24] (Emphases supplied)

Section 74. *Rules in the Payment of Collective Negotiation Agreement Incentives*. — x x x That the funding sources and **amount of CNA Incentive shall in all cases be limited to the** allowable MOOE allotments and **rates determined by the DBM**, respectively x x x.

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[22] RA 10155, or the "GENERAL APPROPRIATIONS ACT OF 2012," approved December 15, 2011.

[23] RA 10352, or the "GENERAL APPROPRIATIONS ACT OF 2013," approved December 19, 2012.

[24] RA 10633, or the "GENERAL APPROPRIATIONS ACT OF 2014," approved December 20, 2013.

Implementation of this provision shall be subject to guidelines issued by the DBM.[25] (Emphases supplied)

Section 77. *Rules in the Grant of Collective Negotiation Agreement Incentive*. — Departments, bureaus, and offices of the National Government, including Constitutional Offices enjoying fiscal autonomy and SUCs may grant collective negotiation agreement (CNA) Incentive sourced from the allowable MOOE allotments identified by the DBM, subject to the following:

x x x x

(c) The **CNA Incentive that may be granted shall be limited to the amount determined by the DBM**[.][26] (Emphasis supplied)

Section 71. *Rules in the Grant of Collective Negotiation Agreement Incentive*. — Departments, bureaus, and offices of the National Government, including Constitutional Offices enjoying fiscal autonomy and SUCs may grant collective negotiation agreement (CNA) Incentive sourced from the allowable MOOE allotments identified by the DBM, subject to the following:

x x x x

(c) The **CNA Incentive that may be granted shall be limited to the amount determined by the DBM**[.][27] (Emphasis supplied)

Section 73. *Rules in the Grant of Collective Negotiation Agreement Incentive*. — Departments, bureaus, and offices of the National Government, including Constitutional Offices enjoying fiscal autonomy and SUCs may grant collective negotiation agreement (CNA) Incentive sourced from the allowable MOOE allotments identified by the DBM, subject to the following:

x x x x

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[25] RA 10651, or the "GENERAL APPROPRIATIONS ACT OF 2015," approved December 15, 2014.

[26] RA 10717, or the "GENERAL APPROPRIATIONS ACT OF 2016," approved December 21, 2015.

[27] RA 10924, or the "GENERAL APPROPRIATIONS ACT OF 2017," approved December 22, 2016.

(c) The **CNA Incentive that may be granted shall be limited to the amount determined by the DBM**[.][28] (Emphasis supplied)

Section 77. *Rules in the Grant of Collective Negotiation Agreement Incentive*. — Departments, bureaus, and offices of the National Government, including Constitutional Offices enjoying fiscal autonomy and SUCs may grant collective negotiation agreement (CNA) Incentive sourced from the allowable MOOE allotments identified by the DBM, subject to the following:

x x x x

(c) **The CNA Incentive that may be granted shall be limited to the amount determined by the DBM**[.][29] (Emphasis supplied)

Notably, the present case must be contrasted with *Dadole v. Commission on Audit (Dadole)*,[30] where the Court struck down the DBM's ceiling on allowances granted to judges by the City of Mandaue since it directly contravened Section 458, paragraph (a) (1) [xi], of the Local Government Code which authorized the grant of additional allowances "when the finances of the city government allow."[31] As opposed to *Dadole*, the ₱25,000.00 — ceiling on CNA incentives in DBM Budget Circular No. 2011-5 is premised on existing laws conferring the DBM with rule-making authority and in addition, also fosters a fiscal policy that is reasonable. As the DBM pointed out in this case, the ₱25,000.00 — ceiling was meant to address the "perverse

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[28] RA 10964, or the "GENERAL APPROPRIATIONS ACT OF 2018," approved December 19, 2017.

[29] RA 11260, or the "APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND AND NINETEEN AND FOR OTHER PURPOSES," approved on April 15, 2019, which was extended to the year 2020 by virtue of RA 11464, otherwise known as "AN ACT EXTENDING THE AVAILABILITY OF THE 2019 APPROPRIATIONS TO DECEMBER 31, 2020, AMENDING FOR THE PURPOSE SECTION 65 OF THE GENERAL PROVISIONS OF REPUBLIC ACT NO. 11260 THE GENERAL APPROPRIATIONS ACT OF FISCAL YEAR 2019," approved December 20, 2019.

[30] 441 Phil. 532 (2002).

[31] Id. at 545.

tendency of agencies of scrimping on vital expenditures or bloating their budgets just so as to accumulate savings."[32] Thus, there being no cogent justification to strike down paragraph 3.5 of DBM Budget Circular No. 2011-5, the same must be upheld by the Court.

At this juncture, it is, however, important to highlight that DBM Budget Circular No. 2011-5 is a regulation that applies to CNA incentives in general. *It is different from the January 20, 2012 Department of Social Welfare and Development (DSWD) Memorandum which is a specific implementation of the said department pertaining to the CNA incentives already released to its employees*.For its part, said Memorandum essentially orders the DSWD employees who had received CNA incentives in the amount of ₱30,000.00 to each return the excess ₱5,000.00 they received, which is the surplus amount released beyond DBM Budget Circular No. 2011-5's ₱25,000.00-cap, *viz.*:

SUBJECT Refund of FY 2011 CNA Incentive

Please be informed that pursuant to DBM Budget Circular No. 2011-5 entitled Supplemental Guidelines on the Grant of Collective Negotiation Agreement (CNA) Incentive for Fiscal Year (FY) 2011, each qualified employee shall be entitled to CNA Incentive but not to exceed ₱25,000.00.

In compliance with the above-mentioned DBM Circular, you are hereby directed to refund the amount of ₱5,000.00 through a fixed monthly deduction from your salary in the amount of ₱500.00 each month effective February 2012 to November 2012 or equivalent to ten (10) months payment.[33]

In my view, while government employees have no vested rights to CNA incentives *per se* since their grant is conditioned upon numerous legal requirements (*e.g.*,existence of savings), **when they, however, had already been released and that their release did not contravene any law, rule or budget**

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[32] See DBM Memorandum dated July 29, 2013; *rollo*, p. 293.

[33] Id. at 63.

regulation *at that time*, then it would be clearly unfair and unjust to mandate their return, as what the DSWD's January 20, 2012 Memorandum does.

To recall, the DSWD authorized the payment of the subject CNA incentives on October 26, 2011[34] and December 3, 2011,[35] and were disbursed accordingly. On the other hand, DBM Budget Circular No. 2011-5 was issued only on December 26, 2011[36] and took effect much later, when it was published in a newspaper of general circulation on February 25, 2012.[37] As earlier discussed, *since the subject amounts had already been, given to the employees without any qualification, and much more, were released to them at the time when the CNA incentives had no cap*, their return on the basis of the subsequent issuance of DBM Budget Circular No. 2011-5 amounts to a retroactive application of an administrative regulation[38] which is simply unfair and unjust.

Accordingly, I vote to **PARTIALLY GRANT** the petition. Paragraph 3.5 of DBM Budget Circular No. 2011-5 is **UPHELD**, while the January 20, 2012 DSWD Memorandum is declared **VOID**.

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[34] See DSWD Memorandum dated October 26, 2011; id. at 57.

[35] See DSWD Memorandum dated December 3, 2011; id. at 58.

[36] See id. at 305.

[37] See Certificate of Publication issued by the Philippine Star dated July 23, 2013; id. at 306. See also: *De Jesus v. Commission on Audit*, 355 Phil. 584 (1998), citing *Tañada v. Tuvera*, 230 Phil. 528 (1986), where the Court ruled that a DBM circular which enforces or implements an existing law should be published for it to take effect.

[38] See *Al-Amanah Islamic Investment Bank of the Phils. v. Civil Service Commission*, 284 Phil, 92 (1992); *Co v. Court of Appeals*, 298 Phil. 221 (1993); *Spouses Arrastia v. National Power Corp.*, 555 Phil. 263 (2007).

CONCURRING OPINION

CAGUIOA, *J.*:

I agree that the employees of the Department of Social Welfare and Development (DSWD) should no longer be required to return the excess Collective Negotiation Agreement Incentives (CNAIs) they received. I write only to expound on the power of the Secretary to order refunds or readjustments in case of overpayment of salaries and other benefits released to its employees.

In gist, my position is that even as Department of Budget and Management Budget Circular No. 2011-5 (DBM BC 2011-5) setting the ₱25,000.00 ceiling on CNAIs is valid, it cannot be given retroactive effect so as to force the return of the "excess" ₱5,000.00 by employees because they received the said CNAIs at the time when no ceiling had been set. Thus, the Memorandum by the Undersecretary of the DSWD ordering the refund of the excess CNAI — while it could be a valid exercise of control and supervision over the department and a measure of fiscal responsibility — cannot be given effect under the facts of this case.

Secretary's power to order a refund in case of overpayment

I agree that the DSWD Memorandum ordering the refund of the ₱5,000.00 excess CNAIs cannot be given effect. The CNAIs were granted by the Department at a time when no cap existed. Thus, no existing regulation was violated by the Secretary's grant and the consequent employees' receipt of the CNAIs. For this reason alone, I submit that the DSWD Memorandum is void and of no legal effect.

That said, the Secretary is, in my view, fully empowered under appropriate circumstances to effect a refund in case of overpayment or undue payment of salaries and other additional compensation within her department. Section 6, Chapter 2, Book

IV of the Administrative Code of 1987[1] vests the power of supervision and control upon the Department Secretary, thus:

> SEC. 6. *Authority and Responsibility of the Secretary*.— The authority and responsibility for the exercise of the mandate of the Department and for the discharge of its powers and functions shall be vested in the Secretary, who shall have **supervision and control** of the Department. (Emphasis and underscoring supplied)

In relation thereto, and more specific to the issue at hand, Presidential Decree No. 1445[2] provides:

> **Section 2.** *Declaration of Policy*. It is the declared policy of the State that all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguard against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in the operations of government. The **responsibility** to take care that such policy is faithfully adhered to rests directly with **the chief or head of the government agency** concerned. (Emphasis and underscoring supplied)
>
> x x x x
>
> **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.

Under the belief — albeit mistaken — that an overpayment has been made, the action taken by the DSWD Secretary is justified and within her powers. The responsibility attaching to the Department Secretary to safeguard the funds of her department, coupled with her general power of supervision and control, authorizes her to countermand any issuance or grant of compensation should she later find out that this was improper or irregular.

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[1] Approved on July 25, 1987.

[2] Approved on June 11, 1978.

Thus, I cannot join the *ponencia* in ruling that the DSWD Secretary's measure of directing the refund of excess CNAIs violated Section 43 of Republic Act No. 10147 of the General Appropriations Act of 2011 (2011 GAA). Section 43 of the 2011 GAA provides:

> SECTION 43. *Authorized Deductions*.— Deductions from salaries, emoluments or other benefits accruing to any government employee chargeable against the appropriations for Personal Services may be allowed for the payment of individual employee's contributions or obligations due the following:
>
> (a) The BIR, GSIS, HDMF and PHILHEALTH;
>
> (b) Mutual benefits associations, thrift banks and non-stock savings and loan associations duly operating under existing laws which are managed by and/or for the benefit of government employees;
>
> (c) Associations/cooperatives/provident funds organized and managed by government employees for their benefit and welfare;
>
> (d) Duly licensed insurance companies accredited by national government agencies; and
>
> (e) Organizations or companies such as banks, non-bank financial institutions, financing companies and other similar entities that have authority to engage in lending and mutual benefits or mutual aid system as stated in their respective constitutions and by-laws approved by government regulating bodies such as the Securities and Exchange Commission (SEC), Insurance Commission (IC), Bangko Sentral ng Pilipinas (BSP) and Cooperative Development Authority (CDA).
>
> PROVIDED, That such deductions shall not reduce the employee's monthly net take home pay to an amount lower than Three Thousand Pesos (₱3,000),after all authorized deductions: PROVIDED, FURTHER, That in the event total authorized deductions shall reduce net take home pay to less than Three Thousand Pesos (₱3,000),authorized deductions under item (a) shall enjoy first preference, those tender item (b) shall enjoy second preference, and so forth.

While Section 43 lists the deductions from salaries and other benefits of government employees that may be allowed, I am

unable to agree that this authorization is an exclusive list which forecloses other valid salary deductions, including those that may be ordered by a head of agency pursuant to her power of control and supervision and as a measure of fiscal responsibility.

An example of an allowable refund is in the case of improper salary adjustment or step increment under the Manual on Position Classification and Compensation[3] and DBM BC No. 2020-4.[4] This same form was used by the Court's Office of Administrative Services in implementing the salary adjustments under Executive Order No. 201 and is still being used in Notices of Step Increment. Section 43 cannot prevent a refund in the form of salary deduction if the same is done with the conformity of the employee concerned.

As the mode of refund or payment, salary deductions are also allowed by issuances other than Section 43: Office of the Court Administrator (OCA) Circular No. 63-2012[5] provides that requests to make payment of fines in administrative cases through staggered salary deductions may be recommended for approval of the Court, and Commission on Audit (COA) Resolution No. 2015-031[6] allows government employees held liable for COA disallowances to settle disallowed salaries and personal benefits, allowances or emoluments by installments through monthly payroll deductions, subject only to the minimum take home pay requirements in the GAA.[7]

ACCORDINGLY, I vote to **PARTLY GRANT** the petition.

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[3] See Annex "B," Manual on Position Classification and Compensation, Chapter 3, pp. 3-17: The Notice of Step Increment pertinently provides:

This step increment is subject to post-audit by the Department of Budget and Management and to appropriate re-adjustment and **refund** if found not in order. (Emphasis and underscoring supplied)

[4] See Sec. 7.3

[5] GUIDELINES ON THE ENFORCEMENT OF THE PAYMENT OF FINES IN ADMINISTRATIVE CASES, approved on July 10, 2012.

[6] POLICY ON SETTLEMENT OF AUDIT DISALLOWANCES BY PERSONS LIABLE, approved on August 20, 2015.

[7] Id. at Sec. 3.

FIRST DIVISION

[G.R. No. 207735. November 10, 2020]

FIELD INVESTIGATION OFFICE-OFFICE OF THE OMBUDSMAN, *Petitioner*, *v.* **LUCIA S. RONDON, RONALDO G. SIMBAHAN, and ROLANDO A. CABANGON,** *Respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE OFFENSES; GROSS NEGLECT OF DUTY DISTINGUISHED FROM SIMPLE NEGLECT OF DUTY.— In the recent case of *Andaya v. Field Investigation Office of the Office of the Ombudsman,* this Court had occasion to define gross neglect of duty as an administrative offense, and to distinguish it with the lesser offense of simple neglect of duty, *viz.*:

> Gross Neglect of Duty is defined as "[n]egligence characterized by 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. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." In contrast, Simple Neglect of Duty is the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."

2. ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY; THE PROCESSING OF DISBURSEMENT VOUCHERS WITH UNDATED AND UNNUMBERED DOCUMENTS DUE TO CARELESSNESS AND INDIFFERENCE IN THE DISCHARGE OF DUTIES AMOUNTS ONLY TO SIMPLE NEGLECT OF DUTY.— The complaint filed by the FIO-OMB charges respondents with gross neglect of duty for failing to discern the badges of fraud in the transactions evidenced by the Disbursement Vouchers (DVs) that they processed. According to the CA, these badges of fraud were undiscoverable either from the face of the documents as presented to respondents or by virtue of respondents' positions

within the DPWH organization and the disbursement process. Thus, they can only be made accountable for not noticing something that was patent on the face of the documents they were processing: the lack of dates and serial numbers.

. . .

As correctly pointed out by the CA, these inspection phases of the process are conducted by duly qualified employees of the DPWH with technical expertise in the determination of the necessity, pricing, and quality of emergency vehicle repair work. . . .

. . .

. . . [R]espondents can only be held responsible for failing in their duty to scrutinize the DVs and supporting documents thereof in the state that these documents were presented to them, to determine if they were regular on their face. The Ombudsman was able to establish that respondents processed several DVs with undated and unnumbered job orders, pre-inspection reports and post-inspection reports. . . .

. . . They are obviously guilty of being negligent in the performance of their duty. However, the Ombudsman failed to prove by substantial evidence that respondents were either consciously and intentionally approving such irregularly supported DVs or being grossly negligent in doing so. As the appellate court pointed out, the respondents' lapses can only be attributed to their carelessness and indifference in the discharge of their duties. As such, the CA did not err in finding respondents guilty of simple neglect of duty.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rhett Emmanuel C. Serfino for respondents.

D E C I S I O N

GAERLAN, *J.*:

This is the latest chapter in what has become a protracted legal saga involving a "vehicle repair scam" in the Department

of Public Works and Highways (DPWH), wherein certain employees and officials connived with private parties in obtaining reimbursements for fictitious emergency repairs conducted on DPWH-owned automobiles. Numerous DPWH officials and employees were implicated, resulting in multiple prosecutions and convictions,[1] some of which have reached this Court.[2] The process flow for the reimbursement of emergency vehicle repairs, as found by the Ombudsman in the course of its investigation, is as follows:

1. The end-user will request for repair.
2. The vehicle will be presented to the motorpool.
3. The Central Equipment and Spare Parts (CESP), Bureau of Equipment (BOE) will conduct an initial inspection.
4. The Special Inspectorate Team (SIT) will conduct the pre-inspection and prepare/approve the pre-inspection report.
5. The Procurement Section, the Administrative and Manpower Management Service (AMMS), will prepare the Requisition for Supplies/Equipment, canvass, quotation of three (3) suppliers, certificate of fair wear and tear and the certificate of emergency purchase.

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[1] Office of the Ombudsman Press Release, Ombudsman wins 2 more cases vs. DPWH officials over P7.8M vehicle repair scam. January 3, 2017, https://www.ombudsman.gov.ph/ombudsman-wins-2-more-cases-vs-dpwh-officials-over-p7-8m-vehicle-repair-scam/. Accessed 10 August 2020. *People v. Planta, et al.*, Crim. Case Nos. 28098 & 28251, November 17, 2016 (Sandiganbayan), https://sb.judiciary.gov.ph/DECISIONS/2016/K_Crim_28098%20&%2028251_Planta_11_17_2016.pdf. Accessed 10 August 2020; *People v. Umali, et al.*, Crim. Case Nos. 28352 & 28099, November 17, 2016 (Sandiganbayan), https://sb.judiciary.gov.ph/DECISIONS/2016/K_Crim_29252%20&%2028099_Umali,%20et%20al_11_17_2016.pdf. Accessed 10 August 2020, *People v. Martinez, et al.*, Case Nos. 28100 & 28253, November 10, 2016 (Sandiganbayan), https://sb.judiciary.gov.ph/DECISIONS/2016/K_Crim_28100-28253_Martinez,%20et%20al_11_10_2016.pdf. Accessed 10 August 2020.

[2] *See Civil Service Commission v. Beray*, G.R. Nos. 191946 & 191974, December 10, 2019; *Arias v. People*, G.R. Nos. 237106-07, June 10, 2019; *Favorito v. Commission on Audit*, G.R. No. 213368, November 10, 2015 (unsigned resolution); *People v. Borje, Jr.*, 749 Phil. 719 (2014); *Republic v. Arias*, 743 Phil. 266 (2014); *Quarto v. Ombudsman Marcelo*, 674 Phil. 370 (2011).

6. The end-user will sign the Requisition for Supplies/Equipment, certificate of emergency purchase.
7. The Bureau of Equipment will recommend the approval of the Requisition for Supplies/Equipment.
8. The AMMS will approve the Requisition for Supplies/ Equipment;
9. The end-user will select the repair shop and/or any of the accredited auto supply.
10. The SIT will conduct a post-repair inspection, approve the report and prepare a report of waste materials.
11. The Assets & Supply Management Control Division will conduct price monitoring and prepare the price monitoring slip, then recommend the payment.
12. The Central Equipment and Spare Parts Division (CESPD) will prepare the Disbursement Voucher (DV) and certify that the expenses are necessary, lawful and incurred under their direct supervision.
13. The BOE will approve the DV.
14. The Claims, Processing and Documentation Section (CPDS) of the Accounting Division will review, initial and certify the DV as to the completeness of supporting documents and its validity in accordance with the accounting and auditing rules and regulations.
15. The Accounting Division will recommend the DV for funding.
16. The Cashier's Division will prepare the check.
17. The Director, CFMS, will sign the check.
18. The Director and the AMMS will countersign the check.
19. The Cashier's Division will release the check to the claimants.[3]

The alleged abuses in this procurement and reimbursement process were uncovered sometime between 2001 and 2002;[4] and resulted in the filing of criminal and administrative charges against several DPWH employees and private parties who purportedly provided the automotive repair services.[5] As regards the involvement of herein respondents, the Court of Appeals (CA) aptly summarizes the facts:

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[3] *Rollo*, pp. 51-53.

[4] *Civil Service Commission v. Beray*; *Republic v. Arias*, supra note 2.

[5] Supra notes 1 & 2. Complaint of the Ombudsman-Field Investigation Office, *rollo*, pp. 45-49.

Sometime in 2002, a criminal complaint was filed before the Office of the Ombudsman against personnel from different divisions of the Department of Public Works and Highways (DPWH) Central Office alleging that through deceptive machinations and fraudulent representations, 521 DPWH vehicles underwent emergency repairs from the period March 2001 to December 2001, when in fact such repairs were either fictitious or non-existent thereby causing the government to be allegedly cheated in an amount equivalent to One Hundred Thirty Nine Million Pesos (₱139,000,000.00). This case was docketed as Criminal Case No. OMB-C-C-02-0507 and was entitled Irene D. Ofilada v. Mir, et al. Probable cause was found resulting in the indictment of majority of the respondents therein for plunder.

Thereafter, in a Supplemental Resolution dated 1 March 2004, Ombudsman Simeon Marcelo ordered the conduct of further proceedings against other persons who appeared responsible for allegedly diverting funds to their own private interest.

In line with such directive, an Administrative Complaint dated 14 March 2008 was filed by the Field Investigation Office of the Office of the Ombudsman (FIO-OMB) against several DPWH Central Office personnel including herein [respondents] Lucia S. Rondon, Ronaldo G. Simbahan and Rolando Cabangon x x x with the Office of the Ombudsman (Ombudsman). The case was docketed as OMB-C-A-08-0657-L and entitled Field Investigation Office-Office of the Ombudsman v. Conrado Valdez, et al.

The complaint essentially alleges that from January 2001 to December 2001, twenty-seven (27) service vehicles of the DPWH figured in 192 anomalous repair transactions with a certain Conrado S. Valdez (Valdez), Clerk III at the Project Management Office-Metropolitan Flood Control (PMO-MFCP) of the DPWH as the payee. Valdez was alleged to have repeatedly requested and signed job orders for the emergency repair of 27 DPWH service vehicles despite not being authorized to do so under existing guidelines. Anomalous claims for reimbursement were then thereafter made by Valdez for the amount he advanced for the emergency repairs of the 27 service vehicles. Allegedly conniving with the other respondents named in the complaint, including herein [respondents] Rondon, Simbahan and Cabangon, it was alleged that Valdez' acts caused the issuance of checks which the respondents in the complaint then converted, misappropriated and misapplied for their own personal benefit thereby causing undue injury to the Government.

The complaint alleged that the claims for reimbursement made for the 192 repair transactions were anomalous for the following reasons: i) Job Order Requests were prepared by Valdez rather than by the end-user named in the Memorandum Receipt for such vehicles; ii) the annual salary of Valdez (amounting to ₱92,272.00) was insufficient to cover the total amount supposedly advanced for said repairs (amounting to ₱4,337,862.00); iii) it is claimed that Valdez did not actually need to make advance payments for the repairs as the vehicles were neither issued to him nor to the department where he was assigned; iv) the number of repairs for each vehicle, as well as the amount involved, were close to exceeding, if not exceeding, the cost of purchasing a new vehicle; v) minor repairs were recommended instead of major repairs, with the scheme of splitting a major repair into several minor repairs clearly intended to circumvent existing guidelines in the repair of vehicles; vi) checks were issued in the name of Valdez rather than in the name of the supplier.

With respect to the other respondents in the complaint, it was alleged that they participated in a scheme whereby vital documents such as Job Orders, Pre- and Post-Inspection Reports, Requisitions for Supplies and Equipment, Certificate of Emergency Purchase, Certificate of Acceptance and other pertinent papers were repeatedly falsified, feigned or simulated which resulted in fraudulent claims, fictitious repairs and anomalous reimbursements involving several vehicles.

As regards [respondents], who are all part of the DPWH Central Office Accounting Division, the FIO-OMB asserts that they initialed, countersigned and indexed various supporting documents necessary for the procurement of emergency repairs and purchase of spare parts of service vehicles and equipment. Specifically, the following acts were attributed to [them]:

(a) Rondon, as Accountant IV, initialed one hundred ninety-two (192) Disbursement Vouchers (DV);

(b) Simbahan, as Senior Bookkeeper, countersigned fifty-three (53) Notices of Cash Allocation; and

(c) Cabangon, as Computer Operator I, indexed forty-six (46) DVs.[6]

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[6] Id. at 29-31. Citations omitted.

In a decision dated April 15, 2011,[7] the Office of the Ombudsman found substantial evidence to support its Field Investigation Office's claim that DPWH officials and employees were running a vehicle repair scam. Of the alleged 192 fictitious repairs covering 27 vehicles, only 118 repairs involving 13 vehicles were substantiated with documentary evidence.[8] Even then, these evidentiary documents were patently defective. The Ombudsman found the following badges of fraud: (1) the emergency repair requests were filed by the same person who was not the end-user of the vehicles sought to be repaired;[9] (2) the vehicles were not presented to the motor pool, as required by DPWH regulations;[10] (3) the suspicious time intervals between repairs, with some vehicles being repaired twice on the same day, and other vehicles being repaired 15 times in the span of one year, indicating an intent to split job orders so that they do not exceed the ₱25,000.00 limit set by Commission on Audit and DPWH regulations;[11] (4) in view of the fact that emergency repairs must be shouldered initially by the requesting party, the person who requested the emergency repairs did not have, considering his salary, sufficient means to advance the amounts needed for such repairs;[12] (5) under DPWH regulations, given the total cost of the repairs, the SIT should have recommended the purchase of new vehicles instead of "fixing" the subject vehicles;[13] (6) most of the documents, particularly the job orders, pre-inspection reports, and post-inspection reports were undated and unnumbered;[14]

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[7] The decision was rendered by a Special Panel composed of Graft Investigation and Prosecution Officers Araceli R. Sonas-Crisostomo, Rolando L. Manjares, and Christine M. Tabasuares-Aba, reviewed by Assistant Ombudsman Aleu A. Amante, and approved by Acting Ombudsman Orlando C. Casimiro. Id. at 88-117.

[8] Id. at 102-103.

[9] Id. at 104.

[10] Id.

[11] Id. at 106-107.

[12] Id. at 107-108.

[13] Id. at 108.

[14] Id.

(7) the automotive repair shops who were in cahoots with the DPWH officers issued undated official receipts or cash invoices but nevertheless received the corresponding checks issued to the "end-user" who requested the repairs;[15] (8) two official receipts issued by an automotive repair shop issued in the name of one DPWH employee named Danilo Planta had corresponding checks issued in the name of another DPWH employee named Conrado Valdez;[16] and (9) three of the 13 vehicles were non-existent.[17] As for herein respondents, they were found guilty of gross neglect of duty and penalized with dismissal from the service. The anti-graft office explained that:

> [t]he following respondents, whose duties are ministerial, have committed Gross Neglect of Duty and Conduct Prejudicial to the Best Interest of the Service. To a certain degree, ministerial duties should not be allowed to be used as a shield to protect abuses in government transactions and diminish the constitutional canon that public office is a public trust, which requires that all public officials and employees should, at all times, embody the values of integrity and discipline. Verily, while a ministerial duty neither requires the exercise of official discretion and judgment, the concerned public official or employee should not turn a deaf ear and blind eye in the face of blatant corruption, as in this case. In so doing, this public official or employee becomes part of the grand scheme to prejudice the government. They are:
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> x x x x x x x x x
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> The repetitive nature of the transactions should have alerted the following respondents: **TOLENTINO, AMAR, CABANGON, and CABACUNGAN** who journalized 71 DVs, 79 DVs, 40 DVs, 27 DVs, respectively; **RONDON** who initialed 41 DVs and **SIMBAHAN** who inquired into the availability of funds and thereafter signed 64 NCAs. They were indispensable in the preparation and issuance of the DVs and checks.[18]

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[15] Id.

[16] Id.

[17] Id. at 109.

[18] Id. at 112-113. Citations omitted, emphases in the original. Underlining supplied.

Respondents were among those who filed motions for reconsideration from the aforesaid decision, which were all denied by the Ombudsman in an Order[19] dated October 18, 2011. Aggrieved, respondents appealed[20] to the CA, which rendered the present assailed decision[21] and resolution[22] downgrading their offense to simple neglect of duty and reducing their penalty to three months' suspension without pay.

The appellate court explained that the nature of respondents' jobs does not require to them to look beyond what is written on the face of the DVs and NCAs they process. As an accountant (Rondon), a bookkeeper (Simbahan), and a computer operator (Cabangon) in the Accounting Division, their participation in the emergency repair disbursement process only comes after the approval of the DV. Their function "is to recommend the funding of the DVs on the basis of the validity of the documents supporting the reimbursement claims."[23] Thus, their duty vis-à-vis examination of supporting documents is limited to determining if these are regular on their face.[24] Consequently, respondents cannot be held responsible for failing to discover the badges of fraud found by the Ombudsman. The appellate court reiterated that respondents only deal with the funding of the DVs after these have been approved by the other divisions of the DPWH, *i.e.*, they only come in at the 14th step of the

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[19] Id. at 125-131. The order was issued by a Special Panel composed of Graft Investigation and Prosecution Officers Araceli R. Sonas-Crisostomo, Rolando L. Manjares, and Christine M. Tabasuares-Aba, reviewed by Assistant Ombudsman Aleu A. Amante, and approved by Ombudsman Conchita Carpio Morales.

[20] Appeals from decisions rendered by the Ombudsman in administrative cases are governed by Rule 43 of the Rules of Court. *Fabian v. Desierto*, 356 Phil. 787 (1998).

[21] *Rollo*, pp. 29-44; penned by Associate Justice Priscilla J. Baltazar-Padilla (now a retired Member of this Court) with Associate Justices Rosalinda Asuncion-Vicente and Agnes Reyes-Carpio, concurring.

[22] Id. at 46-47.

[23] Id. at 41.

[24] Id. at 41-42.

disbursement process (see above), after the DVs have been approved by the Bureau of Equipment. Prior to that, DVs can only be issued after the preparation of Pre-Inspection Report and Post-Inspection Report by the SIT and subject to price monitoring and payment recommendation by the Assets & Supply Management Control Division. Only then will the Central Equipment and Spare Parts Division (CESPD) will prepare the DVs and certify that the expenses are necessary, lawful and incurred under their direct supervision. Stated in simpler terms, the respondents, who worked for the Accounting Division, had a right to rely on the documents attached to the DVs, which were generated by the foregoing departments who are primarily tasked with ascertaining the propriety of the vehicle repair disbursement requests.

Dissatisfied with the CA's downgrading of the sanctions against respondents, the FIO-OMB lodged the present petition for review.

In the recent case of *Andaya v. Field Investigation Office of the Office of the Ombudsman*, this Court had occasion to define gross neglect of duty as an administrative offense, and to distinguish it with the lesser offense of simple neglect of duty, *viz.*:

> Gross Neglect of Duty is defined as "[n]egligence characterized by 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. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property." In contrast, Simple Neglect of Duty is the failure of an employee or official to give proper attention to a task expected of him or her, signifying a "disregard of a duty resulting from carelessness or indifference."[25] (Citations omitted)

The complaint filed by the FIO-OMB charges respondents with gross neglect of duty for failing to discern the badges of fraud in the transactions evidenced by the DVs that they

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[25] G.R. No. 237837, June 10, 2019.

processed. According to the CA, these badges of fraud were undiscoverable either from the face of the documents as presented to respondents or by virtue of respondents' positions within the DPWH organization and the disbursement process. Thus, they can only be made accountable for not noticing something that was patent on the face of the documents they were processing: the lack of dates and serial numbers.

This Court is of the considered opinion that the CA correctly found respondents guilty of simple neglect of duty. The CA did not err in holding that badges of fraud were undiscoverable either from the face of the documents as presented to respondents or by virtue of their positions within the DPWH organization and the disbursement process. It must be remembered that the participation of respondents in the disbursement process sets in only after the emergency repair request has passed through the following steps:

- Presentation of the vehicle to the motorpool.
- Initial inspection by the Central Equipment and Spare Parts (CESP), Bureau of Equipment (BOE).
- Pre-inspection by the Special Inspectorate Team (SIT) and preparation/approval of the pre-inspection report.
- Preparation of the Requisition for Supplies/Equipment, canvass, quotation of three (3) suppliers, certificate of fair wear and tear and the certificate of emergency purchase by the Procurement Section of the Administrative and Manpower Management Service (AMMS).
- Signature by the end-user of the Requisition for Supplies/ Equipment and Certificate of Emergency Purchase.
- Recommendation of approval of the Requisition for Supplies/ Equipment by the Bureau of Equipment.
- Approval of the Requisition for Supplies/Equipment by the AMMS.
- Selection of the repair shop and/or accredited auto supply by the end-user.
- Post-repair inspection and report plus preparation of waste materials report by the SIT.
- Price monitoring and recommendation of payment by the Assets & Supply Management Control Division.
- Preparation of the Disbursement Voucher (DV) by the Central Equipment and Spare Parts Division (CESPD), including a

certification that the expenses are necessary, lawful and incurred under their direct supervision.

- Approval of the DV by the BOE.

As correctly pointed out by the CA, these inspection phases of the process are conducted by duly qualified employees of the DPWH with technical expertise in the determination of the necessity, pricing, and quality of emergency vehicle repair work. Particularly, the SIT, which conducts the pre-repair and post-repair inspections and prepares the reports therefor, is composed of licensed mechanical engineers.[26] Thus, the documents generated during these inspection phases, having been prepared by employees with technical expertise in the pertinent field, were entitled to a presumption of regularity. Even the Office of the Ombudsman itself admits that respondents' duties in relation to the disbursement process were ministerial in nature.[27] Furthermore, as found by the CA, the badges of fraud found by the Ombudsman were not discoverable on the face of the documents, but discoverable during the aforestated inspection phases. Thus, respondents cannot be held liable for failing to find badges of fraud in the transactions embodied by the DVs they processed, not only because they had the right to rely on the expertise and experience of the SIT and the other requisition inspection sections of the DPWH, but also because the DVs are presented to them with a certification by the CESPD that the expenses covered thereby are necessary, lawful and incurred under their direct supervision. On this point, We approvingly quote the findings of the CA:

> The Ombudsman held that the documents supporting the reimbursement claims were full of apparent irregularities which indicate that the reimbursements being sought on the repairs of the DPWH vehicles, were fraudulent. However, after an examination of the case, WE find that although there are indeed irregularities in the supporting documents, most of them are nevertheless not apparent.
>
> First among these alleged patent irregularities is the fact that the person who requested the repairs is not the end-user of the vehicle

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[26] *Rollo*, p. 38.

[27] Id. at 112.

when the same is required to be specified in the Memorandum Receipt which according to the Ombudsman was attached to the Pre-inspection Report as purportedly required under DPWH Department Order No. 33, series of 1988 (D.O. 33) and the Memorandum of DPWH Secretary Gregorio R. Vigilar dated 31 July 1997 (DPWH Memorandum). The Pre-inspection Report, in turn, is one of the documents submitted to the Accounting Division to support the reimbursement claim.

However, a careful perusal of D.O. 33 and the DPWH Memorandum reveals that there is no express statement therein requiring that the Memorandum Receipt be attached to the Pre-inspection report. In fact, the only reference to the Memorandum Receipt with respect to the Pre-inspection Report is that found in Section C.6 of the DPWH Memorandum, *viz.*:

C. GUIDELINES, PROCEDURES AND OTHER RELATED MATTERS.

x x x x x x x x x

6. No request for pre-repair inspection shall be processed unless the service vehicle concerned has been properly recorded with the Bureau of Equipment with corresponding HI property numbers with the LTO Registration under DPWH ownership, and with updated Memorandum Receipt (MR).

Based on the foregoing provision, it can be seen that the Memorandum Receipt is only a requirement for the processing of the request for pre-inspection. There was no mention that it forms part and is attached to the Pre-inspection Report. Furthermore, assuming the Memorandum Receipt was attached to the Pre-inspection Report, Section D of the DPWH Memorandum specified the documents to be examined by the Accounting Division in processing the funding of payment for emergency repairs and the Memorandum Receipt is not one of them, *viz.*:

D. Funding Requirements

1. Documentation — No claim for payment for the emergency minor/major repair of vehicles of this Department shall be processed by the Accounting Division, CFMS without strictly following [*sic*] provisions of COA Circular No. 92-389 dated November 03, 1997. The following documentary requirements shall be complied with prior to funding and/or processing of payment, to wit:

1.1 Request for Obligation of Allotment (ROA) for said claim which shall be signed by the concerned Undersecretary, Assistant Secretary, Bureau Directors, Project Director/Manager, Service Chief, or the duly designated representative of the office of the end-user;

1.2 Certification of Emergency Purchase/Repair which shall be signed by the end-user, duly approved by the Head of Office concerned (with the rank higher than Division Chief);

1.3 Abstract of Open Canvass and corresponding written quotations for the purchase of spare parts and repair vehicles duly signed by the Supply Officer, Canvasser, and supplier concerned;

1.4 The Requisition for Supplies or Equipment (RSE) shall be prepared and signed by the end-user, recommended for approval and duly approved by the official concerned, in accordance with the existing delegation of authorities;

1.5 The Motor Vehicle Pre-repair/Post-repair Inspection Report which shall indicate the Control Series No. and the date of inspection, duly signed by all members of the Special Inspectorate Team (SIT);

1.6 The Certificate of Acceptance which shall be signed by the end-user of said vehicle. All documents, under accounting and auditing rules and regulations, shall be signed by the official and/or supplier concerned over their respective printed names.

Hence, assuming *arguendo* that the Memorandum Receipt was attached to the Pre-Inspection Report, [respondents] cannot still be faulted in failing to discover that the person requesting the repairs was not the end-user as they were not obliged to examine the Memorandum Receipt since that function is given to the body tasked with pre-inspection which in this case is the Special Inspectorate Team since it was them who issue the pre-inspection report. As it is not their function to inspect the Memorandum Receipt, [respondents] have the right to rely on what is written in the pre-inspection report and limit their inspection to the same.

For the same reason, [respondents] could have not known also that Valdez' annual salary (₱92,272.00) was not enough to answer for to total cost of repairs (₱4,337,862.00) which was allegedly advanced by him; and that there was a violation of Section C.8 of

the DPWH Memorandum as the cost of the repetitive repairs made on the vehicles is already almost equivalent to the current market value thereof. The annual salary of the end-user, the current fair market value of the repaired vehicles and the total cost of the repairs made on each of the same are not part of the supporting documents enumerated under Section D of the DPWH Memorandum which are required to be examined by [respondents] in processing the funding of the disbursement voucher. Nor can it be said that it is their function to determine the same given that the Accounting Division only deals with the disbursement voucher and its supporting documents. As such, [respondents] could have not possibly discovered the aforementioned irregularities.[28] (Citations omitted)

In *Macadangdang v. Sandiganbayan*,[29] a similar vehicle repair scam was discovered in the La Union branch of the Bureau of Posts. The officials and employees involved were prosecuted for estafa through falsification. The Sandiganbayan found the regional director, the budget officer, the accountant, the motorpool dispatcher, and the auditing examiner/property inspector guilty. On appeal by the budget officer, this Court reversed his conviction, *viz.*:

The records show that the only participation of the budget officer in the alleged conspiracy was to obligate and allot funds. His job was to certify to the availability of funds and to segregate those funds in the books once allotted. It was not his job to directly attend to the inspection of vehicles, the ascertainment of whether or not repairs were needed, the bidding and awards to repair shops, and the determination of whether or not the repairs were effected pursuant to specifications in the contracts. More particularly, he had nothing to do with the abstract of bids which were falsified to make it appear that the accused private persons participated in the bidding when in truth, they did not do so.

Simply because a person in a chain of processing officers happens to sign or initial a voucher as it is going the rounds, it does not necessarily follow that he becomes part of a conspiracy in an illegal scheme. x x x[30] (Citations omitted)

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[28] Id. at 8-10; 36-38.

[29] 325 Phil. 316 (1989).

[30] Id. at 335.

Contrary to the assertion of the FIO-OMB, the *Arias*[31] doctrine cannot be applied here, since there is no proof that respondents, who were in the Accounting Division, were superior officers vis-à-vis the SIT and the other vehicle repair inspectors of the DPWH. At any rate, respondents' right to rely on the documents attached to the DVs lay in the nature of respondents' functions within the DPWH and the technical nature of said documents; and not upon the existence of a superior-subordinate relation between them and the DPWH inspection organs.

In line with the foregoing disquisitions, respondents can only be held responsible for failing in their duty to scrutinize the DVs and supporting documents thereof in the state that these documents were presented to them, to determine if they were regular on their face. The Ombudsman was able to establish that respondents processed several DVs with undated and unnumbered job orders, pre-inspection reports and post-inspection reports. Book VI, Section 40 of the Administrative Code provides:

> 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

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[31] *Arias v. Sandiganbayan (Third Div.)*, 259 Phil. 794, 801 (1989). The Arias doctrine espouses the general rule that all heads of office cannot be convicted of a conspiracy charge just because they did not personally examine every single detail before they, as the final approving authority, affixed their signatures on the subject documents. *Lihaylihay v. People*, 715 Phil. 722 (2013).

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.

Respondents, who were part of the Accounting Division, have two essential tasks in the emergency repair disbursement process: 1) ensuring that the DVs and the supporting documents thereof are regular on their face; and 2) recommending the DVs for funding. Respondents Rondon and Cabangon initialed 41 and 40 DVs, respectively; while respondent Simbahan inquired into the availability of funds for 64 notices of cash allocation (NCA) and signed such notices despite the fact that some of these DVs and NCAs were supported by undated and unnumbered job orders and inspection reports. They are obviously guilty of being negligent in the performance of their duty. However, the Ombudsman failed to prove by substantial evidence that respondents were either consciously and intentionally approving such irregularly supported DVs or being grossly negligent in doing so. As the appellate court pointed out, the respondents' lapses can only be attributed to their carelessness and indifference in the discharge of their duties. As such, the CA did not err in finding respondents guilty of simple neglect of duty.

WHEREFORE, the present petition is **DENIED**. The February 19, 2013 decision and June 11, 2013 resolution of the Court of Appeals in CA-G.R. SP No. 123018 are **AFFIRMED**.

SO ORDERED.

Peralta, C.J., Caguioa, Carandang, and *Zalameda, JJ.*, concur.

FIRST DIVISION

[G.R. No. 208251. November 10, 2020]

PHILIPPINE WIRELESS, INC. and REPUBLIC TELECOMMUNICATIONS, INC., *Petitioners*, *v.* **OPTIMUM DEVELOPMENT BANK (formerly CAPITOL DEVELOPMENT BANK),** *Respondent*.

SYLLABUS

1. MERCANTILE LAW; FINANCIAL REHABILITATION RULES OF PROCEDURE (2013 FRIA RULES); ISSUANCE OF STAY ORDER; RIGHT OF CREDITORS TO COMMENCE ACTIONS OR PROCEEDINGS IN ORDER TO PRESERVE *AD CAUTELAM* THEIR RESPECTIVE CLAIMS AGAINST A DISTRESSED CORPORATION DESPITE THE ISSUANCE OF A STAY ORDER.— The Stay Order issued by the rehabilitation court, which effectively started the rehabilitation proceedings, together with its order suspending all claims against PWI and RETELCO, is akin to a commencement order under Section 8, Rule 2 of the 2013 FRIA Rules. The quoted provision clearly recognizes the right of creditors to commence actions or proceedings in order to preserve *ad cautelam* their respective claims against a distressed corporation despite the issuance of a stay order. This provision reinforces Section 7, Rule 3 of the 2008 Rehabilitation Rules and acknowledges creditors' right to commence actions or proceedings against a corporation undergoing rehabilitation.

2. ID.; ID.; ID.; WHAT IS SOUGHT TO BE SUSPENDED IN A STAY ORDER IS THE EXECUTION AND SATISFACTION OF JUDGMENTS AGAINST CORPORATIONS UNDER REHABILITATION.— It is apparent that the Court, in formulating the 2008 Rehabilitation Rules and the 2013 FRIA Rules, did not intend to bar creditors from filing actions and instituting proceedings necessary to preserve their claim against distressed corporations and to toll the running of the prescriptive period. In construing Section 7, Rule 3 of the 2008 Rehabilitation Rules and Section 8, Rule 2 of the 2013 FRIA Rules, these provisions must be harmonized and taken as a whole, giving effect to each word. The Court is clear in enacting the 2008

Rehabilitation Rules and the 2013 FRIA Rules. Insofar as creditors' claims are concerned, what was sought to be suspended in a stay order issued pursuant to Section 7, Rule 3 of the 2008 Rehabilitation Rules or a commencement order issued under Section 8, Rule 2 of the FRIA Rules is the execution and satisfaction of judgments against corporations under rehabilitation.

APPEARANCES OF COUNSEL

A.J.Y. Arreza & Associates for petitioners.
Christian M. Chavez for respondent.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court (Rules), assailing the Decision[2] dated April 17, 2013 and the Resolution[3] dated July 16, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 92685 denying the appeal of petitioners Philippine Wireless, Inc. (PWI) and Republic Telecommunications, Inc. (RETELCO) for lack of merit.

Antecedents

In August 1997, PWI entered into a Credit Agreement with respondent Capitol Development Bank (Capitol), availing a ₱20,000,000.00 credit facility from Capitol secured by the corporate suretyship of RETELCO. In the Continuing Suretyship Agreement RETELCO executed, it undertook to jointly and severally pay with PWI the obligation PWI may incur pursuant to the Credit Agreement.[4]

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[1] *Rollo*, pp. 7-20.

[2] Penned by Associate Justice Sesinando E. Villon, with the concurrence of Associate Justices Florito S. Macalino and Pedro B. Corales; id. at 26-34.

[3] Id. at 35.

[4] Id. at 26-27.

On September 11, 1997, PWI borrowed ₱10,000,000.00 from Capitol, payable on October 13, 1997 at 36% interest rate *per annum* under Account No. COM 735. The next day, or on September 12, 1997, PWI borrowed another ₱10,000,000.00 from Capitol, payable on October 13, 1997 at 36% interest rate *per annum* under Account No. COM 735-A.[5]

When the loans matured, PWI requested for several extensions to pay the loans. Capitol agreed, on the condition that the interests corresponding to the extension period be paid by PWI. After several extensions, the maturity date of the loans became May 13, 1998.[6]

Meanwhile, in February 1998, Capitol extended another loan to PWI in the amount of ₱2,200,000.00 payable on June 4, 1998 at 32.53% interest *per annum* under Account No. COM 735-B.[7]

As of June 10, 1998, PWI's unpaid loans under Account Nos. COM 735, COM 735-A, and COM 735-B amounted to ₱23,363,378.73. Thus, on June 15, 1998, Capitol demanded payment from PWI. Capitol also demanded payment from RETELCO pursuant to the Continuing Suretyship Agreement. However, despite repeated demands, PWI and RETELCO failed to pay their outstanding obligations that had already ballooned to ₱24,669,709.40 as of July 10, 1998. Thus, Capitol instituted a Complaint for collection of a sum of money docketed as Civil Case No. 66906 in the Regional Trial Court (RTC) of Pasig.[8]

In their Answer, PWI and RETELCO argued that Capitol is estopped from proceeding with the collection case as it was aware of the possible restructuring or repayment plan to settle all of PWI's debts. PWI and RETELCO also raised that the

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[5] Id. at 27.

[6] Id.

[7] Id.

[8] Id. at 28.

collection case was not instituted in the name of the real party-in-interest.[9]

Ruling of the Regional Trial Court

On September 15, 2008, the RTC of Pasig rendered its Decision, the dispositive portion of which reads:

> **WHEREFORE**, judgment is hereby rendered in favor of the plaintiff:
>
> 1. **ORDERING** defendants jointly and severally, to pay the plaintiff the amount of Php 24,669,709.40 with 6% legal interest from July 16, 1998 until full payment, as actual damages.
>
> 2. **ORDERING** defendants jointly and severally, to pay plaintiff attorney's fees equivalent to 10% of the entire obligation.
>
> 3. Cost of the suits.
>
> **SO ORDERED.**[10] (Emphasis in the original)

Thereafter, PWI and RETELCO filed an appeal under Rule 41 of the Rules seeking to reverse and set aside the Decision dated September 15, 2008 of the RTC of Pasig.[11]

On August 20, 2009, while the appeal under Rule 41 of the Rules of PWI and RETELCO was pending before the CA, PWI and RETELCO instituted a petition for corporate rehabilitation with the RTC of Makati docketed as Special Proceeding No. M-6853.[12]

On August 24, 2009, the RTC of Makati (rehabilitation court) issued a Stay Order,[13] the dispositive portion of which states:

> IN VIEW OF THE FOREGOING, this Court issues a Stay Order, in accordance with Section 7, Rule 2 of the aforecited Rules of Procedure on Corporate Rehabilitation, as follows:

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[9] Id.

[10] Id. at 29.

[11] Id. at 26.

[12] Id. at 29.

[13] Penned by Presiding Judge Joselito C. Villarosa; id. at 36-39.

1. Appointing **Atty. Pamela Barbara D. Quizon-Labayen with address at Unit 410 Cornell St., Southpointe Townhomes, Merville, Parañaque City**, as rehabilitation receiver who shall be considered as an officer of the court and who shall have the powers, duties and functions as provided in Section 12, Rule 3 of the aforecited Rules of Procedure on Corporate Rehabilitation. The rehabilitation receiver must post a bond of Php1,000,000.00 before entering upon his powers, duties and functions and must take an oath, as provided under Section 13, Rule 3 of the aforecited Rules. The petitioners is [sic] directed to serve immediately a copy of this Stay Order upon the rehabilitation receiver, **Atty. Pamela Barbara D. Quizon-Labayen** who shall manifest her acceptance or non-acceptance of her appointment to this Court not later than ten (10) days from receipt hereof;

2. Staying enforcement of all claims, whether for money or otherwise and whether such enforcement by this court, action or otherwise, against the petitioners, and its guarantors and sureties not solidarily liable with the petitioners;

3. Prohibiting the petitioners from selling, encumbering, transferring or disposing in any manner any of the properties except in the ordinary course of business;

4. Prohibiting the petitioners from making any payment of its liabilities outstanding as of the date of filing of the verified Petition on **August 20, 2009**;

5. Prohibiting the suppliers of the petitioners from withholding supply of goods or services in the ordinary course of business for as long as the petitioners makes [sic] payments for the services and goods supplied after the issuance of the Stay Order.

6. Directing the petitioners to pay in full all administrative expenses incurred after the issuance of this Stay Order.

x x x[14] (Emphasis in the original; underscoring supplied)

However, Atty. Labayen failed to manifest her acceptance or non-acceptance of her appointment as rehabilitation receiver. In an Order[15] dated October 21, 2009, the rehabilitation court appointed Atty. Lito A. Mondragon in her stead. On December

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[14] Id. at 37-38.

[15] Id. at 40.

7, 2009, Atty. Mondragon took his oath as rehabilitation receiver[16] of PWI and RETELCO.[17]

On February 12, 2010, PWI and RETELCO filed a Manifestation with Motion with the CA seeking the suspension of the appellate proceedings in accordance with the 2008 Rules of Procedure on Corporate Rehabilitation[18] (2008 Rehabilitation Rules) which was granted in a Resolution dated August 20, 2010.[19]

The CA directed PWI and RETELCO to give an update on the status of the rehabilitation proceedings. In their Manifestation dated December 20, 2010, PWI and RETELCO reported that the rehabilitation receiver had already filed a Rehabilitation Receiver's Report dated November 24, 2010. Also, in their Compliance dated July 12, 2011, PWI and RETELCO manifested that an Order[20] dated April 1, 2011 was issued by the rehabilitation court in Special Proceeding No. M-6853, approving the Rehabilitation Plan they submitted. Three sets of creditors filed their Petition for Review with the CA assailing the grant of the petition for corporate rehabilitation and seeking the nullification of the approved rehabilitation plan.[21]

Thereafter, in the appealed case, the CA issued a Minute Resolution dated August 9, 2011 ordering the resumption of the appellate proceedings in the collection case and for PWI and RETELCO to submit their Appellants' Brief.[22]

Ruling of the Court of Appeals

On April 17, 2013, the CA rendered its Decision,[23] the dispositive portion of which states:

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[16] Id. at 41.

[17] Id.

[18] A.M. No. 00-08-10, December 2, 2008.

[19] *Rollo*, p. 30.

[20] Id. at 42-60.

[21] Id. at 30.

[22] Id.

[23] Supra note 2.

WHEREFORE, premises considered, the present appeal is **DENIED** for lack of merit. The assailed Decision dated September 15, 2008 rendered by the Regional Trial Court, Branch 71, Pasig City in Civil Case No. 66906, is hereby **AFFIRMED**.

SO ORDERED.[24] (Emphasis in the original)

In affirming the ruling of the RTC, the CA pointed out that the petition for corporate rehabilitation was only initiated after the RTC of Pasig rendered the appealed Decision. For the CA, it did not err in continuing with the appellate proceedings because the Rehabilitation Plan of PWI and RETELCO was approved in a petition for corporate rehabilitation initiated after the decision in the collection case was appealed to the CA.[25] The CA also noted the three petitions for review separately filed with the CA assailing the rehabilitation court's Order dated April 1, 2011 approving the Rehabilitation Plan. The CA opined that the rehabilitation court's Order dated April 1, 2011 is not yet final so as to adversely affect the appellate proceedings in the collection case because the three petitions for review can still be granted or denied by the CA and raised to the Court.[26]

The CA also ruled that Capitol is a real party-in-interest as it stands to be benefited or injured by any judgment in the case.[27] The CA also held that Capitol is not barred from proceeding with the collection case despite its alleged knowledge of the existence of a steering committee created to prepare a restructuring plan to settle PWI's debts. The CA explained that the principle of estoppel cannot be applied because Capitol did not make any admission or representation which would make PWI and RETELCO believe that the bank will no longer enforce the loan obligations against them.[28] Lastly, the CA declared that PWI and RETELCO cannot renege on their loan obligations

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[24] *Rollo*, p. 34.

[25] Id. at 31.

[26] Id.

[27] Id. at 32.

[28] Id. at 32-33.

and simply invoke the existence of "[']circumstances beyond its control['] or [']acts of God[']"[29] to justify non-payment of their loan obligations without establishing entitlement to such exemption.[30]

In a Resolution[31] dated July 16, 2013, the CA denied the Motion for Reconsideration PWI and RETELCO filed for lack of merit.

In the present petition, PWI and RETELCO argue that the stay order contemplated in Section 7, Rule 3 of the 2008 Rehabilitation Rules,[32] which was carried over to Section 7 (b)

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[29] Id. at 33.

[30] Id.

[31] Supra note 3.

[32] Rule 3 — *General Provisions*.

x x x x x x x x x

Section 7. *Stay Order*. — If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) working days from the filing of the petition, issue an order: (a) appointing a rehabilitation receiver and fixing his bond; (b) staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and persons not solidarily liable with the debtor; provided, that the stay order shall not cover claims against letters of credit and similar security arrangements issued by a third party to secure the payment of the debtor's obligations; provided, further, that the stay order shall not cover foreclosure by a creditor of property not belonging to a debtor under corporate rehabilitation; provided, however, that where the owner of such property sought to be foreclosed is also a guarantor or one who is not solidarily liable, said owner shall be entitled to the benefit of exclusion as such guarantor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) prohibiting the debtor from making any payment of its liabilities except as provided in items (e), (f) and (g) of this Section or when ordered by the court pursuant to Section 10 of Rule 3; (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) directing the payment of new loans or other forms of credit accommodations obtained for the rehabilitation of the debtor with prior court approval; (h)

of Republic Act No. (R.A.) 10142 or the Financial Rehabilitation and Insolvency Act of 2010,[33] covers all actions for claims against a corporation pending before any court, tribunal or board. They emphasize that these claims shall be suspended in whatever stage they may be found upon the appointment of a rehabilitation receiver.[34] Citing various jurisprudence, PWI and RETELCO maintain that all monetary claims against a distressed corporation,

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fixing the dates of the initial hearing on the petition not earlier than forty-five (45) days but not later than sixty (60) days from the filing thereof; (i) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (j) directing the petitioner to furnish a copy of the petition and its annexes, as well as the stay order, to the creditors named in the petition and the appropriate regulatory agencies such as, but not limited to, the Securities and Exchange Commission, the Bangko Sentral ng Pilipinas, the Insurance Commission, the National Telecommunications Commission, the Housing and Land Use Regulatory Board and the Energy Regulatory Commission; (k) directing the petitioner that foreign creditors with no known addresses in the Philippines be individually given a copy of the stay order at their foreign addresses; (l) directing all creditors and all interested parties (including the regulatory agencies concerned) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than fifteen (15) days before the date of the first initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (m) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition.

The issuance of a stay order does not affect the right to commence actions or proceedings insofar as it is necessary to preserve a claim against the debtor.

[33] Section 7. *Substantive and Procedural Consolidation.* — Each juridical entity shall be considered as a separate entity under the proceedings in this Act. Under these proceedings, the assets and liabilities of a debtor may not be commingled or aggregated with those of another, unless the latter is a related enterprise that is owned or controlled directly or indirectly by the same interests: Provided, however, That the commingling or aggregation of assets and liabilities of the debtor with those of a related enterprise may only be allowed where:

x x x x x x x x x

(b) the debtor and the related enterprise have common creditors and it will be more convenient to treat them together rather than separately;

[34] *Rollo*, pp. 13-14.

without distinction, are suspended pending the rehabilitation proceedings.[35]

In its Comment,[36] Capitol, now called Optimum Development Bank (Optimum), highlights that the RTC of Pasig could no longer suspend the collection case when the Stay Order[37] was issued on August 24, 2009. The Decision dated September 15, 2008 of the RTC of Pasig was already appealed on October 28, 2008 by PWI and RETELCO to the CA.[38] Even assuming *arguendo* that proceedings are still pending before the RTC of Pasig, Optimum posits that the RTC of Pasig was justified in not suspending the proceedings because the Stay Order merely enjoins the enforcement of claims and not its determination.[39] Optimum stresses that, just like the appeal PWI and RETELCO made to the CA, the present petition does not impugn the determination by the RTC of Pasig of PWI and RETELCO's liability. What is only being questioned is the propriety of suspending the proceedings in light of the Stay Order.[40] In the present case, Optimum insists that the Stay Order was only issued a year after the Decision of the RTC of Pasig was rendered and after the decision was appealed.[41] Optimum also maintains that the CA is justified in resuming the appellate proceedings since the collection case has been pending for more than 15 years already.[42] Optimum argues that continuing the appellate proceedings would not unduly hinder or prevent the rehabilitation of PWI. Optimum also notes that the timing of the filing of the petition for rehabilitation, 11 years after the filing of the collection case by Capitol, is suspicious.[43]

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[35] Id. at 14-19.

[36] Id. at 67-72.

[37] Supra note 15.

[38] *Rollo*, p. 68.

[39] Id. at 68-69.

[40] Id. at 71.

[41] Id. at 69.

[42] Id. at 70.

[43] Id. at 71.

In their Reply,[44] PWI and RETELCO clarify that it is the appeal pending before the CA that they are asking the Court to suspend. PWI and RETELCO also reiterate that a stay order suspends all actions for claims against a corporation under rehabilitation in whatever stage they may be and wherever they may be pending, including one that is pending appeal before the CA. PWI and RETELCO also add that the suspension covers all claims of a pecuniary nature such as the present collection case.[45]

The parties submitted their memoranda[46] reiterating their respective positions.

Issue

The issue to be resolved is whether the appellate proceedings assailing the money judgment the RTC of Pasig rendered in a collection case against PWI and RETELCO may be suspended by a stay order issued in a petition for rehabilitation PWI and RETELCO initiated after the decision on the collection case was appealed.

Ruling of the Court

The petition is not meritorious.

The collection case instituted by the creditor against the principal debtor and its surety may proceed despite a stay order issued by the rehabilitation court. The issuance of a stay order does not affect the right to commence actions or proceedings insofar as it is necessary to preserve a claim against the debtor.

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[44] *Id.* at 81-87.

[45] *Id.* at 82-86.

[46] *Id.* at 106-123, 130-143.

Presidential Decree No. (P.D.) 902-A[47] as amended, previously governed the rehabilitation of distressed corporations. Subparagraph (c) of Section 6 of P.D. 902-A, as amended by P.D. 1799, reads as follows:

> c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors: *Provided, however*, That the Commission may, in appropriate cases, appoint a rehabilitation receiver of corporations, partnerships or other associations not supervised or regulated by other government agencies who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph d) hereof: *Provided, further*, That the Commission may appoint a rehabilitation receiver of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned: *Provided, finally*, That **upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly**. (Emphasis supplied; italics in the original)

In cases such as *Rizal Commercial Banking Corp. v. IAC*[48] and *Castillo v. Uniwide Warehouse Club, Inc. and/or Gow*[49] the Court ruled that upon the appointment of a management committee, rehabilitation receiver, board or body pursuant to P.D. 902-A, all actions for claims against a distressed corporation

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[47] Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the Said Agency under the Administrative Supervision of the Office of the President, Presidential Decree No. 902-A, March 11, 1976.

[48] 378 Phil. 10 (1999).

[49] 634 Phil. 41 (2010).

pending before any court, tribunal, board or body shall be suspended accordingly.[50]

The continuation of proceedings pending before the Securities and Exchange Commission (SEC) mentioned in P.D. 902-A, as amended, is applicable only to pending suspension of payment and rehabilitation cases filed as of June 30, 2000 as provided in Section 5.2 of R.A. 8799 or the Securities Regulation Code:

> 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. **The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.** [Emphasis supplied]

On November 21, 2000, after the transfer of cases from the SEC to the RTC, the Court issued its Interim Rules of Procedure on Corporate Rehabilitation[51] (2000 Rehabilitation Rules). Section 6, Rule 4 of the 2000 Rehabilitation Rules states:

> Section 6. *Stay Order*. — If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order (a) appointing a Rehabilitation Receiver and fixing his bond; (b) **staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor**; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) prohibiting the debtor from making any payment of its liabilities outstanding as at the date of filing of the petition; (e) prohibiting the debtor's suppliers of goods or services from

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[50] Supra note 48 at 27; id. at 49.

[51] A.M. No. 00-8-10-SC; promulgated on November 21, 2000.

withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) fixing the initial hearing on the petition not earlier than forty-five (45) days but not later than sixty (60) days from the filing thereof; (h) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (i) directing all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (j) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition. (Emphasis supplied)

The 2000 Rehabilitation Rules explicitly stated that the "enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor"[52] is suspended by the issuance of a stay order.

However, at the time the petition for rehabilitation of PWI and RETELCO was initiated and the Stay Order dated August 24, 2009 was issued, the rules governing corporate rehabilitation was already the 2008 Rehabilitation Rules.[53] Section 6, Rule 4 of the 2000 Rehabilitation Rules had been superseded by Section 7, Rule 3 of the 2008 Rehabilitation Rules which enumerates the consequences of the issuance of a stay order as follows:

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[52] Section 6, Rule 4 of A.M. No. 00-8-10-SC or the Interim Rules of Procedure on Corporate Rehabilitation.

[53] A.M. No. 00-8-10-SC, supra note 18.

Section 7. *Stay Order*. — If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) working days from the filing of the petition, issue an order: (a) appointing a rehabilitation receiver and fixing his bond; (b) **staying enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and persons not solidarily liable with the debtor**; *provided*, **that the stay order shall not cover claims against letters of credit and similar security arrangements issued by a third party to secure the payment of the debtor's obligations**; *provided*, further, that the stay order shall not cover foreclosure by a creditor of property not belonging to a debtor under corporate rehabilitation; *provided*, however, that where the owner of such property sought to be foreclosed is also a guarantor or one who is not solidarily liable, said owner shall be entitled to the benefit of exclusion as such guarantor; (c) prohibiting the debtor from selling, encumbering, transferring, or disposing in any manner any of its properties except in the ordinary course of business; (d) prohibiting the debtor from making any payment of its liabilities except as provided in items (e), (f) and (g) of this Section or when ordered by the court pursuant to Section 10 of Rule 3; (e) prohibiting the debtor's suppliers of goods or services from withholding supply of goods and services in the ordinary course of business for as long as the debtor makes payments for the services and goods supplied after the issuance of the stay order; (f) directing the payment in full of all administrative expenses incurred after the issuance of the stay order; (g) directing the payment of new loans or other forms of credit accommodations obtained for the rehabilitation of the debtor with prior court approval; (h) fixing the dates of the initial hearing on the petition not earlier than forty-five (45) days but not later than sixty (60) days from the filing thereof; (i) directing the petitioner to publish the Order in a newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; (j) directing the petitioner to furnish a copy of the petition and its annexes, as well as the stay order, to the creditors named in the petition and the appropriate regulatory agencies such as, but not limited to, the Securities and Exchange Commission, the Bangko Sentral ng Pilipinas, the Insurance Commission, the National Telecommunications Commission, the Housing and Land Use Regulatory Board and the Energy Regulatory Commission; (k) directing the petitioner that foreign creditors with no known addresses in the Philippines be individually given a copy of the stay order at their foreign addresses; (l) directing all creditors and all interested

parties (including the regulatory agencies concerned) to file and serve on the debtor a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than fifteen (15) days before the date of the first initial hearing and putting them on notice that their failure to do so will bar them from participating in the proceedings; and (m) directing the creditors and interested parties to secure from the court copies of the petition and its annexes within such time as to enable themselves to file their comment on or opposition to the petition and to prepare for the initial hearing of the petition.

The issuance of a stay order does not affect the right to commence actions or proceedings insofar as it is necessary to preserve a claim against the debtor. (Emphasis and underscoring supplied; italics in the original)

Noticeably, the consequences of the issuance of a stay order enumerated in Section 6, Rule 4 of the 2000 Rehabilitation Rules were modified and expanded in Section 7, Rule 3 of the 2008 Rehabilitation Rules. It is worthy to point out that the Court included a paragraph clarifying that "a stay order does not affect the right to commence actions or proceedings insofar as it is necessary to preserve a claim against the debtor."[54] Therefore, it is clear that the Court recognizes in the 2008 Rehabilitation Rules the right of creditors to commence actions or proceedings necessary to safeguard its claim against distressed corporations like PWI and RETELCO despite a stay order.

Though the petition for rehabilitation of PWI and RETELCO was filed under the 2008 Rehabilitation Rules, the significant changes incorporated in R.A. 10142 or the Financial Rehabilitation and Insolvency Act (FRIA) of 2010[55] may be applied to resolve the present petition. To integrate the changes introduced in the FRIA, the Court enacted the Financial Rehabilitation Rules of Procedure[56] (2013 FRIA Rules) on August 27, 2013. Section 2, Rule 1 of the 2013 FRIA Rules provides that it shall govern rehabilitation cases already

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[54] Section 7, Rule 3 of the Rules of Procedure of Corporate Rehabilitation.

[55] Effective on August 31, 2010.

[56] A.M. No. 12-12-11-SC, August 27, 2013 (Resolution).

pending, except when its application would not be feasible or would work injustice, to wit:

> Section 2. *Scope*. — These Rules shall apply to petitions for rehabilitation of corporations, partnerships, and sole proprietorships, filed pursuant to Republic Act No. 10142, otherwise known as the Financial Rehabilitation and Insolvency Act (FRIA) of 2010.
>
> **These Rules shall similarly govern all further proceedings in suspension of payments and rehabilitation cases already pending**, except to the extent that, in the opinion of the court, its application would not be feasible or would work injustice, in which event the procedures originally applicable shall continue to govern. (Emphasis supplied; italics in the original)

Similarly, in Section 146 of the FRIA, it is stated that:

> Section 146. *Application to Pending Insolvency, Suspension of Payments and Rehabilitation Cases*. — This Act shall govern all petitions filed after it has taken effect. All further proceedings in insolvency, suspension of payments and rehabilitation cases then pending, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the procedures set forth in prior laws and regulations shall apply.

Therefore, the retroactive application of the pertinent provisions of the 2013 FRIA Rules is permitted in resolving the issue on the non-suspension of the appellate proceedings in the CA despite the issuance by the rehabilitation court of a stay order during the pendency of the appeal.

In *Allied Banking Corp. v. Equitable PCI Bank, Inc.*,[57] the Court found that the application of the 2013 FRIA Rules was proper in resolving a rehabilitation case instituted under the 2000 Rehabilitation Rules "insofar as it clarifies the effect of an order staying claims against a debtor sought to be rehabilitated."[58]

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[57] 828 Phil. 64 (2018).

[58] Id. at 78.

A creditors' right to commence actions or proceedings under Section 7, Rule 3 of the 2008 Rehabilitation Rules was carried over in the last paragraph of Section 8, Rule 2 of the 2013 FRIA Rules which states:

> Section 8. *Commencement of Proceedings and Issuance of a Commencement Order*. — The rehabilitation proceedings shall be deemed to have commenced from the date of filing of the petition.
>
> The Commencement Order shall:
> (V) include a Stay or Suspension Order, which shall:
> (i) suspend all actions or proceedings in court or otherwise, for the enforcement of all claims against the debtor;
> (ii) suspend all actions to enforce any judgment, attachment or other provisional remedies against the debtor;
> (iii) prohibit the debtor from selling, encumbering, transferring or disposing in any manner any of its properties except in the ordinary course of business; and
> (iv) prohibit the debtor from making any payment of its liabilities outstanding as of the commencement date except as may be provided herein.
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> **The issuance of a stay order does not affect the right to commence actions or proceedings in order to preserve ad cautelam a claim against the debtor and to toll the running of the prescriptive period to file the claim.** For this purpose, the plaintiff may file the appropriate court action or proceeding by paying the amount of One Hundred Thousand Pesos (₱100,000.00) or one-tenth (1/10) of the prescribed filing fee, whichever is lower. The payment of the balance of the filing fee shall be a jurisdictional requirement for the reinstatement or revival of the case. (Emphasis supplied; italics in the original)

The Stay Order issued by the rehabilitation court, which effectively started the rehabilitation proceedings, together with its order suspending all claims against PWI and RETELCO, is akin to a commencement order under Section 8, Rule 2 of the 2013 FRIA Rules. The quoted provision clearly recognizes the right of creditors to commence actions or proceedings in order to preserve *ad cautelam* their respective claims against a distressed corporation despite the issuance of a stay order. This provision reinforces Section 7, Rule 3 of the 2008 Rehabilitation

Rules and acknowledges creditors' right to commence actions or proceedings against a corporation undergoing rehabilitation.

In their petition, PWI and RETELCO argued that the Court's ruling in *Phil. Airlines, Inc. v. Court of Appeals*[59] is applicable to the present case.[60] This case originated from a complaint for design infringement and damages instituted by Sabine Koschinger against the company. Before the trial court had rendered a decision, the SEC gave due course to Philippine Airlines' petition for the appointment of a rehabilitation receiver pursuant to P.D. 902-A. The Court upheld the suspension of monetary claims against Philippine Airlines because of the SEC's order placing it under receivership. The Court recognized the need to suspend the payment of the claims pending the rehabilitation proceedings in order to enable the management committee/receiver to channel the efforts towards restructuring and rehabilitation.[61] The Court explained that "[t]he continuation of the appeal proceedings would have unduly hindered the management committee's task of rehabilitating the ailing corporation, giving rise precisely to the situation that the stay order sought to avoid."[62]

The ruling in *Phil. Airlines, Inc. v. Court of Appeals* cannot be applied to the present case to justify suspending the appellate proceedings of Capitol's collection case against PWI and RETELCO as they do not involve the same factual milieu. It must be emphasized that Philippine Airlines' petition for the appointment of a rehabilitation receiver was filed pursuant to P.D. 902-A, as amended, and it was resolved by applying the provisions under the 2000 Rehabilitation Rules,[63] the provisions of which did not yet include the amendment introduced in the last paragraph of Section 7, Rule 3 of the 2008 Rehabilitation Rules. Unlike the *Phil. Airlines, Inc. v. Court of Appeals* case,

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[59] 596 Phil. 500 (2009).

[60] Petition for Review; *rollo*, p. 14.

[61] Supra note 59.

[62] Id. at 508.

[63] Id. at 508-509.

the petition for corporate rehabilitation of PWI and RETELCO was initiated pursuant to the 2008 Rehabilitation Rules. More importantly, it is now clear in Section 7, Rule 3 of the 2008 Rehabilitation Rules and Section 8, Rule 2 of the 2013 FRIA Rules that creditors have a right to commence actions to preserve their claims against a distressed corporation under rehabilitation.

Likewise, in *Philippine Airlines, Incorporated v. Zamora*,[64] the Court declared that:

> x x x [N]o other action may be taken in, including the rendition of judgment during the state of suspension — what are automatically stayed or suspended are the proceedings of an action or suit and not just the payment of claims during the execution stage after the case had become final and executory.
>
> The suspension of action for claims against a corporation under rehabilitation receiver or management committee embraces all phases of the suit, be it before the trial court or any tribunal or before this Court. Furthermore, the actions that are suspended cover all claims against a distressed corporation whether for damages founded on a breach of contract of carriage, labor cases, collection suits or any other claims of a pecuniary nature.[65]

However, the principle expressed above cannot be indiscriminately applied in resolving all controversies involving suspension of claims of distressed corporations presented before Us. The application of the quoted declaration of the Court must be done cautiously, taking into consideration the context in which it was decided. Similar to *Philippine Airlines v. Court of Appeals*, the ruling of the Court in *Philippine Airlines, Incorporated v. Zamora*, quoted above cannot be applied to the present case because the labor case from which the case originated was still pending in the National Labor Relations Commission (NLRC) when Philippine Airlines filed a petition for the appointment of a rehabilitation receiver. Moreover, Philippine Airlines' petition for the appointment of a rehabilitation receiver was filed pursuant to P.D. No.

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[64] 543 Phil. 546 (2007).

[65] Id. at 567.

902-A, as amended, and the Court relied only on its provisions and prior decided cases in resolving the dispute.[66] Considering the apparent differences between *Philippine Airlines, Incorporated v. Zamora* and the present case, adopting principles from said case, insofar as implications of stay order is concerned, to resolve the case at bar, is misplaced.

More recently, in *La Savoie Development Corp. v. Buenavista Properties, Inc.*,[67] the Court applied the ruling in *Phil. Airlines, Inc. v. Court of Appeals*, in declaring that the "effect of the Stay Order is to *ipso jure* suspend the proceedings in the x x x RTC at whatever stage the action may be."[68] This case originated from a complaint for termination of contract and recovery of property with damages Buenavista Properties, Inc. (Buenavista) filed against La Savoie Development Corp. (La Savoie) in 1998. On June 12, 2013, the RTC of Quezon City issued a decision in favor of Buenavista. Subsequently, La Savoie filed a manifestation dated June 21, 2003 informing the court that a stay order dated June 4, 2003 was issued by the RTC of Makati and asking the RTC of Quezon City to suspend its proceedings. In ruling that the decision of the RTC of Quezon City did not attain finality due to the issuance of a stay order pursuant to the 2000 Rehabilitation Rules, the Court applied the amendatory provisions of P.D. No. 902-A which mandated the suspension of all actions for claims against a corporation placed under a management committee by the SEC.[69] Noticeably, what may be applied is the favorable treatment under the transitory clause under Section 146 of the FRIA wherein suppletory application of FRIA Rules to pending rehabilitation cases is permitted "except to the extent that in the opinion of the court their application would not be feasible or would work injustice."[70]

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[66] Supra note 59.

[67] G.R. Nos. 200934-35, June 19, 2019.

[68] Id.

[69] Id.

[70] Section 146 of Republic Act No. 10142 or the Financial Rehabilitation and Insolvency Act (FRIA) of 2010.

Accordingly, the collection case instituted by the creditor against the principal debtor and its surety may proceed despite a stay order issued by the rehabilitation court. The CA was correct in resuming the appellate proceedings of the collection case Capitol filed against PWI and RETELCO despite the stay order issued by the rehabilitation court in relation to PWI and RETELCO's rehabilitation. Regardless of the date the petition for rehabilitation was initiated, the issuance of a stay order no longer bars the court from making a determination of rights and liabilities in a collection case involving distressed corporations.

Undoubtedly, the objective in undergoing rehabilitation "is to enable the company to gain a new lease on life and thereby allow creditors to be paid their claims from its earnings."[71] Nevertheless, allowing the continuation of the collection case against distressed corporations under rehabilitation is not inconsistent with the inherent objective of rehabilitation proceedings. What Section 7, Rule 3 of the 2008 Rehabilitation Rules and Section 8, Rule 2 of the 2013 FRIA Rules disallow is the enforcement of claims against the distressed corporation through the execution of money judgment which will undermine efforts to preserve its assets and restore its economic viability.

It is apparent that the Court, in formulating the 2008 Rehabilitation Rules and the 2013 FRIA Rules, did not intend to bar creditors from filing actions and instituting proceedings necessary to preserve their claim against distressed corporations and to toll the running of the prescriptive period. In construing Section 7, Rule 3 of the 2008 Rehabilitation Rules and Section 8, Rule 2 of the 2013 FRIA Rules, these provisions must be harmonized and taken as a whole, giving effect to each word. The Court is clear in enacting the 2008 Rehabilitation Rules and the 2013 FRIA Rules. Insofar as creditors' claims are concerned, what was sought to be suspended in a stay order issued pursuant to Section 7, Rule 3 of the 2008 Rehabilitation Rules or a commencement order issued under Section 8, Rule

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[71] Supra note 57 at 77, citing *Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation*, 745 Phil. 651, 660-661 (2014).

2 of the FRIA Rules is the execution and satisfaction of judgments against corporations under rehabilitation. Therefore, while a stay order is immediately executory[72] the CA was correct in continuing the proceedings in the appellate level because it is allowed under the FRIA Rules.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **DENIED**.

SO ORDERED.

Peralta, C.J., Caguioa, Zalameda, and *Gaerlan, JJ.*, concur.

[72] Section 5, Rule 3 of A.M. No. 00-8-10-SC.

FIRST DIVISION

[G.R. No. 213753. November 10, 2020]

ARMED FORCES OF THE PHILIPPINES, *Petitioner*, *v.* **ENELINDA AMOGOD, NICANOR ARADO, MA. LEONORA ARBUTANTE, DARIO ARBUTANTE, MARCIANA ARBUTANTE, MARFELINA ARBUTANTE, CESAR ALFEREZ, GERTRUDES AGURA, ISIDRO BALAN, MARY GRACE BACAS, EMILIO BANTANG, RUTH BULAY-OG, FELIZA BARANODIN, ERNESTO BASILIO, SALVADOR CASTILLO, AQUILLO CAGAMPANG, JULIUS CORBETA, PHILIP CORTES, VICENTE CARULLU, JR., HENRY DELA CRUZ, VIOLETA CRUZ, JANICE CAINGAY, MARCIANO DENAMARCA, EMMANUEL DENAMARCA, WILSON DOMINGO, MARY DELORIA, FLORANTE DAMO, RODOLFO ESTRADA, JORGE ESTRONE, VIVENCIA ELEMANCO, FELIX FABALLE, ANITO FORTIZA, JOVELYN FORTIZA, ARSENIO GEVERO, SR., GRECORIA GEROCHI, ROSEMARIE GABUTAN, ANASTACIO CALVEZ, FELIX GARCIA, CARLOS GARCIA VALENTINA GARCIA, RICARDO GALIT, RITA HERNANE, VIVIAN ILAS, ELIAS JARAMILLO, ETHEL KAWALING, ROBERTO LAMATA, PRIMO LOBICO, MAMERTO LUZON, JEWEL MABANAG, RUTH MACAHILAS, EDNA MACANOQUIT, CANDIDO MANGLICMOT, YOLANDA MANGLICMOT, DANILO MANGLICMOT, ARLENE MANTIS, AQIOLINO MENDOZA, JILL MACIBALO, ANTONIA MANUEL MORTEJO, NONITA NUAL, GODOFREDO NAVAREZ, PERFECTA NEYRA, PEDRITO NALA, PANCHITO NOB, LUZ PIONAN, JIMMY PERALES, MARCELENO REYES, CASIMIRO RAGUINE, BERNABE SANGGUAL, TERESITA SAGUING, EDWINO SECILLO, BENJAMIN TAGUD, CESAR TACOGDOY, JOSE TORAYNO, SALVADOR TING,**

ESPERANZA VALDEZ, ZENAIDA VIGOR, RODOLFO VALENCIA, PAZ VALLECER, JERIC VILLANUEVA, CELSA BARORO, BENJAMIN TAGUS, JR., MARIETTA EROLAN, AMADO RECHA, GERRICA NAVAREZ, PEDRITO NALA, AMARIO EROLAN, FE DAWAL, AMPARO MICANBALO, ROGELIO SERQUIÑA, ELIZABETH SUGANOB, APOLONIO SUGANOB, MELIA C. ASO, HELEN D. CENTENO, LORETO SALOMON, EDUARDO SALOMON, CRISTINA FIGUEROA, JOSE ARLO FIGUEROA, BENADETTE MENDAROS, ARNOLD FIGUEROA, TERESITA ESTIGOY, EMPERATRIS CEBALLOS, EDUARDO PAUMAR, MARINA ACERO, CESAR MANDALUCAY, ROSITA LORENZO, JOCELYN EMONG, WILBUR MAMAWAG, JOSEPHINE POGAY, ROSALINO CUPAY, GERONDIO TAPANGOT, AURELIA GALINADA, VICTORIANA T. ALJAS, JOHNIEL POGAY, CORAZON ESPINA, MAMERTO SENERES, FLORDELIZA DE JESUS, ASUNCION JACALAN and NICOLAS POGAY, *Respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INJUNCTION; ELEMENTS AND REQUIREMENTS FOR THE ISSUANCE OF AN INJUNCTIVE WRIT. — [A] petition for injunction may be the principal action and not merely an ancillary to a main case. . . .

. . .

. . . [T]he following elements must be present before a writ of preliminary injunction or a writ of injunction may be issued, to wit: (a) extreme urgency, and (b) grave and irreparable injury will be suffered by the applicant.

In addition, the Court in the case of *European Resources and Technologies, Inc, et al. v. Ingenieuburo Birkhahn + Nolte, et al.,* ruled that prior to the issuance of a WPI, the existence of some requirements must be proved, to wit:

> Before an injunctive writ can be issued, it is essential that the following requisites are present: (I) there must be a right in esse or the existence of a right to be protected; and (2) the act against which injunction to be directed is a violation of such right. . .
>
> The foregoing requisites were synthesized in the case of *Lukang v. Pagbilao Development Corporation, et al.,* where the Court explained: . . .
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> > . . . [A] writ of preliminary injunction may be issued upon the concurrence of the following essential requisites, to wit: **(a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.**

2. ID.; ID.; ID.; ID.; ACTUAL POSSESSION WHICH IS NOT IN THE CONCEPT OF AN OWNER IS NOT THE CLEAR AND UNMISTAKABLE RIGHT THAT MAY SERVE AS BASIS FOR THE ISSUANCE OF A WRIT OF INJUNCTION. — [R]espondents' right over the subject property is anchored on the fact that they are the actual occupants thereon, as well as, on their contention that such is outside the property of petitioner. While their actual possession of the subject property has been established, the ownership thereof is still the subject of litigation. . . .

. . .

Respondents . . . rely on acquisitive prescription contending that they have been in actual possession of the subject property for more than 30 years. While they are indeed the actual occupants of the disputed parcels of land, they, unfortunately, failed to establish that such possession was in the concept of an owner. Worse, records are bereft of any showing of the legality of their entry into the subject lands. Respondents likewise failed to state the date when they entered and occupied the subject property.

Despite having actual possession of the disputed lands allegedly for more than 30 years, however, respondents' possession did not and will not ripen to ownership. . . .

. . . [A]s between petitioner and respondents, this Court holds and so rules that it is petitioner who has a better right over the subject parcels of land. Respondents, therefore, have no clear and unmistakable right over the subject properties. Corollarily, there is no invasion of a purported right that needs to be protected. A Writ of Injunction is, therefore, unwarranted in this case.

3. CIVIL LAW; PROPERTY; OWNERSHIP BY ACQUISITIVE PRESCRIPTION; POSSESSION BY TOLERANCE; WHILE ACQUISITIVE PRESCRIPTION IS A MODE OF OWNERSHIP, POSSESSION BY MERE TOLERANCE DOES NOT START THE RUNNING OF THE PRESCRIPTIVE PERIOD. — [T]he established rule [is] that while acquisitive prescription is a mode of ownership, possession by mere tolerance does not start the running of the prescriptive period. Thus, lawful owners have the right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated. This right is never barred by laches, because possession by mere tolerance does not start the running of the prescriptive period. This was exhaustively explained in the case of *Heirs of Jarque v. Jarque*, to wit:

> Acquisitive prescription is a mode of acquiring ownership by a possessor through the requisite lapse of time. **In order to ripen into ownership, possession must be in the concept of an owner, public, peaceful and uninterrupted**. . . . **Acts of possessory character executed due to license or by mere tolerance of the owner would likewise be inadequate. Possession, to constitute the foundation of a prescriptive right, must be *en concepto de duno*, or, to use the common law equivalent of the term, that possession should be adverse, if not, such possessory acts, no matter how long, do not start the running of the period of prescription.**

4. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; THE FACTUAL FINDINGS OF AN ADMINISTRATIVE AGENCY ON THE ISSUE OF WHO HAS A BETTER RIGHT OVER A PROPERTY ARE BINDING ON THE SUPREME COURT IF SUPPORTED BY EVIDENCE. — The DENR Secretary, however, in his Decision dated August 8, 2013 made a pronouncement that petitioner, not the respondents, has a better right to the disputed subject property, . . .

. . . [W]hile opinions of administrative bodies are not controlling to this Court, administrative decisions on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law. Otherwise stated, unless it is shown that the DENR Secretary has acted in a wanton, whimsical, or oppressive manner, giving undue advantage to a party or for an illegal consideration and similar reasons, this Court is inclined to be guided by the Secretary's conclusion. Moreover, the DENR Secretary, in the instant case, reviewed the evidence, both testimonial and documentary, submitted by both parties before arriving at the said ruling. It is worthy to note that this evidence were the same pieces of evidence adduced by the parties in the instant case to support their respective claims. Hence, this Court finds no reason to deviate from the DENR Secretary's ruling.

5. CIVIL LAW; NUISANCE; NUISANCE *PER SE* DISTINGUISHED FROM NUISANCE *PER ACCIDENS*. — Article 694 of the Civil Code defines a nuisance as any act, omission, establishment, business, condition of property, or anything else which: (1) injures or endangers the health or safety of others; (2) annoys or offends the senses; (3) shocks, defies or disregards decency or morality; (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 Court recognizes two kinds of nuisances. In *Knights of Rizal v. DMCI Homes, Inc.,* the Court made this distinction, "nuisance *per se* is one recognized as a nuisance under any and all circumstances, because it constitutes a direct menace to public health or safety, and, for that reason, may be abated summarily under the undefined law of necessity. The second, nuisance *per accidens*, is that which depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing in law constitutes a nuisance."

6. ID.; ID.; URBAN DEVELOPMENT AND HOUSING ACT OF 1992 (R.A. NO. 7279); SITUATIONS WHERE SUMMARY EVICTION AND DEMOLITION OF HOUSES MAY BE ALLOWED; THE SUBJECT RESIDENTIAL HOUSES AND STORES ARE NOT NUISANCE *PER SE* THAT CAN BE SUMMARILY ABATED UNDER THE SAID LAW. —

It can easily be gleaned that respondents' occupation of the disputed lands is not a nuisance *per se*. This Court agrees with the CA that the residential houses and stores built and occupied by respondents cannot be considered as a nuisance *per se* because, by their very nature, they are not a "direct menace to public health or safety." They were built merely for residential purposes. Thus, their summary abatement is unwarranted.

. . . [U]nder Section 28 of R.A. No. 7279, there are only three situations where summary eviction and demolition of underprivileged and homeless citizens and their residential structures may be allowed: (1) when persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds; (2) when government infrastructure projects with available funding are about to be implemented; and (3) when there is a court order for eviction and demolition. This case, however, does not fall within the ambit of any of these instances.

The disputed lands cannot be considered one of or similar to the enumerated danger areas. There is likewise no court order for eviction and/or demolition. Furthermore, records are bereft of any showing that the disputed lands are subject of an infrastructure project with available funding. While petitioner claimed that the subject lands were dedicated for the quarters of its personnel temporarily assigned to it, no evidence whatsoever was ever presented to prove that there was indeed a concrete plan to construct the said infrastructure project and that funds were already available therefor. Petitioner's assertion that it may summarily abate and evict respondents from the disputed lands, therefore, has no bases, both in fact and in law.

7. ID.; P.D. NO. 1227, WHICH PROSCRIBES RE-ENTRY TO A MILITARY BASE AFTER HAVING BEEN REMOVED THEREFROM AND ORDERED NOT TO RE-ENTER BY THE BASE COMMANDER, DOES NOT APPLY WHERE THE LAND IS OUTSIDE A MILITARY BASE. — Section 1 of Presidential Decree No. 1227 proscribes and sanctions anyone who re-enters a military base after having been removed therefrom and ordered not to re-enter by the base commander. This provision, however, finds no application to the instant case.

The subject parcels of land are not within the premises of petitioner's military base. As clearly stated in the Supplemental Relocation Survey Report from the DENR, "the area subject of the relocation survey x x x is outside the Military Reservation under Presidential Proclamation No. 265 x x x." While the disputed lands belong to petitioner, they are not, at least for the time being, a part of its military base. Respondents' occupation of the subject parcels of land, therefore, is not tantamount to entry to a military base.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Carrasco & Carrasco Law Office for respondents.

D E C I S I O N

GAERLAN, *J.*:

Subject to review under Rule 45 of the Rules of Court at the instance of petitioner Armed Forces of the Philippines (AFP), represented by Major General Oscar T. Lactao, Armed Forces of the Philippines, Commanding General of the Fourth Infantry Division, Philippine Army, are the Decision[1] dated August 22, 2013 and the Resolution[2] dated July 30, 2014 in CA-G.R. CV No. 01833-MIN, whereby the Court of Appeals (CA) affirmed the Regional Trial Court's (RTC) Order[3] dated October 29, 2008 in Civil Case Nos. 2007-104 and 2007-152.

Antecedents

On May 7, 2007, Enelida Amogod, Nicanor Arado, Ma. Leonora Arbutante, Dario Arbutante, Marciana Arbutante, Marfelina Arbutante, Cesar Alferez, Gertrudes Agura, Isidro

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[1] *Rollo*, pp. 56-78; penned by Associate Justice Edward B. Contreras, with Associate Justices Edgardo A. Camello and Marie Christine Azcarraga-Jacob, concurring.

[2] Id. at 79-83.

[3] Id. at 388-438; penned by Judge Downey C. Valdevilla.

Balan, Mary Grace Bacas, Emilio Bantang, Ruth Bulay-og, Feliza Baranodin, Ernesto Basilio, Salvador Castillo, Aquillo Cagampang, Julius Corbeta, Philip Cortes, Vicente Carullu, Jr., Henry Dela Cruz, Violeta Cruz, Janice Caingay, Marciano Denamarca, Emmanuel Denamarca, Wilson Domingo, Mary Deloria, Florante Damo, Rodolfo Estrada, Jorge Estrone, Vivencia Elemanco, Felix Faballe, Anita Fortiza, Jovelyn Forteza, Arsenio Gevero, Jr., Arsenio Gevero, Sr., Gregoria Gerochi, Rose Marie Gabutan, Anastacio Galvez, Felix Garcia, Carlos Garcia, Valentina Garcia, Ricardo Galit, Rita Hernane, Vivian Ilas, Elias Jaramillo, Ethel Kawaling, Roberto Lamata, Primo Lubico, Mamerto Luzon, Jemuel Mabanag, Ruth Macahilas, Edna Macanoquit, Candido Manglicmot, Yolanda Manglicmot, Danilo Manglicrot, Arlene Mantis, Aqiolino Mendoza, Gil Micabalo, Antonina Manuel Mortejo, Nonito Nual, Godofredo Navarez, Perfecta Neyra, Pedrito Nala, Pablo Nala Panchito Nob, Luz Pionan, Jimmy Perales, Marceleno Reyes, Casimiro Raguine, Bernabe Sanggual, Teresita Saguing, Edwino Secillo, Benjamin Tagud, Cesar Tacogdoy, Jose Torayno, Salvador Ting, Esperanza Valdez, Zenaida Vigor, Rodolfo Valencia, Paz Vallecer, Jeric Villanueva, Celsa Baroro, Benjamin Tagus, Jr., Marietta Erolan, Amado Recha, Gerrica Navarez, Pedrito Nala, Amario Erolan, Fe Dawal, and Amparo Micanbalo (respondents), the actual occupants of the parcels of land located in Cagayan de Oro City and designated as Lot 2, Lot 45748 with an area of 69,974 square meters (sq.m.) and Lot 3, Lot 45749, with an area of 12,859 sq.m. filed a petition for injunction[4] (Civil Case No. 2007-104) against petitioner AFP, Fourth Infantry Division (4ID), Philippine Army (PA), Camp Edilberto Evangelista.

A separate petition[5] (Civil Case No. 2007-152), likewise for injunction, was filed on June 27, 2007 by respondents Rogelio C. Serquiña, Elizabeth Suganob, Apolonio Suganob, Melia C. Aso, Helen D. Centeno, Loreto Salomon, Eduardo Salomon, Cristina Figueroa, Jose Arlo Figueroa, Bernadette Mendaros, Arnold Figueroa, Teresita Estigoy, Emperatris Ceballos, Eduardo

[4] Id. at 103-111.

[5] Id. at 135-147.

Paumar, Marina Acero, Cesar Mandalucay, Rosita Lorenzo, Jocelyn Emong, Wilbur Mamawag, Josephine Pogay, Rosalino Cupay, Gerondio Tapongot, Aurelia Galanida, Victoriana T. Aljas, Johniel Pogay, Corazon Espina, Mamerto Señeres, Flordeliza de Jesus, Asuncion Jacalan and Nicolas Pogay, all actual occupants of Lot 4, Lot 45750 with an area of 1,417 sq.m., Lot 5, Lot 45751 with an area of 4,739 sq.m. and Lot 6, Lot 45752 with an area of 2,462 sq.m. of Lots 22052 and 4353, CAD 237, likewise located in Cagayan de Oro City, also against petitioner AFP, 4ID, PA.

In both petitions for injunction, respondents averred that they and their predecessors-in-interest are the lawful occupants of the subject parcels of land for more than 30 years; their lands are outside the Philippine Army's Camp Edilberto Evangelista, a 32-hectare land given to petitioner by the Velezes; and they, as early as November 9, 1995, filed a petition to the President of the Philippines for the segregation and release thereof on the ground that these are outside the property of the petitioner.[6]

Respondents further narrated that sometime in 2007, they received a notice to vacate their respective areas within a period of two months. Respondents, however, did not give heed to petitioner's demand. As a result, thereof, petitioner harassed respondents and unceremoniously closed some of their stores. Respondents, thus, sought to enjoin petitioner from closing their stores and from disturbing their lawful and peaceful possession of the subject parcels of land.[7]

In its answer (with counterclaim),[8] petitioner contended that respondents are all squatters in a military reservation, hence, they are considered as nuisances *per se* and may be subjected to summary abatement.[9] Petitioner explained further that it is the lawful owner of the subject parcels of land considering that

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[6] Id. at 106, 137.

[7] Id. at 139.

[8] Id. at 112-134.

[9] Id. at 114.

the land was sold to its favor by Apolinar Velez in 1936; and that such sale was acknowledged by the Velezes and Pinedas in their respective deeds of donation and quitclaim.[10]

RTC Ruling

The RTC rendered the October 29, 2008 Order[11] granting respondents' petitions for injunction. It ratiocinated that based on the relocation/verification report of Engr. Arlene Galope and the supplemental report of Director Dichoso of the Department of Environment and Natural Resources (DENR), the subject parcels of land are not only outside the 36-hectare property of petitioner but are also considered alienable and disposable.[12] The trial court further concluded that since respondents are in actual possession of the subject parcels of land since time immemorial, they have a clear and unmistakable right over the subject property, which must be protected. The trial court, thus, disposed the case in this wise:

> *WHEREFORE*, in view of the foregoing, the injunctive writ prayed for by plaintiffs — prohibitory injunction is hereby GRANTED for being meritorious. Accordingly, defendants 4th Infantry Division, Philippine Army, represented by its Officers and personnel and defendants in their own rights, Major General Jose T. Barbieto, Jr., AFP Commanding General, 4th ID PA; Col. Augusto L. Tolentino, PA, Chief of Staff 4ID, PA; LTC Rex G. Gatiologo, PA, Camp Commander, 4ID, PA; LTC Silver P. Linsangan, PA, Division Adjutant; Major Crispin O. Mendoza, Jr., PA, Commanding Officer, Post Engineering Detachment (PED), 4ID, PA; and Capt. Eduardo Abaño, PA, Division Real Estate Officer (DREO), 4ID, PA, and all persons acting for and in their behalf, are hereby ordered to cease and desist in their summary eviction of plaintiffs, and cease and desist in harassing the plaintiffs; open all stores of some plaintiffs which were closed without due process and remove the wooden structures indicating the closure.
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> Considering that the main cause for action of the instant complaints/petitions is injunction, with the granting of the same by the Court,

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[10] Id. at 121.

[11] Id. at 388-438.

[12] Id. at 431.

the bond put up by the plaintiffs in the sum of One Hundred Thousand (₱100,000.00) pesos under Official Receipt No. 0847126A re: temporary restraining order issued by the Court dated July 8, 2008, is hereby ordered cancelled and returned to the bondsmen Enelida Amogod and Rogelio C. Serquiña.

SO ORDERED.[13]

Undaunted, petitioner filed an appeal to the CA.

CA Ruling

In a Decision promulgated on August 22, 2013, the CA affirmed the RTC Decision, the decretal portion of which reads:

WHEREFORE, premises considered, the appeal is hereby **DENIED** for lack of merit. The assailed Decision rendered by the Regional Trial Court in Civil Case Nos. 2007-104 and 2007-152 is hereby **AFFIRMED**.

No costs.

SO ORDERED.[14]

The CA based its decision mainly on the September 21, 2010 Order of the Regional Executive Director (RED) of DENR-Region X which granted respondents' petition for exclusion and segregation. In the said Order, the DENR concluded that, after evaluation of the documentary evidence of respondents, as well as the findings of the ocular inspection conducted over the lots in question, the subject parcels of land are deemed alienable and disposable. As such, respondents, being the actual occupants thereon, have the right to apply for segregation and exclusion. The DENR, likewise, found the deeds of donation and quitclaim executed by the Velezes and the Pinedas without value considering that no acceptance thereof was made by petitioner. Accordingly, the CA ruled that as between petitioner and respondents, the latter has a clear and unmistakable right over the subject parcels of land.[15]

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[13] Id. at 437-438.

[14] Id. at 77.

[15] Id. at 69-75.

Aggrieved, petitioner moved for reconsideration. It was, however, denied in a Resolution[16] dated July 30, 2014.

Hence, the instant petition for review on *certiorari* interposing a lone issue.

Issue

Whether or not the Court of Appeals, in CA-G.R. CV No. 01833-MIN, seriously erred in sustaining, through its herein challenged August 22, 2013 Decision and July 30, 2014 Resolution, the Regional Trial Court of Cagayan de Oro City, Branch 39 which, in Civil Case No. 2007-104 and 2007-152, granted (sic) the complaints/petitions below, through its October 29, 2008 and January 8, 2009 orders.[17]

Court's Ruling

The petition is meritorious.

It must be stressed at the outset that the main issue involved in the instant petition is whether the issuance or non-issuance of a *writ* of injunction is warranted in the case. Notwithstanding, a determination as to who between the parties have the legal right over the subject property is necessary before arriving at a proper and legally sound conclusion.

In the instant petition, petitioner AFP, 4ID, PA insists that although the subject property is outside their military reservation, it is still within the area covered by the quitclaim and donation executed by the Velezes and Pinedas in its favor; this is confirmed by the Secretary of DENR in his August 8, 2013 Decision[18] which in turn, reversed the RED's September 21, 2010 Order. Petitioner further claims that with the issuance of the DENR Secretary's August 8, 2013 Decision, respondents' occupation of the subject property no longer has any legal basis, hence, a writ of injunction is no longer warranted; thus, petitioner may now summarily evict respondents therefrom.

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[16] Id. at 79-83.

[17] Id. at 32.

[18] Id. at 545-567.

Respondents, on the other hand, claim that the appeal to the DENR Secretary was made out of time. They further aver that the donation and quitclaim executed in petitioner's favor were invalid considering that it failed to make an acceptance thereof. Simply, respondents insist that they, being the actual occupants of the subject property, declared as disposable and alienable, have the right not to be disturbed from their peaceful possession of the disputed lands.[19]

This Court rules in favor of the petitioner.

Settled is the rule that a petition for injunction may be the principal action and not merely an ancillary to a main case. This has been the ruling of the Court in the case of *Sangguniang Panlungsod ng Baguio City v. Jadewell Parking Systems, Corporation*,[20] to wit:

> An action for injunction is a recognized remedy in this jurisdiction. It is a suit for the purpose of enjoining the defendant, perpetually or for a particular time, from committing or continuing to commit a specific act, or compelling the defendant to continue performing a particular act. It has an independent existence. The action for injunction is distinct from the ancillary remedy of preliminary injunction, which cannot exist except only as part or an incident of an independent action or proceeding.[21]

Now, Section 3, Rule 58 of the Rules of Court, enumerates the grounds for the issuance of a *writ* of preliminary injunction (WPI), whether prohibitive or mandatory, *viz.*:

> SEC. 3. *Grounds for issuance of preliminary injunction*. — A preliminary injunction may be granted when it is established:
>
> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

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[19] Id. at 616-624.

[20] 734 Phil. 53 (2014).

[21] Id. at 100.

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual."

Section 5 thereof further provides:

Sec. 5. Preliminary injunction not granted without notice; exception. — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made may issue a temporary restraining order to be effective only for a period of twenty (20) days from notice to the party or person sought to be enjoined. Within the said twenty-day period, the court must order said party or person to show cause, at a specified time and place, why the injunction should not be granted, determine within the same period whether or not the preliminary injunction shall be granted, and accordingly issue the corresponding order.

However, and subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue *ex parte* a temporary restraining order effective for only seventy-two (72) hours from issuance but he shall immediately comply with the provisions of the next preceding section as to service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. In no case shall the total period of effectivity of the temporary restraining order exceed twenty (20) days, including the original seventy-two hours provided herein.

In the event that the application for preliminary injunction is denied or not resolved within the said period, the temporary restraining order is deemed automatically vacated. The effectivity of a temporary restraining order is not extendible without need of any judicial

declaration to that effect and no court shall have authority to extend or renew the same on the same ground for which it was issued.

However, if issued by the Court of Appeals or a member thereof, the temporary restraining order shall be effective for sixty (60) days from notice to the party or person sought to be enjoined. A restraining order issued by the Supreme Court or a member thereof shall be effective until further orders.

From the foregoing provisions, it is clear that the following elements must be present before a writ of preliminary injunction or a writ of injunction may be issued, to wit: (a) extreme urgency, and (b) grave and irreparable injury will be suffered by the applicant.

In addition, the Court in the case of *European Resources and Technologies, Inc., et al. v. Ingenieuburo Birkhahn + Nolte, et al.*,[22] ruled that prior to the issuance of a WPI, the existence of some requirements must be proved, to wit:

Before an injunctive writ can be issued, it is essential that the following requisites are present: (1) there must be a right in esse or the existence of a right to be protected; and (2) the act against which injunction to be directed is a violation of such right. The onus probandi is on movant to show that there exists a right to be protected, which is directly threatened by the act sought to be enjoined. Further, there must be a showing that the invasion of the right is material and substantial and that there is an urgent and paramount necessity for the writ to prevent a serious damage. Thus, it is clear that for the issuance of the writ of preliminary injunction to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage.[23]

The foregoing requisites were synthesized in the case of *Lukang v. Pagbilao Development Corporation, et al.*,[24] where the Court explained:

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[22] 479 Phil. 114 (2004).

[23] Id. at 129.

[24] 728 Phil. 608 (2014).

A writ of preliminary injunction is a provisional remedy which is adjunct to a main suit, as well as a preservative remedy issued to maintain the status quo of the things subject of the action or the relations between the parties during the pendency of the suit. The purpose of injunction is to prevent threatened or continuous irremediable injury to the parties before their claims can be thoroughly studied and educated. Its sole aim is to preserve the status quo until the merits of the case are fully heard. Under Section 3, Rule 58 of the Rules of Court, an application for a writ of preliminary injunction may be granted if the following grounds are established:

> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
>
> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Thus, a writ of preliminary injunction may be issued upon the concurrence of the following essential requisites, to wit: **(a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.**"[25] (Emphasis supplied, citations omitted)

After a careful review and evaluation of the records of this case, *vis-a-vis* the arguments raised by the parties, this Court finds that the elements for the issuance of writ preliminary injunction and/or writ of injunction are wanting in this case.

Respondents have no clear and unmistakable right over the subject property.

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[25] Id. at 617-618.

To recall, respondents' right over the subject property is anchored on the fact that they are the actual occupants thereon, as well as, on their contention that such is outside the property of petitioner. While their actual possession of the subject property has been established, the ownership thereof is still the subject of litigation. The DENR Secretary, however, in his Decision dated August 8, 2013 made a pronouncement that petitioner, not the respondents, has a better right to the disputed subject property, *viz.*:

> The appealed Decision correctly pointed out that appellees are the actual occupants of the disputed lots. However, the records did not show that [respondent's] entry was legal. There was also no showing that [respondent's] possession was in the concept of an owner. Hence, it was erroneous for the RED to give appellees preferential rights to the disputed lots. The law giving preferential rights to actual occupants is not designed to encourage, condone and reward illegal settlers. Moreover, it must be stressed that the law on preferential rights of actual occupants was not designed to defeat or nullify the legal title or the vested right of the lawful possessor of the land involved, because it would [be] tantamount to a taking without just compensation.
>
> Unlike appellees, appellant (petitioner herein) was able to adduce evidence to support its claim over the controverted lots. Appellant submitted the following evidence: (1) the Quitclaim Deed of the Heirs of Apolinar Velez dated 28 December 1951; (2) the Quitclaim Deed of Hernando Pineda dated 22 December 1951; (3) the invalid Deed of Donation executed by the Heirs of Apolinar Velez dated 20 September 1960; (4) the Tax Declaration No. 198089; (5) the Land History Card of Lot 4319 in the Cadastral Records showing Apolinar Velez as Cadastral Claimant of said lot; and (6) the Consolidation/ Subdivision Plan No. 10-001013.
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> On the basis of the above evidence, it is the considered opinion of this Office that appellant has a better right to the disputed lots than appellees.[26]

Admittedly, while opinions of administrative bodies are not controlling to this Court, administrative decisions on matters

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[26] *Rollo*, pp. 556-557.

within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law.[27] Otherwise stated, unless it is shown that the DENR Secretary has acted in a wanton, whimsical, or oppressive manner, giving undue advantage to a party or for an illegal consideration and similar reasons, this Court is inclined to be guided by the Secretary's conclusion. Moreover, the DENR Secretary, in the instant case, reviewed the evidence, both testimonial and documentary, submitted by both parties before arriving at the said ruling. It is worthy to note that this evidence were the same pieces of evidence adduced by the parties in the instant case to support their respective claims. Hence, this Court finds no reason to deviate from the DENR Secretary's ruling.

Be that as it may, even without considering the DENR Secretary's Decision, this Court is still constrained to overturn the ruling of the CA in respondents' favor.

To prove ownership over the subject parcels of land, petitioner presented and offered as evidence the following documents: (1) Quitclaim Deed executed by the Velezes;[28] (2) the Land History Card of Lot No. 4319;[29] (3) Tax Declaration No. 198089;[30] (4) Deed of Donation executed by the Velezes;[31] (5) Quitclaim Deed executed by the Pinedas;[32] (6) Consolidation/ Subdivision Plan No. Ccs-10-001013[33] duly approved by the Land Management Services, DENR; and (7) Supplemental Relocation Survey Report.[34]

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[27] *Alecha v. Atienza, Jr.*, 795 Phil. 126, 141 (2016).

[28] *Rollo*, pp. 84-85.

[29] Id. at 86.

[30] Id. at 87-88.

[31] Id. at 89-91.

[32] Id. at 92-93.

[33] Id. at 94.

[34] Id. at 95-96.

Based on the Quitclaim Deed[35] executed by the Velezes, as well as the Quitclaim Deed[36] executed by the Pinedas, both in 1951, the disputed parcels of land were already sold to petitioner AFP as early as 1936. It is for this reason that the Deed of Donation executed by the Velezes in 1960 are considered invalid. The object of their donation are the very same parcels of land already sold in 1936. Simply, the Velezes and the Pinedas could not have donated the disputed lands since as early as 1936, these subject properties were already sold to petitioner. Despite the invalidity of the donation, the sale of the subject properties in favor of petitioner was acknowledged in these deeds of donation. It, thus, supports the fact that a sale thereof was executed in favor of petitioner.

Further solidifying petitioner's claim of ownership is their consistent declaration of the subject property for tax purposes. While it is true that tax receipts and tax declarations are not incontrovertible evidence of ownership, they constitute credible proof of a claim of title over the property.[37]

Finally, the duly approved consolidation plan, *vis-a-vis* the Supplemental Relocation Survey Report from the DENR fortify petitioner's claim of ownership. The pertinent portion of the Survey Report reads:

> That it is hereby informed that the area subject of the relocation survey which is the Consolidation/subdivision plan of Lots 22052 and 4353, Cad 237, Ccs-10-001013 is outside the Military Reservation under Presidential Proclamation No. 265, which are Lot Nos. 4318, 4354 and 4357, all of Cad. 237, Cagayan Cadastre. However, the same relocated area covered by the Deed of Quitclaim by the Velez'es, Deed of Donations by the Velez'es and Affidavit of Quitclaim by Hermundo Pineda, all in favor of the Philippine Army, executed on December 26, 1951, September 20, 1960 and December 22, 1951, respectively, copies attached for reference. In fact, a previous plan

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[35] Id. at 84-85.

[36] Id. at 92-93.

[37] *Heirs of Spouse Suyam v. Heirs of Julaton*, G.R. No. 209081, June 19, 2019.

Pcs-3919 was approved by the Bureau of Lands confirming the claims of the Armed Forces of the Philippines covering Lot 1. The same was surveyed for the Republic of the Philippines.

That Lot 2, identified to Lot 45748, Cad. 237; Lot 3, identical to Lot 45749, Cad. 237; Lot 7, identical to Lot 45753, Cad. 237; Lot 8, identical to Lot 45755, Cad. 237, all of plan Ccs-10-001013 are outside the Military Reservation under PP No. 265 but inside the area subject of the Deed of Quitclaim and Deeds of Donation by the Velez'es executed on December 26, 1951 and September 20, 1951. The same are occupied by as follows: the herein plaintiffs of Civil Case Nos. 2007-104 & 2007-38 utilized as their residence for a long time, National Food Authority Bodega for a long time, Regional Training Division & Special Forces Company for a long time and 4th I.D. Used as a Mosque, respectively.

That Lot 4, identical to Lot 45750, Cad. 237; Lot 5, identical to Lot 45752, Cad. 237, all of plan Ccs-10-001013 are outside the Military Reservation but inside the area subject of a Affidavit of Quitclaim by Hernando Pineda executed on December 22, 1951. The same area are occupied by herein plaintiffs of Civil Case No. 2007-152 and are utilized as their residence for a long period of time.[38]

Based on this Survey Report, the DENR confirmed that the disputed lands, while outside petitioner's Military Reservation, are the subject of Deeds of Quitclaim executed by the Velezes and Pinedas in favor of petitioner sometime in 1951.

Respondents, on the other hand, rely on acquisitive prescription contending that they have been in actual possession of the subject property for more than 30 years. While they are indeed the actual occupants of the disputed parcels of land, they, unfortunately, failed to establish that such possession was in the concept of an owner. Worse, records are bereft of any showing of the legality of their entry into the subject lands. Respondents likewise failed to state the date when they entered and occupied the subject property.

Despite having actual possession of the disputed lands allegedly for more than 30 years, however, respondents'

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[38] *Rollo*, pp. 95-96.

possession did not and will not ripen to ownership. This is pursuant to the established rule that while acquisitive prescription is a mode of ownership, possession by mere tolerance does not start the running of the prescriptive period.[39] Thus, lawful owners have the right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated. This right is never barred by laches, because possession by mere tolerance does not start the running of the prescriptive period.[40] This was exhaustively explained in the case of *Heirs of Jarque v. Jarque*,[41] to wit:

> Acquisitive prescription is a mode of acquiring ownership by a possessor through the requisite lapse of time. **In order to ripen into ownership, possession must be in the concept of an owner, public, peaceful and uninterrupted.** Thus, mere possession with a juridical title, such as, to exemplify, by a usufructuary, a trustee, a lessee, an agent or a pledgee, not being in the concept of an owner, cannot ripen into ownership by acquisitive prescription, unless the juridical relation is first expressly repudiated and such repudiation has been communicated to the other party. **Acts of possessory character executed due to license or by mere tolerance of the owner would likewise be inadequate. Possession, to constitute the foundation of a prescriptive right, must be *en concepto de duno*, or, to use the common law equivalent of the term, that possession should be adverse, if not, such possessory acts, no matter how long, do not start the running of the period of prescription**.[42] (Emphasis supplied)

Viewed in light of all the foregoing, as between petitioner and respondents, this Court holds and so rules that it is petitioner who has a better right over the subject parcels of land. Respondents, therefore, have no clear and unmistakable right over the subject properties. Corollarily, there is no invasion of

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[39] *Estrella v. Robles, Jr.*, 563 Phil. 384, 398 (2007).

[40] *Bishop v. Court of Appeals*, 284-A Phil. 125, 130 (1992).

[41] G.R. No. 196733, November 21, 2018, 886 SCRA 269.

[42] Id. at 290-291 citing *Marcelo v. Court of Appeals*, 365 Phil. 354, 361-362 (1999).

a purported right that needs to be protected. A Writ of Injunction is, therefore, unwarranted in this case.

Petitioner cannot summarily abate or evict respondents from the disputed lands.

Petitioner contends that respondents' illegal occupation of the subject parcels of land is considered nuisance *per se*. Hence, it may be summarily abated even without judicial order. It further avers that under Section 28 of Republic Act (R.A.) No. 7279, or the Urban Development and Housing Act of 1992, petitioner may summarily evict respondents, and their homes summarily demolished.

These contentions, however, are unmeritorious.

Despite having the right of possession over the subject parcels of land, petitioner cannot summarily abate and/or evict respondents therefrom. Neither can petitioner close and padlock the stores of respondents.

Firstly, respondents cannot be considered nuisance *per se*. Article 694 of the Civil Code defines a nuisance as any act, omission, establishment, business, condition of property, or anything else which: (1) injures or endangers the health or safety of others; (2) annoys or offends the senses; (3) shocks, defies or disregards decency or morality; (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 Court recognizes two kinds of nuisances. In *Knights of Rizal v. DMCI Homes, Inc.*,[43] the Court made this distinction, "nuisance *per se* is one recognized as a nuisance under any and all circumstances, because it constitutes a direct menace to public health or safety, and, for that reason, may be abated summarily under the undefined law of necessity. The second, nuisance *per accidens*, is that which depends upon certain conditions and circumstances, and its existence being a question

[43] 809 Phil. 453 (2017).

of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing in law constitutes a nuisance."[44]

It can easily be gleaned that respondents' occupation of the disputed lands is not a nuisance *per se*. This Court agrees with the CA that the residential houses and stores built and occupied by respondents cannot be considered as a nuisance *per se* because, by their very nature, they are not a "direct menace to public health or safety." They were built merely for residential purposes. Thus, their summary abatement is unwarranted.

Secondly, under Section 28 of R.A. No. 7279, there are only three situations where summary eviction and demolition of underprivileged and homeless citizens and their residential structures may be allowed: (1) when persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds; (2) when government infrastructure projects with available funding are about to be implemented; and (3) when there is a court order for eviction and demolition. This case, however, does not fall within the ambit of any of these instances.

The disputed lands cannot be considered one of or similar to the enumerated danger areas. There is likewise no court order for eviction and/or demolition. Furthermore, records are bereft of any showing that the disputed lands are subject of an infrastructure project with available funding. While petitioner claimed that the subject lands were dedicated for the quarters of its personnel temporarily assigned to it, no evidence whatsoever was ever presented to prove that there was indeed a concrete plan to construct the said infrastructure project and that funds were already available therefor. Petitioner's assertion that it may summarily abate and evict respondents from the disputed lands, therefore, has no bases, both in fact and in law.

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[44] Id. at 541.

Section 1, Presidential Decree No. 1227 is inapplicable to this case.

Finally, petitioner claims that respondents violated and are violating Section 1 of Presidential Decree No. 1227 by entering and re-entering Camp Evangelista, where the subject parcels of land are located.

Such contention, however, is misplaced.

Section 1 of Presidential Decree No. 1227[45] proscribes and sanctions anyone who re-enters a military base after having been removed therefrom and ordered not to re-enter by the base commander. This provision, however, finds no application to the instant case.

The subject parcels of land are not within the premises of petitioner's military base. As clearly stated in the Supplemental Relocation Survey Report from the DENR, "the area subject of the relocation survey x x x is outside the Military Reservation under Presidential Proclamation No. 265 x x x." While the disputed lands belong to petitioner, they are not, at least for the time being, a part of its military base. Respondents' occupation of the subject parcels of land, therefore, is not tantamount to entry to a military base.

All told, the RTC and the CA committed reversible error when it granted respondents' petitions and issued a Writ of Injunction to enjoin petitioner from evicting respondents and demolishing their houses and stores. From the evidence presented, petitioner was able to prove that it has the legal right over the disputed lands. Meanwhile, respondents' possession thereof,

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[45] Section 1. Any person who, without express or implied permission or authority of the base commander or his duly authorized representatives, shall re-enter by the base commander or his duly authorized representative, shall be punished for the first offense, with imprisonment of not more than ten (10) days or a fine not exceeding ₱100.00, or both; for the second offense, with imprisonment of not less than ten (10) days but not more than ₱200.00 or both; and for the third and subsequent offenses, with imprisonment of not less than one (1) month but not more than six (6) months or a fine of not less than ₱200.00 but not more than ₱1,000.00, or both.

despite the lapse of time, did not ripen to ownership. This, however, does not necessarily give petitioner the unbridled right to summarily abate and/or evict respondents from the disputed lands. Compliance with the pertinent laws and rules still needs to be observed.

WHEREFORE, in view of the foregoing premises, the instant petition for review on *certiorari* is **GRANTED**. The assailed Decision of the Court of Appeals dated August 22, 2013 and the Resolution dated July 30, 2014 in CA-G.R. CV No. 01833-MIN, are **REVERSED and SET ASIDE**.

The Petitions for Injunction are dismissed for lack of merit.

SO ORDERED.

Peralta, C.J., Caguioa, Carandang, and *Zalameda, JJ.*, concur.

FIRST DIVISION

[G.R. Nos. 216745-46. November 10, 2020]

EDMUNDO JOSE T. BUENCAMINO, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES and SANDIGANBAYAN,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; A JUDGMENT OF CONVICTION IS WARRANTED WHEN THE TRIAL COURT IS SATISFIED WITH MORAL CERTAINTY THAT THE ACCUSED HAS INDEED COMMITTED THE CRIME, BUT WHEN THERE IS REASONABLE DOUBT, ACQUITTAL MUST FOLLOW BECAUSE OF THE PRESUMPTION OF INNOCENCE.— In all criminal cases, the prosecution is burdened with the duty of establishing with proof beyond reasonable doubt the guilt of an accused. The determination of whether the prosecution has fulfilled such a heavy burden is left to the trial court, which, in turn, must be satisfied with moral certainty that an accused has indeed committed the crime on the basis of facts and circumstances to warrant a judgment of conviction. Otherwise, where there is reasonable doubt, acquittal must then follow, for all accused are presumed innocent until the contrary is proved.

2. CRIMINAL LAW; VIOLATION OF SECTION 3(e) OF REPUBLIC ACT (R.A.) NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT), ELEMENTS OF.— Petitioner here is charged with violation of Section 3(e) of R.A. 3019 . . . .

. . .

In order to hold a person liable under this provision, the following elements must concur, to wit:

(1) the offender is a public officer;

(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;

(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and

(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.

3. ID.; VIOLATION OF SECTION 3(e) OF R.A. NO. 3019; MODES OF COMMISSION.— [T]here are three modes by which the offense for violation of Section 3(e) may be committed:

1. Through evident bad faith;

2. Through manifest partiality;

3. Through gross inexcusable negligence.

4. ID.; ID.; ID.; POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS; A VARIANCE BETWEEN THE MODE OF COMMISSION THE ACCUSED ARE CHARGED WITH AND THE ONE THEY ARE CONVICTED WITH VIOLATES THEIR CONSTITUTIONAL RIGHT TO DUE PROCESS, SPECIFICALLY THEIR RIGHT TO BE INFORMED OF THE NATURE OF THE ACCUSATION AGAINST THEM. — [T]he Informations alleged that petitioner committed two counts of violation of Section 3(e) through evident bad faith, as worded in the accusatory portions thereof . . . .

. . .

The plain language of both Informations indicate that petitioner was charged with violating Section 3(e) of R.A. 3019 through the modality of evident bad faith. Against and inconsistent with this singular modality as charged, however, the Sandiganbayan's conviction of petitioner significantly grounded its finding of fault on the discussion of petitioner's gross negligence . . . .

. . .

What is clear to the Court from the . . . disquisition of the Sandiganbayan is that it convicted petitioner on the modality of gross inexcusable negligence, which is separate and distinct from the modality of evident bad faith petitioner was charged with in the Informations. This stark variance, as correctly pleaded by petitioner, is violative of his constitutional right to due process,

specifically his right to be informed of the nature of the accusation against him.

5. ID.; ID.; ID.; GROSS INEXCUSABLE NEGLIGENCE AND EVIDENT BAD FAITH ARE SEPARATE AND DISTINCT MODALITIES, AND A CHARGE OF ONE IN AN INFORMATION MAY NOT BE CONSIDERED EXTENDIBLE TO A CONVICTION FOR THE OTHER.— Section 3(e) of R.A. 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*, as when the accused committed gross inexcusable negligence. The two modalities of violating Section 3(e) are distinct in their nature of commission: "evident bad faith" entails the willfulness to do something wrong, whereas "gross inexcusable negligence" entails failure to exercise the required diligence that either results in a wrong or in the failure to prevent the occurrence of a wrongdoing. Thus, "gross inexcusable negligence" and "evident bad faith" are separate and distinct modalities, and a charge of one in an Information may not be considered extendible to a conviction for the other. Petitioner here, therefore, may not be convicted on the basis of gross inexcusable negligence, since the said modality was not included in the charge levelled against him on both counts.

6. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY AND PROBATIVE VALUE, DISTINGUISHED.— [T]he Court agrees with petitioner and finds that there is no sufficient evidence to prove the element of evident bad faith on either count.

The failure on the prosecution's collective evidence is two-tiered: (1) admissibility and (2) probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. The prosecution's pieces of documentary evidence failed on both, in that even if they hurdled the requirement of admissibility, they still would fail when tested in the crucible of probative worth.

7. ID.; ID.; DOCUMENTARY EVIDENCE; BEST EVIDENCE RULE; THE ORIGINAL DOCUMENT MUST BE PRODUCED WHEN ITS CONTENTS ARE SUBJECT TO INQUIRY BUT COURTS ARE NOT PRECLUDED TO ACCEPT IN EVIDENCE A MERE PHOTOCOPY THEREOF WHEN NO OBJECTION IS RAISED WHEN IT IS FORMALLY

OFFERED.— 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 of the Revised Rules of Evidence. As such, mere photocopies of documents are inadmissible. Nevertheless, evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment, and courts are not precluded to accept in evidence a mere photocopy of a document when no objection was raised when it was formally offered. In the case at bar, petitioner made timely objections to each challenged documentary evidence, and they are therefore fittingly excluded.

8. ID.; ID.; ID.; ID.; MERE PHOTOCOPIES OF DOCUMENTS OFFERED FOR THE TRUTH VALUE OF THEIR CONTENTS ARE INADMISSIBLE FOR BEING HEARSAY AND FOR FAILING TO COMPLY WITH THE BEST EVIDENCE RULE.— The OSP's argument that the Best Evidence Rule under Section 3, Rule 129 of the Revised Rules of Evidence does not apply when a party uses a document to prove the existence of an independent fact, as to which the writing is merely collateral or incident, is clearly misplaced. There is no gainsaying here that in the case at bar, the photocopies, which were submitted as documentary evidence, were offered not to prove an independent fact in relation to which the document's content is considered merely incidental or collateral. On the contrary, the questioned documentary evidence were offered to prove precisely the truth of the contents therein. As cited in the prosecution's own Formal Offer of Evidence, the documents sought to prove the truth of their written content . . . .

. . .

. . . More, the probative purposes of . . . [the] documents go into the heart of the accusation against petitioner, *i.e.*, that he knowingly imposed the pass way fees fully aware of the absence of any legal authority for the same, and hence did so in evident bad faith. Therefore, since these documents, offered for the truth value of their contents, were mere photocopies, these documents are inadmissible for being hearsay and for failing to comply with the Best Evidence Rule.

9. CRIMINAL LAW; VIOLATION OF SECTION 3(e) OF R.A. NO. 3019; EVIDENT BAD FAITH; EVIDENT BAD FAITH CONTEMPLATES A STATE OF MIND THAT IS POSITIVELY MOTIVATED BY SOME FURTIVE DESIGN OR WITH SOME MOTIVE OR SELF-INTEREST OR ILL WILL OR FOR ULTERIOR PURPOSES.— [E]ven if the Court accords admissibility to the prosecution's core documentary evidence, the Court finds that they nevertheless fall short of persuading that petitioner's act of imposing the pass way fees was attended by evident bad faith.

"Evident bad faith" does not only mean bad judgment but a palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind that is positively motivated by some furtive design or with some motive or self-interest or ill will or for ulterior purposes.

10. ID.; ID.; ID.; EVIDENT BAD FAITH IS NEGATED WHEN THE ACCUSED ACTED OUT OF HONEST BUT MISPLACED RELIANCE ON AN INOPERATIVE RESOLUTION; CASE AT BAR.— After careful consideration, the Court here finds there was insufficient evidence to persuade a finding of evident bad faith in the contemplation of Section 3(e) of R.A. 3019. Still conversely, the Court here finds a considerable number of factual instances that *negate* evident bad faith and convince that petitioner here clearly erred not pursuant to a surreptitious design, but out of an honest but misplaced reliance on an inoperative resolution.

First, contrary to the summary finding that petitioner knew that *Kapasiyahan 89A-055/Kautusang Bayan 029* had been earlier revoked, and nevertheless persisted in imposing the pass way fees said resolution imposed, petitioner was consistent and unwavering in his denial that at the time he allowed the imposition of said fees, he was under the assured information from both the Municipal Treasurer and the *Sangguniang Bayan* Secretary that said resolution subsisted and was in force. Both on direct and cross examination, petitioner's testimony maintained that he was not aware of the revocation, as the same was never transmitted . . . .

. . .

Second, with respect to the Sandiganbayan's finding that petitioner acted in gross negligence amounting to bad faith when he authorized Tabernero to act in behalf of the Municipal Treasurer in collecting the pass way fees from RMDC, petitioner in his testimony was, on the contrary, able to fully explain the reason for the same.

. . .

Third, the Sandiganbayan found that even if *Kapasiyahan 89A-055/Kautusang Bayan 029* were still valid, petitioner imposed the pass way fees in a manner that was excessive and confiscatory. But this finding is completely belied by petitioner who testified that the computation of the total pass way fee per truck, based on a per-cubic meter cost, was not one which was within his tasks, and therefore could not be properly attributed to him.

. . .

Finally, with respect to the evident bad faith appreciated in petitioner's act of giving instructions for the impounding of the trucks before he even authorized Tabernero to receive the pass way fees, the Court is unpersuaded that this factual ruling holds in the face of petitioner's vehement denial that he ordered said impounding, as supported by the fact that the memorandum the prosecution submitted to prove the same did not bear any signature that would trace authorship of the same to petitioner.

. . .

It is also worth noting that it was not disputed that the proceeds of the collection of pass way fees during petitioner's term were, in fact, remitted to the Municipal Treasury and deposited to the municipality's bank accounts, as attested to by petitioner and Marciano, and that there was no color of allegation that the proceeds were in any way misappropriated or otherwise diverted to petitioner's personal account.

11. REMEDIAL LAW; EVIDENCE; ENTRIES IN A POLICE BLOTTER ARE NOT CONCLUSIVE PROOF OF THE TRUTH OF SUCH ENTRIES FOR BEING INCOMPLETE AND INACCURATE.— The Court further rules that the Certificate of Blotter dated August 23, 2004, which is the prosecution's main evidence to establish that petitioner ordered the impounding of RMDC's hauling trucks, failed to prove the

same. As the Court has held before, entries in a police blotter, though regularly done in the course of the performance of official duty, are not conclusive proof of the truth of such entries for they are often incomplete and inaccurate. Certificates of blotter, therefore, should not be given undue significance or probative value as to the facts stated therein, for they only stand as *prima facie* proofs of the facts stated therein. Absent any other corroborative evidence, the certificate of blotter here may not be considered as sufficient proof to trace the authorship of the impounding of RMDC's trucks to petitioner.

12. CRIMINAL LAW; VIOLATION OF SECTION 3(e) OF R.A. NO. 3019; EVIDENT BAD FAITH; REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; PRESUMPTION OF INNOCENCE; FAILURE TO ADEQUATELY IMPUTE EVIDENT BAD FAITH RESULTS IN THE FINDING OF THE ACCUSED'S INNOCENCE FOR THERE CAN BE NO PRESUMPTION OF BAD FAITH.— [T]he Court finds that the prosecution failed to support a prayer of conviction. Reasonable doubt has been cast on the culpability of petitioner for the crime charged. The prosecution was unable to present sufficient evidence to prove that petitioner, in imposing the pass way fees, was moved by a clear, notorious, evident bad faith to consciously inflict injury on RMDC. Further, since there can be no presumption of bad faith, including cases involving violations of the Anti-Graft and Corrupt Practices Act, failure to adequately impute evident bad faith as required by its Section 3(e) must result in finding petitioner innocent as he is constitutionally presumed.

13. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY OF EVIDENCE; COURTS MUST RULE ON THE ADMISSIBILITY OF EVIDENCE UPON OFFER AND OBJECTION FOR THEM TO ASSESS AT THE EARLIEST OPPORTUNITY WHETHER A CASE DESERVES ATTENTION OR WARRANTS DISMISSAL FOR LACK OF MERIT.— The Court takes this opportunity to now enjoin all courts to rule on the admissibility of each and every piece of evidence brought before them as soon as they are offered and objected to, and to refrain from deferring the resolution on admissibility at a later stage, *i.e.*, during the drafting of the decision.

. . .

> . . . [T]he Court is acutely cognizant of the increasing volume of cases which constantly strains the courts' mental and temporal resources. It is precisely in light of this challenge that courts are now reminded that ruling on the admissibility of evidence upon offer and objection gives the court the earliest opportunity to assess whether a case further deserves the court's scarce time and attention, or otherwise warrants dismissal for lack of merit. For all cases brought before the courts are only as viable as their evidence can substantiate them, which is, in turn, finely woven with whether or not the evidence is admissible, to begin with. All prayers before the court, however impassioned or believed, must still be held up by the fibers of evidence, and it is the court's duty to make the earliest determination if the evidence are mere gossamer threads.
>
> Lest it be forgotten, nipping an untenable case as soon as its baselessness is discernible is a crucial dimension of dispensing justice that courts cannot neglect without cost. For it not only frees up the court's resource, but perhaps, and more significantly, affords the parties to the case with the dignity of knowing better than to devote their own finite years, money, and energy to a futile exercise of a failed cause.

APPEARANCES OF COUNSEL

Salonga Hernandez & Mendoza for petitioner.

D E C I S I O N

CAGUIOA, *J.*:

The petition at bar presents the Court with the occasion to reiterate the fine-tuning of the elements required for a successful prosecution of crimes under Section 3 (e)[1] of Republic Act No. (R.A.) 3019, otherwise known as the "Anti-Graft and Corrupt

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[1] Section 3 (e) of R.A. 3019 provides:

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

Practices Act" and the crucial import of non-variance of the mode of commission embodied in the accusatory portion of the information *vis-à-vis* that which the court finds as basis for it to convict. In consonance with the persuasion that our penal laws on graft and corruption are meant to enhance, instead of stifle, public service,[2] the Court here repeats, among others, that absent the decisive element of bad faith in charges of violation of Section 3 (e),the prosecution cannot pass the test of moral certainty required to uphold a conviction, and the constitutionally afforded presumption of innocence of the petitioner must prevail.

At bench is a Petition[3] for Review on *Certiorari* under Rule 45 seeking to reverse and set aside the Decision[4] dated February 18, 2015 of the Sandiganbayan, Special Fifth Division (Sandiganbayan), in Criminal Case No. SB-06-CRM-0419-0420. Said Decision found Edmundo Jose T. Buencamino (petitioner) guilty beyond reasonable doubt[5] of two counts of violation of Section 3 (e) of R.A. 3019.

The Facts

In two separate Informations,[6] petitioner was charged with violation of Section 3 (e) of R.A. 3019, the accusatory portions of which read:

(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

[2] *Villarosa v. People*, G.R. Nos. 233155-63, June 23, 2020.

[3] *Rollo*, pp. 11-40.

[4] Id. at 45-71. Penned by Associate Justice Napoleon E. Inoturan and concurred in by Associate Justices Rolando B. Jurado and Alexander G. Gesmundo (now a Member this Court).

[5] Id. at 69.

[6] Id. at 72-73; 74-75.

In SB-06-CRM-0419

That on or about July 23, 2004, or sometime prior or subsequent thereto, in the Municipality of San Miguel, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, EDMUNDO JOSE T. BUENCAMINO, a public officer, being the Municipal Mayor of San Miguel, Bulacan, while in the performance of his official duties and committing the crime in relation to his office, did then and there, willfully, unlawfully and criminally, through evident bad faith, cause undue injury to Rosemoor Mining and Development Corporation by collecting "pass way" fees, through a certain Robert Tabarnero, in the amount of One Thousand Pesos (₱1,000.00) per truck, on all the delivery trucks of the Rosemoor Mining and Development Corporation (a corporation duly awarded by the Department of Environment and Natural Resources (DENR) through the Mines and Geosciences Bureau, a permit to conduct mining operations) that pass within the territorial jurisdiction of San Miguel, Bulacan, said accused knowing fully well that the said collection was not legally sanctioned by any resolution or ordinance, the Kapasiyahan Blg. 89A-055/Kautusang Bayan 029 of San Miguel, Bulacan, having been declared by the Sangguniang Panlalawigan, Malolos, Bulacan, to be null and void, being an *ultra vires* act, to the damage and prejudice of the private complainant, Constantino A. Pascual, President and Chairman of the Board of Directors of the Rosemoor Mining and Development Corporation.

CONTRARY TO LAW.[7]

In SB-06-CRM-0420

That on or about July 23, 2004, or sometime prior or subsequent thereto, in the Municipality of San Miguel, Province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, EDMUNDO JOSE T. BUENCAMINO, a public officer, being the Municipal Mayor of San Miguel, Bulacan, while in the performance of his official duties and committing the crime in relation to his office, did then and there, willfully, unlawfully, and criminally, through evident bad faith cause undue injury to Rosemoor Mining and Development Corporation by ordering the apprehension and impounding of the delivery trucks bearing plate numbers PSZ-706 and UEX-283 of the Rosemoor Mining and Development Corporation (a corporation duly awarded by the

[7] Id. at 72.

Department of Environment and Natural Resources (DENR) through the Mines and Geosciences Bureau, a permit to conduct mining operations) allegedly for failure to pay the "pass way fee" imposed by the accused on all the delivery trucks that pass within the territorial jurisdiction of San Miguel, Bulacan, said accused knowing fully well that the said collection was not legally sanctioned by any resolution or ordinance, the Kapasiyahan Blg. 89A-055/Kautusang Bayan 029 of San Miguel, Bulacan, having been declared by the Sangguniang Panlalawigan, Malolos, Bulacan, to be null and void, being an ultra vires act, to the damage and prejudice of the private complainant, Constantino A. Pascual, President and Chairman of the Board of Directors of the Rosemoor Mining and Development Corporation.

CONTRARY TO LAW.[8]

Upon arraignment, petitioner pleaded not guilty.[9] Thus, trial on the merits ensued.

Evidence of the Prosecution

During trial, the prosecution presented Engineer Constantino A. Pascual (Constantino), Zenaida P. Pascual (Zenaida), Marciano T. Cruz (Marciano), and Clarissa Pascual Fernando (Clarissa).

Constantino, the President of Rosemoor Mining & Development Corporation (RMDC), testified that sometime in 2004, he was called by petitioner to discuss the operation of the marble industry and the transport of its products.[10] Constantino narrated that petitioner straightforwardly asked him to pay ₱1,000.00 as "pass way fee" per truckload.[11] Constantino claimed that he tried to ask petitioner for any legal document that could serve as basis for said collection, considering that RMDC was not operating a quarry in San Miguel, Bulacan, but in Doña Remedios Trinidad, Bulacan, and only passed through the territorial jurisdiction of San Miguel during hauling. Petitioner said that temporary receipts would be issued by one

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[8] Id. at 74.

[9] Id. at 47.

[10] Id. at 96.

[11] Id. at 97.

Robert Tabernero[12] (Tabernero),who was later authorized by petitioner to receive said collections.[13] Subsequently, Tabernero collected from RMDC a pass way fee of ₱1,000.00 per delivery truck at Barangay Sibol, which was the first barangay through which the said trucks would traverse when transporting marble out of its quarries in Doña Remedios Trinidad.[14]

Constantino added that even prior to the issuance of the authorization in favor of Tabernero, petitioner had already ordered San Miguel Police Chief Prudencio Peña Legaspi to cause the apprehension and subsequent impounding[15] of the RMDC delivery trucks bearing plate numbers PSZ-706 and UEX-283,[16] through a Memorandum dated July 19, 2004.[17]

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[12] "Tabarnero" in some parts of the *rollo*.

[13] *Rollo*, p. 97.

[14] Id. at 98.

[15] Id. at 106; as evidenced by a Certificate of Blotter dated August 23, 2004.

[16] Id. at 108-109; the Memorandum dated July 19, 2004 to Senior Police Officer (SPO) 2 Mustala B. Indasan (SPO2 Indasan), SPO1 William S. Garcia (SPO1 Garcia), SPO1 Mario S. Duria (SPO1 Duria), Police Officer (PO) 3 Renato A. Centeno (PO3 Centeno) and PO2 Romulo P. Santos (PO2 Santos), entitled "Apprehension of Motor Vehicles" was relatedly offered in evidence as Exhibit "PP".

[17] Id. at 68; said Memorandum provides:

"1. You are hereby directed to apprehend the following V-10 vehicles loaded with marble blocks **for failure to pay the Municipal Regulatory Fee as per instruction of the Municipal Mayor Edmundo Jose. T. Buencamino**.

Plate No.	Color:
UEX 283	WHITE STRIPE BLUE
WHN 936	GREEN
WAE 651	GREEN
TFV 428	ORANGE

2. If apprehended, place said vehicle into police custody and instruct x x x them to **pay the corresponding regulatory fee**.

3. For info & strict compliance." Emphasis in the original.

He added that when he later inquired with the Municipal Treasurer and from members of the *Sangguniang Bayan* if the collections of pass way fees were duly remitted to the municipal treasury, he was told that no existing ordinance covered such collections, and was advised to request from the *Sangguniang Panlalawigan* of Malolos, Bulacan a certification regarding a former resolution which previously covered the pass way fee collections which was later disapproved.[18]

With the assistance of his counsel, Constantino managed to obtain copies of a document issued by the *Sangguniang Panlalawigan* dated November 8, 2004, denominated as *Ikalawang Paglilipat* issued by the *Tanggapan ng Panlalawigang Mananganggol* dated August 10, 1989 and *Kapasiyahan Blg. 504* dated September 11, 1989, which evidenced the disapproval of the resolution which previously covered the imposition of the pass way fees.

Constantino then sought the assistance of the Department of the Interior and Local Government (DILG) and requested an investigation on what appeared to be a case of illegal collection,[19] for which a Preliminary Report was issued on September 13, 2004.[20] He then proceeded to file an administrative case and a criminal case against petitioner before the Office of the Deputy Ombudsman for Luzon, for the illegal collection of the pass way fees, as well as the illegal impounding of RMDC's trucks.[21]

For her part, Zenaida testified that as the In-House Operations Manager of RMDC, she was in charge of overseeing the quarrying operations, including supervising the deliveries of marble blocks from the quarry sites, and monitoring the financial collections coming from quarrying operators.[22] She testified that the 30% royalty fee from quarrying operators formed part of RMDC's

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[18] Id. at 49.

[19] Id. at 114.

[20] Id. at 360-363.

[21] Id. at 49; 114.

[22] Id. at 52; TSN, May 20, 2008, pp. 204-205.

revenue,[23] and that the same was greatly prejudiced when its operator, one Nora Tan (Nora),failed to remit the 30% royalty fee to RMDC due to the fact that Nora already gave petitioner 20% thereof, allegedly per petitioner's order.[24] She likewise explained that the impounding of RMDC's delivery trucks disadvantaged RMDC because, as a result, it failed to meet its daily quota of seven blocks per day of delivery.[25] She finally detailed that the hauling of marble from RMDC's quarrying sites inevitably had to pass through the municipal roads of San Miguel, as the other routes were too difficult for its hauling trucks to ply.[26]

The prosecution also presented Marciano, who testified that he has been the Municipal Treasurer of San Miguel, Bulacan since 1998.[27] His testimony centered on the irregularity of the issuance of the official receipts which were issued to Constantino as proof of payments of the pass way fees, more specifically the dates indicated thereon, and the initials of the person who issued them.[28] He described how the dates for the issuance of the receipts reflected dates earlier than the dates of issuance of said receipt books by the Treasurer's office.[29] He identified the irregularity of issuance by further explaining that it was normally the Cash Clerk who issued official receipts to the collectors of the municipality, but in the case of the receipts for the pass way fees, the official receipts were issued by one Jannilyn Alfonso, San Miguel's Librarian Aide, as indicated by the initials on the stamps.[30]

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[23] Id. at 206.

[24] Id. at 207-209.

[25] Id. at 216.

[26] TSN, May 21, 2008, p. 248.

[27] Id. at 263-264.

[28] Id. at 268-271.

[29] *Rollo*, pp. 53-54; id.

[30] Id. at 54.

Marciano however clarified that the amounts reflected in the said receipts were, in fact, remitted to the municipality's collection, albeit belatedly, as evidenced by the Report of Collections and Deposits of the Municipality of San Miguel, Bulacan.[31] He explained that when Constantino inquired regarding the remittances of said fees, he replied that the pass way fees were not remitted to the Municipal Treasury because at that time, no remittances were made, as the same were received late. He likewise clarified that his office did not collect pass way fees for the transport of quarried marble.[32]

The prosecution presented Clarissa as its final witness, who testified that she is the Corporate Secretary of RMDC, as well as one of its mining operators.[33] She testified that she herself paid pass way fees to Tabernero, as evidenced by an official receipt.[34] She also clarified that although she was the registered owner of the impounded trucks, it was her father, Constantino, who bought them for RMDC.[35]

Evidence of the Defense

In his defense, petitioner testified that sometime in July 2004, Constantino went to his office,[36] with the purpose of asking permission for the passing through of RMDC's delivery trucks along San Miguel's municipal roads.[37] Petitioner, however, refused to grant said request, for the reason that the heavy load of the mining delivery trucks would most likely destroy the water table of San Miguel.[38] Petitioner said that Constantino countered by recounting that during previous administrations,

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[31] Id. at 54-55; TSN, May 21, 2008, pp. 272-273.

[32] Id. at 54; 292.

[33] Id. at 55-56; TSN, May 22, 2008, p. 301.

[34] Id. at 56; id. at 304.

[35] Id.; id. at 321.

[36] Id.; TSN, February 22, 2010, p. 416.

[37] Id.; Id. at 417.

[38] Id.

the trucks of RMDC were allowed to pass through municipal roads in exchange for a certain amount of fees.[39] In an effort to verify Constantino's claim, petitioner asked Marciano who, in turn, replied that a certain amount of pass way fee was being collected, and that its basis was *Sangguniang Bayan Kapasiyahan Blg. 89A-055/Kautusang Bayan Blg. 029*, entitled "*Kautusang Bayan na Nag[-]aatas sa Lahat Nang Nagmimina ng Marble sa Nasasakupan ng San Miguel, Bulacan x x x Regulatory Fee*" (*Kapasiyahan 89A-055/Kautusang Bayan 029*).[40] He added that to further verify if the imposition of the pass way fee had legal basis, he called upon the *Sangguniang Bayan* Secretary Renato Magtalas and asked him if there was such a *Kautusan*,and the latter replied that it was in force at that time.[41]

Petitioner further denied any knowledge that *Kapasiyahan 89A-055/Kautusang Bayan 029* was subsequently declared void by the *Sangguniang Panlalawigan* of Bulacan.[42] He presented a certification issued by the Municipal Secretary dated February 11, 2005, and a certification issued by the Secretary of the *Sangguniang Panlalawigan* dated February 11, 2005, both of which provided that they have no record on file to indicate that the disapproval of *Kapasiyahan 89A-055/Kautusang Bayan 029* was ever transmitted to their offices.[43]

Petitioner added that all the proceeds from the pass way fees collected were remitted to the Treasurer's Office of the Municipality of San Miguel, as evidenced by official receipts.[44] He also denied giving the instructions for the impounding of RMDC's hauling trucks, and refuted any imputed knowledge on the actual apprehension of said trucks.[45]

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[39] Id.; TSN, February 22, 2010, p. 418.

[40] Id.

[41] Id. at 61; TSN, February 22, 2010, p. 419.

[42] Id.; id. at 418.

[43] Id. at 61-62; id. at 419-420.

[44] Id. at 59; id. at 421.

[45] Id.; id. at 422-423.

Ruling of the Sandiganbayan

After trial on the merits, the Sandiganbayan found evident bad faith attributable to petitioner, and found such bad faith as the direct and proximate cause of RMDC and Constantino's undue injury.[46] Accordingly, it convicted petitioner of two counts of the crime charge in its Decision dated February 18, 2015, the dispositive portion of which reads:

> **WHEREFORE**, judgment is hereby rendered convicting accused EDMUNDO JOSE T. BUENCAMINO of the crimes charged in both Criminal Case Nos. SB-06-CRM-0419 and SB-06-CRM-0420, his guilt having been proven beyond reasonable doubt. Accordingly, in Criminal Case No. 0419, Edmundo Jose T. Buencamino is hereby sentenced to suffer an indeterminate penalty of SIX (6) YEARS and ONE (1) MONTH as minimum, to EIGHT (8) YEARS as maximum, and to suffer perpetual disqualification from public office. In Criminal Case No. 0420, Edmundo Jose T. Buencamino is hereby sentenced to suffer an indeterminate penalty of SIX (6) YEARS and ONE (1) MONTH, as minimum, to EIGHT (8) YEARS, as maximum, and to suffer perpetual disqualification from public office.
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> **SO ORDERED**.[47]

In finding petitioner guilty, the Sandiganbayan found that all the elements of unlawful acts penalized under Section 3 (e) were proven by the prosecution, and held that petitioner did cause undue injury to Constantino, RMDC, and the government, through acts that were attended by evident bad faith and gross inexcusable negligence.

For the first count pertaining to the illegal imposition of the pass way fees, the Sandiganbayan found petitioner guilty beyond reasonable doubt. With specific reference to the element of evident bad faith, it appreciated the same in petitioner's act of imposing and collecting the pass way fees knowing fully well that he was without authority to do so.[48] Bad faith was also

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[46] Id. at 69.

[47] Id. Emphasis in the original.

[48] Id. at 63.

ruled as shown in petitioner's act of making it appear that he relied on the assurance of Marciano that the pass way fee collections were covered by *Kapasiyahan 89A-055/Kautusang Bayan 029*, when Marciano himself, in his own testimony, belied this by testifying that his office has never collected pass way fees before.[49]

The Sandiganbayan also ruled that petitioner's inexcusable negligence was manifest in his act of authorizing Tabernero, a former barangay captain and then private person, to implement the collection of the pass way fees, in direct violation of Section 130 (c) of the Local Government Code which proscribed any private person from the collection of local taxes, fees, charges and other impositions.[50] The Sandiganbayan explained:

> Thus, we are persuaded from a study of the evidence that accused was actuated by a dishonest purpose or ill-will partaking of some furtive design or ulterior purpose to do wrong and cause damage. Accused acted recklessly or in utter disregard of consequences so as to suggest some degree of intent to cause injury. Notably, the DILG had already questioned accused's act of collecting [pass way] fee and impounding RMDC trucks, yet he continued to have the questioned acts implemented and enforced.[51]

It was further observed by the Sandiganbayan that *Kapasiyahan 89A-055/Kautusang Bayan 029*,upon which petitioner relied for the legitimacy of the pass way fees, showed that petitioner exceeded the properly computed estimate of the regulatory fees imposable, and therefore imposed said fees in

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[49] Id.

[50] Id. at 63; Section 130 (c), LOCAL GOVERNMENT CODE provides:

SECTION 130.*Fundamental Principles.*— The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units:

x x x x x x x x x

(c) The collection of local taxes, fees, charges and other impositions shall in no case be let to any private person;

x x x x x x x x x

[51] Id. at 64.

a manner that was "excessive and confiscatory."[52] It dismissed petitioner's defense that he relied erroneously on the existence of a voided resolution, having found that even if such reliance was true, it was nevertheless suspect for being arbitrarily applied, to wit:

> Accused's defense that [*Kapasiyahan Blg. 504*] of the [*Sangguniang Panlalawigan*] disapproving the [*Kapasiyahan Blg. 029*] of the [*Sangguniang Bayan*] of San Miguel was not transmitted to the Municipality of San Miguel, is of no moment because his act of imposing and collecting the [pass way] fee is not in accordance with the mandate of the defunct municipal resolution, but on his own whims and caprices.[53]

With respect to the third element of undue injury, the Sandiganbayan found that the injury suffered by RMDC, Constantino, and the government were directly attributable to petitioner's assailed acts which were demonstrative of bad faith and gross negligence. It found that Constantino and RMDC were injured by the very collection of the pass way fees, which RMDC financially had to be burdened with without legal cause.[54]

With respect to damage to the government, the Sandiganbayan held that the same was inflicted when petitioner designated Tabernero to collect the pass way fees without official receipts, which allowed for said fees to be imposed without the government being able to fully account for the collection. The Sandiganbayan

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[52] Id.; The Sandiganbayan ruled:

> x x x Said ordinance mandates the charge of Fifty Pesos ([₱]50.00) per cubic meter as the base in computing the pass[ ]way or regulatory fee. However, evidence shows that accused demanded and collected [₱]1,000.00 per truck per delivery, an amount clearly beyond what is allowed in said resolution. Pascual testified that the maximum in cubic meters extracted and carried by each truck is only 6 cubic meters. Using the [₱]50.00 as base multiplied by 6 cubic meters only [₱]300.00 should have been assessed and been paid by RMDC. Thus, the imposition and collection of [₱]1,000.00 is excessive and confiscatory, even if the same was based on the assailed resolution.

[53] Id. at 65.

[54] Id.

also found that the proceeds from the fees were belatedly and not fully remitted, to the injury of the municipality.[55]

With reference to the second count which pertained to the act of impounding two of RMDC's trucks, the Sandiganbayan likewise found bad faith evident in petitioner's act of giving instructions for the impounding of RMDC's trucks for failure to pay the regulatory fees even before he executed an authorization in favor of Tabernero to enable the latter to collect and receive said fees.[56] It also noted that petitioner still proceeded with the impounding of RMDC's trucks and the collection of the pass way fees even after the DILG questioned their propriety.[57]

Hence, the instant petition.

Criminal Case No. SB-06-CRM-0419

Petitioner now seeks the reversal of his conviction on the following errors: (1) he was convicted based on documentary evidence which were mere photocopies despite petitioner's objection; (2) his conviction infringed upon the fundamental rule that the prosecution must prove the accused's guilt beyond reasonable doubt; and (3) he was convicted of a manner of commission of Section 3 (e) of R.A. 3019 which was not alleged in the Informations, in violation of his right to be informed of the nature of the accusation against him.[58]

Petitioner here claims that the prosecution failed to prove his guilt beyond reasonable doubt because it presented documentary evidence[59] which were mere photocopies and were

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[55] Id. at 66.

[56] Id. at 68; the Sandiganbayan held that:

"The evident bad faith of the accused is clearly shown in issuing aforementioned memorandum. The memo is dated July 19, 2004. However, he authorized Robert Tabernero to collect the [pass way] fee only on July 23, 2004."

[57] Id. at 67.

[58] Id. at 11.

[59] Id. at 21. Petitioner specifically objected to the following documentary evidence for being hearsay:

therefore inadmissible for being hearsay. He also faults the presentation and admission of the DILG Preliminary Report since what was presented was a mere photocopy of the said report, which he timely objected to for being inadmissible.[60] He likewise imputes error on the Sandiganbayan's appreciation of the same, arguing instead that said preliminary report did not question the collection of the pass way fees because it found that (1) as to the allegation that there was no existing ordinance which covered the pass way fees, the DILG obtained a copy of *Kapasiyahan 89A-055/Kautusang Bayan 029* which did cover such regulatory fee and (2) contrary to the Sandiganbayan's observation that the collection of the fees continued despite said DILG Preliminary Report, the report itself provided that the pass way fee collection was discontinued when the investigation pertaining to it commenced.[61]

Petitioner further faults the Sandiganbayan for disregarding the facts which tended to support his primary defense that he was not aware that the municipal resolution he was relying on had already been voided by the *Sangguniang Panlalawigan* of Bulacan, and therefore he could not be found to have acted in evident bad faith.[62] He insists that there was no record of *Kapasiyahan Blg. 504* of *Sangguniang Panlalawigan* of Bulacan dated September 11, 1989, which contained its disapproval of *Kapasiyahan 89A-055/Kautusang Bayan 029*, ever being transmitted to the Municipality of San Miguel, and therefore he could not be faulted for believing that said municipal resolution

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a) photocopy of a certified photocopy of *Kapasiyahan Blg. 504* of *Sangguniang Panlalawigan ng Bulacan* dated September 11, 1989;
b) photocopy of a certified photocopy of the Second Indorsement dated August 10, 1989 from the Office of the Provincial Attorney; and
c) photocopy of a letter dated November 8, 2004 addressed to Atty. Glenn B. Palubon (Atty. Palubon) from the Secretary of the *Sangguniang Panlalawigan* of Bulacan.

[60] Id. at 22.

[61] Id. at 22-23.

[62] Id. at 25-26.

subsisted and validly covered the collection of the pass way fees.[63] He reiterates that the Sandiganbayan erred in attributing his belief of the validity of the pass way fees on the representation of Marciano, the Municipal Treasurer, and asserts instead that he did not rely simply on the word of Marciano but on the existence of *Kapasiyahan 89A-055/Kautusang Bayan 029*. He added that even Marciano himself did not testify to the effect that said municipal resolution was already ineffective, and so his testimony did not negate petitioner's defense.[64]

He also questions the appreciation of evident bad faith against him, and argues instead that the evidence failed to show that he deliberately intended to cause RMDC damage.[65] He specifically directs the Court's attention to the fact that when the collection of pass way fees was first brought to his attention, he exerted several efforts to verify if the same was indeed covered by a resolution or other issuance, by way of conferring with Marciano, the Municipal Treasurer and the *Sangguniang Bayan* Secretary, who both informed him that the said fee was indeed covered by *Kapasiyahan 89A-055/Kautusang Bayan 029*.[66]

Petitioner next challenges the Sandiganbayan's finding of gross and inexcusable negligence against him, and claims instead that inexcusable negligence was not the manner of violating Section 3 (e) that he was charged with under the Informations,[67] and this variance violates his constitutional right to be informed of the nature of the accusation against him.

The present petition also justifies that his act of hiring Tabernero was not inexcusable negligence since the appointment of collectors does not require the confirmation of the *Sangguniang Bayan* Secretary or the Municipal Treasurer, and that he was well within his power when he made such

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[63] Id. at 25.

[64] Id.

[65] Id. at 27.

[66] Id.

[67] Id. at 28.

authorization.[68] He also adds that with respect to the amount of ₱1,000.00 per truckload, it was Constantino who volunteered such amount, as validated by the fact that none of the payments were made under protest.[69]

Petitioner adds that the element of actual injury to RMDC was not established because the pieces of documentary evidence do not show on their face that the pass way fees were in fact paid by RMDC, as the same were paid by the mining operators themselves, with personalities that are distinct and separate from RMDC.[70]

Finally, in defense, petitioner invokes the applicability of the equipoise rule because the inculpatory facts and circumstances are capable of two or more explanations, and the evidence shown do not support with moral certainty a conviction.[71]

Criminal Case No. SB-06-CRM-0420

With respect to his conviction for the second count, petitioner similarly assails the admission and appreciation of the Certification of Blotter dated August 23, 2004,[72] which he says

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[68] Id. at 30, citing Section 444 (b) (v), LOCAL GOVERNMENT CODE, which provides:

Section 444. *The Chief Executive: Powers, Duties, Functions and Compensation.—*

x x x x x x x x x

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

x x x x x x x x x

(v) Appoint all officials and employees whose salaries and wages are wholly or mainly paid out of municipal funds and whose appointments are not otherwise provided for in this Code, as well as those he may be authorized by law to appoint[.]

x x x x x x x x x

[69] Id.

[70] Id. at 31.

[71] Id. at 32.

[72] Id. at 33.

should not have been given weight for being hearsay, since the information contained therein was reported by a certain Dominador Aguilan and entered by PO2 Gary de Guzman, neither of whom were presented by the prosecution.[73] Petitioner further cites jurisprudence to the effect that entries in a police blotter are not evidence of the truth value of the contents therein, but merely prove the fact they were caused to be recorded.[74] He questions the Sandiganbayan's reliance on the Memorandum dated July 19, 2014 which attributed to petitioner the instruction that the RMDC trucks be impounded. On the contrary, petitioner asserts that his signature did not appear anywhere on said document, and he likewise straightforwardly denied having issued any such instruction during his testimony.[75]

He also argues that the third element of injury or damage to RMDC was not proven, since the prosecution failed to show RMDC's ownership over said impounded trucks.[76]

In its Comment[77] dated September 28, 2015, the Office of the Ombudsman, through the Office of the Special Prosecutor (OSP) maintained that (1) petitioner's challenge of the factual findings of the Sandiganbayan is improper and unavailing;[78] and that (2) petitioner was correctly proven guilty beyond reasonable doubt.[79] The OSP preliminarily submits that petitioner raises questions of fact which are beyond the parameters of a proper petition for review under Rule 45.[80] The OSP counters

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[73] Id.

[74] Id. at 34, citing *People v. Dacibar*, G.R. No. 111286, February 17, 2000, 325 SCRA 725; *People v. Geral*, G.R. No. 122283, June 15, 2000, 333 SCRA 453; and *People v. Cabrera, Jr.*, G.R. No. 138266, April 30, 2003, 402 SCRA 299.

[75] Id. at 34-35.

[76] Id. at 36.

[77] Id. at 509-533.

[78] Id. at 518.

[79] Id. at 526.

[80] Id. at 525.

that the Sandiganbayan's appreciation of the facts that led to petitioner's conviction did not solely rely on the documentary evidence, the admissibility of some the latter questions, but instead was based on the entire evidence on record, most specially the collective testimonies of the prosecution's witnesses.[81] It adds that the assailed pieces of documentary evidence were all presented in relation to the testimonial evidence of the witnesses.[82] Finally, with respect to the variance of the mode of commission of the violations of Section 3 (e) as alleged in the Informations *vis-à-vis* those for which petitioner was convicted, the OSP submits that petitioner was not convicted on the basis of gross inexcusable negligence. Instead, the discussion of gross negligence on his part was only for purposes of showing how a grossly negligent act could evolve into one which is considered attended by evident bad faith.[83]

It also argues that the Sandiganbayan correctly dismissed petitioner's testimony and defense since they were correctly found to be self-serving, unsubstantiated, and replete with inconsistencies.[84] It added that petitioner's lack of credibility was duly shown by his evasiveness and general lack of candor, and his defense merely consisted of naked denials that were not corroborated by clear and convincing evidence.[85] It submits that evident bad faith was duly proven for purposes of convicting petitioner for violation of Section 3 (e) in Criminal Case No. SB-06-CRM-0419.

Petitioner, through his Reply dated November 11, 2015, countered, among others, that photocopies were not presented in relation to the testimonies of the prosecution witnesses, but were themselves offered as documentary evidence intending to prove the contents thereof, citing the prosecution's own Formal

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[81] Id. at 518.

[82] Id. at 522.

[83] Id. at 529.

[84] Id. at 522.

[85] Id. at 524.

Offer of Evidence.[86] Petitioner likewise maintains that his constitutional right to be informed of the nature of the accusation against him was violated because he was convicted for a manner of committing the offense charged which is different from the one contained in the Informations.[87]

Issue

The sole issue for the Court's resolution is whether the Sandiganbayan erred in convicting petitioner of two counts of violation of Section 3 (e) of R.A. 3019.

The Court's Ruling

The petition is impressed with merit and the Court acquits.

In all criminal cases, the prosecution is burdened with the duty of establishing with proof beyond reasonable doubt the guilt of an accused. The determination of whether the prosecution has fulfilled such a heavy burden is left to the trial court, which, in turn, must be satisfied with moral certainty that an accused has indeed committed the crime on the basis of facts and circumstances to warrant a judgment of conviction.[88] Otherwise, where there is reasonable doubt, acquittal must then follow,[89] for all accused are presumed innocent until the contrary is proved.[90]

Petitioner here is charged with violation of Section 3 (e) of R.A. 3019 which provides:

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:

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[86] Id. at 544.

[87] Id. at 547.

[88] *Valencerina v. People*, G.R. No. 206162, December 10, 2014, 744 SCRA 579, 598.

[89] *People v. Maraorao*, G.R. No. 174369, June 20, 2012, 674 SCRA 151, 160.

[90] 1987 CONSTITUTION, Article III, Section 14 (2).

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(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

In order to hold a person liable under this provision, the following elements must concur, to wit:

(1) the offender is a public officer;

(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;

(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and

(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.[91]

The presence of the first and second elements are not disputed. Petitioner was the Mayor of the Municipality of San Miguel, Bulacan at the time of the commission of the alleged offense, and the acts complained of were done in the exercise of his official functions.

The dispute lies in whether the third element was proven, particularly whether his act of collecting the pass way fees was done in evident bad faith and resulted in giving RMDC or the government undue injury. The Court here finds that the prosecution failed to establish beyond doubt the third element of evident bad faith as charged under the Informations levelled against petitioner.

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[91] *Villarosa v. People, supra* note 2; *Valencerina v. People, supra* note 88, at 599.

The case the prosecution built fails on two fatal points.

First, the Court agrees with petitioner's observation that a variance does exist between the mode of commission petitioner was charged with (*i.e.*, evident bad faith) *vis-à-vis* the one he was convicted with (gross inexcusable negligence).

Second, and even granting *in arguendo* the prosecution's claim that the gross inexcusable negligence was discussed by the Sandiganbayan merely to flesh out the element of evident bad faith, and that no variance as to the mode of commission existed, the Court finds, after a careful contemplation of the entire body of evidence, that the prosecution failed to prove that petitioner's assailed acts were attended by evident bad faith. The Court here agrees with petitioner's objection to the admissibility of several pieces of documentary evidence offered by the prosecution on the ground of them being hearsay evidence. And still, even if the Court admits the entire body of documentary evidence as submitted by the prosecution, it is compelled to find that what it only managed to show is that petitioner's acts stemmed not from ill will or evident bad faith, but from an honest albeit erroneous reliance on a defunct legal authority.

Variance on Mode of Commission

It must first be considered that there are three modes by which the offense for violation of Section 3 (e) may be committed:

1. Through evident bad faith;
2. Through manifest partiality;
3. Through gross inexcusable negligence.[92]

To recall, the Informations alleged that petitioner committed two counts of violation of Section 3 (e) through evident bad faith, as worded in the accusatory portions thereof:

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[92] *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009, 580 SCRA 279, 285-286.

Criminal Case No. SR-06-CRM-0419

x x x [T]he above-named accused, EDMUNDO JOSE T. BUENCAMINO, a public officer, being the Municipal Mayor of San Miguel, Bulacan, while in the performance of his official duties and committing the crime in relation to his office, did then and there, willfully, unlawfully and criminally, **through evident bad faith**, cause undue injury to Rosemoor Mining and Development Corporation by collecting "pass way" fees, through a certain Robert Tabarnero, in the amount of One Thousand Pesos (₱1,000.00) per truck x x x.[93]

Criminal Case No. SB-06-CRM-0420

x x x [T]he above-named accused, EDMUNDO JOSE T. BUENCAMINO, a public officer, being the Municipal Mayor of San Miguel, Bulacan, while in the performance of his official duties and committing the crime in relation to his office, did then and there, willfully, unlawfully, and criminally, **through evident bad faith** cause undue unjury to Rosemoor Mining and Development Corporation by ordering the apprehension and impounding of the delivery trucks bearing plate numbers PSZ-706 and UEX-283 of the Rosemoor Mining and Development Corporation x x x.[94]

The plain language of both Informations indicate that petitioner was charged with violating Section 3 (e) of R.A. 3019 through the modality of evident bad faith. Against and inconsistent with this singular modality as charged, however, the Sandiganbayan's conviction of petitioner significantly grounded its finding of fault on the discussion of petitioner's gross negligence, to wit:

The accused imposed and collected payment for pass way fee knowing fully well that he is without authority of law, decree, ordinance or resolution to do so.

x x x x x x x x x

Also, Buencamino's **inexcusable negligence** is manifest in his act of allowing an ex-Barangay Captain, not an employee of the municipality and not even a bonded person, to implement the collection of the [pass way] fee. He should have acted with much caution

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[93] *Rollo*, p. 72. Emphasis supplied.

[94] Id. at 74. Emphasis supplied.

considering that he had just assumed the mayoralty on June 30, 2004, or just a few days prior the collection of [pass way] fee. Under the Local Government Code, the collection of local taxes, fees, charges and other impositions shall in no case be let to any private person. Thus, Tabernero's designation to collect the [pass way] fees, made without the knowledge of the Sangguniang Bayan and the Municipal Treasurer, is highly irregular. Buencamino's acts and omissions are **grossly negligent. Gross negligence** is the pursuit of a course of conduct which would naturally and reasonably result in injury. It is an utter disregard of or conscious indifference to consequences.

Thus, we are persuaded from a study of the evidence that accused was actuated by a dishonest purpose or ill-will partaking of some furtive design or ulterior purpose to do wrong and cause damage. **Accused acted recklessly or in utter disregard of consequence so as to suggest some degree of intent to cause injury**.x x x[95]

What is clear to the Court from the foregoing disquisition of the Sandiganbayan is that it convicted petitioner on the modality of gross inexcusable negligence, which is separate and distinct from the modality of evident bad faith petitioner was charged with in the Informations. This stark variance, as correctly pleaded by petitioner, is violative of his constitutional right to due process, specifically his right to be informed of the nature of the accusation against him.

The recently decided *en banc* case of *Villarosa v. People*[96] is acutely instructive:

Yet, even as petitioner's actions were clearly not proven to be tinged with evident bad faith, there are still those that opine that an acquittal should not logically follow. The dissent advances the view that petitioner could still be convicted for violation of Section [3(e) of R.A.] 3019 because the latter's actions may be considered to fall under the rubric of *gross inexcusable negligence* regardless. The dissent further points out that such a conviction would be justified — even if the Informations against petitioner do not contain any allegation of gross inexcusable negligence — following the case of *Sistoza v. Desierto*.This is plain error.

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[95] Id. at 63-64. Emphasis supplied.

[96] Supra note 2.

Contrary to the dissent's view, it would be highly improper, *nay* unconstitutional, to convict petitioner on the basis of gross inexcusable negligence. It must be emphasized that the Informations filed against petitioner all accuse the latter of violating Section [3(e) of R.A.] 3019 through the modality of evident bad faith *only*. Not one Information accused petitioner of violating the same provision through gross inexcusable negligence. **As can be derived from our earlier discussions, *evident bad faith* and *gross inexcusable negligence* are two of the three modalities of committing violations of Section 3 (e) of RA 3019. Also, by our previous discussion, we were able to establish that each modality of violating Section 3 (e) of RA 3019 is actually distinct from the others.** Hence, while all three modalities may be alleged simultaneously in a single information for violation of Section [3(e) of R.A.] 3019, **an allegation of only one modality without mention of the others necessarily means the exclusion of those not mentioned**. Verily, an accusation for a violation of Section 3 (e) of RA 3019 committed through evident bad faith *only*, cannot be considered as synonymous to, or includes an accusation of violation of Section 3 (e) of RA 3019 committed through gross inexcusable negligence.

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x x x Convicting petitioner of violation of Section 3 (e) of [R.A.] 3019 on the basis of gross inexcusable negligence, when he was but charged of committing the violation by means of evident bad faith only, would be highly unfair as it effectively deprives the petitioner of the opportunity to defend himself against a novel accusation. This outcome simply cannot be countenanced.

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Alas, even assuming for the sake of argument that petitioner may be held accountable for the issuance of the subject extraction permits, such is not for the offense charged in the present Informations, as the acts being complained of do not constitute the elements of the crime presently charged. x x x[97]

The Office of the Ombudsman, through its Comment, reasons that the discussion on gross inexcusable negligence was only made to "paint the grand extent" of how an act of gross negligence can be considered evident bad faith.[98]

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[97] Id. Emphasis supplied.

[98] *Rollo*, p. 529.

The Court is not persuaded.

Section 3 (e) of R.A. 3019 may be committed either by *dolo*, as when the accused acted with evident bad faith or manifest partiality, or by *culpa*,as when the accused committed gross inexcusable negligence.[99] The two modalities of violating Section 3 (e) are distinct in their nature of commission: "evident bad faith" entails the willfulness to do something wrong, whereas "gross inexcusable negligence" entails failure to exercise the required diligence that either results in a wrong or in the failure to prevent the occurrence of a wrongdoing. Thus, "gross inexcusable negligence" and "evident bad faith" are separate and distinct modalities,[100] and a charge of one in an Information may not be considered extendible to a conviction for the other. Petitioner here, therefore, may not be convicted on the basis of gross inexcusable negligence, since the said modality was not included in the charge levelled against him on both counts.

Element of Evident Bad Faith Not Proven or is otherwise Absent

Even without the glaring variance between the modality of commission which petitioner was charged with and the one he was convicted with, the Court remains unconvinced that petitioner's conviction is in order. The prosecution alleges that petitioner is guilty of evident bad faith. However, the Court agrees with petitioner and finds that there is no sufficient evidence to prove the element of evident bad faith on either count.

The failure on the prosecution's collective evidence is two-tiered: (1) admissibility and (2) probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue.[101] The

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[99] *People v. Atienza*, G.R. No. 171671, June 18, 2012, 673 SCRA 470, 480.

[100] *Villarosa v. People,* supra note 2.

[101] *Heirs of Lourdes Saez Sabanpan v. Comorposa*, G.R. No. 152807, August 12, 2003, 408 SCRA 692, 700.

prosecution's pieces of documentary evidence failed on both, in that even if they hurdled the requirement of admissibility, they still would fail when tested in the crucible of probative worth.

First, even before proceeding to the probative merit of the prosecution's evidence, the Court holds that several documentary evidence upon which the prosecution relied for establishing petitioner's guilt were correctly objectionable for being hearsay evidence, and are therefore inadmissible.

Petitioner specifically objected to the following documentary evidence for being hearsay.

(a) photocopy of a certified photocopy of *Kapasiyahan Blg. 504* of *Sangguniang Panlalawigan ng Bulacan* dated September 11, 1989;

(b) photocopy of a certified photocopy of the Second Indorsement dated August 10, 1989 from the Office of the Provincial Attorney; and

(c) photocopy of a letter dated November 8, 2004 addressed to Atty. Palubon from the Secretary of the *Sangguniang Panlalawigan* of Bulacan;[102] and

(d) photocopy of the DILG Preliminary Report dated issued on September 13, 2004.[103]

The Best Evidence Rule requires that the original document be produced whenever its contents are the subject of inquiry,[104] except in certain limited cases laid down in Section 3 of Rule 130[105] of the Revised Rules of Evidence. As such, mere

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[102] *Rollo*, p. 21.

[103] Id. at 22.

[104] *Tapayan v. Martinez*, G.R. No. 207786, January 30, 2017, 816 SCRA 178, 189.

[105] Section 3, Rule 130 provides:

SECTION 3. *Original document must be produced; exceptions*.— When the subject of inquiry is the contents of a document, no evidence shall be

photocopies of documents are inadmissible. Nevertheless, evidence not objected to is deemed admitted and may be validly considered by the court in arriving at its judgment, and courts are not precluded to accept in evidence a mere photocopy of a document when no objection was raised when it was formally offered.[106] In the case at bar, petitioner made timely objections to each challenged documentary evidence, and they are therefore fittingly excluded.

The OSP's argument that the Best Evidence Rule under Section 3, Rule 129 of the Revised Rules of Evidence does not apply when a party uses a document to prove the existence of an independent fact, as to which the writing is merely collateral or incident,[107] is clearly misplaced. There is no gainsaying here that in the case at bar, the photocopies, which were submitted as documentary evidence, were offered not to prove an independent fact in relation to which the document's content is considered merely incidental or collateral. On the contrary, the questioned documentary evidence were offered to prove precisely the truth of the contents therein. As cited in the

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admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office. (2a) *Revised Rules on Evidence* (Rules 128-134), Bar Matter No. 411, July 1, 1989.

[106] *Lorenzana v. Lelina*, G.R. No. 187850, August 17, 2016, 800 SCRA 570, 580-581 citing *Caraan v. Court of Appeals*, G.R. No. 140752, November 11, 2005, 474 SCRA 543 and *Decaleng v. Bishop of the Missionary District of the Philippine Islands of Protestant Episcopal Church in the United States of America*, G.R. Nos. 171209 & UDK-13672, June 27, 2012, 675 SCRA 145.

[107] *Rollo*, p. 522.

prosecution's own Formal Offer of Evidence,[108] the documents sought to prove the truth of their written content:

(1) *Kapasiyahan Blg. 504* of the *Sangguniang Panlalawigan* of Bulacan dated September 11, 1989, which disapproved *Kapasiyahan 89A-055/Kautusang Bayan 029*, was offered precisely "to prove that accused imposed and collected pass way fee or regulatory fee without any legal basis";[109]

(2) The Second Indorsement dated August 10, 1989 from the Office of the Provincial Attorney was offered for the purpose of proving that "the Municipal Resolution No. 055/089-A could not be a valid for the imposition and collection of regulatory fee"; and that it was also offered to "prove the evident bad faith of the accused in his imposition and collection of regulatory fee or pass way fee without any legal basis";[110]

(3) The letter dated November 8, 2004 addressed to Atty. Palubon from the Secretary of the *Sangguniang Panlalawigan* of Bulacan was submitted "to prove that the accused imposed the pass way or regulatory fee without any legal basis; [and was also] offered as part of the testimony of Prosecution witness Constantino Pascual";[111]

(4) The DILG Preliminary Report was offered and appreciated to have shown that despite the DILG's questioning of the propriety of the imposition of the pass way fees, petitioner nevertheless continued the collection of the same, which allegedly evidenced bad faith.

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[108] Id. at 57; 544.

[109] Id.

[110] Id.

[111] Id.

Clearly belying the OSP's submission, these photocopied documents were offered as proof of the facts of their contents, and not for any other independent fact. More, the probative purposes of these documents go into the heart of the accusation against petitioner, *i.e.*, that he knowingly imposed the pass way fees fully aware of the absence of any legal authority for the same, and hence did so in evident bad faith. Therefore, since these documents, offered for the truth value of their contents, were mere photocopies, these documents are inadmissible for being hearsay and for failing to comply with the Best Evidence Rule.

At this juncture, the Court would be remiss in its duty if it did not call out this failure on the part of the Sandiganbayan to capture this patent inadmissibility. It does not help that the assailed Decision did not make any reference to or otherwise rule on petitioner's objections to the admissibility of the photocopy documentary evidence. The Sandiganbayan should have ruled on the objections over said documentary evidence immediately at that time, and already excluded them for being inadmissible under Section 3, Rule 129 of the Revised Rules of Evidence. Had such a finding of inadmissibility been made, the case could have been dismissed at that point. Such a ruling on admissibility would have then spared everyone concerned the nearly six additional years and the sizeable cost of further litigation that the case took — all the way to this Court.

Second, even if the Court accords admissibility to the prosecution's core documentary evidence, the Court finds that they nevertheless fall short of persuading that petitioner's act of imposing the pass way fees was attended by evident bad faith.

"Evident bad faith" does not only mean bad judgment but a palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind that is positively motivated by some furtive design or with some motive or self-interest or ill will or for ulterior purposes.[112]

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[112] *Albert v. Sandiganbayan,* supra note 101, at 290.

To recap, the Sandiganbayan found evident bad faith on the first count in petitioner's acts of (1) imposing the pass way fees even though he knew "fully well" that he had no authority to do so,[113] (2) authorizing Tabernero to collect the pass way fees in behalf of the Municipal Treasurer,[114] and (3) imposing the pass way fees in a confiscatory and excessive manner for having gone beyond the usually estimated amount per cubic meter cost under the defunct resolution.[115]

For the second count, evident bad faith was similarly appreciated in petitioner's act of instructing the impounding of RMDC's trucks for the latter's failure to pay the pass way fees even before he authorized Tabernero to receive said fees.[116]

After careful consideration, the Court here finds there was insufficient evidence to persuade a finding of evident bad faith in the contemplation of Section 3 (e) of R.A. 3019. Still conversely, the Court here finds a considerable number of factual instances that *negate* evident bad faith and convince that petitioner here clearly erred not pursuant to a surreptitious design, but out of an honest but misplaced reliance on an inoperative resolution.

First, contrary to the summary finding that petitioner knew that *Kapasiyahan 89A-055/Kautusang Bayan 029* had been earlier revoked, and nevertheless persisted in imposing the pass way fees said resolution imposed, petitioner was consistent and unwavering in his denial that at the time he allowed the imposition of said fees, he was under the assured information from both the Municipal Treasurer and the *Sangguniang Bayan* Secretary that said resolution subsisted and was in force. Both on direct and cross examination, petitioner's testimony maintained that he was not aware of the revocation, as the same was never transmitted:

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[113] *Rollo*, p. 63.

[114] Id.

[115] Id. at 64.

[116] Id. at 68.

[ATTY. MENDOZA:] Now, according to the testimony also of prosecution witness Mr. Constantino Pascual[,] this [*Kapasiyahan Blg. 89A-055*] or [*Kautusang Bayan 029*] which you just mentioned was already declared void by the provincial board of Bulacan, what do you say to this statement?

[MR. BUENCAMINO:] I have no prior knowledge of that allegation of Mr. Pascual, sir. [In fact],as I have mentioned earlier[,] I was only informed by the municipal treasurer that there was an existing Kautusan and that the municipal treasurer's office was collecting the fees from Mr. Pascual, sir.

Q To your knowledge was there any record of the decision of the provincial board of Bulacan voiding the [*Kapasiyahan Blg. 89A-055*] in the record of your municipality?

A No, sir. **There is no existing record of the disapproval from the [*Sangguniang Panlalawigan*]**.[In fact] if I may add, I also called the [*Sangguniang*] Secretary at that moment because I wanted to be doubly sure that we were collecting a legal fee and so the [*Sangguniang*] Secretary also confirmed to me that there is no record of any disapproval and we also confirmed that the said [*Kautusan*] was enforced, sir.

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A Yes, sir. **The [*Sangguniang*] Secretary issued a certification to the effect that there exist no record of any disapproval or transmittal of any communication** whatsoever from the [*Sangguniang Panlalawigan*], sir.

x x x x x x x x x

A I have the **certification from the Secretary of the [*Sangguniang Panlalawigan*] stating that they have also no record on file that**

> **they have ever transmitted the disapproval** of the [*Kautusan*] as passed by the [*Sangguniang Bayan*].[117]

But even if one believes that the revocation of the *Kautusan* had, in point of fact, been actually transmitted, petitioner's testimony reveals, if anything, that as a new local government head who has only assumed the mayoralty, he perhaps even conducted himself with the extra caution that was required in his efforts to first verify that such pass way fees were legally covered by a resolution or other issuance, before he authorized Tabernero to collect the same.

Second,with respect to the Sandiganbayan's finding that petitioner acted in gross negligence amounting to bad faith when he authorized Tabernero to act in behalf of the Municipal Treasurer in collecting the pass way fees from RMDC, petitioner in his testimony was, on the contrary, able to fully explain the reason for the same. Petitioner amply testified that Tabernero, although not an official of the Municipal Hall, was nevertheless employed by the local government of San Miguel under a job order arrangement, and that he was the one who manned the Municipality's Sibul Springs Resort, which was where RMDC's trucks would pass. Petitioner explained that Tabernero out of an accommodation for Constantino, since his trucks would pass by the roads during hauling at night, and for convenience, it was Tabernero who was authorized to collect the pass way fees so that RMDC's trucks need not go all the way to the Municipal Hall to pay the fees there.

The pertinent portion of petitioner's testimony on cross-examination informs:

> [PROSECUTOR LABOG:] And, you also authorized Mr. Tabarnero knowing fully well that he is an ex-barangay captain, am I right?
>
> [MR. BUENCAMINO:] I do not see the connection, sir.

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[117] Id. at 418-420. TSN, February 22, 2010. Emphasis supplied.

Q That at that time you authorized Mr. Tabarnero he was not an employee of the Municipality of San Miguel?

A **He was a job order employee sir, receiving full salary from the municipal government, sir**.

Q What is the specific job description of Mr. Tabarnero at that time?

A **The specific job at that time sir, was that he was in-charge of the Sibul Springs Resort, sir**.

Q You will also admit that you authorized Tabarnero even if you know that he is not an official of the municipality?

A No sir. If I may explain the word authorized is actually misleading. All of this authorization is actually **just an accommodation on the request of Mr. Pascual that he be allowed to pay the pass way fee at his end in Sibul Spring because the trucks are supposed to pass during the night and so if the trucks are passing through the night, there is no way that they can pay through the municipal office as there is no one who must be in the office during the evening.** So, he asked at that particular moment whether he could possibly just leave the money with Mr. Tabarnero who resides in Sibul Spring and who is in charge of the Sibul Spring Resort anyway and that for Mr. Tabarnero to just remit the money to the treasurer[']s office. [In fact] sir, we maintained a collection clerk in Sibul Spring, actually for that sole job of collecting entrance fees from the Sibul Spring Resort. x x x And, so I said okay, if that is the request and so I'll ask the Municipal Treasurer if that is okay and the Municipal Treasurer said, yes, it can be done provided that Mr. Tabarnero

does not issue an official receipt, because Mr. Tabarnero is not a bonded employee.[118]

Third, the Sandiganbayan found that even if *Kapasiyahan 89A-055/Kautusang Bayan 029* were still valid, petitioner imposed the pass way fees in a manner that was excessive and confiscatory. But this finding is completely belied by petitioner who testified that the computation of the total pass way fee per truck, based on a per-cubic meter cost, was not one which was within his tasks, and therefore could not be properly attributed to him. Still on cross examination, petitioner reasoned:

[PROSECUTOR LABOG:] And, you admit before this Court that you implemented that Kapasiyahan Bilang 89 which was approved on June of 1989 using computation at that time in the year of 2004?

[MR. BUENCAMINO:] Sir, the matter of computation is not within my competence. I am not an Engineer, I am not in the field. **Whatever is to be collected is not determined by me, sir. As per my understanding, my responsibility is to see to it that any [*Kautusan*] is followed and implemented.** How it is implemented and followed would actually rely upon the responsibility of the implementing party.[119]

Finally, with respect to the evident bad faith appreciated in petitioner's act of giving instructions for the impounding of the trucks before he even authorized Tabernero to receive the pass way fees, the Court is unpersuaded that this factual ruling holds in the face of petitioner's vehement denial that he ordered said impounding, as supported by the fact that the memorandum the prosecution submitted to prove the same did not bear any signature that would trace authorship of the same to petitioner.

On cross-examination, petitioner explained:

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[118] Id. at 434-435. Emphasis supplied.

[119] Id. at 439-440. Emphasis supplied.

[PROSECUTOR LABOG:] And in this memorandum addressed to the following: SPO2 Indasan, SPO1 Garcia, SPO1 Doria, PO3 Centeno and PO2 Santos, he mentioned here about and I quote:

"You are hereby directed to apprehend the following V-10 vehicles loaded with marble blocks for failure to pay the municipal regulatory fee as per instruction of the Municipal Mayor Edmundo Jose T. Buencamino." What can you say to this?

[MR. BUENCAMINO:] I have no specific instruction regarding that memo, sir.[120]

The Court further rules that the Certificate of Blotter dated August 23, 2004, which is the prosecution's main evidence to establish that petitioner ordered the impounding of RMDC's hauling trucks, failed to prove the same. As the Court has held before, entries in a police blotter, though regularly done in the course of the performance of official duty, are not conclusive proof of the truth of such entries for they are often incomplete and inaccurate. Certificates of blotter, therefore, should not be given undue significance or probative value as to the facts stated therein, for they only stand as *prima facie* proofs of the facts stated therein.[121] Absent any other corroborative evidence, the certificate of blotter here may not be considered as sufficient proof to trace the authorship of the impounding of RMDC's trucks to petitioner.

It is also worth noting that it was not disputed that the proceeds of the collection of pass way fees during petitioner's term were, in fact, remitted to the Municipal Treasury and deposited to the municipality's bank accounts, as attested to by petitioner[122] and Marciano,[123] and that there was no color of allegation that

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[120] Id. at 429.

[121] *People v. Sorongon*, G.R. No. 142416, February 11, 2003, 397 SCRA 264, 268.

[122] *Rollo*, pp. 421-422.

[123] Id. at 282-284.

the proceeds were in any way misappropriated or otherwise diverted to petitioner's personal account.

In all, the Court finds that the prosecution failed to support a prayer of conviction. Reasonable doubt has been cast on the culpability of petitioner for the crime charged. The prosecution was unable to present sufficient evidence to prove that petitioner, in imposing the pass way fees, was moved by a clear, notorious, evident bad faith to consciously inflict injury on RMDC. Further, since there can be no presumption of bad faith, including cases involving violations of the Anti-Graft and Corrupt Practices Act, failure to adequately impute evident bad faith as required by its Section 3 (e) must result in finding petitioner innocent as he is constitutionally presumed.

On these premises, the Court finds sufficient counterweight for petitioner's acquittal.

A Final Note

The Court takes this opportunity to now enjoin all courts to rule on the admissibility of each and every piece of evidence brought before them as soon as they are offered and objected to, and to refrain from deferring the resolution on admissibility at a later stage, *i.e.*, during the drafting of the decision. The Court is not unaware of, and is in fact deeply concerned about, the proclivity of a number of courts to delay ruling on the admissibility of evidence until such time that the decision is rendered. Worse, the Court has likewise observed the penchant of a number of courts to admit evidence that are not otherwise admissible for the reason often used by these courts of "for whatever they are worth." As well, the Court has come to know that some courts have justified this admission of inadmissible evidence on the reason that "admissibility" is different from "probative value" — totally and illogically against the simple legal truism that inadmissible evidence cannot have any probative value at all. These practices can no longer be countenanced, as they are counterproductive, and result in a total waste of the time and effort of the appellate courts. These practices betray incompetence or indolence, or both. Certainly, these practices reek of grave abuse of discretion.

To be sure, the Court is acutely cognizant of the increasing volume of cases which constantly strains the courts' mental and temporal resources. It is precisely in light of this challenge that courts are now reminded that ruling on the admissibility of evidence upon offer and objection gives the court the earliest opportunity to assess whether a case further deserves the court's scarce time and attention, or otherwise warrants dismissal for lack of merit. For all cases brought before the courts are only as viable as their evidence can substantiate them, which is, in turn, finely woven with whether or not the evidence is admissible, to begin with. All prayers before the court, however impassioned or believed, must still be held up by the fibers of evidence, and it is the court's duty to make the earliest determination if the evidence are mere gossamer threads.

Lest it be forgotten, nipping an untenable case as soon as its baselessness is discernible is a crucial dimension of dispensing justice that courts cannot neglect without cost. For it not only frees up the court's resource, but perhaps, and more significantly, affords the parties to the case with the dignity of knowing better than to devote their own finite years, money, and energy to a futile exercise of a failed cause.

WHEREFORE, the instant petition is **GRANTED**. The assailed February 18, 2015 Decision of the Sandiganbayan in Criminal Case Nos. SB-06-CRM-0419-0420 finding petitioner Edmundo Jose T. Buencamino guilty beyond reasonable doubt of two (2) counts of violation of Section 3 (e) of Republic Act No. 3019, is **REVERSED** and **SET ASIDE**. Consequently, petitioner is **ACQUITTED** of the crime charged.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

EN BANC

[G.R. No. 216824. November 10, 2020]

GINA VILLA GOMEZ, *Petitioner*, *v.* **PEOPLE OF THE PHILIPPINES,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A PETITION FOR REVIEW ON CERTIORARI UNDER RULE 45 OF THE RULES OF COURT IS CONFINED TO PURE QUESTIONS OF LAW.— Decisions, final orders or resolutions of the CA in any case (regardless of the nature of the action or proceedings involved) may be appealed to this Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court which, in essence, is a continuation of the appellate process over the original case. Being an appellate process, such remedy is confined to a review of any error in judgment. However, unlike other modes of appeal, the scope of review is narrower because this Court only entertains pure questions of law, and generally does not re-evaluate the evidence presented by the parties during the trial stage of the whole proceedings. Furthermore, the scope of review under Rule 45 for CA decisions, resolutions or final orders in granting or denying petitions for *certiorari* under Rule 65 **is even narrower**. Just like in labor cases, this Court will examine the CA's decision, resolution or final order from the prism of whether it correctly determined the presence or absence of grave abuse of discretion on the lower tribunal's part and not whether the same tribunal decided correctly on the merits.

2. ID.; CRIMINAL PROCEDURE; JUDGMENT OF ACQUITTAL; CONSTITUTIONAL LAW; RIGHT OF THE ACCUSED; DOUBLE JEOPARDY; DOUBLE JEOPARDY DOES NOT ATTACH WHEN THE JUDGMENT OF ACQUITTAL IS TAINTED WITH GRAVE ABUSE OF DISCRETION OR WHEN THE TRIAL IS A SHAM.— [T]his Court reiterates the general rule that the Prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case because an acquittal is immediately final and executory and the Prosecution is barred from appealing lest the constitutional prohibition against double jeopardy be

violated. However, there are instances where an acquittal may still be challenged without resulting to double jeopardy, such as:

"1) When the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction due to a **violation of due process**; or

(2) When the **trial** was a **sham**."

In these instances, the dismissal or judgment of acquittal is considered void and assailing the same does not result in jeopardy.

3. ID.; ID.; ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A JUDGMENT OF ACQUITTAL ON GROUND OF GRAVE ABUSE OF DISCRETION MAY ONLY BE ASSAILED IN A PETITION FOR CERTIORARI.— As to the proper procedure, a judgment of acquittal (or order of dismissal amounting to acquittal) may **only** be assailed in a petition for *certiorari* under Rule 65 of the Rules of Court. The reasons being are that: (1) the Prosecution is barred from appealing a judgment of acquittal lest the constitutional prohibition against double jeopardy be violated; (2) double jeopardy does not attach when the judgment or order of acquittal is tainted with grave abuse of discretion; and (3) that *certiorari* is a supervisory *writ* whose function is to keep inferior courts and quasi-judicial bodies within the bounds of their jurisdiction. Verily, *certiorari* is a comprehensive and extraordinary *writ* wielded by superior courts in criminal cases to **prevent** inferior courts from committing grave abuse of discretion.

4. ID.; ID.; ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION, CONCEPT OF; A PARTY SEEKING TO NULLIFY A JUDGMENT OF ACQUITTAL MUST CLEARLY SHOW THAT THE LOWER COURT BLATANTLY AND GRAVELY ABUSED ITS AUTHORITY DEPRIVING IT OF THE POWER TO DISPENSE JUSTICE.— [G]rave abuse of discretion should be alleged and proved to exist in order for such petition to prosper. The petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction whenever grave abuse of discretion is alleged in the petition for *certiorari*. Such manner of exercising

jurisdiction must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. In other words, mere abuse of discretion is not enough — it must be grave. Thus, as applied in this case, while *certiorari* may be used to nullify a judgment of acquittal or order of dismissal amounting to an acquittal, the petitioner seeking for the issuance of such an extraordinary *writ* must demonstrate clearly that the lower court blatantly abused its authority to a point that such act is so grave as to deprive it of its very power to dispense justice.

5. ID.; ID.; MOTION TO QUASH; WAIVABLE AND NON-WAIVABLE GROUNDS THEREOF; AN ACCUSED MUST MOVE FOR THE QUASHAL OF INFORMATION BEFORE ENTERING A PLEA, FOR OTHERWISE, THE GROUNDS THEREFOR ARE DEEMED WAIVED; EXCEPTIONS.— Sec. 9 [of Rule 117 of the Rules of Court] is clear that **an accused must move for the quashal of the Information before entering his or her plea during the arraignment. Failure to file a motion to quash** the Information before pleading in an arraignment shall be **deemed a waiver** on the part of the accused to raise the grounds in Sec. 3. Nevertheless, **failure** to **move for a quashal** of the Information before entering his or her plea on the **grounds** based on paragraphs **(a), (b), (g)** and **(i)** of Sec. 3; *i.e*., (1) that the facts charged do not constitute an offense; (2) that the court trying the case has no jurisdiction over the offense charged; (3) that the criminal action or liability has been extinguished; and (4) that the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent, will **not be considered** as a **waiver** for the accused and the latter may still file such motion based on these grounds **even after** arraignment.

6. ID.; ID.; JURISDICTION; DEFINITION AND ASPECTS OF JURISDICTION; REQUISITES FOR THE ACQUISITION OF JURISDICTION IN CRIMINAL CASES.— Semantically, "jurisdiction" is derived from the Latin words "*curis*" and "*dico*" which means "I speak by the law." In a broad and loose sense, it is "[t]he authority of law to act officially in a particular matter in hand." In a refined sense, it is "the power and authority of a court [or quasi-judicial tribunal] to hear, try, and decide a

case." Indeed, a judgment rendered without such power and authority is void thereby creating no rights and imposing no duties on the parties. As a consequence, a void judgment may be attacked anytime.

Relatedly, the concept of jurisdiction has several **aspects,** namely: (1) jurisdiction over the **subject matter;** (2) jurisdiction over the **parties**; (3) jurisdiction over the **issues** of the case; and (4) in cases involving property, jurisdiction over the ***res*** or the **thing** which is the subject of the litigation. Additionally, a court must also acquire jurisdiction over the **remedy** in order for it to exercise its powers validly and with binding effect. As to the acquisition of jurisdiction in criminal cases, there are three (3) important requisites which should be satisfied, to wit: (1) the court must have jurisdiction over the **subject matter**; (2) the court must have jurisdiction over the **territory** where the offense was committed; and, (3) the court must have jurisdiction over the **person** of the accused.

7. ID.; ID.; ID.; JURISDICTION OVER THE SUBJECT MATTER OR NATURE OF THE OFFENSE; JURISDICTION OVER AN OFFENSE IS VESTED BY LAW AND IS DETERMINED BY THE ALLEGATIONS OF THE ULTIMATE FACTS CONSTITUTING THE ELEMENTS OF THE CRIME CHARGED.— Jurisdiction over the **subject matter** or **offense** in a judicial proceeding is conferred by the sovereign authority which organizes the court — it is **given only by law** and in the **manner prescribed by law**. It is the power to hear and determine the **general class** to which the proceedings in question belong.

As applied to criminal cases, jurisdiction over a given crime is vested by law upon a particular court and may not be conferred thereto by the parties involved in the offense. More importantly, jurisdiction over an offense cannot be conferred to a court by the accused through an express waiver or otherwise. Here, a trial court's jurisdiction is determined by the allegations in the Complaint or Information and not by the result of proof. These allegations pertain to ultimate facts constituting elements of the crime charged. Such recital of ultimate facts apprises the accused of the nature and cause of the accusation against him or her.

8. ID.; ID.; ID.; ID.; THE AUTHORITY OF THE HANDLING OFFICER IN FILING AN INFORMATION DOES NOT

AFFECT THE CAUSE OF THE ACCUSATION OR THE NATURE OF THE CRIME AND IS, THUS, IRRELEVANT TO THE TRIAL COURT'S POWER TO TAKE COGNIZANCE OF A CRIMINAL CASE FOR A SPECIFIC OFFENSE.— [T]he **authority** of the **officer** in filing an Information **has nothing to do with the ultimate facts** which **describe the charges** against the accused. The issue on whether or not the handling prosecutor secured the necessary authority from his or her superior before filing the Information **does not affect or change the cause of the accusation or nature of the crime** being attributed to the accused. **The nature and cause of the accusation remains the same with or without such required authority**.

In fact, existing jurisprudence even allows the Prosecution to amend an Information alleging facts which do not constitute an offense just to make it line up with the nature of the accusation. In other words, existing rules grant the Prosecution a chance to amend a fatally and substantially defective Information affecting the cause of the accusation or the nature of the crime being imputed against the accused. As such, it is with more reason that the handling prosecutor shall also be afforded with the chance to first secure the necessary authority from the provincial, city or chief state prosecutor. Viewed from a different angle, **the law conferring a court with jurisdiction over a specific offense does not cease to operate in cases where there is lack of authority on the part of the officer or handling prosecutor filing** an Information. As such, the authority of an officer filing the Information is **irrelevant** in relation to a trial court's power or authority to take cognizance of a criminal case according to its nature as it is determined by law. Therefore, absence of authority or prior approval of the handling prosecutor from the city or provincial prosecutor cannot be considered as among the grounds for the quashal of an Information which is non-waivable.

9. ID.; ID.; ID.; JURISDICTION OVER THE PERSON OF THE ACCUSED; ACQUISITION AND WAIVER OF JURISDICTION OVER THE PERSON OF THE ACCUSED.— Jurisdiction **over the person** of the accused is acquired upon his or her: (I) **arrest or apprehension**, with or without a warrant; or (2) **voluntary appearance or submission** to the jurisdiction of the court. It allows the court to render a decision that is binding

on the accused. However, unlike jurisdiction over the subject matter, the right to challenge or object to a trial court's **jurisdiction over the person** of the accused **may be waived by silence or inaction** before the entering of a plea during arraignment. Moreover, such right may also be waived by the accused when he or she files any pleading seeking an affirmative relief, except in cases when he or she invokes the special jurisdiction of the court by impugning such jurisdiction over his person.

10. ID.; ID.; ID.; ID.; THE HANDLING PROSECUTOR'S AUTHORITY IN FILING AN INFORMATION HAS NOTHING TO DO WITH THE TRIAL COURT'S ACQUISITION OF JURISDICTION OVER THE PERSON OF THE ACCUSED, AS IT DOES NOT RELATE TO EITHER THE VOLUNTARY APPEARANCE OR VALIDITY OF THE ARREST OF THE ACCUSED.— [T]he authority of an officer or handling prosecutor in the filing of an Information also has nothing to do with the voluntary appearance or validity of the arrest of the accused. **Voluntary appearance entirely depends on the volition of the accused, while the validity of an arrest strictly depends on the apprehending officers' compliance with constitutional and statutory safeguards in its execution**. Here, the trial court's power to make binding pronouncements concerning and affecting the person of the accused is merely passive and is solely hinged on the conduct of either the accused or the arresting officers — not on the authority of the handling prosecutor filing the criminal Information. Moreover, if a serious ground such as jurisdiction over the person of the accused may be waived, so can the authority of the handling prosecutor which does not have any constitutional underpinning. Therefore, a handling prosecutor's lack of prior authority or approval from the provincial, city or chief state prosecutor in the filing of an Information **may be waived** by the accused if not raised as a ground in a motion to quash before entering a plea.

11. ID.; ID.; PRELIMINARY INVESTIGATION; DEFINITION AND PURPOSE THEREOF; NATURE OF PROSECUTORIAL FUNCTIONS.— Since a handling prosecutor is an officer of the government's prosecutorial arm, the Court also considers it necessary to expound on the nature of prosecutorial functions in relation to Sec. 33 of Rule 138.

For a clearer understanding of the nature of a prosecutor's duties and corresponding scope of authority, the Court highlights that the prosecution of crimes pertains to the Executive Branch of Government whose principal duty is to see to it that our laws are faithfully executed. A necessary component of this duty is the right to prosecute their violators. Concomitant to this duty is the function of conducting a preliminary investigation which is defined as "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." The purposes of such inquiry or proceeding are: (1) to inquire concerning the commission of a crime and the connection of the accused with it, in order that he may be informed of the nature and character of the crime charged against him, and, if there is probable cause for believing him guilty, that the State may take the necessary steps to bring him to trial; (2) to preserve the evidence and keep the witnesses within the control of the State; and (3) to determine the amount of bail, if the offense is bailable. Moreover, such proceeding is also meant to: (1) avoid baseless, hasty, malicious and oppressive prosecution; and (2) to protect the innocent against the trouble, expense and anxiety of a public trial as a result of an open and public accusation of a crime. In essence, a preliminary investigation serves the following main purposes: (1) to protect the innocent against wrongful prosecutions; and (2) to spare the State from using its funds and resources in useless prosecutions. Stated succinctly, such proceeding was established to prevent the indiscriminate filing of criminal cases to the detriment of the entire administration of justice.

12. ID.; ID.; LEGAL REPRESENTATION OR AUTHORITY TO FILE A COMPLAINT OR INFORMATION; REPUBLIC ACT NO. 5180; THE FAILURE OF THE HANDLING PROSECUTOR TO SECURE A PRIOR WRITTEN AUTHORITY OR APPROVAL FROM THE PROVINCIAL, CITY, OR CHIEF STATE PROSECUTOR BEFORE FILING AN INFORMATION MERELY AFFECTS THE STANDING OF SUCH OFFICER TO APPEAR FOR THE STATE.— In criminal cases, the filing of a Complaint or Information in court initiates a criminal action. Such act of filing signifies that the handling prosecutor has **entered** his or her **appearance** on behalf of the People of the Philippines and

is presumably clothed with ample authority from the agency concerned such as the Department of Justice or the Office of the Ombudsman. However, the **appearance** of a handling prosecutor, in the form of filing an Information against the accused, is conditioned by Sec. 4 of Rule 112 of the Rules of Court with a requirement of a prior written authority or approval from the city or provincial prosecutor. . . .

. . .

In determining the proper officer of the Executive Branch charged with the handling of prosecutorial duties before the courts, it is noteworthy to point out that the important condition for the valid filing of an Information was first provided in Sec. 1 of Republic Act (*R.A.)* No. 5180 . . . .

. . . Sec. 1 of R.A. No. 5180 (as embodied in Sec. 4 of Rule 112) merely provides the guidelines on **how** handling prosecutors, who are subordinates to the provincial, city or chief state prosecutor, should **proceed** in formally charging a person imputed with a crime before the courts. It neither provides for the power or authority of courts to take cognizance of criminal cases filed before them nor imposes a condition on the acquisition or exercise of such power or authority to try or hear the criminal case. Instead, it simply **imposes** a **duty** on investigating prosecutors to first secure a "prior authority or approval" from the provincial, city or chief state prosecutor before filing an Information with the courts. Thus, non-compliance with Sec. 4 of Rule 112 on the duty of a handling prosecutor to secure a "prior written authority or approval" from the provincial, city or chief state prosecutor merely affects the "standing" of such officer "to appear for the Government of the Philippines" as contemplated in Sec. 33 of Rule 138.

13. ID.; ID.; ID.; ANY PROCEDURAL INFIRMITY PERTAINING TO LEGAL REPRESENTATION IS DEEMED WAIVED IF NOT TIMELY OBJECTED TO BY AN ACCUSED.— [T]he Court deems it fit to emphasize that, since rules of procedure are not ends in themselves, courts may still brush aside procedural infirmities in favor of resolving the merits of the case. Correlatively, since legal representation before the courts and quasi-judicial bodies is a matter of procedure, any procedural lapse pertaining to such matter may be deemed waived when no timely objections have been raised. This means that

the failure of an accused to question the handling prosecutor's authority in the filing of an Information will be considered as a valid waiver and courts may brush aside the effect of such procedural lapse.

14. ID.; ID.; ID.; POLITICAL LAW; ADMINISTRATIVE LAW; LAW ON PUBLIC OFFICERS; *DE FACTO* DOCTRINE; AN OFFICER WHO FILED AN INFORMATION DESPITE THE LACK OF AUTHORITY MAY BE CONSIDERED AS A *DE FACTO* OFFICER.— The Court emphasizes that the prosecution of crimes, especially those involving crimes against the State, is the concern of peace officers and government prosecutors. Public prosecutors, not private complainants, are the ones obliged to bring forth before the law those who have transgressed it. They are the representatives not of an ordinary party to a controversy, but of a Sovereign whose obligation to govern impartially is as compelling as its obligation to govern at all. Accordingly, while an Information which is required by law to be filed by a public prosecuting officer cannot be filed by another, the latter may still be considered as a *de facto* officer who is in possession of an office in the open exercise of its functions under the color of an appointment even though, in some cases, it may be irregular. This is because a prosecutor is ingrained with the reputation as having the authority to sign and file Informations which makes him or her a *de facto* officer.

15. ID.; ID.; ID.; ID.; ID.; ID.; ID.; REQUISITES FOR ONE TO BE CONSIDERED A *DE FACTO* OFFICER.— To constitute *a de facto officer*, the following requisites must be present, *viz*: (1) there must be an office having a *de facto* existence or, at least, one recognized by law; (2) the claimant must be in actual possession of the office; and (3) the claimant must be acting under color of title or authority. As to the third requisite, the word "color," as in "color of authority," "color of law," "color of office," "color of title," and "colorable," suggests a kind of **holding out** and means "appearance, semblance, or *simulacrum*," but not necessarily the reality. Contrastingly, a mere usurper is one who takes possession of an office and undertakes to act officially without any color of right or authority, either actual or apparent, he or she is no officer at all.

16. ID.; ID.; ID.; ID.; ID.; ID.; ID.; *DE FACTO* OFFICER DISTINGUISHED FROM A MERE USURPER; THE HANDLING PROSECUTOR'S LACK OF AUTHORITY

MAY EITHER RESULT IN A VALID FILING OF AN INFORMATION IF NOT OBJECTED TO BY THE ACCUSED OR SUBJECT THE PROSECUTOR TO A CRIMINAL OR ADMINISTRATIVE LIABILITY.— In the present case, the Court cogently acknowledges that the *de facto* doctrine has been formulated, not for the protection of the *de facto* officer principally, but rather for the protection of the public and individuals who get involved in the official acts of persons discharging the duties of an office without being lawful officers. At the very least, an officer who **maliciously insists** on filing an Information without a prior written authority or approval from the provincial or city prosecutor may be held criminally or administratively liable for usurpation provided that all of its elements are present and are proven, especially the *mens rea* in criminal cases. However, a handling prosecutor who files an Information despite lack of authority but without any *indicia* of bad faith or criminal intent will be considered as a mere *de facto* officer clothed with the **color of authority** and exercising **valid** official acts. In other words, the lack of authority on the part of the handling prosecutor may either result in a valid filing of an Information if not objected to by the accused or subject the former to a possible criminal or administrative liability —but it **does not prevent the trial court from acquiring jurisdiction** over the **subject matter** or over the **person** of the accused.

17. ID.; ID.; ID.; EVIDENCE; PRESUMPTION OF REGULARITY IN THE DISCHARGE OF OFFICIAL DUTIES; A RESOLUTION DULY SIGNED BY THE CITY PROSECUTOR AND ATTACHED TO AN INFORMATION CONSTITUTES A TACIT APPROVAL TO THE CONTENTS OF THE INFORMATION AND TO ITS FILING.— [T]he OCP's September 21, 2010 Resolution reveals that the subject Information was presumably reviewed by City Prosecutor Aspi before it was filed by ACP Paggao. . . .

. . .

Since a public official enjoys the presumption of regularity in the discharge of one's official duties and functions, it also becomes reasonable for the Court to assume that the attached or accompanying Information was read and understood by City Prosecutor Aspi when he affixed his signature on the September

21, 2020 Resolution. The fact that City Prosecutor Aspi signed the Resolution himself constitutes a tacit approval to the contents of the attached Information as well as to such pleading/ document's resultant filing. Clearly, his actions indicate that he had indeed authorized ACP Paggao to file the subject Information.

18. ID.; ID.; ID.; ID.; ID.; THE HANDLING PROSECUTOR'S AUTHORITY IN FILING AN INFORMATION NEED NOT APPEAR ON THE FACE OF THE INFORMATION ITSELF, WHICH IS ALREADY ATTACHED TO AN APPROVED RESOLUTION RECOMMENDING THE INDICTMENT OF AN ACCUSED.— The requirement of first obtaining a prior written authority or approval before filing an Information is understood or rendered useless and inoperative when the same Information is **already attached** to the Resolution signed by the city prosecutor himself recommending for the indictment of the accused. There being no factual indication to the contrary, this presupposes that City Prosecutor Aspi had knowledge of the existence and the contents of the subject Information when he signed the OCP's September 21, 2010 Resolution. To require City Prosecutor Aspi's signature on the face of the subject Information under the circumstances would be to impose a redundant and pointless requirement on the Prosecution.

Furthermore, this Court emphatically evinces its observation that what is **primarily** subjected to review by the provincial, city or chief state prosecutor in the context of R.A. No. 5180 is the very **Resolution** issued by an investigating prosecutor recommending either the indictment or the release of a respondent in a preliminary investigation from possible criminal charges. In comparison, the Information merely contains factual recitations which make out an offense; it does not provide for the underlying reasons for such proposed indictment. This means that, whatever authority that a handling prosecutor may have, as it pertains to the filing of an Information, proceeds from the review and subsequent approval by the provincial, city or chief state prosecutor of the underlying Resolution **itself**. Therefore, the authority of a handling prosecutor need not be shown in the face of the Information itself if it is duly established in the records that the provincial, city or chief state prosecutor approved the underlying Resolution recommending the indictment.

19. ID.; ID.; ID.; ARREST; INQUEST, DEFINED; AN INFORMATION MAY BE FILED BY THE INQUEST PROSECUTORS WITHOUT WAITING FOR THE APPROVAL OF THE PROVINCIAL, CITY, OR CHIEF STATE PROSECUTOR IN CASES INVOLVING WARRANTLESS ARRESTS.— [T]he Court also observes that the petitioner-accused was arrested in *flagrante delicto* during an entrapment operation and underwent an inquest proceeding instead of the usual preliminary investigation. Accordingly, there is a need to refer to Sec. 6 of Rule 112 on warrantless arrests and inquests revealing an exception to the requirement of securing prior written authority or approval from the city or provincial prosecutor . . . .

Inquest is defined as an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether said persons should remain under custody and correspondingly be charged in court. . . .

. . . [I]t bears emphasizing that it is a more prudent jurisprudential policy to allow a suspect arrested in *flagrante delicto* (or pursuant to other modes of warrantless arrest) to be lawfully restrained in the interest of public safety. Moreover, the same rule uses the phrase "may be filed by a **prosecutor**" without specifying the rank of such officer. This implies that **any available prosecutor** conducting the inquest may file an Information with the trial court.

As a matter of procedure, Sec. 6 of Rule 112 even allows private offended parties or peace officers to file a Complaint *in lieu* of an Information **directly** with the competent court in the absence or unavailability of an inquest prosecutor in instances involving warrantless arrests. Thus, it is with more reason that inquest prosecutors can directly file the Information with the proper court without waiting for the approval of the provincial, city or chief state prosecutor if the latter is unavailable due to the **exigent nature** of processing warrantless arrests.

20. ID.; ID.; ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF ACCUSED; RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION; IF A CONSTITUTIONALLY GUARANTEED RIGHT MAY BE WAIVED, MORE SO THE ABSENCE OF A PRIOR

WRITTEN AUTHORITY FROM THE PROVINCIAL, CITY, OR CHIEF STATE PROSECUTOR IN THE FILING OF AN INFORMATION.— [T]he constitutional requirements for the exercise of the right to be informed of the nature and cause of accusation are outlined in Sec. 6, Rule 110 of the Rules of Court . . . .

In this regard, the Court points out that there is nothing in the aforementioned provision which requires a prior authority, approval or signature of the provincial, city or chief state prosecutor for an Information to be sufficient. Even assuming for the sake of argument that such prior authority, approval or signature is required, this Court in its recent *en banc* ruling in *People v. Solar* . . . held that failure of the accused to question the **insufficiency of an Information** as to the averment of aggravating circumstances with specificity **constitutes a waivable defect.** Logically, if the constitutional right to be informed of the nature and cause of the accusation may be waived by the accused, then it is with more reason that the absence of the requirement pertaining to a handling prosecutor's duty to secure a prior written authority or approval from the provincial, city or chief state prosecutor in the filing of an Information may also be waived.

Consistent with the foregoing observations, if some grounds for the quashal of an Information with serious constitutional implications may be waived, it is with more reason that the ground on securing a prior written approval or authority from the provincial, city or chief state prosecutor, which has nothing to do with the Bill of Rights or with a trial court's jurisdiction to take cognizance of a case, can also be waived by the accused.

21. ID.; ID.; ID.; ID.; ID.; RIGHT TO A FAIR TRIAL; THE ABSENCE OF A PRELIMINARY INVESTIGATION IS NEITHER A GROUND TO QUASH AN INFORMATION NOR AN INFRINGEMENT OF THE RIGHT TO DUE PROCESS.— [T]he Court highlights that the **right** of the accused to a **preliminary investigation** is **merely statutory** as it is not a right guaranteed by the Constitution. Furthermore, such right is personal and may even be waived by the accused. . . .

Aside from the observation on the nature of the right of the accused to a preliminary investigation, the Court also reiterates

the rudimentary rule that **absence** of a **preliminary investigation** is **not** a **ground** to **quash** a Complaint or Information under Sec. 3, Rule 117 of the Rules of Court. A preliminary investigation may be done away with entirely without infringing the constitutional right of an accused under the due process clause to a fair trial. The reason being is that such proceeding is merely preparatory to trial, not a trial on the merits. An adverse recommendation by the investigating prosecutor in a concluded preliminary investigation does not result in the deprivation of liberty of the accused as contemplated in the Constitution. Relatedly, although the restrictive effect on liberty of those arrested in *flagrante delicto* is more apparent during the initial stages of prosecution (inquest proceedings), it is merely indirect since the pronouncement on according provisional liberty or imposing preventive imprisonment ultimately depends on the trial court's action after giving all parties the opportunity to be heard in a bail proceeding.

22. ID.; ID.; ID.; STATUTES; STATUTORY CONSTRUCTION; THE REQUIREMENT IN R.A. NO. 5180 OF SECURING A PRIOR WRITTEN AUTHORITY FROM THE PROVINCIAL, CITY, OR CHIEF STATE PROSECUTOR BEFORE FILING AN INFORMATION CANNOT BE INTERPRETED AS A CONDITION ON THE VALIDITY OF AN INFORMATION OR ON THE POWER OF TRIAL COURTS TO HEAR AND DECIDE CERTAIN CRIMINAL CASES.— [I]t is also noteworthy to point out that the requirement of first securing a prior written approval or authority from the provincial, city or chief state prosecutor before filing an Information is **merely contained** in R.A. No. 5180, the substantive law which first recognized the right of an accused to a preliminary investigation. Significantly, even such law **makes no specific mention** of the **effect** on the **validity** of an Information filed without first securing a prior written approval or authority from the provincial, city or chief state prosecutor. Consequently, such statutory requirement of securing a prior written authority or approval cannot be expanded to also touch on the validity of an Information. Moreover, the same law also cannot be interpreted as a condition on the power and authority of trial courts to hear and decide certain criminal cases. *Expressium facit cessare taciturn* — where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters. And since

procedural rules should yield to substantive laws, it should be understood that this Court cannot promulgate a rule of procedure which would defeat the trial courts' power to acquire jurisdiction in criminal cases as conferred and outlined by *Batas Pambansa Bilang* 129 (The Judiciary Reorganization Act of 1980).

23. ID.; ID.; ID.; THE REQUIREMENT OF A PRIOR AUTHORITY IN FILING AN INFORMATION IS MERELY A FORMAL, AND NOT A JURISDICTIONAL REQUISITE, WHICH MAY BE WAIVED BY THE ACCUSED.— Sec. 8, Rule 112 of the Rules of Court even enumerates instances where a preliminary investigation is not required; allowing the complainant (public or private) or handling prosecutor to directly file the Complaint or Information with the trial court. Significantly, even jurisprudence is settled that the absence of a preliminary investigation neither affects the court's jurisdiction over the case nor impairs the validity of the Information or otherwise renders it defective. Hence, if the lack of a preliminary investigation is not even a ground to quash an Information, what more so the lack of prior written authority or approval on the part of the handling prosecutor which is merely a **formal** requirement and part of the preliminary investigation itself? It can only mean that such requirement of prior written authority or approval is **not jurisdictional** and **may be waived** by the accused expressly or impliedly.

24. ID.; ID.; JURISDICTION; ONLY A LAW, NOT EVEN A RULE OF PROCEDURE OR A JUDICIAL DECISION, CAN ADD OR REMOVE ANY REQUIREMENT AFFECTING JURISDICTION. — Jurisdiction is a matter of substantive law — it establishes a relation between the court and the subject matter. This is because Congress has the power to define, prescribe and apportion the jurisdiction of the various courts; although it may not deprive this Court of its jurisdiction over cases enumerated in Sec. 5, Art. VIII of the Constitution. More importantly, the authority of the courts to try a case is not embraced by the rule-making power of the Supreme Court to promulgate rules of "pleading, practice and procedure in all courts." In other words, only a constitutional or statutory provision can create and/or vest a tribunal with jurisdiction.

Incidentally, the power to define, prescribe and apportion jurisdiction **necessarily includes** the power to expand or diminish the scope of a court's authority to take cognizance of a case,

to impose additional conditions or to reduce established requirements with respect to an adjudicative body's acquisition of jurisdiction. This is because every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms. In effect, only a law (or constitutional provision in the case of this Court) may add or take away any requirement affecting jurisdiction. Not even a rule of procedure or judicial decision can legally accomplish such act as both are not "laws" as used in the context of the Constitution. The purpose of procedural rules or "adjective law" is to ensure the effective enforcement of substantive rights through the orderly and speedy administration of justice; while judicial decisions which apply or interpret the Constitution or the laws cannot be considered as an independent source of law and cannot create law. As such, while the Rules of Court (specifically the Revised Rules of Criminal Procedure) may impose conditions as to the proper conduct of litigation such as legal standing, it cannot **by itself** (and without any constitutional or statutory basis) impose additional conditions or remove existing requirements pertaining to a tribunal's assumption or acquisition of jurisdiction.

25. ID.; ID.; ID.; WITHOUT ANY CONSTITUTIONAL OR STATUTORY FIAT, A COURT'S PRONOUNCEMENT CREATING ANOTHER JURISDICTIONAL REQUIREMENT BEFORE A TRIAL COURT CAN ACQUIRE JURISDICTION OVER A CRIMINAL CASE IS UNCONSTITUTIONAL FOR VIOLATING THE PRINCIPLE OF SEPARATION OF POWERS.— [T]here is no penal law which prescribes or requires that an Information filed must be personally signed by the provincial, city or chief state prosecutor (or a delegated deputy) in order for trial courts to acquire jurisdiction over a criminal case. Clearly, the pronouncement in *Villa* is not sanctioned by any constitutional or statutory provision. Absence such constitutional or statutory fiat, such pronouncement or ruling cannot operate to create another jurisdictional requirement before a court can acquire jurisdiction over a criminal case without treading on the confines of judicial legislation. In effect, *Villa* is rendered unconstitutional for violating the basic principle of separation of powers. Hence, it now stands to reason that a

handling prosecutor's lack of prior written authority or approval from the provincial, city or chief state prosecutor in the filing of an Information **does not affect a trial court's acquisition of jurisdiction over the subject matter or the person** of the accused.

26. ID.; ID.; ID.; SUBSTANTIVE AND PROCEDURAL LAW; DISTINGUISHED; JURISDICTION IS CONFERRED BY SUBSTANTIVE LAW AND CANNOT BE ACCORDED OR TAKEN AWAY FROM A COURT FOR PURELY PROCEDURAL REASONS.— "[S]ubstantive law" is that part of the law which creates, defines and regulates rights, or which regulates the rights and duties which give rise to a cause of action. Comparatively, "procedural law" refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. It ensures the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism, or whimsicality in the settlement of disputes. And since jurisdiction is conferred upon courts by substantive law, it cannot be accorded to or taken away from an otherwise competent court for purely procedural reasons. As alluded to earlier, a **court's jurisdiction** is different from a **government officer's authority to sue** as the former fixes the rights and obligations of the parties after undergoing due process[;] while the latter pertains to internal matters concerning the giving of consent by the State in its own affairs.

27. ID.; ID.; MOTION TO QUASH; INSTANCES WHERE THE TRIAL COURT CAN *SUA SPONTE* QUASH THE INFORMATION AND DISMISS THE CASE.— The rule is clear that only an accused may move to quash a Complaint or Information. However, for the guidance of the Bench and the Bar, the Court deems it imperative to clarify that *Nitafan* does not apply to paragraphs (a), (b), (g) and (i), Sec. 3 of Rule 117. It is obvious that proceeding to trial after arraignment would be utterly pointless if: (l) the Information alleges facts that do not constitute an offense; (2) the trial court has no power and authority to take cognizance of the offense being charged against the accused; (3) the accused cannot anymore be made to stand charges because the criminal action or liability had been extinguished under Art. 89 of the RPC or some other special law; or (4) the accused would be placed in double jeopardy. In

these instances, the trial court is allowed to act *sua sponte* provided that it shall first conduct a **preliminary hearing** to verify the existence of facts supporting any of such grounds. Should the trial court find these facts to be adequately supported by evidence, the case shall be dismissed without proceeding to trial. Doing so would unburden both the parties and the courts from having to undergo the rigmarole of participating in a void proceeding.

28. ID.; ID.; ID.; LACK OF AUTHORITY OF THE HANDLING PROSECUTOR IN FILING AN INFORMATION IS NOT A GROUND TO *MOTU PROPRIO* QUASH THE INFORMATION AND DISMISS THE CASE.— In the instant case, the RTC, in ordering the dismissal of the case, resultantly quashed the subject Information in a *motu proprio* and summary manner despite the fact that: (I) both the accused and the prosecution had already adduced all of their evidence and both have rested their respective cases; and (2) the same case was already submitted for decision. In doing so, it failed to notify the Prosecution and give the latter an opportunity to be heard on the matter. Since, as comprehensively explained in the previous discussions, lack of authority of the handling prosecutor to file an Information does not affect the trial court's jurisdiction or authority to take cognizance of a criminal case, it is not among the exceptions of *Nitafan* where the RTC may *sua sponte* quash the Information and dismiss the case.

29. ID.; ID.; ID.; JUDGMENT OF ACQUITTAL; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO DUE PROCESS; A *MOTU PROPRIO* QUASHAL OF AN INFORMATION AND DISMISSAL OF THE CRIMINAL CASE FOR LACK OF AUTHORITY OF THE HANDLING PROSECUTOR IN FILING THE INFORMATION VIOLATE THE STATE'S RIGHT TO DUE PROCESS, RENDERING THE JUDGMENT OF ACQUITTAL VOID.— It is settled that both the accused and the State are entitled to due process. For the former, such right includes the right to present evidence for his or her defense; for the latter, such right pertains to a fair opportunity to prosecute and convict. Accordingly, in such context, it becomes reasonable to assume that the Constitution affords not only the accused but also the State with the complete guarantee of procedural due process, especially the opportunity to be heard.

. . .

> As pointed out in *Nitafan*, a *motu proprio* and summary quashal of an Information also violates the State's (and the Prosecution's) fundamental right to due process as the presiding judge who initiates such quashal would now be tainted with bias in favor of the accused. In addition, such perfunctory court action also deprives the Prosecution of its right to be notified and to be accorded the opportunity to be heard regarding such quashal of the Information and eventual dismissal of the criminal case. Such violation of the State's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will for it has the effect of ousting a court of its jurisdiction.
>
> . . . [A] judgment is void when it violates the basic tenets of due process. Since a void judgment creates no rights and imposes no duties, no jeopardy attaches to a judgment of acquittal or order of dismissal where the prosecution, which represents the Sovereign People in criminal cases, is denied due process. In this regard, the CA correctly found the RTC's February 13, 2013 Order to be tainted with grave abuse of discretion necessitating the latter's annulment for exceeding jurisdictional bounds.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

GESMUNDO, *J.*:

The crux of the entire controversy is whether, in a criminal case, a trial court is divested of its jurisdiction over the person of the accused and over the offense charged if the Information filed by the investigating prosecutor does not bear the *imprimatur* because of the absence on its face of both the word "approved" and the signature of the authorized officer such as the provincial, city or chief state prosecutor.

Overview

Before this Court is a Petition for Review on *Certiorari*[1] filed by accused Gina A. Villa Gomez through the Public Attorney's Office seeking to set aside the October 9, 2014 Decision[2] in CA-G.R. SP No. 130290 rendered by the Court of Appeals *(CA)* which issued a *writ* of *certiorari* (1) annulling the February 13, 2013[3] and April 29, 2013[4] Orders issued by the Regional Trial Court of Makati City, Branch 57 *(RTC)*; and (2) reinstating the criminal case against the petitioner. The CA held that the RTC committed grave abuse of discretion in *motu proprio* dismissing the charge of corruption of public officials, even after the case had already been submitted for decision, on the ground that the Information filed was without signature and authority of the City Prosecutor.

Antecedents

On September 17, 2010, police operatives from the Anti-Illegal Drugs Special Operations Task Group of Makati City arrested the petitioner.[5]

On September 19, 2010, a Complaint was filed against the petitioner for corruption of public officials under Article 212 of the Revised Penal Code *(RPC)*.[6] The same Complaint was received for inquest by the Office of the City Prosecutor *(OCP)* of Makati City.[7]

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[1] *Rollo*, pp. 13-30.

[2] Id. at 35-45; penned by Associate Justice Socorro B. Inting (now an incumbent Commissioner of the Commission on Elections) with Associate Justices Jose C. Reyes, Jr. (now a retired Member of this Court) and Mario V. Lopez (now an incumbent Member of this Court), concurring.

[3] Id. at 66-67.

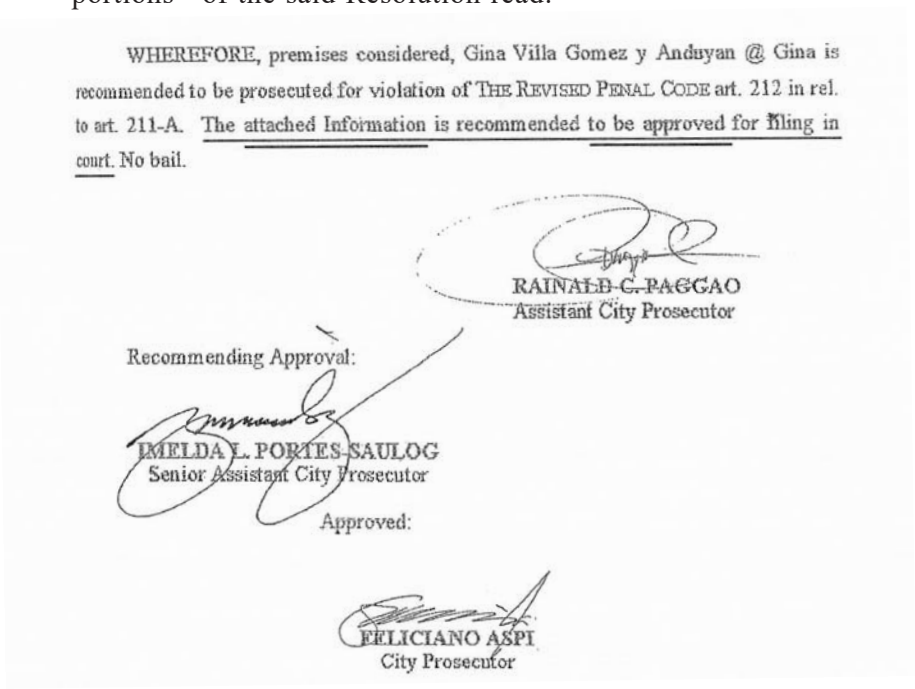
[4] Id. at 68-69.

[5] Id. at 35.

[6] Id. at 36.

[7] Id.

On September 21, 2010, a Resolution[8] was issued by the OCP of Makati City finding probable cause that the petitioner may have offered ₱10,000.00 to both PO2 Ronnie E. Aseboque and PO2 Renie E. Aseboque in exchange for the release of her companion Reynaldo Morales *y* Cabillo @ "Anoy."[9] The relevant portions[10] of the said Resolution read:



WHEREFORE, premises considered, Gina Villa Gomez y Anduyan @ Gina is recommended to be prosecuted for violation of THE REVISED PENAL CODE art. 212 in rel. to art. 211-A. The attached Information is recommended to be approved for filing in court. No bail.

RAINALD C. PAGGAO
Assistant City Prosecutor

Recommending Approval:

IMELDA L. PORTES-SAULOG
Senior Assistant City Prosecutor

Approved:

FELICIANO ASPI
City Prosecutor

On September 22, 2010, an Information[11] for corruption of public officials was filed with the RTC against the petitioner and docketed as Criminal Case No. 10-1829, the delictual allegations of which read:

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[8] Id. at 70-71.

[9] Supra note 6.

[10] *Rollo*, p. 71, underscoring supplied.

[11] Id. at 72.

On September 17, 2010, in the [C]ity of Makati, Philippines, accused did then and there willfully, unlawfully and feloniously offer and tender Php10,000[.00] to PO2 Ronnie E. Aseboque, PO2 Renie E. Aseboque and PO2 Glen S. Gonzalvo for and in consideration of the release and non-prosecution of Reynaldo Morales *y* Cabillo @ Anoy, who was arrested for violation of THE REPUBLIC ACT 9165 [S]ec. 5, a non-bailable offense punishable by life imprisonment.

CONTRARY TO LAW.

(Sgd.)
RAINALD C. PAGGAO
Assistant City Prosecutor

I HEREBY CERTIFY that the foregoing Information is filed pursuant to the REVISED RULES ON CRIMINAL PROCEDURE [R]ule 112, [S]ec. 6, accused not having opted to avail of her right to a preliminary investigation and not having executed a waiver pursuant to THE REVISED PENAL CODE, [A]rt. 125. I further certify that the Information is being ***filed with the prior authority*** of the City Prosecutor.

(Sgd.)
RAINALD C. PAGGAO
Assistant City Prosecutor
(emphasis supplied)

Thereafter, trial on the merits ensued and the case was eventually declared by the RTC as submitted for decision after both parties had finished presenting their respective evidence-in-chief.[12]

The RTC Ruling

On February 13, 2013, the RTC issued an Order,[13] without any motion from either the petitioner or the Prosecution, perfunctorily dismissing Criminal Case No. 10-1829 because (1) Assistant City Prosecutor Rainald C. Paggao *(ACP Paggao)* had no authority to prosecute the case as the Information he filed does not contain the signature or any indication of approval from City Prosecutor Feliciano Aspi *(City Prosecutor Aspi)*

[12] Id. at 36.

[13] Supra note 3.

himself; and (2) ACP Paggao's lack of authority to file the Information is "a jurisdictional defect that cannot be cured." The dispositive portion of the said Order reads:

> WHEREFORE, premises considered and for lack of jurisdiction, this case is hereby dismissed and the Jail Warden of BJMP Makati City is hereby ordered to release the accused immediately upon receipt hereof unless there is a valid cause for her continued detention.
>
> **SO ORDERED**.[14]

Aggrieved, the Prosecution filed a Motion for Reconsideration[15] stating that: (1) it was caught by surprise when, after more than two (2) years of trial and of the petitioner's detention, the case was suddenly and summarily dismissed by the RTC without any motion filed by either party;[16] (2) the RTC "obviously misappreciated the record and misinterpreted the law" as the OCP's September 21, 2010 Resolution was not only signed by City Prosecutor Aspi himself but also contained his approval for the filing of the attached Information;[17] (3) there is nothing in Section 4, Rule 112 of the Rules of Court which states that the authorization or approval of the city or provincial prosecutor should appear on the face or be incorporated in the Information;[18] and (4) the case laws cited by the petitioner, pertaining to the handling prosecutor's lack of authority which invalidates an Information, do not apply in the instant case because these rulings involve the delegation of authority to file, not the validity of, an Information.[19]

On April 29, 2013, the RTC issued an Order[20] denying the Prosecution's motion for reconsideration ratiocinating that the

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[14] *Rollo*, p. 67.

[15] Id. at 79, 83.

[16] Id. at 79.

[17] Id. at 80-81.

[18] Id. at 80.

[19] Id.

[20] Supra note 4.

OCP's September 21, 2010 Resolution **merely authorized the handling prosecutor**, ACP Paggao, **to file** the subject Information.[21] It explained that **there is nothing** in the September 21, 2010 Resolution **which authorized** ACP Paggao **to sign** the subject Information.[22] Thus, the RTC concluded that: (1) ACP Paggao was **never authorized to file and sign** the subject Information; and (2) courts are not precluded from ruling on jurisdictional issues even if not raised by the parties.[23] The dispositive portion of said Order reads:

> **WHEREFORE**, for utter lack of merit, the Motion for Reconsideration is hereby **DENIED**.
>
> **SO ORDERED**.[24]

Unsated, the Prosecution, through the Office of the Solicitor General *(OSG)*, filed a Petition for *Certiorari*[25] under Rule 65 with the CA seeking *inter alia* to annul the RTC's April 29, 2013 and February 13, 2013 Orders. There, the OSG argued that: (1) there is only one instance when a city prosecutor (including provincial and chief state prosecutors) or the Ombudsman (or his or her deputy) may directly file and sign the Information — if the investigating prosecutor's recommendation for dismissal of the Complaint is disapproved as contemplated in Sec. 4, Rule 112 of the Rules of Court;[26] (2) there is no provision in the Rules of Court which restricts the signing of the Information only to the city or provincial prosecutor to the exclusion of their assistants;[27] (3) the case laws cited by the RTC do not apply in the petitioner's case because, in those cases, those who filed their respective Informations had

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[21] *Rollo*, p. 68.

[22] Id.

[23] Id. at 69.

[24] Id.

[25] Id. at 49-64.

[26] Id. at 57-58.

[27] Id. at 58.

absolutely no authority to do so because: (i) in the first case, the special counsel appointed by the Secretary of Justice to perform prosecutorial functions was not even an employee of the Department of Justice; and (ii) in the second case, the approving officer was a regional prosecutor whose duties then were limited only to exercising administrative supervision over city and provincial prosecutors of the region;[28] (4) quashing of the Information can no longer be resorted to "since the case had already gone to trial and the parties had in fact completed the presentation of their evidence";[29] and (5) quashing of the Information can only be done by the trial court upon motion of the accused signed personally or through counsel under Sec. 2, Rule 117 of the Rules of Court.[30]

The CA Ruling

On October 9, 2014, the CA rendered a Decision[31] which: (1) granted the Petition for *Certiorari*; (2) set aside both the February 13, 2013 and April 29, 2013 RTC Orders; and (3) reinstated Criminal Case No. 10-1829. In that Decision, it was pointed out that: (1) the records show that the OCP's September 21, 2010 Resolution was indeed **signed** by City Prosecutor Aspi himself;[32] and (2) the RTC cannot quash an Information and dismiss the case on its own without a corresponding motion filed by the accused, especially if the latter had already entered a plea during a previously conducted arraignment.[33] The dispositive portion of the same Decision reads:

WHEREFORE, the premises considered, the Petition is hereby **GRANTED**. The challenged [O]rders dated 13 February 2013 and 29 April 2013 of the Regional Trial Court (RTC), Branch 57, Makati

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[28] Id. at 58-59.

[29] Id. at 59.

[30] Id. at 59-62.

[31] Supra note 2.

[32] *Rollo*, pp. 39-42.

[33] Id. at 42-44, citing *People v. Hon. Nitafan*, *infra* note 180.

City are **REVERSED and SET ASIDE**. The Information against Gina Villa Gomez for Corruption of Public Officials and the Criminal Case No. 10-1829 against her is **REINSTATED AND** a **WARRANT** for her **ARREST** be issued anew.

SO ORDERED.[34]

On November 13, 2014, the petitioner filed a Motion for Reconsideration[35] essentially arguing that courts may *motu proprio* dismiss a case when it finds jurisdictional infirmities (such as lack of authority from the city or provincial prosecutor on the part of the handling prosecutor in filing a criminal Information) at any stage of the proceedings.

On February 4, 2015, the CA issued a Resolution[36] finding that the petitioner's "reasons and arguments in support of the motion [for reconsideration] have been amply treated, discussed and passed upon in the subject decision" and that "the additional arguments proffered therein constitute no cogent or compelling reason to modify, much less reverse" its judgment.[37] The dispositive portion of the same Resolution reads:

WHEREFORE, the Motion for Reconsideration is hereby **DENIED**.

SO ORDERED.[38]

Dissatisfied, the petitioner, by way of a Petition for Review on *Certiorari*, now assails before this Court the propriety of the CA's October 9, 2014 Decision and February 4, 2015 Resolution.[39]

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[34] Id. at 45.

[35] Id. at 73-78.

[36] Id. at 47-48.

[37] Id. at 47.

[38] Id. at 48.

[39] Id. at 13-28.

Parties' Arguments

The petitioner, in challenging the CA' s Decision, insists that: (1) the RTC was correct in ordering the dismissal of the criminal case due to the absence of authority on the part of the handling prosecutor (ACP Paggao) who signed the Information;[40] (2) the ground of want of jurisdiction may be assailed at any stage of the proceedings, even if the accused had already entered a plea during the arraignment or the case had already been submitted for decision;[41] and (3) a criminal Information which is void for lack of authority cannot be cured by an amendment for such authority is a mandatory jurisdictional requirement.[42]

On the other hand, the Prosecution, through the OSG,[43] points out that: (1) the RTC acted with grave abuse of discretion in dismissing Criminal Case No. 10-1829 due to lack of authority on the part of the handling prosecutor *(ACP Paggao)* because the OCP's September 21, 2010 Resolution recommending for the attached Information "to be approved for filing" bore the signature of City Prosecutor Aspi;[44] (2) the jurisprudence cited by the petitioner do not apply in this case because they pertain to instances where an Information was filed without the approval or prior written authority of the city or provincial prosecutor;[45] (3) an Information cannot be quashed by the court or judge *motu proprio*, especially if the case had already gone to trial and the parties had already completed the presentation of their evidence;[46] and (4) lack of jurisdiction over the offense charge

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[40] Id. at 19.

[41] Id. at 20-21.

[42] Id. at 21-26.

[43] Id. at 117; Comment signed by: Solicitor General Florin T. Hilbay, Assistant Solicitor General Marissa Macaraig-Guillen and Senior State Solicitor Jayrous L. Villanueva.

[44] Id. at 111-113.

[45] Id. at 113-114.

[46] Id. at 114-116.

should still be invoked by the accused in seeking for the dismissal of the case or quashal of the Information.[47]

Issues

I

WHETHER THE CA CORRECTLY FOUND GRAVE ABUSE OF DISCRETION ON THE RTC'S PART FOR QUASHING THE INFORMATION AND DISMISSING THE CRIMINAL CASE ON THE GROUND OF ABSENCE OF JURISDICTION RELATIVE TO ACP PAGGAO'S FAILURE TO SECURE A PRIOR WRITTEN AUTHORITY OR STAMPED APPROVAL FROM CITY PROSECUTOR ASPI TO FILE THE SAME PLEADING AND CONDUCT THE PROSECUTION AGAINST THE ACCUSED;

II

WHETHER THE CA CORRECTLY FOUND GRAVE ABUSE OF DISCRETION ON THE RTC'S PART FOR: (1) *MOTU PROPRIO* QUASHING THE INFORMATION; AND (2) DISMISSING THE CRIMINAL CASE DESPITE HAVING ALREADY BEEN SUBMITTED FOR DECISION AND WITHOUT GIVING THE PROSECUTION AN OPPORTUNITY TO BE HEARD.

The Court's Ruling

I. *Procedural Considerations*

Decisions, final orders or resolutions of the CA in any case (regardless of the nature of the action or proceedings involved) may be appealed to this Court by filing a petition for review on *certiorari* under Rule 45 of the Rules of Court which, in essence, is a continuation of the appellate process over the original case.[48] Being an appellate process, such remedy is confined to a review of any error in judgment.[49] However, unlike other modes of appeal, the scope of review is narrower because this Court

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[47] Id. at 116.

[48] *Albor v. Court of Appeals*, G.R. No. 196598, January 17, 2018, 823 SCRA 901, 909, citation omitted.

[49] See *Villareal v. Aliga*, 724 Phil. 47, 64 (2014).

only entertains pure questions of law,[50] and generally does not re-evaluate the evidence presented by the parties during the trial stage of the whole proceedings.[51] Furthermore, the scope of review under Rule 45 for CA decisions, resolutions or final orders in granting or denying petitions for *certiorari* under Rule 65 is **even narrower**. Just like in labor cases, this Court will examine the CA's decision, resolution or final order from the prism of whether it correctly determined the presence or absence of grave abuse of discretion on the lower tribunal's part and not whether the same tribunal decided correctly on the merits.[52]

In this case, the CA nullified the RTC's February 13, 2013 Order dismissing the case against the petitioner on the ground of grave abuse of discretion and reinstated Criminal Case No. 10-1829. As a consequence of such reinstatement, this Court is now confronted with the issue on whether the petitioner's constitutional right against double jeopardy was violated by the CA.

To resolve such issue, this Court reiterates the general rule that the Prosecution cannot appeal or bring error proceedings from a judgment rendered in favor of the defendant in a criminal case because an acquittal is immediately final and executory and the Prosecution is barred from appealing lest the constitutional prohibition against double jeopardy be violated.[53] However, there are instances where an acquittal may still be challenged without resulting to double jeopardy, such as:

(1) When the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction due to a **violation of due process**;[54] or

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[50] *Century Iron Works, Inc. v. Bañas*, 711 Phil. 576, 585 (2013), citation omitted.

[51] See *Carbonell v. Carbonell-Mendes*, 762 Phil. 529, 536 (2015), citation omitted.

[52] See *Philippine National Bank v. Gregorio*, 818 Phil. 321, 336 (2017).

[53] *People v. Court of Appeals*, 755 Phil. 80, 97 (2015), citation omitted.

[54] *People v. Sandiganbayan*, 426 Phil. 453, 458 (2002).

(2) When the **trial** was a **sham**.[55]

In these instances, the dismissal or judgment of acquittal is considered void and assailing the same does not result in jeopardy.[56]

As to the proper procedure, a judgment of acquittal (or order of dismissal amounting to acquittal) may **only** be assailed in a petition for *certiorari* under Rule 65 of the Rules of Court.[57] The reasons being are that: (1) the Prosecution is barred from appealing a judgment of acquittal lest the constitutional prohibition against double jeopardy be violated;[58] (2) double jeopardy does not attach when the judgment or order of acquittal is tainted with grave abuse of discretion;[59] and (3) that *certiorari* is a supervisory *writ* whose function is to keep inferior courts and quasi-judicial bodies within the bounds of their jurisdiction.[60] Verily, *certiorari* is a comprehensive[61] and extraordinary *writ* wielded by superior courts in criminal cases to **prevent** inferior courts from committing grave abuse of discretion.[62]

More importantly, grave abuse of discretion should be alleged and proved to exist in order for such petition to prosper.[63] The petitioner should establish that the respondent court or tribunal

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[55] *Galman v. Sandiganbayan*, 228 Phil. 42 (1986).

[56] *People v. Judge Laguio, Jr.*, 547 Phil. 296, 316 (2007).

[57] *People v. Alejandro*, 823 Phil. 684, 692 (2018).

[58] *People v. Court of Appeals*, supra note 53.

[59] See *Chiok v. People*, 774 Phil. 230, 249-250 (2015), citations omitted.

[60] *Association of Medical Clinics for Oversees Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 136-137 (2016).

[61] See *Bordomeo v. Court of Appeals*, 704 Phil. 278 (2013), citations omitted.

[62] See *Heirs of Eliza Q. Zoleta v. Land Bank of the Philippines*, 816 Phil. 389, 419 (2017); *Cruz v. People*, 812 Phil. 166, 172 (2017); *Toyota Motors Phils. Corporation Workers' Association v. Court of Appeals*, 458 Phil. 661, 680-681 (2003), citations omitted.

[63] *Novateknika Land Corporation v. Philippine National Bank*, 706 Phil. 414, 423 (2013).

acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction whenever grave abuse of discretion is alleged in the petition for *certiorari*.[64] Such manner of exercising jurisdiction must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[65] In other words, mere abuse of discretion is not enough — it must be grave.[66] Thus, as applied in this case, while *certiorari* may be used to nullify a judgment of acquittal or order of dismissal amounting to an acquittal, the petitioner seeking for the issuance of such an extraordinary *writ* must demonstrate clearly that the lower court blatantly abused its authority to a point that such act is so grave as to deprive it of its very power to dispense justice.[67]

At this point, it now becomes imperative for this Court to re-assess whether the CA: (1) correctly found grave abuse of discretion on the RTC's part; and (2) properly reinstated Criminal Case No. 10-1829 without violating the constitutional prohibition on placing an accused twice in jeopardy.

II. *Effect of Filing an Information Not Signed by the City Prosecutor or a Duly-Delegated Deputy*

A. Grounds for Quashing an Information and Prevailing Jurisprudence

Secs. 3 and 9, Rule 117 of the Rules of Court read:

Section 3. *Grounds*. — The accused may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;

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[64] *Chua v. People*, 821 Phil. 271, 279 (2017), citations omitted.

[65] *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*, 820 Phil. 235, 247 (2017), citation omitted.

[66] *Intec Cebu, Inc. v. Court of Appeals*, 788 Phil. 31, 42 (2016).

[67] *People v. Court of Appeals*, 368 Phil. 169, 185 (1999).

(b) That the court trying the case has no jurisdiction over the offense charged;

(c) That the court trying the case has no jurisdiction over the person of the accused;

(d) That **the officer who filed the information had no authority to do so**;

(e) That it does not conform substantially to the prescribed form;

(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;

(g) That the criminal action or liability has been extinguished;

(h) That it contains averments which, if true, would constitute a legal excuse or justification; and

(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent.

x x x x x x x x x

Section 9. *Failure to move to quash or to allege any ground therefor*. — The **failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information**, either because he did not file a motion to quash or failed to allege the same in said motion, **shall be deemed a waiver of any objections except** those based on the grounds provided for **in paragraphs (a), (b), (g), and (i) of section 3** of this Rule. (emphases supplied)

Here, Sec. 9 is clear that **an accused must move for the quashal of the Information before entering his or her plea during the arraignment. Failure to file a motion to quash** the Information before pleading in an arraignment shall be **deemed a waiver** on the part of the accused to raise the grounds in Sec. 3. Nevertheless, **failure** to **move for a quashal** of the Information before entering his or her plea on the **grounds** based on paragraphs **(a), (b), (g)** and **(i)** of Sec. 3; *i.e.*, (1) that the facts charged do not constitute an offense; (2) that the court trying the case has no jurisdiction over the offense charged; (3) that the criminal action or liability has been extinguished; and (4) that the accused has been previously convicted or acquitted of the offense charged, or the case against him was

dismissed or otherwise terminated without his express consent, will **not be considered** as a **waiver** for the accused and the latter may still file such motion based on these grounds **even after** arraignment.

Correlatively, the prevailing jurisprudence is of the view that paragraph **(d)** of Sec. 3, that the **officer** who **filed** the Information had **no authority** to do so, **also cannot be waived** by the accused like those in paragraphs (a), (b), (g) and (i). Even if such ground is not listed in Sec. 9 as among those which cannot be waived, it may still be asserted or raised by the accused even after arraignment for purposes of quashing an Information and, consequently, having the criminal case dismissed.

It was first held in *Villa v. Ibañez*[68] *(Villa)* that:

> x x x It is a **valid information signed by a competent officer which**, among other requisites, **confers jurisdiction on the court over the person of the accused *and* the subject matter of the accusation**. In consonance with this view, an infirmity of the nature noted in the information [cannot] be cured by silence, acquiescence, or even by express consent.[69] (emphasis supplied)

To date, *Villa* had never been thoroughly expounded, modified or abandoned during the effectivity of the 1935 and 1973 Constitutions as it relates to the reason **why** a valid Information signed by a competent officer confers jurisdiction on the trial court over the person of the accused and over the subject matter of the accusation. It was merely accepted by the Bench and the Bar that a handling prosecutor's lack of authority to file an Information adversely affects the personal and subject matter jurisdiction of the trial court in criminal cases.

More so, under the 1987 Constitution, the same ruling was reinforced in *People v. Garfin*[70] *(Garfin)* where the Court

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[68] 88 Phil. 402 (1951).

[69] Id. at 405.

[70] 470 Phil. 211 (2004); see also *Cudia v. Court of Appeals*, 348 Phil. 190 (1998), citations omitted.

enunciated that "lack of authority on the part of the filing officer prevents the court from acquiring jurisdiction over the case."[71]

Likewise, *Garfin* was further supplemented by the rulings in *Turingan v. Garfin*[72] *(Turingan)* and *Tolentino v. Paqueo, Jr.*[73] *(Tolentino)* where this Court declared that an Information filed by an investigating prosecutor without prior written authority or approval of the provincial, city or chief state prosecutor (or the Ombudsman or his deputy) **constitutes a jurisdictional defect** which cannot be cured and waived by the accused.[74]

Furthermore, this Court in *Quisay v. People*[75] *(Quisay)* also reinforced the doctrines established in *Villa, Garfin, Turingan* and *Tolentino* by unequivocally maintaining that "the filing of an Information by an officer **without the requisite authority to file** the same **constitutes a jurisdictional infirmity which cannot be cured by silence, waiver, acquiescence, or even by express consent**"; and "such ground may be raised at any stage of the proceedings."[76] It also added that resolutions issued by an investigating prosecutor finding probable cause to indict an accused of some crime charged **cannot be considered** as "**prior written authority or approval** of the provincial or city prosecutor."

Finally, this Court in *Maximo v. Villapando, Jr.*[77] *(Maximo)* finally institutionalized *Villa* when it categorically declared that: (1) "[a]n Information, when required by law to be filed by a public prosecuting officer, cannot be filed by another"; (2) "[t]he court does not acquire jurisdiction over the case because

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[71] Id. at 230.

[72] 549 Phil. 903 (2007).

[73] 551 Phil. 355 (2007).

[74] Id. at 364.

[75] 778 Phil. 481 (2016).

[76] Id. at 487, citation omitted, emphasis supplied.

[77] 809 Phil. 843 (2017), citations omitted; see also *Ongkingco v. Sugiyama*, G.R. No. 217787, September 18, 2019.

there is a defect in the Information"; and (3) "[t]here is no point in proceeding under a defective Information that could never be the basis of a valid conviction."[78]

As deduced from the aforementioned rulings, it now becomes sensible to conclude that the following reasons first laid down in *Villa* have been the Court's *raison d'être* of **why an officer's lack of authority in filing an Information is considered a jurisdictional infirmity**, to wit:

1) Lack of jurisdiction over the **person** of the accused; and

2) Lack of jurisdiction over the **subject matter** or **nature of the offense**.

In view of the aforementioned observation, the Court deems it inevitably necessary to revisit the aforementioned doctrines laid down in *Villa, Garfin, Turingan, Tolentino, Quisay, Maximo* and other rulings of similar import on account of this glaring realization:

> Lack of **prior** written **authority** or **approval** on the face of the Information by the prosecuting officers authorized to approve and sign the same **has nothing to do** with a trial court's **acquisition of jurisdiction** in a criminal case.

To start with, the prevailing adjective law at that time of *Villa*'s promulgation was the 1940 Rules of Court[79] with the following relevant provisions (which were essentially carried over to the 1964 Rules of Court[80] with minor modifications) that read:

RULE 108
Preliminary Investigation

x x x x x x x x x

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[78] Id. at 869.

[79] July 1, 1940.

[80] January 1, 1964.

SECTION 6. *Duty of Judge or Corresponding Officer in Preliminary Investigation*. — The justice of the peace or the officer who is to conduct the preliminary investigation must take under oath, either in the presence or absence of the defendant, the testimony of the complainant and the witnesses to be presented by him or by the fiscal, but only the testimony of the complainant shall be reduced to writing. He shall, however, make an abstract or brief statement of the substance of the testimony of the other witnesses.

x x x x x x x x x

RULE 113
Motion to Quash

x x x x x x x x x

SECTION 2. *Motion to Quash — Grounds*. — The defendant may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;

(b) That **the court trying the cause has no jurisdiction of the offense charged or of the person of the defendant**;

(c) That **the fiscal has no authority to file the information**;

(d) That it does not conform substantially to the prescribed form;

(e) That more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses;

(f) That the criminal action or liability has been extinguished;

(g) That it contains averments which, if true, would constitute a legal excuse or justification;

(h) That the defendant has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged;

(i) That the defendant is insane.

If the motion to quash is based on an alleged defect in the complaint or information which can be cured by amendment the court shall order the amendment to be made and shall overrule the motion.

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SECTION 10. *Failure to Move to Quash — Effect of — Exception*. — If the defendant does not move to quash the complaint or information before he pleads thereto he **shall be taken to have waived all objections** which are grounds for a motion to quash **except** when the complaint or information does not charge an offense, or the court is **without jurisdiction** of the same. If, however, the defendant learns after he has pleaded or has moved to quash on some other ground that the offense with which he is now charged is an offense for which he has been pardoned, or of which he has been convicted or acquitted or been in jeopardy, the court *may* in its discretion entertain at any time before judgment a motion to quash on the ground of such pardon, conviction, acquittal or jeopardy. (emphases supplied)

There is nothing in Sec. 6, Rule 108 of the 1940 Rules of Court which requires the handling prosecutor to first secure either a prior written authority or approval or a signature from the provincial, city or chief state prosecutor before an Information may be filed with the trial court. Admittedly, Sec. 2 (c) of Rule 113 states that a handling prosecutor's lack of authority to file is a ground for the quashal of an Information. However, in the context of *Villa*, the Court merely clarified that, "to be eligible as special counsel to aid a fiscal[,] the appointee must be either an employee or officer in the Department of Justice." It also did not explain why a handling prosecutor's lack of authority is also intertwined with Sec. 2 (b) of Rule 113 so as to deprive the trial court of its jurisdiction over the offense charged or the person of the accused. The only apparent reason why the subject Information in *Villa* was rendered invalid by this Court was primarily because the handling prosecutor who signed and filed the same initiatory pleading was not even an officer of the Department of Justice qualified "to assist a fiscal or prosecuting attorney in the discharge of his [or her] duties" under Sec. 1686[81] of Act No. 2711[82] amending Sec. 1305 of

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[81] Erroneously referred to as Section "189" of Act No. 2711 in *Villa v. Ibañez*, supra note 68.

[82] An Act Amending the Administrative Code (March 10, 1917), as further amended by Commonwealth Act No. 144 (November 7, 1936).

Act No. 2657[83] — the governing Administrative Code at that time.

For a clearer understanding, the Court now finds it necessary to dissect the relationship between the concepts relative to jurisdiction and the handling prosecutor's authority to file an Information.

B. Jurisdiction in General

Semantically, "jurisdiction" is derived from the Latin words *"juris"* and *"dico"* which means "I speak by the law."[84] In a broad and loose sense, it is "[t]he authority of law to act officially in a particular matter in hand."[85] In a refined sense, it is "the power and authority of a court [or quasi-judicial tribunal] to hear, try, and decide a case."[86] Indeed, a judgment rendered without such power and authority is void thereby creating no rights and imposing no duties on the parties.[87] As a consequence, a void judgment may be attacked anytime.[88]

Relatedly, the concept of jurisdiction has several **aspects**, namely: (1) jurisdiction over the **subject matter**; (2) jurisdiction over the **parties**; (3) jurisdiction over the **issues** of the case; and (4) in cases involving property, jurisdiction over the ***res*** or the **thing** which is the subject of the litigation.[89] Additionally, a court must also acquire jurisdiction over the **remedy** in order for it to exercise its powers validly and with binding effect.[90]

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[83] An Act Consisting an Administrative Code (December 31, 1916).

[84] *People v. Mariano*, 163 Phil. 625, 629 (1976).

[85] *Frazier v. Moffatt*, 108 Cal.App.2d 379 (1951), citing Cooley on Torts, p. 417.

[86] *Foronda-Crystal v. Son*, 821 Phil. 1033, 1042 (2017), citation omitted.

[87] See *Imperial v. Judge Armes*, 804 Phil. 439 (2017).

[88] *Bilag v. Ay-ay*, 809 Phil. 236, 243 (2017).

[89] *Boston Equity Resources, Inc. v. Court of Appeals*, 711 Phil. 451, 464 (2013), citation omitted.

[90] *De Pedro v. Romasan Development Corporation*, 748 Phil. 706, 723 (2014).

As to the acquisition of jurisdiction in criminal cases, there are three (3) important requisites which should be satisfied, to wit: (1) the court must have jurisdiction over the **subject matter**; (2) the court must have jurisdiction over the **territory** where the offense was committed; and, (3) the court must have jurisdiction over the **person** of the accused.[91]

In the case at hand, the relevant aspects of jurisdiction being disputed are: (1) over the subject matter or, in criminal cases, over the nature of the offense charged; and (2) over the parties, or in criminal cases, over the person of the accused. At this juncture, the Court will now proceed to determine how these aspects of jurisdiction are supposedly affected by the handling prosecutor's authority to sign and file an Information.

C. Jurisdiction Over the Subject Matter or Nature of the Offense

Jurisdiction over the **subject matter** or **offense** in a judicial proceeding is conferred by the sovereign authority which organizes the court — it is **given only by law** and in the **manner prescribed by law**.[92] It is the power to hear and determine the **general class** to which the proceedings in question belong.[93]

As applied to criminal cases, jurisdiction over a given crime is vested by law upon a particular court and may not be conferred thereto by the parties involved in the offense.[94] More importantly, jurisdiction over an offense cannot be conferred to a court by the accused through an express waiver or otherwise.[95] Here, a trial court's jurisdiction is determined by the allegations in the Complaint or Information and not by the result of proof.[96] These

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[91] *People v. Spouses Valenzuela*, 581 Phil. 211, 219 (2008), citation omitted.

[92] *Cunanan v. Arceo*, 312 Phil. 106, 116 (1995), citation omitted; *United States v. Jayme*, 24 Phil. 90, 92 (1913).

[93] *Foronda-Crystal v. Son*, supra note 86.

[94] See *Valdepeñas v. People*, 123 Phil. 734 (1966), citations omitted.

[95] *United States v. Jimenez*, 41 Phil. 1, 3 (1920), citation omitted.

[96] *Navaja v. De Castro*, 761 Phil. 142, 153 (2015), citation omitted.

allegations pertain to ultimate facts constituting elements of the crime charged.[97] Such recital of ultimate facts apprises the accused of the nature and cause of the accusation against him or her.[98]

Clearly, the **authority** of the **officer** in filing an Information **has nothing to do with the ultimate facts** which **describe the charges** against the accused. The issue on whether or not the handling prosecutor secured the necessary authority from his or her superior before filing the Information **does not affect or change the cause of the accusation or nature of the crime** being attributed to the accused. **The nature and cause of the accusation remains the same with or without such required authority**.

In fact, existing jurisprudence even allows the Prosecution to amend an Information alleging facts which do not constitute an offense just to make it line up with the nature of the accusation.[99] In other words, existing rules grant the Prosecution a chance to amend a fatally and substantially defective Information affecting the cause of the accusation or the nature of the crime being imputed against the accused. As such, it is with more reason that the handling prosecutor shall also be afforded with the chance to first secure the necessary authority from the provincial, city or chief state prosecutor. Viewed from a different angle, **the law conferring a court with jurisdiction over a specific offense does not cease to operate in cases where there is lack of authority on the part of the officer or handling prosecutor filing** an Information. As such, the authority of an officer filing the Information is **irrelevant** in relation to a trial court's power or authority to take cognizance of a criminal case according to its nature as it is determined by law. Therefore, absence of authority or prior approval of the handling prosecutor from the city or provincial prosecutor

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[97] *People v. Sandiganbayan*, 769 Phil. 378, 382 (2015).

[98] See *Quimvel v. People*, 808 Phil. 889, 911 (2017), citation omitted.

[99] See *Go v. Bangko Sentral ng Pilipinas*, 619 Phil. 306, 316 (2009).

cannot be considered as among the grounds for the quashal of an Information which is non-waivable.

D. Jurisdiction Over the Person of the Accused

Jurisdiction **over the person** of the accused is acquired upon his or her: (1) **arrest or apprehension**, with or without a warrant; or (2) **voluntary appearance or submission** to the jurisdiction of the court.[100] It allows the court to render a decision that is binding on the accused.[101] However, unlike jurisdiction over the subject matter, the right to challenge or object to a trial court's **jurisdiction over the person** of the accused **may be waived by silence or inaction** before the entering of a plea during arraignment.[102] Moreover, such right may also be waived by the accused when he or she files any pleading seeking an affirmative relief, except in cases when he or she invokes the special jurisdiction of the court by impugning such jurisdiction over his person.[103]

Akin to the foregoing discussions on the trial court's acquisition of jurisdiction over the subject matter, the authority of an officer or handling prosecutor in the filing of an Information also has nothing to do with the voluntary appearance or validity of the arrest of the accused. **Voluntary appearance entirely depends on the volition of the accused, while the validity of an arrest strictly depends on the apprehending officers' compliance with constitutional and statutory safeguards in its execution**. Here, the trial court's power to make binding pronouncements concerning and affecting the person of the accused is merely passive and is solely hinged on the conduct of either the accused or the arresting officers — not on the

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[100] *Inocentes v. People*, 789 Phil. 318, 332 (2016), emphases supplied.

[101] *Cf. People's General Insurance Corporation v. Guansing*, G.R. No. 204759, November 14, 2018.

[102] *People v. Badilla*, 794 Phil. 263, 272 (2016), citation omitted, emphasis supplied.

[103] *Miranda v. Tuliao*, 520 Phil. 907, 921 (2006).

authority of the handling prosecutor filing the criminal Information. Moreover, if a serious ground such as jurisdiction over the person of the accused may be waived, so can the authority of the handling prosecutor which does not have any constitutional underpinning. Therefore, a handling prosecutor's lack of prior authority or approval from the provincial, city or chief state prosecutor in the filing of an Information **may be waived** by the accused if not raised as a ground in a motion to quash before entering a plea.

E. A Handling Prosecutor's Legal Standing and Authority to Appear

The 1987 Constitution gave this Court the exclusive power to promulgate rules concerning pleading, **practice** and **procedure** in all courts as well as the power to disapprove procedural rules in special courts and quasi-judicial bodies.[104] Covered by this constitutional power to promulgate rules of procedure is the prerogative to define and prescribe guidelines on who are qualified to appear before the courts and conduct litigation on behalf of oneself or another. In other words, legal representation in the form of a court appearance is a component of law practice under this Court's constitutional power to regulate the legal profession. As such, the conditions or requirements for such representation, being matters of procedure, are governed by the Rules of Court.

To begin with, the relevant portion of Sec. 23, Rule 138 of the Rules of Court succinctly states that "[a]ttorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure"; save for compromises or partial receipt of anything which discharges the whole claim. This is the reason why Sec. 21 of the same Rule presumes that an attorney is "presumed to be properly authorized to represent any cause in which he [or she] appears, and no written power

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[104] See *Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Hon. Cabato-Cortes*, 627 Phil. 543, 550 (2010); *see also* 1987 CONSTITUTION, Art. VIII, Sec. 5 (5).

of attorney is required to authorize him to appear in court for his client" unless the presiding judge may, on motion of any party and on reasonable grounds therefor being shown, "require any attorney who assumes the right to appear in a case to produce or prove the authority under which he appears, and to disclose, whenever pertinent to any issue, the name of the person who employed him, and may thereupon make such order as justice requires." Hence, in the context of law practice, to "represent" is standing in place, supplying the place, or performing the duties or exercising the rights, of the party represented; to speak or act with authority on behalf of another; to conduct and control proceedings in court on behalf of another.[105]

In this jurisdiction, the relevant governing procedures in the conduct of litigation and court appearances are laid out in Secs. 33 and 34 of Rule 138 of the Rules of Court as follows:

Section 33. ***Standing*** *in court of person authorized to appear for Government*. — **Any official or other person appointed or designated in accordance with law to appear for the Government of the Philippines** shall have all the rights of a duly authorized member of the bar to appear in any case in which said government has an interest direct or indirect.

Section 34. *By whom litigation conducted*. — In the court of a justice of the peace a party may conduct his litigation in person, with the aid of an agent or friend appointed by him for the purpose, or with the aid an attorney. In any other court, a party may conduct his litigation personally or by aid of an attorney, and his appearance must be either personal or by a duly authorized member of the bar. (emphasis supplied)

Both aforementioned sections of Rule 138 set out two (2) major categories of representation and clearly delineate the rules regarding a person's capacity to appear or stand in court depending on who or what is being represented.

In the first category, Sec. 33 states that a person appointed or designated in accordance with law to appear **on behalf of**

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[105] *Gonzales v. Chavez*, 282 Phil. 858, 880-881 (1992), citation omitted.

the Government with a direct or indirect interest in a litigation shall have all the rights, of a duly authorized member of the Bar, to appear before the courts. This means that duly authorized officials, even if they are not members of the Bar, have the authority to sue in behalf of and bind their principals to the judgment or any disposition of a competent court in the same manner and capacity as those who are actual members of the Bar. Such category of legal representation is part of the performance of official acts as mandated by law.

In the second category, Sec. 34 enumerates the modes of appearance for **private** or **non-governmental parties**: (1) by counsel or assisted appearance, where they assign legal representatives to appear on their behalf by virtue of some contract of engagement or proceed with the litigation through compulsory legal assistance (*i.e.*, appointment as counsel *de officio*); and (2) *pro se* or personal appearance, where they enter their personal appearance and conduct their own litigation.

In criminal cases, the filing of a Complaint or Information in court initiates a criminal action.[106] Such act of filing signifies that the handling prosecutor has **entered** his or her **appearance** on behalf of the People of the Philippines and is presumably clothed with ample authority from the agency concerned such as the Department of Justice or the Office of the Ombudsman. However, the **appearance** of a handling prosecutor, in the form of filing an Information against the accused, is conditioned by Sec. 4 of Rule 112 of the Rules of Court with a requirement of a prior written authority or approval from the city or provincial prosecutor. Since a handling prosecutor is an officer of the government's prosecutorial arm, the Court also considers it necessary to expound on the nature of prosecutorial functions in relation to Sec. 33 of Rule 138.

For a clearer understanding of the nature of a prosecutor's duties and corresponding scope of authority, the Court highlights that the prosecution of crimes pertains to the Executive Branch of Government whose principal duty is to see to it that our

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[106] *Crespo v. Judge Mogul*, 235 Phil. 465, 474 (1987).

laws are faithfully executed. A necessary component of this duty is the right to prosecute their violators.[107] Concomitant to this duty is the function of conducting a preliminary investigation which is defined as "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."[108] The purposes of such inquiry or proceeding are: (1) to inquire concerning the commission of a crime and the connection of the accused with it, in order that he may be informed of the nature and character of the crime charged against him, and, if there is probable cause for believing him guilty, that the State may take the necessary steps to bring him to trial; (2) to preserve the evidence and keep the witnesses within the control of the State; and (3) to determine the amount of bail, if the offense is bailable.[109] Moreover, such proceeding is also meant to: (1) avoid baseless, hasty, malicious and oppressive prosecution; and (2) to protect the innocent against the trouble, expense and anxiety of a public trial as a result of an open and public accusation of a crime.[110] In essence, a preliminary investigation serves the following main purposes: (1) to protect the innocent against wrongful prosecutions; and (2) to spare the State from using its funds and resources in useless prosecutions.[111] Stated succinctly, such proceeding was established to prevent the indiscriminate filing of criminal cases to the detriment of the entire administration of justice.

In determining the proper officer of the Executive Branch charged with the handling of prosecutorial duties before the courts, it is noteworthy to point out that the important condition for the valid filing of an Information was first provided in

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[107] *Ampatuan, Jr. v. Secretary De Lima*, 708 Phil. 153, 162 (2013).

[108] *Yusop v. Sandiganbayan*, 405 Phil. 233, 239 (2001), citation omitted.

[109] *Callo-Claridad v. Esteban*, 707 Phil. 172, 184 (2013).

[110] See *Sales v. Adapon*, 796 Phil. 368, 378 (2016); see also *Ventura v. Bernabe*, 148 Phil. 610, 616 (1971).

[111] *Sec. De Lima v. Reyes*, 776 Phil. 623, 648 (2016).

Sec. 1 of Republic Act (R.A.) No. 5180[112] — a statute which first prescribed and outlined a uniform system of preliminary investigation by state, provincial and city prosecutors — which states that "no assistant fiscal or state prosecutor may file an [I]nformation or dismiss a case except with the prior authority or approval of the provincial or city fiscal or Chief State Prosecutor."[113] The same provision was eventually incorporated in what is now Sec. 4, Rule 112 of the Rules of Court concerning preliminary investigations which is hereby reproduced in *verbatim* as follows:

Section 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 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.

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[112] An Act Prescribing a Uniform System of Preliminary Investigation by Provincial and City Fiscals and their Assistants, and by State Attorneys or their Assistants (September 8, 1967), as amended by Presidential Decree Nos. 77 (December 6, 1972) and 911 (March 23, 1976).

[113] Section 87 of Republic Act No. 296 (Judiciary Act of 1948 [June 17, 1948]) and Section 37 of Batas Pambansa Bilang 129 (The Judiciary Reorganization Act of 1980 [August 14, 1981]) both gave trial judges the power to conduct preliminary investigation concurrent with that of the government's various prosecutorial arms. This was justified by **both Section 13, Article VIII of the 1935 Constitution and Section 5 (5), Article X of the 1973 Constitution which gave Congress/Batasang Pambansa the power to "repeal, alter or supplement" procedural rules promulgated by the Supreme Court**.

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 deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct any other 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 Justice 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, Sec. 1 of R.A. No. 5180 (as embodied in Sec. 4 of Rule 112) merely provides the guidelines on **how** handling prosecutors, who are subordinates to the provincial, city or chief state prosecutor, should **proceed** in formally charging a person imputed with a crime before the courts. It neither provides for the power or authority of courts to take cognizance of criminal cases filed before them nor imposes a condition on the acquisition or exercise of such power or authority to try or hear the criminal case. Instead, it simply **imposes** a **duty** on investigating prosecutors to first secure a "prior authority or approval" from the provincial, city or chief state prosecutor before filing an Information with the courts. Thus, non-compliance with Sec. 4 of Rule 112 on the duty of a handling prosecutor to secure a "prior written authority or approval" from the provincial, city or chief state prosecutor merely affects the "standing" of such officer "to appear for the Government of the Philippines" as contemplated in Sec. 33 of Rule 138.

Moreover, the Court deems it fit to emphasize that, since rules of procedure are not ends in themselves,[114] courts may still brush aside procedural infirmities in favor of resolving the merits of the case.[115] Correlatively, since legal representation before the courts and quasi-judicial bodies is a matter of procedure, any procedural lapse pertaining to such matter may be deemed waived when no timely objections have been raised.[116] This means that the failure of an accused to question the handling prosecutor's authority in the filing of an Information will be considered as a valid waiver and courts may brush aside the effect of such procedural lapse.

In effect, the operative consequence of filing of an Information without a prior written authority or approval from the provincial, city or chief state prosecutor is that the handling prosecutor's **representation** as counsel for the State **may not be recognized by the trial court** as sanctioned by the procedural rules enforced by this Court pursuant to its constitutional power to promulgate rules on pleading, practice and procedure. Courts are not bound by the internal procedures of the Executive Branch, most especially by its hierarchy of prosecution officers. Rightly so because, as pointed out earlier, the prosecution of crimes lies with the Executive Branch of the government whose principal power and responsibility is to see that the laws of the land are faithfully executed.[117]

The Court is certain that the purpose of R.A. No. 5180, as well as Sec. 4, Rule 112 of the Rules of Court, is neither to cripple nor to divest duly appointed prosecutors from performing their constitutional and statutory mandate of prosecuting criminal offenders but to prevent a situation where such powerful attribute of the State might be abused and indiscriminately wielded or be used as a tool of oppression by just any prosecutor for personal

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[114] *Republic v. Gimenez*, 776 Phil. 233, 237 (2016).

[115] See *Dr. Malixi v. Dr. Baltazar*, 821 Phil. 423 (2017).

[116] *Cf. Philippine Nails and Wires Corporation v. Malayan Insurance Company, Inc.*, 445 Phil. 465, 468 (2003).

[117] *Punzalan v. Plata*, 717 Phil. 21, 32 (2013).

or other reasons. Holding fewer top officials in the prosecutorial service accountable on command responsibility exhorts, if not ensures, the implementation of supervisory safeguards and policies, especially in instances when indictments with deficient indications of probable cause are allowed to reach the courts to the detriment of an otherwise blameless accused.

However, such libertarian safeguard outlined in Sec. 4 of Rule 112 should be balanced with the State's constitutional duty to maintain peace and order.[118] The Court emphasizes that the prosecution of crimes, especially those involving crimes against the State, is the concern of peace officers and government prosecutors.[119] Public prosecutors, not private complainants, are the ones obliged to bring forth before the law those who have transgressed it.[120] They are the representatives not of an ordinary party to a controversy, but of a Sovereign whose obligation to govern impartially is as compelling as its obligation to govern at all.[121] Accordingly, while an Information which is required by law to be filed by a public prosecuting officer cannot be filed by another,[122] the latter may still be considered as a *de facto* officer who is in possession of an office in the open exercise of its functions under the color of an appointment even though, in some cases, it may be irregular.[123] This is because a prosecutor is ingrained with the reputation as having the authority to sign and file Informations which makes him or her a *de facto* officer.[124]

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[118] See *Chavez v. Romulo*, 475 Phil. 486, 491 (2004), citing 1987 PHILIPPINE CONSTITUTION, Art. II, Sec. 5.

[119] *People v. Apawan*, 331 Phil. 51, 59 (1996).

[120] *Metropolitan Bank and Trust Company v. Reynaldo*, 641 Phil. 208, 225 (2010).

[121] *Paredes, Jr. v. Sandiganbayan*, 322 Phil. 709, 725 (1996); *Dimatulac v. Hon. Villon*, 358 Phil. 328, 364 (1998).

[122] See *Maximo v. Villapando, Jr.*, *supra* note 77.

[123] See *Dimaandal v. Commission on Audit*, 353 Phil. 525, 534 (1998).

[124] The difference between the basis of the authority of a *de jure* officer and that of a *de facto* officer is that one rests on right, the other on reputation (*Civil Service Commission v. Jason, Jr.*, 473 Phil. 844, 858-859, (2004).

Relatedly, the Court in *Corpuz v. Sandiganbayan*[125] even had the occasion to point out that "**[t]he State should not be prejudiced and deprived of its right to prosecute the cases simply because of the ineptitude or nonchalance of the Ombudsman/Special Prosecutor**." This doctrine also applies with equal force to cases where a city or provincial prosecutor fails to sign the Information or duly delegate the signing and filing of the same pleading with the competent court to the handling prosecutor. A necessary component of the power to execute our laws is the right to prosecute their violators.[126] The duties of a public office (such as the Department of Justice or the subordinate Office of the Prosecutor) include all those which: (1) truly lie within its scope; (2) are essential to the accomplishment of the main purpose for which the office was created; and (3) are germane to and serve to promote the accomplishment of the principal purposes, although incidental and collateral.[127] This is the reason why even an irregularity in the appointment of a prosecutor does not necessarily invalidate his or her act of signing complaints, holding investigations, and conducting prosecutions if he or she may be considered a *de facto* officer.[128]

To constitute a *de facto* officer, the following requisites must be present, *viz.*: (1) there must be an office having a *de facto* existence or, at least, one recognized by law; (2) the claimant must be in actual possession of the office; and (3) the claimant must be acting under color of title or authority.[129] As to the third requisite, the word "color," as in "color of authority," "color of law," "color of office," "color of title," and "colorable," suggests a kind of **holding out** and means "appearance, semblance, or *simulacrum*," but not necessarily the reality.[130]

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[125] 484 Phil. 899 (2004).

[126] *SPO4 Soberano v. People*, 509 Phil. 118, 132-133 (2005).

[127] See *Lo Cham v. Ocampo*, 77 Phil. 635, 639 (1946).

[128] See *Galvez v. Court of Appeals*, 307 Phil. 708, 731 (1994).

[129] *Codilla v. Martinez*, 110 Phil. 24, 27 (1960), citations omitted.

[130] Partial Dissenting Opinion of Justice William O. Douglas in *Adickers v. S.H. Kress & Co.*, 398 U.S. 144 (1970).

Contrastingly, a mere usurper is one who takes possession of an office and undertakes to act officially without any color of right or authority, either actual or apparent, he or she is no officer at all.[131]

In the present case, the Court cogently acknowledges that the *de facto* doctrine has been formulated, not for the protection of the *de facto* officer principally, but rather for the protection of the public and individuals who get involved in the official acts of persons discharging the duties of an office without being lawful officers.[132] At the very least, an officer who **maliciously insists** on filing an Information without a prior written authority or approval from the provincial or city prosecutor may be held criminally or administratively liable for usurpation provided that all of its elements are present and are proven, especially the *mens rea* in criminal cases.[133] However, a handling prosecutor who files an Information despite lack of authority but without any *indicia* of bad faith or criminal intent will be considered as a mere *de facto* officer clothed with the **color of authority** and exercising **valid** official acts.[134] In other words, the lack of authority on the part of the handling prosecutor may either result in a valid filing of an Information if not objected to by the accused or subject the former to a possible criminal or administrative liability — but it **does not prevent the trial court from acquiring jurisdiction** over the **subject matter** or over the **person** of the accused.

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[131] *Re: Nomination of Atty. Chaguile, IBP Ifugao President, as Replacement for IBP Governor for Northern Luzon, Denis B. Habawel*, 723 Phil. 39, 60 (2013).

[132] *Monroy v. Court of Appeals*, 127 Phil. 1, 7 (1967).

[133] A person who, under pretense of official position, performs any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government or any agency thereof, **without being lawfully entitled to do so** may be held liable of usurpation under Article 177 of the Revised Penal Code (see *Gigantoni v. People*, 245 Phil. 133, 137 (1988)).

[134] See *Re: Nomination of Atty. Chaguile, IBP Ifugao President, as Replacement for IBP Governor for Northern Luzon, Denis B. Habawel*, *supra* note 131.

Besides, the OCP's September 21, 2010 Resolution reveals that the subject Information was presumably reviewed by City Prosecutor Aspi before it was filed by ACP Paggao. The contents of such resolution read:

> WHEREFORE, premises considered, Gina Villa Gomez y Anduyan @ Gina is recommended to be prosecuted for violation of THE REVISED PENAL CODE, [A]rt. 212 in rel. to [A]rt. 211-A. The **attached Information** is recommended **to be approved** for filing in court. No bail. (emphasis supplied)

As such, the Court can reasonably deduce the following facts, to wit:

(1) The accused **did not dispute** the fact that the subject Information was presumably **attached** to the September 21, 2010 Resolution, **as stated in the dispositive portion**, when it was forwarded to City Prosecutor Aspi for approval and Signature.[135]

(2) The OCP's September 21, 2010 Resolution, albeit indicating that that the attached Information was **"to be approved"** for filing, was **actually signed by City Prosecutor Aspi himself below the word "Approved."**

(3) The attached Information was signed only by Assistant City Prosecutor Paggao and did not contain City Prosecutor Aspi's signature.

(4) Assistant City Prosecutor Paggao merely certified in the subject Information that "is being filed with the prior authority of the City Prosecutor."

Proceeding from the aforementioned observations, the requirement of securing a prior written authority or approval of the provincial or city prosecutor or chief state prosecutor even becomes redundant and inapplicable. The reason being is that, when the draft September 21, 2010 Resolution was presented to City Prosecutor Aspi for review and approval, it came with the subject Information presumably attached to the same Resolution. This can be inferred in the second sentence of the

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[135] *Rollo*, p. 71.

dispositive portion of the OCP's September 21, 2010 Resolution which categorically states that "[t]he **attached Information** is recommended **to be approved** for filing in court."[136] It means that the Resolution recommending for the indictment of the accused is still subject for approval by the city prosecutor. The phrase "to be approved" would normally involve a situation where the approving officer has yet to give his or her *imprimatur* to a document and its contents before the same is made official either by entering it in the public records or filing it with an agency or tribunal. This presupposes that such approving officer has yet to examine the document's content before signifying his or her assent to the contents thereof.

Since a public official enjoys the presumption of regularity in the discharge of one's official duties and functions,[137] it also becomes reasonable for the Court to assume that the attached or accompanying Information was read and understood by City Prosecutor Aspi when he affixed his signature on the September 21, 2020 Resolution. The fact that City Prosecutor Aspi signed the Resolution himself constitutes a tacit approval to the contents of the attached Information as well as to such pleading/document's resultant filing. Clearly, his actions indicate that he had indeed authorized ACP Paggao to file the subject Information. Moreover, the requirement of first obtaining a prior written authority or approval before filing an Information is understood or rendered useless and inoperative when the same Information is **already attached** to the Resolution signed by the city prosecutor himself recommending for the indictment of the accused. There being no factual indication to the contrary, this presupposes that City Prosecutor Aspi had knowledge of the existence and the contents of the subject Information when he signed the OCP's September 21, 2010 Resolution. To require City Prosecutor Aspi's signature on the face of the subject Information under the circumstances would be to impose a redundant and pointless requirement on the Prosecution.

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[136] Id.

[137] *Yap v. Lagtapon*, 803 Phil. 652, 662 (2017).

Furthermore, this Court emphatically evinces its observation that what is **primarily** subjected to review by the provincial, city or chief state prosecutor in the context of R.A. No. 5180 is the very **Resolution** issued by an investigating prosecutor recommending either the indictment or the release of a respondent in a preliminary investigation from possible criminal charges. In comparison, the Information merely contains factual recitations which make out an offense; it does not provide for the underlying reasons for such proposed indictment. This means that, whatever authority that a handling prosecutor may have, as it pertains to the filing of an Information, proceeds from the review and subsequent approval by the provincial, city or chief state prosecutor of the underlying Resolution **itself**. Therefore, the authority of a handling prosecutor need not be shown in the face of the Information itself if it is duly established in the records that the provincial, city or chief state prosecutor approved the underlying Resolution recommending the indictment.

More importantly, the petitioner failed to show that ACP Paggao, the investigating and handling prosecutor, did not comply with Sec. 7 (a), Rule 112 of the Rules of Court which reads:

> **Section 7**. *Records*. — (a) *Records supporting the information or complaint*. — An information or complaint filed in court shall be supported by the affidavits and counter-affidavits of the parties and their witnesses, together with the other supporting evidence **and the resolution on the case**. x x x (emphasis supplied)

Under the aforecited provision, the handling prosecutor is required to furnish the trial court the **resolution** on the preliminary investigation along with the necessary documents in support of the Information or Complaint. Had the presiding judge been vigilant and circumspect in his duty to carefully scrutinize the records of the case, he would have noticed that the September 21, 2010 Resolution filed, together with the Information, bears City Prosecutor Aspi's signature. This shows that City Prosecutor Aspi not only had knowledge of the contents of the draft Information, **as attached** to the September 21, 2010 Resolution, but also gave his consent for ACP Paggao to file the same pleading with the trial court. The RTC's casual disregard of

and dismissive attitude towards the September 21, 2010 Resolution's vital contents make up for a clear case of grave abuse of discretion.

Additionally, the Court also observes that the petitioner-accused was arrested *in flagrante delicto* during an entrapment operation and underwent an inquest proceeding instead of the usual preliminary investigation. Accordingly, there is a need to refer to Sec. 6 of Rule 112 on warrantless arrests and inquests revealing an exception to the requirement of securing prior written authority or approval from the city or provincial prosecutor which reads:

> **Section 6.** *When accused lawfully arrested without warrant.* — When a person is **lawfully arrested without a warrant** involving an offense which requires a preliminary investigation, the complaint or **information may be filed by a prosecutor without need of such investigation provided an inquest has been conducted** in accordance with existing rules. In the **absence** or **unavailability** of an **inquest prosecutor, the complaint may be filed by the offended party or a peace officer directly with the proper court** on the basis of the affidavit of the offended party or arresting officer or person.
>
> Before the complaint or information is filed, the person arrested may ask for a preliminary investigation in accordance with this Rule, but he must sign a waiver of the provisions of Article 125 of the Revised Penal Code, as amended, in the presence of his counsel. Notwithstanding the waiver, he may apply for bail and the investigation must be terminated within fifteen (15) days from its inception.
>
> After the filing of the complaint or information in court without a preliminary investigation, the accused may, within five (5) days from the time he learns of its filing, ask for a preliminary investigation with the same right to adduce evidence in his defense as provided in this Rule. (emphasis supplied)

Inquest is defined as an informal and summary investigation conducted by a public prosecutor in criminal cases involving persons arrested and detained without the benefit of a warrant of arrest issued by the court for the purpose of determining whether said persons should remain under custody and

correspondingly be charged in court.[138] The accelerated process of inquest, owing to its summary nature and the attendant risk of running against Art. 125 of the RPC, ends with either the prompt filing of an Information in court or the immediate release of the arrested person.[139] This is because a person subject of a warrantless arrest must be delivered to the proper judicial authorities within the periods provided in Art. 125 of the RPC, otherwise, the public official or employee could be held liable for the failure to deliver except if grounded on reasonable and allowable delays.[140] Here, time is of the essence when the arrest is warrantless; especially when it is not planned, arranged or scheduled in advance.[141] And, since Sec. 5 of Rule 113 mandates that inquest proceedings be conducted pursuant to warrantless arrests,[142] inquest prosecutors have to take into account that they have to conduct such proceedings in an expeditious matter and in a way which is not violative of the suspect's constitutional rights; otherwise, they risk releasing such person arrested.

At this point, it bears emphasizing that it is a more prudent jurisprudential policy to allow a suspect arrested in *flagrante delicto* (or pursuant to other modes of warrantless arrest) to be lawfully restrained in the interest of public safety.[143] Moreover, the same rule uses the phrase "may be filed by **a prosecutor**" without specifying the rank of such officer. This implies that **any available prosecutor** conducting the inquest may file an Information with the trial court.

As a matter of procedure, Sec. 6 of Rule 112 even allows private offended parties or peace officers to file a Complaint

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[138] *Leviste v. Hon. Alameda*, 640 Phil. 620, 635 (2010).

[139] Id.

[140] *In the Matter of the Petition for Issuance of Writ of Habeas Corpus with Petition for Relief/Integrated Bar of the Philippines Pangasinan Chapter Legal Aid v. Department of Justice*, 814 Phil. 440, 455 (2017).

[141] *People v. Lim*, G.R. No. 231989, September 4, 2018.

[142] *Ladlad v. Senior State Prosecutor Velasco*, 551 Phil. 313 (2007).

[143] *Cf. Veridiano v. People*, 810 Phil. 642 (2017).

in lieu of an Information **directly** with the competent court in the absence or unavailability of an inquest prosecutor in instances involving warrantless arrests. Thus, it is with more reason that inquest prosecutors can directly file the Information with the proper court without waiting for the approval of the provincial, city or chief state prosecutor if the latter is unavailable due to the **exigent nature** of processing warrantless arrests.

This Court also points out that, under Rule 117 of the Rules of Court, both lack of jurisdiction over the offense charged under Sec. 3 (b) and lack of jurisdiction over the person of the accused under Sec. 3 (c) are listed as grounds for the quashal of an Information which are **separate and distinct** from, **not** as **subsets** of, the lack of an officer's authority to file such Information under Sec. 3 (d). This means that the various grounds enumerated in Sec. 3 of Rule 117 are separate and distinct from each other, some waivable while others are not.

In sum, a procedural infirmity regarding legal representation is **not** a **jurisdictional defect** or handicap which prevents courts from taking cognizance of a case, it is merely a defect which should not result to the quashal of an Information. As a result, objections or challenges pertaining to a handling prosecutor's lack of authority in the filing of an Information **may be waived** by the accused through silence, inaction or failure to register a timely objection. An Information filed by a handling prosecutor with no prior approval or authority from the provincial, city or chief state prosecutor will be rendered as merely **quashable, until waived by the accused**, and **binding** on the part of the State due to the presence of colorable authority.

F. Nature of the Requirement of Obtaining a Prior Written Authority or Approval from the Provincial, City or Chief State Prosecutor

To understand the nature of the requirement for a handling prosecutor to first secure a written authority or approval from the provincial, city or chief state prosecutor before filing an

Information, it is necessary to analyze such requisite in the context of the rights accorded by the Constitution to the accused.

At the outset, the Court deems it noteworthy to point out that some of the more serious grounds which tread on the fine line of constitutional infirmity may even be waived by the accused.

One such example, as mentioned earlier in the discussions pertaining to Sec. 3 (c) of Rule 117, is the right of an accused to question the legality of his or her arrest as being a violation of his or her constitutional right to due process. It is already established in jurisprudence that "[t]he right to question the validity of an arrest may be waived if the accused, assisted by counsel, fails to object to its validity before arraignment."[144]

Another example is the right of an accused to be informed of the nature and cause of accusation against him or her, a right which is given life during the arraignment of the accused.[145] The theory in law is that since the accused officially begins to prepare his defense against the accusation **on the basis of the recitals in the Information** read to him or her during arraignment, then the prosecution must establish its case on the basis of the same Information.[146] Accordingly, in instances pertaining to duplicity of offenses (where a single Complaint or Information charges more than one offense),[147] Sec. 3 (f) of Rule 117 makes it a ground for the quashal of a Complaint or Information. Even then, such ground may still be validly waived by the accused;[148] notwithstanding the serious constitutional ramification that charging two or more offenses in an Information might confuse the accused in his or her defense,[149] a situation

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[144] *Lapi v. People*, G.R. No. 210731, February 13, 2019.

[145] *People v. Sandiganbayan*, G.R. No. 240621, July 24, 2019.

[146] *Dr. Mendez v. People*, 736 Phil. 181, 192 (2014).

[147] *Loney v. People*, 517 Phil. 408, 420 (2006).

[148] *Atty. Dimayacyac v. Court of Appeals*, 474 Phil. 139 (2004); *Sy v. Court of Appeals*, 198 Phil. 713 (1982).

[149] See *People v. Court of Appeals*, *supra* note 53 at 116, citation omitted.

affecting a person's perception of the nature and cause of an accusation.

Relatedly, the constitutional requirements for the exercise of the right to be informed of the nature and cause of accusation are outlined in Sec. 6, Rule 110 of the Rules of Court as follows:

> **Section 6.** *Sufficiency of complaint or information*. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
>
> When an offense is committed by more than one person, all of them shall be included in the complaint or information.

In this regard, the Court points out that there is nothing in the aforementioned provision which requires a prior authority, approval or signature of the provincial, city or chief state prosecutor for an Information to be sufficient. Even assuming for the sake of argument that such prior authority, approval or signature is required, this Court in its recent *en banc* ruling in *People v. Solar*[150] where all prosecutors were "**instructed to state with sufficient particularity** not just the acts complained of or the acts constituting the offense, but also **the aggravating circumstances, whether qualifying or generic, as well as any other attendant circumstances, that would impact the penalty to be imposed on the accused should a verdict of conviction be reached**," held that failure of the accused to question the **insufficiency of an Information** as to the averment of aggravating circumstances with specificity **constitutes a waivable defect**. Logically, if the constitutional right to be informed of the nature and cause of the accusation may be waived by the accused, then it is with more reason that the absence of the requirement pertaining to a handling prosecutor's duty to secure a prior written authority or approval from the provincial, city or chief state prosecutor in the filing of an Information may also be waived.

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[150] G.R. No. 225595, August 6, 2019.

Consistent with the foregoing observations, if some grounds for the quashal of an Information with serious constitutional implications may be waived, it is with more reason that the ground on securing a prior written approval or authority from the provincial, city or chief state prosecutor, which has nothing to do with the Bill of Rights or with a trial court's jurisdiction to take cognizance of a case, can also be waived by the accused.

At this critical juncture, the Court highlights that the **right** of the accused to a **preliminary investigation** is **merely statutory** as it is not a right guaranteed by the Constitution.[151] Furthermore, such right is personal and may even be waived by the accused.[152] On this score, it is also noteworthy to point out that the requirement of first securing a prior written approval or authority from the provincial, city or chief state prosecutor before filing an Information is **merely contained** in R.A. No. 5180, the substantive law which first recognized the right of an accused to a preliminary investigation. Significantly, even such law **makes no specific mention** of the **effect** on the **validity** of an Information filed without first securing a prior written approval or authority from the provincial, city or chief state prosecutor. Consequently, such statutory requirement of securing a prior written authority or approval cannot be expanded to also touch on the validity of an Information. Moreover, the same law also cannot be interpreted as a condition on the power and authority of trial courts to hear and decide certain criminal cases. *Expressium facit cessare tacitum* — where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to other matters.[153] And since procedural rules should yield to substantive laws,[154] it should be understood that this Court cannot promulgate a rule of procedure which would defeat the trial courts' power to acquire jurisdiction in criminal cases as conferred and outlined

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[151] *Sec. De Lima v. Reyes*, supra note 111.

[152] See *United States v. Escalante*, 36 Phil. 743, 746 (1917).

[153] *Malinias v. COMELEC*, 439 Phil. 319, 335 (2002).

[154] *Fernandez v. Fulgueras*, 636 Phil. 178, 182 (2010).

by *Batas Pambansa Bilang 129*[155] (The Judiciary Reorganization Act of 1980).

Aside from this observation on the nature of the right of the accused to a preliminary investigation, the Court also reiterates the rudimentary rule that **absence** of a **preliminary investigation** is **not** a **ground** to **quash** a Complaint or Information under Sec. 3, Rule 117 of the Rules of Court.[156] A preliminary investigation may be done away with entirely without infringing the constitutional right of an accused under the due process clause to a fair trial.[157] The reason being is that such proceeding is merely preparatory to trial, not a trial on the merits.[158] An adverse recommendation by the investigating prosecutor in a concluded preliminary investigation does not result in the deprivation of liberty of the accused as contemplated in the Constitution.[159] Relatedly, although the restrictive effect on liberty of those arrested *in flagrante delicto* is more apparent during the initial stages of prosecution (inquest proceedings),[160]

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[155] An Act Reorganizing the Judiciary, Appropriating Funds Therefor, and for Other Purposes (August 14, 1981), as amended.

[156] *Pilapil v. Sandiganbayan*, 293 Phil. 368 (1993).

[157] *Sen. Estrada v. Office of the Ombudsman*, 751 Phil. 821, 870 (2015).

[158] *Maza v. Judge Turla*, 805 Phil. 736, 759 (2017), citation omitted.

[159] In *Cariño v. Commission on Human Rights*, 281 Phil. 547, 561 (1991), the Court essentially explained that an "investigation" does not adjudicate or settle the rights and obligations of contending parties as its purpose is to "to discover, to find out, to learn, obtain information." This implies that, in preliminary investigations, the requirements of due process only become relevant as it pertains to remedies guaranteed by the statute; see *Uy v. Office of the Ombudsman*, 578 Phil. 635, 655 (2008) timely invoked by the accused. The reason being is that "the Due Process Clause is set in motion only when there is actual or a risk of an impending *deprivation* of life, liberty or property." (*National Telecommunications Commission v. Brancomm Cable and Television Network Co.*, G.R. No. 204487, December 5, 2019)

[160] A nuisance *per se* affects the **immediate safety** of **persons** and property, which may be summarily abated under the undefined law of necessity (*Cruz v. Pandacan Hiker's Club, Inc.*, 776 Phil. 336, 346 [2016] citations omitted) — a valid exception to the constitutional guarantee of due process. The instances which are included in this permissible summary abatement are *in*

it is merely indirect since the pronouncement on according provisional liberty or imposing preventive imprisonment ultimately depends on the trial court's action after giving all parties the opportunity to be heard in a bail proceeding.

Moreover, Sec. 8,[161] Rule 112 of the Rules of Court even enumerates instances where a preliminary investigation is not

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flagrante delicto arrests (see *Legaspi v. City of Cebu*, 723 Phil. 90, 111 [2013], citations omitted). Since *in flagrante delicto* arrests are obviously warrantless, they are subject to inquest proceedings which normally pertain only to a **preliminary determination** of the alleged crime's existence and nature for the purpose of indictment — ***not*** an **adjudication** or **final pronouncement** as to the matter of continuing with the preventive imprisonment. The reason being is that warrantless arrests which happened prior to their corresponding inquest proceedings are not due to the instance of inquest prosecutors but of law enforcers (RULES OF COURT, Rule 113, Sec. 8) or private persons (RULES OF COURT, Rule 113, Sec. 9).

[161] Section 8. *Cases not requiring a preliminary investigation nor covered by the Rule on Summary Procedure*. —

(a) *If filed with the prosecutor*. — If the complaint is filed directly with the prosecutor involving an offense punishable by imprisonment of less than four (4) years, two (2) months and one (1) day, the procedure outlined in Section 3 (a) of this Rule shall be observed. The prosecutor shall act on the complaint based on the affidavits and other supporting documents submitted by the complainant within ten (10) days from its filing.

(b) *If filed with the Municipal Trial Court*. — If the complaint or information is filed directly with the Municipal Trial Court or Municipal Circuit Trial Court for an offense covered by this section, the procedure in section 3 (a) of this Rule shall be observed. If within ten (10) days after the filing of the complaint or information, the judge finds no probable cause after personally evaluating the evidence, or after personally examining in writing and under oath the complainant and his witnesses in the form of searching question and answers, he shall dismiss the same. He may, however, require the submission of additional evidence, within ten (10) days from notice, to determine further the existence of probable cause. If the judge still finds no probable cause despite the additional evidence, he shall, within ten (10) days from its submission or expiration of said period, dismiss the case. When he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused had already been arrested, and hold him for trial. However, if the judge is satisfied that there is no necessity for placing the accused under custody, he may issue summons instead of a warrant of arrest.

required; allowing the complainant (public or private)[162] or handling prosecutor to directly file the Complaint or Information with the trial court. Significantly, even jurisprudence is settled that the absence of a preliminary investigation neither affects the court's jurisdiction over the case nor impairs the validity of the Information or otherwise renders it defective.[163] Hence, if the lack of a preliminary investigation is not even a ground to quash an Information, what more so the lack of prior written authority or approval on the part of the handling prosecutor which is merely a **formal** requirement and part of the preliminary investigation itself? It can only mean that such requirement of prior written authority or approval is **not jurisdictional** and **may be waived** by the accused expressly or impliedly.

In a nutshell, the Court reiterates that even some constitutionally guaranteed rights may be expressly or impliedly waived by the accused. The perceived right of the accused to question a handling prosecutor's authority in the filing of an Information does not even have any constitutional or statutory bearing. At best, it is only recognized by this Court, pursuant to its rule-making power, as a procedural device available for the accused to invoke in aid of the orderly administration of justice. Accordingly, such requirement to obtain a prior written authority or approval from the provincial, city or chief state prosecutor is considered merely a **formal**, and **not** a **jurisdictional**, requisite which **may be waived** by the accused.

G. Relationship Between Jurisdiction and Authority to Appear

Jurisdiction is a matter of substantive law[164] — it establishes a relation between the court and the subject matter.[165] This is because Congress has the power to define, prescribe and apportion the jurisdiction of the various courts; although it may not deprive

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[162] *See* RULES OF COURT, Rule 112, Sec. 6.

[163] *Sanciangco, Jr. v. People*, 233 Phil. 1, 4 (1987).

[164] *Radiowealth Finance Company, Inc. v. Pineda, Jr.*, G.R. No. 227147, July 30, 2018.

[165] See *Nocum v. Tan*, 507 Phil. 620, 626 (2005).

this Court of its jurisdiction over cases enumerated in Sec. 5, Art. VIII of the Constitution.[166] More importantly, the authority of the courts to try a case is not embraced by the rule-making power of the Supreme Court to promulgate rules of "pleading, practice and procedure in all courts."[167] In other words, only a constitutional or statutory provision can create and/or vest a tribunal with jurisdiction.

Incidentally, the power to define, prescribe and apportion jurisdiction **necessarily includes** the power to expand or diminish the scope of a court's authority to take cognizance of a case, to impose additional conditions or to reduce established requirements with respect to an adjudicative body's acquisition of jurisdiction. This is because every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms.[168] In effect, only a law (or constitutional provision in the case of this Court) may add or take away any requirement affecting jurisdiction. Not even a rule of procedure or judicial decision can legally accomplish such act as both are not "laws" as used in the context of the Constitution.[169] The purpose of procedural rules or "adjective law" is to ensure the effective enforcement of substantive rights

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[166] The 1987 CONSTITUTION, Art. VIII, Sec. 2.

[167] See *Valera v. Tuason, Jr.*, 80 Phil. 823, 828-829 (1948); see also *Republic v. Court of Appeals*, 331 Phil. 1070 (1996).

[168] *Chua v. Civil Service Commission*, 282 Phil. 970, 986-987 (1992).

[169] Rules of procedure should be distinguished from substantive law — a substantive law creates, defines or regulates rights concerning life, liberty or property, or the powers of agencies or instrumentalities for the administration of public affairs, whereas rules of procedure are provisions prescribing the method by which substantive rights may be enforced in courts of justice (*Primicias v. Ocampo*, 93 Phil. 446, 451-452 (1953), citation omitted). Jurisprudence, in our system of government, cannot be considered as an independent source of law; it cannot create law (*Philippine International Trading Corporation v. Commission on Audit*, 821 Phil. 144, 155 (2017), citing *Columbia Pictures, Inc. v. Court of Appeals*, 329 Phil. 875, 906 (1996)).

through the orderly and speedy administration of justice;[170] while judicial decisions which apply or interpret the Constitution or the laws cannot be considered as an independent source of law and cannot create law.[171] As such, while the Rules of Court (specifically the Revised Rules of Criminal Procedure) may impose conditions as to the proper conduct of litigation such as legal standing, it cannot **by itself** (and without any constitutional or statutory basis) impose additional conditions or remove existing requirements pertaining to a tribunal's assumption or acquisition of jurisdiction.

Presently, there is no penal law which prescribes or requires that an Information filed must be personally signed by the provincial, city or chief state prosecutor (or a delegated deputy) in order for trial courts to acquire jurisdiction over a criminal case. Clearly, the pronouncement in *Villa* is not sanctioned by any constitutional or statutory provision. Absence such constitutional or statutory fiat, such pronouncement or ruling cannot operate to create another jurisdictional requirement before a court can acquire jurisdiction over a criminal case without treading on the confines of judicial legislation. In effect, *Villa* is rendered unconstitutional for violating the basic principle of separation of powers.[172] Hence, it now stands to reason that a handling prosecutor's lack of prior written authority or approval from the provincial, city or chief state prosecutor in the filing of an Information **does not affect a trial court's acquisition of jurisdiction over the subject matter or the person** of the accused.

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[170] See *Dr. Malixi v. Dr. Baltazar*, supra note 115.

[171] See *Philippine International Trading Corporation v. Commission on Audit*, supra note 169.

[172] In the cases of *Lu v. Ym, Sr.*, 658 Phil. 156 (2011) and *In Re: Petition Seeking for Clarification as to Validity and Forceful Effect of Two (2) Final and Executory But Conflicting Decisions of the Honorable Supreme Court* (G.R. No. 123780, September 24, 2002), the Court *en banc* declared decisions promulgated by one of its Divisions as void, invalid and **unconstitutional** for violating Sec. 4 (3), Article VIII of the Constitution which provides that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*."

In this regard, the Court reminds the Bench and the Bar that "substantive law" is that part of the law which creates, defines and regulates rights, or which regulates the rights and duties which give rise to a cause of action.[173] Comparatively, "procedural law" refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice.[174] It ensures the effective enforcement of substantive rights by providing for a system that obviates arbitrariness, caprice, despotism, or whimsicality in the settlement of disputes.[175] And since jurisdiction is conferred upon courts by substantive law,[176] it cannot be accorded to or taken away from an otherwise competent court for purely procedural reasons. As alluded to earlier, a **court's jurisdiction** is different from a **government officer's authority to sue** as the former fixes the rights and obligations of the parties after undergoing due process while the latter pertains to internal matters concerning the giving of consent by the State in its own affairs. All told, the Court is convinced that the CA did not commit any reversible error in not applying *Villa*, along with its derivative rulings, and in granting the Prosecution's petition for *certiorari*.

III. *The State's Right to Due Process in Criminal Cases*

It is settled that both the accused and the State are entitled to due process.[177] For the former, such right includes the right to present evidence for his or her defense;[178] for the latter, such right pertains to a fair opportunity to prosecute and convict.[179] Accordingly, in such context, it becomes reasonable to assume

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[173] See *Bernabe v. Alejo*, 424 Phil. 933, 941 (2002).

[174] See *Sumiran v. Spouses Damaso*, 613 Phil. 72, 78 (2009).

[175] See *Asia United Bank v. Goodland Company, Inc.*, 650 Phil. 175, 184 (2010), citations omitted.

[176] See *Savage v. Judge Taypin*, 387 Phil. 718, 725 (2000).

[177] *People v. Tampal*, 314 Phil. 35, 41 (1995).

[178] See *People v. Yambot*, 397 Phil. 23, 46 (2000).

[179] See *Valencia v. Sandiganbayan*, 510 Phil. 70, 84 (2005).

that the Constitution affords not only the accused but also the State with the complete guarantee of procedural due process, especially the opportunity to be heard.

Accordingly, in cases involving the quashal of an Information, Sec. 1, Rule 117 of the Rules of Court provides:

> **Section 1.** *Time to move to quash*. — At any time before entering his plea, the accused may move to quash the complaint or information.

The application of such provision as to who may initiate the quashal was clarified by the Court in *People v. Hon. Nitafan*[180] *(Nitafan)* as follows:

> It is also clear from Section 1 that **the right to file a motion to quash belongs only to the accused. There is nothing in the rules which authorizes the court or judge to *motu proprio* initiate a motion to quash if no such motion was filed by the accused**. A motion contemplates an initial action originating from the accused. It is the latter who is in the best position to know on what ground/s he will base his objection to the information. Otherwise, if the judge initiates the motion to quash, then he is not only pre-judging the case of the prosecution but also takes side with the accused. This would violate the right to a hearing before an independent and impartial tribunal. Such independence and impartiality cannot be expected from a magistrate, such as herein respondent judge, who in his show cause orders, orders dismissing the charges and order denying the motions for reconsideration stated and even expounded in a lengthy disquisition with citation of authorities, the grounds and justifications to support his action. Certainly, in compliance with the orders, the prosecution has no choice but to present arguments contradicting that of respondent judge. Obviously, however, it cannot be expected from respondent judge to overturn the reasons he relied upon in his different orders without contradicting himself. To allow a judge to initiate such motion even under the guise of a show cause order would result in a situation where a magistrate who is supposed to be neutral, in effect, acts as counsel for the accused and judge as well. **A combination of these two personalities in one person is violative of due process which is a fundamental right not only of the accused but also of the prosecution**. (emphases supplied)

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[180] 362 Phil. 58, 70-71 (1999).

The rule is clear that only an accused may move to quash a Complaint or Information. However, for the guidance of the Bench and the Bar, the Court deems it imperative to clarify that *Nitafan* does not apply to paragraphs (a), (b), (g) and (i), Sec. 3 of Rule 117. It is obvious that proceeding to trial after arraignment would be utterly pointless if: (1) the Information alleges facts that do not constitute an offense; (2) the trial court has no power and authority to take cognizance of the offense being charged against the accused; (3) the accused cannot anymore be made to stand charges because the criminal action or liability had been extinguished under Art. 89 of the RPC or some other special law; or (4) the accused would be placed in double jeopardy. In these instances, the trial court is allowed to act *sua sponte* provided that it shall first conduct a **preliminary hearing** to verify the existence of facts supporting any of such grounds. Should the trial court find these facts to be adequately supported by evidence, the case shall be dismissed without proceeding to trial. Doing so would unburden both the parties and the courts from having to undergo the rigmarole of participating in a void proceeding.

In the instant case, the RTC, in ordering the dismissal of the case, resultantly quashed the subject Information in a *motu proprio* and summary manner despite the fact that: (1) both the accused and the prosecution had already adduced all of their evidence and both have rested their respective cases; and (2) the same case was already submitted for decision. In doing so, it failed to notify the Prosecution and give the latter an opportunity to be heard on the matter. Since, as comprehensively explained in the previous discussions, lack of authority of the handling prosecutor to file an Information does not affect the trial court's jurisdiction or authority to take cognizance of a criminal case, it is not among the exceptions of *Nitafan* where the RTC may *sua sponte* quash the Information and dismiss the case.

Besides, assuming *arguendo* that a non-waivable ground to quash the subject Information existed in this case, what the RTC should have done was to conduct a preliminary hearing to give the parties, especially the Prosecution, a right to be

heard. In doing so, the RTC may be able to identify (based on evidentiary facts) which grounds are waivable and which are not so that it may properly proceed or dispose of the case, thereby facilitating an expeditious resolution of the criminal case. Verily, the summary act of quashing the subject Information and perfunctorily dismissing the corresponding criminal case is an overt violation of Sec. 1, Rule 117.

As pointed out in *Nitafan*, a *motu proprio* and summary quashal of an Information also violates the State's (and the Prosecution's) fundamental right to due process as the presiding judge who initiates such quashal would now be tainted with bias in favor of the accused. In addition, such perfunctory court action also deprives the Prosecution of its right to be notified and to be accorded the opportunity to be heard regarding such quashal of the Information and eventual dismissal of the criminal case. Such violation of the State's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will for it has the effect of ousting a court of its jurisdiction.[181]

Finally, a judgment is void when it violates the basic tenets of due process.[182] Since a void judgment creates no rights and imposes no duties,[183] no jeopardy attaches to a judgment of acquittal or order of dismissal where the prosecution, which represents the Sovereign People in criminal cases, is denied due process.[184] In this regard, the CA correctly found the RTC's February 13, 2013 Order to be tainted with grave abuse of discretion necessitating the latter's annulment for exceeding jurisdictional bounds.

Conclusion

All told, the handling prosecutor's authority, particularly as it does not appear on the face of the Information, has no

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[181] See *People v. Judge Bocar*, 222 Phil. 468 (1985).

[182] See *Frias v. Alcayde*, G.R. No. 194262, February 28, 2018.

[183] *Imperial v. Judge Armes*, supra note 87 at 474.

[184] *People v. Hon. Velasco*, 394 Phil. 517, 554-555 (2000), citations omitted.

connection to the trial court's power to hear and decide a case. Hence, Sec. 3 (d), Rule 117, requiring a handling prosecutor to secure a prior written authority or approval from the provincial, city or chief state prosecutor before filing an Information with the courts, may be waived by the accused through silence, acquiescence, or failure to raise such ground during arraignment or before entering a plea. If, at all, such deficiency is merely formal and can be cured at any stage of the proceedings in a criminal case.

Moreover, both the State and the accused are entitled to the constitutional guarantee of due process — especially when the most contentious of issues involve jurisdictional matters. A denial of such guarantee against any of the parties of the case amounts to grave abuse of discretion. Consequently, a judgment of acquittal or order of dismissal amounting to an acquittal which is tainted with grave abuse of discretion becomes void and cannot amount to a first jeopardy.

Henceforth, all previous doctrines laid down by this Court, holding that the lack of signature and approval of the provincial, city or chief state prosecutor on the face of the Information shall divest the court of jurisdiction over the person of the accused and the subject matter in a criminal action, are hereby abandoned. It is sufficient for the validity of the Information or Complaint, as the case may be, that the Resolution of the investigating prosecutor recommending for the filing of the same in court bears the *imprimatur* of the provincial, city or chief state prosecutor whose approval is required by Sec. 1 of R.A. No. 5180[185] and is adopted under Sec. 4, Rule 112 of the Rules of Court.

WHEREFORE, in view of the foregoing premises, the Court **DENIES** the Petition for Review on *Certiorari* filed by Gina A. Villa Gomez and **AFFIRMS** the October 9, 2014 Decision of the Court of Appeals, Seventh Division in CA-G.R. SP No. 130290 for absence of any reversible error. Moreover, the Regional Trial Court of Makati City, Branch 57 is hereby

[185] Supra note 112.

ORDERED to **RESUME** its proceedings in Criminal Case No. 10-1829 with utmost dispatch.

Let copies of this Decision be furnished to the Department of Justice, National Prosecution Service, Public Attorney's Office and Integrated Bar of the Philippines for their information and guidance.

No pronouncement as to costs.

SO ORDERED.

Peralta, C.J., Leonen, Caguioa, Hernando, Carandang, Gaerlan, and *Rosario, JJ.*, concur.

Perlas-Bernabe and *Delos Santos, JJ.*, see concurring opinions.

Lazaro-Javier and *Zalameda, JJ.*, on official leave.

Inting[*] and *Lopez,*[**] *JJ.*, no part.

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I join the *ponencia* in abandoning previous jurisprudence on the subject,[1] which holds that an Information filed by an investigating prosecutor, without prior written authority or approval of the provincial, city or chief state prosecutor (or the Ombudsman or his deputy), constitutes a jurisdictional defect which cannot be cured and waived by the accused. Indeed, the trial court does not lose jurisdiction over the subject matter or the person of the accused if the Information does not bear, on its face, the stamp of approval of the provincial, city or chief state prosecutor, provided, however, that the prosecutor who filed the Information had, at least, colorable title to make such

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[*] Inhibit, his sister, Associate Justice Socorro B. Inting penned the CA Decision.

[**] No part. Took part in the CA Decision.

[1] See *Villa v. Ibañez* (88 Phil. 402 [1951]) and similar cases discussed in the *ponencia*.

filing.[2] Section 3 (d), Rule 117[3] of the Rules of Criminal Procedure, which pertains to the prosecuting officer's lack of authority to file the Information in court, must be raised by the accused prior to his arraignment; otherwise, pursuant to the clear language of Section 9, Rule 117, the ground is deemed waived:

> Section 9. *Failure to move to quash or to allege any ground therefor*. — The failure of the accused to assert any ground of a motion to quash **before he pleads to the complaint or information**, either because he did not file a motion to quash or failed to allege the same in said motion, **shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule**. (Emphases supplied)

As the *ponencia* extensively explains, the ground to quash under Section 3 (d), Rule 117 is not jurisdictional in nature since it does not relate to the trial court's power to hear, try, and decide a case,[4] nor the apprehension or the submission of the accused to the court's authority.[5] Thus, the "[l]ack of prior written authority or approval on the part of the officer filing an Information has nothing to do with a trial court's assumption of jurisdiction."[6]

As stated in Section 9, Rule 117, only the grounds to quash under Section 3 (a), (b), (g) and (i) are not waivable. These grounds are: that the facts charged do not constitute an offense (Section 3 [a]); that the court trying the case has no jurisdiction

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[2] See discussion of *ponencia* on *de facto* officers, pp. 24-27.

[3] Section 3 (d), Rule 117 of the Revised Rules of Court reads:

> Section 3. *Grounds*. — The accused may move to quash the complaint or information on any of the following grounds:
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> x x x x
>
> **(d) That the officer who filed the information had no authority to do so**[.] (Emphasis and underscoring supplied)

[4] *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, 760 Phil. 954, 960 (2015), citing *Spouses Genato v. Viola*, 625 Phil. 514, 527 (2010).

[5] See *Inocentes v. People*, 789 Phil. 318, 332 (2016).

[6] *Ponencia*, p. 14.

over the offense charged (Section 3 [b]); that the criminal action or liability has been extinguished (Section 3 [g]); and that the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent (Section 3 [i]).

Section 3 (b), Rule 117 is self-explanatory: the trial court's lack of jurisdiction over the offense charged negates any authority to proceed with the case; hence, it may be raised by the accused as a ground for dismissal at any stage of the proceedings.

The same goes for Section 3 (a), Rule 117 since when the Information does not charge an offense at all, there is no criminal case to speak of as the offense is one that does not legally exist.[7] Jurisdiction over the subject matter or nature of the offense is conferred by law,[8] and determined by the allegations in the Complaint or Information. Hence, where an Information does not really charge an offense, the case against the accused must be dropped immediately instead of subjecting the accused to the anxiety and inconvenience of a useless trial.[9]

Section 3 (g) is also clear: if the criminal action or liability is found to have already been extinguished, there is no more reason to proceed with the case.

And finally, pursuant to Section 21, Article III of the 1987 Constitution, which states that "[n]o person shall be twice put in jeopardy of punishment for the same offense," Section 3 (i) is a ground to quash the Information or dismiss the criminal case, which ground may be invoked at any stage of the proceedings.

These non-waivable grounds are simply not on the same plane as Section 3 (d), Rule 117. To my mind, the investigating prosecutor's lack of authority only pertains to the accused's opportunity to question, prior to his arraignment, the State's

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[7] See *De Lima v. Reyes*, 776 Phil. 623, 638-639 (2016).

[8] See *Padlan v. Dinglasan*, 707 Phil. 83, 91 (2013).

[9] *Cruz v. Court of Appeals*, 271 Phil. 968, 976 (1991).

certainty in determining probable cause against him. Within the organizational workings of the State's prosecutorial machinery, it is recognized that the provincial, city or chief state prosecutor must officially approve the filing of the Information in court.[10] Hearkening back to the core considerations underlying preliminary investigations, the lack of official approval coming from these high-ranking officers — in my opinion — **puts into doubt whether or not probable cause was correctly determined by the investigating prosecutor as the former's subordinate**. Hence, the accused may preliminarily raise this ground so as to prevent "an open and public accusation of [a] crime"[11] from even commencing. Further, the State need not anymore expend its resources by proceeding to a criminal trial where it will be called to prove, beyond reasonable doubt, the accused's guilt.

However, these apparent concerns should already be addressed when the Information is already filed in court and the accused is already arraigned. The arraignment of the accused signifies that he has understood the nature and cause of the accusation against him and thereby enters a plea of guilt or non-guilt. By this time, issues pertaining to the prosecutor's probable cause finding should have already been resolved and determined. On this score, it is relevant to note that upon the filing of an information, the trial court judge is tasked, first and foremost, to determine the existence or non-existence of probable cause for the arrest of the accused,[12] based on his/her personal evaluation of the prosecutor's resolution and supporting evidence.[13] In making such independent and purely judicial

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[10] See Section 1, Republic Act No. 5180, entitled "AN ACT PRESCRIBING A UNIFORM SYSTEM OF PRELIMINARY INVESTIGATION BY PROVINCIAL AND CITY FISCALS AND THEIR ASSISTANTS, AND BY STATE ATTORNEYS OR THEIR ASSISTANTS," approved on September 8, 1967.

[11] See *Callo-Claridad v. Esteban*, 707 Phil. 172, 184 (2013).

[12] *Maza v. Turla*, 805 Phil. 736, 757-758 (2017), citing *Leviste v. Hon. Alameda*, 640 Phil. 620, 649 (2009).

[13] Id.

determination,[14] the trial judge can: *(a)* dismiss the criminal case outright if the evidence on record clearly fails to establish probable cause; *(b)* issue a warrant of arrest or a commitment order if findings show probable cause; or *(c)* order the prosecutor to present additional evidence if there is doubt on the existence of probable cause.[15] Therefore, when a warrant of arrest or a commitment order is issued by the trial judge, the existence of probable cause is already judicially determined which, hence, permits the case to proceed.

Further, during arraignment, it is well to note that the prosecution is duly represented.[16] Should it deem that the investigating prosecutor erroneously filed the Information contrary to the prerogative of the provincial, city or chief state prosecutor, then it may well move to withdraw[17] the case. There is, in fact, no prohibition against the prosecution from filing a motion to withdraw even after trial has already commenced. Indeed, the prosecutor has full control of the prosecution of criminal actions.[18] In case of any uncertainty in proceeding with the prosecution of a criminal case, the prosecutor may always move to withdraw or dismiss the Information, subject to the permission of the trial court.[19] Thus, by proceeding to trial, the prosecution effectively ratifies any previous defects in its own officer's filing, and resultantly, demonstrates its interest in continuing with the prosecution of the criminal case.

In fine, I reiterate my concurrence with the *ponencia*'s well-reasoned proposal to abandon previous jurisprudence. Section 3 (d), Rule 117, *i.e.*, "[t]hat the officer who filed the information

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[14] Id., citing *Napoles v. De Lima*, 790 Phil. 161, 175-176 (2016).

[15] Id., citing *Ong v. Genio*, 623 Phil. 835, 843 (2009).

[16] See Section 7.2, Chapter VII of the 2017 Revised Manual for Prosecutors.

[17] See Section 10.4.1, Chapter X of the 2017 Revised Manual for Prosecutors.

[18] *Estipona, Jr. v. Lobrigo*, 816 Phil. 789, 814-815 (2017), citing *People v. Villarama, Jr.*, 285 Phil. 723, 732 (1992).

[19] See *De Lima v. Reyes*, supra note 7, at 649-650.

had no authority to do so," as a ground to quash the Information, must be raised prior to arraignment; otherwise, it is deemed waived. It is not a jurisdictional or fatal defect, unlike the non-waivable grounds provided under Section 3 (a), (b), (g), and (i) of Rule 117. Accordingly, the instant petition claiming the contrary must be denied and the Court of Appeals' Decision reinstating Criminal Case No. 10-1829 affirmed.

CONCURRING OPINION

DELOS SANTOS, *J.*:

The *ponencia* **DENIED** the instant petition after revisiting the case of *Villa v. Ibañez*[1] *(Villa)*, which is the basis of the prevailing rule that makes paragraph (d) of Section 3,[2] Rule 117 of the Rules of Court a jurisdictional defect like those in paragraphs (a), (b), (g), and (i) under Section 9[3] of the same Rule.

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[1] 88 Phil. 402 (1951).

[2] Section 3. *Grounds*. — The accused may move to quash the complaint or information on any of the following grounds:

(a) That the facts charged do not constitute an offense;
(b) That the court trying the case has no jurisdiction over the offense charged;
(c) That the court trying the case has no jurisdiction over the person of the accused;
(d) That the officer who filed the information had no authority to do so;
(e) That it does not conform substantially to the prescribed form;
(f) That more than one offense is charged except when a single punishment for various offenses is prescribed by law;
(g) That the criminal action or liability has been extinguished;
(h) That it contains averments which, if true, would constitute a legal excuse or justification; and
(i) That the accused has been previously convicted or acquitted of the offense charged, or the case against him was dismissed or otherwise terminated without his express consent. (Emphasis supplied)

[3] Section 9. *Failure to move to quash or to allege any ground therefor*. — The failure of the accused to assert any ground of a motion to quash

Notably, the *ponencia* further declared that the pronouncement in *Villa* was clearly not sanctioned by any constitutional or statutory provision. Hence, *Villa* is rendered unconstitutional for violating the basic principles of separation of powers.

I concur.

The *ponencia*'s analysis of *Villa* presents a breakthrough illumination in criminal proceedings that lack of prior written authority or approval on the face of the Information by the prosecuting officers authorized to approve and sign the same has nothing to do with the trial court's acquisition of jurisdiction in a criminal case.[4]

In this regard, I deem it proper to underscore *ponencia*'s re-examination of the legal and factual antecedents of *Villa*, to wit:

(1) The prevailing adjective law at the time was the 1940 Rules of Court.[5]

(2) There was nothing in the 1940 Rules of Court which requires the handling prosecutor to first secure either a prior written authority or approval or a signature from the provincial, city or chief state prosecutor before an Information may be filed with the trial court.[6]

(3) The Court merely clarified that to be eligible as special counsel to aid a fiscal, the appointee must either be an employee or officer of the Department of Justice (DOJ).[7]

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before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections based on the grounds provided for in paragraphs (a), (b), (g), and (i) of section 3 of this Rule.

[4] Discussion of *ponencia* on Grounds for Quashing an Information and Prevailing Jurisprudence, p. 14.

[5] Id.

[6] Id. at 16.

[7] Id.

(4) It was not explained why the handling prosecutor's lack of authority was intertwined with Section 2 (b) of Rule 113 — so as to deprive the trial court of its jurisdiction over the offense charged or the person of the accused.[8]

(5) The information was rendered invalid because the handling prosecutor who signed and filed the initiatory pleading was not even an officer of the DOJ qualified to assist a fiscal or prosecuting attorney in the discharge of his or her duties under the Administrative Code during that time.[9]

In view of the foregoing elucidation, it is clear at the onset that *Villa* is not applicable to the instant case. Drastically, this also shows how the subsequent cases overlooked to review the background of *Villa* and misguidedly applied its ruling.

Significantly, in denying the instant petition, the *ponencia* holds:

(1) The issue on whether or not the handling prosecutor secured the necessary authority from his or her superior before filing the Information has nothing to do with jurisdiction over the subject matter and jurisdiction over the person of the accused;[10]

(2) The lack of prior authority or approval from the provincial, city or chief state prosecutor in the filing of the Information may be waived by the accused if not raised as a ground in a motion to quash before entering a plea;[11] and

(3) Non-compliance on the duty of the handling prosecutor to secure prior written authority or approval from the provincial, city or chief state prosecutor merely affects

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[8] Id.

[9] Id.

[10] Discussion of *ponencia* on *Jurisdiction*, pp. 17-20.

[11] Id.

> the "standing" of such officer to appear for the Government of the Philippines, which is not a jurisdictional defect or handicap that prevents the courts from taking cognizance of the case.[12]

In sum, it was held that an information filed by a handling prosecutor with no prior approval or authority from the provincial, city or chief state prosecutor will be rendered as merely quashable, until waived by the accused, and binding on the part of the State due to the presence of colorable authority.[13]

I write this Concurring Opinion to likewise emphasize my view that the trial court committed a grave abuse of discretion since it has no power to *motu proprio* dismiss the instant case on the ground of absence of authority of the handling prosecutor to file the Information.

Brief restatement of antecedents.

The petitioner was charged with corruption of public officials under Article 212 of the Revised Penal Code in relation to Article 211-A of the same Code. Trial on the merits ensued. After the case was submitted for decision, the trial court *motu proprio* dismissed the case for lack of jurisdiction after finding that the Information was filed without written authority of the City Prosecutor. Citing the cases of *Villa* and *Turingan v. Garfin*[14] *(Turingan)*, the trial court ruled that the foregoing infirmity in the Information constituted a jurisdictional defect and cannot be cured.[15] Respondent filed a motion for reconsideration, which however, was denied by the trial court.[16] At that time, the trial court acknowledged that the Resolution[17] dated September 21, 2010 recommending the approval of the attached Information

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[12] Discussion of *ponencia* on *Authority to Appear*, pp. 20-32.

[13] Id.

[14] 549 Phil. 903 (2007).

[15] *Rollo*, pp. 66-67.

[16] Id. at 68-69.

[17] Id. at 70-71.

was approved for filing by no less than the City Prosecutor, however, it further ratiocinated that said approval was only for the filing of the same. According to the trial court, nowhere in the said Resolution that the City Prosecutor authorized the Assistant Prosecutor to sign the Information in compliance with Section 4 of Rule 112 of the Rules of Court.[18] On appeal, the Court of Appeals (CA) found that the trial court committed grave abuse of discretion[19] and that a written authority and approval was secured by the assistant city prosecutor. In ruling that the error of the trial court was patent and gross, the CA pointed out that there was no provision under the law, specifically the Rules of Court, which requires with exclusivity that the Information shall only be signed by the City or Provincial Prosecutor and not by any of their assistants.[20] The CA held that since petitioner pleaded to the charges against her without filing any motion to quash, she is deemed to have waived and abandoned her right to avail of any legal ground which she may have properly and timely invoked to challenge the complaint or Information pursuant to Section 9 of Rule 117. Lastly, citing the case of *People v. Nitafan*[21] *(Nitafan)*, the CA ruled that the act of the trial court in *motu proprio* dismissing the case on the ground that the Information was filed without prior authority of the City Prosecutor, allegedly a jurisdictional defect, is tantamount to quashing the Information which can no longer be done since the parties have already presented their respective evidence.

The handling prosecutor has the authority to file the Information.

In *motu proprio* dismissing the instant case, the trial court found that the handling prosecutor had no prior written authority

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[18] Id. at 68.

[19] Penned by Associate Justice Socorro B. Inting (now a Commissioner of Commission on Elections) with Associate Justices Jose C. Reyes, Jr. (a retired Member of this Court) and Mario V. Lopez (an incumbent Member of this Court), concurring; id. at 35-45.

[20] Id. at 41.

[21] 362 Phil. 58 (1999).

to sign the Information, without giving credence to the Resolution dated September 21, 2010 issued by the Office of the City Prosecutor. Accordingly, the trial court ruled that Section 4, Rule 112 was not complied with.

Section 4, Rule 112 provides:

Section 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 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.

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 deputy on the ground that a probable cause exists, the latter may, by himself, file the information against the respondent, or direct any other 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 Justice 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)

Verily, there is nothing in the foregoing provision which restricts the signing of the information itself only to the provincial, city prosecutor or chief state prosecutor or the Ombudsman or his deputy. Moreover, the third paragraph of the provision is complied with provided that the filing of the information was made with prior approval of the city prosecutor, as in this case. The Resolution dated September 21, 2010, which was issued by the Office of the City Prosecutor and was attached to the Information, is a clear badge of the handling prosecutor's authority to sign and file the Information.

As correctly opined in the *ponencia*, the fact that the City Prosecutor signed the draft resolution himself constitutes a tacit approval to the contents of the attached Information as well as to such pleading/document's resultant filing. To require the City Prosecutor's signature on the face of the subject Information under the circumstances would be to impose a redundant and pointless requirement on the Prosecution.[22]

The cases of Villa and Turingan are not applicable.

In its Order[23] dated February 13, 2013, the trial court cited the cases of *Villa* and *Turingan* claiming that infirmity in the information, such as absence of authority to sign the information, constitutes a jurisdictional defect that cannot be cured.

As noted earlier, the factual antecedents of *Villa* were different. *First*, Section 6, Rule 108 of the 1940 Rules of Court, the prevailing adjective law at the time of *Villa*, does not require the handling prosecutor to secure a prior written authority or approval or a signature from the provincial, city or chief state prosecutor before an information may be filed with the trial court. *Second*, the Court in that case, merely clarified that to

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[22] Discussion of the *ponencia* on Authority to Appear, p. 29.

[23] *Rollo*, pp. 66-67.

be eligible as special counsel to aid a fiscal, the appointee must either be an employee or officer of the DOJ. *Lastly*, the information was rendered invalid because the handling prosecutor who signed and filed the initiatory pleading was not even an officer of the DOJ.

Meanwhile, in the case of *Turingan*, the dismissal of the case was upheld after finding that the prosecutor who filed the information was not authorized and designated by the Secretary of Justice to particularly act as special prosecutor in Social Security System cases.

In sum, the respective officers who filed the information in these two cases were indeed disqualified since they undoubtedly had no legal authority to file the information.

In clear contrast to the instant case, the handling prosecutor was proven as amply clothed with authority to file and sign the Information. The approval of the filing of the Information was clearly shown in the Resolution signed and approved by the City Prosecutor. At this juncture, I firmly agree with the *ponencia* that the trial court's casual disregard of and dismissive attitude towards the vital contents of the Resolution dated September 21, 2010 make up for a clear case of grave abuse of discretion.

The Regional Trial Court cannot motu proprio quash the Information and dismiss the criminal case.

Foremost, I share my observation with the *ponencia* that the *motu proprio* dismissal was done despite the fact that: (1) both the accused and the prosecution had already adduced all their evidence, and both have rested their respective cases; and (2) the case was already submitted for decision.[24]

Section 1, Rule 117 of the Rules of Court provides:

Section 1. *Time to move to quash.* — At any time *before entering his plea, the accused* may move to quash the complaint or information. (Italics supplied)

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[24] Discussion of *ponencia* on The State's Right to Due Process in Criminal Cases, pp. 37-40.

Relatedly, Section 2 of the same rule provides:

> **Section 2.** *Form and contents*. — The motion to quash shall be in writing, *signed by the accused or his counsel* and shall distinctly specify its factual and legal grounds. The court shall consider no ground other than those stated in the motion, except for lack of jurisdiction over the offense charged. (Italics supplied)

In this case, the act of the trial court in dismissing the case *motu proprio* on the ground that the Information was not signed by the city prosecutor was tantamount to quashing the said Information. As correctly pointed out, the summary act of quashing the subject Information and perfunctorily dismissing the criminal case is an overt violation of Section 1, Rule 117 of the Rules of Court.

Clearly, the quashing of an information can only be ordered by the trial court upon written motion of the accused, which must be signed by him or by his counsel. In the case of *Nitafan*, the Court expounded the foregoing by ruling that: (1) the right to file a motion to quash belongs only to the accused; (2) there is nothing in the rules which authorizes the court or judge to *motu proprio* initiate a motion to quash if no such motion was filed by the accused; and (3) the filing of a motion to quash is a right that belongs to the accused who may waive it by inaction and not an authority for the court to assume.

Based on the foregoing, I submit my concurrence to the *ponencia*.

EN BANC

[G.R. No. 217285. November 10, 2020]

THE DEPARTMENT OF AGRARIAN REFORM EMPLOYEES ASSOCIATION, represented by its President, LUTHGARDA S. SIBBALUCA, *Petitioner*, *v.* **COMMISSION ON AUDIT,** *Respondent*.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM PROGRAM LAW OF 1988); COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP) FUND; THE CARP FUND SHOULD BE USED EXCLUSIVELY FOR ITS AVOWED PURPOSE, AND ANY ATTEMPT TO APPROPRIATE IT FOR ANOTHER REASON IS UNCONSTITUTIONAL.— The cases of *Dubongco v. Commission on Audit* and *Department of Public Works and Highways, Region IV-A v. Commission on Audit* (*DPWH*) have settled with finality the illegality of using agency funds to finance the grant of CNA Incentives.

Indeed, the CARP Fund is a special fund created under EO No. 229, particularly to cover the cost of the CARP. As such, it should be used exclusively for its avowed purpose. In the case of *Confederation of Coconut Farmers Organizations of the Philippines, Inc. v. President Benigno Simeon C. Aquino III*, the Court elucidated that the rationale behind the restriction on the use of special funds is to deter abuse in their disposition. The Court categorically ruled then that "any attempt to appropriate [such] funds for another reason, no matter how noble or beneficial, would be struck down as unconstitutional."

2. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; COLLECTIVE NEGOTIATION AGREEMENT (CNA); CNA INCENTIVES; THE GRANT OF CNA INCENTIVES IS AUTHORIZED, BUT SUBJECT TO RESTRICTIVE GUIDELINES AND POLICIES.— We are mindful that the grant of CNA Incentives is authorized under Public Sector Labor-Management Council (PSLMC) Resolution

No. 4, Series of 2002, Administrative Order (AO) No. 103, Series of 2004, as well as AO No. 135, Series of 2005, to recognize the joint efforts of labor and management in the achievement of planned targets, programs, and services approved in the budget of the agency at a lesser cost. . . . However, restrictive guidelines and policies were laid down for the implementation of this purpose consonant with the limitation on the use of special funds.

3. ID.; ID.; ID.; ID.; ID.; REQUIREMENTS FOR RELEASE OF CNA INCENTIVES; NON-COMPLIANCE WITH THE SAID REQUIREMENTS WARRANTS THE DISALLOWANCE OF THE DISBURSED AMOUNTS, ESPECIALLY WHEN SOURCED FROM THE CARP FUND.— For one, PSLMC Resolution No. 4, Series of 2002, mandates that "the CNA Incentive is intended to be charged against [the] free unencumbered savings of the agency, which are no longer intended for any specific purpose[,]" to ensure that funds are available and all planned targets, programs and services approved in the budget of the agency are still achieved. "[O]nly savings generated after the signing of the CNA may be used for the CNA Incentive." . . .

Also, AO No. 135, Series of 2005, requires that "[t]he CNA Incentive[s] shall be sourced only from the savings generated during the life of the CNA." Further, "[t]he management and the accredited employees' organization [are obliged] to identify in the CNA the cost-cutting measures and systems improvement to be jointly undertaken by them to achieve effective service delivery and agency targets at lesser cost." Strict compliance with the DBM policy and guidelines was also provided for its implementation.

Relevantly, DBM Circular No. 2006-1 provides that "[t]he CNA Incentive[s] shall be sourced solely from savings from released x x x (MOOE) allotments for the year under review x x x," subject to several conditions such as requiring the savings to be generated out of the cost-cutting measures identified in the CNAs and its supplements. Moreover, the amount of the individual CNA Incentive cannot be pre-determined in the CNAs or in its supplements since it is dependent on savings generated from cost-cutting measures and systems improvement.

. . .

Considering the explicit rules, the Court finds no grave abuse of discretion on the part of the COA in upholding the NDs. . . . [N]one of these requirements were complied with in the DAR-R02's release of the CNA Incentives in 2008 and 2009. The disbursed amounts for the payment of CNA Incentives were irregularly sourced from the CARP Fund. What is more, the approved amounts for release were pre-determined before the end of the year. Worse, no cost-cutting measures were identified, from which the supposed savings were generated. It is also crucial to point out that the CARP Fund is considered as a "continuing appropriation," which refers to an appropriation available to support obligations for a specified purpose or project, even when these obligations are incurred beyond the budget year. Notably, the CARP has been extended until June 30, 2014 under RA No. 8532 and RA No. 9700. Hence, the CARP Fund was still in use for CARP purposes when the CNA Incentives were released in 2008 and 2009. No savings could have been realized from the special fund that could be released as an MOOE allotment, from which the CNA Incentives may be sourced. These factual findings, which are conclusive to this Court, yield no other conclusion but the illegality of the disbursements.

4. ID.; ID.; PUBLIC FUNDS; UNLAWFUL EXPENDITURES; CIVIL LAW; PRINCIPLES OF *SOLUTIO INDEBITI* AND UNJUST ENRICHMENT; RECEIPT OF PUBLIC FUNDS WITHOUT VALID BASIS IS AN UNDUE BENEFIT THAT GIVES RISE TO THE OBLIGATION TO RETURN REGARDLESS OF THE RECIPIENTS' GOOD FAITH.— The extent of one's participation in the grant and/or disbursement of the disallowed transaction is indeed considered as one of the determinants of liability. In the past, the Court has ruled that the recipients' retention of the disallowed amount received in good faith was justified due to their lack of participation in the approval or disbursement process. In the recent case of *Madera v. Commission on Audit*, however, the Court exhaustively clarified that this justification is unwarranted, considering that payees always have an involvement in the transaction by mere receipt of the benefits. . . .

Without doubt, the receipt of public funds without valid basis or justification is already undue benefit that gives rise to the obligation to return. This obligation is founded by the civil law principles of *solutio indebiti* and unjust enrichment. The

recipients' good faith or bad faith is immaterial in the determination of their liability.

. . .

Accordingly, we find the COA's order to refund against DAREA's members proper. The established fact that DAR-R02 had no valid basis to release CNA Incentives in 2008 and 2009 to the prejudice of the government already constitutes unjust enrichment that obligates the recipients to refund. There is also no showing that the disallowed incentives were given in consideration of services rendered. It was merely alleged by the DAR-R02 in its petition before the COA that the incentives were given for accomplishing the agency's targets, but no evidence was adduced to prove this claim.

Moreover, none of the recognized justifications that may excuse the liability to return is present in this case. . . .

Here, it is settled that the recipients are not entitled to the disallowed CNA Incentives. The benefits were not given as a financial aid to help the payees recover from a calamity or an actual emergency, or for any other humanitarian purposes. This Court cannot perceive any undue prejudice upon the recipients in holding them liable for the refund of the incentives inappropriately received. On the contrary, the utter disregard of the clear letter of the fundamental rules in this case cannot be laid aside on humanitarian or social justice grounds.

5. ID.; ID.; ID.; ID.; ID.; ID.; AN EXCEPTION TO THE OBLIGATION TO RETURN BENEFITS IS WHEN THE RECIPIENTS CAN PROVE THEIR ENTITLEMENT THERETO.— By way of exception, however, the recipients do not incur liability to refund when they can prove their entitlement to what they received as a matter of fact and law because in such situation, there is no undue payment and the government incurs no loss. The essence of *solutio indebiti* and unjust enrichment is thereby negated. Additionally, certain justifications that may excuse a recipient's liability to return may be recognized such as undue prejudice, social justice considerations, and other *bona fide* exceptions depending on the purpose and nature of the disallowed amount relative to the attending circumstances.

6. ID.; ID.; ID.; ID.; ID.; ID.; LIABILITY OF RECIPIENTS; RULES ON RETURN.— The rules on the extent of the recipients' liability to return the disallowed amount are summarized in *Madera* as follows:

> *E. The Rules on Return*
>
> x x x x
>
> 2. If a Notice Disallowance is upheld, the rules on return are as follows:
>
> x x x x
>
> 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.

7. ID.; ID.; CNA INCENTIVES, NATURE OF; CNA INCENTIVES REQUIRE THE PARTICIPATION OF THE EMPLOYEES WHO ARE THE INTENDED BENEFICIARIES AND WHO ARE, THEREFORE, NOT MERELY PASSIVE RECIPIENTS. — [I]t should be pointed out that the rank-and-file employees, who received CNA Incentives are not mere passive recipients because they participated in the negotiation and approval of the CNA Incentives. This distinct nature of CNA Incentives, compared to other benefits, was explained in *Dubongco* and *DPWH* as follows:

> CNA Incentive[s] are based on the CNA entered into between the accredited employees' organization as the negotiating unit and the employer or management. . . .
>
> **. . . [U]nlike ordinary monetary benefits granted by the government, CNA Incentives require the participation of the employees who are the intended beneficiaries.** The employees indirectly participate through the negotiation between the government agency and the employees'collective negotiation representative and directly, through the approval

of the CNA by the majority of the rank-and-file employees in the negotiating unit. Thus, the employees' participation in the negotiation and approval of the CNA, whether direct or indirect, allows them to acquire knowledge as to the prerequisites for the valid release of the CNA Incentive. **They could not feign ignorance of the requirement that CNA Incentive must be sourced from savings from released MOOE.**

8. ID.; ID.; PUBLIC FUNDS; UNLAWFUL EXPENDITURES; LIABILITY TO RETURN DISALLOWED AMOUNTS; BEING A MERE EXCEPTION TO THE LIABILITY TO RETURN DISALLOWED AMOUNTS, SOCIAL JUSTICE CONSIDERATION IS MEANT ONLY FOR THE PROTECTION OF THOSE UNQUESTIONABLY WORTHY OF IT.— [C]ontrary to its assertion, the DAREA is not completely without fault in the unauthorized disbursements to be deserving of compassionate justice.

In *Madera*, the Court was emphatic in declaring the general rule that recipients should be liable to return the disallowed amounts that they received. Compassionate justice considerations, being mere exceptions to such liability, must be applied only in clearly meritorious cases. While the Court is willing to consider this great policy of social justice in disallowance cases, it is meant only for the protection of those unquestionably worthy of it. To rule otherwise would render nugatory the COA's auditing mandate and to deplete public coffers in favor of undeserving individuals. As the Court intimated in *Dubongco*, we are perturbed by the fact that these agrarian reform implementors can find the courage to claim that savings are realized from the CARP Funds and utilized for the payment of their incentives, when in reality, agrarian reform issues continue to be unabated and the funds allocated to address them are, more often than not, insufficient to meet the needs of its beneficiaries. Thus, the only discernible prejudice in this case is that caused to the government's agrarian reform programs, and ultimately to the Filipino farmers.

APPEARANCES OF COUNSEL

Santos M. Baculi for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LOPEZ, *J.*:

This Petition for *Certiorari*[1] under Rule 64 of the Revised Rules of Court seeks to reverse respondent Commission on Audit's (COA) Decision No. 2014-388[2] dated December 17, 2014 that upheld Notices of Disallowance (ND) Nos. 08-001-158-(08),[3] 09-003-158-(09),[4] and 10-001-158-(09).[5]

Initially, the Court dismissed the Petition in a Resolution[6] dated April 21, 2015 for failure to indicate the latest Mandatory Continuing Legal Education Certificate of Compliance of petitioner Department of Agrarian Reform Employees Association's (DAREA) counsel, and for failure to submit proof of authority to file the petition. The Court further resolved that the dismissal was proper because the Petition failed to sufficiently show grave abuse of discretion on the part of the COA. The DAREA moved for reconsideration, which was granted in the Court's Resolution[7] dated January 12, 2016. Hence, the Petition was reinstated.

Facts

On October 29, 2004, then Department of Agrarian Reform (DAR) Secretary Rene Villa (Secretary Villa) and the DAREA executed a Collective Negotiation Agreement (CNA). Pursuant to this CNA, the DAR Regional Office No. 02 (DAR-R02) released a total of ₱6,598,000.00 to its officials and employees as incentives for accomplishing their targets from 2008 to 2009:

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[1] *Rollo*, pp. 5-13.

[2] *Id*. at 70-78.

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

[4] *Id*. at 40-44.

[5] *Id*. at 60-63.

[6] *Id*. at 79-80.

[7] *Id*. at 136-137.

₱1,894,000.00 for January to June 2008;[8] ₱1,584,000.00 for January to June 2009;[9] and ₱3,120,000.00 for October to December 2009.[10]

These disbursements were, however, disallowed in ND No. 08-001-158-(08)[11] dated September 9, 2008; ND No. 09-003-158-(09)[12] dated July 17, 2009; and ND No. 10-001-158-(09)[13] dated February 18, 2010. The COA Audit Team found that the CNA Incentives were illegally charged against the Comprehensive Agrarian Reform Program (CARP) Fund or Fund 158 in violation of Section 4 (3) of Presidential Decree (PD) No. 1445[14] or the "Government Auditing Code of the Philippines," stating that "[t]rust funds shall be available and may be spent only for the specific purpose for which the trust was created or the funds received."[15] The Audit Team explained that as the CARP Fund was created under Republic Act (RA) No. 6657[16] or the "CARP Law of 1988," as amended, for a specific purpose, its use should be strictly scrutinized.

The DAR-R02, through its Executive Committee, filed appeals to the COA Regional Office No. 2 (COA-R02), for and on behalf of all its officers and rank-and-file employees.

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[8] *Id*. at 26.

[9] *Id*. at 42-44.

[10] *Id*. at 53.

[11] *Supra* note 3.

[12] *Supra* note 4.

[13] *Supra* note 5.

[14] ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES; approved on June 11, 1978.

[15] PD No. 1445, Sec. 4 (3).

[16] AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES; approved on June 10, 1988.

They argued that Section 4 (3)[17] of PD No. 1445 is not applicable because the CARP Fund is a special fund, not a trust fund. Also, the Department of Budget and Management (DBM) Budget Circular 2006-1,[18] which laid down the guidelines in the grant of CNA Incentives, does not specify what savings may be used for the incentives granted. Hence, for the DAR-R02, the CNA Incentives may be taken from the CARP Fund savings.

COA-R02 Ruling

In three separate Decisions,[19] the COA-R02 affirmed the NDs and ruled that the CARP Fund is a special fund pursuant to the categorical statement in Section 20[20] of Executive Order (EO) No. 229.[21] Being a fund for a special purpose, the limitation to its use continues to apply despite satisfaction or abandonment of the original purpose for which it was created. Further, DBM Budget Circular No. 2006-1 requires that CNA Incentives be sourced solely from Maintenance and Other Operating Expenses (MOOE) allotment savings,[22] released under the General Appropriations Act (GAA).[23] Thus, the CARP Fund was illegally

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[17] *Supra* note 15.

[18] Dated February 1, 2006.

[19] *Rollo*, pp. 26-29, 45-49, and 64-67.

[20] SEC. 20. *Agrarian Reform Fund*. — As provided in Proclamation No. 131 dated July 22, 1987, a **special fund** is created, known as The Agrarian Reform Fund, an initial amount of FIFTY BILLION PESOS (₱50 billion) to cover the estimated cost of the CARP from 1987 to 1992 which shall be sourced from the receipts of the sale of the assets of the Asset Privatization Trust (APT) and receipts of sale of ill-gotten wealth recovered through the Presidential Commission on Good Government and such other sources as government may deem appropriate. The amount collected and accruing to this special fund shall be considered automatically appropriated for the purpose authorized to this Order. (Emphasis supplied.)

[21] PROVIDING THE MECHANISMS FOR THE IMPLEMENTATION OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM; signed on July 22, 1987.

[22] DBM Budget Circular No. 2006-1, par. 7.1.

[23] *Rollo*, pp. 28, 47-48, and 66-67.

disbursed as it was directly charged for the payment of the CNA Incentives.[24]

Dissatisfied with the COA-R02's disposition, the DAR-R02 filed with the COA Proper three separate Petitions for Review.[25]

COA Ruling

In a consolidated Decision[26] dated December 17, 2014, the COA denied the petitions for review and upheld the validity of the NDs. The COA affirmed that the CARP Fund is a special fund, similar to a trust fund, which is segregated for a specific purpose. As such, it should be used solely for the purpose for which it was created. Any unused balance from the fund cannot be used for another purpose by the agency because it is required to be transmitted to the general funds of the government.[27] The COA concluded that the CNA Incentives cannot be directly sourced from the CARP Fund.

The DAR-R02 officers and employees, who approved and released the CNA Incentives were then held solidarily liable to return the disallowed amounts. The other recipients, on the other hand, were held liable only up to the amounts that they received pursuant to the principle of *solutio indebiti*.[28]

The COA disposed the petitions in this wise:

WHEREFORE, premises considered, the instant petitions for review are hereby **DENIED** for lack of merit. Accordingly, [COA-R02] Decision Nos. 2010-025, 2010-010, and 2010-05[,] sustaining [ND] Nos. 08-001-158(08), 09-003-158(09)[,] and 10-001-158(09)

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[24] *Id*. at 28, 48, and 66-67.

[25] *Id*. at 14-21, 32-39, and 52-59.

[26] *Id*. at 70-78.

[27] CONSTITUTION, Article VI, Section 29 (3) provides, "(3) [a]ll money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government."

[28] *Rollo*, p. 76.

in the aggregate amount of [₱]6,598,000.00 are hereby **AFFIRMED**. Moreover, the officers and employees who approved and released the payment of Collective Negotiation Agreement Incentives are solidarily liable for the said disallowances, while each of the payees shall be liable for the amount he received.[29] (Emphasis in the original.)

The DAR-R02 did not question the COA Decision. This prompted the DAREA, representing its members who are rank-and-file employees, to seek relief from this Court, imputing grave abuse of discretion on the part of the COA. The DAREA insists that the CNA Incentives can be derived from the CARP Fund savings following DBM Undersecretary for Operations, Mario L. Relampagos' (Undersecretary Relampagos) Letter[30] dated October 10, 2007, and DBM Secretary Rolando G. Andaya, Jr.'s (Secretary Andaya) undated Letter,[31] stating that the CARP Fund is considered "consolidated and operationally one" with Fund 101 or the DAR's general fund for use in pursuit of CARP outputs and objectives that includes payment of salaries, wages, and MOOE.[32] The DAREA also argues that it will be "grossly unfair, unjust, and inequitable" to require its members to refund the benefits that they received in good faith.[33]

For its part, the COA maintains the validity of the NDs,[34] and contends that the principle of *solutio indebiti* applies despite DAREA's claim of good faith. The COA cites that Section 43, Chapter 5, Book VI of the Administrative Code categorically calls for "every person receiving such [disallowed] payment [to] be jointly and severally liable to the Government for the full amount so paid or received [x x x]."[35]

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

[30] *Id*. at 30.

[31] *Id*. at 31.

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

[33] *Id*. at 10.

[34] *Id*. at 154-159.

[35] *Id*. at 161-162.

Ruling

The petition lacks merit.

The disbursements were properly disallowed for being illegally sourced from the CARP Fund.

This issue is not novel. The cases of *Dubongco v. Commission on Audit*[36] and *Department of Public Works and Highways, Region IV-A v. Commission on Audit*[37] *(DPWH)* have settled with finality the illegality of using agency funds to finance the grant of CNA Incentives. In *Dubongco*, the Court ruled:

> [T]he CARP Fund could not be legally used to finance the grant of the CNA Incentive. x x x.
>
> [T]he CNA Incentive may be awarded to rank-and-file employees only if there are savings in the agency's operating expenses. **The grant of CNA Incentives financed by the CARP Fund is not only illegal but also inconsiderate of the plight of Filipino farmers for whose benefit the CARP Fund is allocated. Moreover, it is disconcerting how petitioner could muster the courage to say that there were savings from the CARP Fund when in reality, agrarian reform funds are more often than not, insufficient to meet the needs of its beneficiaries.** x x x
>
> Another point that militates against petitioner's position is the character of the CARP Fund as a special fund, as stated in Sections 20 and 21 of Executive Order (E.O.) No. 229, Series of 1987 and Section 63 of R.A. No. 6657, x x x.
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> x x x x x x x x x
>
> Even petitioner admits that the CARP Fund is a special trust fund, but he insists that the purpose of the CARP Fund may be broadened to include the grant of incentives to employees who play an integral role in the achievement of the CARP's objectives. While the Court recognizes the employees' indispensable part in the implementation of agrarian reforms, it cannot legally uphold the grant of incentives

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[36] G.R. No. 237813, March 5, 2019, 895 SCRA 53.

[37] G.R. No. 237987, March 19, 2019, 897 SCRA 425.

financed by the wrong source for to do so would lead to an abhorrent situation wherein the sources of funds for bonuses or incentives depend upon the whims and caprice of superior officials in blatant disregard of the laws which they are supposed to implement. In addition, it must be emphasized that the primary purpose of the CNA Incentive is to recognize the joint efforts of labor and management in the achievement of planned targets, programs and services at lesser cost. On the other hand, the CARP Fund is intended to support the State's policy of social justice which includes the adoption of an "agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof." The two serve very different purposes. The CNA Incentive is conditional as it is made to depend upon the availability of savings from operating expenses; whereas, the CARP Fund is derived from multiple sources of funding to ensure continued implementation of the agrarian reform program. x x x.[38] (Emphasis supplied; citations omitted.)

Similarly, in *DPWH*, the Court held:

Clear from the foregoing is that CNA Incentive may not be allocated out of the savings of any fund. To be valid, the CNA Incentive must be released from the savings of the MOOE. In this case, there is no dispute that the subject CNA Incentive was paid out of the savings from the EAO. The violation of the provisions of DBM Budget Circular No. 2006-1 is glaring. Thus, the COA correctly affirmed ND No. 09-01-101-(09) as there are factual and legal justifications therefor.[39]

Indeed, the CARP Fund is a special fund created under EO No. 229,[40] particularly to cover the cost of the CARP. As such, it should be used exclusively for its avowed purpose. In the case of *Confederation of Coconut Farmers Organizations of the Philippines, Inc. v. President Benigno Simeon C. Aquino III*,[41]

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[38] *Dubongco v. Commission on Audit*, *supra* note 36, at 66-70.

[39] *Department of Public Works and Highways, Region IV-A v. Commission on Audit*, *supra* note 37, at 439-440.

[40] *Supra* note 20.

[41] 815 Phil. 1036 (2017), as cited in *Dubongco v. Commission on Audit*, *supra* note 36.

the Court elucidated that the rationale behind the restriction on the use of special funds is to deter abuse in their disposition. The Court categorically ruled then that "any attempt to appropriate [such] funds for another reason, no matter how noble or beneficial, would be struck down as unconstitutional."[42]

We are mindful that the grant of CNA Incentives is authorized under Public Sector Labor-Management Council (PSLMC) Resolution No. 4, Series of 2002,[43] Administrative Order (AO) No. 103, Series of 2004,[44] as well as AO No. 135, Series of 2005,[45] to recognize the joint efforts of labor and management in the achievement of planned targets, programs, and services approved in the budget of the agency at a lesser cost.[46] This was confirmed by the invoked opinions of Undersecretary Relampagos and Secretary Andaya. However, restrictive guidelines and policies were laid down for the implementation of this purpose consonant with the limitation on the use of special funds.

For one, PSLMC Resolution No. 4, Series of 2002,[47] mandates that "the CNA Incentive is intended to be charged against [the] free unencumbered savings of the agency, which are no longer intended for any specific purpose[,]"[48] to ensure that funds are available and all planned targets, programs and services approved in the budget of the agency are still achieved. "[O]nly savings

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[42] *Id*. at 1053.

[43] GRANT OF COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVE FOR NATIONAL GOVERNMENT AGENCIES, STATE UNIVERSITIES AND COLLEGES AND LOCAL GOVERNMENT UNITS; approved on November 14, 2002.

[44] DIRECTING THE CONTINUED ADOPTION OF AUSTERITY MEASURES IN THE GOVERNMENT; signed on August 31, 2004.

[45] AUTHORIZING THE GRANT OF COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVE TO EMPLOYEES IN GOVERNMENT AGENCIES; signed on December 27, 2005.

[46] PSLMC Resolution No. 4 (2002), Sec. 1.

[47] *Supra.*

[48] PSLMC Resolution No. 4 (2002), paragraph 6 of the Whereas Clauses.

generated after the signing of the CNA may be used for the CNA Incentive."[49] Section 3 of PSLMC Resolution No. 4 defines the specific "savings" that may be used, thus:

> Sec. 3. Savings refer to such balances of the agency's released allotment for the year, free from any obligation or encumbrance and which are no longer intended for specific purpose/s:
>
> (a) After completion of the work/activity for which the appropriation is authorized;
>
> (b) Arising from unpaid compensation and related costs pertaining to vacant positions; or
>
> (c) Realized from the implementation of the provisions of the CNA which resulted in improved systems and efficiencies thus enabled the agency to meet and deliver the required or planned targets, programs and services approved in the annual budget at a lesser cost.

Also, AO No. 135, Series of 2005,[50] requires that "[t]he CNA Incentive[s] shall be sourced only from the savings generated during the life of the CNA."[51] Further, "[t]he management and the accredited employees' organization [are obliged] to identify in the CNA the cost-cutting measures and systems improvement to be jointly undertaken by them to achieve effective service delivery and agency targets at lesser cost."[52] Strict compliance with the DBM policy and guidelines was also provided for its implementation.

Relevantly, DBM Circular No. 2006-1 provides that "[t]he CNA Incentive[s] shall be sourced solely from savings from released x x x (MOOE) allotments for the year under review x x x,"[53] subject to several conditions such as requiring the savings to be generated out of the cost-cutting measures identified

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[49] PSLMC Resolution No. 4 (2002), Sec. 1.

[50] *Supra.*

[51] AO No. 135 (2005), Sec. 4.

[52] AO No. 135 (2005), Sec. 3.

[53] DBM Circular No. 2006-1, par. 7.1.

in the CNAs and its supplements.[54] Moreover, the amount of the individual CNA Incentive cannot be pre-determined in the CNAs or in its supplements since it is dependent on savings generated from cost-cutting measures and systems improvement.[55]

It is noteworthy that the invoked opinions of Undersecretary Relampagos and Secretary Andaya, relied upon by the DAREA, did not deviate from the established rules. They deferred to the COA and the guidelines and policies under DBM Circular No. 2006-1 to determine the propriety of the use of CARP Funds for payment of CNA Incentives.

Considering the explicit rules, the Court finds no grave abuse of discretion on the part of the COA in upholding the NDs. As the COA observed, none of these requirements were complied with in the DAR-R02's release of the CNA Incentives in 2008 and 2009. The disbursed amounts for the payment of CNA Incentives were irregularly sourced from the CARP Fund. What is more, the approved amounts for release were pre-determined before the end of the year. Worse, no cost-cutting measures were identified, from which the supposed savings were generated.[56] It is also crucial to point out that the CARP Fund is considered as a "continuing appropriation,"[57] which refers to an appropriation available to support obligations for a specified purpose or project, even when these obligations are incurred beyond the budget year. Notably, the CARP has been extended until June 30, 2014 under RA No. 8532[58] and RA No.

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[54] DBM Circular No. 2006-1, par. 7.1.1.

[55] DBM Circular No. 2006-1, par. 5.6.1.

[56] *Rollo*, p. 76.

[57] RA No. 6657, Chapter XIV, Section 63, last paragraph, provides that "[a]ll funds appropriated to implement the provisions of this Act shall be considered continuing appropriations during the period of its implementation."

[58] AN ACT STRENGTHENING FURTHER THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), BY PROVIDING AUGMENTATION FUND THEREFOR, AMENDING FOR THE PURPOSE SECTION 63 OF REPUBLIC ACT NO. 6657, OTHERWISE KNOWN AS "THE CARP LAW OF 1988"; approved on February 23, 1998.

9700.[59] Hence, the CARP Fund was still in use for CARP purposes when the CNA Incentives were released in 2008 and 2009. No savings could have been realized from the special fund that could be released as an MOOE allotment, from which the CNA Incentives may be sourced. These factual findings, which are conclusive to this Court, yield no other conclusion but the illegality of the disbursements.

The order to refund against DAREA's members was proper.

We note that this Petition involves only the liability of DAREA's members. The DAR approving officers, who were likewise made liable in the NDs, did not join the present Petition. Hence, the Court shall not delve into the DAR officers' liability in this disquisition.

Basically, the DAREA implores that its rank-and-file members should not be held liable for refund because they had no hand in the approval of the CNA Incentives, and are mere passive recipients in good faith of such benefits. We do not agree.

The extent of one's participation in the grant and/or disbursement of the disallowed transaction is indeed considered as one of the determinants of liability.[60] In the past, the Court has ruled that the recipients' retention of the disallowed amount received in good faith was justified due to their lack of participation in the approval or disbursement process.[61] In the

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[59] AN ACT STRENGTHENING THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), EXTENDING THE ACQUISITION AND DISTRIBUTION OF ALL AGRICULTURAL LANDS, INSTITUTING NECESSARY REFORMS, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF REPUBLIC ACT NO. 6657, OTHERWISE KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR; approved on August 7, 2009.

[60] *Madera v. Commission on Audit*, G.R. No. 244128, September 8, 2020; see also *Department of Public Works and Highways*, *supra* note 37; and *Dubongco v. Commission on Audit*, *supra* note 36.

[61] See *Silang v. Commission on Audit*, 769 Phil. 327, 346 (2015); *Lumayna*

recent case of *Madera v. Commission on Audit*,[62] however, the Court exhaustively clarified that this justification is unwarranted, considering that payees always have an involvement in the transaction by mere receipt of the benefits. We said:

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.

x x x x x x x x x

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. x x x.

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v. Commission on Audit, 616 Phil. 929, 942 (2009); *Querubin v. The Regional Cluster Director*, 477 Phil. 919, 924 (2004); and *Blaquera v. Hon. Alcala*, 356 Phil. 678, 765-766 (1998).

[62] *Supra.*

x x x x x x x x x

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. x x x.[63] (Emphases supplied; citations omitted.)

Without doubt, the receipt of public funds without valid basis or justification is already undue benefit that gives rise to the obligation to return. This obligation is founded by the civil law principles of *solutio indebiti*[64] and unjust enrichment.[65] The recipients' good faith or bad faith is immaterial in the determination of their liability.

By way of exception, however, the recipients do not incur liability to refund when they can prove their entitlement to what they received as a matter of fact and law because in such situation, there is no undue payment and the government incurs no loss. The essence of *solutio indebiti* and unjust enrichment is thereby negated. Additionally, certain justifications that may excuse a recipient's liability to return may be recognized such as undue prejudice, social justice considerations, and other *bona fide* exceptions depending on the purpose and nature of the disallowed amount relative to the attending circumstances.[66]

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[63] *Madera v. Commission on Audit*, *supra* note 60.

[64] CIVIL CODE, ART. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

[65] CIVIL CODE, 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.

[66] *Madera v. Commission on Audit*, *supra* note 60:

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 include payees who can show that the amounts received were granted in consideration for services

The rules on the extent of the recipients' liability to return the disallowed amount are summarized in *Madera* as follows:

E. The Rules on Return

x x x x x x x x x

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

x x x x x x x x x

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.

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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. x x x.

x x x x x x x x x

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 *bona fide* 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. x x x. 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. x x x. (Emphases supplied; citations omitted.)

Accordingly, we find the COA's order to refund against DAREA's members proper. The established fact that DAR-R02 had no valid basis to release CNA Incentives in 2008 and 2009 to the prejudice of the government already constitutes unjust enrichment that obligates the recipients to refund. There is also no showing that the disallowed incentives were given in consideration of services rendered. It was merely alleged by the DAR-R02 in its petition before the COA that the incentives were given for accomplishing the agency's targets, but no evidence was adduced to prove this claim.

Moreover, none of the recognized justifications that may excuse the liability to return is present in this case. In *Madera*, the Court considered the undue prejudice that will be caused to the recipients if they will be required to return the amounts that were given as financial assistance to help them recuperate from the onslaught of Typhoon *Yolanda* that devastated the country. In *Uy v. Commission on Audit*,[67] the Court overruled the disallowance of the back wages of illegally dismissed employees on legal and humanitarian grounds because to uphold the disallowance would cause undue prejudice to the government employees, who were adjudged duly entitled to the compensation. The Court also noted in *Uy* that the long-winded arbitration and litigation already caused undue prejudice to these employees for over a decade despite the fact of their entitlement to the compensation.

Here, it is settled that the recipients are not entitled to the disallowed CNA Incentives. The benefits were not given as a financial aid to help the payees recover from a calamity or an actual emergency, or for any other humanitarian purposes. This Court cannot perceive any undue prejudice upon the recipients in holding them liable for the refund of the incentives inappropriately received. On the contrary, the utter disregard of the clear letter of the fundamental rules in this case cannot be laid aside on humanitarian or social justice grounds.[68] At

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[67] 385 Phil. 324 (2000).

[68] See *Philippine Long Distance Telephone Co. v. NLRC*, 247 Phil. 641, 650 (1988).

this juncture, it should be pointed out that the rank-and-file employees, who received CNA Incentives are not mere passive recipients because they participated in the negotiation and approval of the CNA Incentives. This distinct nature of CNA Incentives, compared to other benefits, was explained in *Dubongco* and *DPWH* as follows:

> CNA Incentive[s] are based on the CNA entered into between the accredited employees' organization as the negotiating unit and the employer or management. Rule XII of the Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize provides:
>
> Rule XII
>
> COLLECTIVE NEGOTIATIONS
>
> SEC. 1. *Subject of negotiation*. — Terms and conditions of employment or improvements thereof, except those that are fixed by law, may be the subject of negotiation.
>
> SEC. 2. *Negotiable matters*. — The following concerns may be the subject of negotiation between the management and the accredited employees' organization:
>
> x x x x x x x x x
>
> (m) CNA incentive pursuant to PSLMC Resolution No. 4, S. 2002 and Resolution No. 2, S. 2003[.]
>
> x x x x x x x x x
>
> SEC. 4. *Effectivity of CNA*. — The CNA shall take effect upon its signing by the parties and ratification by the majority of the rank-and-file employees in the negotiating unit.

Hence, it can be gleaned that unlike ordinary monetary benefits granted by the government, CNA Incentives require the participation of the employees who are the intended beneficiaries. The employees indirectly participate through the negotiation between the government agency and the employees' collective negotiation representative and directly, through the approval of the CNA by the majority of the rank-and-file employees in the negotiating unit. Thus, the employees' participation in the negotiation and approval of the CNA, whether direct or indirect, allows them to acquire knowledge as to the prerequisites for the valid release of the CNA Incentive.

They could not feign ignorance of the requirement that CNA Incentive must be sourced from savings from released MOOE.[69] (Emphases supplied.)

From the provisions of the aforecited rule, there are two necessary steps which must be undertaken before the CNA Incentive could be released to the government employees: *first*, the negotiation between the government agency and the employees' collective negotiation representative; and *second*, the approval by the majority of the rank-and-file employees in the negotiating unit. In the first step, the government employees concerned participates through their duly-elected representative; in the second, the rank-and-file employees participate directly. Thus, unlike ordinary monetary benefits granted by the government, the CNA Incentive involve the participation of the employees who are intended to be the beneficiaries thereof.

In this case, the DPWH IV-A employees' participation in the negotiation and approval of the CNA, whether direct or indirect, certainly gives them the necessary information to know the requirements for the valid release of the CNA Incentive. **Verily, when they received the subject benefit, they must have known that they were undeserving of it.**[70] (Emphasis supplied.)

In other words, contrary to its assertion, the DAREA is not completely without fault in the unauthorized disbursements to be deserving of compassionate justice.

In *Madera*, the Court was emphatic in declaring the general rule that recipients should be liable to return the disallowed amounts that they received. Compassionate justice considerations, being mere exceptions to such liability, must be applied only in clearly meritorious cases. While the Court is willing to consider this great policy of social justice in disallowance cases, it is meant only for the protection of those unquestionably worthy of it. To rule otherwise would render nugatory the COA's auditing mandate and to deplete public coffers in favor of undeserving individuals.

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[69] *Department of Public Works and Highways, Region IV-A v. Commission on Audit*, *supra* note 37, at 446-447; *Dubongco v. Commission on Audit*, *supra* note 36, at 72-73.

[70] *Department of Public Works and Highways, Region IV-A v. Commission on Audit*, *supra* note 37, at 447.

As the Court intimated in *Dubongco*, we are perturbed by the fact that these agrarian reform implementors can find the courage to claim that savings are realized from the CARP Funds and utilized for the payment of their incentives, when in reality, agrarian reform issues continue to be unabated and the funds allocated to address them are, more often than not, insufficient to meet the needs of its beneficiaries. Thus, the only discernible prejudice in this case is that caused to the government's agrarian reform programs, and ultimately to the Filipino farmers.

FOR THESE REASONS, the petition is **DISMISSED**. The Decision No. 2014-388 dated December 17, 2014 of the Commission on Audit is **AFFIRMED**.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Carandang, Delos Santos, Gaerlan, and *Rosario, JJ.*, concur.

Lazaro-Javier, Inting, and *Zalameda, JJ.*, on official leave.

FIRST DIVISION

[G.R. No. 223449. November 10, 2020]

MINA C. NACILLA and the late ROBERTO[*] C. JACOBE, represented herein by his heir and widow, NORMITA JACOBE, *Petitioners*, *v.* **MOVIE AND TELEVISION REVIEW AND CLASSIFICATION BOARD,** *Respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; MOVIE AND TELEVISION REVIEW AND CLASSIFICATION BOARD (MTRCB); MTRCB'S POWER TO DISCIPLINE EMPLOYEES AND TO CREATE SUB-COMMITTEES. — Section 16 of the MTRCB Charter provides that the MTRCB "shall have the power to suspend or dismiss for cause any employee and/or approve or disapprove the appointment, transfer or detail of employees." Further, Section 3(j) of P.D. No. 1986 states that the Board can "prescribe the internal and operational procedures for the exercise of its powers and functions as well as the performance of its duties and responsibilities, including the creation and vesting of authority upon sub-committees of the BOARD for the work of review and other related matters." The MTRCB was likewise authorized to promulgate rules and regulations for the implementation of P.D. No. 1986 and its purposes and objectives.

Further, Section 40 of the 1998 MTRCB Implementing Rules and Regulations (IRR) allowed the creation of a Hearing and Adjudication Committee composed of three members of the Board to be designated by the Chairperson to hear and decide cases involving violations of the MTRCB Charter and its IRR.

. . . [F]ollowing Section 3(j) of the MTRCB Charter allowing the Board to create sub-committees for the work of review and other related matters, and Section 40 of the 1998 MTRCB IRR where the Chairperson may designate the three members of the Hearing and Adjudication Committee, the Board issued the

[*] Also appears as "Robert" in some parts of the *rollo*.

MTRCB Rules of Procedure on May 11, 1999. The Rules of Procedure was made applicable to any administrative complaint filed with the MTRCB for violation of the MTRCB Charter and its IRR. The Rules of Procedure likewise defined "Board" as the MTRCB, or the Chairman of the Board, or the Hearing and Adjudication Committee, acting for and in behalf of the Board.

. . .

The MTRCB, given the considerable number of movies and television shows, among others, that it has to review, and the cases it has to hear for violations of its charter, had divided the work amongst themselves by creating adjudication committees, with the designation of members being given to the Board's Chairperson. This procedure was followed in hearing an administrative case against its employees.

2. ID.; ID.; ID.; ID.; ID.; THE MTRCB'S POWER TO DISMISS ITS EMPLOYEES CAN BE EXERCISED THROUGH ITS ADJUDICATION COMMITTEE AND NEED NOT BE MADE *EN BANC*. — As shown by the provisions quoted from the MTRCB's Charter, the MTRCB is empowered to create sub-committees to exercise the power granted to the Board. There is nothing in its charter that requires that decisions be made *en banc* when what is involved is a disciplinary proceeding involving its employees. Thus, the MTRCB was correct when it argued that the Adjudication Committee that directed petitioners' dismissal was no different from any of its other committees. It is a committee exercising the Board's disciplinary power in a manner allowed by its Charter, by acting through a sub-committee of the Board.

3. ID.; ID.; ID.; ID.; ID.; UNAUTHORIZED ACTS OF THE ADJUDICATION COMMITTEE MAY BE RATIFIED BY THE BOARD. — [E]ven if the Court were to assume that the Adjudication Committee was improperly constituted, the actions of the Adjudication Committee were ratified. In *Vivo v. Philippine Amusement and Gaming Corporation* where the petitioner questioned whether his dismissal from service by the respondent's Adjudication Committee was valid as he did not receive copies of any board resolution, the Court held that even if the Board had not approved his dismissal, his dismissal was not illegal, but only unauthorized; and such unauthorized action may be subject of ratification.

As correctly cited by the MTRCB, applicable by analogy is the Court's ruling in *Mison v. Commission on Audit* to show that the action of the Adjudication Committee was ratified:

> x x x The phrase therefore, by which Chairman Domingo describes the capacity in which he acted, *i.e.*, "FOR THE COMMISSION," must be taken as entirely accurate, not only because of the familiar presumption of regularity of performance of official functions, but because the records do show Commissioner Fernandez' full concurrence with the decision in said indorsement. Besides, said 4th Indorsement was ratified and reaffirmed by "*COA Decision No. 992*" of May 19, 1989 signed by "the full complement of three (3) members of the Commission on Audit," to the effect *inter alia* that the 4th Indorsement dated June 22, 1987 (of Chairman Domingo and Commissioner Fernandez) should be "deemed for all legal intents and purposes as the *final* decision on the matter x x x."

Here, the Adjudication Committee's Resolution dated June 2, 2008, which ruled on petitioners' motion for reconsideration, and affirmed the committee's Decision dated April 8, 2008, indicates "BY AUTHORITY OF THE BOARD." Thus, even if the Adjudication Committee's Decision was initially unauthorized, it was ratified. Further, absent any proof otherwise, it is presumed that the Adjudication Committee, the MTRCB, and its Chairperson were performing their functions regularly and that the Adjudication Committee was authorized to rule on the complaint against petitioners, and eventually direct their dismissal from service.

4. ID.; ID.; ID.; ID.; A PARTY AGGRIEVED BY THE DECISION OF THE MTRCB ADJUDICATION COMMITTEE HAS THE OPTION EITHER TO APPEAL TO THE MTRCB CHAIRPERSON (AS THE DEPARTMENT HEAD) OR DIRECTLY TO THE CIVIL SERVICE COMMISSION (CSC). — [W]hen the Adjudication Committee rendered a decision against petitioners on April 8, 2008, the applicable CSC rule was MC 19, as amended by Resolution No. 07-0244. Following Section 43 as amended, petitioners had two options: appeal to the department head before appealing to the CSC or directly file an appeal with the CSC.

And this is where petitioners made a grievous mistake when they appealed to the OP, which as they argue, is the department head. . . .

Petitioners therefore had the option of filing an appeal with Laguardia or directly with the CSC. It was a mistake for them to appeal the decision of the Adjudication Committee with the OP as the MTRCB had its own charter and considered a department under MC 19, as amended by Resolution No. 07-0244, making Laguardia the department head. The CA was therefore correct in affirming the CSC's dismissal of the appeal for being filed out of time.

5. ID.; ID.; ID.; ID.; ID.; FAILURE TO APPEAL THE DECISION OF THE ADJUDICATION COMMITTEE IN THE MANNER AND WITHIN THE PERIOD PRESCRIBED BY LAW RENDERS THE SAID DECISION FINAL AND EXECUTORY. — By the time petitioners filed the appeal with the CSC, the decision of the Adjudication Committee had already become final and executory and could no longer be disturbed. Following Rule II, Section 37 of MC 19, as amended by Resolution No. 07-0244, a judgment attains finality by the lapse of the period for taking an appeal without such appeal or motion for reconsideration having been filed.

Allowing an appeal, even if belatedly filed, should never be taken lightly. In fact, it is a basic rule that when a party to an original action fails to question an adverse judgment or decision by not filing the proper remedy within the period prescribed by law, that party loses the right to do so, and the judgment or decision, as to that party, becomes final and binding.

. . .

In light of the foregoing, the Court agrees with the CA and the CSC that petitioners could no longer question the Adjudication Committee's decision as they have failed to appeal the same in the manner prescribed by law. The decision has become final and executory as to them and no court, not even this Court, has the power to revise, review, change or alter it.

APPEARANCES OF COUNSEL

Sanidad Viterbo Enriquez & Tan Law Firm for petitioners.
The Solicitor General for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated November 3, 2015 and Resolution[3] dated March 8, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 135862, which agreed with the Civil Service Commission (CSC) that petitioners failed to timely appeal the Decision[4] dated April 8, 2008 of respondent Movie and Television Review and Classification Board's (MTRCB) Adjudication Committee directing their dismissal from service.

Facts

Petitioners Mina C. Nacilla (Nacilla) and Roberto C. Jacobe (Jacobe) were former employees of the MTRCB.[5] Nacilla held the position of Administrative Officer V with Salary Grade (SG) 18 while Jacobe, who passed away on May 21, 2011, was formerly employed as Secretary I or Administrative Assistant I with SG 7.[6]

The controversy arose from a Collective Negotiation Agreement (CNA) which the MTRCB and the MTRCB Employees Association (MTRCBEA) executed on October 29, 2004 (2004 CNA), which covered the period from October 29, 2004 until October 29, 2007.[7] It appears that Jacobe was assigned to register the 2004 CNA with the CSC and for which he brought

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[1] *Rollo*, pp. 35-58, excluding the Annexes.

[2] Id. at 59-81. Penned by Associate Justice Ramon Paul L. Hernando (now a Member of the Court) and concurred in by Associate Justices Jose C. Reyes, Jr. (a retired Member of the Court) and Stephen C. Cruz.

[3] Id. at 82-83.

[4] Id. at 215-233.

[5] Id. at 60.

[6] Id.

[7] Id.

copies to the CSC Personnel Relations Office (CSC-PRO).[8] He was, however, informed that the 2004 CNA could not be registered because it was not properly ratified by the MTRCBEA and was not submitted for registration within 30 days from its execution. CSC-PRO advised Jacobe to cause the signing of the 2004 CNA anew, post a copy in conspicuous places for at least seven days and ratify it again before re-submitting it to the CSC-PRO for registration.[9]

Following the CSC-PRO, Jacobe printed four copies of the 2004 CNA and asked the then MTRCB Chairperson Ma. Consoliza P. Laguardia (Laguardia) to sign on the reprinted copies on December 1, 2005. Jacobe explained to Laguardia that she needed to re-sign the 2004 CNA so it could be registered with the CSC.[10] Jacobe then wrote "December 1, 2005" on the documents, the date Laguardia actually re-signed the re-printed 2004 CNA (2005 CNA).[11] Except for the date indicating it was re-signed, all other provisions of the 2005 CNA were the same as the 2004 CNA.[12]

Jacobe then executed an Affidavit dated January 3, 2006 which affirmed that a copy of the 2005 CNA was posted in two conspicuous places at the MTRCB's premises, and thereafter it was ratified by the MTRCBEA anew on December 8, 2005 after the MTRCBEA was informed by petitioners of the circumstances surrounding the registration of the 2004 CNA. Eventually, the CSC issued a Certificate of Registration of the 2005 CNA and provided therein that it would be effective from December 1, 2005 to December 1, 2008.[13]

On October 1, 2007, since the 2004 CNA was about to expire, a CNA Committee was formed to convene with the officials

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[8] Id. at 61.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] Id.

and representatives of the MTRCBEA in order to frame a new CNA.[14] During the meeting, Nacilla, as President of the MTRCBEA, informed the CNA Committee that it was not yet necessary to negotiate a new CNA since the 2005 CNA registered with the CSC was effective until December 1, 2008.[15]

As a result of this information, Laguardia called for an investigation of the matter. As the MTRCB Chairperson, she created an Investigating Committee to look into the alleged falsification of official documents and to recommend the appropriate action.[16] The Investigating Committee released its Report and Recommendation dated December 4, 2007 where petitioners were found to be responsible for the falsification of the 2005 CNA or at least making it appear as a new CNA covering a different period in order to secure benefits from the MTRCB.[17]

Laguardia then formally charged petitioners for violating civil service rules on dishonesty, grave misconduct and falsification of official documents under Section 52(A) 1, 3 and 6 of the Uniform Rules on Administrative Cases in the Civil Service through a Formal Charge dated December 4, 2007, which was amended on December 14, 2007.[18] Laguardia also designated three members of the MTRCB to comprise the Adjudication Committee that would hear the administrative case.[19] She also submitted an Affidavit dated January 8, 2008 to support the Formal Charge.[20]

Petitioners both executed their respective Affidavits dated March 13, 2008 which served as their direct examination before the Adjudication Committee. They were likewise given written

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[14] Id. at 62.

[15] Id.

[16] Id.

[17] Id.

[18] Id. at 62-63.

[19] Id. at 63-64.

[20] Id. at 64.

cross-examination questions, and they responded with Verified Replies.[21]

While the administrative proceedings were pending, the Adjudication Committee issued an Order dated January 8, 2008 directing the preventive suspension of petitioners.[22] Eventually, the Adjudication Committee rendered a Decision dated April 8, 2008, finding petitioners guilty of dishonesty and falsification of public document and imposed the penalty of dismissal from service.[23]

The Adjudication Committee found that petitioners falsified the CNA by altering the dates and that they collaborated with a single objective to register the 2005 CNA with the CSC. They even used the altered dates to justify the deferment of the renewal or renegotiation of the 2004 CNA. The committee also found that petitioners admitted to the authorship of the 2005 CNA and that they participated in the making, preparing, and intervening in the simulation and registration of the 2005 CNA. They did not even deny re-printing the CNA, securing the signatures, and adding the date "01 December 2005" on the document.[24]

Petitioners moved for reconsideration and questioned the power and authority of the Adjudication Committee to impose the penalty of dismissal, but the committee denied this. It ruled that it acted and decided pursuant to the authority of the MTRCB and that requiring the entire Board to decide the case lacked statutory basis.[25] The committee also ruled that its decision was based on evidence on record, including petitioners' own evidence, which show that they violated civil service rules.[26] The committee

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[21] Id. at 65.

[22] Id. at 66.

[23] Id. at 67.

[24] Id.

[25] Id.

[26] See id. at 68.

likewise denied the motion to lift their preventive suspension to preclude the possibility of imposing undue influence on the witnesses.[27]

Petitioners appealed on June 18, 2008 to the Office of the President (OP), which issued an Order dated July 15, 2008 stating that without necessarily giving due course to the appeal, petitioners were directed to pay the appeal fee and submit pertinent documents.[28] After five years, the OP promulgated its Decision on October 23, 2013 dismissing the appeal for lack of jurisdiction over administrative cases of government officials and employees who are not presidential appointees. The OP ruled that the CSC had jurisdiction following Presidential Decree (P.D.) No. 1986[29] or the MTRCB Charter and that since appeal is a statutory privilege based on law, petitioners must show a statutory basis for their appeal to the OP. They failed to do this.[30]

Following this, petitioners appealed to the CSC on November 25, 2013.[31] The CSC, without delving into the merits, dismissed the appeal for being filed out of time.[32] Petitioners then filed an appeal before the CA.

In the assailed Decision, the CA affirmed the CSC. Similarly, without delving into the merits, the CA ruled that the appeal with the CSC was filed out of time. The dispositive portion of the CA Decision states:

WHEREFORE, in view of the foregoing premises, the petition filed in this case is hereby **DENIED**. The assailed *Decision* dated

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[27] Id.

[28] Id.

[29] CREATING THE MOVIE AND TELEVISION REVIEW AND CLASSIFICATION BOARD, October 5, 1985.

[30] *Rollo*, p. 68.

[31] Id.

[32] Id. at 68-69.

May 30, 2014 of the Civil Service Commission in Case No. 140420 is hereby **AFFIRMED**.

SO ORDERED.[33]

Petitioners filed a motion for reconsideration, but this was denied.

Hence, this Petition.

The MTRCB filed its Comment[34] and petitioners also filed their Reply.[35]

Issues

Petitioners raised the following issues:

THE COURT OF APPEALS ERRED IN RULING THAT THE ADJUDICATION COMMITTEE HAD THE POWER OR AUTHORITY TO ORDER THE DISMISSAL OF PETITIONERS.

THE COURT OF APPEALS ERRED IN FINDING THAT THE PETITIONERS LOST THEIR RIGHT TO APPEAL TO THE CSC WHEN THEY WRONGFULLY FILED IT WITH THE OFFICE OF THE PRESIDENT.[36]

The Court's Ruling

The Petition lacks merit.

The Adjudication Committee had the power to dismiss petitioners.

Petitioners argue that the Adjudication Committee that Laguardia created had no power or authority to order their dismissal.[37] For petitioners, it is only the entire Board that has the power to suspend or dismiss any employee for cause.[38] This is error.

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[33] Id. at 80.

[34] Id. at 507-532.

[35] Id. at 541-546.

[36] Id. at 42.

[37] Id. at 43.

[38] Id.

Section 16 of the MTRCB Charter provides that the MTRCB "shall have the power to suspend or dismiss for cause any employee and/or approve or disapprove the appointment, transfer or detail of employees." Further, Section 3(j) of P.D. No. 1986 states that the Board can "prescribe the internal and operational procedures for the exercise of its powers and functions as well as the performance of its duties and responsibilities, including the creation and vesting of authority upon sub-committees of the BOARD for the work of review and other related matters." The MTRCB was likewise authorized to promulgate rules and regulations for the implementation of P.D. No. 1986 and its purposes and objectives.[39]

Further, Section 40 of the 1998 MTRCB Implementing Rules and Regulations[40] (IRR) allowed the creation of a Hearing and Adjudication Committee composed of three members of the Board to be designated by the Chairperson to hear and decide cases involving violations of the MTRCB Charter and its IRR.[41]

Thus, following Section 3(j) of the MTRCB Charter allowing the Board to create sub-committees for the work of review and other related matters, and Section 40 of the 1998 MTRCB IRR where the Chairperson may designate the three members of the Hearing and Adjudication Committee, the Board issued the MTRCB Rules of Procedure on May 11, 1999.[42] The Rules of Procedure was made applicable to any administrative complaint filed with the MTRCB for violation of the MTRCB Charter and its IRR.[43] The Rules of Procedure likewise defined "Board"

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[39] P.D. No. 1986, Sec. 3(a).

[40] Issued on July 20, 1998.

[41] The same composition of the committee and the designation by the Chairperson was retained in Chapter XIII, Sections 1 and 2 of the 2004 MTRCB IRR; available at <https://midas.mtrcb.gov.ph/site/assets/files/pd1986/b1e922365340a0edcf08f240adafa4e1.pdf> accessed on October 22, 2020.

[42] See MTRCB RULES OF PROCEDURE, available at <https://midas.mtrcb.gov.ph/site/assets/files/pd1986/b1e922365340a0edcf08f240adafa4e1.pdf.> accessed on October 22, 2020.

[43] Id., Rule II, Sec. 1.

as the MTRCB, or the Chairman of the Board, or the Hearing and Adjudication Committee, acting for and in behalf of the Board.[44]

Here, it is beyond dispute that the MTRCB Chairperson created the Adjudication Committee and designated three members of the Board as members of the committee.

Admittedly, the MTRCB Rules of Procedure was applicable to complaints for violations of the MTRCB Charter and its IRR, and there was no indication therein that it was applicable to disciplinary cases involving the MTRCB's employees. Nonetheless, to the mind of the Court, the steps followed by the MTRCB and its Chairperson, which mirrored steps followed for the adjudication of cases for violations of the MTRCB Charter and its IRR, were all in accord with the broad powers granted to the MTRCB and to its Chairperson.

The MTRCB, given the considerable number of movies and television shows, among others, that it has to review, and the cases it has to hear for violations of its charter, had divided the work amongst themselves by creating adjudication committees, with the designation of members being given to the Board's Chairperson. This procedure was followed in hearing an administrative case against its employees.

In *Realty Exchange Venture Corp. v. Sendino*,[45] a similar issue was raised as petitioner therein questioned whether the decision rendered by the Office of Appeals, Adjudication and Legal Affairs (OAALA) of the Housing and Land Use Regulatory Board (HLURB) was valid when it was not rendered by the HLURB *en banc*. The Court held:

> Going to petitioners' contention that the decision of the OAALA should have been rendered by the Board of Commissioners sitting *en banc*, we find ample authority — both in the statutes and in jurisprudence — justifying the Board's act of dividing itself into divisions of three. Under Section 5 of E.O. 648 which defines the

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[44] Id., Rule IV, Sec. 1.1.

[45] 304 Phil. 65 (1994).

powers and duties of the Commission, the Board is specifically mandated to "(a)dopt rules of procedure for the conduct of its business" and ["]perform such functions necessary for the effective accomplishment of (its) above mentioned functions." Since nothing in the provisions of either E.O. 90 or E.O. 648 denies or withholds the power or authority to delegate adjudicatory functions to a division, we cannot see how the Board, for the purpose of effectively carrying out its administrative responsibilities and quasi-judicial powers as a regulatory body should be denied the power, as a matter of practical administrative procedure, to constitute its adjudicatory boards into various divisions. After all, the power conferred upon an administrative agency to issue rules and regulations necessary to carry out its functions has been held "to be an adequate source of authority to delegate a particular function, unless by express provision of the Act or by implication it has been withheld." The practical necessity of establishing a procedure whereby cases are decided by three (3) Commissioners furthermore assumes greater significance when one notes that the HLURB, as constituted, only has four (4) full time commissioners and five (5) part time commissioners to deal with all the functions, administrative, adjudicatory, or otherwise, entrusted to it. As the Office of the President noted in its February 26, 1993 Resolution denying petitioners' Motion for Reconsideration, "it is impossible and very impractical to gather the four (4) full time and five (5) part time commissioners (together) just to decide a case." Considering that its part time commissioners act merely in an *ex-officio* capacity, requiring a majority of the Board to sit *en banc* on each and every case brought before it would result in an administrative nightmare.[46]

The same can be said about the MTRCB, which is composed of 32 members, including its Chairperson and its Vice-Chairperson. As shown by the provisions quoted from the MTRCB's Charter, the MTRCB is empowered to create sub-committees to exercise the power granted to the Board. There is nothing in its charter that requires that decisions be made *en banc* when what is involved is a disciplinary proceeding involving its employees. Thus, the MTRCB was correct when it argued that the Adjudication Committee that directed petitioners' dismissal was no different from any of its other committees. It

[46] Id. at 75-76.

is a committee exercising the Board's disciplinary power in a manner allowed by its Charter, by acting through a sub-committee of the Board.[47]

Further, to require that the MTRCB decide disciplinary proceedings *en banc* would indeed result in a logistical and administrative nightmare. As the Board itself argued in its Comment:

> x x x If only the Board *en banc* can discharge the power to suspend and dismiss an MTRCB employee, as suggested by petitioners, then x x x all the thirty (30) members, the Chairperson, and the Vice Chairperson should convene in order to constitute an investigating body and then again convene to constitute an adjudicative body so that it could discipline its employees. To follow this proposition from the petitioners would result in an irrational and unreasonable requirement in the exercise of said power, in that, if all thirty-two (32) members of the MTRCB could not convene for one reason or another, it will result in the delay in the administration of justice, particularly, the suspension, removal or separation of erring government employees from the service, or exoneration, if found otherwise. This situation will prejudice the whole office, the movie and television industry and, ultimately, the Filipino people in general. If all members of the MTRCB are required to convene to constitute an investigating body or adjudicating body, no one will be left to perform the other more important duties and responsibilities that the MTRCB is likewise mandated to do. Quite certainly, the framers of the law did not intend such kind of absurdity or irrationality. It is a rule of statutory construction that the court may consider the spirt and reason of a statute where a literal meaning would lead to absurdity, contradiction, injustice or would defeat the clear purpose of the lawmakers.[48]

And even if the Court were to assume that the Adjudication Committee was improperly constituted, the actions of the Adjudication Committee were ratified. In *Vivo v. Philippine Amusement and Gaming Corporation*[49] where the petitioner

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[47] See *rollo*, p. 526.

[48] Id. at 524-525.

[49] 721 Phil. 34 (2013).

questioned whether his dismissal from service by the respondent's Adjudication Committee was valid as he did not receive copies of any board resolution, the Court held that even if the Board had not approved his dismissal, his dismissal was not illegal, but only unauthorized; and such unauthorized action may be subject of ratification.[50]

As correctly cited by the MTRCB, applicable by analogy is the Court's ruling in *Mison v. Commission on Audit*[51] to show that the action of the Adjudication Committee was ratified:

> x x x The phrase therefore, by which Chairman Domingo describes the capacity in which he acted, *i.e.*, "FOR THE COMMISSION," must be taken as entirely accurate, not only because of the familiar presumption of regularity of performance of official functions, but because the records do show Commissioner Fernandez' full concurrence with the decision in said indorsement. Besides, said 4th Indorsement was ratified and reaffirmed by "*COA Decision No. 992*" of May 19, 1989 signed by "the full complement of three (3) members of the Commission on Audit," to the effect *inter alia* that the 4th Indorsement dated June 22, 1987 x x x (of Chairman Domingo and Commissioner Fernandez) should be "deemed for all legal intents and purposes as the *final* decision on the matter x x x."[52]

Here, the Adjudication Committee's Resolution[53] dated June 2, 2008, which ruled on petitioners' motion for reconsideration, and affirmed the committee's Decision dated April 8, 2008, indicates "BY AUTHORITY OF THE BOARD."[54] Thus, even if the Adjudication Committee's Decision was initially unauthorized, it was ratified. Further, absent any proof otherwise, it is presumed that the Adjudication Committee, the MTRCB, and its Chairperson were performing their functions regularly and that the Adjudication Committee was

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[50] See id. at 41.

[51] 265 Phil. 484 (1990).

[52] Id. at 492.

[53] *Rollo*, pp. 246-267.

[54] Id. at 267.

authorized to rule on the complaint against petitioners, and eventually direct their dismissal from service.

Petitioners' appeal was filed out of time.

On the second issue, petitioners argue that the OP already acquired jurisdiction over the appeal when it directed them to pay the appeal fee and the completion of the records.[55] The OP, therefore, should have ruled on the merits rather than dismissing the appeal for lack of jurisdiction.[56] They further argue that they were allowed to appeal first to the department head, which was the President, making the appeal to the OP proper. In turn, the appeal with the CSC, after the OP's dismissal of their appeal, was not filed out of time.[57] This lacks merit.

The CSC's jurisdiction over civil service disputes is settled. Sections 2(1) and 3 of Article IX-B of the 1987 Constitution states the following on the powers of the CSC.

> 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.
>
> x x x x
>
> 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.

In fact, in *Cabungcal v. Lorenzo*,[58] the Court has held that "the CSC, as the central personnel agency of the Government,

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[55] Id. at 48.

[56] See id.

[57] See id. at 47-49.

[58] 623 Phil. 329 (2009).

has jurisdiction over disputes involving the removal and separation of all employees of government branches, subdivisions, instrumentalities and agencies, including government-owned or controlled corporations with original charters. Simply put, it is the sole arbiter of controversies relating to the civil service."[59]

In line with this power, the CSC issued the rules on administrative cases in the civil service, the evolution of which the CA correctly and clearly outlined as follows:[60]

The CSC adopted Memorandum Circular No. 19, series of 1999 (MC 19), or the Revised Uniform Rules on Administrative Cases in the Civil Service. MC 19 affirmed the CSC's disciplinary appellate jurisdiction over employees of government agencies. This is under the presumption that prior to filing an appeal before the CSC, the government agency concerned should have already rendered a decision on the administrative case of a government employee.

As regards appeals regarding administrative disciplinary cases, Rule III, Section 43 of MC 19 provides:

Section 43. *Filing of Appeals*. — Decisions of heads of departments, agencies, provinces, cities, municipalities and other instrumentalities imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty days salary, may be appealed to the Commission Proper within a period of fifteen (15) days from receipt thereof.

In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department head and finally to the Commission Proper. Pending appeal, the same shall be executory except where the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.

x x x x (Emphasis supplied)

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[59] Id. at 338-339.

[60] *Rollo*, pp. 75-77.

Thereafter, on February 7, 2007, the CSC issued Resolution No. 07-0244, which amended the aforementioned provision, as follows:

Section 43. Filing of Appeals. — Decisions of heads of department, agencies, provinces, cities, municipalities and other instrumentalities imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty days salary, may be appealed to the Commission Proper within a period of fifteen (15) days from receipt thereof.

In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department head and finally to the Commission Proper. Pending appeal, the same shall be executory except where the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.

Unless otherwise provided by law, the decision of the head of an attached agency imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office is appealable directly to the Commission Proper within a period of fifteen (15) days from receipt thereof. Pending appeal, the penalty imposed shall be executory, including the penalty of removal from the service without need for the confirmation by the department secretary to which the agency is attached.

x x x (Emphasis supplied)

On November 8, 2011, the CSC revised its rules anew, terming it as Revised Rules on Administrative Cases in the Civil Service. The provision in consideration was rewritten as follows:

Section 61. *Filing*. — Subject to Section 45 of this Rules, **decisions of heads of departments, agencies**, provinces, cities, municipalities and other instrumentalities imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty (30) days salary, **may be appealed to the Commission within a period of fifteen (15) days from receipt thereof. In cases the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department head and then finally to the Commission**.

All decisions of heads of agencies are immediately executory pending appeal before the Commission. The decision imposing the penalty of dismissal by disciplining authorities in departments is not immediately executory unless confirmed by the Secretary concerned. However, the Commission may take cognizance of the appeal pending confirmation of its execution by the Secretary. (Emphasis supplied)

Based on the foregoing, when the Adjudication Committee rendered a decision against petitioners on April 8, 2008, the applicable CSC rule was MC 19, as amended by Resolution No. 07-0244. Following Section 43 as amended, petitioners had two options: appeal to the department head before appealing to the CSC or directly file an appeal with the CSC.

And this is where petitioners made a grievous mistake when they appealed to the OP, which as they argue, is the department head. The Court, however, agrees with and affirms the correct disposition of the CA on this issue, as follows:

To Our mind, the phrase "department head" when applied to this case refers to the Chairperson of the MTRCB. The interpretation of said phrase should be specific enough to pertain to the MTRCB Chairperson, or to Laguardia in particular, since logically she exercised supervision over the affairs of not only the whole Board but also the MTRCB employees. She technically does not report or answer to a department head, compared to other departments under the Office of the President such as the Department of Justice which has a department head in the person of the Secretary of Justice, who is also a presidential appointee. Treating Laguardia as the "department head" is a practical application of the phrase given that it would be illogical to require the Office of the President to rule upon the subject of Petitioners' dismissal from service when they were not even presidential appointees.

Besides, the Office of the President is technically not a department under the purview of Resolution No. 07-0244. Specifically, "department" under Resolution No. 07-0244 refers to "any of the executive departments or entities having the category of a department, including the judiciary and the other constitutional commission and offices." Similarly, the Administrative Code defined department as an executive department created by law. Surely the Office of the President is not merely a department as it is considered as the head office of the executive branch of the government.

In this respect, it is of no moment that Laguardia was the one who initiated the complaint against the Petitioners because she was merely performing her duty as the Chief Executive Officer of the MTRCB to ascertain and investigate the alleged falsification of the 2004 CNA. In any case, the Petitioners should not assume that just because Laguardia initiated the complaint against them, then she would automatically rule against them if they appealed the Adjudication Committee's decision to her.[61]

Petitioners therefore had the option of filing an appeal with Laguardia or directly with the CSC. It was a mistake for them to appeal the decision of the Adjudication Committee with the OP as the MTRCB had its own charter and considered a department under MC 19, as amended by Resolution No. 07-0244, making Laguardia the department head. The CA was therefore correct in affirming the CSC's dismissal of the appeal for being filed out of time.

By the time petitioners filed the appeal with the CSC, the decision of the Adjudication Committee had already become final and executory and could no longer be disturbed. Following Rule II, Section 37[62] of MC 19, as amended by Resolution No. 07-0244, a judgment attains finality by the lapse of the period for taking an appeal without such appeal or motion for reconsideration having been filed.

Allowing an appeal, even if belatedly filed, should never be taken lightly.[63] In fact, it is a basic rule that when a party to an original action fails to question an adverse judgment or decision by not filing the proper remedy within the period prescribed

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[61] *Rollo*, pp. 78-79.

[62] **Section 37. *Finality of Decisions***. — A decision rendered by heads of agencies whereby a penalty of suspension for not more than thirty (30) days or a fine in an amount not exceeding thirty (30) days' salary is imposed, shall be final and executory. However, if the penalty imposed is suspension exceeding thirty (30) days, or fine in an amount exceeding thirty (30) days salary, the same shall be final and executory after the lapse of the reglementary period for filing a motion for reconsideration or an appeal and no such pleading has been filed.

[63] *Building Care Corp. v. Macaraeg*, 700 Phil. 749, 757 (2012).

by law, that party loses the right to do so, and the judgment or decision, as to that party, becomes final and binding.[64]

As the Court ruled in *Zamboanga Forest Managers Corp. v. New Pacific Timber and Supply Co.*.[65] "Although appeal is an essential part of our judicial process, it has been held, time and again, that the right thereto is not a natural right or a part of due process but is merely a statutory privilege. Thus, the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but also jurisdictional and failure of a party to conform to the rules regarding appeal will render the judgment final and executory."[66] As the Court continued:

> Once a decision attains finality, it becomes the law of the case irrespective of whether the decision is erroneous or not and no court — not even the Supreme Court — has the power to revise, review, change or alter the same. The basic rule of finality of judgment is grounded on the fundamental principle of public policy and sound practice that, at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.[67]

In light of the foregoing, the Court agrees with the CA and the CSC that petitioners could no longer question the Adjudication Committee's decision as they have failed to appeal the same in the manner prescribed by law. The decision has become final and executory as to them and no court, not even this Court, has the power to revise, review, change or alter it.

WHEREFORE, premises considered, the Petition is **DENIED**. The Decision dated November 3, 2015 and Resolution dated March 8, 2016 of the Court of Appeals in CA-G.R. SP No. 135862 are **AFFIRMED**.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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[64] Id. at 758.

[65] 647 Phil. 403 (2010).

[66] Id. at 415.

[67] Id.

FIRST DIVISION

[G.R. No. 223572. November 10, 2020]

JENNIFER M. ENANO-BOTE, VIRGILIO A. BOTE, JAIME M. MATIBAG, WILFREDO L. PIMENTEL, TERESITA M. ENANO, *Petitioners, v.* **JOSE CH. ALVAREZ, CENTENNIAL AIR, INC. and SUBIC BAY METROPOLITAN AUTHORITY,** *Respondents*.

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; TRUST FUND DOCTRINE; IN INVOKING THE TRUST FUND DOCTRINE TO PROCEED AGAINST THE UNPAID SUBSCRIPTIONS OF STOCKHOLDERS OF A DEBTOR CORPORATION, A CREDITOR MUST ALLEGE AND PROVE THE CORPORATION'S INSOLVENCY OR ANY OF THE OTHER GROUNDS WHERE THE TRUST FUND DOCTRINE MAY BE APPLIED.— [I]t is clear that a corporate creditor cannot immediately invoke the trust fund doctrine to proceed against unpaid subscriptions of stockholders of the debtor corporation without alleging and proving the corporation's insolvency or any of the other acceptable grounds where the trust fund doctrine, theory or principle has been applied. The observation that a corporation has the beneficial or equitable as well as the legal title of its capital stock and is in business to make money for itself and its stockholders and not for its creditors is well-taken. As well, the capital stock of a corporation is a trust to be managed during its corporate life for the benefit of stockholders. It is only in the event of its dissolution or insolvency, does the capital stock become a trust fund for the benefit of its creditors.

2. ID.; ID.; ID.; GROUNDS TO JUSTIFY THE APPLICATION OF THE TRUST FUND DOCTRINE; IN A SUIT AGAINST THE STOCKHOLDERS OF AN INSOLVENT CORPORATION, IT IS ONLY NECESSARY TO ESTABLISH THAT THE STOCKHOLDERS HAVE NOT IN GOOD FAITH PAID THE PAR VALUE OF THE STOCKS OF THE CORPORATION. — Based on the Court's . . . pronouncements, *Halley* recognized two instances when the creditor is allowed to maintain an action

upon any unpaid subscriptions based on the trust fund doctrine: (1) where the debtor corporation released the subscriber to its capital stock from the obligation of paying for their shares, in whole or in part, without a valuable consideration, or fraudulently, to the prejudice of creditors; and (2) where the debtor corporation is insolvent or has been dissolved without providing for the payment of its creditors.

. . .

Clearly, the first instance finds no relevance in the present case. It is the second which SBMA, as creditor, may invoke to collect from CAIR's stockholders for their unpaid subscriptions and apply the same to CAIR's unpaid rentals. But, as stressed in *Halley*: "To make out a *prima facie* case in a suit against stockholders of an insolvent corporation to compel them to contribute to the payment of its debts by making good unpaid balances upon their subscriptions, it is only necessary to establish that the stockholders have not in good faith paid the par value of the stocks of the corporation."

3. ID.; ID.; ID.; ID.; A CREDITOR CANNOT INVOKE THE TRUST FUND DOCTRINE TO COLLECT A CORPORATION'S DEBT WHEN WHAT WAS ALLEGED AND PROVED WAS JUST THE DEBT, AND NOT ANY OF THE GROUNDS JUSTIFYING THE APPLICATION OF THE DOCTRINE.— Unfortunately, SBMA has not even pleaded either insolvency of CAIR or its dissolution. What is evident in SBMA's complaint is that it is a simple collection suit. . . .

Not only were the allegations of SBMA's complaint insufficient to justify the invocation and application of the trust fund doctrine as appreciated in *Halley*, even the evidence adduced by SBMA was solely to prove the uncollected rentals. . . .

[S]BMA failed to either allege or prove any of the two grounds recognized in *Halley* when the trust fund doctrine may be applied to compel the stockholders to contribute to the payment of CAIR's debts by compelling them to pay the unpaid balances upon their subscriptions.

The CA indeed misapplied *Halley* in this case. The CA miserably failed to identify the salient facts of the case

constituting the specific ground to justify the application of the trust fund doctrine. The CA relied on *Halley* without showing, either in the pleadings or in the evidence, how its ratio could be applied.

APPEARANCES OF COUNSEL

The Law Firm of Perlas De Guzman & Partners for petitioners.
Gargantiel Ilagan & Atanante for respondents.
Anna Rosario P. Reyes for respondent SBMA.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court (Rules) assailing the Decision[2] dated September 21, 2015 and Resolution[3] dated March 3, 2016 of the Court of Appeals[4] (CA) in CA-G.R. CV. No. 103619. The CA Decision affirmed the Decision[5] dated April 8, 2014 of the Regional Trial Court of Olongapo City, Branch 72 (RTC) in Civil Case No. 190-0-2004 while the CA Resolution denied petitioners' motion for reconsideration.

The Facts

The CA Decision narrates the antecedents as follows:

On February 3, 1999, plaintiff-appellee Subic Bay Metropolitan Authority (SBMA for brevity) entered into a Lease Agreement with defendant/third-party plaintiff Centennial Air, Inc. (CAIR for brevity),

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[1] *Rollo*, pp. 3-21, excluding Annexes.

[2] *Id*. at 27-52. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Priscilla J. Baltazar-Padilla (a retired Member of the Court) and Socorro B. Inting, concurring.

[3] *Id*. at 23-25.

[4] Second Division.

[5] Records, Vol. 2, pp. 1199-1226. Penned by Presiding Judge Richard A. Paradeza.

represented by defendant Roberto Lozada (Lozada for brevity), for the lease of Building 8324 (subject property for brevity) located at Subic Bay International Airport (SBIA), Subic Bay Freeport Zone (SBFZ), for a period of five (5) years commencing on February 1, 1999 until midnight of January 31, 2004.

Under the pertinent provisions of the lease, the parties agreed that the monthly rental for the use and occupation of the subject property shall be payable as follows:

> "[x x x] **Section 1. Rental Payment** — The LESSEE shall pay the LESSOR the amount of Two United States Dollars and fifty cents (US$2.50) per square meter per month or Four Thousand Seven Hundred Fifty Seven United States Dollars and fifty cents (US$4,757.50) per month or its equivalent in the Philippine Peso currency at the prevailing exchange rate at the time of payment. [x x x]"

In addition to the payment of rental, [CAIR] was also required to remit a monthly amount for the use of the facilities in relation to its operations. Concomitantly, in case of default in the fulfillment of these obligations, an additional rent charged against [CAIR] equivalent to twenty-four percent (24%) of any overdue amount was imposed. [SBMA] was also authorized to seek judicial relief for damages incurred by reason of such default as well as recovery of all amounts and penalties due under the lease contract including court costs, attorney's fees and expenses.

For the duration of the lease, [CAIR] became delinquent and was constantly remiss in the payment of its obligations. As a result, [SBMA], through its Accounting Department, sent a letter dated November 9, 1999 to [CAIR] demanding the latter to settle its outstanding obligation which, as of October 31, 1999, amounted to [₱119,324.51]. In an attempt to settle its account, [CAIR] proposed a payment scheme for its overdue debts which, as of December 31, 2002, reached [₱168,405.84]. Under this payment scheme, [CAIR] vowed to: (1) pay an initial payment of [US$33,682.00]; (2) submit [18] post dated checks to cover payment of its balance of [US$134,723.84] payable in monthly installments of [US$7,484.66]; and pay current rental starting January 2003. While the initial payment of US$33,682.00 was received, [CAIR] never delivered the 18 post dated checks to [SBMA]. Thus, on February 7, 2003, another letter was sent to [CAIR], asking the same to comply with its proposed payment scheme by submitting the 18 post dated checks for the

settlement of its outstanding balance of US$134,723.84 and pay the rent for March 2003. Despite repeated demands, [CAIR] still failed to comply. On January 14, 2004, a Final Demand Letter was sent to [CAIR], requiring the latter to pay its outstanding obligation within five (5) days from receipt thereof. In the same letter, the Lease Agreement between [SBMA] and [CAIR] was terminated, and the latter was ordered to vacate the premises.

Due to the continuous refusal of [CAIR] to settle its debts, [SBMA] was compelled to file a Complaint against the former and its stockholders asking for the payment of [(1)] its outstanding obligation in the total amount of US$163,341.89 plus legal interest; (2) exemplary damages in the amount of [₱]100,000.00[;] and (3) [a]ttorney's fees in the amount of [₱]20,000.00.

Subsequently, [summonses] were served on defendants-appellants Jennifer Enano-Bote [(Jennifer for brevity)], Virgilio A. Bote [(Virgilio for brevity)], Amelita G. Simon, Teresita M. Enano, Jaime M. Matibag,[6] Wilfredo Pimentel, Vicente T. Suazo (hereinafter collectively referred to as [Enano-Bote, *et al.*] for brevity), [Lozada] and [CAIR].

On September 3, 2004, [Enano-Bote, *et al.*] filed their Answer denying any liability to [SBMA]. [They] argued that they were no longer stockholders of the corporation at the time the Lease Agreement was executed between [CAIR] and [SBMA] on February 3, 1999. Allegedly, on December 1, 1998, they entered into a Deed of Assignment of Subscription Rights ([DASR] for brevity) with third-party defendant-appellee Jose Ch. Alvarez (Alvarez for brevity), whereby they assigned, transferred, and conveyed their aggregate subscription of [400,000] shares, representing [100%] of the outstanding capital stock of [CAIR], in favor of [Alvarez]. Pursuant to the [DASR], [Alvarez] was obliged to transfer and assign 76,000 and 4,000 of fully paid and non-assessable shares of the corporation to [Jennifer] and [Virgilio]. Furthermore, [Alvarez] assumed to pay the unpaid balance of their subscriptions in the amount of [₱30,000,000.00]. In effect, only [Jennifer] and [Virgilio] remained as nominal stockholders of the corporation while the rest of them were totally divested of their corporate shares. Since they ceased to be stockholders of the corporation, they were no longer parties to the Lease Agreement, thus they cannot be held liable for any breach thereof.

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[6] Appears as "Jaime M. Mabitag" in some parts of the records.

On September 27, 2004, [Lozada] filed his Answer with Counterclaim alleging that: [SBMA] has no cause of action against [Enano-Bote, *et al.*] because its cause of action was barred by the Statute of Limitations; the obligation set forth in the complaint had been paid, waived, abandoned or otherwise extinguished; and that there was novation, compensation, confusion or remission of debt which extinguished the obligation. By way of compulsory counterclaim, he prayed for the payment of attorney's fees and expenses of litigation in the amount of [₱]50,000.00, as well as exemplary damages in the amount of [₱]200,000.00 in view of the filing of the unfounded and unmeritorious claim against them.

On February 4, 2005, [CAIR] was declared in default for failure to file an answer. However, such order was lifted on June 15, 2006, and [CAIR] was allowed to adopt "*en toto*" the answer filed by [Lozada].

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[After the preliminary and pre-trial conferences], trial ensued.

[SBMA] presented Editha Lim-Marzal[, the Division Chief of the Accounting Department, Account Receivables Division of SBMA,[7]] and Kenneth Lemuel G. Rementilla[, the Manager of the Locator's Registration and Licensing Department of SBMA,[8]] as its witnesses.

x x x x

After [SBMA] rested its case, [CAIR] filed a Demurrer to Evidence, which the [RTC] subsequently denied for lack of merit.

Meanwhile, defendants-appellants [Jennifer], [Virgilio], Jaime M. Matibag, Wilfredo L. Pimentel and Teresita M. Enano ([petitioners for brevity]), with leave of court, filed a Third[-]Party Complaint against [Alvarez]. In their complaint, they admitted that they were the incorporators of [CAIR] when it was incorporated on December 29, 1997. On December 1, 1998, they executed [the DASR] in favor of [Alvarez] covering their entire shares of stock in [CAIR]. Among the conditions of this transfer was [Alvarez's] undertaking to relieve each of them from the payment of their remaining unpaid subscriptions to the corporation. Moreover, in consideration of the assignment,

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[7] *Rollo*, p. 34.

[8] Id. at 35.

[Alvarez] also agreed to transfer and assign 76,000 and 4,000 fully paid and non-assessable shares to [Jennifer and Virgilio]. Thus, with the exception of [Jennifer and Virgilio], who remained as nominal stockholders of the corporation, the rest of them were totally divested of their corporate shares and were thereafter relieved from paying their unpaid subscriptions as a consequence of the assignment. When the Lease Agreement was executed between [SBMA] and [CAIR] on February 1, 1999, [petitioners] were no longer the majority stockholders of the latter. At that time, it was [Alvarez] who stood as the President and the authorized representative of [CAIR]. As such, he alone should be held liable for the payment of their unpaid subscription which would cover the unpaid rentals of the corporation.

On June 25, 2008, [s]ummons was issued upon [Alvarez]. On July 18, 2008, the latter filed his Third-Party Answer with Counterclaim, reiterating the same defenses raised in the answer filed by [Lozada] in the main case.

[The preliminary and pre-trial conferences for the third-party complaint ensued.]

In the interim, [petitioners] filed a Request for Admission addressed to [Alvarez], asking, among others, for the latter to admit the genuineness of the [DASR] dated December 1, 1998, Minutes of the Special Meeting of the Board of Directors of [CAIR] held in December 1998, and the Lease Agreement dated February 3, 1999. On September 24, 2009, [Alvarez] filed his Answer to Request for Admission and denied all the allegations set forth in said request. On even date, [SBMA] commented [thereon], declaring the same to be inappropriate for being a repetition of the claims stated in [petitioners'] previous pleadings. In resolving this pending incident, the [RTC] in its September 22, 2010 Order, echoed the comment of [SBMA], holding that a response to the request for admission is no longer required since the allegations therein were mere reiteration of the statements in the third-party complaint. The same has been effectively denied in the third-party answer filed by [Alvarez].

Significantly, at the continuation of the trial, only [Jennifer] was presented as a witness x x x.

[CAIR] did not present any evidence. On the other hand, [Alvarez] was given several opportunities to present his evidence but he still failed to do so, thus he was deemed to have waived his right.

On April 8, 2014, the [RTC] issued [its] Decision. [The dispositive portion of which, states:

> **WHEREFORE**, in light of the foregoing, judgment is hereby rendered **ORDERING**:
>
> 1. Defendant corporation Centennial Air, Inc. and individual defendants Jennifer M. Enano-Bote, Virgilio A. Bote, Jaime M. Matibag, Wilfredo L. Pimentel, Teresita M. Enano, Vicente Suazo and Amelita G. Simon jointly and severally to pay plaintiff SBMA the total amount of US$163,341.89, plus legal interest;
> 2. Third-party defendant Jose Ch. Alvarez to refund/reimburse to individual defendants Jennifer M. Enano-Bote, Virgilio A. Bote, Jaime M. Matibag, Wilfredo L. Pimentel, Teresita M. Enano, Vicente Suazo and Amelita G. Simon the total amount of US$163,341.89, plus legal interests, to be paid by the latter to the plaintiff SBMA;
> 3. Third-party defendant Jose Ch. Alvarez to pay third-party plaintiff Jennifer M. Enano-Bote the amount of three hundred thousand (₱300,000.00) pesos by way of moral damages and the amount of two hundred thousand (₱200,000.00) pesos as attorney's fees; and
> 4. The case as against defendant Roberto Lozada is dismissed for lack of merit.
>
> **SO ORDERED**.[9]]

[Petitioners then appealed to the CA].[10]

Ruling of the CA

The CA in its Decision[11] dated September 21, 2015 denied the appeal of petitioners. The dispositive portion thereof states:

> **WHEREFORE**, premises considered, the appeal is **DENIED**. The Decision dated April 8, 2014 of the Regional Trial Court, Branch 72, in Civil Case No. 190-0-2004 is hereby **AFFIRMED**.

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[9] Records, Vol. 2, p. 1226.

[10] *Rollo*, pp. 29-43.

[11] *Supra* note 2.

SO ORDERED.[12]

Petitioners filed a motion for reconsideration[13] with the CA, which the CA denied in its Resolution[14] dated March 3, 2016.

Hence the present Petition. SBMA filed its Comment[15] dated November 24, 2016. Petitioners filed their Reply[16] dated May 26, 2017. Alvarez and CAIR filed a belated Comment[17] dated March 26, 2019. Petitioners filed their Reply (to the Comment dated 26 March 2019)[18] dated October 7, 2019.

The Issues

The Petition raises two main issues: (1) whether the CA committed an error of law in applying the trust fund doctrine to make petitioners personally and solidarily liable with CAIR for the unpaid rentals claimed by SBMA against CAIR because of their supposedly unpaid subscriptions in CAIR's capital stock; and (2) whether under the Third-Party Complaint, Alvarez should be made liable to independently and separately pay Jennifer and Virgilio moral damages in the amount of ₱300,000.00 and ₱200,000.00 as attorney's fees, aside from cost of suit.

The Court's Ruling

The Petition is partly meritorious.

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[12] Id. at 51.

[13] CA *rollo*, pp. 108-124.

[14] Supra note 3.

[15] *Rollo*, pp. 87-96.

[16] Id. at 112-125.

[17] Id. at 157-169. While the Comment was supposedly for respondents Alvarez, CAIR and SBMA, SBMA had already filed its Comment and paragraph 4 of the Comment alleges that Gargantiel Ilagan and Atanante Law Firm, the law firm which filed the Comment, earlier filed on March 20, 2019 a Notice of Appearance as collaborating counsel of Alvarez and CAIR.

[18] Id. at 208-212.

Anent the first issue, the CA affirmed the RTC's invocation of *Halley v. Printwell, Inc.*[19] *(Halley)* to justify the application of the trust fund doctrine in this wise:

> Consistently, the [RTC] is convinced that [petitioners] may be held liable up to the extent of their unpaid subscription for the payment of [CAIR's] outstanding obligation to [SBMA]. The rationale [for] the [RTC's] rulings find support in the case of [*Halley*], which held that:
>
> "[x x x] The trust fund doctrine, first enunciated in the American case of Wood v. Dummer, was adopted in our jurisdiction in Philippine Trust Co. v. Rivera, where this Court declared that:
>
> It is established doctrine that subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debts. (Velasco vs. Poizat, 37 Phil. 802) . . .
>
> We clarify that the trust fund doctrine is not limited to reaching the stockholder's unpaid subscriptions. The scope of the doctrine when the corporation is insolvent encompasses not only the capital stock, but also other property and assets generally regarded in equity as a trust fund for the payment of corporate debts. All assets and property belonging to the corporation held in trust for the benefit of creditors that were distributed or in the possession of the stockholders, regardless of full payment of their subscriptions, may be reached by the creditor in satisfaction of its claim.
>
> Also, under the trust fund doctrine, a corporation has no legal capacity to release an original subscriber to its capital stock from the obligation of paying for his shares, in whole or in part, without a valuable consideration, or fraudulently, to the prejudice of creditors. **The creditor is allowed to maintain an action upon any unpaid subscriptions and thereby steps**

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[19] G.R. No. 157549, May 30, 2011, 649 SCRA 116. Rendered by the Third Division; penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Conchita Carpio Morales, Arturo D. Brion, Martin S. Villarama, Jr. and Ma. Lourdes P. A. Sereno.

> **into the shoes of the corporation for the satisfaction of its debt. To make out a *prima facie* case in a suit against stockholders of an insolvent corporation to compel them to contribute to the payment of its debts by making good unpaid balances upon their subscriptions, it is only necessary to establish that the stockholders have not in good faith paid the par value of the stocks of the corporation**. [x x x]" *(emphasis ours)*[20]

Petitioners argue that *Halley* is inapplicable and takes the position that the facts of *Halley* are "not substantially on **'all fours'** with the present action."[21] They claim that the corporate personality of Business Media Philippines, Inc. (the corporation subject of *Halley*) was disregarded and the stockholders were held personally liable because it was shown that the said stockholders were found and proved to be in charge of its operation at the time the unpaid obligation was transacted and incurred which greatly benefitted the corporation, and that Rizalino Viñeza had assigned his "fully paid up" shares to a certain Gerardo Jacinto in 1989 at the time when the directors and stockholders of the corporation had resolved to dissolve the corporation during its annual meeting.[22] They further claim that there was no evidence whatsoever presented during the trial nor self-evident on the records of this case to show that petitioners were in charge of the operation of CAIR and they acted in bad faith or fraudulently when the lease was transacted with SBMA. Having sold, ceded and assigned their entire subscription rights to the 400,000 shares in CAIR representing 100% of its entire outstanding capital stock to Alvarez who as assignee agreed to assume the payment of the unpaid balance of the price of the subscription rights in the total amount of ₱30,000,000.00 and Alvarez being then in charge as President of CAIR and its major stockholder as well as the signatory to the Lease Agreement, petitioners conclude that when *Halley* is

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[20] *Rollo*, pp. 46-48.

[21] Id. at 6-7.

[22] Id. at 7-8.

invoked correctly, Alvarez should be solely responsible and liable for the unpaid rentals of CAIR to SBMA.[23]

Regarding petitioners' assignment of their subscription rights to Alvarez through the DASR, the CA stated that for this to become a viable defense, it was incumbent upon petitioners to show that a valid transfer/assignment of shares, binding against third persons, took place under Section 63 of the Corporation Code, which provides:

SECTION 63. *Certificate of Stock and Transfer of Shares*. — The capital stock of stock corporation shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation. (35)[24]

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[23] Id. at 8.

[24] See *id*. at 44. The counterpart provision of the Revised Corporation Code (Republic Act No. 11232), which became effective on February 23, 2019, is Section 62, which states:

SEC. 62. *Certificate of Stock and Transfer of Shares*. — The capital stock of corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the bylaws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner, his attorney-in-fact, or any other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates, and the number of shares transferred. The Commission may require corporations whose securities

Citing *The Rural Bank of Lipa City, Inc. v. Court of Appeals*,[25] the CA noted that there must be strict compliance with the mode of transfer prescribed by law before a valid transfer of stock takes place wherein the following requirements are complied with: (1) there must be delivery of the stock certificate; (2) the certificate must be endorsed by the owner or his attorney-in-fact or other persons legally authorized to make the transfer; and (3) to be valid against third persons, the transfer must be recorded in the books of the corporation.[26] Based on these parameters, the CA stated that petitioners failed to hurdle their burden as the record is bereft of any proof to show compliance with the requirements for a valid transfer of shares; thus, without a valid transfer of shares, petitioners are still deemed to be stockholders of CAIR at the time the lease was enforced.[27] The CA further stated that the unrecorded transfer/assignment of shares between petitioners and Alvarez is not binding on SBMA, and the latter can proceed against petitioners, who in its eyes remained as stockholders, against their unpaid subscriptions for the satisfaction of CAIR's rental arrears pursuant to the trust fund doctrine.[28]

Petitioners counter by insisting that under the DASR, which Alvarez failed to deny under oath its genuineness and due execution in his Third-Party Answer with Counterclaim, Alvarez is deemed to have admitted that petitioners had already assigned, transferred and conveyed to him their entire subscription rights representing 100% of the outstanding capital stock of CAIR with the exception of Jennifer and Virgilio who remained

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are traded in trading markets and which can reasonably demonstrate their capability to do so to issue their securities or shares of stocks in uncertificated or scripless form in accordance with the rules of the Commission.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.

[25] G.R. No. 124535, September 28, 2001, 366 SCRA 188.

[26] *Rollo*, pp. 44-45.

[27] Id. at 45.

[28] Id. at 45-46.

stockholders with fully paid and non-assessable shares numbering 76,000 and 4,000, respectively.[29] With the assignment, petitioners claim that they are no longer stockholders of CAIR with unpaid subscription and should not be made primarily and principally liable to SBMA, and that instead Alvarez should be solely be responsible for the unpaid rentals because he is the majority stockholder and the active President in charge of CAIR at the time he signed the lease contract.[30]

Petitioners further argue that as inactive stockholders with fully paid shares, Jennifer and Virgilio cannot be liable for the debts of CAIR.[31] Given the separate personality of CAIR, they posit that the piercing of the corporate veil is unwarranted without any allegation in the complaint and proof that individual petitioners consented or connived to commit patently unlawful acts of the corporation or that any of them was guilty of gross negligence or bad faith.[32] In fact, they claim that, effective December 1, 1998, they ceased to be directors of CAIR and had no participation in its operation, with Jennifer being replaced by Bienvenido S. Santos as Treasurer based on the minutes of the election of the corporate officers held in December 1998.[33]

Moreover, petitioners claim that the unpaid stock subscriptions are receivables of the corporation, which can only become due and owing upon a subscription call by the corporation's Board of Directors or when it undergoes bankruptcy or its assets are being levied under an execution or attachment, and none of them obtains in this case.[34]

Lastly, petitioners claim that Alvarez has admitted liability to them when he did not present contradictory evidence to the evidence presented by them despite the RTC giving him several

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[29] Id. at 9-10.

[30] Id. at 10.

[31] Id.

[32] Id. at 11-12.

[33] Id. at 12-13.

[34] Id. at 13-14.

chances and a final opportunity to present evidence, with prior notice to his counsel of record, on October 16, 2012.[35]

To have a historical perspective of the development of the common law trust fund doctrine, theory or principle, the following excerpt from Edwin S. Hunt's article[36] on the subject is insightful:

> It was formerly supposed that the relations between a corporation and its creditors were the same as those which existed between an individual debtor and his creditor. For example, in the year 1826, in the case of *Catlin v. The Eagle Bank* (6 Conn. 233), Chief Justice Hosmer said:
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> > "Where no legal lien has been obtained, it is a reasonable supposition that the relation between creditor and debtor must in all cases infer the same consequences; and that where the same mischief exists, there is the same law. The cases of an individual and of a corporation, in the matter under discussion, it appears to me are not merely analogous but identical; and I discern no reason for the slightest difference between them."
>
> Since that time, however, the view has gradually grown up that the common law rights of a creditor over his debtor's property did not adequately protect the creditor of a corporation. In order to give the latter more extensive rights, it was thought that those rights must be based upon a theory different from that which ordinarily applies between debtor and creditor.
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> This new doctrine was for the first time announced in the year 1824 by Judge Story in the well-known case of *Wood v. Dummer* (3 Mason 309). In that case, the stockholders of a bank without paying its debts, had divided among themselves all the property of the corporation. Manifestly, a great injustice had been done to the creditors and on some theory or other they must be allowed to recover their claims from the persons who had so received the property of the corporation. Apparently, Judge Story thought that none of the principles of law applicable to the ordinary relation of debtor and creditor were

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[35] Id. at 14-15.

[36] Edwin S. Hunt, "The Trust Fund Theory and Some Substitutes For It," The Yale Law Journal, vol. 12, no. 2, 1902, pp. 63-81, available at <https://www.jstor.org/stable/782112>.

adequate to the situation. The stockholders did not owe the debt and how, therefore, could the creditor compel them to pay? If, however, the property of the company be regarded as a fund held by the corporation in trust for its creditors, then the difficulty was overcome, for trust property could be followed into the hands of persons who have notice of the trust. As Judge Story said:

> "If I am right in this position, the principle difficulty in the cause is overcome. If the capital stock is a trust fund, then it may be followed into the hands of any persons having notice of the trust attaching to it."

As this new theory was so convenient to the solution of this case, Judge Story proceeded to show that the property of a corporation was a fund held in trust by it for its creditors. He says:

> "It appears to me very clear upon general principles as well as the Legislative intention, that the capital stock is to be deemed a pledge or trust fund for payment of debts contracted by the bank. The public as well as the Legislature have always supposed this to be a fund appropriated for such a purpose. The individual stockholders are not liable for the debts of the bank in their private capacities. The charter relieves them from personal responsibility and substitutes the capital stock in its stead. Credit is universally given to this fund by the public as the only means of repayment. * * * The stockholders have no rights until all the other creditors are satisfied. They have the full benefit of all the profits made by the establishment, and cannot take any portion of the fund until all the other claims on it are extinguished."

There would perhaps be little reason to object to calling the property of a corporation a trust fund for the benefit of its creditors, if all that the phrase meant was, that a corporation must pay its debts before dividing its assets among its stockholders.

But the trouble is that the "trust fund theory" thus originated has not been confined to the case to which Judge Story first applied it. That could not be expected. x x x

x x x x

A trust implies a trustee holding a legal title and *cestui que* trusts who have the beneficial interest. A court of equity will compel a trustee to hold and manage the property for the sole benefit of a

cestui, to whom alone, in its eyes, the property belongs. The trustee can make no profit out of the property. His sole reward is his commission. All the property and all the profits belong to the cestui que trust.

Manifestly, the property of a corporation is held by it in trust in no such sense. A corporation has the beneficial or equitable as well as the legal title. It is in business to make money for itself and its stockholders and not for its creditors; while a trustee can only make money for his cestui que trust.

But it may be said that it is not claimed that the property of a going, solvent corporation is a trust fund for its creditors; it is only when the corporation becomes insolvent and ceases to do business that the assets become a trust fund. Many cases may be found where it is so stated. For example, in the case of *Appleton v. Turnbull* (84 Me. 72), the court said:

> "It is too firmly established at the present day to be questioned, that the capital stock of a corporation is a trust fund for the payment of its debts * * * during the existence of the life of the corporation, it is a trust to be managed for the benefit of its stockholders, but in the event of a dissolution or of insolvency, it becomes a trust fund for the benefit of its creditors."
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> x x x x
>
> x x x The trust fund theory has been, perhaps, most often applied to the case where a creditor of an insolvent corporation seeks to compel a stockholder to pay a balance claimed to be due on stock for which the par value has never been paid to the corporation.[37]

The trust fund doctrine or theory has been, perhaps, most often applied to the case where a creditor of an insolvent corporation seeks to compel a stockholder to pay a balance claimed to be due on stock for which the par value has never been paid to the corporation.[38] On this matter of the creditors running after shareholders for their unpaid subscriptions, it has been said:

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[37] Id. at 63-72.

[38] Id. at 72.

Sawyer v. Hoag[39] established that the stockholders of an insolvent corporation were liable to its creditors to the extent of the amount unpaid on stock subscriptions. Justice Miller based liability squarely on the trust-fund doctrine, saying that the doctrine applied to the capital stock of a corporation "especially its unpaid subscriptions." This holding carved a significant exception out of the general rule that stockholders of a corporation are insulated from liability for its debts.

As long as a corporation remains solvent the subscriber's only liability runs to the corporation. Once the corporation has matured the contract liability of the shareholder, it can, of course, assign that debt like no other. But except by way of assignment, the *creditor* of a *solvent* corporation, being in no sense a party to the subscription contract, is unable to reach an unpaid subscription. Practically speaking, however, as long as the corporation is solvent a corporate creditor will not need to pursue any remedy beyond a direct action against the corporation taken to judgment; hence any absence of privity between creditor and shareholder is not at this time a serious problem. But when the corporation becomes insolvent judgments at law are relatively worthless. At this juncture the trust-fund doctrine entered the picture to protect the creditor.[40]

In the Philippine setting, the following cases are illustrative of the application of the trust fund doctrine where the debtor is insolvent.

In the 1923 case of *Philippine Trust Company v. Rivera*[41] *(Philippine Trust Co.)*, the Court allowed Philippine Trust Company, as assignee in insolvency of *La Cooperativa Naval Filipina*, to collect the balance of ₱22,500.00 that was due upon the subscription of Marciano Rivera, the defendant therein, to the capital stock of said insolvent corporation, *viz.*:

It appears in evidence that in 1918 the *Cooperativa Naval Filipina* was duly incorporated under the laws of the Philippine Islands, with

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[39] 17 Wall. 610, 21 L. Ed. 731 (1873).

[40] James R. Ellis & Charles L. Sayre, "Trust-Fund Doctrine Revisited, Part II," 24 Wash. L. Rev. & St. B. J. 134-135 (1949), available at <https://digitalcommons.law.uw.edu/wlr/vol24/iss2/4>.

[41] 44 Phil. 469 (1923).

a capital of ₱100,000, divided into one thousand shares of a par value of ₱100 each. Among the incorporators of this company was numbered the defendant Marciano Rivera, who subscribed for 450 shares representing a value of ₱45,000, the remainder of the stock being taken by other persons. The articles of incorporation were duly registered in the Bureau of Commerce and Industry on October 30 of the same year.

In the course of time the company became insolvent and went into the hands of the Philippine Trust Company, as assignee in bankruptcy; and by it this action was instituted to recover one-half of the stock subscription of the defendant, which admittedly has never been paid.

The reason given for the failure of the defendant to pay the entire subscription is, that not long after the *Cooperativa Naval Filipina* had been incorporated, a meeting of its stockholders occurred, at which a resolution was adopted to the effect that the capital should be reduced by 50 per centum and the subscribers released from the obligation to pay any unpaid balance of their subscription in excess of 50 per centum of the same. As a result of this resolution it seems to have been supposed that the subscriptions of the various shareholders had been cancelled to the extent stated; and fully paid certificates were issued to each shareholder for one-half of his subscription. It does not appear that the formalities prescribed in section 17 of the Corporation Law (Act No. 1459), as amended, relative to the reduction of capital stock in corporations were observed, and in particular it does not appear that any certificate was at any time filed in the Bureau of Commerce and Industry, showing such reduction.

His Honor, the trial judge, therefore held that the resolution relied upon by the defendant was without effect and that the defendant was still liable for the unpaid balance of his subscription. In this we think his Honor was clearly right.

It is established doctrine that subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debts. (Velasco vs. Poizat, 37 Phil. 802.) A corporation has no power to release an original subscriber to its capital stock from the obligation of paying for his shares, without a valuable consideration for such release; and as against creditors a reduction of the capital stock can take place only in the manner and under the conditions prescribed by the statute or the charter or the

articles of incorporation. Moreover, strict compliance with the statutory regulations is necessary (14 C.J. 498, 620).

In the case before us the resolution releasing the shareholders from their obligation to pay 50 per centum of their respective subscriptions was an attempted withdrawal of so much capital from the fund upon which the company's creditors were entitled ultimately to rely and, having been effected without compliance with the statutory requirements, was wholly ineffectual.[42] (Underscoring supplied)

The 1918 case of *Velasco v. Poizat*[43] cited in *Philippine Trust Co.* also involved recovery of unpaid subscriptions in an insolvent company, *viz.*:

From the amended complaint filed in this cause upon February 5, 1915, it appears that the plaintiff, as assignee in insolvency of "The Philippine Chemical Product Company" (Ltd.) is seeking to recover of the defendant, Jean M. Poizat, the sum of ₱1,500, upon a subscription made by him to the corporate stock of said company. It appears that the corporation in question was originally organized by several residents of the city of Manila, where the company had its principal place of business, with a capital of ₱50,000, divided into 500 shares. The defendant subscribed for 20 shares of the stock of the company, and paid in upon his subscription the sum of ₱500, the par value of 5 shares. The action was brought to recover the amount subscribed upon the remaining shares.

x x x x

No attempt is made in the Corporation Law to define the precise conditions under which an action may be maintained upon a stock subscription, as such conditions should be determined with reference to the rules governing contract liability in general; and where it appears as in this case that a matured stock subscription is unpaid, none of the provisions contained in Sections 38 to 48, inclusive, of Act No. 1459 can be permitted to obstruct or impede the action to recover thereon. By virtue of the first subsection of Section 36 of the Insolvency Law (Act No. 1956) the assignee of the insolvent corporation succeeds to all the corporate rights of action vested in the corporation prior to its insolvency; and the assignee therefore has the same freedom

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[42] Id. at 469-471.

[43] 37 Phil. 802 (1918).

with respect to suing upon a stock subscription as the directors themselves would have had under section 49 above cited.

But there is another reason why the present plaintiff must prevail in this case, even supposing that the failure of the directors to comply with the requirements of the provisions of sections 38 to 48, inclusive, of Act No. 1459 might have been an obstacle to a recovery by the corporation itself. That reason is this: When insolvency supervenes upon a corporation and the court assumes jurisdiction to wind it up, all unpaid stock subscriptions become payable on demand, and are at once recoverable in an action instituted by the assignee or receiver appointed by the court. This rule apparently had its origin in a recognition of the principle that a court of equity, having jurisdiction of the insolvency proceedings, could, if necessary, make the call itself, in its capacity as successor to the powers exercised by the board of directors of the defunct company. Later a further rule gained recognition to the effect that the receiver or assignee, in an action instituted by proper authority, could himself proceed to collect the subscription without the necessity of any prior call whether. This conclusion is well supported by reference to the following authorities:

". . . a court of equity may enforce payment of stock subscriptions, although there have been no calls for them by the company." (Hatch *vs.* Dana, 101 U.S. 205.)

"It is again insisted that plaintiffs cannot recover because the suit was not preceded by a call or assessment against the defendant as a subscriber, and that until this is done no right of action accrues. In a suit by a solvent going corporation to collect a subscription, and in certain suits provided by statute this would be true; but it is now quite well settled that when the corporation becomes insolvent, with proceedings instituted by creditors to wind up and distribute its assets, no call or assessment is necessary before the institution of suits to collect unpaid balances on subscription." (Ross-Meehan Shoe F. Co. *vs.* Southern Malleable Iron Co., 72 Fed., 957, 960; *see also* Henry *vs.* Vermillion, etc., R.R. Co., 17 Ohio, 187, and Thompson on Corporations, 2d ed., vol. 3, sec. 2697.)

It evidently cannot be permitted that a subscriber should escape from his lawful obligation by reason of the failure of the officers of the corporation to perform their duty in making a call; and when the original mode of making the call becomes impracticable, the obligation must be treated as due upon demand. If the corporation were still an active entity, and this action should be dismissed for irregularity in the making of the call, other steps could be taken by the board to

cure the defect and another action could be brought; but where the company is being wound up, no such procedure would be practicable. **The better doctrine is that when insolvency supervenes all unpaid subscriptions become at once due and enforceable.**[44] (Emphasis supplied)

In *Philippine National Bank v. Bitulok Sawmill, Inc., et al.*,[45] the Court allowed Philippine National Bank, as creditor, to substitute the receiver of Philippine Lumber Distributing Agency in the actions for the recovery from defendant lumber producers the balance of their stock subscriptions and ordered the payment by the latter of their unpaid subscriptions, applying the trust fund doctrine, *viz.*:

> In Philippine Trust Co. *v.* Rivera, citing their leading case of Velasco *v.* Poizat, this Court held: "It is established doctrine that subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debt. . . . A corporation has no power to release an original subscriber to its capital stock from the obligation of paying for his shares, without a valuable consideration for such release; and as against creditors a reduction of the capital stock can take place only in the manner and under the conditions prescribed by the statute or the charter or the articles of incorporation. Moreover, strict compliance with the statutory regulations is necessary. . . . " The Poizat doctrine found acceptance in latter cases. One of the latest cases, Lingayen Gulf Electric Power *v.* Baltazar, speaks to this effect: "In the case of Velasco *v.* Poizat, the corporation involved was insolvent, in which case all unpaid stock subscriptions become payable on demand and are immediately recoverable in an action instituted by the assignee."[46]

In *Steinberg v. Velasco*,[47] the trust fund doctrine was impliedly applied in a situation wherein the debtor corporation was not

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[44] Id. at 803-808.

[45] 132 Phil. 758 (1968).

[46] Id. at 763-764. Citations omitted.

[47] 52 Phil. 953 (1929).

only insolvent, but its directors also acted in fraud of creditors when they authorized the purchases of the corporation's capital stock from the stockholders and even purchased and distributed dividends to the stockholders, leaving the creditors unpaid, *viz.*:

It is very apparent that on June 24, 1922, the board of directors acted on the assumption that, because it appeared from the books of the corporation that it had accounts receivable of the face value of ₱19,126.02, therefore it had a surplus over and above its debts and liabilities. But as stated there is no stipulation as to the actual cash value of those accounts, and it does appear from the stipulation that on February 28, 1924, ₱12,512.47 of those accounts had but little, if any, value, and it must be conceded that, in the purchase of its own stock to the amount of ₱3,300 and in declaring the dividends to the amount of ₱3,000, the real assets of the corporation were diminished ₱6,300. It also appears from paragraph 4 of the stipulation that the corporation had a "surplus profit" of ₱3,314.72 only. It is further stipulated that the dividends should "be made in installments so as not to affect financial condition of the corporation." In other words, that the corporation did not then have an actual *bona fide* surplus from which the dividends could be paid, and that the payment of them in full at that time would "affect the financial condition of the corporation."

It is, indeed, peculiar that the action of the board in purchasing the stock from the corporation and in declaring the dividends on the stock was all done at the same meeting of the board of directors, and it appears in those minutes that both Ganzon and Mendaros were formerly directors and resigned before the board approved the purchase and declared the dividends, and that out of the whole 330 shares purchased, Ganzon sold 100 and Mendaros 200, or a total of 300 shares out of the 330, which were purchased by the corporation, and for which it paid ₱3,300. In other words, that the directors were permitted to resign so that they could sell their stock to the corporation. As stated, the authorized capital stock was ₱20,000 divided into 2,000 shares of the par value of ₱10 each, of which only ₱10,030 was subscribed and paid. Deducting the ₱3,300 paid for the purchase of the stock, there would be left ₱7,000 of paid up stock, from which deduct ₱3,000 paid in dividends, there would be left ₱4,000 only. In this situation and upon this state of facts, it is very apparent that the directors did not act in good faith or that they were grossly ignorant of their duties.

Upon each of those points, the rule is well stated in Ruling Case Law, vol. 7, p. 473, section 454, where it is said:

"*General Duty to Exercise Reasonable Care*. — The directors of a corporation are bound to care for its property and manage its affairs in good faith, and for a violation of these duties resulting in waste of its assets or injury to the property they are liable to account the same as other trustees. And there can be no doubt that if they do acts clearly beyond their power, whereby loss ensues to the corporation, or dispose of its property or pay away its money without authority, they will be required to make good the loss out of their private estates. This is the rule where the disposition made of money or property of the corporation is one either not within the lawful power of the corporation, or, if within the power of the corporation, is not within the power or authority of the particular officer or officers."

And section 458 which says:

"*Want of Knowledge, Skill, or Competency*. — It has been said that directors are not liable for losses resulting to the corporation from want of knowledge on their part; or for mistakes of judgment, provided they were honest, and provided they are fairly within the scope of the powers and discretion confided to the managing body. But the acceptance of the office of a director of a corporation implies a competent knowledge of the duties assumed, and directors cannot excuse imprudence on the ground of their ignorance or inexperience; and if they commit an error of judgment through mere recklessness or want of ordinary prudence or skill, they may be held liable for the consequences. Like a mandatory, to whom he has been likened, a director is bound not only to exercise proper care and diligence, but ordinary skill and judgment. As he is bound to exercise ordinary skill and judgment, he cannot set up that he did not possess them."

Creditors of a corporation have the right to assume that so long as there are outstanding debts and liabilities, the board of directors will not use the assets of the corporation to purchase its own stock, and that it will not declare dividends to stockholders when the corporation is insolvent.[48]

From the foregoing disquisition, it is clear that a corporate creditor cannot immediately invoke the trust fund doctrine to

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[48] Id. at 959-961.

proceed against unpaid subscriptions of stockholders of the debtor corporation without alleging and proving the corporation's insolvency or any of the other acceptable grounds where the trust fund doctrine, theory or principle has been applied.[49] The observation that a corporation has the beneficial or equitable as well as the legal title of its capital stock and is in business to make money for itself and its stockholders and not for its creditors is well-taken.[50] As well, the capital stock of a corporation is a trust to be managed during its corporate life for the benefit of stockholders. It is only in the event of its dissolution or insolvency, does the capital stock become a trust fund for the benefit of its creditors.[51]

The Court will now proceed to determine the propriety of the CA's application of *Halley* in this case.

In *Halley*, Business Media Philippines, Inc. (BMPI) made several orders on credit from Printwell, Inc. (Printwell) involving the printing of business magazines, wrappers and subscription cards, in the total amount of ₱291,342.76. The said goods were delivered to and received by BMPI but it failed to pay its overdue account to Printwell as well as the interest thereon, at the rate of 20% *per annum* until fully paid. It was also during this time that defendant stockholders therein, which included Donnina C. Halley (Halley) (petitioner therein), were in charge of the operation of BMPI despite the fact that they were not able to

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[49] In general, the trust fund doctrine or principle has been applied to instances: (1) where the property of a corporation has been divided among its stockholders without paying creditors, (2) where an insolvent corporation has preferred a creditor, and (3) where it is sought to recover unpaid or partially paid subscriptions to capital stock. Edwin S. Hunt, *supra* note 36, at 69. Also, the trust fund doctrine usually applies in four cases: (a) where the corporation has distributed its capital among the stockholders without providing for the payment of creditors; (b) where it had released the subscribers to the capital stock from their subscriptions; (c) where it has transferred the corporate property in fraud of its creditors; and (d) where the corporation is insolvent. Cesar L. Villanueva, "The Trust Fund Doctrine Under Philippine Corporate Setting," Ateneo Law Journal, Vol. XXXI, 1987, p. 42.

[50] See Edwin S. Hunt, id. at 65.

[51] Id.

pay their unpaid subscriptions to BMPI, and yet greatly benefited from said transactions. On February 8, 1990, Printwell amended the complaint in order to implead as defendants all the original stockholders and incorporators to recover on their unpaid subscriptions. Printwell impleaded the petitioner therein and the other stockholders of BMPI for two reasons, namely: (a) to reach the unpaid subscriptions because it appeared that such subscriptions were the remaining visible assets of BMPI; and (b) to avoid multiplicity of suits. The defendants therein filed a consolidated answer, averring that they all had paid their subscriptions in full; that BMPI had a separate personality from those of its stockholders; that Rizalino C. Viñeza (one of the defendant stockholders) had assigned his fully paid up shares to a certain Gerardo R. Jacinto in 1989; and that the directors and stockholders of BMPI had resolved to dissolve BMPI during the annual meeting held on February 5, 1990.

The issues, which are relevant to this case, that Halley presented to the Court to resolve were: (a) the propriety of piercing of the thin veil of the corporate fiction, and (b) the application of the trust fund doctrine.

On the first issue, Halley argued that she should not be liable because she had no participation in the transaction between BMPI and Printwell; BMPI acted on its own; and she had no hand in persuading BMPI to renege on its obligation to pay.

The Court observing that corporate personality cannot be used to foster injustice ruled against Halley's submission, thus:

> Although a corporation has a personality separate and distinct from those of its stockholders, directors, or officers, such separate and distinct personality is merely a fiction created by law for the sake of convenience and to promote the ends of justice. The corporate personality may be disregarded, and the individuals composing the corporation will be treated as individuals, if the corporate entity is being used as a cloak or cover for fraud or illegality; as a justification for a wrong; as an alter ego, an adjunct, or a business conduit for the sole benefit of the stockholders. As a general rule, a corporation is looked upon as a legal entity, unless and until sufficient reason to the contrary appears. Thus, the courts always presume good faith, and for that reason accord prime importance to the separate personality

of the corporation, disregarding the corporate personality only after the wrongdoing is first clearly and convincingly established. It thus behooves the courts to be careful in assessing the milieu where the piercing of the corporate veil shall be done.

Although nowhere in Printwell's amended complaint or in the testimonies Printwell offered can it be read or inferred from that the petitioner was instrumental in persuading BMPI to renege on its obligation to pay; or that she induced Printwell to extend the credit accommodation by misrepresenting the solvency of BMPI to Printwell, her personal liability, together with that of her co-defendants, remained because the CA found her and the other defendant stockholders to be in charge of the operations of BMPI at the time the unpaid obligation was transacted and incurred, to wit:

> "In the case at bench, it is undisputed that BMPI made several orders on credit from appellee PRINTWELL involving the printing of business magazines, wrappers and subscription cards, in the total amount of ₱291,342.76 x x x which facts were never denied by appellants' stockholders that they owe(d) appellee the amount of ₱291,342.76. The said goods were delivered to and received by BMPI but it failed to pay its overdue account to appellee as well as the interest thereon, at the rate of 20% *per annum* until fully paid. It was also during this time that appellants stockholders were in charge of the operation of BMPI despite the fact that they were not able to pay their unpaid subscriptions to BMPI yet greatly benefited from said transactions. In view of the unpaid subscriptions, BMPI failed to pay appellee of its liability, hence appellee in order to protect its right can collect from the appellants stockholders regarding their unpaid subscriptions. To deny appellee from recovering from appellants would place appellee in a limbo on where to assert their right to collect from BMPI since the stockholders who are appellants herein are availing the defense of corporate fiction to evade payment of its obligations."

It follows, therefore, that whether or not the petitioner persuaded BMPI to renege on its obligations to pay, and whether or not she induced Printwell to transact with BMPI were not good defenses in the suit.[52] (Citations omitted)

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[52] *Halley v. Printwell, Inc.*, supra note 19, at 132-134.

Anent the second issue, Halley argued that the trust fund doctrine was inapplicable because she had already fully paid her subscriptions to the capital stock of BMPI. However, the Court affirmed the factual findings of the lower courts that she failed to discharge her burden to prove full payment of her subscriptions. On the trust fund doctrine, the Court stated:

> The *trust fund doctrine* enunciates a —
>
> "x x x rule that the property of a corporation is a trust fund for the payment of creditors, but such property can be called a trust fund 'only by way of analogy or metaphor.' As between the corporation itself and its creditors it is a simple debtor, and as between its creditors and stockholders its assets are in equity a fund for the payment of its debts."

The *trust fund doctrine*, first enunciated in the American case of *Wood v. Dummer*, was adopted in our jurisdiction in *Philippine Trust Co. v. Rivera*, where this Court declared that:

> "It is established doctrine that subscriptions to the capital of a corporation constitute a fund to which creditors have a right to look for satisfaction of their claims and that the assignee in insolvency can maintain an action upon any unpaid stock subscription in order to realize assets for the payment of its debts. (*Velasco vs. Poizat*, 37 Phil. 802) x x x"

We clarify that the *trust fund doctrine* is not limited to reaching the stockholder's unpaid subscriptions. The scope of the doctrine when the corporation is insolvent encompasses not only the capital stock, but also other property and assets generally regarded in equity as a trust fund for the payment of corporate debts. All assets and property belonging to the corporation held in trust for the benefit of creditors that were distributed or in the possession of the stockholders, regardless of full payment of their subscriptions, may be reached by the creditor in satisfaction of its claim.

Also, under the *trust fund doctrine*, a corporation has no legal capacity to release an original subscriber to its capital stock from the obligation of paying for his shares, in whole or in part, without a valuable consideration, or fraudulently, to the prejudice of creditors. The creditor is allowed to maintain an action upon any unpaid subscriptions and thereby steps into the shoes of the corporation for the satisfaction of its debt. **To make out a *prima facie* case in a suit**

against stockholders of an insolvent corporation to compel them to contribute to the payment of its debts by making good unpaid balances upon their subscriptions, it is only necessary to establish that the stockholders have not in good faith paid the par value of the stocks of the corporation.[53] (Emphasis supplied; citations omitted)

Based on the Court's above pronouncements, *Halley* recognized two instances when the creditor is allowed to maintain an action upon any unpaid subscriptions based on the trust fund doctrine: (1) where the debtor corporation released the subscriber to its capital stock from the obligation of paying for their shares, in whole or in part, without a valuable consideration, or fraudulently, to the prejudice of creditors; and (2) where the debtor corporation is insolvent or has been dissolved without providing for the payment of its creditors.

The crucial fact in *Halley* which justified the application of the trust fund doctrine is that after the filing of the original complaint, the directors and stockholders of BMPI had resolved to dissolve BMPI during the annual meeting held on February 5, 1990. This move to dissolve BMPI triggered the amendment of Printwell's complaint on February 8, 1990 in order to implead as defendants all the original stockholders and incorporators to recover their unpaid subscriptions. The move to dissolve BMPI was viewed by the Court as a clear attempt by the directors and stockholders to escape BMPI's liability to Printwell. And, as it turned out, the subscriptions, while appearing on the books of the corporation as fully paid, were in fact not paid. These circumstances thus justified the Court's piercing of BMPI's corporate veil where the corporate personality may be disregarded if the corporate entity is being used as a cloak or cover for fraud. While good faith is always presumed and prime importance is accorded to the separate personality of the corporation as an alter ego, an adjunct, or a business conduit for the sole benefit of stockholders, the corporate personality can be disregarded only after the wrongdoing is first clearly and convincingly established.[54]

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[53] Id. at 134-136.

[54] See id. at 132.

Clearly, the first instance finds no relevance in the present case. It is the second which SBMA, as creditor, may invoke to collect from CAIR's stockholders for their unpaid subscriptions and apply the same to CAIR's unpaid rentals. But, as stressed in *Halley*: "To make out a *prima facie* case in a suit against stockholders of an insolvent corporation to compel them to contribute to the payment of its debts by making good unpaid balances upon their subscriptions, it is only necessary to establish that the stockholders have not in good faith paid the par value of the stocks of the corporation."[55]

Unfortunately, SBMA has not even pleaded either insolvency of CAIR or its dissolution. What is evident in SBMA's complaint is that it is a simple collection suit, to wit:

> 10. Despite the clear language of the Lease Agreement, however, Defendant Corporation has been consistently remiss in paying its lease rentals and airport fees as it failed to pay numerous monthly rentals and airport fees at the specified time each month, despite repeated demands for its compliance.
>
> x x x x
>
> 15. Despite the above demands and notices, Defendant Corporation still failed to heed the same. x x x
>
> x x x x
>
> 19. Despite several demands on Plaintiff's part for Defendant Corporation to fully settle its outstanding accounts, the latter has utterly failed and/or refused to pay the same. x x x
>
> x x x x
>
> 21. Equally important to stress is the fact that the foregoing antecedents would only prove Defendant Corporation's continuous and unfair disregard of its contractual obligations to pay the amounts due the Plaintiff under the Lease Agreement, to Plaintiff's extreme damage and prejudice.
>
> 22. By reason of its continued refusal to settle the above said amounts, Defendants should therefore be adjudged liable to pay the

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[55] Id. at 136.

amount of **US$163,641.89** (US$143,269.76 + US$20,372.13), plus legal interest until it has effected full payment of the said amounts.[56]

As to petitioners, the only allegation of the complaint is:

4. Defendants [who are individually named with their respective addresses] are impleaded herein being the incorporators/stockholders of [CAIR], and are liable to the payment of the Defendant Corporation's unpaid obligations, incurred damages and other amounts to be adjudged by this Honorable Court, to the extent of their unpaid subscribed capital stock as follows:

x x x x[57]

Not only were the allegations of SBMA's complaint insufficient to justify the invocation and application of the trust fund doctrine as appreciated in *Halley*, even the evidence adduced by SBMA was solely to prove the uncollected rentals. SBMA presented two witnesses, Editha Lim-Marzal (Editha) and Kenneth Lemuel G. Rementilla (Kenneth). Editha, the Division Chief of the Accounting Department, Account Receivables of SBMA, testified in the main that: as per records, CAIR was consistently remiss in paying its lease rentals and airport fees; demand letters were sent to CAIR, which fell on deaf ears; and according to the Summary of Outstanding Account, the obligation incurred by CAIR amounted to US$212,135.55 or ₱10,171,899.60 as of March 28, 2007.[58] Kenneth, the Manager of the Locator's Registration and Licensing Department of SBMA, testified that: he was familiar with CAIR; it underwent the usual process of registration to become a free port enterprise and complied with all the documentary requirements to prove its existence as a business enterprise, such as its Articles of Incorporation (AOI) duly registered with the Securities and Exchange Commission; he was not notified of any changes or amendments in the AOI with respect to the names of the incorporators; and SBMA

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[56] Records, Vol. 1, pp. 4-7.

[57] Id. at 2.

[58] Id. at 33-34.

and CAIR entered into a Lease Agreement on February 3, 1999 but was pre-terminated on January 14, 2004 due to CAIR's failure to settle its account.[59]

In short, SBMA failed to either allege or prove any of the two grounds recognized in *Halley* when the trust fund doctrine may be applied to compel the stockholders to contribute to the payment of CAIR' s debts by compelling them to pay the unpaid balances upon their subscriptions.

The CA indeed misapplied *Halley* in this case. The CA miserably failed to identify the salient facts of the case constituting the specific ground to justify the application of the trust fund doctrine. The CA relied on *Halley* without showing, either in the pleadings or in the evidence, how its ratio could be applied.

Given the failure of SBMA to make a case for the application of the trust fund doctrine against petitioners, the Court will not provide the basis for the former.

With the Court's finding that the CA erred in applying the trust fund doctrine to make the stockholders liable to SBMA for their unpaid subscriptions to the extent of CAIR unpaid obligations to SBMA, and without any evidence to controvert the total amount of US$163,341.89, plus legal interest, adjudged by the lower courts in favor of SBMA, only CAIR should be solely liable therefor. The third-party complaint filed by petitioners against Alvarez should also be dismissed with the award of damages in favor of petitioners vacated. With the dismissal of the third-party complaint, the resolution of the second issue is rendered superfluous.

As a final note, the Court quotes Judge Clark in *Barr & Creelman Mill & Plumbing Supply Co. v. Zoller*,[60]

> The well-publicized criticisms of the trust fund doctrine are appreciated in New York, for the Court of Appeals has said recently

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[59] Id. at 35-36.

[60] 109 F.2d 924 (2d Cir. 1940).

in Reif v. Equitable Life Assurance Society, 268 N.Y. 269, 276, 197 N.E. 278, 280, 100 A.L.R. 55: "First declared by Justice Story (Wood v. Dummer (1824), Fed.Cas.No. 17,994, 3 Mason 308, 311), this 'trust fund doctrine' has been the subject of much adverse commentary and has often been repudiated as a fiction unsound in principle and vexing in business practice. See 5 Pomeroy's Equity Jurisprudence (4th Ed.) §§ 2319, 2320, 2130, collating the authorities. We do not stop now to canvass the limits of such a theory. It is enough that the facts of the present case so we hold do not call for application of the doctrine." x x x[61]

WHEREFORE, the Petition is partly **GRANTED**. The Decision dated September 21, 2015 and Resolution dated March 3, 2016 of the Court of Appeals in CA-G.R. CV No. 103619 are **REVERSED** and **SET ASIDE**. A new judgment is hereby rendered in Civil Case No. 190-0-2004 before the Regional Trial Court of Olongapo City, Branch 72, **ORDERING** defendant corporation Centennial Air, Inc. solely liable to pay plaintiff Subic Bay Metropolitan Authority the total amount of US$163,341.89, plus legal interest at 6% *per annum* from January 14, 2004[62] until fully paid, and **DISMISSING** the case against defendant Roberto Lozada and the Third-Party Complaint for lack of merit.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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[61] Id. at 927.

[62] Date of final demand letter, Annex "I" of the Complaint. Records, Vol. 1, p. 53.

FIRST DIVISION

[G.R. No. 226409. November 10, 2020]

RINGO B. DAYOWAN TRANSPORT SERVICES OR RINGO B. DAYOWAN, *Petitioner*, *v.* **DIONITO D. GUARINO, JR.,** *Respondent*.

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; RESIGNATION.— For the resignation of an employee to be a viable defense in an action for illegal dismissal, an employer must prove that the resignation was voluntary, and its evidence thereon must be clear, positive, and convincing. The employer cannot rely on the weakness of the employee's evidence.

APPEARANCES OF COUNSEL

Rogelio B. Guinid for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

CARANDANG, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[2] dated March 31, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 141585, which reversed and set aside the Decision[3] dated April 14, 2015 and the Resolution[4] dated

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[1] *Rollo*, pp. 10-21.

[2] Penned by Associate Justice Amy C. Lazaro-Javier (now a Member of this Court), with the concurrence of Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang; *id.* at 55-72.

[3] Penned by Presiding Commissioner Gerardo C. Nograles, with the concurrence of Commissioner Romeo L. Go; *id.* at 46-51.

[4] Id. at 52-54.

June 5, 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 02-000288-15.

Facts of the Case

Dionito D. Guarino (Dionito) was employed as a jeepney driver by Ringo B. Dayowan (Ringo), doing business under the name of Ringo B. Dayowan Transport Services. Compensated on boundary basis, Dionito was required to drive Ringo's jeepney five times a week on a ten to twelve-hour schedule. Dionito earned around ₱600.00 to ₱800.00 per day. Since the start of his employment on July 9, 2009, Dionito was required to deposit to Ringo ₱20.00 per day for his Social Security System (SSS) contribution. Sometime in March 2014, Dionito discovered that Ringo was not remitting his daily deposit to the SSS. On March 5, 2014, Dionito confronted Ringo about it. Ringo then told Dionito: "*Kung ayaw mo ng patakaran dito, wag ka na bumiyahe*."[5] The following day, Dionito reported to work. However, Ringo informed him that he is no longer allowed to drive the jeepney. Ringo also asked Dionito to sign a resignation letter. Dionito refused and insisted that he still wants to continue working.[6]

Ringo claims that Dionito voluntarily quit his job. To show that Dionito's allegation is baseless, Ringo submitted in evidence SSS receipts[7] proving that the SSS contributions of Dionito and of all seven other drivers were duly remitted. According to Ringo, Dionito surrendered the jeepney with plate number PKN 375 and its keys on March 4, 2014 because he did not like the imposed increase on the boundary rate. Ringo asked Dionito to make a resignation letter but Dionito refused, saying that a resignation letter is unnecessary. Then, Ringo asked Dionito how would he pay for his unremitted boundary and cash advances in the total amount of ₱19,500.00 reflected in the PUJ Daily Logbook for PUJ PKN 375.[8] Dionito told Ringo to just consider the amount as financial assistance. Insulted, Ringo immediately

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[5] Id. at 33.

[6] Id.

[7] CA *rollo*, pp. 47-81.

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

sought the assistance of the barangay.[9] His "*Sumbong*"[10] dated March 5, 2014 before the Tanggapan ng Punong Barangay states:

Nagpunta po ako dito sa barangay para humingi ng tulong tungkol po sa aking drayber na si Dionito Guarino Jr. dahil hindi po siya nagbibigay ng tama o saktong boundary ng jeep. Kinausap ko na po siya kasama ang kanyang asawa tungkol sa boundary at sila ay pumayag, pero noong nag boundary siya ay kulang parin. Muli ko siyang kinausap at ang sagot niya ay aalis nalang daw siya o mag resign. At noong pagawain ko siya ng salaysay ay ayaw niyang gumawa. Pinapapirma ko po siya ng resignation letter ay ayaw din niya. Hindi po malinaw sa akin kung siya ay magre-resign o hindi kaya po ako nandito sa Barangay Hall 175.[11]

On March 12, 2014 and in the presence of Punong Barangay Ruben Dela Cruz, a "*Kasunduang Pag-Aayos*"[12] was signed by Ringo and Dionito:

Ang magkabilang panig ay nagkasundo na ang dyep na minamaneho ng ipinagsumbong [Dionito] ay ipapalabas na sa ibang driver dahil hindi niya kaya ang taas ng boundary. Ang paglagda ng bawat panig ay hudyat ng kanilang pagkakasundo sa araw na ito.[13]

On April 11, 2014, Dionito filed a Complaint[14] for illegal dismissal against Ringo. Dionito prayed for reinstatement, payment of backwages and other benefits, as well as moral and exemplary damages.[15]

Ruling of the Labor Arbiter

The Labor Arbiter (LA) dismissed Dionito's complaint for illegal dismissal. In its Decision[16] dated October 30, 2014, the

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[9] Id. at 39-40.

[10] CA *rollo*, p. 34.

[11] Id.

[12] Id. at 36.

[13] Id.

[14] Id. at 20.

[15] Id.

[16] Penned by Labor Arbiter Marita V. Padolina; *rollo*, pp. 37-45.

LA found that there is no termination or dismissal because Dionito voluntarily resigned when he refused to pay the ₱20.00 increase in the boundary rate per day. This finding is supported by the "*Sumbong*" and the "*Kasunduang Pag-aayos*" executed before the barangay officials who are presumed to be in the regular performance of official duties. Proceedings at the barangay level also includes conciliation, with the aim of letting the parties settle amicably. As such, the LA stated that Dionito cannot claim that he did not understand the said proceedings. The LA further noted that Dionito's allegation of non-remittance of SSS contributions was refuted when Ringo submitted copies of receipts issued by SSS. Lastly, the LA denied Dionito's claim for moral and exemplary damages because of failure to provide evidence of bad faith, fraud, violence, or intimidation on the part of Ringo.[17]

Ruling of the National Labor Relations Commission

On appeal, the NLRC affirmed the Decision of the LA dismissing Dionito's complaint for illegal dismissal. The NLRC agreed with the LA that there was no dismissal or termination of employment in the case at bar. In its Decision[18] dated April 14, 2015, the NLRC explained that it is clear that a misunderstanding existed between Dionito and Ringo because of the increase in the boundary rate. The NLRC found that the increase in the boundary rate is a valid exercise of management prerogative. Dionito's claim that he did not resign is immaterial because during the barangay proceedings, he manifested his intention to relinquish his employment because he could not afford the additional boundary. Furthermore, the tenor of the "*Sumbong*" also shows that Dionito did not remit the correct boundary and when he was reminded about it, he refused to pay and said that he would just resign. Dionito, however, refused to give nor sign any resignation letter. The NLRC ruled that it would be unfair if Ringo would be left in a limbo on whether Dionito would report to work or not, and whether he should

[17] Id. at 41-45.

[18] Supra note 3.

assign the jeepney to another driver. These matters, if left unclear, will be detrimental to the daily operations of Ringo's business. Moreover, Ringo's words "*kung ayaw mo ng patakaran dito, 'wag ka na bumiyahe, umalis ka na lang*"[19] cannot be interpreted as an outright dismissal. It only implies that Dionito was given options: (a) to comply with the policy of remitting additional ₱20.00 boundary or; (b) to resign. To interpret Ringo's statement as terminating Dionito's employment will result in cuddling an employee who does not want to comply with the valid company policy but who at the same time does not want to resign simply because he needs a job.[20]

Ruling of the Court of Appeals

Dionito filed a Petition for *Certiorari*[21] before the CA. In its Decision[22] dated March 31, 2016, the CA found that Dionito had been illegally dismissed. The following circumstances show that Dionito never really intended to relinquish his employment: (1) Dionito still reported back for work the day after he was told "*kung ayaw mo ng patakaran dito, "wag ka na bumiyahe, umalis ka na lang."*";[23] (2) Dionito refused to sign the resignation letter and pleaded that he be allowed to continue driving; and (3) Dionito was only compelled to submit a resignation letter during the barangay proceeding.[24] Ringo, as an employer, failed to prove that Dionito was dismissed for a just or valid cause and that the employee was afforded procedural due process. The CA found that the record is devoid of proof that Dionito was given the requisite notices before his employment was terminated. The CA ordered Ringo to pay Dionito backwages and separation pay in lieu of reinstatement. According to the CA, there was bad faith on the part of Ringo when he dismissed

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[19] *Rollo*, p. 50.

[20] Id. at 49-50.

[21] CA *rollo*, pp. 2-15.

[22] Supra note 2.

[23] *Rollo*, p. 66.

[24] Id.

Dionito from employment when he inquired about his SSS contribution. Hence, the CA awarded moral damages in the amount of ₱50,000.00 in favor of Dionito.[25]

Ringo assails the CA ruling through the present Petition for Review on *Certiorari*. Ringo avers that Dionito's overt acts show that he voluntarily discontinued his work as jeepney driver due to his dislike of the increase in the daily boundary rate. He further claims that Dionito filed the baseless illegal dismissal complaint in order to avoid payment of his unsettled debt.[26]

Meanwhile, in his Comment[27] filed before this Court, Dionito maintains that he was illegally dismissed because he never really intended to relinquish his employment. *First*, he reported back to work after he was told to resign. *Second*, he refused to sign or execute a resignation letter. *Third*, he immediately filed a complaint for illegal dismissal. *Lastly*, Dionito claims that he did not understand the "*Kasunduang Pag-Aayos*" he was made to sign.[28]

Ruling of the Court

For the resignation of an employee to be a viable defense in an action for illegal dismissal, an employer must prove that the resignation was voluntary, and its evidence thereon must be clear, positive, and convincing. The employer cannot rely on the weakness of the employee's evidence.[29]

In this case, Ringo, as an employer, was able to present sufficient evidence to establish that Dionito resigned as Ringo's jeepney driver. As borne out by the "*Sumbong*"[30] and the "*Kasunduang Pag-aayos*,"[31] Dionito did not want to comply

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[25] Id. at 67-70.

[26] Id. at 16-18.

[27] Id. at 118-131.

[28] Id. at 125-128.

[29] *D.M. Consunji Corp. v. Bello*, 715 Phil. 335, 347 (2013).

[30] Supra note 10.

[31] Supra note 12.

with the increased boundary rate imposed by Ringo. Both the "*Sumbong*" and the "*Kasunduang Pag-aayos*" are plainly worded and written in simple language, which a person of ordinary intelligence can discern the consequences thereof. The NLRC correctly found that the "*Kasunduang Pag-aayos*" is clear in its tenor and the parties' intention does not require different interpretation.[32] Hence, Dionito's claim that he did not understand the "*Kasunduang Pag-aayos*" is not to be believed.

It is also of no contention that the imposed increase in boundary rate is Ringo's exercise of management prerogative. Records fail to show any reason why Dionito should not abide by this employer's right to control and manage his enterprise effectively, especially when it is reasonable and exercised in good faith.[33]

By returning the jeepney and its keys, coupled with his non-payment of the adjusted boundary rate, Dionito has opted to leave rather than stay employed where he believes that personal reasons cannot be sacrificed for the favor of employment.[34] Indeed, Dionito has resigned from employment. Resignation — the formal renunciation or relinquishment of a position or office — is the voluntary act of an employee compelled by personal reason(s) to dissociate himself from employment.[35] Like in this case of Dionito, resignation was done with the intention of relinquishing an office, accompanied by the act of manifesting this intent.[36]

Furthermore, no substantial evidence was presented to show that Dionito was dismissed or was prevented from returning to work. The fact that Dionito filed a Complaint[37] for illegal

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[32] *Rollo*, p. 53.

[33] *Endico v. Quantum Foods Distribution Center*, 597 Phil. 295, 305-306 (2009).

[34] *Chiang Kai Shek College v. Torres*, 731 Phil. 177, 186 (2014).

[35] *San Miguel Properties Phils., Inc. v. Gucaban*, 669 Phil. 288, 297 (2011).

[36] *Fortuny Garments/Johnny Co. v. Castro*, 514 Phil. 317, 323 (2005).

[37] Supra note 14.

dismissal is not by itself sufficient indicator that he had no intention of deserting his employment since the totality of his acts — surrendering the jeepney and its keys to his employer[38] — palpably display the contrary. The substantial evidence proffered by the employer that he had not, in the first place, terminated the employee, should not simply be ignored on the pretext that the employee would not have filed the complaint for illegal dismissal if he had not really been dismissed.[39] Absent any showing of an overt or positive act proving that Ringo had dismissed Dionito from employment, the latter's self-serving claim of illegal dismissal cannot be sustained.

WHEREFORE, the Decision dated March 31, 2016 and the Resolution dated August 15, 2016 of the Court of Appeals in CA-G.R. SP No. 141585 are **REVERSED** and **SET ASIDE**. The Decision dated April 14, 2015 of the National Labor Relations Commission affirming the Decision dated October 30, 2014 of the Labor Arbiter is **REINSTATED**.

SO ORDERED.

Peralta, C.J., Caguioa, Zalameda, and *Gaerlan, JJ.*, concur.

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[38] *Rollo*, p. 59.

[39] *Abad v. Roselle Cinema*, 520 Phil. 135, 146 (2006).

FIRST DIVISION

[G.R. No. 229070. November 10, 2020]

EUFEMIA ABAD and SPS. FLORDELIZA ABAD-CEZAR and POLLIE CEZAR[*] who are Heirs of ENRIQUE ABAD, *Petitioners, v.* **HEIRS OF JOSE EUSEBIO ABAD GALLARDO namely: DOLORES LOLITA J. GALLARDO, JOCELYN A. GALLARDO, JUDITH A. GALLARDO and JONAH GALLARDO, all represented by DOLORES LOLITA J. GALLARDO and JONAH GALLARDO,** *Respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT ON THE PLEADINGS; A JUDGMENT ON THE PLEADINGS IS NOT PROPER WHEN THE ANSWER TENDERS FACTUAL ISSUES.— If factual issues are tendered by the answer, then judgment on the pleadings is not proper.

. . .

Regarding judgment on the pleadings, the Court in *Asian Construction and Development Corporation v. Sannaedle Co. Ltd.* stated: . . .

. . .

Judgment on the pleadings is proper when an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleadings. An answer fails to tender an issue if it does not comply with the requirements of a specific denial as set out in Sections 8 and 10, Rule 8 of the 1997 Rules of Civil Procedure, resulting in the admission of the material allegations of the adverse party's pleadings.

2. ID.; ID.; JUDGMENTS; *RES JUDICATA*, REQUISITES OF; A JUDGMENT RENDERED BY A COURT HAVING JURISDICTION HAS THE EFFECT OF *RES JUDICATA* OR BAR BY PRIOR JUDGMENT AND CONCLUSIVENESS

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[*] Also "Paulino A. Cezar" and "Paullie Cezar" in some parts of the records.

OF JUDGMENT.— The judgment or final order rendered by a Philippine court or judge, having jurisdiction to render the judgment or order, has the effect of *res judicata* or bar by prior judgment and conclusiveness of judgment. Paragraph (a) of Section 47[,] [Rule 39 of the Rules of Civil Procedure] is the rule on *res judicata* in judgments *in rem*; paragraph (b) is the rule on *res judicata* in judgments *in personam*; and paragraph (c) is the rule on conclusiveness of judgments.

In *Bardillon v. Barangay Masili of Calamba, Laguna*, the Court observed:

Res judicata literally means a matter adjudged, judicially acted upon or decided, or settled by judgment. It provides that 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.

The following are the requisites of *res judicata*: (1) the former judgment must be final; (2) the court that rendered it had jurisdiction over the subject matter and the parties; (3) it is a judgment on the merits; and (4) there is — between the first and the second actions — an identity of parties, subject matter and cause of action.

3. ID.; 2019 PROPOSED AMENDMENTS TO THE 1997 RULES OF CIVIL PROCEDURE; THE 2019 AMENDMENTS SHALL GOVERN ALL CASES FILED AFTER THEIR EFFECTIVITY AND ON PENDING PROCEEDINGS, EXCEPT TO THE EXTENT THAT THE APPLICATION WOULD NOT BE FEASIBLE OR WOULD WORK INJUSTICE.— Under the 2019 [Proposed] Amendments [to the 1997 Rules of Civil Procedure], the present appeal to the Court is not sanctioned because it is clear under Section 2, Rule 34, which is new, that any action of the court on a motion for judgment on the pleadings shall not be subject of an appeal. Rule 144 of the 2019 Amendments provides that the 2019 Amendments shall govern all cases filed after their effectivity on May 1, 2020, and also all pending proceedings, except to the extent that in the opinion of the court, their application would not be feasible or would work injustice, in which case the procedure under which the cases were filed shall govern.

Since the application of the 2019 Amendments would work injustice in the present case, they will not be applied.

4. ID.; CIVIL PROCEDURE; MANNER OF MAKING ALLEGATIONS IN PLEADINGS; SPECIFIC DENIAL; THE REQUIREMENT TO SPECIFICALLY DENY UNDER OATH THE GENUINENESS AND AUTHENTICITY OF THE DOCUMENTS ADVERTED TO DOES NOT APPLY WHEN THE ADVERSE PARTY DOES NOT APPEAR TO BE A PARTY TO THE INSTRUMENT.— In the Comment of respondents, they argue for the denial of the Petition on the ground that their complaint contained allegations "of several documents . . .

. . .

[which in petitioners' answer], they did not specifically deny under oath any of these documents' genuineness and authenticity. x x x Thus, [t]he answer would fail to tender an issue x x x, if it does not comply with the requirements for a specific denial set out in Section 10 (or Section 8) of Rule 8; and it would admit the material allegations of the adverse party's pleadings not only where it expressly confesses the truthfulness thereof but also if it omits to deal with them at all."

In determining whether the answer tenders an issue or otherwise admits the allegations of the complaint, the denials contained in the answer must be scrutinized in the light of the pertinent Sections of Rule 8 of the Rules . . . .

. . .

Respondents are mistaken in their contention that petitioners needed to specifically deny under oath the genuineness and authenticity of the documents that they adverted to, otherwise petitioners would be deemed to have admitted the same. Section 8 of Rule 8 expressly states that "the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument."

. . .

. . . [I]n this case, the Amicable Settlement and Deed of Partition was executed by petitioners' father (Enrique), aunt (Isabel) and uncle (Dionisio). The *Kasunduan* was only between

one of the plaintiffs and one of the defendants, the other parties not being privies thereto. The Court notes that the Deed of Donation (Annex "I" of the complaint) wherein Isabel donated the subject lot to Jose Eusebio did not at all involve petitioners or their predecessor-in-interest, Enrique.

Clearly, Section 8 does not apply and respondents have to introduce evidence to establish that said documents are genuine and that they were truly executed by the parties thereto. With those allegations in the complaint having been denied, the answer tenders factual issues. Thus, the RTC's grant of respondents' motion for judgment on the pleadings may not be upheld because the judgment on the pleadings rendered by the RTC is not proper.

5. ID.; RULES OF PROCEDURE; PROCEDURAL RULES SHOULD BE LIBERALLY CONSTRUED FOR JUSTICE IS BEST SERVED WITH A JUDGMENT BASED ON A TRIAL ON THE MERITS AND NOT ON TECHNICALITIES.— [J]ustice is best served with a judgment based on a trial on the merits and not on technicalities, *viz.*:

It bears repeating that rules of procedure should be liberally construed to the end that substantial justice may be served. As stated in *Pongasi v. Court of Appeals* (71 SCRA 614):

"We repeat what We said in *Obut v. Court of Appeals, et al., supra*, that 'what should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or *property* on technicalities.'

"In dispensing justice Our action must reflect a deep insight into the failings of human nature, a capability for making allowances for human error and/or negligence, and the ability to maintain the scales of justice happily well-balanced between these virtues and the application of the law."

APPEARANCES OF COUNSEL

The Law Offices of Vallejo Vallejo Vallejo Vallejo-Dela Cruz & Dela Cruz for petitioners.

Freniza Joy D. Cacatian-Barangan for respondents.

RESOLUTION

CAGUIOA, *J.*:

Before the Court is a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court (Rules) filed by petitioners, assailing the Resolutions dated September 27, 2016[2] and December 9, 2016[3] of the Regional Trial Court (RTC) of Santiago City, Branch 36[4] in Civil Case No. 36-4014. The RTC Resolution rendered a judgment on the pleadings in favor of respondents.

The case involves a parcel of land, Lot 5826-B (subject lot), consisting of 5,000 square meters situated in Capiddigan, Cordon, Isabela, which is a portion of a bigger parcel of land with an area of 22,618 square meters covered by Original Certificate of Title No. (OCT) P-2769 registered in the names of Spouses Miguel Abad and Agueda de Leon (Sps. Miguel and Agueda). Subsequently, OCT P-2769 was cancelled and Transfer Certificate of Title No. (TCT) T-131684 was issued in the name of Enrique Abad (Enrique).[5]

In their complaint (for specific performance, surrender of title, redemption and consignation with damages), the Heirs of Jose Eusebio Abad Gallardo, namely: Dolores Lolita Gallardo, Jocelyn Gallardo, Judith Gallardo and Jonah Gallardo (respondents or Heirs of Jose Eusebio) averred that upon the death of Sps. Miguel and Agueda, the land covered by OCT P-2769 was inherited by their three children Dionisio, Isabel[6] and Enrique. They all took possession of the land as co-owners.[7]

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[1] *Rollo*, pp. 3 to 25-A, excluding Annexes.

[2] Id. at 56-66. Penned by Presiding Judge Anastacio D. Anghad.

[3] Id. at 103-115.

[4] For brevity, RTC Branch 36 is referred to as RTC.

[5] *Rollo*, pp. 56-57.

[6] Referred to as "Isabel Abad" and "Isabel Abad Gallardo" in some parts of the *rollo*.

[7] *Rollo*, p. 57.

On January 15, 1988, said land became the subject of Civil Case No. 0591 filed before the RTC Branch 21 in Santiago City entitled *Dionisio Abad and Isabel Abad v. Enrique Abad* for annulment of deed and TCT T-131684 with damages. Dionisio and Isabel alleged that an Extrajudicial Settlement and Waiver of Rights was executed, adjudicating the land to Enrique, and by virtue thereof, OCT P-2769 was cancelled and TCT T-131684 was issued in Enrique's name.[8]

On May 17, 1988, Enrique manifested before RTC Branch 21 that he had entered into a compromise agreement with his siblings Dionisio and Isabel. Said court gave Enrique a period to file his answer, pending the approval of the compromise agreement. Since no answer was received from Enrique within the period granted, said court concluded that a compromise agreement was forged among the parties and dismissed Civil Case No. 0591[9] on December 27, 1988. However, on February 3, 1989, said case was reinstated upon motion for reconsideration filed by Dionisio and Isabel on the ground that there had yet been no compromise agreement.[10]

On August 25, 1989, Civil Case No. 0591 was finally dismissed on the manifestation of Dionisio and Isabel that a compromise agreement had been forged between them and Enrique. A deed of partition was notarized and executed whereby said land was divided as follows:

1. Share of Dionisio: that western portion of 7,500 square meters, more or less, to be segregated from the western portion of Lot No. 5826 of the Santiago Cadastre;
2. Share of Isabel: that middle portion of 5,000 square meters, more or less, to be segregated from the middle portion of Lot No. 5826 of the Santiago Cadastre;

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[8] Id.

[9] Also appears as "Civil Case No. XXI-0591" in some parts of the *rollo*.

[10] *Rollo*, pp. 57-58.

3. Share of Enrique: that eastern portion of 10,000[11] square meters, more or less, to be segregated from the eastern portion of Lot No. 5826 of the Santiago Cadastre.[12]

The said portions were never actually segregated nor partitioned, leaving intact TCT T-131684 registered in Enrique's name. But, on May 15, 2003, an approved subdivision plan reflecting the partition agreement identified the 5,000 square meters portion as Lot 5826-B (subject lot).[13]

On July 4, 2004, Isabel died leaving Lot 5826-B to his son Jose Eusebio Abad Gallardo (Jose Eusebio), married to Dolores Lolita Gallardo (Dolores Lolita), by virtue of a Deed of Donation earlier executed by Isabel in favor of Jose Eusebio.[14] The subject lot was tenanted by Furtunato Abad, who on April 30, 2008, relinquished tenancy over the same in exchange of ₱50,000.00. On the same date, Dolores Lolita, then widowed, obtained a ₱75,000.00 loan from Eufemia Abad (Eufemia), which was secured by Lot 5826-B or the subject lot. Said transaction was evidenced by a *Kasunduan* dated April 30, 2008.[15] On November 15, 2015, Jonah Gallardo, one of respondents/Heirs of Jose Eusebio, caused the recording of a blotter at the Philippine National Police, Cordon Police Station stating that his uncle, Pollie Cezar, entered and cultivated the subject lot.[16]

The complaint further alleged that: Eufemia, an heir of Enrique, was in possession of TCT T-131684; out of the ₱75,000.00 loan obtained by Dolores Lolita from Eufemia, ₱25,000.00 was

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[11] Per the RTC Resolution, *id*. at 58. However, it is stated as 10,110 in the Complaint, *id*. at 28.

[12] *Id*. at 58. The Court notes that the total of the segregated portions is only 22,500 square meters per the RTC Resolution or 22,610 square meters based on the Complaint, but the total area of the land covered by OCT P-2769 is 22,618 square meters.

[13] Id.

[14] See id. at 28.

[15] See id. at 29.

[16] Id. at 59.

incurred for the payment of the processing fee for the segregation of the title of the subject lot; Eufemia processed the segregation of the respective titles; upon demand, Eufemia refused to give the title of the subject lot unless the loan was paid; sometime in February 2015, Eufemia refused to receive the payment of the loan and demanded instead ₱350,000.00, and would return only one-fourth of the subject lot; Spouses Larry and Evelyn Gallardo claimed the subject lot; and Spouses Flordeliza Abad Cezar and Pollie Cezar continuously disturbed the peaceful possession and control of the possession of the Heirs of Jose Eusebio over the subject lot.[17]

In the answer submitted by the Heirs of Enrique (petitioners) dated January 15, 2016, they admitted that TCT T-131684 was registered in the name of Enrique and averred that the subject lot is exclusively owned by them through hereditary succession. They denied the rest of the allegations in the complaint for want of knowledge sufficient to form a belief with respect to the truth or falsity thereof. As to Spouses Larry and Evelyn Abad, they also averred that no cause of action was alleged against the former because they are not heirs of Enrique.[18]

On January 26, 2016, respondents filed a motion for judgment on the pleadings, which was heard by the RTC on March 1, 2016. In the hearing, the counsel for petitioners interposed no opposition to the motion. Thereafter, the parties submitted their respective memoranda.[19]

In its September 27, 2016 Resolution,[20] the RTC found that judgment on the pleadings was proper and *res judicata* attached in the present case in view of the proceedings in the earlier Civil Case No. 0591, which the RTC took judicial notice of.[21] The dispositive portion of the RTC Resolution states:

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[17] Id. at 59-60.

[18] Id. at 60.

[19] Id. at 60-61.

[20] Supra note 2.

[21] Id. at 62-64.

WHEREFORE, from the foregoing Judgment on the Pleadings is hereby rendered in favor of the plaintiffs [(respondents)] and against the defendants [(petitioners)]. Accordingly, this Court is hereby

1) ORDERING the defendant Heirs of Enrique Abad and Eufemia Abad and Sps. Flordeliza Abad Cezar and Pollie Cezar, to comply with the Deed of Partition and approved subdivision plan Psd-(af)-02-024846 as well as to honor the Deed of Donation executed by Isabel Abad in favour of Jose Eusebio Abad Gallardo;

2) ORDERING the defendant Eufemia Abad to Surrender the title of the plaintiffs Heirs of Jose Eusebio Abad Gallardo over Lot No. 5826-B consisting of 5,000 square meters OR, in the alternative, TO SURRENDER the mother title Transfer Certificate of Title N[o]. T-131684 of the Registry of Deeds of Santiago City and ORDER the latter to issue the title to the plaintiffs;

3) ORDERING ALL THE DEFENDANTS to cease and desist from all acts of threatening the peaceful possession, occupation, and cultivation of the plaintiffs over the subject lot;

4) ORDERING the defendant EUFEMIA ABAD to accept the payment of the plaintiff Dolores Lolita Gallardo deposited in Court thru consignation in the amount of ₱75,000.00 and declare the plaintiffs to have legally redeemed the subject property;

5) ORDERING THE DEFENDANTS to pay ₱30,000.00 as Attorney's fees, and ₱2,500.00 per appearance fee, and costs of litigation.

SO ORDERED.[22]

Petitioners filed a motion for reconsideration, which was denied by the RTC in its Resolution[23] dated December 9, 2016.

Hence, the present Petition. Respondents filed a Comment[24] dated June 28, 2017 to which petitioners filed a Reply[25] dated November 12, 2017.

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[22] Id. at 65-66.

[23] Supra note 3.

[24] Id. at 85-93.

[25] Id. at 121-132.

The Court's Ruling

In the main, petitioners argue that the RTC erred in granting respondents' motion for judgment on the pleadings because the answer raised the genuine issue of the exclusive ownership of the subject lot, which they claim as theirs by virtue of TCT T-131684 which is registered in the name of Enrique, their predecessor-in-interest.[26] They also contend that: the answer had numerous specific denials on respondents' causes of action;[27] the due execution, genuineness and authenticity of the Deed of Donation, which Isabel executed and attached to the complaint as Annex "I," and the Deed of Partition, which was executed by Dionisio, Isabel and Enrique pursuant to the amicable settlement dated May 17, 1988 that they entered into relative to Civil Case No. 0591 and attached to the complaint as Annex "L," needed to be proved to be given any legal effect; and they never were privies to such documents.[28] Furthermore, petitioners claim that the RTC erred in its application of *res judicata* or "bar by prior judgment" because there was no final decision on the merits in Civil Case No. 0591, the amicable settlement not having been submitted to the court (RTC Branch 21).[29]

The Petition is meritorious.

The Court will no longer discuss respondents' objection to petitioners' direct recourse to the Court since the determination of the propriety of the RTC's resolution of respondents' motion for judgment on the pleadings basically involves legal questions. If factual issues are tendered by the answer, then judgment on the pleadings is not proper.

The RTC resolved the issue on the propriety of judgment on the pleadings in this wise:

It is proper to cite that the [plaintiffs' (respondents)] thru counsel on January 26, 2016 filed a Motion for Judgment on the Pleadings.

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[26] Id. at 12.

[27] Id. at 14.

[28] Id. at 15.

[29] See id. at 15-18.

No written opposition was filed by the defendants [(petitioners)]. When [said] motion x x x was heard on March 1, 2016, the counsel for the defendants interposed no objections [thereto].

With that scenario, plaintiffs' Motion for Judgment on the Pleadings was given due course. Aside from that ground, herein principles/ and doctrines are likewise cited to wit:

First, while the defendant[s'] denied knowledge sufficient to form a belief with respect to the truthfulness or falsity of the proceedings x x x before the [RTC] Branch 21 of Santiago[,] Isabela in 19[8]8, this Court takes judicial notice of the said proceedings and the result thereof under Rule 129, [Section] 1 of the Rules of Court.

Second, the doctrine of Res Judicata attaches in the present case.

Res judicata embraces two concepts: (1) bar by prior judgment as enunciated in Rule 39, Section 47(b) of the Rules of Civil Procedure; and (2) conclusiveness of judgment in Rule 39, Section 47(c).

x x x x

The requisites for res judicata under the concept of bar by prior judgment are:

(1) The former judgment or order must be final;

(2) It must be a judgment on the merits;

(3) It must have been rendered by a court having jurisdiction over the subject matter and the parties; and

(4) There must be between the first and second actions, identity of parties, subject matter, and cause of action.

Res judicata is present in this instant case.

x x x x

In the present case, the defendants and the plaintiffs both raised the issue of ownership over the said 5,000 square meter[s] portion of land, although this Court notes that the defendants did not present evidence to prove their defense of exclusive ownership other than their assertion of inheritance of the land traceable to Enrique Abad. The same issue was directly involved in the case filed in RTC Branch 21 which ended in a compromise agreement executed between Enrique Abad and Isabel Abad and Dionisi[o] Abad. Pertinent portion of the said agreement was reflected in the Deed of Partition (exh. "F") which reads:

> *"x x x. That this partition made is in accordance with the Deed of Amicable Settlement we have executed on May 17, 1989, at Santiago, Isabela, and before Atty. Eufren Changale relative to Civil Case No. XXI-0591 RTC [of] Santiago, Isabela. x x x"*

It cannot again be ventilated, and litigated between the parties and their privies, whether or not the claim, demand, purpose, or subject matter of the two actions is the same.[30]

As correctly pointed out by petitioners, the RTC erred in ruling that *res judicata* attaches in the instant case.

Section 47, Rule 39 of the Rules provides:

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:

(a) In case of a judgment or final order against a specific thing or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or status of a particular person or his relationship to another, the judgment or final order, is conclusive upon the title to the thing, the will or administration, or the condition, status or relationship of the person; however, the probate of a will or granting of letters of administration shall only be *prima facie* evidence of the death of the testator or intestate;

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto. (49a)

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[30] Id. at 62-65. Citations omitted.

The judgment or final order rendered by a Philippine court or judge, having jurisdiction to render the judgment or order, has the effect of *res judicata* or bar by prior judgment and conclusiveness of judgment.[31] Paragraph (a) of Section 47 is the rule on *res judicata* in judgments *in rem*; paragraph (b) is the rule on *res judicata* in judgments *in personam*; and paragraph (c) is the rule on conclusiveness of judgments.[32]

In *Bardillon v. Barangay Masili of Calamba, Laguna*,[33] the Court observed:

> *Res judicata* literally means a matter adjudged, judicially acted upon or decided, or settled by judgment. It provides that 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.
>
> The following are the requisites of *res judicata*: (1) the former judgment must be final; (2) the court that rendered it had jurisdiction over the subject matter and the parties; (3) it is a judgment on the merits; and (4) there is — between the first and the second actions — an identity of parties, subject matter and cause of action.[34]

The RTC erred in finding that *res judicata* attached in the instant case because there was no judgment on the merits in Civil Case No. 0591 (the prior case).

As aptly observed by petitioners, the prior case was dismissed twice, the first dismissal based on the Order dated December 27, 1988 on the assumption that a compromise agreement had been forged among the parties: "To date no answer was filed such that the court can safely conclude that a Compromise Agreement was forged between him [(the defendant)] and the plaintiffs because neither of them has done anything to prosecute

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[31] See Florenz D. Regalado, REMEDIAL LAW COMPENDIUM, 1982 Second Rev. Ed., p. 241.

[32] See id.

[33] 450 Phil. 521 (2003).

[34] Id. at 528-529. Citations omitted.

the complaint."[35] This first Order of dismissal was reconsidered in the Order dated February 3, 1989 and the complaint was reinstated "on the ground that [c]ontrary to the presumption of the Court, no compromise [agreement] was entered into by them [(the plaintiffs)] and the [defendant] and that they are ready and willing to pursue their complaint."[36] The second Order of dismissal was dated August 25, 1989 with the RTC Branch 21 noting that:

> x x x NO answer was filed. Subsequently a Manifestation was filed by the plaintiffs submitting an amicable settlement which was not however attache[d] to the Manifestation and no such amicable settlement was ever submitted. For this reason the Court is convinced that the parties chose to settle their controversy between themselves.[37]

Since no compromise agreement was filed with the RTC Branch 21 and formed part of the records of the prior case, there was no compromise agreement that was ever judicially approved and no judgment thereon was entered in the prior case.[38] Thus, there was no judgment on the merits in the prior case. Without a judgment on the merits in the prior case, the rule of *res judicata* was incorrectly applied by the RTC in this case.

Besides, there is also no identity of causes of action in the prior case and in the present case. While the prior case concerned the ownership of the subject lot, the present case does not only involve said cause of action, but also possession and consignation.

Since *res judicata* may not be applied to bar petitioners from questioning respondents' alleged ownership of the subject lot, may the RTC's grant of respondents' motion for judgment on the pleadings be upheld on the ground that petitioners' answer did not tender an issue or otherwise admitted the material allegations of the complaint?

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[35] *Rollo*, p. 15.

[36] Id. at 16.

[37] Id.

[38] See id. at 18.

Regarding judgment on the pleadings, the Court in *Asian Construction and Development Corporation v. Sannaedle Co., Ltd.*[39] stated:

Judgment on the pleadings is governed by Section 1, Rule 34 of the 1997 Rules of Civil Procedure which reads:

> Sec. 1. *Judgment on the pleadings.* – Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved.

Judgment on the pleadings is proper when an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading. An answer fails to tender an issue if it does not comply with the requirements of a specific denial as set out in Sections 8 and 10, Rule 8 of the 1997 Rules of Civil Procedure, resulting in the admission of the material allegations of the adverse party's pleadings.

This rule is supported by the Court's ruling in *Mongao v. Pryce Properties Corporation* wherein it was held that "judgment on the pleadings is governed by Section 1, Rule 34 of the 1997 Rules of Civil Procedure, essentially a restatement of Section 1, Rule 19 of the 1964 Rules of Court then applicable to the proceedings before the trial court. Section 1, Rule 19 of the Rules of Court provides that where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. The answer would fail to tender an issue, of course, if it does not comply with the requirements for a specific denial set out in Section 10 (or Section 8) of Rule 8; and it would admit the material allegations of the adverse party's pleadings not only where it expressly confesses the truthfulness thereof but also if it omits to deal with them at all."

Further, in *First Leverage and Services Group, Inc. v. Solid Builders, Inc.*, this Court held that where a motion for judgment on the pleadings is filed, the essential question is whether there are issues generated

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[39] 736 Phil. 200 (2014).

by the pleadings. In a proper case for judgment on the pleadings, there is no ostensible issue at all because of the failure of the defending party's answer to raise an issue. The answer would fail to tender an issue, of course, if it does not deny the material allegations in the complaint or admits said material allegations of the adverse party's pleadings by confessing the truthfulness thereof and/or omitting to deal with them at all.[40]

Rule 34 of the 2019 Proposed Amendments to the 1997 Rules of Civil Procedure[41] (2019 Amendments) now provides:

RULE 34
JUDGMENT ON THE PLEADINGS

Section 1. *Judgment on the pleadings*. – Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. However, in actions for declaration of nullity or annulment of marriage or for legal separation, the material facts alleged in the complaint shall always be proved. (1)

Section 2. *Action on motion for judgment on the pleadings*. – The court may *motu proprio* or on motion render judgment on the pleadings if it is apparent that the answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleadings. Otherwise, the motion shall be subject to the provisions of Rule 15 of these Rules.

Any action of the court on a motion for judgment on the pleadings shall not be subject of an appeal or petition for *certiorari*, prohibition or *mandamus*. (n)

Under the 2019 Amendments, the present appeal to the Court is not sanctioned because it is clear under Section 2, Rule 34, which is new, that any action of the court on a motion for judgment on the pleadings shall not be subject of an appeal. Rule 144 of the 2019 Amendments provides that the 2019 Amendments shall govern all cases filed after their effectivity on May 1, 2020, and also all pending proceedings, except to

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[40] Id. at 205-206. Emphasis and citations omitted.

[41] A.M. No. 19-10-20-SC.

the extent that in the opinion of the court, their application would not be feasible or would work injustice, in which case the procedure under which the cases were filed shall govern. Since the application of the 2019 Amendments would work injustice in the present case, they will not be applied.

In the Comment of respondents, they argue for the denial of the Petition on the ground that their complaint contained allegations "of several documents such as:

1. Amicable Settlement executed by Enrique Abad, Dionisio Abad and Isabel Abad;
2. Deed of Partition executed by Enrique Abad, Dionisio Abad and Isabel Abad;
3. Subdivision plan of the subject [land] x x x;
4. Kasunduan dated April 30, 2008 executed by [Eufemia] Abad and Dolores Lolita J. Gallardo;

[which in petitioners' answer], they did not specifically deny under oath any of these documents' genuineness and authenticity. x x x Thus, [t]he answer would fail to tender an issue x x x, if it does not comply with the requirements for a specific denial set out in Section 10 (or Section 8) of Rule 8; and it would admit the material allegations of the adverse party's pleadings not only where it expressly confesses the truthfulness thereof but also if it omits to deal with them at all."[42]

In determining whether the answer tenders an issue or otherwise admits the allegations of the complaint, the denials contained in the answer must be scrutinized in the light of the pertinent Sections of Rule 8 of the Rules, which provide:

Section 7. *Action or defense based on document*. — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading. (7)

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[42] *Rollo*, pp. 89-91. Emphasis omitted.

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. (8a)

x x x x

Section 10. *Specific denial*. — A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial. (10a)

Section 11. *Allegations not specifically denied deemed admitted*. — Material averment in the complaint, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. Allegations of usury in a complaint to recover usurious interest are deemed admitted if not denied under oath. (1a, R9)[43]

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[43] Sections 8, 10 and 11 of Rule 8 of the 2019 Amendments state:
Section 8. *How to contest such documents*. - When an action or defense is founded upon a written instrument, 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 or she 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. (8a)
x x x x
Section 10. *Specific denial*. — A defendant must specify each material allegation of fact the truth of which he or she does not admit and, whenever practicable, shall set forth the substance of the matters upon which he or she relies to support his or her denial. Where a defendant desires to deny only a part of an averment, he or she shall specify so much of it as is true and material and shall deny only the remainder. Where a defendant is without

Respondents are mistaken in their contention that petitioners needed to specifically deny under oath the genuineness and authenticity of the documents that they adverted to, otherwise petitioners would be deemed to have admitted the same. Section 8 of Rule 8 expressly states that "the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument."

The Court in *Toribio v. Bidin*[44] observed:

> Moreover, the heirs of Olegario Toribio, his widow and minor children represented by their mother, are among the plaintiffs-petitioners. **They are not parties to the deeds of sale allegedly executed by their father, aunt, and uncle. They are not required to deny the deeds of sale under oath.** The private respondents will still have to introduce evidence to establish that the deeds of sale are genuine and that they were truly executed by the parties with authority to dispose of the disputed property.[45]

Similarly, in this case, the Amicable Settlement and Deed of Partition was executed by petitioners' father (Enrique), aunt (Isabel) and uncle (Dionisio). The *Kasunduan* was only between one of the plaintiffs and one of the defendants, the other parties not being privies thereto. The Court notes that the Deed of Donation (Annex "I" of the complaint)[46] wherein Isabel donated the subject lot to Jose Eusebio did not at all involve petitioners or their predecessor-in-interest, Enrique.

Clearly, Section 8 does not apply and respondents have to introduce evidence to establish that said documents are genuine

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knowledge or information sufficient to form a belief as to the truth of a material averment made to the complaint, he or she shall so state, and this shall have the effect of a denial. (10a)

Section 11. *Allegations not specifically denied deemed admitted.* — Material averments in a pleading asserting a claim or claims, other than those as to the amount of unliquidated damages, shall be deemed admitted when not specifically denied. (11a)

[44] 219 Phil. 139 (1985).

[45] Id. at 147. Emphasis and underscoring supplied.

[46] See *rollo*, p. 126.

and that they were truly executed by the parties thereto. With those allegations in the complaint having been denied, the answer tenders factual issues. Thus, the RTC's grant of respondents' motion for judgment on the pleadings may not be upheld because the judgment on the pleadings rendered by the RTC is not proper.

Moreover, justice is best served with a judgment based on a trial on the merits and not on technicalities, *viz.*:

> It bears repeating that rules of procedure should be liberally construed to the end that substantial justice may be served. As stated in *Pongasi v. Court of Appeals* (71 SCRA 614):
>
> > "We repeat what We said in *Obut v. Court of Appeals, et al., supra*, that 'what should guide judicial action is the principle that a party-litigant is to be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or *property* on technicalities.'
> >
> > "In dispensing justice Our action must reflect a deep insight into the failings of human nature, a capability for making allowances for human error and/or negligence, and the ability to maintain the scales of justice happily well-balanced between these virtues and the application of the law."
>
> An interpretation of a rule of procedure which would not deny to the petitioners their rights to their inheritance is warranted by the circumstances of this case.[47]

WHEREFORE, the Petition is hereby **GRANTED**. Accordingly, the Resolutions dated September 27, 2016 and December 9, 2016 of the Regional Trial Court of Santiago City, Branch 36 in Civil Case No. 36-4014 are **REVERSED** and **SET ASIDE**. The motion for judgment on the pleadings filed by the defendants therein is **DENIED**. The Regional Trial Court is directed to hear and decide the case on the merits with dispatch.

SO ORDERED.

Peralta, C.J. (Chairperson), Carandang, Zalameda, and *Gaerlan, JJ.*, concur.

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[47] *Toribio v. Bidin*, supra note 44, at 147-148.

FIRST DIVISION

[G.R. No. 236572. November 10, 2020]

SECURITY BANK CORPORATION, *Petitioner*, *v.* **SPOUSES JOSE V. MARTEL and OLGA S. MARTEL,** *Respondents*.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DOCKET FEES; CIVIL LAW; PRESCRIPTION OF ACTIONS; PAYMENT OF DEFICIENCY DOCKET FEES MAY BE ALLOWED WITHIN THE PRESCRIPTIVE PERIOD IN WHICH A SPECIFIC ACTION MUST BE FILED. — The rule in this jurisdiction is that when an action is filed in court, the complaint must be accompanied by the payment of the requisite docket and filing fees. Section 1, Rule 141 of the Rules of Court expressly requires that, upon the filing of the pleading or other application that initiates an action or proceeding, the prescribed fees for such action or proceeding shall be paid in full. If the correct fees are not paid at the time of filing the action, however, the court may still allow payment of any deficiency within a reasonable time after the action was filed, but in no case beyond the lapse of its prescriptive period. The "prescriptive period" referred to pertains to the period in which a specific action must be filed as provided in the applicable laws, particularly Chapter 3, Title V, Book III, of the Civil Code, the principal law on prescription of actions.

2. ID.; ID.; ID.; ID.; ID.; REAL ACTIONS; IN REAL ACTIONS, SUCH AS AN ACTION TO ANNUL THE FORECLOSURE PROCEEDINGS AND TO RECOVER TITLE TO, AND POSSESSION OF, A PROPERTY, THE PRESCRIPTIVE PERIOD TO PAY DEFICIENCY DOCKET FEES IS THIRTY (30) YEARS FROM THE DATE OF EXTRAJUDICIAL FORECLOSURE SALE. — [T]he Court agrees with the trial court that what has been filed by respondent spouses is a real action, as they not only seek the nullification of the foreclosure proceedings but also seek recovery of title to and possession of the subject property. Indeed, a real action is one in which the plaintiff seeks recovery of real property; or as indicated

under Section 1, Rule 4 of the Rules of Court, a real action is an action affecting title to, possession of or interest in real property. Under Article 1141 of the Civil Code, real actions over immovables prescribe after thirty (30) years.

In the present case, the foreclosure proceedings was held on October 23, 2002. It is on this date that respondent spouses' cause of action accrued. Applying Article 1141 of the Civil Code, an action to assail said proceedings, such as the one filed by the respondent spouses, will thus prescribe 30 years from October 23, 2002.

Hence, when the trial court directed the respondent spouses to pay deficiency docket fees *via* its decision dated August 5, 2014 — it is clear that the right of action of the respondent spouses to institute their complaint at that time has not yet prescribed. Accordingly, the directive may be sustained as a valid exercise by the trial court of its discretion to allow belated payment of the correct amount of docket fees.

3. ID.; ID.; ID.; ID.; ID.; ID.; WHILE BELATED PAYMENT OF DEFICIENCY DOCKET FEES IS ALLOWED, SUCH PAYMENT MUST BE MADE WITHIN A REASONABLE TIME BEFORE THE LAPSE OF THE PRESCRIPTIVE PERIOD. — It should be clarified, however, that while the respondent spouses may be allowed to belatedly pay the balance of their docket fees, such payment has to be made within a *reasonable time* before the lapse of the prescriptive period or, as applied in this case, within 15 days from the trial court's decision — the period specified in the said decision. Payment by the respondent spouses of their balance within such time frame, and before prescription sets in, suffices to cure the defect caused by their incomplete payment of docket fees.

4. CIVIL LAW; DOCTRINE OF ESTOPPEL; NATURE AND PURPOSE THEREOF. — The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against its own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result. It has been applied by this Court wherever and whenever

the special circumstances of a case demands, and the Court finds it applicable in the instant case.

5. ID.; ID.; BAD FAITH PRECLUDES A PARTY FROM ASSAILING THE VALIDITY OF FORECLOSURE PROCEEDINGS. — [P]arties, like herein respondent spouses, who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing. The action (or inaction) of the party seeking equity must be "free from fault, and he must have done nothing to lull his adversary into repose, thereby obstructing and preventing vigilance on the part of the latter.

Moreover, it is evident from respondent spouses' actuations that they are in bad faith. After their request for the re-scheduling of the public auction, without republication, was granted, they subsequently went to court to invalidate or nullify the said public auction. The Court arrives at no other conclusion than that this request was made as an underhanded tactic purposely crafted in order to deceive both petitioner and the Clerk of Court into acceding to their request and, thus, laying the ground for the subsequent filing of an action to nullify the proceedings in the conduct of the said public auction, in case respondent spouses failed to acquire the subject property in the said auction. What makes their act more detestable is the fact that they made the same request three times and that all these requests were granted in order to accommodate them.

6. ID.; ID.; HUMAN RELATIONS; A DISHONEST AND SCHEMING ACT CONSTITUTES AN ABUSE IN THE EXERCISE OF A RIGHT. — This dishonest and scheming act on the part of respondent spouses is clearly a violation of Article 19 of the Civil Code, which states that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."

APPEARANCES OF COUNSEL

Lariba Perez Mangrobang Miralles Dumbrique Avila & Fulgencio for petitioner.

Dela Cruz Law Office for respondents.

D E C I S I O N

PERALTA, *C.J.*:

Assailed in the present petition for review on *certiorari* under Rule 45 of the Rules of Court are the September 28, 2016 Decision[1] and January 8, 2018 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 104629. The questioned Decision reversed and set aside the Order,[3] dated December 22, 2014, of the Regional Trial Court (*RTC*) of Makati City, Branch 134, in Civil Case No. 03-1316, and reinstated the same trial court's Decision[4] dated August 5, 2014 in a case filed by herein respondent spouses against herein petitioner for nullification of foreclosure proceedings and promissory notes, as well as damages. The challenged CA Resolution denied herein petitioner's Motion for Reconsideration.

The pertinent factual and procedural antecedents of the case are as follows:

Herein petitioner bank and respondent spouses entered into a credit agreement. Pursuant to such agreement, or August 26, 1994, respondent spouses executed a Real Estate Mortgage (*REM*) contract in petitioner's favor as security for a loan accommodation, in the amount of ₱10,000,000.00, which petitioner extended to respondent spouses. The REM was

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[1] Penned by Associate Justice Jose C. Reyes, Jr. (retired member of this Court), with Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando (now a member of this Court) concurring; Annex "A" to Petition, *rollo*, pp. 53-69.

[2] Issued by a Division of Five and penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios concurring and Associate Justices Stephen C. Cruz and Ramon Paul L. Hernando registering their separate Dissenting Opinions; Annex "B" to Petition, *id.* at 70-87.

[3] Penned by Presiding Judge Perpetua Atal-Paño; Annex "Z" to Petition, *id.* at 235-244.

[4] Penned by Presiding Judge Perpetua Atal-Paño; Annex "W" to Petition, *id.* at 190-208.

constituted over respondents' residential house and lot located at No. 8, Farol St., Urdaneta Village, Makati City, covered by Transfer Certificate of Title (*TCT*) No. (288267) 146489, which was originally registered with the Register of Deeds for the Province of Rizal. Following the original agreement, on various dates starting from April 12, 1995 until March 22, 1999, respondent spouses executed five (5) REM contracts in petitioner's favor which were constituted over the same property to secure several loans obtained by the former from the latter.[5] The aggregate principal loan obligation eventually amounted to ₱26,700,000.00. Thereafter, from September 14, 2001 until October 5, 2001, respondent spouses executed four (4) Promissory Notes to cover ₱25,000,000.00 of their obligation.[6] Subsequently, respondent spouses defaulted in the payment of their loan obligations prompting petitioner to extra-judicially foreclose the subject REMs. Based on petitioner's demand letter, dated May 15, 2002, respondent spouses' obligation as of May 8, 2002 amounted to ₱33,009,745.43, "exclusive of the stipulated attorney's fees and other charges."[7]

In a Notice of Sheriff's Sale[8] dated July 31, 2002, which was issued by the Office of the Clerk of Court and *Ex-Officio* Sheriff of the RTC of Makati City, the public auction of the subject mortgaged property was scheduled to be held at the New City Hall of Makati, at 10 o'clock in the morning of

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[5] See Annexes "D" (REM, dated April 12, 1995, as security for a loan obligation of ₱3,000,000.00), "E" (REM, dated March 14, 1996, as security for a loan obligation of ₱7,000,000.00), "F" (REM, dated October 3, 1996, as security for a loan obligation of ₱5,000,000.00), "G" (Addendum to REM, acknowledged on July 22, 1998, to include respondents' family home as security for their loan obligation), and "H" (REM, dated March 22, 1999, as security for a loan obligation of ₱1,700,000.00) to Petition, *id.* at 98-115.

[6] See Annexes "I" (Promissory Note, dated September 14, 2001, in the amount of ₱7,250,000.00), "J" (Promissory Note, dated September 21, 2001, in the amount of ₱7,200,000.00), "K" (Promissory Note, dated September 28, 2001, in the amount of ₱5,550,000.00), and "L" (Promissory Note, dated October 5, 2001, in the amount of ₱5,000,000.00) to Petition, *id.* at 116-129.

[7] See Annex "M" to Petition, *id.* at 130.

[8] Annex "N" to Petition, *id.* at 131.

September 6, 2002. The Notice was duly posted and published. In the said Notice, the mortgage debt amounted to ₱34,645,909.44 as of June 30, 2002.

On September 5, 2002, respondent spouses wrote a letter addressed to the Clerk of Court and *Ex-Officio* Sheriff of the RTC of Makati City asking that the scheduled auction sale be moved from September 6, 2002 to September 23, 2002.[9] The pertinent text of the letter-request reads as follows:

> May we have the honor to request for a postponement of the auction sale of TCT No. (288267) 146489 scheduled on September 06, 2002 to September 23, 2002 **without the need of republication**.[10] (emphasis supplied)

The request was granted.

Again, on September 23, 2002, respondent spouses wrote a similarly-worded letter to the Clerk of Court and *Ex-Officio* Sheriff of the RTC of Makati City, asking for the postponement of the auction sale of the subject property and requesting that it be held, instead, on October 8, 2002, "without the need of republication."[11] The request was, again, granted.

For the third time, on October 8, 2002, respondent spouses wrote another letter to the Clerk of Court and *Ex-Officio* Sheriff of the RTC of Makati City asking for the re-scheduling of the auction sale to October 23, 2002, again "without the need of republication."[12] The request was, likewise, granted.

Thus, on October 23, 2002, the extra-judicial foreclosure sale was conducted by the Clerk of Court and *Ex-Officio* Sheriff of the RTC of Makati City, as scheduled, and the subject property was sold to petitioner, as the highest bidder, in the amount of ₱25,303,072.21. A Certificate of Sale[13] dated

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[9] Annex "O" to Petition, *id.* at 132.

[10] *Id.*

[11] Annex "P" to Petition, *rollo*, p. 133.

[12] Annex "Q" to Petition, *id.* at 134.

[13] Annex "R" to Petition, *id.* at 135.

November 15, 2002 was subsequently issued in the name of petitioner and, on November 18, 2002, the sale was annotated in the memorandum of encumbrances of the TCT under which the property was registered.

On November 11, 2003, respondent spouses filed a Complaint against the petitioner, the Register of Deeds of Makati City, and the Clerk of Court and *Ex-Officio* Sheriff of the Makati City RTC, seeking the nullification of the foreclosure sale which was held on October 23, 2002 as well as the Promissory Notes it executed, and for damages, attorney's fees and cost of suit. Respondent spouses cited the grounds of prematurity of the foreclosure sale, bad faith on the part of the defendants, exorbitant interest rates, irregularity in the signing of the promissory notes, and failure to comply with the requirements of the law on posting and publication of the auction sale. In the alternative, respondent spouses prayed that the RTC determine the proper amount of redemption money to be paid within a reasonable time.

On November 19, 2003, petitioner executed an Affidavit of Consolidation[14] for the purpose of consolidating its title over the disputed property, on the ground that respondent spouses failed to redeem the auctioned property on time. Subsequently, TCT No. 146489, in the name of respondent spouses, was cancelled and a new title (TCT No. 219694) was issued in the name of petitioner. On, application, petitioner was subsequently placed in possession of the subject property.

On April 14, 2004, petitioner filed its Answer to the above-mentioned complaint of respondent spouses, contending, among others, that: posting and publication requirements with respect to the foreclosure sale were duly complied with; respondent spouses were the ones who requested for the postponement of the auction sales; they never requested for reconciliation of the statement of their accounts; and, they knowingly signed and executed the disputed Promissory Notes. Thereafter, trial ensued.

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[14] Annex "S" to Petition, *id.* at 136.

On August 5, 2014, the RTC rendered its Decision, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered and:

1. The Clerk of Court of the Regional Trial Court of Makati City is hereby ordered to reassess, determine and collect additional fees that should be paid by plaintiffs within fifteen (15) days, provided the applicable prescriptive or reglementary period has not yet expired, and the plaintiffs are given the same period to pay the same;
2. In the event that the plaintiffs wish to pay their outstanding obligation to defendant, the former is ordered to pay the latter Thirty[-]Four Million Six Hundred Forty[-]Five Thousand Nine Hundred Nine Pesos and Forty[-]Four Centavos (PhP34,645,909.44), at 12% interest per annum from 31 July 2002, until fully paid;
3. [D]eclaring as null and void;

a. the auction sale by the City Sheriff of Makati City on 23 October 2002 over the property located at No. 8 Farol St., Urdaneta Village, Makati City;

b. the Certificate of Sale dated 23 October 2002 (Exhibit "G") issued by the Clerk of Court approved by then Executive Judge Leticia P. Morales on 15 November 2002 regarding the foreclosure in the case Security Bank vs. Spouses Jose and Olga Martel, docketed as S-02-086;

c. the Affidavit of Consolidation [dated] 19 November 2003 (Exhibit "1"); and

d. Transfer Certificate of Title No. 219694 in the name of Security Bank Corporation.

4. Ordering the Register of Deeds of Makati City to cancel TCT No. 219694 and to reinstate TCT No. 288267 in the name of Jose Martel married to Olga Severino; and

5. Ordering the City Sheriff of Makati City to conduct a new auction sale strictly complying with the mandatory requirements as required by Act No. 3135, as amended by Act No. 4118.

SO ORDERED.[15]

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[15] *Rollo*, pp. 207-208.

Ruling on the main issue of whether or not respondent spouses are estopped from questioning the validity of the auction sale of the subject property, considering that they were the ones who requested for the postponement of the said sale without need of publication of the re-scheduled date of auction sale, the RTC noted that the alleged letter-requests of respondent spouses were not formally offered in evidence. As such, the RTC ruled that petitioner's failure to make a formal offer of these pieces of evidence is fatal to its cause as the same may not be considered by the trial court.

Both petitioner and respondent spouses sought reconsideration of the above Decision.

On December 22, 2014, the RTC issued its assailed Order, the dispositive portion of which reads as follows:

> **WHEREFORE**, premises considered, the Decision dated 5 August 2014 is hereby **REVERSED and SET ASIDE**. The Complaint for Nullification of the Foreclosure Proceedings, Promissory Notes, and Damages filed by plaintiff-Spouses Jose V. Martel and Olga Severino Martel against defendants Security Bank Corporation, the Register of Deeds of Makati City, and the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court, Makati City is hereby **DISMISSED**.
>
> **SO ORDERED**.[16]

This time, the RTC held that despite the failure of petitioner to formally offer in evidence respondent-spouses' letter-requests, which asked for the postponement of the auction sale without need of publication of the re-scheduled date of auction, the RTC noted that respondent spouses, nonetheless, admitted the existence of these letter-requests in their Motion for Summary Judgment filed with the RTC. Also, one of their witnesses made the same admission during her cross-examination. Moreover, the said letter-requests were attached to their Supplemental Memorandum which they submitted to the trial court. On these bases, the RTC concluded that the above admissions made by respondent spouses in their pleadings and in the course of trial

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[16] *Id.* at 243.

constitute judicial admissions which, in the absence of any contradiction, are legally binding upon them. As such, respondent spouses are estopped from questioning the validity of the subject auction sale.

On appeal by herein respondent spouses, the CA reversed the December 22, 2014 Order of the RTC and reinstated the trial court's August 5, 2014 Decision.

The CA ruled that the extrajudicial foreclosure sale of the subject property held on October 23, 2002 is void for failure of petitioner to comply with the required publication of the notice of the re-scheduled date of auction sale.

Herein petitioner filed a Motion for Reconsideration, but the CA denied it in its January 8, 2018 Resolution.

Hence, the present petition for review on *certiorari*, which the Court finds meritorious.

At the outset, petitioner contends that respondent spouses' complaint not only seeks the nullification of the questioned foreclosure proceedings but also the recovery of title or possession of the subject property. As such, petitioner argues that the bases of the docket fees that should have been imposed should also have included the estimated or assessed value of the property which was the subject of the foreclosure proceedings. Petitioner claims that the amount of docket fees paid by respondent spouses were insufficient, and that they subsequently failed to pay the correct docket fees within the period allowed by law. Thus, petitioner concludes that the RTC "did not validly acquire jurisdiction over respondent spouses' complaint for non-payment of [the] correct docket fee"[17] within the prescriptive period.

The Court is not persuaded.

The rule in this jurisdiction is that when an action is filed in court, the complaint must be accompanied by the payment of the requisite docket and filing fees. Section 1, Rule 141 of the

[17] *Id.* at 30.

Rules of Court expressly requires that, upon the filing of the pleading or other application that initiates an action or proceeding, the prescribed fees for such action or proceeding shall be paid in full. If the correct fees are not paid at the time of filing the action, however, the court may still allow payment of any deficiency within a reasonable time after the action was filed, but in no case beyond the lapse of its prescriptive period.[18] The "prescriptive period" referred to pertains to the period in which a specific action must be filed as provided in the applicable laws, particularly Chapter 3, Title V, Book III, of the Civil Code, the principal law on prescription of actions.[19]

In that regard, the Court agrees with the trial court that what has been filed by respondent spouses is a real action, as they not only seek the nullification of the foreclosure proceedings but also seek recovery of title to and possession of the subject property. Indeed, a real action is one in which the plaintiff seeks recovery of real property; or as indicated under Section 1, Rule 4 of the Rules of Court, a real action is an action affecting title to, possession of or interest in real property. Under Article 1141 of the Civil Code, real actions over immovables prescribe after thirty (30) years.

In the present case, the foreclosure proceedings was held on October 23, 2002. It is on this date that respondent spouses' cause of action accrued. Applying Article 1141 of the Civil Code, an action to assail said proceedings, such as the one filed by the respondent spouses, will thus prescribe 30 years from October 23, 2002.

Hence, when the trial court directed the respondent spouses to pay deficiency docket fees *via* its decision dated August 5, 2014 — it is clear that the right of action of the respondent spouses to institute their complaint at that time has not yet prescribed. Accordingly, the directive may be sustained as a

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[18] *Philippine First Insurance Co., Inc. v. Pyramid Logistics and Trucking Corp.*, 579 Phil. 679-693 (2008).

[19] *Fedman Development Corporation v. Agacaoili*, 672 Phil. 20, 29 (2011).

valid exercise by the trial court of its discretion to allow belated payment of the correct amount of docket fees.

It should be clarified, however, that while the respondent spouses may be allowed to belatedly pay the balance of their docket fees, such payment has to be made within a *reasonable time* before the lapse of the prescriptive period or, as applied in this case, within 15 days from the trial court's decision — the period specified in the said decision. Payment by the respondent spouses of their balance within such time frame, and before prescription sets in, suffices to cure the defect caused by their incomplete payment of docket fees.

Be that as it may, the Court agrees with petitioner that respondent spouses are estopped from questioning the validity of the subject foreclosure proceedings precisely because they, themselves, were the ones who "requested for several postponements of the auction sale without need of republication."[20]

The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against its own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result. It has been applied by this Court wherever and whenever the special circumstances of a case demands,[21] and the Court finds it applicable in the instant case.

Indeed, parties, like herein respondent spouses, who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing.[22] The action (or inaction) of the

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[20] *Rollo*, p. 34.

[21] *Philippine National Bank v. Intermediate Appellate Court (First Civil Cases Div.)*, 267 Phil. 720, 728 (1990).

[22] *Department of Public Works and Highways v. Quiwa, et al.*, 681 Phil. 485, 489 (2012).

party seeking equity must be "free from fault, and he must have done nothing to lull his adversary into repose, thereby obstructing and preventing vigilance on the part of the latter."[23]

Moreover, it is evident from respondent spouses' actuations that they are in bad faith. After their request for the re-scheduling of the public auction, without republication, was granted, they subsequently went to court to invalidate or nullify the said public auction. The Court arrives at no other conclusion than that this request was made as an underhanded tactic purposely crafted in order to deceive both petitioner and the Clerk of Court into acceding to their request and, thus, laying the ground for the subsequent filing of an action to nullify the proceedings in the conduct of the said public auction, in case respondent spouses failed to acquire the subject property in the said auction. What makes their act more detestable is the fact that they made the same request three times and that all these requests were granted in order to accommodate them. This dishonest and scheming act on the part of respondent spouses is clearly a violation of Article 19 of the Civil Code, which states that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."

The Court agrees with the Dissenting Opinion of then CA Associate Justice Ramon Paul I. Hernando[24] that, if any, it is the public, as well as respondent spouses' creditors and heirs, who have a cause of action to seek nullification of the subject auction sale that was conducted without the requisite republication. Respondent spouses, nonetheless, are estopped from availing of the right to question the sale as they did not come to court with clean hands.

Based on the foregoing, the Court no longer finds it necessary to discuss the other grounds raised by petitioner.

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[23] *Id.*

[24] Now a member of this Court; see *rollo*, p. 87.

WHEREFORE, the petition is **GRANTED**. The September 28, 2016 Decision and January 8, 2018 Resolution of the Court of Appeals in CA-G.R. CV No. 104629 are **REVERSED** and **SET ASIDE**. The Order of the Regional Trial Court of Makati City, Branch 134, dated December 22, 2014, dismissing respondent spouses' Complaint, is **REINSTATED**.

SO ORDERED.

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

EN BANC

[G.R. No. 242925. November 10, 2020]

NAOMI K. TORRETA and JAIME M. LOPEZ, *Petitioners*, *v.* **COMMISSION ON AUDIT,** *Respondent*.

SYLLABUS

1. POLITICAL LAW; COMMISSION ON AUDIT (COA); AUDIT POWER; IT IS WELL WITHIN THE COA's AUDIT POWER TO REQUIRE THE SUBMISSION OF DOCUMENTS TO DETERMINE COMPLIANCE BY THE RECIPIENT OF A GOVERNMENT PROJECT WITH ITS DUTIES.— Given the scope of the audit made, COA was clearly justified in requiring the submission of the additional documents which consisted mainly of the documents listed under Section 3.2 of the MOA, in order to determine Hapicow's compliance with its duties and obligations under the Program.

On this score, it is well to note that the extent of the auditor's review does not unnecessarily encroach upon the administrative functions of the NDA. For one, no less than the Constitution has vested COA with the exclusive authority to define the scope of its audit and examination, and establish techniques and methods required therefor. As such, it is vested with the broadest latitude to discharge its role as the guardian of public funds and property and is accorded the complete discretion to exercise its constitutional duty.

. . .

. . . [W]e find that COA acted within its mandate. It did not act beyond what was expected of it to do in audit. The Court is mindful that the implementation of the Program and the enforcement of the provisions of the subject MOA are functions which are lodged primarily in the NDA as the central policy in determining and directing the body of the Philippine dairy industry. However, in keeping with the COA's role as the watchdog of the financial operations of the government and the guardian of the people's property, it was well-within the scope of the respondent's audit power to enjoin the submission of the documentary requirements under Section 3.2 of the MOA for audit purposes.

2. ID.; ID.; NOTICE OF DISALLOWANCE; NON-SUBMISSION OF THE DOCUMENTS REQUIRED IN AUDIT WITHIN 90 DAYS FROM RECEIPT OF NOTICE OF SUSPENSION IS A VALID GROUND FOR DISALLOWANCE.— [S]ection 82 of P.D. No. 1445 prescribes a period of 90 days for the settlement of NS.

Accordingly, by itself alone, the non-submission by petitioners of the documents required in audit within 90 days from receipt of NS No. 10-001-(10) constitutes a valid ground for disallowance.

3. ID.; ID.; REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES; THE COA'S FINDINGS OF NON-IMPLEMENTATION OF THE QUALIFICATION REQUIREMENTS AND CRITERIA IN THE AWARD OF GOVERNMENT PROGRAM ARE ACCORDED GREAT RESPECT WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE.— [E]ven by looking into the pre-selection qualification of Hapicows, We agree with COA's conclusion that NDA failed to strictly implement the Qualification Requirements and Selection Criteria for the program when it awarded the project to Hapicows.

Well-settled is the rule that factual findings of administrative agencies are generally respected and even afforded finality because of the special knowledge and expertise gained by these agencies from handling matters falling under their specialized jurisdiction. By reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies are in a better position to pass judgment thereon, and their findings of fact are generally accorded great respect, if not finality by the courts. Such findings must be respected as long as they are supported by substantial evidence even if such evidence is not overwhelming or even preponderant. It is not the task of the appellate court or this Court to once again weigh the evidence submitted before and passed upon by the administrative body and to substitute its own judgment regarding the sufficiency of the evidence.

4. ID.; ADMINISTRATIVE LAW; LAW ON PUBLIC OFFICERS; GOOD FAITH, DEFINED; THE PRESUMPTION OF GOOD FAITH IN THE PERFORMANCE OF OFFICIAL DUTIES IS UNAVAILABLE FOR ACTS DONE BEYOND THE SCOPE OF ONE'S AUTHORITY, IN BAD FAITH, OR

WITH GROSS NEGLIGENCE.— 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. Indeed, a public officer is presumed to have acted in good faith in the performance of his duties. However, public officials can be held personally accountable for acts claimed to have been performed in connection with official duties where they have acted beyond their scope of authority or where there is a showing of bad faith.

Consistent thereto, Sections 38 and 39 of the Administrative Code of 1987 provides that the presumption of good faith is unavailable when there is a clear showing of gross negligence.

5. ID.; ID.; IRREGULAR EXPENDITURES; DEFINITION THEREOF. — 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 disciplines. 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.

6. ID.; ID.; ID.; GROSS NEGLIGENCE; LIABILITY FOR IRREGULAR GOVERNMENT CONTRACTS; THE APPROVING AND CERTIFYING OFFICERS ARE LIABLE FOR IRREGULAR TRANSACTIONS THAT DISREGARD THE QUALIFICATIONS SET FOR THE AWARD OF GOVERNMENT CONTRACTS, WHICH AMOUNTED TO GROSS NEGLIGENCE.— [A] person can be held liable under a ND, if it was proven that he or she is directly responsible for the illegal, irregular, unnecessary, excessive, extravagant, or unconscionable transactions. . . .

Gross negligence is evident in the case at bar. Petitioners hold vital positions in the NDA. By holding such positions, they are knowledgeable of the principles and policies of the said government agency. Further, their signatures appearing in pertinent documents of the said program proves that they were directly responsible for the irregular transaction. Lopez's signature appeared in the Farm Evaluation Sheet of Hapicows which recommended it as a qualified recipient farm of the imported dairy animals. On the other hand, Torreta's signature appeared in Qualification Requirements and Selection Criteria of the Applicants for Batch 10 Imported Animals Documents which signifies that she reviewed and recommended the said criteria to which a farm must comply with. Clearly, the award to Hapicows is highly irregular as the qualifications set were not complied. . . . Both officers had the opportunity to review and scrutinize the evaluation and qualification documents, yet the dairy animals were still awarded to an unqualified recipient. The financial capability of Hapicows glaringly shows that it is an unqualified farm. This fact alone should have alerted petitioners.

7. **ID.; ID.; ID.; ID.; ID.; DISPENSING WITH THE REQUIREMENT IN THE MEMORANDUM OF AGREEMENT FOR THE RECIPIENT ENTITY TO PROCURE AN INSURANCE PRIOR TO AN AWARD OF A GOVERNMENT PROGRAM CONSTITUTES GROSS NEGLIGENCE THAT NEGATES THE PRESUMPTION OF GOOD FAITH.—** [P]etitioners allowed and accepted the reason of Hapicows with regard to the non-procurement of insurance for the animals notwithstanding the express requirement in the MOA. In an effort to justify, petitioners averred that such requirement of insurance is unavailable at that time. As such they still push through with the award even without it. Evidently, petitioners had been remiss in exercising the necessary diligence to protect government assets and prevent irregular disbursement. Petitioners already knew the circumstances which make Hapicows unqualified for the program yet they still signed the MOA. Considering that public funds are involved, the government would always be on the losing end in this transaction should an unfortunate event happens, without recourse to insurance coverage or Hapicows' insufficient assets. Accordingly, petitioners' gross negligence negates the presumption of good faith.

8. ID.; ID.; ID.; ID.; PUBLIC OFFICERS WHO ARE DIRECTLY RESPONSIBLE FOR IRREGULAR GOVERNMENT EXPENDITURES ARE SOLIDARILY LIABLE FOR THE RETURN OF THE DISALLOWED AMOUNTS.— With the finding of gross negligence on the part of the petitioners, COA did not err in finding petitioners together with the other NDA officers who signed the MOA solidarily liable for the disallowed amount. According to Section 52 of the Administrative Code of 1987, [e]xpenditures 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.

9. ID.; ID.; ID.; ID.; ID.; MADERA RULES OF RETURN; THE MADERA RULES APPLY TO CASES INVOLVING GOVERNMENT CONTRACTS FOR THE PROCUREMENT OF GOODS AND SERVICES IN SO FAR AS THE DETERMINATION OF PERSONS LIABLE FOR THE DISALLOWED AMOUNT IS CONCERNED.— We, however, recognize Senior Associate Justice Estela Perlas-Bernabe's (Justice Perlas-Bernabe) position that the Rules of Return in the *Madera* case will not squarely apply in the case at bar. The Rules of Return in Madera is as follows:

> E. The Rules on Return
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> In view of the foregoing discussion, the Court pronounces:
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> . . .
>
> 2. If the 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.
>
> 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.

. . .

. . . [T]he Rules of Return in *Madera* is applicable in cases involving government contracts for the procurement of goods and services only in so far as paragraph 2a and 2b is concerned which deals with the determination of who are liable for the disallowed amount.

10. ID.; ID.; ID.; ID.; ID.; CIVIL LAW; PRINCIPLE OF *QUANTUM MERUIT*; THE DISALLOWED AMOUNTS MUST BE RETURNED BY THE PASSIVE RECIPIENTS.— [T]he peculiarity of cases involving government contracts for procurement of goods or services necessitates the promulgation of a separate guidelines for the return of the disallowed amounts. In these cases, it is deemed fit that the passive recipients be ordered to return what they received subject to the application of the principle of *quantum meruit*. *Quantum meruit* literally means "as much as he deserves." Under this principle, a person may recover a reasonable value of the thing he delivered or the service he rendered. The principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of *quantum meruit* is predicated on equity. . . . Thus, in applying this principle, the amount in which the petitioners together with the other liable individuals shall be equitably reduced.

11. ID.; ID.; ID.; ID.; ID.; REMAND OF THE CASE TO THE COMMISSION ON AUDIT IS NECESSARY TO FIX THE AMOUNT OF LIABILITY.— We hereby adopt the proposed guidelines on return of disallowed amounts in cases involving unlawful/irregular government contracts submitted by herein Justice Perlas-Bernabe, to wit:

. . .

In applying the above rules to the present case, this Court is aware of the technicalities involved in fixing the amount that should ultimately be returned by the persons solidarily liable under the ND. The process requires assessing the value of animals to be repossessed and computing the value due to the government based on the applicable rules, regulations, and issuances. It is therefore, proper that the present case be remanded back to COA for the determination of amount of liability of the

petitioners, applying the general accepted accounting rules and COA rules and regulations.

12. ID.; ID.; ID.; LIABILITY FOR IRREGULAR GOVERNMENT CONTRACTS; COMMERCIAL LAW; CORPORATIONS; DOCTRINE OF PIERCING THE CORPORATE VEIL; WHEN THE CORPORATION IS A MERE ALTER EGO OF A PERSON, ITS LIABILITIES MAY BE ATTRIBUTED TO THE LATTER, THEY BEING CONSIDERED ONE AND THE SAME.— Notably, the ND also included Molina, the President-CEO of Hapicows in the list of persons liable. In their decision, COA ruled that the application of the doctrine of piercing the veil of corporate fiction is proper in the case because it was found that not only did Molina own the controlling interest in Hapicows but it was his expertise and experience which NDA considered to qualify Hapicows to the program despite its financial incapability.

We agree that the piercing of the corporate veil was properly applied by COA in the present case. Piercing the corporate veil is warranted when "[the separate personality of a corporation] is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues." It is also warranted in alter ego cases "where a corporation is merely 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 are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation." Based on the factual findings of respondent COA, Hapicows is a mere alter ego of Molina. As such, all liabilities being imputed to Hapicows is in fact attributed to Molina as they are considered one and the same.

13. ID.; ID.; ID.; ID.; ID.; ID.; PASSIVE RECIPIENTS ARE SOLIDARILY LIABLE TO RETURN THE DISALLOWED AMOUNTS REGARDLESS OF GOOD FAITH.— Hapicows, being the named partner farm in the MOA and the recipient of the dairy animals of the program, is held liable for the disallowed amount. This is in line with the recent pronouncement in the case of *Madera* wherein it abandoned the "good faith rule" with regard to passive recipients of disallowed amounts. In the said case, it reconciled the previous rulings due to the presence of inadvertent injustice wherein passive recipients were excused

from returning the amount they received on the basis of good faith and imposing upon the approving/certifying officers the responsibility to refund the amounts they did not personally receive or benefitted from. Thus, if we would deviate from the *Madera* ruling, Hapicows may evade its solidary liability using the good faith doctrine, to the detriment and disadvantage of the government. As earlier mentioned, Hapicows' solidary liability is in fact the liability of Molina, the farmer's corporate personality having been pierced.

APPEARANCES OF COUNSEL

LATIPH Law Office for petitioners.
The Solicitor General for respondent.

D E C I S I O N

GAERLAN, *J.*:

The case is a petition for *certiorari* and prohibition with application for preliminary injunction and temporary restraining order[1] filed by Naomi K. Torreta (Torreta) and Jaime M. Lopez (Lopez), herein (petitioners), who are officers of National Dairy Authority (NDA), seeking to annul and set aside the Notices[2] and Decisions[3] issued by herein public respondent Commission on Audit (COA) against NDA which awarded dairy cows in the amount of ₱17,316,000.00 to HapiCows@Tropical Dairy Farm, Inc. (Hapicows) under NDA's Dairy Multiplier Farm Program in 2009.

Antecedents

NDA is a government-owned and controlled corporation created by Republic Act (R.A.) No. 7884. The NDA was created

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[1] *Rollo*, pp. 3-31.

[2] Id. at 42-43, 44.

[3] Id. at 45-50; penned by Director Jose R. Rocha, Jr., 51-59; signed by Chairperson Ma. Gracia M. Pulido Tan, Commissioners Heidi L. Mendoza and Jose A. Fabia with Director Nilda B. Plaras, attesting.

to be the central policy determining and directing body tasked to ensure the accelerated development of the Philippine dairy industry, in accordance with the policies and objectives set forth by the law.

Under the NDA's Dairy Multiplier Farm Program (Program), NDA is to distribute imported, mature female dairy animal to eligible and qualified participants, who, within a certain period of time, would make a repayment-in-kind: For every one mature female dairy animals, payment shall be by way of two mature female dairy animals with similar or higher dairy blood composition and with condition similar to the animals originally received by the Multiplier Farm Partner from the NDA.[4]

The Qualification Requirements and Selection Criteria of the Application for the Batch 10 Imported Animals[5] under the Program is as follows:

1. Submit a formal Letter of Intent to Avail of Batch 10 imported dairy animals[;]
2. Pass the Technical Evaluation of NDA on Viable Dairy Farm Operation covering:
    a) Acceptability & Readiness of Farm Site/Location
        • Has the capability to provide the minimum animal-to-land area requirement;
    b) Availability & Adequacy of Farm/Utility Resources
        • Has own production facility & equipment;
    c) Adequacy of & Accessibility to Feeds Resources
    d) Dairy Husbandry Capability & Readiness of the Proponent
        • Provide clean, fresh water at all times (ad libitum supply)
        • Conducts regular health tests, if and when applicable, on Tuberculosis, Leptospirosis, and Brucellosis

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[4] Id. at 8-9.

[5] Id. at 61.

- Conducts regular vaccination, if and when applicable, on Hemorrhagic septicemia and Foot and Mouth Disease
- Provide a daily; dry matter equivalent to 10% of the animal's body weight (minimum of 40 kg of fresh roughage and 2 kg concentrate)
- Maintains technical and financial records

3. The cooperative/organization to which the partner is a member must be of good standing in accordance with the Cooperative Development Authority (CDA) and Securities and Exchange Commission (SEC) rules and policies;
4. Existing partner must have a good credit/updated loan standing with the National Dairy Authority while new farmers must have a good track record with the cooperative;
5. Existing partners has the capacity and ability to pay the animals being availed from the National Dairy Authority (NDA); and
6. Able to pay the hauling cost of the animals being availed from the quarantine site to point of destination.[6]

NDA found Hapicows qualified for the program. On August 20, 2009, NDA delivered 134 heads of imported pregnant dairy animals to Hapicows' farm in Pagbilao, Quezon. The other 16 heads empty imported animals were delivered in Ayusan, Tiaong, Quezon farm.[7] At the same time, the Memorandum of Agreement (MOA)[8] between NDA and Hapicows was executed; herein petitioners signing the said MOA as officers of NDA. Torreta is the Deputy Administrator while Lopez is Division Chief of the Technical Support Unit of NDA.[9]

COA, thereafter, conducted a post-audit on NDA's Program. The Audit Team Leader (ATL) of respondent issued Audit Observation Memorandum (AOM) No. 10-006[10] dated March

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[6] Id.

[7] Id. at 11.

[8] Id. at 85-92.

[9] Id. at 13.

[10] Id. at 40-41.

5, 2010 noting that the dispersal of the 150 heads of dairy animals in favor of Hapicows was of doubtful validity due to lack of proper recording as stated in the approved NDA Board Resolution No. 424, Series of 2009 and as required under Section 112 of Presidential Decree (P.D.) No. 1445. Thus, ATL recommended that management of NDA comply with the aforementioned laws and requested the submission of the following documents:

a) acknowledgment receipt of the dairy animals by Multiplier Farm-partners;

b) MOA entered into by and between NDA and the Multiplier Farm-partners;

c) criteria for eligibility requirements of progressive farms/ entities; and

d) technical evaluation and actual accreditation report for each farm by the designated NDA officers including location and terms of lease of pasture area.[11]

NDA allegedly filed the requested documents. However, ATL found that not all the requested documents were submitted. This prompted them to issue Notice of Suspension (NS) No. 10-001(10)[12] on June 21, 2010. Further, ATL requested for additional supporting documents.

On July 26, 2010, ATL conducted an audit inventory of NDA Animals which resulted to the issuance of the second AOM No. 10-017[13] because Hapicows failed to comply with the prescribed standards of sound dairy production and husbandry management as mandated in the MOA due to observed high incidence of mortality and abortion cases among the dairy animals. Thus, ATL recommended the following actions:

1. Reevaluate the technical and financial capability of Hapicows and determine whether Mr. Benjamin Molina

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[11] Id. at 41.

[12] Id. at 42-43.

[13] Id. at 262-264.

(Molina) is representing Hapicows or acting in his individual capacity;

2. Implement Article 7 of the MOA providing for the repossession of the animals and termination of the MOA; and

3. Submit management action to save the remaining animals in the custody of Hapicows and its proposal for the animals' rehabilitation.[14]

Upon the recommendation of the COA, NDA decided to pull out the animals. However, the Secretary of Agriculture Memorandum requested a suspension of the pullout and NDA acceded.[15]

On September 28, 2010, ATL issued a Notice of Disallowance (ND) No. 10-002(10)[16] stating that the dispersal of the 150 heads of dairy animals to Hapicows was irregular as it lacks proper evaluation and supporting documents holding herein petitioners, together with Molina, President-CEO of Hapicows, Orkhan H. Usman, NDA Former Administrator and Sulpicio Bayawa Jr., NDA-Operations Department OIC, liable as signatories of the MOA.[17]

Petitioners appealed the ND to COA Office of the Cluster Director, Corporate Government Sector, Cluster C (CGS-C). In its Decision[18] dated July 1, 2011, the CGS-C denied the appeal, and further stating the following observations:

1. Torreta in her letter dated September 20, 2010, admitted that there was only partial submission of requirements by Hapicows, which fell short of the NDA requirements and stated that the NDA management decided to repossess the remaining animals with Hapicows;

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[14] Id. at 52.

[15] Id. at 12-13.

[16] Id. at 44.

[17] Id.

[18] Id. at 45-50.

2. Hapicows did not have a good credit/updated loan standing with the NDA in violation of Item 4 of the Qualification Requirements having only partially updated its account with the NDA per Certification dated June 22, 2010 issued by the NDA Finance and Administrative Manager;

3. There was inadequate capitalization of Hapicows with paid-up capital of only ₱62,500; thus, unduly exposing the dairy animals to unnecessary risk in case the Hapicows reneges or fails to comply with its duty under the MOA;

4. Hapicows was not a member of good standing in accordance with the CDA and SEC rules and policies. The certification issued by the SEC revealed that Hapicows was registered merely one year before the signing of the MOA. Also, Hapicows failed to submit certain required statements and to secure prior approval of the SEC for changes in its capital stock; and

5. As to Hapicows' three farm sites, two of which were not substantiated due to lack of lease contracts and other pertinent documents while one was covered by a lease contract that was undated and not notarized, and entered into with the punong barangay who had no property rights over the property.[19]

Aggrieved with the above findings and decision of the CGS-C, petitioners filed a petition for review before the Commission Proper. In its Decision[20] dated September 11, 2014, the Commission Proper denied the petition for review for lack of merit. The dispositive portion of which reads as follows:

WHEREFORE, the Commission hereby **DENIES** the herein petition for review for lack of merit and **AFFIRMS** Corporate Government Sector-C Decision No. 2011-021 dated July 1, 2011 affirming Notice of Disallowance No. 10-002(10) dated September 28, 2010 pertaining

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[19] Id. at 48-50.

[20] Id. at 51-59.

to the dispersal of 150 heads of dairy animals to Hapicows@Tropical Dairy Farm, Inc. in the amount of ₱17,316,000.00. Accordingly, National Dairy Authority is hereby directed to Implement Article 7 of the Memorandum Agreement providing for the repossession of the dairy animals. Hapicows@Tropical Dairy Farm, Inc. and officials of the National Dairy Authority, who signed or initiated the Memorandum of Agreement, are jointly and severally liable for the difference between the book value of the originally distributed animals and the appraised/assessed value of the repossessed animals.[21]

Petitioners filed a motion for reconsideration for the above Commission Proper's decision however the same was denied thru the Commission's Resolution dated August 16, 2018.[22]

Hence, this review under Rule 64, in relation to Rule 65 of the Rules of Court.

Issues

Petitioners submit that the COA committed grave abuse of discretion amounting to lack or in excess of jurisdiction:

1. When its audit was wrongly based on its perceived evaluation process instead of what the NDA, as the country's sole dairy authority, had observed and implemented.
2. When its findings and interpretations were not based on the documents actually submitted by Hapicows to NDA and adamantly refused to acknowledge NDA's evaluation process and documentation, in direct contravention of the petitioners' right to administrative due process.
    a) COA misinterpreted petitioner Torreta's statement and wrongly treated the same as admission of Hapicows lack of evaluation and documents.

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[21] Id. at 58.

[22] Id. at 60.

b) Because COA erred in considering Hapicows and Molina as one and the same, its findings on the outstanding loans of Hapicows and its Manager Molina became disjointed and confused. Yet both notably enjoy good credit and standing regardless of whether both were to be treated as one or separately.

c) The NDA's and Hapicows' MOA included insurance at the time when security against risks stemming from animal safety was unfortunately rare and almost non-existent.

d) Hapicows' Articles of Incorporation and its capital stock were regular and its standing was unassailed.

e) The Tagkawayan property can serve as a third farm whenever a need for one is required. Hapicows provided two farms for the dairy animals both of which were evaluated and found qualified by the NDA.

3. Thus, petitioners cannot and should not be held liable for this transaction as no irregularity attended the same; their participation in the evaluation process is minimal while documents required by the COA and the rules have been submitted and complied by them in good faith.[23]

Ruling of the Court

The petition for *certiorari* is bereft of merit.

I. COA acted within its constitutional mandate.

Petitioners contend that NDA was vested by law to be the country's authority on the dairy industry. Thus, they are in the best position to formulate the process of distribution of animals and the evaluation of the farms as recipient under the Program.

[23] Id. at 14-15.

Petitioners do not question the authority of COA to conduct audit, however, they claim that it was exercised without caution, fairness and circumspect. COA found the delivery of dairy animals to Hapicows farm irregular despite the petitioners providing it all the documents it requested in support of the award. Petitioners find COA's disallowance as arbitrary, unreasonable and wrong. By imposing its own interpretation and evaluation of the criteria set by NDA, COA effectively arrogated itself to be the authority in the dairy farm industry.[24]

We do not agree.

Petitioners' insistence for COA to accept the documents provided by Hapicows as sufficient compliance with the requirements of audit is misplaced. It proceeds from petitioners' myopic view that the term "supporting documents" in ND No. 10-002(10) should only refer to the qualification requirements of Hapicows during the selection of the Program. However, the proceedings that led to the issuance of ND No. 10-002(10) evince that the purpose of the subject audit was not simply to look into Hapicow's eligibility, but likewise to monitor the status of the government's transaction with the latter as one of the selected Multiplier Farm Partners for the Program. This was clear from the import of the ATL's observation in AOM No. 10-017 — a precursor of ND No. 10-002(10) — *viz.*:

x x x x x x x x x

From the farm records presented, the original important pregnant heifers reduction of 23.13% unaccounted pregnancy abortion cases of 30.59% and the absence of documents and farm facilities showing multiplier farm partner's capability, we have observed that the MULTIPLIER FARM PARTNER failed to manage the dairy animals according to the prescribed standards of sound dairy production and husbandry management as mandated by Article 3.2 of the Memorandum of Agreement, particularly animals at Pagbilao Farm.

Being a non-technical observer as to the farm status, we have observed that the multiplier partner was unable to implement the provisions of Sections 3.2.4, 3.2.7, 3.2.13 and 3.2.14 of the MOA. These resulted

[24] Id. at 18-19.

to poor animal condition as manifested by the majority of animals that were tick infested during our count. All original animals seem to be non-pregnant. According to Mr. Molina, he opted to dry all animals since he saw them not fit for lactation. The conditions were also incorporated in the inventory team's report.

Due to said failure of implementing the provisions of the MOA, the agency's objective as stipulated in the approved Board Resolution No. 424, S-2009 could not be attained.[25]

Given the scope of the audit made, COA was clearly justified in requiring the submission of the additional documents which consisted mainly of the documents listed under Section 3.2[26]

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[25] Id. at 264.

[26] Section 3.2 of the MOA provides:

The **MULTIPLIER FARM PARTNER** shall manage the dairy animals according to the prescribed standards of sound dairy production and husbandry management to ensure technical and financial viability of its business. Specifically, the **MULTIPLIER FARM PARTNER** shall:
3.2.1. Acknowledge the receipt of the animals by signing an Acknowledgment Receipt as well as this Agreement on the date of delivery of animals.
3.2.2. Insure the animals with a **reputable insurance company** to ensure that the animals can be repaid within the prescribed payment period.
3.2.3. Expenses for such insurance as an option shall be for the account of the **MULTIPLIER FARM PARTNER**.
3.2.4. Regularly, provide adequate inputs such as, but not limited to, safe drinking water, quality feeds and roughage, mineral supplements, drugs and biologics and other supplies necessary for the efficient care and management of the dairy animals including its offsprings.
3.2.5. Ensure that all offspring's borne out of the dairy animals provided by the **NDA** are properly registered in the municipality to where the farm/s is/are located and shall in no case be sold to anyone without prior consultation with and consent from the NDA.
3.2.6. Offer first to the **NDA** the offsprings should the **MULTIPLIER FARM PARTNER** opt to sell or otherwise dispose of the same.
3.2.7. Ensure to milk all lactating animals, preferably, twice a day and according to standard milking practices, process them according to prescribed dairy technology standards and/or course the milk produce to the nearest processing center.
3.2.8. Ensure the breeding of the dairy animals with dairy bloodline and implement, as deemed necessary, the corrective measures as recommended by the **NDA**.
3.2.9. Monitor and maintain milk production, health and breeding records

of the MOA, in order to determine Hapicow's compliance with its duties and obligations under the Program.

On this score, it is well to note that the extent of the auditor's review does not unnecessarily encroach upon the administrative functions of the NDA. For one, no less than the Constitution has vested COA with the exclusive authority to define the scope of its audit and examination, and establish techniques and methods required therefor.[27] As such, it is vested with the broadest latitude to discharge its role as the guardian of public funds and property and is accorded the complete discretion to exercise its constitutional duty.[28]

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of each dairy animal and make available and submit the same to the **NDA** on a monthly basis including other reports as may be prescribed by the **NDA** from time to time.
3.2.10. Furnish the **NDA** with financial statements (preferably, audited) on an annual basis, including other documents pertaining to the project that may be required by duly authorized government entities.
3.2.11. Agree that, for purposes of the application of this Agreement, the liability of its Board of Directors shall be solidary with the **MULTIPLIER FARM PARTNER**.
3.2.12. Remit to **NDA** an Annual Milk Volume Service Fee equivalent to **One Peso (Php1.00) per liter of milk produced by the original dairy animals provided by the NDA to the MULTIPLIER FARM PARTNER** based on the milk production records submitted by the latter and upon the former's validation thereof. It shall be understood that the Service Fee aforementioned shall be charged only on the milk actually marketed and sold by the **MULTIPLIER FARM PARTNER**.
The remittance of such fees to the **NDA shall be on a quarterly basis. The period covered for the remittance shall be ten (10) days after every calving** of the original dairy animal/s provided by the **NDA** and shall continue throughout the aforesaid animal/s' lactation cycle; Provided however, that this obligation shall automatically cease upon full payment by the **MULTIPLIER FARM PARTNER** of its obligations under Article 5 of this Agreement.
3.2.13. Provide any other services and support within its means to ensure the success of the Program.
3.2.14. Continue its dairy activities and vigorously play its role in dairy development even after full payment of the animals has been completed.

[27] Section 2 (2), Article IX (D) of the 1987 Constitution.

[28] *Development Bank of the Phils. v. Commission on Audit*, 808 Phil. 1001, 1017 (2017).

Furthermore, the action taken by COA auditor of monitoring the progress of the project, with a view of ascertaining if the public assets were utilized economically, efficiently and effectively; and evaluating the adequacy of controls over the account, was completely in accord with the following examination standards and objectives prescribed under Sections 55 and 58 of P.D. No. 1445, otherwise known as the Government Auditing Code of the Philippines, *viz.*:

Section 55. *Examination and evaluation standards*. —

(1) The audit work shall be adequately planned and assistants shall be properly supervised.

(2) A review shall be made of compliance with legal and regulatory requirements.

(3) An evaluation shall be made of the system of internal control and related administrative practices to determine the extent they can be relied upon to ensure compliance with laws and regulations and to provide for efficient, economical and effective operations.

(4) The auditor shall obtain through inspections, observation, inquiries, confirmation and other techniques, sufficient competent evidential matter to afford himself a reasonable basis for his opinions, judgments, conclusions, and recommendations.

Section 58. *Audit of assets*. — The examination and audit of assets shall be performed with a view to ascertaining their existence, ownership, valuation and encumbrances as well as the propriety of items composing the respective asset accounts, determining their agreement with records; proving the accuracy of such records; ascertaining if the assets were utilized economically, efficiently and effectively; and evaluating the adequacy of controls over the accounts.

In view of the foregoing, We find that COA acted within its mandate. It did not act beyond what was expected of it to do in audit. The Court is mindful that the implementation of the Program and the enforcement of the provisions of the subject MOA are functions which are lodged primarily in the NDA as the central policy in determining and directing the body of the Philippine dairy industry. However, in keeping with the COA's role as the watchdog of the financial operations of the government

and the guardian of the people's property, it was well-within the scope of the respondent's audit power to enjoin the submission of the documentary requirements under Section 3.2 of the MOA for audit purposes.

II. The Notice of Disallowance is proper.

Petitioners argued that they have provided COA all the necessary documentation it requested, however, COA still failed to recognize these documents and thus, violating their right to administrative due process.

Again, We are unimpressed.

Section 6 of COA Circular No. 77-55 provides:

6. AUDITORIAL ACTION:

Whenever, in the course of audit and guided by the set of standards aforementioned, an auditor is convinced and has satisfied himself that the transaction in question is irregular, unnecessary, excessive, or extravagant, he may pursue any of the following alternative courses of action:

In-pre-audit –

a) The auditor may tentatively suspend payment on the proposed expenditure and require compliance with certain auditing requirements within the period prescribed by existing regulations. After the lapse of said period without the requirements having been complied with, such tentative suspension shall become a final disallowance;

x x x x x x x x x

Corollarily, Section 82[29] of P.D. No. 1445 prescribes a period of 90 days for the settlement of NS.

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[29] Section 82. *Auditor's notice to accountable officer of balance shown upon settlement*. — The auditor concerned shall, at convenient intervals, send a written notice under a certificate of settlement to each officer whose accounts have been audited and settled in whole or in part by him, stating the balances found due thereon and certified, and the charges or differences arising from the settlement by reason of disallowances, charges, or suspensions. The certificate shall be properly itemized and shall state the reasons for disallowance, charge, or suspension of credit. A charge of

Accordingly, by itself alone, the non-submission by petitioners of the documents required in audit within 90 days from receipt of NS No. 10-001(10) constitutes a valid ground for disallowance.

In any case, even by looking into the pre-selection qualification of Hapicows, We agree with COA's conclusion that NDA failed to strictly implement the Qualification Requirements and Selection Criteria for the program when it awarded the project to Hapicows.

Well-settled is the rule that factual findings of administrative agencies are generally respected and even afforded finality because of the special knowledge and expertise gained by these agencies from handling matters falling under their specialized jurisdiction. By reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies are in a better position to pass judgment thereon, and their findings of fact are generally accorded great respect, if not finality by the courts. Such findings must be respected as long as they are supported by substantial evidence even if such evidence is not overwhelming or even preponderant. It is not the task of the appellate court or this Court to once again weigh the evidence submitted before and passed upon by the administrative body and to substitute its own judgment regarding the sufficiency of the evidence.[30]

It must be noted that at the time of the award, Hapicows does not have enough capital to secure the dairy animals amounting to ₱17,316,000.00. Even though it subsequently boosted its financial capability by infusing additional funds, it is still insufficient to cover the amount of the dairy animals. Moreover, the dispersal of the dairy animals happened before the capital infusion; hence, it could not have been considered

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suspension which is not satisfactorily explained within ninety days after receipt of the certificate or notice by the accountable officer concerned shall become a disallowance, unless the Commission or auditor concerned shall, in writing and for good cause shown, extend the time for answer beyond ninety days.

[30] *Sps. Hipolito v. Cinco*, 611 Phil. 331, 349 (2011).

in the evaluation of Hapicows' ability and capability to pay for the dairy animals.

III. Petitioners are liable. There is no good faith when there is gross negligence.

Petitioners contend that they should not be held liable in this transaction as they acted in good faith in the dispersal of the dairy animals to Hapicows. They alleged that they followed the same requirements and procedures as they have with the other farms in the Program.

We are not persuaded.

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.[31] Indeed, a public officer is presumed to have acted in good faith in the performance of his duties. However, public officials can be held personally accountable for acts claimed to have been performed in connection with official duties where they have acted beyond their scope of authority or where there is a showing of bad faith.[32]

Consistent thereto, Sections 38 and 39 of the Administrative Code of 1987 provides that the presumption of good faith is unavailable when there is a clear showing of gross negligence, to wit:

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.

(2) Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable

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[31] *Montejo v. COA, et al.*, G.R. No. 232272, July 24, 2018.

[32] *Dr. Velasco, et al. v. COA, et al.*, 695 Phil. 226, 241 (2012).

period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.

(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.[33]

Likewise, a person can be held liable under a ND, if it was proven that he or she is directly responsible for the illegal, irregular, unnecessary, excessive, extravagant, or unconscionable transactions. Section 103 of P.D. No. 1445 provides:

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.

Gross negligence is evident in the case at bar. Petitioners hold vital positions in the NDA. By holding such positions, they are knowledgeable of the principles and policies of the said government agency. Further, their signatures appearing in pertinent documents of the said program proves that they were directly responsible for the irregular transaction. Lopez's signature appeared in the Farm Evaluation Sheet[34] of Hapicows which recommended it as a qualified recipient farm of the imported dairy animals. On the other hand, Torreta's signature appeared in Qualification Requirements and Selection Criteria of the Applicants for Batch 10 Imported Animals Documents[35]

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[33] EXECUTIVE ORDER NO. 292, Book I, Chapter 9 — General Principles Governing Public Officers.

[34] *Rollo*, pp. 63-66.

[35] Id. at 61.

which signifies that she reviewed and recommended the said criteria to which a farm must comply with. Clearly, the award to Hapicows is highly irregular as the qualifications set were not complied. 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 disciplines. 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.[36] Both officers had the opportunity to review and scrutinize the evaluation and qualification documents, yet the dairy animals were still awarded to an unqualified recipient. The financial capability of Hapicows glaringly shows that it is an unqualified farm. This fact alone should have alerted petitioners.

Further, petitioners allowed and accepted the reason of Hapicows with regard to the non-procurement of insurance for the animals notwithstanding the express requirement in the MOA. In an effort to justify, petitioners averred that such requirement of insurance is unavailable at that time. As such they still push through with the award even without it. Evidently, petitioners had been remiss in exercising the necessary diligence to protect government assets and prevent irregular disbursement. Petitioners already knew the circumstances which make Hapicows unqualified for the program yet they still signed the MOA. Considering that public funds are involved, the government would always be on the losing end in this transaction should an unfortunate event happens, without recourse to insurance coverage or Hapicows' insufficient assets. Accordingly, petitioners' gross negligence negates the presumption of good faith.

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[36] Section 3.1, COA Circular No. 85-55-A dated September 8, 1985; Section 3.1, COA Circular No. 2012-003 dated October 29, 2012.

IV. Petitioners are solidarily liable.

With the finding of gross negligence on the part of the petitioners, COA did not err in finding petitioners together with the other NDA officers who signed the MOA solidarily liable for the disallowed amount. According to Section 52 of the Administrative Code of 1987, [e]xpenditures 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.[37]

Notably, the ND also included Molina, the President-CEO of Hapicows in the list of persons liable. In their decision, COA ruled that the application of the doctrine of piercing the veil of corporate fiction is proper in the case because it was found that not only did Molina own the controlling interest in Hapicows but it was his expertise and experience which NDA considered to qualify Hapicows to the program despite its financial incapability.

We agree that the piercing of the corporate veil was properly applied by COA in the present case. Piercing the corporate veil is warranted when "[the separate personality of a corporation] is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues." It is also warranted in alter ego cases "where a corporation is merely 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 are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation."[38] Based on the factual findings of respondent COA, Hapicows is a mere alter ego of Molina. As such, all liabilities being imputed to Hapicows is in fact attributed to Molina as they are considered one and the same.

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[37] EXECUTIVE ORDER NO. 292, Book V, Title I, Subtitle B, Chapter 9 — Accountability and Responsibility for Government Funds and Property.

[38] *Lanuza Jr. v. BF Corporation*, 744 Phil. 612, 636-637 (2014).

Further, Hapicows is held to be solidarily liable as the recipient in an irregular expenditure. Section 43 of the Administrative Code of 1987 provides that:

> 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.[39]

Based on the foregoing, Hapicows, being the named partner farm in the MOA and the recipient of the dairy animals of the program, is held liable for the disallowed amount. This is in line with the recent pronouncement in the case of *Madera*[40] wherein it abandoned the "good faith rule" with regard to passive recipients of disallowed amounts. In the said case, it reconciled the previous rulings due to the presence of inadvertent injustice wherein passive recipients were excused from returning the amount they received on the basis of good faith and imposing upon the approving/certifying officers the responsibility to refund the amounts they did not personally receive or benefitted from. Thus, if we would deviate from the *Madera* ruling, Hapicows may evade its solidary liability using the good faith doctrine, to the detriment and disadvantage of the government. As earlier mentioned, Hapicows' solidary liability is in fact the liability

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[39] EXECUTIVE ORDER NO. 292, Book VI, Chapter 5, Budget Execution.

[40] *Madera, et al. v. Commission on Audit (COA) and COA Regional Office No. VIII*, G.R. No. 244128, September 8, 2020.

of Molina, the former's corporate personality having been pierced.

We, however, recognize Senior Associate Justice Estela Perlas-Bernabe's (Justice Perlas-Bernabe) position that the Rules of Return in the *Madera* case will not squarely apply in the case at bar. The Rules of Return in Madera is as follows:

> E. The Rules on Return
>
> In view of the foregoing discussion, the Court pronounces:
>
> 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 the 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.
>
> 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 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 *bonafide* exceptions as it may determine on a case to case basis.[41]

As pointed out by Justice Perlas-Bernabe, the above-mentioned rules were specifically borne from the context of disallowance

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[41] Id.

cases involving employee incentives and benefits and not to government contracts for the procurement of goods and services involving the use or expenditures of the public funds, as in this case. Quoting her discussion, to wit:

> To recall, *Madera* is a landmark jurisprudence which not only abandoned the then prevailing "good faith rule" that absolved passive recipients from civil liability to return disallowed incentives and benefits received by them, but also detailed the statutory bases for the new rules of return in disallowance cases. In *Madera*, the Court primarily situated the civil liability of approving/authorizing officers under Section 38, Chapter 9, Book I of the Administrative Code, while that of recipients under the civil law principles of *solutio indebiti* and unjust enrichment.
>
> Further, pursuant to Section 43, Chapter 5, Book VI of the Administrative Code, the Court ruled that the approving/authorizing officers who had acted with bad faith, malice, or gross negligence are solidarily liable for the disallowance. However, as discussed in *Madera*, such civil liability should only be confined to the net disallowed amount, *i.e.*, the total disallowed amount minus the amounts excused to be returned by recipients particularly those: *(a)* genuinely given in consideration of services rendered (**Rule 2c**); and *(b)* excused by the Court based on undue prejudice, social justice considerations, and other *bona fide* exceptions as may be determined on a case-to-case basis (**Rule 2d**). These exceptions were formulated by the Court relative to the *solutio indebiti* nature of the recipients' civil obligation, on a finding that these grounds for return negated the existence of unjust enrichment, and hence, resulted in no proper loss on the part of the government.
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> x x x x x x x x x
>
> Given the backdrop of *Madera*, the *solutio indebiti* nature of the recipients' obligation to return the incentives and benefits they had received, and the considerations behind Rules 2c and 2d as above-discussed, it is my view that the *Madera* rules do not squarely apply in disallowances made under the peculiar auspices of unlawful/irregular **government contracts** authorizing the use or expenditure of public funds.
>
> Since these contracts, by their very nature, provide for the expenditure of public **funds in consideration of services rendered/ to be rendered and/or the delivery of property/goods**, the exception

under Rule 2c of the *Madera* Rules (genuinely given in consideration of services rendered), as formulated, should not squarely apply. Neither should the grounds for excuse under Rule 2d (undue prejudice, social justice considerations, and other *bona fide* exceptions) apply since these grounds were intended to address the inequitable situation of requiring government employees to still return the incentives and benefits they had already received based on exceptional fairness or social justice considerations.

Thus notwithstanding, the general provisions of Sections 38 and 43 of the Administrative Code — which were utilized in Rules 2a and 2b of *Madera* — still apply.[42]

To summarize, the Rules of Return in *Madera* is applicable in cases involving government contracts for the procurement of goods and services only in so far as paragraphs 2a and 2b is concerned which deals with the determination of who are liable for the disallowed amount.

However, with regard to the amount to be returned, we take note of the peculiarity of the cases of government procurement contracts for goods or services. In the instant case, what makes it unique is that what was delivered to the recipient were live animals and not its monetary equivalent. Logically, the subject of the return must be the same animals delivered in case of valid ND. The peculiarity of this situation is that some of these dairy animals have died already at the time of audit. And because of its perishable nature, some may even die during the pendency of this case. In any case, the records provide that the dairy animals remain in the possession of Hapicows.[43]

It must also be noted that in the COA Decision, COA ordered the application of the repossession/termination clauses as provided under the MOA. Under the provisions of the MOA specifically 7.1 and 7.2 the repossession/termination clause shall only apply under the following instances:

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[42] Concurring Opinion, Justice Perlas-Bernabe, pp. 3-5.

[43] *Rollo*, p. 111.

a) When there is failure to comply with the provisions of the MOA due to gross negligence and/or mismanagement on the part of the multiplier farm partner;

b) the multiplier farm partner loses the capacity to manage the dairy animals properly; and

c) failure to submit to NDA the animal payments due and to pay the penalty charges, if any, one year after the due date.[44]

To reiterate, respondent COA has not issued any findings regarding mismanagement or non-payment committed by Hapicows. It must be noted that the audit was made to ascertain the qualification of Hapicows and not as to its management or dealings with the dairy animals delivered. As such, the application of the clauses regarding repossession/termination in the MOA is improper.

Verily, the peculiarity of cases involving government contracts for procurement of goods or services necessitates the promulgation of a separate guidelines for the return of the disallowed amounts. In these cases, it is deemed fit that the passive recipients be ordered to return what they received subject to the application of the principle of *quantum meruit*. *Quantum merit* literally means "as much as he deserves." Under this principle, a person may recover a reasonable value of the thing he delivered or the service he rendered. The principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of *quantum merit* is predicated on equity.[45] In the case of *Geronimo v. COA*,[46] it has been held that "the [r]ecovery on the basis of *quantum merit* was allowed despite the invalidity or absence of a written contract between the contractor and the government agency."[47] In *Dr. Eslao v.*

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[44] Id. at 89.

[45] *Rolando S. Gregorio v. Commission on Audit and Department of Foreign Affairs*, G.R. No. 240778, June 30, 2020.

[46] G.R. No. 224163, December 4, 2018.

[47] Id.

COA,[48] the Court explained that the denial of the contractor's claim would result in the government unjustly enriching itself. The Court further reasoned that justice and equity demand compensation on the basis of *quantum meruit*. Thus, in applying this principle, the amount in which the petitioners together with the other liable individuals shall be equitably reduced.[49]

Accordingly, we hereby adopt the proposed guidelines on return of disallowed amounts in cases involving unlawful/ irregular government contracts submitted by herein Justice Perlas-Bernabe, to wit:

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 the 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.
    b. Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted with bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.
    c. The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit* on a case to case basis.
    d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved.[50]

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[48] 273 Phil. 97, 106 (1991).

[49] Id. at 107.

[50] Concurring Opinion, Justice Perlas-Bernabe, p. 7.

In applying the above rules to the present case, this Court is aware of the technicalities involved in fixing the amount that should ultimately be returned by the persons solidarily liable under the ND. The process requires assessing the value of animals to be repossessed and computing the value due to the government based on the applicable rules, regulations, and issuances. It is therefore, proper that the present case be remanded back to COA for the determination of amount of liability of the petitioners, applying the general accepted accounting rules and COA rules and regulations.

WHEREFORE, premises considered, the Petition for *Certiorari* filed by petitioners is hereby **DISMISSED**. The Notice of Disallowance [No. 10-002(10)] issued by Commission on Audit against herein petitioners is **AFFIRMED WITH MODIFICATION**. Accordingly, the case is hereby remanded to COA to:

a. Direct NDA to repossess the remaining dairy animals and their offsprings in the possession of Hapicows and determine their fair market value in accordance with the general accepted accounting principles and COA's own rules and regulations;

b. Deduct the fair market value of the returned dairy animals from the civil liability of the named individuals held solidarily liable under ND 10-002(10); and

c. Issue an amended Notice of Disallowance reflecting any deductions in accordance with the COA's factual determination.

SO ORDERED.

Peralta, C.J., Gesmundo, Hernando, Carandang, Lopez, Delos Santos, and *Rosario, JJ.*, concur.

Perlas-Bernabe and *Caguioa, JJ.*, see concurring opinions.

Leonen, J., join the separate opinions of *S.A.J. Perlas-Bernabe* and *J. Caguioa.*

Lazaro-Javier, Inting, and *Zalameda, JJ.*, on official leave.

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur.

Respondent the Commission on Audit (COA) properly disallowed the National Dairy Authority's (NDA) dispersal of dairy animals in favor of Hapicows@Tropical Dairy Farm, Inc. (Hapicows). As the COA correctly ruled, the subject dairy animals were dispersed in violation of the NDA Qualification Requirements and Selection Criteria for applicants under its Dairy Multiplier Farm Program (Program) and the Memorandum of Agreement executed by the NDA and Hapicows pursuant thereto, and hence, **irregular**.[1]

To recount the COA's findings, it was observed that: (1) there was only partial submission by Hapicows of the NDA requirements, leading to the NDA's decision to repossess the remaining animals with Hapicows; (2) Hapicows did not have good credit standing/updated loan standing with the NDA; (3) Hapicows did not have sufficient capitalization to secure the dairy animals at the time the MOA was executed; (4) Hapicows was not a member of good standing in accordance with the Cooperative Development Authority and Securities and Exchange Commission; and (5) Hapicows' three (3) farm sites were not substantiated by lease contracts and in fact, violated the requirements on technical evaluation in connection with acceptability, adequacy, capability and readiness of the proponent.[2]

Thus, the following persons were held civilly liable under Notice of Disallowance No. 10-002(10)[3] dated September 28, 2020 (ND 10-002[10]):

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[1] See *rollo*, pp. 44, 47-50, and 54-58.

[2] See id. at 48-49 and 55-57.

[3] Id. at 44.

The amount of ₱17,316,000.00 was disallowed in audit because the dairy animals were dispersed without proper evaluation and lacked the required supporting documents. This constitutes an irregular transaction.

The following persons have been determined to be liable for the transaction:

Name	Position/Designation	Nature of Participation in the Transaction
1. Benjamin Molina	**President-CEO, Hapicows**	**Signed MOA**
2. Orkhan H. Usman	Former NDA Administrator	Signed MOA
3. Naomi K. Torreta	Deputy Administrator	Initialed MOA
4. Sulpicio Bayawa Jr.	OIC, Operations Dept.	Signed MOA
5. Jaime Lopez	Manager, South Luzon	Signed MOA

As indicated in the ND, Hapicows' President-CEO Benjamin Molina (Mr. Molina) was held civilly liable together with the erring authorizing/approving officers. In this regard, the COA applied the piercing doctrine as follows:

It should be noted also that according to the 2008 audited financial statement, which was supposed to be considered by the NDA in their evaluation, **Mr. Molina** appears to be the controlling stockholder of Hapicows, having ₱2,000,000.00 out of the ₱3,400,000.00 subscribed and paid-up capital or 58.8% of the corporation. **In view of the peculiarity of factual antecedents of this case, the doctrine of piercing the corporate veil can be applied in this case**. x x x

x x x x

Contrary to the submission of the petitioners that Mr. Molina and Hapicows should be treated as distinct personalities, the statements in the petition show that the NDA, in evaluating the capability of Hapicows, considered Mr. Molina and Hapicows as one. These statements consist of Mr. Molina's expertise and experience outweighing the financial limitations of Hapicows and of Mr. Molina's active participation in the management and operations of Hapicows. **These and his controlling interest in the corporation justify the**

conclusion that Mr. Molina and Hapicows are one and the same.[4] (Emphases and underscoring supplied)

Meanwhile, with respect to Hapicows, the COA invoked the repossession/termination clauses under the MOA, and thereby resolved that Hapicows should be held accountable only for the difference between the book value of the originally distributed animal/s and the appraised/assessed values of the repossessed animals, *viz.*:

> From the foregoing, this Commission finds the dispersal of 150 heads of dairy animals to Hapicows to be irregular, hence, the issuance of the assailed ND is proper. For this reason, **NDA should implement Article 7 of the MOA providing for the repossession of the dairy animals and the termination of the MOA**. As provided under Article 7.3 of the MOA, Hapicows "x x x shall be accountable for **the difference between the book value of the originally distributed animal/s and the appraised/assessed values of the repossessed animals** x x x." x x x.[5]

However, as the *ponencia* correctly pointed out,[6] the COA should not have applied the repossession/termination clauses under the MOA since the case at bar does not fall under the circumstances stipulated therein.

Instead, considering the irregularity of the contract, Hapicows should turn over any remaining dairy animals and their offspring in its possession for being an unqualified beneficiary. By virtue of Section 7, Chapter 11 of the Government Accounting Manual for National Government Agencies,[7] the returned dairy animals,

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[4] See COA Decision dated September 11, 2014 in Decision No. 2014-245; *Id*. at 55-56.

[5] Id. at 58.

[6] See *ponencia*, pp. 17-18.

[7] Section 7. Measurement. — A biological asset shall be measured on initial recognition and at each reporting date at its fair value lass costs to sell, except where market — determined process of values are not available, and for which alternative estimates of fair value are determined to be clearly unreliable. In such a case, that biological asset shall be measured at its cost

if any, should be valued at their fair market value at the time of the return. Said value, once determined, should then be considered as a form of restitution in kind that serves to partially satisfy the civil liability of the persons to be held liable under ND 10-002(10).

In this regard, the Rules on Return in *Madera v. Commission on Audit*[8] *(Madera)* have been generally resorted to by the Court in determining the civil liability of persons held liable in disallowance cases of recent vintage. However, I take this opportunity to clarify that the civil liability of the individuals under ND 10-002(10) should not be adjudged in accordance with the parameters laid down in *Madera*. This is because the *Madera* Rules on Return were specifically borne from the context of disallowance cases involving employee incentives and benefits, and not to government contracts for the procurement of goods and services involving the use or expenditure of public funds, as in this case.

To recall, *Madera* is a landmark jurisprudence which not only abandoned the then prevailing "good faith rule" that absolved passive recipients from civil liability to return disallowed incentives and benefits received by them, but also detailed the statutory bases for the new rules of return in disallowance cases. In *Madera*, the Court primarily situated the civil liability of approving/authorizing officers under Section 38, Chapter 9, Book I of the Administrative Code, while that of recipients under the civil law principles of *solutio indebiti* and unjust enrichment.

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less any accumulated depreciation and any accumulated impairment losses. (Pars. 16 and 34, PPSAS 27)

In determining cost, accumulated depreciation and accumulated impairment losses, an entity considers policies on Inventories, Property, Plant and Equipment, Impairment of Non-Cash-Generating Assets and Impairment of Cash-Generating Assets. (Par. 37, PPSAS 27)

In all cases, agricultural produce harvested from an entity's biological assets shall be measured at its fair value less costs to sell at the point of harvest. Such measurement is the cost at that date when applying PPSAS 12 — Inventories or another applicable standard. (Par. 18, PPSAS 27)

[8] G.R. No. 244128, September 8, 2020.

Further, pursuant to Section 43, Chapter 5, Book VI of the Administrative Code, the Court ruled that the approving/ authorizing officers who had acted with bad faith, malice, or gross negligence are solidarily liable for the disallowance. However, as discussed in *Madera*, such civil liability should only be confined to the net disallowed amount, *i.e.*, the total disallowed amount minus the amounts excused to be returned by recipients, particularly those: *(a)* genuinely given in consideration of services rendered (**Rule 2c**); and *(b)* excused by the Court based on undue prejudice, social justice considerations, and other *bona fide* exceptions as may be determined on a case-to-case basis (**Rule 2d**). These exceptions were formulated by the Court relative to the *solutio indebiti* nature of the recipients' civil obligation, on a finding that these grounds for return negated the existence of unjust enrichment, and hence, resulted in no proper loss on the part of the government.

Accordingly, the *Madera* Rules on Return state in full:

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

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.

    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.[9]

Given the backdrop of *Madera*, the *solutio indebiti* nature of the recipients' obligation to return the incentives and benefits they had received, and the considerations behind Rules 2c and 2d as above-discussed, it is my view that the *Madera* rules do not squarely apply in disallowances made under the peculiar auspices of unlawful/irregular[10] **government contracts** authorizing the use or expenditure of public funds.

Since these contracts, by their very nature, provide for the expenditure of public funds **in consideration of services rendered/to be rendered and/or the delivery of property/goods**, the exception under Rule 2c of the *Madera* Rules (genuinely given in consideration of services rendered), as formulated, should not squarely apply. Neither should the grounds for excuse under Rule 2d (undue prejudice, social justice considerations, and other *bona fide* exceptions) apply since these grounds were intended to address the inequitable situation of requiring government employees to still return the incentives and benefits they had already received based on exceptional fairness or social justice considerations.

This notwithstanding, the general provisions of Sections 38 and 43 of the Administrative Code — which were utilized in Rules 2a and 2b of *Madera* — still apply.

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[9] See *Madera v. Commission on Audit*, *supra*.

[10] This term is broadly used to refer to illegal, irregular, unnecessary, excessive, extravagant, or unconscionable use or expenditures of public funds authorized under government contracts.

Even in disallowances involving illegal/irregular expenditures under a government contract, only those approving/authorizing officers acting in bad faith, with malice or gross negligence, should be held civilly liable for the return of any amounts disallowed. If bad faith, malice or gross negligence are not shown, then the presumption of regularity stands, negating the accountable officers' civil liability following Section 38 of the Administrative Code. Meanwhile, pursuant to Section 43 of the Administrative Code, the officers who had approved/authorized the unlawful/irregular government contract in bad faith, with malice, or gross negligence are solidarily liable together with the recipients of the amounts disallowed under the said contract.

Notably, the application of Sections 38 and 43 — as embodied in Rules 2a and 2b of the *Madera* Rules on Return — to unlawful/irregular government contracts is consistent with the provisions of the General Appropriations Act,[11] as well as pertinent COA rules and regulations.[12] However, it should be qualified that

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[11] Section 85 of Republic Act No. 11260, otherwise known as "AN ACT APPROPRIATING FUNDS FOR THE OPERATION OF THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES FROM JANUARY ONE TO DECEMBER THIRTY-ONE, TWO THOUSAND AND NINETEEN AND FOR OTHER PURPOSES," approved on April 15, 2019, which was extended until the end of 2020 by Republic Act No. 11464, otherwise known as "AN ACT EXTENDING THE AVAILABILITY OF THE 2019 APPROPRIATIONS TO DECEMBER 31, 2020, AMENDING FOR THE PURPOSE SECTION 65 OF THE GENERAL PROVISIONS OF REPUBLIC ACT NO. 11260," approved on December 20, 2019, reads:

> SECTION 85. *Incurrence or Payment of Unauthorized or Unlawful Obligation or Expenditure*. — **Disbursements or expenditures incurred [in violation of existing laws, rules and regulations] shall be rendered void**. Any and all public officials or employees who will authorize, allow or permit, as well as those who are negligent in the performance of their duties and functions which resulted in the incurrence or payment of unauthorized and unlawful obligation or expenditure shall be, personally liable to the government for the full amount committed or expended and, subject to disciplinary actions in accordance with **Section 43, Chapter 5 and Section 80, Chapter 7, Book VI of E.O. No. 292**. (Emphases and underscoring supplied)

[12] Section 30.1.2 of COA Circular No. 94-001, otherwise known as the "*Manual on Certificate of Settlement and Balances*," provides:

with respect to the application of *Madera*'s Rule 2b in this case, it is discerned that instead of applying the concept of ***net disallowed amount*** — which was specifically formulated in *Madera* relative to the grounds for excuse under Rules 2c and 2d — the liability of the recipient-counter party may instead, be reduced by the amounts qualified by the **principle of *quantum meruit*,**[13] if so warranted by the peculiar facts and evidence submitted in each case. As discussed in *Geronimo v. Commission on Audit*:[14]

> Recovery on the *basis of quantum meruit* [is] x x x allowed despite the **invalidity or absence of a written contract between the contractor and the government agency**. x x x

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> Section 30. Liability for Unlawful/Illegal Expenditures or Uses of Government Funds. —
>
> x x x x
>
> 30.1.2 **Every expenditure** or **obligation authorized or incurred** in violation of law or of the annual budgetary measure **shall be void**. Every payment in violation thereof shall be illegal and **every official or employee authorizing such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable for the full amount so paid or received**. (Emphases and underscoring supplied)

Presently, the foregoing rule is partly reflected, in essence, under Section 16.1.4, COA Circular No. 2009-006, otherwise known as the "*Rules and Regulations on Settlement of Accounts*," which stipulates:

> 16.1.4 **Public officers** and other persons who confederated or conspired in a transaction which is disadvantageous or prejudicial to the government shall be held liable **jointly and severally** with **those who benefited therefrom**. (Emphases and underscoring supplied)

[13] The principle of *quantum meruit* has been often applied in disallowances involving government contracts. See *Sto. Niño Construction v. Commission on Audit*, G.R. No. 244443, October 15, 2019; *F.L. Hong Architects and Associates v. Armed Forces of the Philippines*, G.R. No. 214245, September 19, 2017; *Department of Public Works and Highways v. Quiwa*, 681 Phil. 485 (2012); *Vigilar v. Aquino*, 654 Phil. 755 (2011); *Department of Health v. C.V. Canchela & Associates*, 511 Phil. 654 (2005); *Melchor v. Commission on Audit*, 277 Phil. 801 (1991); *Eslao v. Commission on Audit*, 273 Phil. 97 (1991).

[14] See G.R. No. 224163, December 4, 2018.

x x x x

Quantum meruit literally means "**as much as he deserves**." Under this principle, a person may recover a **reasonable value of the thing he delivered or the service he rendered. The principle also acts as a device to prevent undue enrichment** based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of ***quantum meruit* is predicated on equity**.[15]

And finally, owing to the variances in the nature of some peculiar government contracts, the determination of civil liability under Sections 38 and 43 of the Administrative Code — as herein discussed — is nonetheless without prejudice to the application of the more specific provisions of law, COA rules and regulations, and recognized accounting principles.[16]

In fine, instead of directly applying the *Madera* Rules on Return, the following rules be applied in this case as well as in similar cases involving unlawful/irregular government contracts:

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.

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[15] See id.

[16] See for example Section 7 of Republic Act No. 6957, entitled "AN ACT AUTHORIZING THE FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF INFRASTRUCTURE PROJECTS BY THE PRIVATE SECTOR, AND FOR OTHER PURPOSES," as amended by Republic Act No. 7718, entitled "AN ACT AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NO. 6957, ENTITLED 'AN ACT AUTHORIZING THE FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF INFRASTRUCTURE PROJECTS BY THE PRIVATE SECTOR, AND FOR OTHER PURPOSES,'" which provides for an additional reasonable rate of return to the counter-party when a build-operate-transfer project is revoked, cancelled or terminated by the government through no fault of their own.

See also Sections 65 (b) and (c), and 67 of Republic Act No. 9184, or the "Government Procurement Reform Act," which provides for particular criminal liability of counter-parties for violation of the bidding regulations contained therein and provides for a corresponding civil liability for restitution or forfeiture in cases of conviction.

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 the 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.

    b. Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted with bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.

    c. The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit* on a case to case basis.

    d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved.

Here, petitioners Naomi K. Torreta and Jaime M. Lopez, as the officers of the NDA responsible for the irregular government contract, were correctly found by the *ponencia* to have acted with gross negligence,[17] and hence civilly liable consistent with Rule 2b of the above-stated rules. Further, also following Rule 2b above, their liability is solidary with the other individuals named in the COA's ND 10-002(10):[18]

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[17] See *ponencia*, pp. 13-14.

[18] *Rollo*, p. 44; emphases supplied.

Name	Position/Designation	Nature of Participation in the Transaction
1. Benjamin Molina	President-CEO, Hapicows	Signed MOA
2. Orkhan H. Usman	Former NDA Administrator	Signed MOA
3. Naomi K. Torreta	Deputy Administrator	Initialed MOA
4. Sulpicio Bayawa Jr.	OIC, Operations Dept.	Signed MOA
5. Jaime Lopez	Manager, South Luzon	Signed MOA

However, as earlier intimated, Hapicows should be directed to turn over to the NDA any remaining dairy animals and their offspring in its possession for being an unqualified beneficiary. This should consequently reduce the civil liability of ₱17,316,000.00 under the ND by the equivalent fair market value of these returned animals, if any, subject to COA rules and regulations and accepted accounting principles. To be sure, the repossessed animals, if any, partake the nature of restitution in kind which should consequently reduce the civil liability of the named individuals under the ND. Properly speaking, this is not an application of the *quantum meruit* principle where goods delivered or services rendered by the contractor are to be credited.

At this juncture, the COA has yet to determine (1) the total amount of dairy animals returned by Hapicows, if any, upon due notice for the purpose, and (2) the fair market value of the returned animals, among others. Hence — as now ruled by the *ponencia* — a remand of this case is in order for the COA to:

(1) Direct the NDA to repossess any remaining dairy animals and their offspring in its possession, and determine their fair market value in accordance with the COA's own rules and regulations;

(2) Deduct the fair market value of the returned dairy animals from the civil liability of the named individuals held solidarily liable under ND 10-002(10); and

(3) Issue an amended Notice of Disallowance reflecting any deductions in accordance with the COA's factual determination.

Accordingly, the petition should be dismissed, and ND 10-002(10) affirmed with the foregoing modifications.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the disposition of the *ponencia* which held the officers who acted with gross negligence as solidarily liable for the disallowance, and limiting the liability to the loss incurred by the government in the transaction by deducting the value of the animals repossessed by the National Dairy Authority (NDA) or returned by the project beneficiary HapiCows@Tropical Dairy Farm, Inc. (HapiCows).

Thus, I limit my Concurring Opinion on the question of the applicability of the Rules of Return in *Madera v. COA*[1] *(Madera)* to government contracts.

I respectfully submit that, save for Rule 2 (d), the Rules of Return may be made to apply to disallowances in general — including personnel benefits disallowances **AND** government contracts. The *Madera* Rules can be made to apply to government contracts in general, for the following reasons:

1. Rules 2 (a) and 2 (b) are based on Sections 38 and 43 of the Administrative Code of 1987, which apply to disallowances in general;

2. Precisely because Rule 2 (c) is but an express adoption in personnel benefits disallowances Code of the application of the principles of *solutio indebiti* and unjust enrichment — and inevitably, *quantum meruit* — in disallowances relating to infrastructure contracts and contracts for services.

In *Madera*, the Court promulgated the Rules on Return, thus:

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[1] G.R. No. 244128, September 8, 2020.

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

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.

    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.[2]

In my Concurring Opinion in *Abellanosa v. COA*,[3] I have already clarified how the entire rubric was structured, and how the application of *solutio indebiti* and unjust enrichment in Rule 2 (c) had been distilled from jurisprudence dealing with government contracts. To reiterate:

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[2] Id. at 35-36.

[3] G.R. No. 185806, November 17, 2020.

Essence of recalibration by the Rules in Madera

At its core, and as exhaustively discussed during the deliberations of *Madera*, its animating spirit is (1) the return to the proper recognition of the liability for unlawful expenditures as a single solidary obligation,[4] of officers and payees and (2) an appeal to a more predictable application of *solutio indebiti* across disallowance cases.

x x x x

In the same manner that contractors in disallowances involving infrastructure or service contracts are allowed to retain amounts representing reasonable compensation for services rendered on the basis of *quantum meruit*, excuse under Rule 2c was intended to recognize situations where payees may be allowed to retain the amounts they received if there is legal basis for the grant of the benefit, and they are entitled to said amounts for having rendered actual services for which the said benefits were given. To do otherwise would sanction unjust enrichment. x x x

In *Madera*, the Court held:

> To be sure, the application of the principles of unjust enrichment and *solutio indebiti* in disallowed benefits 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 recognized 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.[5]

The import of Rule 2c is it exempts payees from return when there are **legal and factual bases** to retain (*i.e.*, that the disallowed benefit

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[4] Such that retention by payees of the disallowed personnel benefits extinguishes the obligation of officers solidarily liable.

[5] *Madera v. COA*, *supra* note 1, at 27. The citation for the quoted portion reads: See *Melchor v. Commission on Audit*, G.R. No. 95398, August 16, 1991, 200 SCRA 704, 714, citing *Eslao v. Commission on Audit*, G.R. No. 89745, April 8, 1991, 195 SCRA 730, 739. This case applies the same principle of unjust enrichment in cases where the contractor seeks payment to this case where reimbursement is sought from the official concerned; see also *Andres v. Commission on Audit*, G.R. No. 94476, September 26, 1991, 201 SCRA 780.

was authorized by law, and the payee can show that he rendered actual service so as to be entitled to the said benefit).

To clarify, each Rule in *Madera* covers distinct situations:

1. Rule 2a provides for **no liability** for officers acting in good faith, in regular performance of official functions, and with the diligence of a good father of a family.

2. Rule 2b treats of the **solidary liability** of officers who are clearly shown to have acted in bad faith, malice, or gross negligence.

3. Rule 2c provides the **general rule** that payees must return based on *solutio indebiti*, **EXCEPT** if the return will sanction unjust enrichment.

4. Rule 2d treats of situations that would otherwise be covered by the general rule in Rule 2c save for the unique circumstances in the case that would prompt the **exercise of the Court's discretion** to excuse the return on a case-to-case basis.[6]

I have not encountered an application of Rule 2 (d) in favor of contractors, for which reason, I can concede that Rule 2 (d) — which was really intended to cover instances where the Court would opt to extend compassionate justice to government employees — is not entirely translatable to disallowances not involving personnel benefits.

That said, in appropriate cases, there is nothing that prevents the Court from applying Rules 2 (a), 2 (b) and 2 (c) to government contracts. I agree therefore with the *ponente* that in this case, Rule 2 (b) squarely applies to NDA officers who were found to have acted with gross negligence.

In this regard, the application of *solutio indebiti* in personnel benefits disallowances is not materially different from its application in government contracts to foreclose the application of the Rules in *Madera*.

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[6] Concurring Opinion, *Abellanosa v. COA*, *supra* note 3, at 2-3.

To stress, Rule 2 (c), only intended to cover "true" *solutio indebiti* cases, such that cases where a refund would result in unjust enrichment in favor of the government, no recovery on an otherwise proper disallowance will be allowed. Again, under this conception of Rule 2 (c), the application of *quantum meruit* is obviously built in and cannot but come into play. The determination of the amount which was unduly received by a payee — whether a government employee or a contractor — and the amount of recovery which will result in unjust enrichment in favor of the government will necessarily entail the determination of the reasonable value of the services rendered or goods delivered, which is *quantum meruit*.

This inevitable interplay between the principles of *solutio indebiti*, unjust enrichment, and *quantum meruit*, is illustrated in the case of *Eslao v. Commission on Audit*,[7] also cited in *Madera*, thus:

> The Court finds and so holds that petitioner entered into the two contracts in good faith for the good and interest of the university and the government. As it is, the two projects are now 95% complete. The buildings are now being used by the university. On the basis of *quantum meruit* ***the contractor should be allowed to recover for the work accomplished***.
>
> In *Royal Trust Construction vs. COA*, a case involving the widening and deepening of the Betis River in Pampanga at the urgent request of the local officials and with the knowledge and consent of the Ministry of Public Works, even without a written contract and the covering appropriation, the project was undertaken to prevent the overflowing of the neighboring areas and to irrigate the adjacent farmlands. The contractor sought compensation for the completed portion in the sum of over P1 million. While the payment was favorably recommended by the Ministry of Public Works, it was denied by the respondent COA on the ground of violation of mandatory legal provisions as the existence of corresponding appropriations covering the contract cost. Under COA Res. No. 36-58 dated November 15, 1986 its existing policy is to allow recovery from covering contracts on the basis of *quantum meruit if there is delay in the accomplishment of the required certificate of availability off ends to support a contract*.

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[7] *Supra* note 5.

In said case, the Solicitor General agreed with the respondent COA but in the present case he agrees with petitioner.

Thus, this Court held therein —

"The work done by it was impliedly authorized and later expressly acknowledged by the Ministry of Public Works, which has twice recommended favorable action on the petitioner's request for payment. Despite the admitted absence of a specific covering appropriation as required under COA Resolution No. 36-58, the petitioner may nevertheless be compensated for the services rendered by it, concededly for the public benefit, from the general fund allotted by law to the Betis River project. Substantial compliance with the said resolution, in view of the circumstances of this case, should suffice. The Court also feels that the remedy suggested by the respondent, to wit, the filing of a complaint in court for recovery of the compensation claimed, would entail additional expense, inconvenience and delay which in fairness should not be imposed on the petitioner.

Accordingly, in the interest of substantial justice and equity, the respondent Commission on Audit is DIRECTED to determine on a *quantum meruit basis the total compensation due to the petitioner for the services rendered by it in the channel improvement of the Betis River in Pampanga and to allow the payment thereof immediately upon completion of the said determination.*"

In the present case, the Court finds that **the contractor should be duly compensated for services rendered**, which were for the benefit of the general public. **To deny the payment to the contractor of the two buildings which are almost fully completed and presently occupied by the university would be to allow the government to unjustly enrich itself at the expense of another. Justice and equity demand compensation on the basis of *quantum meruit*.**

WHEREFORE, the petition is GRANTED. The questioned decision of the respondent COA dated February 16, 1989 and its resolution dated August 2, 1989 are hereby REVERSED AND SET ASIDE. The respondent COA is directed to determine on a *quantum meruit basis the total compensation due to the contractor for the completed portion of these two projects and to allow the payment thereof immediately upon the completion of said determination. No costs.*[8] (Emphasis, underscoring and italics supplied; citations omitted.)

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[8] Id. at 738-739.

Adopted into a disallowance case, the Court explained in *Melchor v. Commission on Audit*:[9]

> As previously discussed, it would be unjust to order the petitioner to shoulder the expenditure when the government had already received and accepted benefits from the utilization of the building.
>
> x x x x
>
> In a more recent case, *Dr. Rufino O. Eslao v. Commission on Audit, G.R. No. 89745, April 8, 1991*, the Court directed payment to the contractor on a *quantum meruit* basis despite the petitioner's failure to undertake a public bidding. In that case, the Court held that "to deny payment to the contractor of the two buildings which are almost fully completed and presently occupied by the university would be to allow the government to unjustly enrich itself at the expense of another."
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> x x x x
>
> Although the two cases mentioned above contemplated a situation where it is the contractor who is seeking recovery, we find that the **principle of payment by *quantum meruit* likewise applies to this case where the contractor had already been paid and the government is seeking reimbursement from the public official** who heads the school. If, after COA determines the value of the extra works computed on the basis of *quantum meruit*, it finds that the petitioner made an excess or improper payment for these extra works, then petitioner Melchor shall be liable only for such excess payment.[10] (Emphasis supplied)

This compensation on the basis of *quantum meruit* applies whether a government employee or contractor rendered the service. The only difference is that the reasonable compensation for the work performed or goods delivered by a contractor is determined by the Commission on Audit (COA), while the reasonable compensation for a government employee is inescapably limited to compensation authorized by law which includes: (i) basic pay in the form of salaries and wages; (ii) other fixed compensation in the form of fringe benefits authorized

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[9] *Supra* note 5.

[10] Id. at 713-714.

by law; (iii) variable compensation (*e.g.*, honoraria or overtime pay) within the amounts authorized by law despite the procedural mistakes that might have been committed by approving and certifying officers.[11] These separate parameters for personnel benefits were set in *Abellanosa v. COA*.

Thus, I believe that there is no cause to limit the application of the Rules in *Madera* — which I had hoped would serve as a blueprint to examining disallowances in general — to only personnel benefits disallowances. Nevertheless, I submit to the collective wisdom of the *banc*.

Proceeding now to the case of *Torreta*, the proper amount of the liability in this case only requires the determination of the difference between the value of the animals dispersed by NDA to the farm partner HapiCows and the value of the animals that have been returned. In other words, the disposition needs only to order COA to determine the balance in what is essentially a loan of agricultural assets as the proper amount of disallowance.

Accordingly, I vote to DISMISS the petition.

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[11] See Manual on Position Classification and Compensation, Chapter 3, Total Compensation Chart, p. 3-3.

EN BANC

[G.R. No. 244193. November 10, 2020]

NATIONAL TRANSMISSION CORPORATION, *Petitioner*, *v.* **COMMISSION ON AUDIT (COA) and COA CHAIRPERSON MICHAEL G. AGUINALDO,** *Respondents*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; EXPENDITURES OF GOVERNMENT-OWNED OR -CONTROLLED CORPORATIONS; DISALLOWANCE OF DISBURSEMENTS; CLAIMS FOR REIMBURSEMENT OF EXTRAORDINARY AND MISCELLANEOUS EXPENSES (EME) MUST BE SUBSTANTIATED BY RECEIPTS OR SUPPORTING DOCUMENTS EVIDENCING DISBURSEMENT.— The claims for reimbursement of EME of GOCCs, like TransCo, rest upon the existence of sufficient proof of the expenditures incurred by the qualified officials such as receipts and/or other documents evidencing disbursement. It is only when supporting documents are presented that the GOCC can properly claim reimbursement of EME. Hence, it is incumbent upon TransCo and its officials, as claimants, to prove that all these requirements have been met before they can properly claim reimbursement of their EME. It is an elementary rule that he who alleges a fact has the burden of proving it.

In this case, TransCo's claim for reimbursement was not supported by any receipt from its officials. The only document presented to substantiate the reimbursement claim was a "certification."

2. ID.; ID.; ID.; ID.; TO BE CONSIDERED AS ENOUGH PROOF OF DISBURSEMENT, A CLAIMANT'S CERTIFICATION MUST REFLECT THE TRANSACTION DETAILS NORMALLY FOUND IN A RECEIPT.— [A] certification may or may not constitute an adequate proof of disbursement. To be admitted as a sufficient evidence of payment, the certification presented by the GOCC must establish "the paying out of an account payable," or a disbursement. It must reflect the transaction details that are typically found in a receipt which is the best evidence

of the fact of payment. It must specify the nature and description of the expenditures, amount of the expenses, and the date and place they were incurred. This interpretation holds true even with just a plain reading of Item III of COA Circular No. 2006-001, since the phrase "other documents" is qualified by the phrase "evidencing disbursements." A sweeping and general statement that expenditures were incurred by some officials within a certain month does not, in any way, satisfy the condition contemplated in the circular. Unfortunately, in this case, the certifications submitted by TransCo officials merely provided a simple declaration from each payee that "the expenses have been incurred for any of the purposes contemplated under the law or regulation (GAA and COA Circular No. 89-300) in relation to or by reason of my position." Hence, the Court is not inclined to accept such certification as valid evidence of disbursement.

Considering the absence of receipts and/or supporting documents to substantiate TransCo's claim of reimbursement, the COA correctly disallowed the EME of TransCo officials.

3. ID.; ID.; ID.; ID.; THE APPROVING/CERTIFYING OFFICERS' GOOD FAITH IN GRANTING ALLOWANCES OR BENEFITS IS A VALID DEFENSE NEGATING CIVIL LIABILITY TO RETURN THE DISALLOWED AMOUNT. — What is clear from the records is that the approving/certifying officers of TransCo committed an honest lapse of judgment when they granted the irregular EME. Their mistake was not indicative of willful and deliberate intent to disregard the COA rules and regulations but only an error of judgment made in good faith. Accordingly, the approving and certifying officers, having acted in good faith in the regular performance of their official functions, are not civilly liable to return the disallowed amount in accordance with Section 38 (1), Chapter 9, Book I of the Administrative Code of 1987.

In the same vein, there is no clear evidence that the approving/certifying officers acted with malice and/or gross negligence when they treated the certifications as valid supporting documents for their EME reimbursement.

. . .

The approving/certifying officers did not patently disregard the existing rules in granting EME reimbursement since in the past, TransCo has consistently allowed the use of certification

as a supporting document without a notice of disallowance having been issued against it. Before the *Espinas* ruling, they sincerely believed that the submission of certifications substantially complied with the requirements of COA Circular No. 2006-001 in relation to COA Circular No. 89-300. There is not the slightest hint that they intentionally and deliberately veered away from the plain meaning of the phrase "other documents evidencing disbursements" in the auditing guidelines just to suit their own interests to the prejudice of the government.

4. ID.; ID.; ID.; ID.; CIVIL LAW; PRINCIPLES OF UNJUST ENRICHMENT AND *SOLUTIO INDEBITI*; RECIPIENTS OF THE DISALLOWED AMOUNTS ARE LIABLE TO RETURN THE SAME REGARDLESS OF THEIR GOOD FAITH.— The approving/certifying officers who are recipients of the disallowed amounts are liable to return the same pursuant to our pronouncement in *Madera* that "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." As judiciously pointed out by Associate Justice Alfredo Benjamin S. Caguioa, the Court 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. The metamorphosis of the rules governing accountability for disallowances, especially payee liability for the amount actually received, strives to create a harmonious interplay of the provisions of the Administrative Code, the principles of unjust enrichment and *solutio indebiti* under the Civil Code, and the policy of social justice in disallowance cases.

5. ID.; ID.; ID.; ID.; INSTANCES WHEN THE RETURN OF THE DISALLOWED AMOUNT UNDULY RECEIVED MAY BE EXCUSED.— [T]he rule that a payee shall be liable for the return of the amount he/she unduly received is not absolute. The Court may excuse the return of the disallowed amount received when: (1) it was genuinely given in consideration of services rendered; (2) undue prejudice will result from requiring the return; (3) social justice comes into play; or (4) the case calls for humanitarian consideration. Since none of the exceptional

circumstances obtain in this case, *We* apply the general rule and hold all passive recipients, including approving/certifying officers who were not clearly shown to have acted in bad faith, with malice, or with gross negligence but had received the disallowed amounts in their capacity as payees, liable to return the amounts they received on the basis of *solutio indebiti*.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
The Solicitor General for respondents.

D E C I S I O N

DELOS SANTOS, *J.*:

A certification which does not substantiate "the paying out of an account payable," or a disbursement is not a valid document to support the claim for reimbursement of extraordinary and miscellaneous expenses (EME) of the officials of government owned and controlled corporations (GOCCs), government financial institutions (GFIs), and their subsidiaries. The Commission on Audit (COA) can properly disallow in audit the EME disbursement for violation of COA Circular No. 2006-001.[1] Consequently, the approving/certifying officers who acted in bad faith or with malice or gross negligence are solidarily liable to return the net disallowed amount. All passive recipients, including the approving/certifying officers who received the disallowed amounts that they have approved/certified, are liable to return the amounts they have respectively received on the basis of *solutio indebiti*.

This is a Petition for *Certiorari*[2] under Rule 64 in relation to Rule 65 of the Rules of Court assailing COA Decision No.

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[1] Guidelines on the Disbursement of Extraordinary and Miscellaneous Expenses and Other Similar Expenses in Government-Owned and Controlled Corporations/Government Financial Institutions and their Subsidiaries.

[2] *Rollo*, pp. 3-14.

2017-115[3] dated April 26, 2017. The COA affirmed the disallowance of payments of EME of the officials of the National Transmission Corporation (TransCo) in the year 2010.

The Facts

TransCo is a GOCC created in June 2001 by virtue of Section 8 of Republic Act No. (RA) 9136,[4] otherwise known as the Electric Power Industry Reform Act (EPIRA). It assumed the electrical transmission function of the National Power Corporation (NAPOCOR) and presently operates NAPOCOR's nationwide electrical transmission and subtransmission system.[5]

On various dates in 2010, TransCo paid its officials EME pursuant to RA 9970[6] or the General Appropriations Act of 2010 (GAA).[7]

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[3] Id. at 21-28.

[4] An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for other Purposes.

[5] Section 8 of RA 9136 provides:

SEC. 8. Creation of the National Transmission Company. — There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation (NPC), and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.

[T]he transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO.

[6] An Act Appropriating Funds for the Operation of the Government of the Republic of the Philippines from January One to December Thirty-One, Two Thousand and Ten, and for Other Purposes.

[7] Section 28 of RA 9970 provides:

SECTION 28. *Extraordinary and Miscellaneous Expenses*. — Appropriations authorized herein may be used for extraordinary expenses of the following officials and those of equivalent ranks as may be determined by the DBM, not exceeding:

On June 1, 2011, Supervising Auditor Corazon V. Español (Supervising Auditor Español) and Audit Team Leader Minerva T. Cabigting issued Notice of Disallowance (ND) No. 11-58-(2010)[8] which disapproved the payments of EME in the amount of ₱1,841,165.44. The ND provides that payments of EME were made on a commutable basis and were not supported by receipts, contrary to Item III of COA Circular No. 2006-001 dated January 3, 2006.

(a.) ₱220,000 for each Department Secretary;
(b.) ₱90,000 for each Department Undersecretary;
(c.) ₱50,000 for each Department Assistant Secretary;
(d.) ₱38,000 for each head of bureau or organization of equivalent rank, and for each head of a Department Regional Office;
(e.) ₱22,000 for each head of a Bureau Regional Office or organization of equivalent rank; and
(f.) ₱16,000 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari'a Circuit Court Judge.

In addition, miscellaneous expenses not exceeding Seventy-Two Thousand Pesos (₱72,000) for each of the offices under the above named officials are herein authorized.

For the purpose of this section, extraordinary and miscellaneous expenses shall include, but shall not be limited to expenses incurred for:

(a.) Meetings, seminars and conferences;
(b.) Official entertainment;
(c.) Public relations;
(d.) Educational, athletic and cultural activities;
(e.) Contributions to civic or charitable institutions;
(f.) Membership in government associations;
(g.) Membership in national professional organizations duly accredited by the Professional Regulations Commission;
(h.) Membership in the Integrated Bar of the Philippines;
(i.) Subscription to professional technical journals and informative magazines, library books and materials;
(j.) Office equipment and supplies; and
(k.) Other similar expenses not supported by the regular budget allocation.

No portion of the amounts authorized herein shall be used for salaries, wages, allowances, confidential and intelligence expenses. In case of deficiency, the requirements for the foregoing purposes shall be charged against savings of the agency.

These expenditures shall be subject to pertinent accounting and auditing rules and regulations.

[8] *Rollo*, pp. 33-35.

Aggrieved, TransCo appealed the ND to the COA Corporate Government Sector (COA-CGS).

Ruling of the COA-CGS

In Decision No. 2014-16[9] dated September 17, 2014, the Cluster Director granted the appeal and lifted the ND. The Cluster Director opined that a certification may be accepted as supporting document for reimbursements of EME by GOCCs, since a certification is allowed in National Government Agencies (NGA) under COA Circular No. 89-300.[10] The Cluster Director likewise stated that the uniformity of the amounts claimed does not support the allegation that the EME were paid on a commutable basis.[11]

Ruling of COA Proper

On April 26, 2017, the COA, upon automatic review, rendered Decision No. 2017-115[12] with the dispositive portion as follows:

> **WHEREFORE**, premises considered Commission on Audit Corporate Government Sector Cluster 3 Decision No. 2014-16 dated September 17, 2014 is hereby **DISAPPROVED**. Accordingly, Notice of Disallowance No. 11-58-(2010) dated June 1, 2011, on the payment of Extraordinary and Miscellaneous Expenses to officials of National Transmission Corporation for the year 2010 in the total amount of [₱]1,841,165.44 is **SUSTAINED**.[13] (Emphasis in the original)

Citing *Espinas v. Commission on Audit*,[14] the COA held that a mere certification will not suffice to support a claim for reimbursement of EME as it is not a document evidencing disbursement under COA Circular No. 2006-001. It clarified

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[9] Not attached to the *rollo*.

[10] Audit Guidelines on Disbursement for Extraordinary and Miscellaneous Expenses in National Government Agencies pursuant to Section 19 and other related sections of RA 6688 (General Appropriations Act for 1989).

[11] *Rollo*, pp. 23-24.

[12] Id. at 21-28.

[13] Id. at 27.

[14] 731 Phil. 67 (2014).

that TransCo cannot invoke COA Circular No. 89-300, which allows the use of certifications in claiming for reimbursement, because said circular applies to NGAs. It further explained that "the substantial distinction between officials of the NGAs and GOCCs lies in the fund from which the EME is sourced. The EME of the GOCCs are allocated by their own internal governing boards while the EME paid by the NGAs are appropriated in the annual GAA duly enacted by Congress."[15]

Contrary to the Cluster Director's Decision, the COA ruled that the absence of receipts or supporting documents evidencing disbursements of the EME and the uniformity of the amounts paid to TransCo officials are conclusive proof that the EME were paid on a commutable basis. It dismissed TransCo's claim of good faith because of its "disregard of the applicable law or rules." Ultimately, it found TransCo officials who had direct participation and/or authorized the payment of the EME solidarily liable with the payees for the disallowed amount.[16]

TransCo moved for reconsideration but the same was denied in a Resolution dated January 23, 2018.[17]

On August 6, 2019, Commission Secretary Nilda B. Plaras (Commission Secretary Plaras) issued Notice of Finality of Decision (NFD) No. 2019-281,[18] pertinent portions of which read:

> Please be informed that the decision of the CP denying the motion for reconsideration of COA Decision No. 2017-115 dated April 26, 2017 has become final and executory pursuant to Section 9, Rule X of the 2009 Revised Rules of Procedure of the Commission on Audit, as modified under COA Resolution No. 2011-006 dated August 17, 2011.
>
> Accordingly, the persons liable shall pay the above amount immediately to the agency cashier. Failure to pay the same shall

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[15] *Rollo*, p. 26.

[16] Id. at 27.

[17] Id. at 32.

[18] Id. at 110-111.

authorize the agency cashier to withhold payment of salary and other money due to persons liable in accordance with COA Order of Execution to be issued to the agency cashier.[19]

In a letter[20] dated September 10, 2019, TransCo requested that the NFD be lifted and the effects thereof be suspended while awaiting the Court's decision in the instant petition. In response, Commission Secretary Plaras clarified that the COA's Revised Rules of Procedure provides that the filing of a petition for *certiorari* shall not sway the execution of the subject Decision and Resolution unless the Court directs otherwise.[21]

TransCo filed a Motion for Issuance of a *Status Quo Ante* Order and/or Preliminary Injunction[22] dated January 3, 2020 to enjoin the implementation of the subject COA Decision and Resolution.

Arguments of the Parties

TransCo argues that the COA erred in sustaining the disallowance due to the following reasons:

1. Supervising Auditor Español failed to substantiate her claim that the payments of EME were made on a commutable basis;
2. Recipients of EME should not be held liable because they received the payments in good faith and without knowledge that they were made contrary to existing rules and regulations;
3. In the absence of malice and gross negligence, TransCo officials are not liable for the mistakes made in the performance of their official duties.

The COA, through the Office of the Solicitor General, for its part, maintains that:

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[19] Id. at 111.

[20] Not attached to the *rollo*.

[21] *Rollo*, p. 112.

[22] Id. at 95-103.

1. The burden of proving that the expenses were incurred for official purposes and not on a commutable basis lies with TransCo;[23]
2. The absence of receipts or supporting documents evidencing disbursements of EME and the uniformity of the amounts paid to TransCo officials are conclusive proof that the EME were paid on a commutable basis;[24]
3. The payees of the EME did not receive the payments in good faith since as high ranking officials, they are expected to be knowledgeable of the laws, rules and regulations governing the grant of allowances and benefits such as EME.[25]

Issues

I.

Whether or not the COA acted with grave abuse of discretion in ruling that Transco has the burden of proof to show that payments were not made on a commutable basis, as it alleged.

II.

Whether or not the COA acted with grave abuse of discretion in holding that the doctrine of good faith is inapplicable in this case.

The Court's Ruling

The petition is partly meritorious.

TransCo has the burden of proof to show that it is entitled to reimbursement of EME incurred by its officials.

[23] Id. at 79.

[24] Id. at 76.

[25] Id. at 80.

COA Circular No. 2006-001 dated January 3, 2006 prescribes the rules and regulations governing the disbursement of EME and other similar expenses to GOCCs/GFIs and their subsidiaries. It aims to regulate the incurrence of EME by the qualified officials of GOCCs/GFIs and their subsidiaries and ensure the prevention or disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds.[26] This breathes life to COA's constitutional mandate, as guardian of public funds, to promulgate accounting and auditing rules and regulations in the exercise of its general audit power.[27]

Item III of the circular reads:

III. AUDIT GUIDELINES

1. The amount of extraordinary and miscellaneous expenses, as authorized in the corporate charters of GOCCs/GFIs, shall be the ceiling in the disbursement of these funds. Where no such authority is granted in the corporate charter and the authority to grant extraordinary and miscellaneous expenses is derived from the General Appropriations Act (GAA), the amounts fixed thereunder shall be the ceiling in the disbursements;

2. **Payment of these expenditures shall be strictly on a non-commutable or reimbursable basis;**

3. **The claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursements**; and

4. No portion of the amounts appropriated shall be used for salaries, wages, allowances, intelligence and confidential expenses which are covered by separate appropriations. (Emphasis supplied)

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[26] Item I of COA Circular No. 2006-001.

[27] Section 2, Article IX (D) of the 1987 Constitution provides:

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

The above audit guidelines enumerate the conditions for a successful EME reimbursement which generally pertain to the authorized budget ceiling, method of payment, requisite proof of disbursement, and appropriation restriction. The COA rules require that the EME shall be paid strictly on a non-commutable or reimbursable basis and that the claim for reimbursement be supported by receipts and/or other documents evidencing disbursements.

In *Maritime Industry Authority v. Commission on Audit*,[28] We have held that the burden of proving the validity or legality of the grant of allowance or benefits is with the government agency or entity granting the allowance or benefit, or the employee claiming the same. Here, it is undisputed that the authority of TransCo to allow the payment of EME is derived from the GAA. But while TransCo is authorized to grant EME, it may do so only when the conditions set forth in COA Circular No. 2006-001 have been clearly established. In fact, the last paragraph of Section 28 of the GAA explicitly states that "these expenditures shall be subject to pertinent accounting and auditing rules and regulations."

The claims for reimbursement of EME of GOCCs, like TransCo, rest upon the existence of sufficient proof of the expenditures incurred by the qualified officials such as receipts and/or other documents evidencing disbursement. It is only when supporting documents are presented that the GOCC can properly claim reimbursement of EME. Hence, it is incumbent upon TransCo and its officials, as claimants, to prove that all these requirements have been met before they can properly claim reimbursement of their EME. It is an elementary rule that he who alleges a fact has the burden of proving it.

In this case, TransCo's claim for reimbursement was not supported by any receipt from its officials. The only document presented to substantiate the reimbursement claim was a "certification." Whether a certification is a sufficient document

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[28] 750 Phil. 288 (2015).

to support EME reimbursement has been squarely settled in *Espinas*[29] in this wise:

> [T]he Court concurs with the CoA's conclusion that the "certification" submitted by petitioners cannot be properly considered as a supporting document within the purview of Item III (3) of CoA Circular No. 2006-01 which pertinently states that a "claim for reimbursement of [EME] expenses shall be supported by receipts and/or other documents evidencing disbursements." Similar to the word "receipts," the "other documents" pertained to under the above-stated provision is qualified by the phrase "evidencing disbursements." Citing its lexicographic definition, the CoA stated that the term "disbursement" means "to pay out commonly from a fund" or "to make payment in settlement of debt or account payable." That said, it then logically follows that petitioners' **"certification," so as to fall under the phrase "other documents" under Item III (3) of CoA Circular No. 2006-01, must substantiate the "paying out of an account payable," or, in simple term, a disbursement**. However, an examination of the sample "certification" attached to the petition does not, by any means, fit this description. The signatory therein merely certifies that he/she has spent, within a particular month, a certain amount for meetings, seminars, conferences, official entertainment, public relations, and the like, and that the certified amount is within the ceiling authorized under the LWUA corporate budget. Accordingly, since petitioners' reimbursement claims were solely supported by this "certification," the CoA properly disallowed said claims for failure to comply with CoA Circular No. 2006-01.[30] (Emphasis and underscoring supplied)

Clearly, a certification may or may not constitute an adequate proof of disbursement. To be admitted as a sufficient evidence of payment, the certification presented by the GOCC must establish "the paying out of an account payable," or a disbursement. It must reflect the transaction details that are typically found in a receipt which is the best evidence of the fact of payment.[31] It must specify the nature and description of

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[29] *Supra* note 14.

[30] Id. at 78-79.

[31] See *Sugar Regulatory Administration v. Tormon*, 700 Phil. 165, 173 (2012).

the expenditures, amount of the expenses, and the date and place they were incurred. This interpretation holds true even with just a plain reading of Item III of COA Circular No. 2006-001, since the phrase "other documents" is qualified by the phrase "evidencing disbursements." A sweeping and general statement that expenditures were incurred by some officials within a certain month does not, in any way, satisfy the condition contemplated in the circular. Unfortunately, in this case, the certifications submitted by TransCo officials merely provided a simple declaration from each payee that "the expenses have been incurred for any of the purposes contemplated under the law or regulation (GAA and COA Circular No. 89-300) in relation to or by reason of my position."[32] Hence, the Court is not inclined to accept such certification as valid evidence of disbursement.

Considering the absence of receipts and/or supporting documents to substantiate TransCo's claim of reimbursement, the COA correctly disallowed the EME of Transco officials. The grant of EME was an irregular expenditure which COA Circular No. 85-55-A[33] dated September 8, 1985 defines as:

> 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 law. Irregular expenditures are incurred without conforming with prescribed usages and rules of discipline. 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. An anomalous transaction which fails to follow or violates appropriate rules of procedure, is likewise irregular. Irregular expenditures are different from illegal expenditures since the latter would pertain to expenses incurred in violation of the law whereas, the former is incurred in violation of applicable rules and regulations other than the law.[34] (Underscoring supplied)

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[32] *Rollo*, p. 47.

[33] Amended Rules and Regulations on the Prevention of Irregular, Unnecessary, Excessive or Extravagant Expenditures or Uses of Funds and Property.

[34] Item 3.1 of COA Circular No. 85-55-A.

As regards the method of payment criteria, the Court is not convinced that the absence of evidence of payment and the uniformity of the amounts paid to TransCo officials are conclusive proof that the EME were paid on a commutable basis. Such a statement by the COA is at best conjectural since the ND supplied no detail whatsoever on how it arrived at its conclusion. The COA did not even mention the applicable law, regulation, jurisprudence or the accounting and auditing principle that support its conclusion that the EME of the officials were not paid in accordance with COA Circular No. 2006-001.

In view of the foregoing, no grave abuse of discretion can be attributed to the COA for upholding the ND.

Even if the approving/certifying officers did not act in bad faith or with malice or gross negligence, all the payees are liable to return the disallowed amounts respectively received by them.

In its petition, TransCo maintains that even if the payment of EME was contrary to the existing COA rules and regulations, the recipients thereof should not be held liable as they received the payments in good faith and without knowledge of any irregularity surrounding its disbursement.[35]

The recent case of *Madera v. Commission on Audit*[36] lays down a clear set of rules on the refund of amounts disallowed by the COA for a just and equitable outcome among persons liable for disallowances. The Court succinctly summarized the rules on the return of the disallowed amounts, to wit:

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:

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[35] *Rollo*, p. 9.

[36] G.R. No. 244128, September 8, 2020.

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.

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.[37]

Good faith is essentially a state of mind at a fixed point in time·that purports "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 through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."[38] It has been a valid defense of public officials against the return of disallowed benefits or allowances based on the principle that public officials are entitled to the presumption of good faith when discharging their official duties.[39] Stated differently, a public official shall be presumed to have regularly performed

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[37] Id.

[38] *Development Bank of the Philippines v. Commission on Audit*, G.R. No. 221706, March 13, 2018, 858 SCRA 531, 550.

[39] *Rotoras v. Commission on Audit*, G.R. No. 211999, August 20, 2019.

his duties provided there is no clear *indicia* of bad faith, showing patent disregard of his responsibility.[40]

TransCo paid the EME of its officials in 2010. It explained that it granted their EME on the basis of mere certifications under the honest belief and understanding that they were compliant with COA Circular No. 2006-001. In its Appeal Memorandum[41] filed before the COA-CGS in 2011, TransCo justified its grant with these averments:

> 13. Based on the above, it is undeniable that by the use of the word "or," the intention is to allow for an alternative. This is consistent with the well-entrenched principle of statutory construction that "The word *or* is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it should, as a rule, be construed in the sense in which it ordinarily implies, as a disjunctive word." In its elementary sense, "or" as used in a statute is a disjunctive article indicating an alternative. It often connects a series of words or propositions indicating a choice of either. When "or" is used, the various members of the enumeration are to be taken separately.
>
> 14. Accordingly, it is clear that the documentary support for the claim of EME can be receipts **OR** other documents, such as the "certification" issued by the officials concerned.
>
> 15. In fact, the sufficiency and validity of the certification is recognized by COA Audit Circular No. 89-300, the circular which generally governs the use of funds for EME by government offices other than GOCCs.
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> 16. It is interesting to note that compared to the auditing rules on EME for GOCCs (COA Circular No. 2006-001), the presentation of receipts is dispensed with if a certification is executed by an official of a national government agency. The dispensation of presentation of receipts is clearly explained in COA Audit Circular No. 89-300, *thus*:
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> "I. RATIONALE: —
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> "x x x. Moreover, the existing reimbursement procedure on the use of the funds is viewed as cumbersome and discriminatory

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[40] See *Madera v. Commission on Audit*, *supra* note 36.

[41] *Rollo*, pp. 36-50.

in that payments for the covered expenses have to be advanced first and reimbursed only after quite some time and only upon presentation of receipts, thereby allowing some officials to benefit more than others."

17. Accordingly, the said circular mandates that:

"1. The underlying principle behind the provision for authority to use appropriations for extraordinary and miscellaneous expenses recognizes the need to grant some form of assistance to officials occupying key positions in the National Government to enable them to meet various financial demands that otherwise would not have been made on them. Verily, by reason of their incumbency to these positions, they have to incur expenses of the sort which are not normally charged to or covered by their salaries and other emoluments. These officials should thus be accorded as much flexibility as possible in the utilization of the funds involved, subject to limitations imposed by law.

"2. The amounts fixed by the General Appropriations Act for the offices and officials indicated therein shall be the basis for the control in the disbursement of these funds.

"3. No portion of the amounts authorized and fixed by law shall be used for salaries, wages, allowances, intelligence and confidential expenses which are covered by separate appropriations.

"4. The entitlement to the benefit provided under the General Appropriations Act shall be on a strictly non-commutable or reimbursement basis. The corresponding claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursement, if these are available, or, **in lieu thereof, by a certification executed by the official concerned that the expenses sought to be reimbursed have been incurred for any of the purposes contemplated under Section 19 and other related sections of RA 6688 (or similar provision in subsequent General Appropriations Act) in relation to or by reason of his position**. In the case of miscellaneous expenses incurred for an office specified in the law, such certification shall be executed solely by the head of the office.

18. While some of the foregoing provisions do not appear in COA Circular No. 2006-001, TransCo does not see any reason why the same rationale and auditing rules should not be extended and applied to GOCCs. After all, TransCo does not go beyond the amounts fixed by the GAA for EME.

19. TransCo believes that there is no substantial distinction between national government agencies and GOCCs insofar as disbursement of EME is concerned to justify the imposition of stricter auditing rules against GOCCs.[42]

Time and again, the Court has held that mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith.[43] Bad faith does not simply connote bad judgment or negligence. It purports breach of a known duty through some motive, interest or ill will that partakes of the nature of fraud, including a dishonest purpose or some moral obliquity and conscious doing of a wrong. The existence of bad faith must be shown by clear and convincing evidence since the law always presumes good faith.[44]

True, TransCo misread COA Circular No. 2006-001 and mistakenly relied on COA Audit Circular No. 89-300, which solely applies to NGAs. However, it is worthy to note that at that time, there was yet a judicial interpretation of the COA rules on what constitutes "or other documents evidencing disbursements." The Court's careful analysis of the use of certification in claims for EME reimbursement of GOCCs was only made in *Espinas* in 2014. Thus, it can hardly be concluded that the approving/certifying officers of TransCo did not act in good faith when they admitted the certifications as evidence of disbursement.

Moreover, TransCo had been granting EME to its officials since it started its operations in 2003 but the payments of EME

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[42] Id. at 42-44. (Citations omitted)

[43] *Lumayna v. Commission on Audit*, 616 Phil. 929, 945 (2009).

[44] See *China Airlines v. Court of Appeals*, 453 Phil. 959 (2003).

were disallowed only in 2010. The records are lacking in proof that between the years 2003 and 2010, certifications were not recognized as valid proof of disbursements. The records did not even show that audit observation memoranda were previously issued to inform TransCo of the deficiencies reflected in the audit of accounts, operations or transactions, if any, such as the absence of supporting documents. What is clear from the records is that the approving/certifying officers of TransCo committed an honest lapse of judgment when they granted the irregular EME. Their mistake was not indicative of willful and deliberate intent to disregard the COA rules and regulations but only an error of judgment made in good faith. Accordingly, the approving and certifying officers, having acted in good faith in the regular performance of their official functions, are not civilly liable to return the disallowed amount in accordance with Section 38 (1),[45] Chapter 9, Book I of the Administrative Code of 1987.

In the same vein, there is no clear evidence that the approving/certifying officers acted with malice and/or gross negligence when they treated the certifications as valid supporting documents for their EME reimbursement.

In *Fernandez v. Office of the Ombudsman*,[46] the Court held that:

> [G]ross negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.[47]

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[45] 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.

[46] 684 Phil. 377 (2012).

[47] *Id.* at 389, citing *Brucal v. Desierto*, 501 Phil. 453, 465-466 (2005).

The approving/certifying officers did not patently disregard the existing rules in granting EME reimbursement since in the past, TransCo has consistently allowed the use of certification as a supporting document without a notice of disallowance having been issued against it. Before the *Espinas* ruling, they sincerely believed that the submission of certifications substantially complied with the requirements of COA Circular No. 2006-001 in relation to COA Circular No. 89-300. There is not the slightest hint that they intentionally and deliberately veered away from the plain meaning of the phrase "other documents evidencing disbursements" in the auditing guidelines just to suit their own interests to the prejudice of the government. On this score, the COA committed grave abuse of discretion in ordering ***all*** approving/authorizing officers solidarily liable with the payees for the return of the disallowed amount.

This is not to say, however, that the government is left to endure the significant fiscal impact of properly disallowed transactions. The approving/certifying officers who are recipients of the disallowed amounts are liable to return the same pursuant to our pronouncement in *Madera* that "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."[48] As judiciously pointed out by Associate Justice Alfredo Benjamin S. Caguioa, the Court 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.[49] The metamorphosis of the rules governing accountability for disallowances, especially payee liability for the amount actually received, strives to create a harmonious interplay of the provisions of the Administrative Code, the principles of unjust enrichment and *solutio indebiti*

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[48] *Madera v. Commission on Audit*, *supra* note 36.

[49] Id.

under the Civil Code, and the policy of social justice in disallowance cases.

Finally, the rule that a payee shall be liable for the return of the amount he/she unduly received is not absolute. The Court may excuse the return of the disallowed amount received when: (1) it was genuinely given in consideration of services rendered; (2) undue prejudice will result from requiring the return; (3) social justice comes into play; or (4) the case calls for humanitarian consideration. Since none of the exceptional circumstances obtain in this case, *We* apply the general rule and hold all passive recipients, including approving/certifying officers who were not clearly shown to have acted in bad faith, with malice, or with gross negligence but had received the disallowed amounts in their capacity as payees, liable to return the amounts they received on the basis of *solutio indebiti*.

WHEREFORE, in view of the foregoing reasons, the Court **DISMISSES** the Petition for *Certiorari* of the National Transmission Corporation and **AFFIRMS** with **MODIFICATION** the Commission on Audit Decision No. 2017-115 dated April 26, 2017. All passive recipients of the disallowed extraordinary and miscellaneous expenses, including the approving/certifying officials who had received the disallowed amounts in their capacity as payees, are ordered to return the amounts respectively received by them.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Carandang, Lopez, Gaerlan, and *Rosario, JJ.*, concur.

Lazaro-Javier, Inting, and *Zalameda, JJ.*, on official leave.

FIRST DIVISION

[G.R. Nos. 245617 & 245836. November 10, 2020]

EL DORADO CONSULTING REALTY AND DEVELOPMENT GROUP CORP., *Petitioner*, *v.* **PACIFIC UNION INSURANCE COMPANY,** *Respondent*.

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER; A COURT OR AN ADJUDICATIVE BODY MUST DISMISS AN ACTION IF IT HAS NO JURISDICTION OVER THE SUBJECT MATTER. — Jurisprudence has consistently held that for a court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. Jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action.

2. ID.; ID.; ID.; ID.; A JUDGMENT RENDERED WITHOUT JURISDICTION IS VOID. — A judgment rendered by a court without jurisdiction is null and void and may be attacked anytime. It creates no rights and produces no effect. It remains a basic fact in law that the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect.

3. ID.; ID.; ID.; ID.; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION (CIAC); CIAC HAS JURISDICTION OVER A SURETY, WHICH ISSUED A PERFORMANCE BOND IN RELATION TO A CONSTRUCTION AGREEMENT WHEN SUCH BOND IS SO CONNECTED THAT IT CANNOT BE SEVERED FROM THE AGREEMENT. — The question of whether the CIAC has jurisdiction over a surety, which issued

a performance bond to guarantee the performance by the contractor of its obligation under the construction agreement, is not novel. In *Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc*, property owner Anscor Land, Inc. (ALI) entered into a contract for the construction of an eight-unit townhouse with Kraft Realty and Development Corporation (KRDC). KRDC secured the completion of the construction project through a surety and performance bond it obtained from Prudential Guarantee. The delay in the construction project prompted ALI to terminate the contract and to file arbitration proceedings against both KRDC and Prudential Guarantee. Prudential Guarantee argued that CIAC did not have jurisdiction over it for not being a signatory of the construction agreement between ALI and KRDC. In ruling that the CIAC has jurisdiction over Prudential Guarantee, the Supreme Court held that: . . .

> . . . In the case at bar, the performance bond was so connected with the construction contract that the former was agreed by the parties to be a condition for the latter to push through and at the same time, the former is reliant on the latter for its existence as an accessory contract.
>
> Although not the construction contract itself, the performance bond is deemed as an associate of the main construction contract that it cannot be separated or severed from its principal. The Performance Bond is significantly and substantially connected to the construction contract that there can be no doubt it is the CIAC, under Section 4 of EO No. 1008, which has jurisdiction over any dispute arising from or connected with it.

4. ID.; ID.; ID.; WHEN THE OWNER-CONTRACTOR AGREEMENT FAILS TO EXPRESSLY INCORPORATE THE PERFORMANCE BOND, CIAC HAS NO JURISDICTION OVER THE SURETY. — It is clear from the Owner-Contractor Agreement that the Performance Bonds were not made an integral part of the same. Even though the Performance Bonds made reference to the Owner-Contractor Agreement, nevertheless, the arbitration clause, which is the basis for CIAC to take cognizance of the case, was only signed by El Dorado and ASPF Construction. PUIC is not a signatory of the Owner-Contractor Agreement. Thus, only El Dorado and ASPF Construction, the parties to the Owner-Contractor Agreement who agreed to the arbitration

clause, can invoke the same. Not being a party to the Agreement, it is not proper for PUIC to be impleaded in the arbitration proceedings before the CIAC. This is consistent with the basic principle that contracts shall take effect only between the parties, their assigns, and heirs.

Since the CIAC has no jurisdiction over PUIC, the CIAC cannot rule on the liability of PUIC over the Performance Bonds.

APPEARANCES OF COUNSEL

Tan Crucillo Dimaculangan & Roque Law Offices for petitioners.

Karen O. Amurao for respondent.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Consolidated Decision[2] dated July 23, 2018 and Consolidated Resolution[3] dated February 28, 2019 of the Court of Appeals (CA) in CA-G.R. SP Nos. 150085 and 150092 which denied the petitions for review filed by both parties and affirmed with modification the ruling of the Construction Industry Arbitration Commission (CIAC).

Facts of the Case

On July 27, 2014, El Dorado Consulting Realty and Development Group Corporation (El Dorado) entered into an Owner-Contractor Agreement[4] with ASPF Construction and Development, Inc. (ASPF Construction) for the construction

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[1] *Rollo*, pp. 8-50.

[2] Penned by Associate Justice Henri Jean Paul B. Inting (now a member of this Court), with the concurrence of Associate Justices Mariflor P. Punzalan Castillo and Danton Q. Bueser; *id.* at 57-81.

[3] *Id.* at 105-109.

[4] *Id.* at 188-205.

of a seven-storey condominium hotel named "The Ritz" located in Pampanga for a contract price of ₱170,000,000.00.[5]

On July 10, 2014, ASPF Construction obtained a Performance Bond from Pacific Union Insurance Company (PUIC) in the amount of ₱19,641,807.80 to guarantee compliance with all its obligations under the Owner-Contractor Agreement. Subsequently, the parties amended the Owner-Contractor Agreement to increase the Performance Bond to ₱98,209,039.00, equivalent to the total contract price for Phase 1 of the project. Hence, PUIC issued another Performance Bond in the amount of ₱78,567,231.20.[6]

During the construction of the project, El Dorado sent several notices to ASPF Construction for Warnings/Notices of Delayed Works, Site Safety Violation, Notices of Defect, and Notices to Comply.[7] Eventually, on February 5, 2015, ASPF Construction requested that a revision of the schedule of payments, which provided for the payment by condominium units, be made. ASPF Construction asked that El Dorado pay in cash instead because it has encountered liquidity problems. However, El Dorado refused, explaining that the payment by condominium units was a major consideration why it agreed to enter into the contract.[8]

On April 30, 2015, El Dorado sent a Notice of Default, Notice of Termination of Agreement, Denial of Claim for Payment Billings and Demand for Return of Unliquidated Down Payment to ASPF Construction.[9]

On May 6, 2015, El Dorado submitted a Notice of Claim to PUIC under Performance Bond No. 25628[10] in the amount of

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[5] Id. at 58.

[6] Id. at 59.

[7] Id.

[8] Id. at 60.

[9] Id. at 60, 233.

[10] Id. at 212.

₱19,641,807.80 and Performance Bond No. 26198[11] amounting to ₱78,567,231.20. In the letter sent by El Dorado, it stated that ASPF Construction has incurred substantial delay in the performance of its obligations which are all events of default under the Owner-Contractor Agreement. Hence, El Dorado requested that PUIC release the full amount of ₱98,209,039.20 under the Performance Bonds.[12]

On June 25, 2015, PUIC informed El Dorado that the Performance Bonds were cancelled for non-payment of premiums.[13]

Due to this, on July 13, 2016, El Dorado filed a Request for Arbitration against PUIC before the CIAC and prayed that it be awarded the following: (1) unliquidated down payment amounting to ₱17,000,000.00; (2) cost of retrofitting in the amount of ₱350,000.00; (3) liquidated damages in the amount of ₱21,538,294.76; and (4) interest and costs of arbitration amounting to ₱3,500,000.00.[14]

In its Answer with Compulsory Counterclaim,[15] PUIC questioned the jurisdiction of the CIAC alleging that it was not a party to the Owner-Contractor Agreement which contains the Arbitration Clause and sought the recovery of exemplary damages in the amount of ₱1,000,000.00 and attorney's fees amounting to ₱1,000,000.00.[16]

Ruling of the CIAC

On March 6, 2017, the CIAC issued its Final Award.[17] The CIAC discussed that is within its jurisdiction to take cognizance

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[11] Id. at 214.

[12] Id. at 60-62.

[13] Id. at 62.

[14] Id. at 158.

[15] Id. at 366-376.

[16] Id. at 159, 375.

[17] Id. at 158-176.

of the case because the dispute between the parties arose from or is connected with the Owner-Contractor Agreement entered into between El Dorado and ASPF Construction.[18]

The CIAC found that El Dorado only paid a total of ₱17,000,000.00 representing the 10% down payment for the whole project. The actual accomplishment of ASPF Construction as of March 28, 2015 was estimated to be 10.39%. Compensating the two, there is still left a balance of 0.39% of the contract price or ₱663,000.00 in favor of ASPF Construction. Hence, El Dorado cannot recover the ₱17,000,000.00 it paid to ASPF Construction.[19] As to the cost of retrofitting or pre-requisite works, the CIAC held that it cannot grant the same to El Dorado because the latter is still liable to ASPF Construction for the 0.39% of the contract price as discussed above. El Dorado will be unjustly enriched at the expense of ASPF Construction if the same is granted.[20] However, the CIAC found it proper to award ₱1,700,000.00 as liquidated damages in favor of El Dorado.[21] The CIAC also ordered the parties to pay their *pro rata* share of the arbitration costs.[22]

On the other hand, the CIAC denied the prayer for exemplary damages and attorney's fees submitted by PUIC.[23]

Both El Dorado and PUIC filed an appeal to the CA.

Ruling of the CA

In its July 23, 2018 Consolidated Decision,[24] the CA agreed with the CIAC that El Dorado is not entitled to its claim for unliquidated damages, costs of retrofitting, and

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[18] Id. at 166-167.

[19] Id. at 169-170.

[20] Id. at 170.

[21] Id. at 173.

[22] Id.

[23] Id.

[24] Supra note 2.

the interests and costs of arbitration. Further, the CA deleted CIAC's award of ₱1,700,000.00 liquidated damages in favor of El Dorado.[25]

The CA agreed that El Dorado is not entitled to reimbursement of rehabilitation and other prerequisite work because the same is in the nature of actual damages that has to be proved. Here, El Dorado failed to adduce actual receipts, invoices, contracts, and similar documents to support such claim.[26]

In deleting the ₱1,700,000.00 liquidated damages awarded by the CIAC to El Dorado, the CA discussed that as a precondition thereto, there must be proof that ASPF Construction incurred delay in the performance of its obligation. In this case, the CA found that there is insufficiency of evidence to establish the fact of delay. Moreover, since El Dorado did not pay the down payment on time and deliberately refused to settle the progress billings or perform its other contractual obligations, it cannot demand that ASPF Construction deliver on time or recover damages by reason of its own breach. The CA concluded that El Dorado was equally at fault.[27]

Lastly, the CA denied PUIC's contention that the unpaid First Variation Order Billing in the amount of ₱729,668.11 be offset against El Dorado's claim because there is no proof to support the billings.[28]

El Dorado filed a motion for partial reconsideration[29] which was denied in the Consolidated Resolution[30] dated February 28, 2019.

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[25] *Rollo*, p. 80.

[26] Id. at 71.

[27] Id. at 72-75.

[28] Id. at 79.

[29] Id. at 82-101.

[30] Supra note 3.

Since the CA deleted the only monetary claim awarded by CIAC in its favor, El Dorado filed this Petition for Review on *Certiorari*[31] reiterating its demand to be reimbursed the amount of ₱17,000,000.00 it paid as down payment, ₱21,538,294.76 as liquidated damages, interest, costs of arbitration, and attorney's fees.[32]

In its Comment,[33] PUIC agreed with the CA in deleting the award of liquidated damages in the amount of ₱1,700,000.00 in favor of El Dorado for lack of legal basis.[34]

Issue

Whether the CA correctly affirmed with modification the ruling of the CIAC.

Ruling of the Court

This case originated from a Request for Arbitration[35] filed by El Dorado against PUIC without impleading ASPF Construction. At the outset, it must be first determined whether the CIAC correctly took cognizance of the case. PUIC questioned the jurisdiction of the CIAC in its Answer with Counterclaim but did not insist on the same argument when the case reached the CA. The silence of PUIC and its failure to raise the issue of jurisdiction before the CA and before this Court is immaterial. Jurisprudence has consistently held that for a court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. Jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no

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[31] *Rollo,* pp. 8-50.

[32] Id. at 49.

[33] Id. at 259-292.

[34] Id. at 266.

[35] Id. at 10.

jurisdiction over the subject matter, the only power it has is to dismiss the action.[36]

A judgment rendered by a court without jurisdiction is null and void and may be attacked anytime. It creates no rights and produces no effect. It remains a basic fact in law that the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect.[37]

The question of whether the CIAC has jurisdiction over a surety, which issued a performance bond to guarantee the performance by the contractor of its obligation under the construction agreement, is not novel. In *Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc.*,[38] property owner Anscor Land, Inc. (ALI) entered into a contract for the construction of an eight-unit townhouse with Kraft Realty and Development Corporation (KRDC). KRDC secured the completion of the construction project through a surety and performance bond it obtained from Prudential Guarantee. The delay in the construction project prompted ALI to terminate the contract and to file arbitration proceedings against both KRDC and Prudential Guarantee. Prudential Guarantee argued that CIAC did not have jurisdiction over it for not being a signatory of the construction agreement between ALI and KRDC. In ruling that the CIAC has jurisdiction over Prudential Guarantee, the Supreme Court held that:

> As regards the first requirement, the Performance Bond issued by the petitioner [Prudential Guarantee] was meant to guarantee the supply of labor, materials, tools, equipment, and necessary supervision to complete the project. A guarantee or a surety contract under Article 2047 of the Civil Code of the Philippines is an accessory contract

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[36] *Bilag v. Ay-ay*, 809 Phil. 236, 248 (2017), citing *Mitsubishi Motors Philippines Corporation v. Bureau of Customs*, 760 Phil. 954, 960 (2015).

[37] Id.

[38] 644 Phil. 634 (2010).

because it is dependent for its existence upon the principal obligation guaranteed by it.

In fact, the primary and only reason behind the acquisition of the performance bond by KRDC was to guarantee to ALI that the construction project would proceed in accordance with the contract terms and conditions. In effect, the performance bond becomes liable for the completion of the construction project in the event KRDC fails in its contractual undertaking.

Because of the performance bond, the construction contract between ALI and KRDC is guaranteed to be performed even if KRDC fails in its obligation. In practice, a performance bond is usually a condition or a necessary component of construction contracts. In the case at bar, the performance bond was so connected with the construction contract that the former was agreed by the parties to be a condition for the latter to push through and at the same time, the former is reliant on the latter for its existence as an accessory contract.

Although not the construction contract itself, the performance bond is deemed as an associate of the main construction contract that it cannot be separated or severed from its principal. The Performance Bond is significantly and substantially connected to the construction contract that there can be no doubt it is the CIAC, under Section 4 of EO No. 1008, which has jurisdiction over any dispute arising from or connected with it.

However, in the case of *Stronghold Insurance Company, Inc. v. Spouses Stroem*,[39] which involved property owners Sps. Stroem who entered into an Owner-Contractor Agreement with Asis-Leif and Company, Inc. (Asis-Leif) for the construction of a two-storey house, Asis-Leif likewise secured a performance bond from Stronghold Insurance Company, Inc. (Stronghold). When Asis-Leif failed to finish the project on time, Sps. Stroem filed a Complaint for breach of contract and for sum of money with claims for damages against both Asis-Leif and Stronghold before the Regional Trial Court (RTC). Stronghold argued that the RTC has no jurisdiction over it in view of the arbitration clause found in the Owners-Contractor Agreement entered into by Sps. Stroem and Asis-Leif. This time, the Supreme Court

[39] 751 Phil. 262 (2015).

held that the RTC and not CIAC has jurisdiction over the surety ruling thus:

This court, however, cannot apply the ruling in Prudential to the present case. Several factors militate against petitioner's claim.

The contractual stipulations in this case and in Prudential are different. The relevant provisions of the Owners-Contractor Agreement in this case state:

ARTICLE 5. THE CONTRACT DOCUMENTS. —

The following documents prepared by the CONTRACTOR shall constitute an integral part of this contract as fully as if hereto attached or herein stated, except as otherwise modified by mutual agreement of parties, and attached to this agreement.

Attachment 5.1 Working Drawings

Attachment 5.2 Outline Specifications

Attachment 5.3 Bill of Quantities

Attachment 5.4 CONTRACTOR Business License

x x x x x x x x x

ARTICLE 7. PERFORMANCE (SURETY) BOND. —

7.1 Within 30 days of the signing of this agreement, CONTRACTOR shall provide to OWNERS a performance bond, issued by a duly licensed authority acceptable to the OWNERS, and equal to the amount of PHP4,500,000.00 (Four Million and Five Hundred Thousand Philippine Pesos), with the OWNERS as beneficiary.

7.2 The performance bond will guarantee the satisfactory and faithful performance by the CONTRACTOR of all provisions stated within this contract.

ARTICLE 8. ARBITRATION. —

8.1 Any dispute between the parties hereto which cannot be amicably settled shall be finally settled by arbitration in accordance with the provision of Republic Act 876, of The Philippines, as amended by the Executive Order 1008 dated February 4, 1985.

In contrast, the provisions of the construction contract in **Prudential** provide:

Article 1

CONTRACT DOCUMENTS

1.1 The following shall form part of this Contract and together with this Contract, are known as the "Contract Documents":

a. Bid Proposal

x x x x x x x x x

d. Notice to proceed

x x x x x x x x x

j. **Appendices A & B (respectively, Surety Bond for Performance and, Supply of Materials by the Developer)**

This court in Prudential held that the construction contract expressly incorporated the performance bond into the contract. In the present case, Article 7 of the Owners-Contractor Agreement merely stated that a performance bond shall be issued in favor of respondents, in which case petitioner and Asis-Leif Builders and/or Ms. Ma. Cynthia Asis-Leif shall pay ₱4,500,000.00 in the event that Asis-Leif fails to perform its duty under the Owners-Contractor Agreement. Consequently, the performance bond merely referenced the contract entered into by respondents and Asis-Leif, which pertained to Asis-Leif's duty to construct a two-storey residence building with attic, pool, and landscaping over respondents' property.

To be clear, it is in the Owners-Contractor Agreement that the arbitration clause is found. The construction agreement was signed only by respondents and the contractor, Asis-Leif, as represented by Ms. Ma. Cynthia Asis-Leif. It is basic that "[c]ontracts take effect only between the parties, their assigns and heirs[.]" Not being a party to the construction agreement, petitioner cannot invoke the arbitration clause. Petitioner, thus, cannot invoke the jurisdiction of the CIAC.[40] (Emphasis supplied)

The Owner-Contractor Agreement in this case is the same as in *Stronghold* in the sense that it failed to expressly incorporate

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[40] Id. at 281-282.

the performance bonds thereto. Article 2 of the Owner-Contractor Agreement between El Dorado and ASPF Construction provides the following:

> **Article 2**
> **CONTRACT DOCUMENTS**
>
> 2.01 The CONTRACT DOCUMENTS, which are hereto incorporated and made integral part hereof, and which are duly signed by the OWNER and the CONTRACTOR, shall consist of, but not limited to the following:
>
> a. Contractor's Proposals dated May 22, 2014 — Annex "A";
>
> b. Plans, Specifications and other bid documents dated _____ Annex "B";
>
> c. Notice of Award dated _____ and instruction to Bidders — Annex "C";
>
> d. Unit Price Schedule — Annex "D";
>
> e. Bar Chart/CPM Network — Annex "E";
>
> f. United Architects of the Philippines (UAP) Document 301 General Conditions — Annex "F";
>
> g. Schedule of Payment — Annex "G"
>
> x x x x x x x x x[41]

It is clear from the Owner-Contractor Agreement that the Performance Bonds were not made an integral part of the same. Even though the Performance Bonds made reference to the Owner-Contractor Agreement, nevertheless, the arbitration clause, which is the basis for CIAC to take cognizance of the case, was only signed by El Dorado and ASPF Construction. PUIC is not a signatory of the Owner-Contractor Agreement. Thus, only El Dorado and ASPF Construction, the parties to the Owner-Contractor Agreement who agreed to the arbitration clause, can invoke the same. Not being a party to the Agreement, it is not proper for PUIC to be impleaded in the arbitration proceedings before the CIAC. This is consistent with the basic

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[41] *Rollo*, p. 190.

principle that contracts shall take effect only between the parties, their assigns, and heirs.[42]

Since the CIAC has no jurisdiction over PUIC, the CIAC cannot rule on the liability of PUIC over the Performance Bonds.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. CIAC Case No. 36-2016 is **DISMISSED** for lack of jurisdiction on the part of the Construction Industry Arbitration Commission.

SO ORDERED.

Peralta, C.J. (Chairperson), Caguioa, Zalameda, and *Gaerlan, JJ.*, concur.

[42] CIVIL CODE OF THE PHILIPPINES, Art. 1311.

FIRST DIVISION

[G.R. No. 248567. November 10, 2020]

ERWIN TORRES *y* CASTILLO, *Petitioner*, *v.* **AAA,**[1] *Respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; POLITICAL LAW; CONSTITUTIONAL LAW; RIGHTS OF THE ACCUSED; RIGHT AGAINST DOUBLE JEOPARDY; FINALITY-OF-ACQUITTAL RULE; A JUDGMENT OF ACQUITTAL IS FINAL, UNAPPEALABLE, AND IMMEDIATELY EXECUTORY EXCEPT WHEN RENDERED WITH GRAVE ABUSE OF DISCRETION.— A judgment of acquittal, whether ordered by the trial or the appellate court, is final, unappealable, and immediately executory upon its promulgation. This iron clad rule has only one exception: **grave abuse of discretion** that is **strictly limited** whenever there is a **violation of the prosecution's right to due process** such as when it is **denied the opportunity to present evidence** or where the **trial is sham** or when there is a **mistrial**, rendering the judgment of acquittal void.

An example of an exception to the finality-of-acquittal rule is the case of *Galman v. Sandiganbayan* where the Court remanded the case to the trial court because the previous trial conducted was a mockery. The unique facts surrounding the

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[1] Pursuant to Republic Act No. 7610 or "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262 or "An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, or the "Rule on Violence against Women and Their Children," effective November 15, 2004; and *People v. Cabalquinto*, 533 Phil. 703 (2006), the real name of the child victim is withheld and, instead, fictitious initials are used to represent her. The personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, are also concealed in accordance with *People v. CCC*, G.R. No. 220492, July 11, 2018.

Galman case constitute the very narrow exception to the application of the right against double jeopardy. Hence, in order for the CA to take cognizance of the *certiorari* petition, AAA and the prosecution must have clearly demonstrated that the RTC blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.

2. ID.; ID.; ID.; ID.; ID.; ID.; ID.; MISAPPRECIATION OF EVIDENCE IS A MERE ERROR OF JUDGMENT THAT DOES NOT QUALIFY AS AN EXCEPTION TO THE FINALITY-OF-ACQUITTAL DOCTRINE.— [I]n setting aside Torres' acquittal, the CA reviewed the evidence presented by the parties before the RTC. The CA held that the RTC mistakenly ruled that there were inconsistencies between the affidavit and direct testimony of AAA. In other words, the CA concluded that the RTC erred in acquitting Torres because of misappreciation of evidence. It is a settled rule that misappreciation of the evidence is a mere error of judgment that does not qualify as an exception to the finality-of-acquittal doctrine. An error of judgment is not correctible by a writ of *certiorari*.

. . . [T]he petition of AAA before the CA is bereft of any allegation, much less, evidence that the prosecution's right to due process was violated or that the proceedings before the RTC were a mockery such that Torres' acquittal was a foregone conclusion. It is immaterial whether the RTC was correct in its assessment of the evidence leading to the acquittal of Torres. The fact remains that Torres' right against double jeopardy already attached when the RTC acquitted him. Hence, no amount of error of judgment will ripen into an error of jurisdiction that would have allowed the CA to review the same through a petition for *certiorari*.

APPEARANCES OF COUNSEL

Chua Lim & Associates for petitioner.
UP Office of Legal Aid for respondent.

D E C I S I O N

CARANDANG, *J.*:

Before this Court is a Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court, assailing the Decision[3] dated March 7, 2019 and the Resolution[4] dated July 24, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 156429, which annulled and set aside the judgment of acquittal rendered by the Regional Trial Court (RTC) of Quezon City, Branch 107, and instead pronounced Erwin Torres *y* Castillo (Torres) guilty beyond reasonable doubt of violation of Section 5 (b) of Republic Act No. (R.A.) 7610, otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

Facts of the Case

Torres was charged with violation of Section 5 (b) of R.A. 7610 in an Information that reads:

> That on or about the 14th day of October 2012, in Quezon City, Philippines, the abovenamed accused, with force and intimidation did then and there, willfully, unlawfully and feloniously commit an act of child abuse upon one AAA, 12 years old, a minor, by then and there embracing her, taking off her shirt and bra, pulling her shorts and panty, laying her down on top of him then touching her breasts, against her will and consent, which act debase, degrade or demeans the intrinsic worth of dignity of said AAA as a human being, to the damage and prejudice of AAA.
>
> Contrary to law.[5]

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[2] *Rollo*, pp. 30-100.

[3] Penned by Associate Justice Jane Aurora C. Lantion, with the concurrence of Associate Justices Maria Elisa Sempio Diy and Marie Christine Azcarraga-Jacob; id. at 10-25.

[4] Id. at 26-28.

[5] Id. at 123.

On June 10, 2014, Torres pleaded not guilty to the offense charged.[6] Thereafter, pre-trial and trial ensued. The prosecution presented three witnesses namely: (1) AAA; (2) BBB,[7] AAA's mother; and (3) Aida Maria H. Perez, a psychiatrist.[8] The version of the prosecution is summarized as follows:

AAA was 12 years old who was born in 1999[9] when the incident happened at their house located in Quezon City. Torres was AAA's stepfather being her mother's husband. On October 14, 2012 at around 12:00 p.m., Torres asked AAA to go to his room and give him a massage. AAA complied to Torres' request. When inside the room, Torres suddenly locked the door and turned off the lights. Torres asked AAA to take off her bra and shirt. He touched AAA's breasts and kissed her from her neck down to her breasts. AAA also claimed that Torres told her to, "*hawakan ko po iyong titi niya para po lumabas iyong tamod niya*," but AAA refused to do so. AAA averred that Torres only stopped mashing her breasts when he heard the gate being opened. He asked AAA to get out of the room. AAA informed her grandmother about what happened.[10]

AAA also narrated that Torres has been molesting her since 2011 by pressing his penis against her butt whenever he would chance upon her standing in front of the kitchen sink and washing the dishes.[11] BBB on the other hand testified that she evicted Torres from their house when she found out about the incidents. She claimed that Torres sent her text messages asking for their forgiveness.[12]

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[6] Id. at 11.

[7] Supra note 1.

[8] *Rollo*, p. 126.

[9] CA *rollo*, p. 51.

[10] *Rollo*, pp. 11-12.

[11] Id. at 12.

[12] Id. at 12-13.

The defense presented Torres as its sole witness who denied the accusations of AAA. According to Torres, on October 14, 2012, he was at the house with AAA and the other members of the family. They were busy preparing the house for the birthday after-party of Andrea's two-year old half sibling. At 2:00 p.m. of the same day, they left the house for Andrea's two-year old half sibling's 3:00 p.m. party at Max's restaurant. Torres added that he never asked AAA for a massage and that AAA is against his marriage to BBB.[13]

Ruling of the Regional Trial Court

In its Decision[14] dated April 17, 2018, the RTC of Quezon City, Branch 107, acquitted Torres for failure of the prosecution to prove his guilt beyond reasonable doubt.[15]

The RTC was not convinced of the veracity of the testimony of AAA and held that her statements fell short of the quantum of evidence required in the prosecution of criminal cases. The RTC noted that AAA's testimony is replete with inconsistencies and lacks specific details on how the acts of sexual abuse was committed by Torres. The RTC, likewise, found conflicting statements between AAA's affidavit and her direct testimony in court.[16]

The RTC also held that the elements of coercion or influence must be proved in the commission of violation of Section 5 (b) of R.A. 7610 when the victim is a minor not exploited in prostitution. However, in this case, there was no allegation much less proof of coercion or influence.[17]

Aggrieved of the acquittal of Torres, AAA filed a Petition for *Certiorari*[18] under Rule 65 to the CA.

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[13] Id. at 13.

[14] Penned by Judge Jose L. Bautista; id. at pp. 125-131.

[15] Id. at 131.

[16] Id. at 126.

[17] Id. at 129-130.

[18] Id. at 132-139.

Ruling of the Court of Appeals

On March 7, 2019, the CA rendered a Decision[19] annulling the ruling of the RTC. The CA found Torres guilty beyond reasonable doubt of lascivious conduct under Section 5 (b) of R.A. 7610; sentenced him to suffer the penalty of *reclusion perpetua* without eligibility for parole; and ordered him to pay fine in the amount of ₱15,000.00, as well as moral damages and exemplary damages amounting to ₱75,000.00 each.[20]

According to the CA, the prosecution proved all the elements of violation of Section 5 (b) of R.A. 7610. Torres committed lascivious conduct when he grabbed and mashed AAA's breasts.[21] The CA found that being AAA's stepfather, Torres exercises moral ascendancy over the former. AAA was only 12 years old at the time the incidents occurred.[22]

Contrary to the ruling of the RTC, the CA held that there were no inconsistencies between the affidavit of AAA and her direct testimony in court. The CA faulted the RTC for not considering the complete affidavit of AAA in ruling for the acquittal of Torres.[23]

Torres filed a motion for reconsideration,[24] which was denied in a Resolution[25] dated July 24, 2019. Hence, Torres filed a Petition for Review on *Certiorari*[26] under Rule 45 of the Rules of Court.

The main argument of Torres in his petition is that the CA erred in convicting him for lascivious conduct under Section

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[19] Supra note 3.

[20] *Rollo*, p. 24.

[21] Id. at 18.

[22] Id. at 19.

[23] Id. at 21.

[24] Id. at 210-282.

[25] Id. at 26-28.

[26] Id. at 30-100.

5 (b) of R.A. 7610 because this violates his constitutional right against double jeopardy after having been earlier acquitted by the RTC.[27]

In her Comment, AAA stresses that the RTC committed grave abuse of discretion in acquitting Torres and in ruling that the affidavit of AAA was inconsistent with her direct testimony because the records of the case belie such a conclusion.[28]

Issue

The issue in this case is whether the CA violated Torres' right against double jeopardy when it convicted him for lascivious conduct under Section 5 (b) of R.A. 7610 even if he was previously acquitted by the RTC.

Ruling of the Court

The petition is meritorious.

A judgment of acquittal, whether ordered by the trial or the appellate court, is final, unappealable, and immediately executory upon its promulgation.[29] This iron clad rule has only one exception: **grave abuse of discretion** that is **strictly limited** whenever there is a **violation of the prosecution's right to due process** such as when it is **denied the opportunity to present evidence** or where the **trial is sham** or when there is a **mistrial**, rendering the judgment of acquittal void.[30]

An example of an exception to the finality-of-acquittal rule is the case of *Galman v. Sandiganbayan*[31] where the Court remanded the case to the trial court because the previous trial conducted was a mockery. The unique facts surrounding the *Galman* case constitute the very narrow exception to the

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[27] Id. at 77.

[28] Additional *rollo*, p. 8.

[29] *Chiok v. People*, 774 Phil. 230, 248 (2015).

[30] *People v. Arcega*, G.R. No. 237489, August 27, 2020.

[31] 228 Phil. 42 (1986).

application of the right against double jeopardy. Hence, in order for the CA to take cognizance of the *certiorari* petition, AAA and the prosecution must have clearly demonstrated that the RTC blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[32]

Here, in setting aside Torres' acquittal, the CA reviewed the evidence presented by the parties before the RTC. The CA held that the RTC mistakenly ruled that there were inconsistencies between the affidavit and direct testimony of AAA. In other words, the CA concluded that the RTC erred in acquitting Torres because of misappreciation of evidence. It is a settled rule that misappreciation of the evidence is a mere error of judgment that does not qualify as an exception to the finality-of-acquittal doctrine. An error of judgment is not correctible by a writ of *certiorari*.[33]

In this case, the petition of AAA before the CA is bereft of any allegation, much less, evidence that the prosecution's right to due process was violated or that the proceedings before the RTC were a mockery such that Torres' acquittal was a foregone conclusion.[34] It is immaterial whether the RTC was correct in its assessment of the evidence leading to the acquittal of Torres. The fact remains that Torres' right against double jeopardy already attached when the RTC acquitted him. Hence, no amount of error of judgment will ripen into an error of jurisdiction that would have allowed the CA to review the same through a petition for *certiorari*.

WHEREFORE, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated March 7, 2019 and the Resolution dated July 24, 2019 of the Court of Appeals in CA-G.R. SP No. 156429, finding Erwin Torres *y* Castillo guilty beyond reasonable doubt of lascivious conduct under Section 5 (b) of Republic Act No. 7610 are hereby declared

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[32] *People v. Court of Appeals*, 691 Phil. 783, 788 (2012).

[33] Id. at 787.

[34] Id.

NULL and **VOID** for violation of his constitutional right against double jeopardy.

SO ORDERED.

Peralta, C.J. (Chairperson), Zalameda, and *Gaerlan, JJ.*, concur.

Caguioa, J., see separate concurring opinion.

SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

Petitioner was charged with violation of Section 5 (b) of Republic Act No. (R.A.) 7610 for allegedly sexually abusing AAA,[1] his 12-year old stepdaughter. The trial court acquitted petitioner for failure of the prosecution to prove his guilt beyond reasonable doubt. **AAA filed a Petition for *Certiorari* under Rule 65 of the Court of Appeals (CA).** The CA annulled the ruling of the trial court and found petitioner guilty beyond reasonable doubt of lascivious conduct under Section 5 (b) of R.A. 7610. In convicting petitioner, the CA faulted the trial court for failing to appreciate AAA's entire affidavit and for finding inconsistencies in her testimonies.

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[1] The identity of the victims or any information which could establish or compromise their identities, as well as those of their immediate family or household members, shall be withheld pursuant to R.A. 7610, titled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; R.A. 9262, titled "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, 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, titled "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; and *People v. XXX and YYY*, G.R. No. 235652, July 9, 2018.)

Hence, the present petition for review on *certiorari* which argues that petitioner's right against double jeopardy was violated.

The *ponencia* grants the petition, ruling that the *certiorari* petition of AAA filed before the CA neither alleged, much less proved, that it falls under the limited exceptions to the finality-of-acquittal rule; hence, the CA's decision granting the same and finding petitioner guilty of the crime charged was void for violation of his right against double jeopardy.[2]

I concur with the granting of the petition. The acquittal by the trial court of petitioner for the crime charged may not be assailed without violating his Constitutional right against double jeopardy. I submit this Concurring Opinion 1) to add that AAA had no legal personality to question the acquittal of petitioner before the CA, and 2) to stress that the remedy of *certiorari* under Rule 65 of the Rules of Court in judgments of acquittal is a very narrow exception which does not arise in the present case.

First, only the Office of the Solicitor General (OSG), on behalf of the State, and not the private offended party, has the authority to question the acquittal of an accused in a criminal case. Therefore, AAA had no legal personality to file the petition for *certiorari* with the CA.

The Court has definitively ruled that in criminal cases, the acquittal of the accused or the dismissal of the case against him can be appealed — whenever legally possible — **only by the OSG, acting on behalf of the State.**[3] **The private complainant or the offended party may question such acquittal or dismissal only insofar as the civil liability of the accused is concerned.**[4] The Court explained this in *Villareal v. Aliga*:[5]

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[2] *Ponencia*, p. 5.

[3] *Bangayan, Jr. v. Bangayan*, G.R. No. 172777, October 19, 2011, 659 SCRA 590, 597.

[4] *Id.*

[5] G.R. No. 166995, January 13, 2014, 713 SCRA 52.

x x x **The authority to represent the State in appeals of criminal cases before the Supreme Court and the CA is solely vested in the [OSG].** Section 35 (I), Chapter 12, Title III, Book IV of the 1987 Administrative Code explicitly provides that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. It shall have specific powers and functions to represent the Government and its officers in the Supreme Court and the CA, and all other courts or tribunals in all civil actions and special proceedings in which the government or any officer thereof in his official capacity is a party. The OSG is the law office of the Government.

x x x x

Thus, the Court has definitively ruled that in a criminal case in which the offended party is the State, the interest of the private complainant or the private offended party is limited to the civil liability arising therefrom. If a criminal case is dismissed by the trial court or if there is an acquittal, an appeal of the criminal aspect may be undertaken, whenever legally feasible, only by the State through the Solicitor General. As a rule, only the Solicitor General may represent the People of the Philippines on appeal. The private offended party or complainant may not undertake such appeal.[6]

The rationale behind this rule is that in criminal cases, the State is the offended party.[7] It is the party affected by the dismissal of the criminal action, and not the private complainant.[8] Thus, in the prosecution of the offense, the complainant's role is limited to that of a witness for the prosecution.[9] If a criminal case is dismissed by the trial court or if there is an acquittal, only the State, through the Solicitor

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[6] *Id.* at 64-66 citing *Bautista v. Cuneta-Pangilinan*, G.R. No. 189754, October 24, 2012, 683 SCRA 521. Emphasis supplied.

[7] *Cu v. Ventura*, G.R. No. 224567, September 26, 2018, 881 SCRA 118, 131-132.

[8] *Chiok v. People*, G.R. Nos. 179814 & 180021, December 7, 2015, 776 SCRA 120, 135.

[9] *People v. Santiago*, 225 Phil. 851, 861-862 (1989).

General, may appeal the criminal aspect thereof and the offended party's right is limited to questioning only its civil aspect.[10]

From the narration of facts in the *ponencia*, AAA filed the petition for *certiorari* before the CA questioning the acquittal of the petitioner, without the participation of the OSG. Hence, it was incumbent upon the CA to dismiss the petition as AAA did not have the requisite legal standing to institute the same.

Second, the remedy of a petition for *certiorari* against the acquittal of an accused is a very limited exception to the finality-of-acquittal rule, and one which does not arise in the present case, as found by the *ponencia*.

The 1987 Constitution, as well as its predecessors, guarantees the right of the accused against double jeopardy.[11] To give life to this guarantee, our rules on criminal proceedings require that a judgment of acquittal, whether ordered by the trial or the appellate court, is final, unappealable, and immediately executory upon its promulgation.[12] This is referred to as the finality-of-acquittal rule.[13] The rationale for this rule is elucidated in the oft-cited *People v. Velasco*,[14] thus:

> x x x The fundamental philosophy highlighting the finality of an acquittal by the trial court cuts deep into "the humanity of the laws and in a jealous watchfulness over the right of the citizen, when brought in unequal contest with the State. [x x x]" Thus, *Green*

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[10] Id.

[11] Article III, Section 21, 1987 CONSTITUTION provides:

Section 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

Also see Article IV, Section 22, 1973 CONSTITUTION; Article III, Section 1 (20), 1935 CONSTITUTION.

[12] *Chiok v. People*, supra note 8 at 137.

[13] Id.

[14] G.R. No. 127444, September 13, 2000, 340 SCRA 207.

expressed the concern that "(t)he underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that **the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent, he may be found guilty**."

It is axiomatic that on the basis of humanity, fairness and justice, an acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal. **The philosophy underlying this rule establishing the absolute nature of acquittals is "part of the paramount importance criminal justice system attaches to the protection of the innocent against wrongful [conviction]."** The interest in the finality-of-acquittal rule, confined exclusively to verdicts of not guilty, is easy to understand: it is a need for "repose," a desire to know the exact extent of one's liability. With this right of repose, the criminal justice system has built in a protection to insure that the innocent, even those whose innocence rests upon a jury's leniency, will not be found guilty in a subsequent proceeding.

Related to his right of repose is the defendant's interest in his right to have his trial completed by a particular tribunal. **This interest encompasses his right to have his guilt or innocence determined in a single proceeding by the initial jury empanelled to try him, for society's awareness of the heavy personal strain which the criminal trial represents for the individual defendant is manifested in the willingness to limit Government to a single criminal proceeding to vindicate its very vital interest in enforcement of criminal laws. The ultimate goal is prevention of government oppression; the goal finds its voice in the finality of the initial [proceeding].** As observed in *Lockhart v. Nelson*, **"(t)he fundamental tenet animating the Double Jeopardy Clause is that the State should not be able to oppress individuals through the abuse of the criminal process."** Because the innocence of the accused has been confirmed by a final judgment, the Constitution conclusively presumes that a second trial would be unfair.[15]

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[15] *Id.* at 240-241. Emphasis and underscoring supplied.

In *People v. Court of Appeals*,[16] the Court recapitulated the purposes of the rule, thus:

> **The finality-of-acquittal doctrine has several avowed purposes. Primarily, it prevents the State from using its criminal processes as an instrument of harassment to wear out the accused by a multitude of cases with accumulated trials. It also serves the additional purpose of precluding the State, following an acquittal, from successively retyring the defendant in the hope of securing a conviction. And finally, it prevents the State, following conviction, from retrying the defendant again in the hope of securing a greater penalty.**[17]

The rule is iron-clad, the exception of grave abuse of discretion being ***strictly limited*** to a situation where there is a violation of the prosecution's right to due process, when it is denied the opportunity to present evidence or where the trial is a sham, thus rendering the assailed judgment void.[18]

The case of *Galman v. Sandiganbayan*[19] *(Galman)* presents the foremost example of the exception to the rule on double jeopardy. In *Galman*, the judgment of acquittal was remanded to the trial court after the Court found that the trial conducted was a mockery — **a sham**. The Court found that the then President had stage-managed in and from Malacañang Palace a scripted and predetermined manner of handling and disposing of the case, and that the prosecution and the Justices who tried and decided the same acted under the compulsion of some pressure which proved to be beyond their capacity to resist, and which not only prevented the prosecution to fully ventilate its position and to offer all the evidence which it could have otherwise presented, but also predetermined the final outcome of the case of total absolution of all the accused of all criminal and civil liability.[20]

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[16] G.R. No. 159261, February 21, 2007, 516 SCRA 383.

[17] Id. at 397. Emphasis supplied.

[18] *Philippine Savings Bank v. Bermoy*, G.R. No. 151912, September 26, 2005, 471 SCRA 94, 109, citing *People v. Sandiganbayan*, G.R. No. 140633, February 4, 2002, 376 SCRA 74, 78-79.

[19] G.R. No. 72670, September 12, 1986, 144 SCRA 43.

[20] Id. at 70.

Due to the influence that the Executive exerted over the independence of the court trying the case, the Court ruled that the decision acquitting the accused issued in that case was in violation of the prosecution's right to due process. The factors the Court considered in making this exception were (1) suppression of evidence, (2) harassment of witnesses, (3) deviation from the regular raffle procedure in the assignment of the case, (4) close monitoring and supervision of the Executive and its officials over the case, and (5) secret meetings held between and among the President, the Presiding Justice of the Sandiganbayan, and the Tanodbayan. From the foregoing, the Court saw the trial as a sham.

Thus, the Court ruled in *Galman* that the right against double jeopardy, absolute as it is, may be invoked only when there was a valid judgment terminating the first jeopardy. The Court explained that no right attaches from a void judgment, and hence the right against double jeopardy may not be invoked when the decision that "terminated" the first jeopardy was invalid and issued without jurisdiction.[21]

The unique facts surrounding *Galman* — and other similar scenarios where the denial of due process on the part of the prosecution was so gross and palpable — is the limited area where an acquittal may be revisited through a petition for *certiorari*.[22]

Verily, this means that not every error in the trial or evaluation of the evidence by the court in question that led to the acquittal of the accused would be reviewable by *certiorari*. As the Court

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[21] Id. at 87.

[22] See *People v. Tria-Tirona*, G.R. No. 130106, July 15, 2005, 463 SCRA 462, 469, wherein the Court ruled that "a judgment of acquittal brought before the Supreme Court on *certiorari* cannot be had unless there is a finding of mistrial, as in *Galman v. Sandiganbayan*." See also *People v. Court of Appeals*, G.R. No. 183652, February 25, 2015, 751 SCRA 675, 697, wherein the Court held that for "[a]n acquittal is considered tainted with grave abuse of discretion when it is shown that the prosecution's right to due process was violated or that the trial conducted was a sham."

ruled in *Republic v. Ang Cho Kio*,[23] "[n]o error, **however, flagrant**, committed by the court against the state, can be reserved by it for decision by the [S]upreme [C]ourt when the defendant has once been placed in jeopardy and discharged, even though the discharge was the result of the error committed."[24]

Applying the foregoing to the case on hand, the CA, in annulling the trial court's decision acquitting petitioner, determined that the trial court committed grave abuse of discretion — the grave abuse of discretion merely in finding inconsistencies in the testimonies of AAA and for failing to consider AAA's complete affidavit.[25] This is not the grave abuse of discretion that is an exception to the rule against double jeopardy. This falls far short of the strict and narrow standard set by law for review of acquittals in criminal cases. Thus, even assuming that the trial court incorrectly appreciated the evidence before it, it thereby only committed an error of judgment, and not one of jurisdiction, which could not be rectified by a petition for *certiorari* because double jeopardy had already set in when the trial court acquitted petitioner. As discussed, it is only when the case falls within the narrow confines of jurisprudential exception — like in *Galman* where the State was deprived of its day in court — that a decision acquitting the accused may be revisited.

Thus, in light of the foregoing considerations, I vote to **GRANT** the petition.

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[23] G.R. Nos. L-6687 & L-6688, July 29, 1954, 95 Phil. 475.

[24] Id. at 480. Emphasis and underscoring supplied.

[25] *Ponencia*, p. 5.

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Gross Neglect of Duty or Negligence — Gross neglect of duty is defined as negligence characterized by 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; it is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. (Field Investigation Office - Office of the Ombudsman *v.* Rondon, *et al.*; G.R. No. 207735; Nov. 10, 2020) p. 806

— Dispensing with the requirement in the memorandum of agreement for the recipient entity to procure an insurance prior to an award of a government program constitutes gross negligence that negates the presumption of good faith. (Torreta, *et al*. *v.* Commission on Audit; G.R. No. 242925; Nov. 10, 2020) p. 1119

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— The failure of a municipal treasurer to diligently verify the correctness of checks for signature is a neglect of duty to exercise proper management of the municipal funds. (Bauzon *v.* Municipality of Mangaldan, Pangasinan, Represented by Mayor Bona Fe De Vera-Parayno; G.R. No. 233316; Nov. 4, 2020) p. 207

— The head of an office cannot easily shift the liability for irregularities to subordinates. (*Id.*)

— The execution of the criminal act must be preceded by cool thought and reflection; there must be showing of a plan or preparation to kill, or proof that the accused meditated and reflected upon his/her decision to execute the crime. (*Id.*)

— When the following requisites are proven during trial: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that he/she clung to his determination; (3) a sufficient lapse of time between the determination and execution, to allow him/her to reflect upon the consequences of his/her act, and to allow his/her conscience to overcome the resolution of his will, it presupposes a deliberate planning of the crime before executing it. (*Id.*)

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(People *v.* XXX; G.R. No. 218277; Nov. 9, 2020) p. 359

— The affidavit of service stating that he served copies of the Rule 43 petition to the adverse parties through personal service instead of registered mail appears to have been an honest mistake; in any case the inaccuracy in the statement of the manner of service appears inconsequential considering that, after all, he was able to serve copies of the petition to the adverse parties. (*Id.*)

Question of Law — A question of law arises when there is doubt as to what the law is on a certain state of facts; it must not involve an examination of the probative value of the evidence; an appeal which involved an interpretation of the true agreement between the parties necessarily raises a question of law. (Privatization and Management Office *v.* Nocom, Substituted by Mariano T. Nocom, Jr., *et al.;* G.R. No. 250477; Nov. 9, 2020) p. 523

Question of Law and Question of Fact, Distinguished — There is a question of law when the doubt or difference arises as to what the law is on certain state of facts and which does not call for an existence of the probative value of the evidence presented by the parties-litigants; in a case involving a question of law, the resolution of the issue rests solely on what the law provides on the given set of circumstances; on the other hand, a question of fact exists when a doubt or difference arises as to the truth or falsity of alleged facts; if the query requires a re-evaluation of the credibility of witnesses or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual. (Central Realty and Development Coporation *v.* Solar Resources, Inc. *et al.;* G.R. No. 229408; Nov. 9, 2020) p. 390

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— PSLMC Resolution No. 4 provides that "CNA Incentive is linked with agency performance and productivity," intended to be charged against free unencumbered savings of the agency, which are no longer intended for any specific purpose. It is an incentive to produce efficiently by meeting targets and generating savings. (*Id.*)

— PSLMC Resolution No. 4, Series of 2002, mandates that the CNA incentive is intended to be charged against the free unencumbered savings of the agency, which are no longer intended for any specific purpose, to ensure that funds are available and all planned targets, programs and services approved in the budget of the agency are still achieved. (Department of Agrarian Reform Employees Association, represented by its President, Luthgarda S. Sibbaluca *v.* Commission on Audit; G.R. No. 217285; Nov. 10, 2020) p. 999

are subject to the Salary Standardization Law; non-wage benefits are subject to regulations issued by the Civil Service Commission; d) The grant of wage benefits is also subject to the constitutional and statutory authorizations for the use of appropriations and savings; e) Unlike in the private sector, negotiations in the public sector must always consider the public interest and take the governmental role of the agency or office into primordial concern; f) All employees are public officers and are thus subject to public trust and statutory limitations on matters including their conduct; g) Incumbent heads of offices are temporary; and h) Members of Congress, representing their constituents, including union members, can change the law. (Confederation for Unity, Recognition and Advancement of Government Employees [COURAGE], Represented by its National President Ferdinand Gaite, *et al*. *v*. Florencio B. Abad, in his Capacity as the Secretary of the Department of Budget and Management, *et al*.; G.R. No. 200418; Nov. 10, 2020) p. 699

Savings — Section 3 of PSLMC Resolution No. 4 defines the specific savings that may be used, thus: "Sec. 3. Savings refers to balances of the agency's released allotment for the year, free from any obligation or encumbrance and which are no longer intended for specific purposes/s: (a) After completion of the work/activity for which the appropriation is authorized; (b) Arising from unpaid compensation and related costs pertaining to vacant positions; or (c) Realized from the implementation of the provisions of the CNA which resulted in improved systems and efficiencies thus enabled the agency to meet and deliver the required or planned targets, programs and services approved in the annual budget at a lesser cost." (Department of Agrarian Reform Employees Association, represented by its President, Luthgarda S. Sibbaluca *v*. Commission on Audit; G.R. No. 217285; Nov. 10, 2020) p. 999

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CONTRACTS

Absolute and Relative Simulation of Contract — Simulation takes place when the parties do not really want the contract, they have executed to produce the legal effects expressed by its wordings; simulation of a contract may either be absolute or relative; the former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement. (Pasco *v.* Cuenca, *et al.;* G.R. No. 214319; Nov. 4, 2020) p. 68

Interpretation of Contracts — It is a cardinal rule in the interpretation of contracts that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. (Privatization and Management Office *v.* Nocom, Substituted by Mariano T. Nocom, Jr., *et al.;* G.R. No. 250477; Nov. 9, 2020) p. 523

— The court is not empowered to alter the terms and conditions of the contract sought to be enforced or to prescribe any other condition not previously agreed to by the parties. (*Id.*)

— The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous; a contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations; where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the agreement as a matter of law. (*Id.*)

CORPORATIONS

Alter Ego Doctrine or Piercing of the Corporate Veil — When the corporation is a mere alter ego of a person, its liabilities may be attributed to the latter, they being

Multiple Corrections or Cancellations of Entries — Multiple corrections or cancellations of entries in civil records may be filed in single action under Rule 108 of the Rules of Court rather than two separate petitions before the Regional Trial Court and the local civil registrar to avoid multiplicity of suits. (Republic *v.* Maligaya, also known as "Merly M. Maligaya Sarmiento"; G.R. No. 233068; Nov. 9, 2020) p. 435

Effect of Failure to Comply with the Requirements for the Correction of Substantial and Clerical Errors — Failure to strictly comply with the procedural requirements renders void the proceedings for the correction of substantial errors. (Republic *v.* Maligaya, also known as "Merly M. Maligaya Sarmiento"; G.R. No. 233068; Nov. 9, 2020) p. 435

— [T]he rules require two sets of notices to potential oppositors — one is given to persons named in the petition and another served to persons who are not named in the petition but nonetheless may be considered interested or affected parties. Consequently, the petition for a substantial correction must implead the civil registrar and other persons who have or claim to have any interest that would be affected. (*Id.*)

— [I]mpleading and notifying only the local civil registrar and the publication of the petition are not sufficient compliance with the procedural requirements. However, the subsequent publication of a notice of hearing may cure the failure to implead and notify the affected or interested parties, such as when: (a) earnest efforts were made by petitioners in bringing to court all possible interested parties; (b) the parties themselves initiated the corrections proceedings; (c) there is no actual or presumptive awareness of the existence of the interested parties; or (d) when a party is inadvertently left out. (*Id.*)

— The proceedings is summary if it pertains to clerical mistakes and adversary if it involves substantial errors. (*Id.*)

the circumstances; a dismissal which was only verbally relayed to an employee by the on-site supervisor is a denial of the right to procedural due process. (Manrique *v.* Delta Earthmoving, Inc., *et al.;* G.R. No. 229429; Nov. 9, 2020) p. 421

EMPLOYMENT

Loss of Trust and Confidence — A less stringent degree of proof is required in terminating managerial employees on the ground of loss of trust and confidence; the mere existence of a basis for believing that such employee has breached the trust of his employer is enough. (Manrique *v.* Delta Earthmoving, Inc., *et al.;* G.R. No. 229429; Nov. 9, 2020) p. 421

— Alleged poor performance of a managerial employee must be clearly and convincingly supported by established facts. (*Id.*)

— An employer cannot be compelled to retain an employee who is guilty of acts inimical to its interests, particularly one who has committed willful breach of trust under Article 297(c); this is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected; to justify a valid dismissal based on loss of trust and confidence, the concurrence of two (2) conditions must be satisfied: (1) the employee concerned must be holding a position of trust and confidence; and (2) there must be an act that would justify the loss of trust and confidence. (*Id.*)

Redundancy — A valid redundancy program must comply with the following requisites: (a) written notice served on both the employees and the DOLE at least one (1) month prior to the intended date of termination of employment; (b) payment of separation pay equivalent to at least one (1) month pay for every year of service; (c) good faith in abolishing the redundant positions; and (d) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly

EXHAUSTION OF ADMINISTRATIVE REMEDIES

When Complexed by Rape — Forcible abduction is deemed complexed by rape when the culprit has carnal knowledge of the woman and there is (1) force or intimidation; (2) the woman is deprived of reason or otherwise unconscious; or (3) she is under 12 years of age or demented. (*Id.*)

FORUM SHOPPING

Concept and Essence — It is the mere act of filing multiple complaints with the same causes of action, parties, and reliefs which constitutes a violation of the rule against forum shopping. (Atty. Go *v.* Atty. Teruel; A.C. No. 11119; Nov. 4, 2020) p. 1

— It is well-settled that the essence of forum shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining of favorable judgment; it exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion in another, or when he institutes two or more actions or proceedings grounded on the same cause to increase the chances of obtaining a favorable decision; an important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs; forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. (*Id.*)

Elements — There is forum shopping when the following exist: (a) identity of parties, or at least such parties as represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata*. (Dela Cruz, *et al. v.* Manila Electric Company (MERALCO), *et al.;* G.R. No. 197878; Nov. 10, 2020) p. 659

GOVERNMENT EXPENDITURES OR DISBURSEMENTS

Disallowance of Personnel Incentives and Benefits — Claims for reimbursement of extraordinary and miscellaneous expenses (EME) must be substantiated by receipts or supporting documents evidencing disbursement. (National Transmission Corporation *v.* Commission on Audit (COA), *et al.;* G.R. No. 244193; Nov. 10, 2020) p. 1170

— The approving/certifying officers' good faith in granting allowances or benefits is a valid defense negating civil liability to return the disallowed amount. (*Id.*)

— To be considered as enough proof of disbursement, a claimant's certification must reflect the transaction details normally found in a receipt. (*Id.*)

Irregular Expenditures — 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. (Torreta, *et al. v.* Commission on Audit; G.R. No. 242925; Nov. 10, 2020) p. 1119

— 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. (*Id.*)

— Irregular expenditures are incurred if funds are disbursed without conforming with prescribed usages and rules of discipline; there is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an irregular expenditure. (*Id.*)

Liability of Approving or Certifying Officials — The Rules of return in *Madera* is applicable to cases involving government contracts for the procurement of goods and services in so far as the determination of persons liable for the disallowed amount is concerned. (Torreta, *et al. v.* Commission on Audit; G.R. No. 242925; Nov. 10, 2020) p. 1119

— The rule that a payee shall be liable for the return of the amount he/she unduly received is not absolute; the Court may excuse the return of the disallowed amount received when: (1) it was genuinely given in consideration of services rendered; (2) undue prejudice will result from requiring the return; (3) social justice comes into play; or (4) the case calls for humanitarian consideration. (National Transmission Corporation *v.* Commission on Audit (COA), *et al.;* G.R. No. 244193; Nov. 10, 2020) p. 1170

— The disallowed amounts must be returned by the passive recipients. (Torreta, *et al*. *v.* Commission on Audit; G.R. No. 242925; Nov. 10, 2020) p. 1119

INFORMATION

Allegations of the Details of Qualifying or Aggravating Circumstances — The generic aggravating circumstances of cruelty, dwelling, and intoxication cannot be considered when not specifically alleged in the information. (People *v.* Natindim, *et al.;* G.R. No. 201867; Nov. 4, 2020) p. 18

Authority to File an Information — A prior written authority from the provincial, city, or chief state prosecutor before filing an information cannot be interpreted as a condition on the validity of an information or on the power of trial courts to hear and decide certain criminal cases. (Gomez *v.* People; G.R. No. 216824; Nov. 10, 2020) p. 915

— An information may be filed by the inquest prosecutors without waiting for the approval of the provincial, city, or chief state prosecutor in cases involving warrantless arrests. (*Id.*)

— An officer who filed an information despite the lack of authority may be considered as a *de facto* officer; to constitute a *de facto officer*, the following requisites must be present, *viz*: (1) there must be an office having a *de facto* existence or, at least, one recognized by law; (2) the claimant must be in actual possession of the office; and (3) the claimant must be acting under color of title or authority; as to the third requisite, the word

"color," as in "color of authority," "color of law," "color of office," "color of title," and "colorable," suggests a kind of holding out and means "appearance, semblance, or *simulacrum*," but not necessarily the reality. (*Id.*)

— In the discharge of official duties, a resolution duly signed by the city prosecutor and attached to an information constitutes a tacit approval to the contents of the information and to its filing. (*Id.*)

— Lack of authority of the handling prosecutor in filing an information is not a ground to *motu proprio* quash the information and dismiss the case. (*Id.*)

— The handling prosecutor's authority in filing an information need not appear on the face of the information itself, which is already attached to an approved resolution recommending the indictment of an accused. (*Id.*)

— The handling prosecutor's lack of authority may either result in a valid filing of an information if not objected to by the accused or subject the prosecutor to a criminal or administrative liability. (*Id.*)

— The requirement of a prior authority in filing an information is merely a formal, and not a jurisdictional requisite, which may be waived by the accused. (*Id.*)

— Any procedural infirmity pertaining to legal representation is deemed waived if not timely objected to by an accused. (*Id.*)

— The failure of the handling prosecutor to secure a prior written authority or approval from the provincial, city, or chief state prosecutor before filing an information merely affects the standing of such officer to appear for the state. (*Id.*)

— If a constitutionally guaranteed right may be waived, more so the absence of a prior written authority from the provincial, city, or chief state prosecutor in the filing of an information. (*Id.*)

Designation of an Offense — An erroneous designation of a felony in the information does not violate the accused's right to be informed of the nature and cause of the accusation; it is important to emphasize that although the Information designated the felony as Statutory Rape and not Qualified Rape, this omission is not fatal so as to violate his right to be informed of the nature and cause of accusation against him. (People *v.* XXX; G.R. No. 218277; Nov. 9, 2020) p. 359

Motu Propio Quashal of an Information — A *motu proprio* quashal of an information and dismissal of the criminal case for lack of authority of the handling prosecutor in filing the information violate the state's right to due process, rendering the judgment of acquittal void. (Gomez *v.* People; G.R. No. 216824; Nov. 10, 2020) p. 915

Sufficiency of an Information — An information is sufficient if it contains the full name of the accused, the designation of the offense given by the statute, the acts or omissions constituting the offense, the name of the offended party, the approximate date, and the place of the offense. (People *v.* Natindim, *et al.;* G.R. No. 201867; Nov. 4, 2020) p. 18

INJUNCTION

Requisites — The following elements must be present before a writ of preliminary injunction or a writ of injunction may be issued, to wit: (a) extreme urgency, and (b) grave and irreparable injury will be suffered by the applicant. (Armed Forces of the Philippines *v.* Amogod, *et al.;* G.R. No. 213753; Nov. 10, 2020) p. 846

— Writ of preliminary injunction may be issued upon the concurrence of the following essential requisites, to wit: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage. (*Id.*)

— Actual possession which is not in the concept of an owner is not the clear and unmistakable right that may

performance of their tasks, for it is their duty to administer justice in a way that inspires confidence in the integrity of the justice system. (Philippine National Construction Corporation *v.* Hon. Jesus B. Mupas, Presiding Judge Branch 112, RTC, Pasay City; A.M. No. RTJ-20-2593 (Formerly: OCA IPI No. 20-5067-RTJ); Nov. 10, 2020) p. 641

Effect of Respondent's Cessation from Office on a Pending Administrative Complaint — The compulsory retirement of a respondent judge cannot render the administrative complaint moot; in lieu of the penalty of dismissal from service, all the retirement benefits of the respondent judge, except accrued leave credits, are forfeited. (Office of the Court Administrator *v.* Judge Reyes, RTC, Br. 61, Baguio City, Benguet; A.M. No. RTJ-17-2506; Nov. 10, 2020) p. 622

— As we held in *Gallo v. Cordero*: The jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case; the Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof; a contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. (Office of the Court Administrator *v.* Former Presiding Judge Owen B. Amor, RTC, Br. 41, Daet, Camarines Norte; A.M. No. RTJ-00-1535; Nov. 10, 2020) p. 605

— It must be emphasized anew that cessation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic; the Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof; contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. (*Id.*)

JURISDICTION

— The Supreme Court has original jurisdiction over petitions for *certiorari* and prohibition assailing acts done in the exercise of judicial, quasi-judicial, or ministerial functions. (Confederation for Unity, Recognition and Advancement of Government Employees [COURAGE], Represented by its National President Ferdinand Gaite, *et al. v.* Florencio B. Abad, in his Capacity as the Secretary of the Department of Budget and Management, *et al.*; G.R. No. 200418; Nov. 10, 2020) p. 699

Bases of Jurisdiction — Jurisdiction over an offense is vested by law and is determined by the allegations of the ultimate facts constituting the elements of the crime charged. (Gomez *v.* People; G.R. No. 216824; Nov. 10, 2020) p. 915

— Only a constitutional or statutory provision can create and/or vest a tribunal with jurisdiction; incidentally, the power to define, prescribe and apportion jurisdiction necessarily includes the power to expand or diminish the scope of a court's authority to take cognizance of a case, to impose additional conditions or to reduce established requirements with respect to an adjudicative body's acquisition of jurisdiction. (*Id.*)

— Without any constitutional or statutory fiat, a court's pronouncement creating another jurisdictional requirement before a trial court can acquire jurisdiction over a criminal case is unconstitutional for violating the principle of separation of powers. (*Id.*)

— "[S]ubstantive law" is that part of the law which creates, defines and regulates rights, or which regulates the rights and duties which give rise to a cause of action. . . . And since jurisdiction is conferred upon courts by substantive law, it cannot be accorded to or taken away from an otherwise competent court for purely procedural reasons. (*Id.*)

Effect of Judgment Rendered Without Jurisdiction — Judgment rendered by a court without jurisdiction is null and void and may be attacked anytime; it creates no

as opposed to its strong version; Professor Cass Sunstein defined the weak version of the precautionary principle to mean that a lack of decisive evidence of harm should not be a ground for refusing to regulate; on the other hand, the strong version of the precautionary principle requires governmental regulation whenever there is a possible risk to health, safety, or the environment, even if the supporting evidence is speculative and even if the economic costs of regulation are high. (Dela Cruz, *et al. v.* Manila Electric Company (MERALCO), *et al.;* G.R. No. 197878; Nov. 10, 2020) p. 659

— The precautionary principle does not apply when regulatory precautions have already been taken. (*Id.*)

— The principle does not apply when the causal link between an action and the environmental damage can be established. (*Id.*)

Questions of Fact — Questions of fact may be raised in appealing the decisions in writ of *kalikasan* cases; this is an exception to the general rule that this Court is not a trier of facts, further reinforcing the extraordinary nature of the writ. (Dela Cruz, *et al. v.* Manila Electric Company (MERALCO), *et al.;* G.R. No. 197878; Nov. 10, 2020) p. 659

Representative Suits — A petition for the issuance of a writ of *kalikasan* may be brought on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, an exception to the rule that the party bringing suit must be the real party-in-interest, or one who stands to be benefited or injured by the judgment in the suit. (Dela Cruz, *et al. v.* Manila Electric Company (MERALCO), *et al.;* G.R. No. 197878; Nov. 10, 2020) p. 659

Requirement of a Certification Against Forum-Shopping — A certification against forum shopping is required to be attached to the petition for the issuance of a writ of *kalikasan.* (Dela Cruz, *et al. v.* Manila Electric Company (MERALCO), *et al.;* G.R. No. 197878; Nov. 10, 2020) p. 659

Proof of Motive — Proof of motive is irrelevant when the accused has been positively identified by an eyewitness. (People *v.* Delos Santos, Jr. *alias* "Skylab;" G.R. No. 248929; Nov. 9, 2020) p. 482

MOVIE AND TELEVISION REVIEW AND CLASSIFICATION BOARD (MTRCB)

Powers of — Section 16 of the MTRCB Charter provides that the MTRCB shall have the power to suspend or dismiss for cause any employee and/or approve or disapprove the appointment, transfer or detail of employees; Section 3(j) of P.D. No. 1986 states that the Board can prescribe the internal and operational procedures for the exercise of its powers and functions as well as the performance of its duties and responsibilities, including the creation and vesting of authority upon sub-committees of the Board for the work of review and other related matters; likewise, the MTRCB authorized to promulgate rules and regulations for the implementation of P.D. No. 1986 and its purposes and objectives; Section 40 of the 1998 MTRCB Implementing Rules and Regulations (IRR) allowed the creation of a Hearing and Adjudication Committee composed of three members of the Board to be designated by the Chairperson to hear and decide cases involving violations of the MTRCB Charter and its IRR. (Nacilla, *et al. v.* Movie and Television Review and Classification Board; G.R. No. 223449; Nov. 10, 2020) p. 1023

— The MTRCB'S power to dismiss its employees can be exercised through its adjudication committee and need not be made *en banc*. (*Id.*)

— Unauthorized acts of the adjudication committee may be ratified by the board. (*Id.*)

NUISANCE

Definition — Article 694 of the Civil Code defines a nuisance as any act, omission, establishment, business, condition of property, or anything else which: (1) injures or

PARTIES

Legal Standing — An organization of government employees has legal standing to represent its members and to assail issuances that may jeopardize their interests. (Confederation for Unity, Recognition and Advancement of Government Employees [COURAGE], Represented by its National President Ferdinand Gaite, *et al. v.* Florencio B. Abad, in his Capacity as the Secretary of the Department of Budget and Management, *et al.*; G.R. No. 200418; Nov. 10, 2020) p. 699

— Labor organizations have the right to represent its members in collective bargaining and other activities beneficial to them. (*Id.*)

— Legal standing means "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." That the party must present a personal stake in the case ensures the presence of concrete adverseness. (*Id.*)

Real Parties-in-Interest — Surface owners are real parties-in-interest and have standing to assail a Mining agreement, as they are bound to be injured by its continuing implementation if proven to be non-compliant with the government safeguards. (Awayan *v.* Sulu Resources Development Corporation; G.R. No. 200474; Nov. 9, 2020) p. 299

PLEADINGS

Specific Denial — The requirement to specifically deny under oath the genuineness and authenticity of the documents adverted to does not apply when the adverse party does not appear to be a party to the instrument. (Abad, *et al. v.* Heirs of Jose Eusebio Abad Gallardo namely: Dolores Lolita J. Gallardo, *et al.;* G.R. No. 229070; Nov. 10, 2020) p. 1085

RAPE

Elements of Rape — A non-consensual act, even within the confines of marriage, constitutes rape. (People *v.* Pingol @ Anton; G.R. No. 219243; Nov. 4, 2020) p. 116

— Rape is committed: 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat, or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. (*Id.*)

Elements of Qualified Rape — The elements of Qualified Rape are: (1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under [eighteen] years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim. (People *v.* XXX; G.R. No. 218277; Nov. 9, 2020) p. 359

Elements of Statutory Rape — In statutory rape, what only needs to be established is that the accused had carnal knowledge of the victim who was under twelve (12) years old. (People *v.* XXX; G.R. No. 246194; Nov. 4, 2020) p. 265

Minor Details — The state of the hymen is not an element of rape. (People *v.* XXX; G.R. No. 246499; Nov. 4, 2020) p. 281

Minority of Victim and Relationship to the Accused — When the victim is a minor and the accused is related to the victim by affinity or consaguinity within the third civil degree, rape is qualified. (People *v.* XXX; G.R. No. 246499; Nov. 4, 2020) p. 281

Moral Ascendancy — The influence of a father over the victim substitutes for violence and intimidation. (People *v.* XXX; G.R. No. 218277; Nov. 9, 2020) p. 359

RECKLESS IMPRUDENCE

— [T]o establish a motorist's liability for negligence, the prosecution must show the "direct causal connection between such negligence and the injuries or damages complained of." (Valencia *v.* People; G.R. No. 235573; Nov. 9, 2020) p. 450

— [M]ere negligence in driving a vehicle is not enough to constitute reckless driving. Rather, it must be shown that the motorist acted willfully and wantonly, in utter disregard of the consequence of his or her action as it is the "inexcusable lack of precaution or conscious indifference to the consequences of the conduct which supplies the criminal intent and brings an act of mere negligence and imprudence under the operation of the penal law[.]" (*Id.*)

Elements — As punished in Article 365 of the Revised Penal Code, reckless imprudence has the following elements: (1) that the offender does or fails to do an act; (2) that the doing or the failure to do that act is voluntary; (3) that it be without malice; (4) that material damage results from the reckless imprudence; and (5) that there is inexcusable lack of precaution on the part of the offender, taking into consideration his employment or occupation, degree of intelligence, physical condition, and other circumstances regarding persons, time and place. (Valencia *v.* People, G.R. No. 235573, Nov. 9, 2020) p. 450

(Ofracio *v.* People, G.R. No. 221981, Nov. 4, 2020) p. 155

— Reckless imprudence consists in voluntary, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place. (Ofracio *v.* People; G.R. No. 221981; Nov. 4, 2020) p. 155

the benefit of medical procedure. (Rodelas *v.* MST Marine Services (Phils.); G.R. No. 244423; Nov. 4, 2020) p. 223

— A company-designated physician must issue a final and definite assessment on the extent of a seafarer's disability and fitness to resume work within the 120/240-day period. (*Id.*)

— Seafarers do not lose their right to consent to the medical procedure prescribed by the company-designated physician. (*Id.*)

— Seafarers may continue to avail of medical treatments from the company-designated physician while in a state of temporary total disability. (*Id.*)

— The medical assessment of a company-designated physician is not binding upon the court, but shall be evaluated based on its inherent merit. (*Id.*)

SOLUTIO INDEBITI AND UNJUST ENRICHMENT

Madera Rule — Recipients of the disallowed amounts are liable to return the same regardless of their good faith; pursuant to our pronouncement in *Madera* that 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; 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. (National Transmission Corporation *v.* Commission on Audit (COA), *et al.*; G.R. No. 244193; Nov. 10, 2020) p. 1170

STATUTORY CONSTRUCTION

Erroneous Interpretation of a Law — An erroneous interpretation of Section 127(b) [of the National Internal Revenue Code (NIRC)] cannot be a source of any vested right. (I-Remit, Inc. (For Itself and On Behalf of JPSA

jurisdictional facts, to wit: (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by plaintiff to defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment. (Galacgac *v.* Bautista; G.R. No. 221384; Nov. 9, 2020) p. 379

— The use of the word "tolerance" without sufficient allegations or evidence to support it cannot deprive a defendant of possession through a summary proceeding. (*Id.*)

Occupation by Tolerance — A person who occupies the land of another at the latter's permission or tolerance, without any contract between them, is necessarily bound by an implied promise that he will vacate upon demand, failing which, a summary action for ejectment may be filed against him; however, it is essential in ejectment cases of this kind that the plaintiff's supposed acts of tolerance must have been present right from the start of the possession which is later sought to be recovered. (Galacgac *v.* Bautista; G.R. No. 221384; Nov. 9, 2020) p. 379

Proof Required — Evidence on ownership may be admitted in ejectment proceedings, but only for the purpose of determining the issue of possession. (Galacgac *v.* Bautista; G.R. No. 221384; Nov. 9, 2020) p. 379

Unavailability of the Remedy of Unlawful Detainer — Registered owners of a real property cannot simply wrest possession from its actual possessor, especially where the occupation of the property was not obtained through the means contemplated by the rules on summary ejectment. (Galacgac *v.* Bautista; G.R. No. 221384; Nov. 9, 2020) p. 379

Trial Court's Assessment of the Credibility of Witnesses — Questions on the credibility of witnesses should be best addressed to the trial court because of its unique position to observe the witnesses' deportment on the stand while testifying, which is denied to the appellate court. (People *v.* XXX; G.R. No. 218277; Nov. 9, 2020) p. 359

— The factual findings of the trial court on the credibility of witnesses are generally accorded respect on appeal since the trial judge is in a better position to ascertain the witnesses' conflicting testimonies and to observe their deportment while testifying. (People *v*. Natindim, *et al*.; G.R. No. 201867; Nov. 4, 2020) p. 18

— The trial court's assessment, especially when upheld by the Court of Appeals, is usually afforded utmost weight and even finality; exceptions: the assessment of witnesses' credibility is best left to the trial court, as it had the chance to perceive their conduct during proceedings; save in cases where the findings were attained arbitrarily or where significant incidents were overlooked which, if duly considered, would affect the result of the case, the trial court's evaluation is usually afforded utmost weight and even finality, especially when upheld by the Court of Appeals. (People *v.* Pingol @ Anton; G.R. No. 219243; Nov. 4, 2020) p. 116

— The trial court's evaluation of the credibility of witnesses and their testimonies is accorded with finality especially when the same carry the full concurrence of the Court of Appeals. (People *v.* Delos Santos, Jr. *alias* "Skylab"; G.R. No. 248929; Nov. 9, 2020) p. 482

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I. LOCAL CASES

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II. FOREIGN CASES