

# UNIVERSITY OF SANTO TOMAS FACULTY OF CIVIL LAW

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    - o Naguit, et al. v. Aquino, et al., G.R. No. 201248, March 11, 2015
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- 7. Effect of failure to set case for pre-trial
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  - o Roberto A. Torres, et al v. Antonia F. Aruego, G.R. No. 201271; 20 September 2017
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- m. Effects of finality of judgment
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  - Mario Magat, Sr., et al. vs. Tantrade Corporation and Pablo S. Borja, Jr., G.R. No. 205483. August 23, 2017
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  - ii. Boardwalk Business Ventures, Inc. v. Villareal, et al., G.R. No. 181182, April 10, 2013
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- iii. Rene H. Imperial and Nidsland Resources AND Development Corporation vs. Hon. Edgar L. Armes, Presiding Judge of Branch 4, Regional Trial Court, 5th Judicial Region, Legazpi City and Alfonso B. Cruz, Jr./ ALFONSO B. CRUZ vs.Rene Imperial and Nidsland Resources and Development Corporation, G.R. Nos. 178842 & 195509, January 30, 2017
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- V. Execution, satisfaction, and effect of judgments
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  - Ayo v. Violago, A.M. No. RTJ-99-1445, June 21, 1999
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    - o Heirs of Reterta v. Mores & Lopez, G.R. No. 159941, August 17, 2011
  - 2. When execution shall issue (execution as a matter of right; discretionary execution)
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    - o Vlason v. CA, G.R. Nos. 121662-64, July 6, 1999
    - Pallada v. RTC of Kalibo, G.R. No. 129442, March 10, 1999
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    - d. Execution of judgments for specific acts
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- 6. In relation to third-party claim and replevin
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- 10. Examination of judgment obligor when judgment unsatisfied
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    - LZK Holdings and Development Corp. v. Planters Development Bank, G.R. No. 187973, January 20, 2014
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  - St. Aviation Services v. Grand International Airways, G.R. No. 140288, October 23, 2006

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  - Security Bank Corporation vs. Great Wall Commercial Press Company, Inc., Alfredo Buriel Atienza, Fredino Cheng Atienza and Sps. Frederick Cheng Atienza and Monica Cu Atienza, G.R. No. 219345, January 30, 2017
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  - b. Requisites; issuance and contents of order of attachment; affidavit and bond
  - c. Purpose of ex parte issuance of writ of attachment
  - d. Rule on prior or contemporaneous service of summons
  - e. Manner of attaching real and personal property; when property attached is claimed by third person
  - f. Discharge of attachment and the counter-bond
    - o Peroxide Philippines Corp. v. CA, G.R. No. 92813, July 31, 1991
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    - o Security Pacific Assurance Corp. v. Tri-Infante, 468 SCRA 526
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- 4. Preliminary injunction
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- o Palm Tree Estates, Inc. v. PNB, G.R. No. 159370, October 3, 2012
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  - Executive Secretary, et al. v. Forerunner Multi Resources, Inc., G.R. No. 199324, January 7, 2013
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    - o Mila Caboverde Tantano, et al. v. ominalda Caboverde, et al., G.R. No. 203585, July 29, 2013
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  - c. Nature of the duty of a receiver; general powers of a receiver
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    - a. Requisites
      - Rizal Commercial Banking Corporation v. Metro Container Corp., G.R. No. 127913, September 13, 2001
    - b. When to file
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      - o Ramos v. Ramos, 399 SCRA 43
  - 3. Declaratory reliefs and similar remedies
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    - o Bernadette Bilag, et.al. v. Estela Ay-ay, et.al., G.R. No. 189950, April 24, 2017
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      - o Allied Broadcasting Corporation v. Republic, G.R. No. 91500, October 18, 1990
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      - o Jumamil v. Café, G.R. No. 144570, September 21, 2005
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- o People of the Philippines v. Sandiganbayan and Juan Roberto L. Abling, G.R. No. 198119, September 27, 2017
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- b. Requisites for certiorari
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  - o Land Bank of the Philippines v. Court of Appeals, 456 Phil 755
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  - o Galang v. Geronimo, G.R. NO. 192793, February 22, 2011
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  - o Adtel, Inc. And vs. Marijoy A. Valdez, G.R. No. 189942. August 9, 2017
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- 6. Quo warranto
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    - a. National Power Corporation v. Joson, 206 SCRA 520
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    - d. Republic v. Rural Bank of Kabacan, Inc., 664 SCRA 223
  - e. Appointment of commissioners; commissioners' report; court action upon commissioners' report
    - e. National Power Corporation v. De la Cruz, 514 SCRA 56
  - f. Remedy of unpaid owner
    - f. Yujuico v. Atienza, Jr. 472 SCRA 463
- 8. Foreclosure of real estate mortgage
  - a. Manner of foreclosure
  - b. Judgment on foreclosure for payment or sale
  - c. Effect of sale of mortgaged property
  - d. Equity of redemption
    - g. Spouses Rosales v. Spouses Alfonso, G.R. No. 137792, August 12, 2003
  - e. Writ of possession ministerial
  - f. Deficiency judgment
  - g. Judicial foreclosure versus extrajudicial foreclosure
- 9. Partition
  - h. Cano Vda. De Viray v. Spouses Usi, G.R. No. 192486, November 21, 2012
  - a. Modes of partition
    - i. Figuracion-Gerilla v. Vda. De Figuracion, 499 SCRA 484

- b. Who are indispensable parties to partition
  - j. Sepulveda v. Pelaez, G.R. No. 152195, January 31, 2005
- c. Matters to allege in the complaint for partition
- d. Two stages in action for partition
  - k. Lacbayan v. Samoy, 645 SCRA 677
- e. Order of partition and partition by agreement
- f. Partition by commissioners
- g. Action for partition imprescriptible; exceptions
  - I. Heirs of Restar v. Heirs of Cichon, 475 SCRA 731
- h. Effects of judgment of partition
- 10. Forcible entry and unlawful detainer
  - Spouses Bernardito and Arsenia Gaela (Deceased), Substituted by her Heirs Namely: Bernardito Gaela and Joseline E. Paguirigan V.Spouses Tan Tian Heang and Sally Tan, G.R. No. 185627 March 15, 2017
  - a. Definitions and distinctions of forcible entry and unlawful detainer
    - Province of Camarines Sur, represented by Governor Luis Raymund F.
       Villafuerte, Jr., Petitioner vs Bodega Glassware, represented by its owner Joseph D. Cabral, Respondent, G.R. No. 194199, March 22, 2017
    - Nunez v. SLTEAS Phoenix Solutions, G.R.No. 180542, April 12, 2010
    - o Dela Cruz v. CA, G.R. No. 139442, December 6, 2006
    - Sarmiento v. Manalite Home Owners Association, G.R. No. 182953, October 11, 2010
    - o Juanita Ermitano, etc. v. Lailanie Paglas, G.R.No. 174436, January 23, 2013
  - b. When demand is necessary
    - Velia J. Cruz v. Sps. Maximo and Susan Christensen, G.R. No. 205539, October 4,
       2017
  - c. Nature of the proceedings (Summary Procedure; prohibited pleadings)
    - m. Delos Reyes v. Spouses Odenes, G.R. No. 178096, March 23, 2011
  - d. Issue of ownership merely incidental
    - o Abigail Mendiola v. Venerando Sangalang, G.R. No. 205283, June 7, 2017
    - o Rural Bank of Sta. Ignacia v. Dimatulac, G.R. No. 142015, April 29, 2003
  - e. Appeals
    - o Manalang v. Bacani, supra
  - f. How to stay immediate execution of judgment
    - o Herminia Acbang v. Hon. Jimmy Luczon, Jr. et al., G.R. No. 164246, January 15, 2014

# 11. Contempt

- a. Atty. Herminio Harry L. Roque, Jr., Petitioner vs. Armed Forces of The Philippines (AFP) Chief of Staff, Gen. Gregorio Pio Catapang, Brig Gen. Arthur Ang, Camp Aguinaldo Camp Commander, and Lt. Col. Harold Cabunoc, AFP Public Affairs Office Chief, Respondents, G.R. No. 214986, February 15, 2017
- b. P/Supt. Hansel Marantan v. Atty. Jose Manuel Diokno, et al., G.R. No. 205956, February 12, 2014
- c. Lorenzo Shipping v. Distribution Association, 656 SCRA 331
- d. Siy v. NLRC, G.R. No. 158971, August 25, 2005
- e. Rivulet Agro-Industrial Corporation v. Anthony Parungao, et al., G.R. No. 197507, January 14, 2013
- f. Regalado v. Go, 514 SCRA 616

- a. Kinds of contempt (Direct and Indirect)
  - o Encinas v. National Bookstore, G.R. No. 162704, July 28, 2005
  - o Re: Letter dated 21 Feb. 2005 of Atty. Noel Sorredo, A.M. No. 05-3-04-SC July 22, 2005
  - o Cruz v. Gigoyon, 658 SCRA 254
  - o SBMA v. Rodriguez, 619 SCRA 176
  - Rizal Commercial Banking Corporation V. Federico A. Serra, Spouses Eduardo And Henedina Andueza, Atty. Leomar R. Lanuza, Mr. Jovito C. Soriano, Atty. Edwin L. Rana, Atty. Paris G. Real, Atty. Prudencio B. Densing, Jr., Hon. Judge Maximino R. Ables, And Atty. Erwin S. Oliva, G.R. No. 216124, July 19, 2017
- b. How contempt proceedings commenced
  - Capitol Hills Golf & Country Club, Inc., et al. v. Manuel O. Sanchez, G.R. No. 182738, February 24, 2014
- c. Where to file
- d. Penalties and remedies against direct and indirect contempt
- e. Contempt against quasi-judicial bodies
  - o Robosa v. NLRC, G.R. No. 176085, February 8, 2012
  - o Land Bank of the Philippines v. Listana, 408 SCRA 328

### ALFONSO SINGSON CORTAL VS INAKI LARRAZABAL

G.R. No. 199107. August 30, 2017, Leonen, J.

Procedural rules "are tools designed to facilitate the adjudication of cases [so] [c]ourts and litigants alike are thus enjoined to abide strictly by the rules." They provide a system for forestalling arbitrariness, caprice, despotism, or whimsicality in dispute settlement. Thus, they are not to be ignored to suit the interests of a party. Their disregard cannot be justified by a sweeping reliance on a "policy of liberal construction."

### **FACTS:**

The assailed Court of Appeals September 30, 2010 Resolution dismissed petitioners' appeal under Rule 43 of the 1997 Rules of Civil Procedure on account of several technical defects. First was an inconsistency between the listing of petitioners' names in their prior Motion for Extension of Time and subsequent Petition for Review, in which the accompanying verification and certification of non-forum shopping were laden with this same inconsistency and other defects. Second was the non--inclusion of the original Complaint filed by the adverse party, now private respondent Inaki A. Larrazabal Enterprises, before the Regional Agrarian Reform Adjudicator of the Department of Agrarian Reform. And last was petitioners' counsel's failure to indicate the place of issue of the official receipt of his payment of annual membership dues to the Integrated Bar of the Philippines

### **ISSUE:**

Whether or not the dismissal of petitioners' appeal was justified by the errors noted by the Court of Appeals.

## **RULING:**

No, the dismissal was not justified by the errors.

Procedural rules "are tools designed to facilitate the adjudication of cases [so] [c]ourts and litigants alike are thus enjoined to abide strictly by the rules." They provide a system for forestalling arbitrariness, caprice, despotism, or whimsicality in dispute settlement. Thus, they are not to be ignored to suit the interests of a party. Their disregard cannot be justified by a sweeping reliance on a "policy of liberal construction."

Still, this Court has stressed that every party litigant must be afforded the fullest opportunity to properly ventilate and argue his or her case, "free from the constraints of technicalities."34 Rule 1, Section 6 of the Rules of Court expressly stipulates their liberal construction to the extent that justice is better served.

In this case, the Court of Appeals was harsh in denying petitioners the opportunity to exhaustively ventilate and argue their case.

Rather than dwelling on procedural minutiae, the Court of Appeals should have been impelled by the greater interest of justice. It should have enabled a better consideration of the intricate issues of the application of the Comprehensive Agrarian Reform Law, social justice, expropriation, and just compensation. The reversals of rulings at the level of the DARAB could have been taken as an indication that the matters at stake were far from being so plain that they should be ignored on mere technicalities. The better part of its discretion dictated a solicitous stance towards petitioners.

# Vivencio, Eugenio, Joji and Myrna, All Surnamed Mateo vs. Department of Agrarian Reform, Land Bank of the Philippines and Mariano T. Rodriguez, et al.

G.R. No. 186339, February 15, 2017, REYES, J.

While the Court recognizes the primacy of the doctrine of exhaustion of administrative remedies in our judicial system, it bears emphasizing that the principle admits of exceptions, among which is when there is unreasonable delay or official inaction that irretrievably prejudices a complainant.

# **FACTS:**

The Mateos were the registered owners of [coconut and rice lands] with a total area of 1,323,112 square meters situated at Fabrica, Bacon, Sorsogon and [were] covered by TCT No. T-22822. A portion of the land[s] was brought under the coverage of the CARP of the government and for this reason, the DAR entered the premises sometime in June 1994. LBP valued the Mateos' land at fifty-two thousand pesos (\$52,000.00) per [ha]. The Mateos, however, rejected the LBP's valuation.

On April 30, 1997, the Mateos filed a complaint against LBP, DAR, and the farmer beneficiaries of the land for just compensation. The case was docketed as Civil Case No. 97-6331 and raffled to the RTC of Sorsogon City, Branch 52, sitting as a Special Agrarian Court (SAC), presided by respondent Judge Honesto A. Villamor.

The LBP and DAR filed their respective answers arguing that since no summary administrative proceedings to determine the amount of just compensation had been conducted yet, the complaint of the Mateos was premature.

The SAC fixed the amount of just compensation to P71, 143, 623.00 and ordered LBP to pay the Mateos the said amount. The CA rendered a decision setting aside the SAC's judgment and dismissing without prejudice the complaint of the Mateos.

### **ISSUE:**

Whether or not the CA erred in negating the jurisdiction of the RTC, as a SAC, to determine in the first instance and in the absence of the conduct of prior administrative proceedings, questions of just compensation to be paid to landowners.

# **RULING:**

Yes, While the Court recognizes the primacy of the doctrine of exhaustion of administrative remedies in our judicial system, it bears emphasizing that the principle admits of exceptions, among which is when there is unreasonable delay or official inaction that irretrievably prejudices a

complainant. This exception is attendant herein where the LBP and the DAR entered the property of the Mateos sometime in 1994, but deposited cash and Agrarian Reform Bonds as payment therefor only on December 13, 1996 and February 11, 1997. The LBP and the DAR were indisputably aware that the Mateos rejected the price offered as just compensation for the subject property. Still, at the time the Mateos filed their suit before the SAC, no summary administrative proceeding was yet initiated by the DAR to make further valuation. The SAC even had to issue no less than three orders dated November 12, 1997, January 7, 1998 and March 18, 1998 for the DAR to conduct the necessary proceedings. DAR's delay and inaction had unjustly prejudiced the Mateos and precluding them from filing a complaint before the SAC shall result in an injustice, which the law never intends.

# PRISCILLA ALMA JOSE, Petitioner, vs. RAMON C. JAVELLANA, ET AL., Respondents. G.R. No. 158239, January 25, 2012, FIRST DIVISION, BERSAMIN, J.

The "fresh period rule" is a procedural law as it prescribes a fresh period of 15 days within which an appeal may be made in the event that the motion for reconsideration is denied by the lower court. Following the rule on retroactivity of procedural laws, the "fresh period rule" should be applied to pending actions, such as the present case.

### **FACTS:**

Marquez Alma Jose sold for consideration of ₱160,000.00 to respondent Ramon Javellana by deed of conditional sale two parcels of land. They agreed that Javellana would pay ₱80,000.00 upon the execution of the deed and the balance of ₱80,000.00 upon the registration of the parcels of land under the Torrens System; and that should Margarita become incapacitated, her son and attorney-in-fact, Juvenal M. Alma Jose, and her daughter, petitioner Priscilla M. Alma Jose, would receive the payment of the balance and proceed with the application for registration.

After Margarita died and with Juvenal having predeceased Margarita without issue, the vendor's undertaking fell on the shoulders of Priscilla, being Margarita's sole surviving heir. However, Priscilla did not comply with the undertaking to cause the registration of the properties under the Torrens System, and, instead, began to improve the properties by dumping filling materials therein with the intention of converting the parcels of land into a residential or industrial subdivision. Faced with Priscilla's refusal to comply, Javellana commenced an action for specific performance, injunction, and damages against her in the RTC Malolos, Bulacan.

Javellana averred that upon the execution of the deed of conditional sale, he had paid the initial amount of \$\mathbb{P}80,000.00\$ and had taken possession of the parcels of land; that he had paid the balance of the purchase price to Juvenal on different dates upon Juvenal's representation that Margarita had needed funds for the expenses of registration and payment of real estate tax; and that in 1996, Priscilla had called to inquire about the mortgage constituted on the parcels of land; and that he had told her then that the parcels of land had not been mortgaged but had been sold to him.

Javellana prayed for the issuance of a temporary restraining order or writ of preliminary injunction to restrain Priscilla from dumping filling materials in the parcels of land; and that Priscilla be ordered to institute registration proceedings and then to execute a final deed of sale in his favor.

Priscilla filed a motion to dismiss, stating that the complaint was already barred by prescription; and that the complaint did not state a cause of action.

The RTC initially denied Priscilla's motion to dismiss on February 4, 1998. However, upon her motion for reconsideration, the RTC reversed itself on June 24, 1999 and granted the motion to dismiss,

Javellana moved for reconsideration. On June 21, 2000, the RTC denied the motion for reconsideration. Accordingly, Javellana filed a notice of appeal from the June 21, 2000 order. He also filed a petition for certiorari in the CA to assail the orders dismissing his. On August 6, 2001, however, the CA dismissed the petition for certiorari, finding that the RTC did not commit grave abuse of discretion in issuing the orders, and holding that it only committed, at most, an error of judgment correctible by appeal in issuing the challenged orders.

On November 20, 2002, the CA promulgated its decision reversing and setting aside the dismissal of the case and remanding the records to the RTC "for further proceedings in accordance with law."

On May 9, 2003, the CA denied the motion for reconsideration, stating that it decided to give due course to the appeal even if filed out of time because Javellana had no intention to delay the proceedings, as in fact he did not even seek an extension of time to file his appellant's brief; that current jurisprudence afforded litigants the amplest opportunity to present their cases free from the constraints of technicalities, such that even if an appeal was filed out of time, the appellate court was given the discretion to nonetheless allow the appeal for justifiable reasons.

# **ISSUES:**

Whether or not the appeal was made on time

# **RULING:**

Appeal was made on time pursuant to Neypes v. CA

Priscilla insists that Javellana filed his notice of appeal out of time. She points out that he received a copy of the June 24, 1999 order on July 9, 1999, and filed his motion for reconsideration on July 21, 1999 (or after the lapse of 12 days); that the RTC denied his motion for reconsideration through the order of June 21, 2000, a copy of which he received on July 13, 2000; that he had only three days from July 13, 2000, or until July 16, 2000, within which to perfect an appeal; and that having filed his notice of appeal on July 19, 2000, his appeal should have been dismissed for being tardy by three days beyond the expiration of the reglementary period.

Section 3 of Rule 41 of the Rules of Court provides:

Section 3. Period of ordinary appeal. — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the

appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed. (n) Under the rule, Javellana had only the balance of three days from July 13, 2000, or until July 16, 2000, within which to perfect an appeal due to the timely filing of his motion for reconsideration interrupting the running of the period of appeal. As such, his filing of the notice of appeal only on July 19, 2000 did not perfect his appeal on time, as Priscilla insists.

The seemingly correct insistence of Priscilla cannot be upheld, however, considering that the Court meanwhile adopted the fresh period rule in Neypes v. Court of Appeals, by which an aggrieved party desirous of appealing an adverse judgment or final order is allowed a fresh period of 15 days within which to file the notice of appeal in the RTC reckoned from receipt of the order denying a motion for a new trial or motion for reconsideration, to wit:

The Supreme Court may promulgate procedural rules in all courts. It has the sole prerogative to amend, repeal or even establish new rules for a more simplified and inexpensive process, and the speedy disposition of cases. In the rules governing appeals to it and to the Court of Appeals, particularly Rules 42, 43 and 45, the Court allows extensions of time, based on justifiable and compelling reasons, for parties to file their appeals. These extensions may consist of 15 days or more.

To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.

Henceforth, this "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by certiorari to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.

The fresh period rule may be applied to this case, for the Court has already retroactively extended the fresh period rule to "actions pending and undetermined at the time of their passage and this will not violate any right of a person who may feel that he is adversely affected, inasmuch as there are no vested rights in rules of procedure."

Procedural law refers to the adjective law which prescribes rules and forms of procedure in order that courts may be able to administer justice. Procedural laws do not come within the legal conception of a retroactive law, or the general rule against the retroactive operation of statues — they may be given retroactive effect on actions pending and undetermined at the time of their

passage and this will not violate any right of a person who may feel that he is adversely affected, insomuch as there are no vested rights in rules of procedure.

The "fresh period rule" is a procedural law as it prescribes a fresh period of 15 days within which an appeal may be made in the event that the motion for reconsideration is denied by the lower court. Following the rule on retroactivity of procedural laws, the "fresh period rule" should be applied to pending actions, such as the present case.

Also, to deny herein petitioners the benefit of the "fresh period rule" will amount to injustice, if not absurdity, since the subject notice of judgment and final order were issued two years later or in the year 2000, as compared to the notice of judgment and final order in Neypes which were issued in 1998. It will be incongruous and illogical that parties receiving notices of judgment and final orders issued in the year 1998 will enjoy the benefit of the "fresh period rule" while those later rulings of the lower courts such as in the instant case, will not.

Consequently, we rule that Javellana's notice of appeal was timely filed pursuant to the fresh period rule.

Ateneo v. De La Rosa, G. R. No. L-286, March 28, 1946

Rodante Guyamin, et.al. v. Jacinto Flores, et.al., G.R. No. 202189, April 25, 2017, Del Castillo, J.

This Court has time and again reiterated the doctrine that the rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration. A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair tria.ls and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party.

# **FACTS:**

The respondents filed a complaint for recovery of possession against petitioners. They alleged that they were the registered owners of a 984 sq.m. property in Gen. Trias, Cavite, which they allowed Petitioners to occupy as their relatives. After demand to vacate, Petitioners however, refused to do so and conciliation in the barangay only proved to be futile. Thus, compelling them to file an action. Summons were served upon the Petitioners, however they refused to sign the receipt. Respondent filed a motion to declare petitioners in default contending that despite service of summons they still failed to appear. The RTC granted the same.

### **ISSUE**:

Whether or not the RTC correctly declared Petitioners in default.

#### **RULING:**

**YES**. The court process server's Return of Summons dated September 26, 2006 exists, and must be presumed regular. The mere fact that the RTC, and even the respondents, requested at different stages in the proceedings that summons be served once more upon petitioners does not prove that the service thereof made on September 25, 2006 was invalid; it only means that the court and parties desire the service of summons anew which was clearly unnecessary. The claim that Lucinia was then abroad is of no moment either; there is no evidence to support this self-serving claim.

The filing of petitioners' answer prior to respondents' motion to declare them in default, and the latter's filing of a reply, do not erase the fact that petitioners' answer is late. Respondents' reply filed thereafter is, like the belated answer a mere scrap of paper, as it proceeds from the said answer.

# DOMINADOR B. BUSTOS, petitioner, vs. ANTONIO G. LUCERO, Judge of First Instance of Pampanga, respondent.

G.R. No. L-2068, March 8, 1940, (RESOLUTION)

As applied to criminal law, substantive law is that which declares what acts are crimes and prescribes the punishment for committing them, as distinguished from the procedural law which provides or regulates the steps by which one who commits a crime is to be punished. Preliminary investigation is eminently and essentially remedial; it is the first step taken in a criminal prosecution.

Tested by this standard, we do not believe that the curtailment of the right of an accused in a preliminary investigation to cross-examine the witnesses who had given evidence for his arrest is of such importance as to offend against the constitutional inhibition. As we have said in the beginning, preliminary investigation is not an essential part of due process of law. It may be suppressed entirely, and if this may be done, mere restriction of the privilege formerly enjoyed thereunder cannot be held to fall within the constitutional prohibition.

### **FACTS:**

In the decision sought to be reconsidered, the Court said "The constitutional right of an accused to be confronted by the witnesses against him does not apply to preliminary hearings; nor will the absence of a preliminary examination be an infringement of his right to confront witness. As a matter of fact, 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." This petition for certiorari raises a constitutional issue.

# **ISSUE:**

Whether or not Section 11 of Rule 108 of the Rules of Court 1 infringes section 13, Article VIII, of the Constitution/ Whether or not the rule in question deals with substantive matters and impairs substantive rights. (NO)

#### **RULING:**

Section 11 of Rule 108, like its predecessors, is an adjective law and not a substantive law or substantive right. Substantive law creates substantive rights and the two terms in this respect may be said to be synonymous. Substantive rights is a term which includes those rights which one enjoys under the legal system prior to the disturbance of normal relations. 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; that part of the law which courts are established to administer; as opposed to adjective or remedial law, which prescribes the method of enforcing rights or obtains redress for their invasion.

As applied to criminal law, substantive law is that which declares what acts are crimes and prescribes the punishment for committing them, as distinguished from the procedural law which provides or regulates the steps by which one who commits a crime is to be punished. Preliminary investigation is eminently and essentially remedial; it is the first step taken in a criminal prosecution.

As a rule of evidence, section 11 of Rule 108 is also procedural. Evidence — which is the "the mode and manner of proving the competent facts and circumstances on which a party relies to establish the fact in dispute in judicial proceedings" — is identified with and forms part of the method by which, in private law, rights are enforced and redress obtained, and, in criminal law, a law transgressor is punished. Criminal procedure refers to pleading, evidence and practice. The entire rules of evidence have been incorporated into the Rules of Court. We can not tear down section 11 of Rule 108 on constitutional grounds without throwing out the whole code of evidence embodied in these Rules.

Tested by this standard, we do not believe that the curtailment of the right of an accused in a preliminary investigation to cross-examine the witnesses who had given evidence for his arrest is of such importance as to offend against the constitutional inhibition. As we have said in the beginning, preliminary investigation is not an essential part of due process of law. It may be suppressed entirely, and if this may be done, mere restriction of the privilege formerly enjoyed thereunder can not be held to fall within the constitutional prohibition.

While section 11 of Rule 108 denies to the defendant the right to cross-examine witnesses in a preliminary investigation, his right to present his witnesses remains unaffected, and his constitutional right to be informed of the charges against him both at such investigation and at the trial is unchanged. In the latter stage of the proceedings, the only stage where the guaranty of due process comes into play, he still enjoys to the full extent the right to be confronted by and to cross-examine the witnesses against him. The degree of importance of a preliminary investigation to an accused may be gauged by the fact that this formality is frequently waived. The motion is denied.

# PANAY RAILWAYS INC., Petitioner vs. HEVA MANAGEMENT and DEVELOPMENT CORPORATION, PAMPLONA AGRO-INDUSTRIAL CORPORATION, and SPOUSES CANDELARIA DAYOT and EDMUNDO DAYOT, Respondents.

G. R. No. 154061, January 25, 2012, SECOND DIVISION, SERENO, J.

Statutes and rules regulating the procedure of courts are considered applicable to actions pending and unresolved at the time of their passage. Procedural laws and rules are retroactive in that sense and to that extent. The argument that the CA had the exclusive jurisdiction to dismiss the appeal has no merit. When this Court accordingly amended Sec. 13 of Rule 41 through A.M. No. 00-2-10-SC, the RTC's dismissal of the action may be considered to have had the imprimatur of the Court. Thus, the CA committed no reversible error when it sustained the dismissal of the appeal, taking note of its directive on the matter prior to the promulgation of its Decision.

## **FACTS:**

Petitioner Panay Railways Inc., a government-owned and controlled corporation, executed a Real Estate Mortgage Contract covering several parcels of lands in favor of Traders Royal Bankto to secure \$\mathbb{P}\$ 20 million worth of loan and credit accommodations.

Petitioner failed to pay its obligations to TRB, prompting the bank to extra-judicially foreclose the mortgaged properties including Lot No. 6153. It was only in 1994 that petitioner realized that the extrajudicial foreclosure included some excluded properties in the mortgage contract. It filed a Complaint for Partial Annulment of Contract to Sell and Deed of Absolute Sale with Addendum; Cancellation of Title No. T-89624; and Declaration of Ownership of Real Property with Reconveyance plus Damages. It then filed an Amended Complaint and a Second Amended Complaint. Respondents filed their respective Motions to Dismiss.

The RTC issued an Order granting the Motion to Dismiss of respondents.

Petitioner filed a Notice of Appeal without paying the necessary docket fees. Thereafter, respondents filed a Motion to Dismiss Appeal on the ground of nonpayment of docket fees.

In its Opposition, petitioner alleged that its counsel was not yet familiar with the revisions of the Rules of Court that became effective only on 1 July 1997. Furthermore, it contended that the requirement for the payment of docket fees was not mandatory. It therefore asked the RTC for a liberal interpretation of the procedural rules on appeals.

On 29 September 1997, the RTC issued an Order dismissing the appeal citing Sec. 4 of Rule 419 of the Revised Rules of Court.

Petitioner thereafter moved for a reconsideration, which was denied.

Petitioner filed with the Court of Appeals a Petition for Certiorari and Mandamus under Rule 65 alleging that the RTC had no jurisdiction to dismiss the Notice of Appeal, and that the trial court had acted with grave abuse of discretion when it strictly applied procedural rules.

The CA ruled that while the failure of petitioner to pay the docket and other lawful fees within the reglementary period was a ground for the dismissal of the appeal pursuant to Sec. 1 of Rule 50 of the Revised Rules of Court, the jurisdiction to do so belonged to the CA and not the trial court. Thus, appellate court ruled that the RTC committed grave abuse of discretion in dismissing the appeal.

Thereafter, respondents filed their respective Motions for Reconsideration.

It appears that prior to the promulgation of the CA's Decision, this Court issued Administrative Matter No. 00-2-10-SC which took effect on 1 May 2000, amending Rule 4, Sec. 7 and Sec. 13 of Rule 41 of the 1997 Revised Rules of Court. The circular expressly provided that trial courts may, motu proprio or upon motion, dismiss an appeal for being filed out of time or for nonpayment of docket and other lawful fees within the reglementary period. Subsequently, Circular No. 48-200013 was issued on 29 August 2000 and was addressed to all lower courts.

By virtue of the amendment to Sec. 41, the CA upheld the questioned Orders of the trial court by issuing the assailed Amended Decision14 in the present Petition granting respondents' Motion for Reconsideration.

The CA's action prompted petitioner to file a Motion for Reconsideration alleging that SC Circular No. 48-2000 should not be given retroactive effect. It also alleged that the CA should consider the case as exceptionally meritorious. Petitioner's counsel, Atty. Rexes V. Alejano, explained that he was yet to familiarize himself with the Revised Rules of Court, which became effective a little over a month before he filed the Notice of Appeal. He was thus not aware that the nonpayment of docket fees might lead to the dismissal of the case.

The CA issued the assailed Resolution denying petitioner's Motion for Reconsideration.

### ISSUE:

Whether or not the CA erred in sustaining the RTC's dismissal of the Notice of Appeal

### **RULING:**

No.

Statutes and rules regulating the procedure of courts are considered applicable to actions pending and unresolved at the time of their passage. Procedural laws and rules are retroactive in that sense and to that extent. The effect of procedural statutes and rules on the rights of a litigant may not preclude their retroactive application to pending actions. This retroactive application does not violate any right of a person adversely affected. Neither is it constitutionally objectionable. The reason is that, as a general rule, no vested right may attach to or arise from procedural laws and rules. It has been held that "a person has no vested right in any particular remedy, and a litigant cannot insist on the application to the trial of his case, whether civil or criminal, of any other than the existing rules of procedure." More so when, as in this case, petitioner admits that it was not able to pay the docket fees on time. Clearly, there were no substantive rights to speak of when the RTC dismissed the Notice of Appeal.

The argument that the CA had the exclusive jurisdiction to dismiss the appeal has no merit. When this Court accordingly amended Sec. 13 of Rule 41 through A.M. No. 00-2-10-SC, the RTC's dismissal of the action may be considered to have had the imprimatur of the Court. Thus, the CA committed no reversible error when it sustained the dismissal of the appeal, taking note of its directive on the matter prior to the promulgation of its Decision.

As early as 1932, in Lazaro v. Endencia, we have held that the payment of the full amount of the docket fees is an indispensable step for the perfection of an appeal. The Court acquires jurisdiction over any case only upon the payment of the prescribed docket fees.

Moreover, the right to appeal is not a natural right and is not part of due process. It is merely a statutory privilege, which may be exercised only in accordance with the law.

We have repeatedly stated that the term "substantial justice" is not a magic wand that would automatically compel this Court to suspend procedural rules. Procedural rules are not to be belittled or dismissed simply because their non-observance may result in prejudice to a party's substantive rights. Like all other rules, they are required to be followed, except only for the most persuasive of reasons when they may be relaxed to relieve litigants of an injustice not commensurate with the degree of their thoughtlessness in not complying with the procedure prescribed.

We cannot consider counsel's failure to familiarize himself with the Revised Rules of Court as a persuasive reason to relax the application of the Rules. It is well-settled that the negligence of counsel binds the client. This principle is based on the rule that any act performed by lawyers within the scope of their general or implied authority is regarded as an act of the client. Consequently, the mistake or negligence of the counsel of petitioner may result in the rendition of an unfavorable judgment against it.

# FELIX MARTOS, et. al Petitioners, vs. NEW SAN JOSE BUILDERS, INC., Respondent. G.R. No. 192650, October 24, 2012, THIRD DIVISION, MENDOZA, J.

Verification is deemed substantially complied with when, as in this case, one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

The absence of a proper verification is cause to treat the pleading as unsigned and dismissible. The lone signature of Martos would have been sufficient if he was authorized by his co-petitioners to sign for them. Unfortunately, petitioners failed to adduce proof that he was so authorized.

### **FACTS:**

New San Jose Builders, Inc. is a domestic corporation duly organized and existing under the laws of the Philippines and is engaged in the construction of road, bridges, buildings, and low cost houses primarily for the government. One of the projects of petitioner is the San Jose Plains Project, which is also known as the "Erap City" calls for the construction of low cost housing, which are being turned over to the National Housing Authority to be awarded to deserving poor families.

Private respondents alleged that, on various dates, petitioner hired them on different positions.

Sometime in 2000, petitioner was constrained to slow down and suspend most of the works on the SJPP project due to lack of funds of the National Housing Authority. Thus, the workers were informed that many of them [would] be laid off and the rest would be reassigned to other projects. Juan Villaber, Terso Garay, Rowell Batta, Pastor Pantig, Rafael Villa, and Melvin Garay were laid off. While on the other hand, Felix Martos, Ariel Dominguez, Greg Bisonia, Allan Caballera, Orlando Limos, Mandy Mamalateo, Eric Castrence, Anthony Molina, and Roy Silva were among those who were retained and were issued new appointment papers to their respective assignments, indicating therein that they are project employees. However, they refused to sign the appointment papers as project employees and subsequently refused to continue to work.

Three Complaints for Illegal Dismissal and for money claims were filed before the NLRC against petitioner and Jose Acuzar, by private respondents who claimed to be the former's employees.

Petitioner denies that private respondents were illegally dismissed, and alleged that they were project employees, whose employments were automatically terminated upon completion of the project for which they were hired. Private respondents claim that petitioner hired them as regular employees, continuously and without interruption, until their dismissal on February 28, 2002.

Subsequently, the three Complaints were consolidated and assigned to Labor Arbiter Facundo Leda. On May 23, 2003, the LA handed down a decision declaring, among others, that petitioner Felix Martos was illegally dismissed and entitled to separation pay, backwages and other monetary benefits; and dismissing, without prejudice, the complaints/claims of the other complainants.

Both parties appealed the LA decision to the NLRC. Petitioners appealed that part which dismissed all the complaints, without prejudice, except that of Martos. New San Jose Builders, Inc. appealed that part which held that Martos was its regular employee and that he was illegally dismissed.

On July 30, 2008, the NLRC dismissed the appeal filed by respondent and partially granting that of the other petitioners.

Respondents are likewise ordered to pay complainants their salary differentials, service incentive leave pay, and 13th month pay, using, as basis, the computation made on the claims of complainant Felix Martos.

After the denial of its motion for reconsideration, respondent filed before the CA a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure.

On July 31, 2009, the CA rendered a decision reversing and setting aside Decision and the Resolution of the NLRC and reinstating the Decision of the LA.

The CA explained that the NLRC committed grave abuse of discretion in reviving the complaints of petitioners despite their failure to verify the same. The CA also held that the NLRC gravely abused its discretion when it took cognizance of petitioners' appeal because Rule 41, Section 1(h) of the 1997 Rules of Civil Procedure, as amended, which is suppletory, provides that no appeal may be taken from an order dismissing an action without prejudice.

With respect to Martos, the CA ruled that he was a regular employee of respondent and his termination was illegal.

Not in conformity with the CA decision, petitioners filed this petition.

# **ISSUE:**

Whether or not the CA was correct in dismissing the complaints filed by those petitioners who failed to verify their position papers. (YES)

#### **RULING:**

Sections 4 and 5 of Rule 7 of the 1997 Rules of Civil Procedure provide:

SEC. 4. Verification. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleadings and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief" or lacks a proper verification, shall be treated as an unsigned pleading.

- SEC. 5. Certification against forum shopping. The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith:
- (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If

the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

The verification requirement is significant, as it is intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. Verification is deemed substantially complied with when, as in this case, one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

The absence of a proper verification is cause to treat the pleading as unsigned and dismissible.

The lone signature of Martos would have been sufficient if he was authorized by his co-petitioners to sign for them. Unfortunately, petitioners failed to adduce proof that he was so authorized.

The liberal construction of the rules may be invoked in situations where there may be some excusable formal deficiency or error in a pleading, provided that the same does not subvert the essence of the proceeding and it at least connotes a reasonable attempt at compliance with the rules. Besides, fundamental is the precept that rules of procedure are meant not to thwart but to facilitate the attainment of justice; hence, their rigid application may, for deserving reasons, be subordinated by the need for an apt dispensation of substantial justice in the normal course. They ought to be relaxed when there is subsequent or even substantial compliance, consistent with the policy of liberality espoused by Rule 1, Section 6.14 Not being inflexible, the rule on verification allows for such liberality.

Considering that the dismissal of the other complaints by the LA was without prejudice, the other complainants should have taken the necessary steps to rectify their procedural mistake after the decision of the LA was rendered. They should have corrected this procedural flaw by immediately filing another complaint with the correct verification this time. Surprisingly, they did not even attempt to correct this technical blunder. Worse, they committed the same procedural error when they filed their appeal with the NLRC.

MARIA CONSOLACION RIVERA-PASCUAL, Petitioner, -versus- SPOUSES MARILYN LIM and GEORGE LIM and the REGISTRY OF DEEDS OF VALENZUELA CITY, Respondents.

G.R. No. 191837, September 19, 2012, FIRST DIVISION, REYES, J.

#### **Facts:**

Consolacion filed with the CA a petition for review under Rule 43 of the Rules of Court to assail a Decision rendered by the DARAB. The CA resolved to require Consolacion's counsel to submit within five (5) days from notice his Mandatory Continuing Legal Education (MCLE) Certificate of Compliance or Exemption and an amended Verification and Certification Against Non-Forum-Shopping. Apparently, Consolacion's counsel failed to indicate in the petition his MCLE Certificate of Compliance or Exemption Number as required under Bar Matter No. 1922. Also, the jurat of Consolacion's verification and certification against non-forum-shopping failed to indicate any

competent evidence of Consolacion's identity apart from her community tax certificate. Considering the failure of Consolacion and her counsel to comply, the CA issued a Resolution dismissing the petition.

#### Issue:

Whether the CA erred in summarily dismissing the petition on technical grounds. (NO)

#### **Ruling:**

The CA did not err in dismissing Consolacion's petition before it on the ground of petitioner's unexplained failure to comply with basic procedural requirements attendant to the filing of a petition for review under Rule 43 of the Rules of Court. Notably, Consolacion and her counsel remained obstinate despite the opportunity afforded to them by the CA to rectify their lapses. While there was compliance, this took place, however, after the CA had ordered the dismissal of Consolacion's petition and without reasonable cause proffered to justify its belatedness. Consolacion and her counsel claimed inadvertence and negligence but they did not explain the circumstances thereof. Absent valid and compelling reasons, the requested leniency and liberality in the observance of procedural rules appears to be an afterthought, hence, cannot be granted. The CA saw no compelling need meriting the relaxation of the rules.

### COMMISSIONER OF INTERNAL REVENUE, Petitioner, -versus- MIRANT1 PAGBILAO CORPORATION (formerly SOUTHERN ENERGY QUEZON, INC.), Respondent.

G.R. No. 159593, October 12, 2006, FIRST DIVISION, CHICO-NAZARIO, J.

A party may not change his theory of the case on appeal. Therefore, the Court of Appeals correctly refused to consider the issues raised by the BIR Commissioner for the first time on appeal. Its discussion on whether the MPC is a public utility and whether it is subject to VAT or franchise tax is nothing more than obiter dictum. It is best not at all to discuss these issues for they do not simply involve questions of law, but also closely-related questions of fact which neither the Court of Appeals nor this Court could presume or garner from the evidence on record.

The courts have the power to relax or suspend technical or procedural rules or to except a case from their operation when compelling reasons so warrant or when the purpose of justice requires it. What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. In his Petition and Memorandum before this Court, the BIR Commissioner made no attempt to provide reasonable explanation for his failure to raise before the CTA the issue of MPC being a public utility subject to franchise tax rather than VAT.

#### **FACTS:**

MPC is a domestic corporation licensed by the Securities and Exchange Commission to principally engage in the business of power generation and subsequent sale thereof.

For the period April 1, 1996 to December 31, 1996, MPC seasonably filed its Quarterly VAT Returns reflecting an accumulated input taxes in the amount of P39,330,500.85. These input taxes were

allegedly paid by MPC to the suppliers of capital goods and services for the construction and development of the power generating plant and other related facilities in Pagbilao, Quezon. MPC filed on June 30, 1998, an application for tax credit or refund of the aforementioned unutilized VAT paid on capital goods .

Without waiting for an answer from the BIR Commissioner, MPC filed the instant petition for review, in order to toll the running of the two-year prescriptive period for claiming a refund under the law.

In answer to the Petition, the BIR Commissioner advanced as special and affirmative defenses that "MPC's claim for refund is still pending investigation and consideration before the office of the BIR Commissioner accordingly, the filing of the present petition is premature; well-settled is the doctrine that provisions in tax refund and credit are construed strictly against the taxpayer as they are in the nature of a tax exemption; in an action for refund or tax credit, the taxpayer has the burden to show that the taxes paid were erroneously or illegally paid and failure to sustain the said burden is fatal to the action for refund; it is incumbent upon MPC to show that the claim for tax credit has been filed within the prescriptive period under the Tax Code; and the taxes allegedly paid by MPC are presumed to have been collected and received in accordance with law and revenue regulations."

Revenue Officer, Rosemarie M. Vitto, was assigned by Revenue District Officer, Ma. Nimfa Penalosa-Asensi to investigate MPC's application for tax credit or refund of input taxes. As a result, a memorandum report, dated August 27, 1998, was submitted recommending a favorable action but in a reduced amount of P49,616.40 representing unapplied input taxes on capital goods.

Mr. Ruben R. Rubio, Partner of SGV & Company, was commissioned to verify the accuracy of MPC's summary of input taxes. A report was presented stating the audit procedures performed and the finding that out of the total claimed input taxes of P39,330,500.85, only the sum of P28,745,502.40 was properly supported by valid invoices and/or official receipts.

The CTA ruled in favor of MPC, and declared that MPC had overwhelmingly proved that its purchases of goods and services were necessary in the construction of power plant facilities which it used in its business of power generation and sale. The tax court, however, reduced the amount of refund to which MPC was entitled.

The CTA subsequently denied the BIR Commissioner's Motion for Reconsideration.

BIR Commissioner filed with the Court of Appeals a Petition for Review. Notably, the BIR Commissioner identified and discussed as grounds for its Petition arguments that were totally new and were never raised.

The Court of Appeals found no merit in the BIR Commissioner's Petition, pronouncing that the BIR Commissioner cannot validly change his theory of the case on appeal.

Refusing to give up his cause, the BIR Commissioner filed the present Petition before this Court.

#### **ISSUE:**

Whether or not the petition has merit. (NO)

#### **RULING:**

This Court finds no merit in the Petition at bar.

The general rule is that a party cannot change his theory of the case on appeal.

There is a palpable shift in the BIR Commissioner's defense against the claim for refund of MPC and an evident change of theory. Before the CTA, the BIR Commissioner admitted that the MPC is a VAT-registered taxpayer, but charged it with the burden of proving its entitlement to refund. However, before the Court of Appeals, the BIR Commissioner, in effect denied that the MPC is subject to VAT, making an affirmative allegation that it is a public utility liable, instead, for franchise tax. Irrefragably, the BIR Commissioner raised for the first time on appeal questions of both fact and law not taken up before the tax court, an actuality which the BIR Commissioner himself does not deny, but he argues that he should be allowed to do so as an exception to the technical rules of procedure and in the interest of substantial justice.

It is already well-settled in this jurisdiction that a party may not change his theory of the case on appeal. Such a rule has been expressly adopted in Rule 44, Section 15 of the 1997 Rules of Civil Procedure, which provides –

SEC. 15. Questions that may be raised on appeal. – Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

The BIR Commissioner pleads with this Court not to apply the foregoing rule to the instant case, for a rule on technicality should not defeat substantive justice. The BIR Commissioner apparently forgets that there are specific reasons why technical or procedural rules are imposed upon the courts, and that compliance with these rules, should still be the general course of action. Procedural rules, we must stress, should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that "all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies." The adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules. While it is true that a litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. There have been some instances wherein this Court allowed a relaxation in the application of the rules, but this flexibility was "never intended to forge a bastion for erring litigants to violate the rules with impunity." A liberal interpretation and application of the rules of procedure can be resorted to only in proper cases and under justifiable causes and circumstances.

The courts have the power to relax or suspend technical or procedural rules or to except a case from their operation when compelling reasons so warrant or when the purpose of justice requires it. What constitutes sufficient cause that would merit suspension of the rules is discretionary upon the courts.

In his Petition and Memorandum before this Court, the BIR Commissioner made no attempt to provide reasonable explanation for his failure to raise before the CTA the issue of MPC being a public utility subject to franchise tax rather than VAT. The submission fails to take into account that although this Honorable Court has repeatedly ruled that litigants cannot raise an issue for the first time on appeal, as this would contravene the basic rules of justice and fair play, the observance of procedural rules may be relaxed, noting that technicalities are not ends in themselves but exist to protect and promote the substantive rights of the litigants.

It should be emphasized that the BIR Commissioner is invoking a suspension of the general rules of procedure or an exception thereto, thus, it is incumbent upon him to present sufficient cause or justifiable circumstance that would qualify his case for such a suspension or exception. That this Court had previously allowed in another case such suspension of or exception to technical or procedural rules does not necessarily mean that the same shall also be allowed in the present case. The BIR Commissioner has the burden of persuading this Court that the same causes or circumstances that justified the suspension of or exception to the technical or procedural rules in the other case are also present in the case at bar.

In the instant case, the conflict between the MPC and the BIR Commissioner could be hardly described as "deeply seated and violent," it remaining on a professional level.

Substantial justice, in such a case, requires not the allowance of issues raised for the first time on appeal, but that the issue of whether MPC is a public utility, and the correlated issue of whether MPC is subject to VAT or franchise tax, be raised and threshed out in the first opportunity before the CTA so that either party would have fully presented its evidence and legal arguments in support of its position and to contravene or rebut those of the opposing party.

The Court of Appeals correctly refused to consider the issues raised by the BIR Commissioner for the first time on appeal. Its discussion on whether the MPC is a public utility and whether it is subject to VAT or franchise tax is nothing more than obiter dictum. It is best not at all to discuss these issues for they do not simply involve questions of law, but also closely-related questions of fact which neither the Court of Appeals nor this Court could presume or garner from the evidence on record.

SALVADOR ESTIPONA, JR. y ASUELA, Petitioner, -versus- HON. FRANK E. LOBRIGO, Presiding Judge of the Regional Trial Court, Branch 3, Legazpi City, Albay, and PEOPLE OF THE PHILIPPINES, Respondents.

G.R. No. 226679, August 15, 2017, EN BANC, PERALTA, J.

#### **FACTS:**

Challenged in this petition for certiorari and prohibition is the constitutionality of Section 23 of Republic Act No. 9165, or the "Comprehensive Dangerous Drugs Act of 2002," which provides:

SEC 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.

Petitioner Salvador A. Estipona, Jr. is the accused in Criminal Case No. 13586 for violation of Section 11, Article II of R.A. No. 9165 (Possession of Dangerous Drugs).

Estipona filed a Motion to Allow the Accused to Enter into a Plea Bargaining Agreement, praying to withdraw his not guilty plea and, instead, to enter a plea of guilty for violation of Section 12, Article II of R.A. No. 9165 (Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs) with a penalty of rehabilitation in view of his being a first-time offender and the minimal quantity of the dangerous drug seized in his possession. He argued that Section 23 of R.A. No. 9165 violates: (1) the intent of the law expressed in paragraph 3, Section 2 thereof; (2) the rule-making authority of the Supreme Court under Section 5(5), Article VIII of the 1987 Constitution; and (3) the principle of separation of powers among the three equal branches of the government.

In its Comment or Opposition dated, the prosecution moved for the denial of the motion for being contrary to Section 23 of R.A. No. 9165, which is said to be justified by the Congress' prerogative to choose which offense it would allow plea bargaining. Later, in a Comment or Opposition dated June 29, 2016, it manifested that it "is open to the Motion of the accused to enter into plea bargaining to give life to the intent of the law as provided in paragraph 3, Section 2 of R.A. No. 9165, however, with the express mandate of Section 23 of R.A. No. 9165 prohibiting plea bargaining, it is left without any choice but to reject the proposal of the accused.

Judge Frank E. Lobrigo of the Regional Trial Court Legazpi City, Albay, denied Estipona's motion. Estipona filed a motion for reconsideration, but it was denied, hence, this petition.

#### **ISSUE:**

Whether Section 23 of Republic Act no. 9165 is unconstitutional as it encroached upon the power of the Supreme Court to promulgate rules of procedure.

#### **RULING:**

Yes. The Supreme Court held that the power to promulgate rules of pleading, practice and procedure is now Their exclusive domain and no longer shared with the Executive and Legislative departments.

Section 5(5), Article VIII of the 1987 Constitution explicitly provides:

Sec. 5. The Supreme Court shall have the following powers:

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

The rule making power of this Court was expanded. This Court for the first time was given the power to promulgate rules concerning the protection and enforcement of constitutional rights. The Court was also granted for the first time the power to disapprove rules of procedure of special courts and quasi-judicial bodies. But most importantly, the 1987 Constitution took away the power of Congress to repeal, alter, or supplement rules concerning pleading, practice and procedure. In fine, the power to promulgate rules of pleading, practice and procedure is no longer shared by this Court with Congress, more so with the Executive.

While the power to define, prescribe, and apportion the jurisdiction of the various courts is, by constitutional design, vested unto Congress, the power to promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts belongs exclusively to this Court.

In Echegaray v. Secretary of Justice the Court traced the evolution of its rule-making authority, which, under the 1935 and 1973 Constitutions, had been priorly subjected to a power-sharing scheme with Congress. As it now stands, the 1987 Constitution textually altered the old provisions by deleting the concurrent power of Congress to amend the rules, thus solidifying in one body the Court's rule-making powers, in line with the Framers' vision of institutionalizing a stronger and more independent judiciary.

Thus, as it now stands, Congress has no authority to repeal, alter, or supplement rules concerning pleading, practice, and procedure.

The separation of powers among the three co-equal branches of our government has erected an impregnable wall that keeps the power to promulgate rules of pleading, practice and procedure within the sole province of this Court. The other branches trespass upon this prerogative if they enact laws or issue orders that effectively repeal, alter or modify any of the procedural rules promulgated by the Court. Viewed from this perspective, the Court has rejected previous attempts on the part of the Congress, in the exercise of its legislative power, to amend the Rules of Court.

Considering that the aforesaid laws effectively modified the Rules, this Court asserted its discretion to amend, repeal or even establish new rules of procedure, to the exclusion of the legislative and executive branches of government. To reiterate, the Court's authority to promulgate rules on pleading, practice, and procedure is exclusive and one of the safeguards of its institutional independence.

SM LAND, INC. (Formerly Shoemart, Inc.) and WATSONS PERSONAL CARE STORES, PHILS., INC., Petitioners, -versus- CITY OF MANILA, LIBERTY TOLEDO, in her official capacity as the City Treasurer of Manila and JOSEPH SANTIAGO, in his official capacity as the Chief of License Division of the City of Manila, Respondents.

G.R. No. 197151, October 22, 2012, THIRD DIVISION, PERALTA, J.

In fact, this Court has held that even if there was complete non-compliance with the rule on certification against forum shopping, the Court may still proceed to decide the case on the merits, pursuant to its inherent power to suspend its own rules on grounds, as stated above, of substantial justice and apparent merit of the case.

There is no dispute that Tax Ordinance Nos. 7988 and 8011 have already been declared null and void by this Court in the case of Coca-Cola Bottlers Philippines, Inc. v. City of Manila. The unquestioned nullity of the above assailed Tax Ordinances upon which petitioners were previously taxed, makes petitioners' claim for tax refund clearly meritorious. Petitioners and their co-plaintiffs in the trial court filed their claim for tax refund as a collective group, because they share a common interest and invoke a common cause of action. Hence, the signature of the representative of the other co-plaintiffs may be considered as substantial compliance with the rule on verification and certification of nonforum shopping.

#### **FACTS:**

On the strength of the provisions of Tax Ordinance Nos. 7988 and 8011, which amended Ordinance No. 7794, also known as the Revenue Code of Manila, herein respondent City of Manila assessed herein petitioners, together with their other sister companies, increased rates of business taxes for the year 2003 and the first to third quarters of 2004.

Petitioners and their sister companies paid the additional taxes under protest.

Subsequently, petitioners and their sister companies claimed with herein respondent City Treasurer of Manila a credit or refund of the increased business taxes which they paid for the period abovementioned. However, the City Treasurer denied their claim.

Aggrieved, petitioners and their sister companies filed with the Regional Trial Court of Pasay City a Complaint for Refund and/or Issuance of Tax Credit of Taxes Illegally Collected.

The RTC rendered a summary judgment in favor of herein petitioners, directing the defendants to grant a refund/tax credit. The RTC held that Tax Ordinance Nos. 7988 and 8011, which were the bases of the City of Manila in imposing the assailed additional business taxes on petitioners and their co-plaintiffs, had already been declared null and void by this Court in the case of Coca-Cola Bottlers Philippines, Inc. v. City of Manila. On this ground, the RTC ruled that respondents cannot use the assailed Ordinances in imposing additional taxes on petitioners and their co-plaintiffs.

Respondents moved for reconsideration, but the RTC denied it in its Order.

After the CTA granted their request for extension of time, herein respondents filed a petition for review with the tax court. The case was raffled to the Second Division of the said court.

The CTA Second Division rendered its Decision ruling of the RTC that Ordinance Nos. 7988 and 8011 are null and void. The CTA Second Division, nonetheless, held that herein petitioners' claims for tax refund should be denied because of their failure to comply with the provisions of the Rules of Court requiring verification and submission of a certificate of non-forum shopping. The CTA Second Division noted that petitioners failed to attach to the complaint filed with the RTC their respective Secretary's Certificates authorizing their supposed representative, a certain Atty. Rex Enrico V. Cruz III, to file the said complaint in their behalf. The CTA also observed that in the Verification and Certification of Non-Forum Shopping attached to the complaint, petitioner SM Land, Inc. was not included in the list of corporations represented by the person who executed the said Verification and Certification.

Petitioners filed a Motion for Partial Reconsideration. Attached to the said Motion was the Verification and Certification executed by Atty. Cruz as the representative of petitioner SM Land, Inc. Also attached were petitioners' Secretary's Certificates authorizing Atty. Cruz as their representative. The CTA Second Division, however, denied the Motion for Partial Reconsideration in its Resolutiondated September 30, 2009.

Aggrieved, petitioners filed a petition for review with the CTA En Banc, contending that the CTA Second Division committed error in denying herein petitioners' claim for tax refund on the ground that they violated the rules on verification and certification of non-forum shopping.

The CTA En Banc affirmed in toto the judgment of the CTA Second Division.

Petitioners' Motion for Reconsideration was subsequently denied.

Hence, the present petition.

#### **ISSUE:**

Whether or not there are compelling reasons to justify the relaxation of the rules requiring verification and certification of non-forum shopping. (YES)

#### **RULING:**

The Court agrees with petitioners' contention in its second argument that there are compelling reasons in the present case which justify the relaxation of the rules on verification and certification of non-forum shopping. It must be kept in mind that while the requirement of the certification of non-forum shopping is mandatory, nonetheless, the requirements must not be interpreted too literally and, thus, defeat the objective of preventing the undesirable practice of forum shopping. Time and again, this Court has held that rules of procedure are established to secure substantial justice. Being instruments for the speedy and efficient administration of justice, they must be used to achieve such end, not to derail it. In particular, when a strict and literal application of the rules on non-forum shopping and verification will result in a patent denial of substantial justice, these may be liberally construed.

In the instant case, petitioner Watsons' procedural lapse was its belated submission of a Secretary's Certificate authorizing Atty. Cruz as its representative. On the other hand, petitioner SM Land, Inc.'s infraction was not only its late submission of its Secretary's Certificate but also its failure to timely submit its verification and certification of non-forum shopping.

In a number of cases, this Court has excused the belated filing of the required verification and certification of non-forum shopping, citing that special circumstances or compelling reasons make

the strict application of the rule clearly unjustified. This Court ruled that substantial justice and the apparent merits of the substantive aspect of the case are deemed special circumstances or compelling reasons to relax the said rule.

In fact, this Court has held that even if there was complete non-compliance with the rule on certification against forum shopping, the Court may still proceed to decide the case on the merits, pursuant to its inherent power to suspend its own rules on grounds, as stated above, of substantial justice and apparent merit of the case.

In the present case, there is no dispute that Tax Ordinance Nos. 7988 and 8011 have already been declared null and void by this Court as early as 2006 in the case of Coca-Cola Bottlers Philippines, Inc. v. City of Manila. The nullity of the said Tax Ordinances is affirmed in the more recent case of City of Manila v. Coca-Cola Bottlers, Philippines, Inc., as cited above. Thus, to the mind of this Court, the unquestioned nullity of the above assailed Tax Ordinances upon which petitioners were previously taxed, makes petitioners' claim for tax refund clearly meritorious. In fact, petitioners' sister companies, which were their co-plaintiffs in their Complaint filed with the RTC, were granted tax refund in accordance with the judgments of the trial court, the CTA Second Division and the CTA En Banc. On this basis, petitioners' meritorious claims are compelling reasons to relax the rule on verification and certification of non-forum shopping.

In any case, it would bear to point out that petitioners and their co-plaintiffs in the trial court filed their claim for tax refund as a collective group, because they share a common interest and invoke a common cause of action. Hence, the signature of the representative of the other co-plaintiffs may be considered as substantial compliance with the rule on verification and certification of non-forum shopping, consistent with this Court's pronouncement that when all the petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the rules.

### EDGARDO PINGA, Petitioner, vs. THE HEIRS OF GERMAN, SANTIAGO represented by FERNANDO SANTIAGO, Respondents.

G.R. No. 170354, June 30, 2006, THIRD DIVISION, TINGA, J.

The constitutional faculty of the Court to promulgate rules of practice and procedure necessarily carries the power to overturn judicial precedents on points of remedial law through the amendment of the Rules of Court. One of the notable changes introduced in the 1997 Rules of Civil Procedure is the explicit proviso that if a complaint is dismissed due to fault of the plaintiff, such dismissal is "without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action." The innovation was instituted in spite of previous jurisprudence holding that the fact of the dismissal of the complaint was sufficient to justify the dismissal as well of the compulsory counterclaim. In granting this petition, the Court recognizes that the former jurisprudential rule can no longer stand in light of Section 3, Rule 17 of the 1997 Rules of Civil Procedure.

#### **FACTS:**

Petitioner Eduardo Pinga was named as one of two defendants in a complaint for injunction filed with the Regional Trial Court of San Miguel, Zamboanga del Sur, by respondent Heirs of German Santiago, represented by Fernando Santiago. The Complaint alleged in essence that petitioner and

co-defendant Vicente Saavedra had been unlawfully entering the coco lands of the respondent, cutting wood and bamboos and harvesting the fruits of the coconut trees therein. Respondents prayed that petitioner and Saavedra be enjoined from committing "acts of depredation" on their properties, and ordered to pay damages.

In their Amended Answer with Counterclaim, petitioner and his co-defendant disputed respondents' ownership of the properties in question, asserting that petitioner's father, Edmundo Pinga, from whom defendants derived their interest in the properties, had been in possession thereof since the 1930s. They alleged that as far back as 1968, respondents had already been ordered ejected from the properties after a complaint for forcible entry was filed by the heirs of Edmundo Pinga. It was further claimed that respondents' application for free patent over the properties was rejected by the Office of the President in 1971. Defendants in turn prayed that to be awarded various types of damages instead in amounts totaling P2,100,000 plus costs of suit.

By July of 2005, the trial of the case had not yet been completed. Moreover, respondents, as plaintiffs, had failed to present their evidence. It appears that on 25 October 2004, the RTC already ordered the dismissal of the complaint after respondents' counsel had sought the postponement of the hearing scheduled then. However, the order of dismissal was subsequently reconsidered by the RTC in an Order dated 9 June 2005, which took into account the assurance of respondents' counsel that he would give priority to that case.

At the hearing of 27 July 2005, plaintiffs' counsel on record failed to appear, sending in his stead a representative who sought the postponement of the hearing. Counsel for defendants (who include herein petitioner) opposed the move for postponement and moved instead for the dismissal of the case. The RTC noted that it was obvious that respondents had failed to prosecute the case for an unreasonable length of time, in fact not having presented their evidence yet. On that ground, the complaint was dismissed. At the same time, the RTC allowed defendants "to present their evidence ex-parte."

Respondents filed a Motion for Reconsideration of the order issued in open court on 27 July 2005, opting however not to seek that their complaint be reinstated, but praying instead that the entire action be dismissed and petitioner be disallowed from presenting evidence ex-parte. Respondents claimed that the order of the RTC allowing petitioner to present evidence ex-parte was not in accord with established jurisprudence. They cited cases, particularly City of Manila v. Ruymann and Domingo v. Santos, which noted those instances in which a counterclaim could not remain pending for independent adjudication.

On 9 August 2005, the RTC promulgated an order granting respondents' Motion for Reconsideration and dismissing the counterclaim, citing as the only ground therefor that "there is no opposition to the Motion for Reconsideration of the [respondents]."Petitioner filed a Motion for Reconsideration, but the same was denied by the RTC in an Order dated 10 October 2005. Notably, respondents filed an Opposition to Defendants' Urgent Motion for Reconsideration, wherein they argued that the prevailing jurisprudential rule is that "compulsory counterclaims cannot be adjudicated independently of plaintiff's cause of action," and "a conversu, the dismissal of the complaint carries with it the dismissal of the compulsory counterclaims."

The matter was elevated to this Court directly by way of a Petition for Review under Rule 45.

#### **ISSUE:**

Whether the dismissal of the complaint necessarily carries the dismissal of the compulsory counterclaim.

#### **RULING:**

We hold that under Section 3, Rule 17 of the 1997 Rules of Civil Procedure, the dismissal of the complaint due to the fault of plaintiff does not necessarily carry with it the dismissal of the counterclaim, compulsory or otherwise. In fact, the dismissal of the complaint is without prejudice to the right of defendants to prosecute the counterclaim.

Our core discussion begins with Section 3, Rule 17 of the 1997 Rules of Civil Procedure, which states:

SEC. 3. Dismissal due to fault of plaintiff.—If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

The express qualification in the provision that the dismissal of the complaint due to the plaintiff's fault, as in the case for failure to prosecute, is without prejudice to the right of the defendant to prosecute his counterclaim in the same or separate action. This stands in marked contrast to the provisions under Rule 17 of the 1964 Rules of Court which were superseded by the 1997 amendments. In the 1964 Rules, dismissals due to failure to prosecute were governed by Section 3, Rule 17, to wit:

SEC. 3. Failure to prosecute. — If plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court.

The old rule was silent on the effect of such dismissal due to failure to prosecute on the pending counterclaims. Under the 1964 Rules, the dismissal of a complaint due to the failure of the plaintiff to appear during pre-trial fell within the coverage of Section 3, Rule 17. Section 2 was clearly limited in scope to those dismissals sustained at the instance of the plaintiff.

To be certain, when the Court promulgated the 1997 Rules of Civil Procedure, including the amended Rule 17, those previous jural doctrines that were inconsistent with the new rules incorporated in the 1997 Rules of Civil Procedure were implicitly abandoned insofar as incidents arising after the effectivity of the new procedural rules on 1 July 1997. We thus rule that the dismissal of a complaint due to fault of the plaintiff is without prejudice to the right of the defendant to prosecute any pending counterclaims of whatever nature in the same or separate action. We confirm that all previous rulings of the Court that are inconsistent with this present holding are now abandoned.

Accordingly, the RTC clearly erred when it ordered the dismissal of the counterclaim, since Section 3, Rule 17 mandates that the dismissal of the complaint is without prejudice to the right of the defendant to prosecute the counterclaim in the same or separate action. If the RTC were to dismiss the counterclaim, it should be on the merits of such counterclaim. Reversal of the RTC is in order, and a remand is necessary for trial on the merits of the counterclaim.

Thus, the present rule embodied in Sections 2 and 3 of Rule 17 ordains a more equitable disposition of the counterclaims by ensuring that any judgment thereon is based on the merit of the counterclaim itself and not on the survival of the main complaint. Certainly, if the counterclaim is palpably without merit or suffers jurisdictional flaws which stand independent of the complaint, the trial court is not precluded from dismissing it under the amended rules, provided that the judgment or order dismissing the counterclaim is premised on those defects. At the same time, if the counterclaim is justified, the amended rules now unequivocally protect such counterclaim from peremptory dismissal by reason of the dismissal of the complaint.

### IN THE MATTER OF PETITION FOR ISSUANCE OF A WRIT OF AMPARO IN FAVOR OF LILIBETH O. LADAGA: LILIBETH O. LADAGA v. MAJ. GEN. REYNALDO MAPAGU +

GR No. 189689, Nov 13, 2012, EN BANC, PERLAS-BERNABE, J.

The writ of amparo was promulgated by the Court pursuant to its rule-making powers in response to the alarming rise in the number of cases of enforced disappearances and extrajudicial killings.

The present petitions do not involve actual cases of abduction or disappearance that can be the basis of an investigation. Petitioners would insist that respondents be investigated and directed to produce the Order of Battle that they have admitted to be in their safekeeping and justify the inclusion of petitioners' names therein. However, without substantial evidence of an actual threat to petitioners' rights to life, liberty and security that consists more than just the inclusion of their names in an OB List, an order for further investigation into, or production of, the military's Order of Battle, would have no concrete basis.

#### **FACTS:**

Petitioners share the common circumstance of having their names included in what is alleged to be a JCICC "AGILA" 3rd Quarter 2007 Order of Battle Validation Result of the Philippine Army's 10th Infantry Division, which is a list containing the names of organizations and personalities in Southern Mindanao, particularly Davao City, supposedly connected to the Communist Party of the

Philippines and its military arm, the New People's Army. They perceive that by the inclusion of their names in the said Order of Battle, they become easy targets of unexplained disappearances or extralegal killings a real threat to their life, liberty and security.

On June 16, 2009, petitioners separately filed before the RTC a Petition for the Issuance of a Writ of Amparo with Application for a Production Order.

The RTC issued separate Writs of Amparo in each of the three cases, directing respondents to file a verified written return within seventy-two hours and setting the case for summary hearing. After submission of the parties' respective Position Papers, the RTC issued Orders finding no substantial evidence to show that the perceived threat to petitioners' life, liberty and security was attributable to the unlawful act or omission of the respondents.

In their Joint Motion for Reconsideration, petitioners argued that the existence and veracity of the OB List had already been confirmed by respondents themselves through their statements to the media, hence, respondents' personal authorship thereof need not be proven by substantial evidence, as it is, after all, "not the crux of the issue."

The RTC, however, rejected petitioners' arguments in the September 22, 2009 Order, hence, these petitions for review on certiorari.

#### **ISSUE:**

Whether or not the petition should be granted

#### **RULING:**

We deny the petitions.

The writ of amparo was promulgated by the Court pursuant to its rule-making powers in response to the alarming rise in the number of cases of enforced disappearances and extrajudicial killings. It plays the preventive role of breaking the expectation of impunity in the commission of extralegal killings and enforced disappearances, as well as the curative role of facilitating the subsequent punishment of the perpetrators. In Tapuz v. Del Rosario, the Court has previously held that the writ of amparo is an extraordinary remedy intended to address violations of, or threats to, the rights to life, liberty or security and that, being a remedy of extraordinary character, it is not one to issue on amorphous or uncertain grounds but only upon reasonable certainty. Hence, every petition for the issuance of the writ is required to be supported by justifying allegations of fact on the following matters:

- (a) The personal circumstances of the petitioner;
- (b) The name and personal circumstances of the respondent responsible for the threat, act or omission, or, if the name is unknown or uncertain, the respondent may be described by an assumed appellation;

- (c) The right to life, liberty and security of the aggrieved party violated or threatened with violation by an unlawful act or omission of the respondent, and how such threat or violation is committed with the attendant circumstances detailed in supporting affidavits;
- (d) The investigation conducted, if any, specifying the names, personal circumstances, and addresses of the investigating authority or individuals, as well as the manner and conduct of the investigation, together with any report;
- (e) The actions and recourses taken by the petitioner to determine the fate or whereabouts of the aggrieved party and the identity of the person responsible for the threat, act or omission; and
- (f) The relief prayed for. The petition may include a general prayer for other just and equitable reliefs.

Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere imputation of wrongdoing or violation that would warrant a finding of liability against the person charged. The summary nature of amparo proceedings, as well as, the use of substantial evidence as standard of proof shows the intent of the framers of the rule to address situations of enforced disappearance and extrajudicial killings, or threats thereof, with what is akin to administrative proceedings.

The alleged threat to herein petitioners' rights to life, liberty and security must be actual, and not merely one of supposition or with the likelihood of happening. And, when the evidence adduced establishes the threat to be existent, as opposed to a potential one, then, it goes without saying that the threshold requirement of substantial evidence in amparo proceedings has also been met. Thus, in the words of Justice Brion, in the context of the Amparo, only actual threats, as may be established from all the facts and circumstances of the case, can qualify as a violation that may be addressed under the Rule on the Writ of Amparo.

Petitioners cannot assert that the inclusion of their names in the OB List is as real a threat as that which brought ultimate harm to victims Celso Pojas, Lodenio Monzon and Dr. Rogelio Peñera without corroborative evidence from which it can be presumed that the suspicious deaths of these three people were, in fact, on account of their militant affiliations or that their violent fates had been actually planned out by the military through its Order of Battle.

Unlike Roxas and Razon, Jr., however, the present petitions do not involve actual cases of abduction or disappearance that can be the basis of an investigation. Petitioners would insist that respondents be investigated and directed to produce the Order of Battle that they have admitted to be in their safekeeping and justify the inclusion of petitioners' names therein. However, without substantial evidence of an actual threat to petitioners' rights to life, liberty and security that consists more than just the inclusion of their names in an OB List, an order for further investigation into, or production of, the military's Order of Battle, would have no concrete basis.

### BP Oil and Chemicals International Philippines, Inc., Petitioner vs. Total Distribution & Logistic Systems, Inc., Respondents

G.R. No. 214406, February 6, 2017, PERALTA, J.:

A close reading of the present petition shows that what this Court is being asked to resolve is, what should prevail - the findings of facts of the RTC or the findings of facts of the CA on the alleged misapprehension of facts of the RTC. The findings of facts of both Courts are obviously conflicting, hence, the need for this Court to rule on the present petition.

#### **FACTS:**

A Complaint for Sum of Money was filed by petitioner BP Oil against respondent Total Distribution & Logistic Systems, Inc. (TDLSI) on April 15, 2002, seeking to recover the sum of ₱36,440,351.79 representing the total value of the moneys, stock and accounts receivables that TDLSI has allegedly refused to return to BP Oil.

The RTC ruled in favor of petitioner, while the CA ruled in favor of respondent. Hence, petitioner filed the present petition before the Supreme Court raising questions of fact.

#### **ISSUE:**

Whether or not the Supreme Court may entertain the present petition.

#### **RULING:**

YES. The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.

However, these rules do admit exceptions: (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.

A close reading of the present petition shows that what this Court is being asked to resolve is, what should prevail - the findings of facts of the RTC or the findings of facts of the CA on the alleged misapprehension of facts of the RTC. The findings of facts of both Courts are obviously conflicting, hence, the need for this Court to rule on the present petition.

### Senator Leila de Lima vs Hon. Juanita Guerrero, et al G.R. No. 229781, October 10, 2017, En Banc, Velasco

#### **FACTS:**

Four complaints, which were later consolidated, were filed against petitioner concerning her involvement on the illegal drug trade at the New Bilibid Prison. These 4 cases were later consolidated and the DOJ Panel, headed by Senior Assistant State Prosecutor Peter Ong was directed to conduct preliminary investigation.

In the preliminary hearings conducted by the DOJ Panel, petitioner filed an Omnibus Motion to have the consolidated cases endorsed to the Ombudsman. Petitioner alleges that Ombudsman has exclusive authority and jurisdiction to hear the complaints against her. The complainants filed an Opposition against this Omnibus Motion to which petitioner filed a Reply thereto. Petitioner also submitted a Manifestation with Motion to First Resolve Pending Incident and to Defer Further Proceedings.

During the next hearing, petitioner submitted that she has decided to not yet submit her counter-affidavits considering the pendency of her two motions. This was denied by the DOJ Panel and declared all pending incidents and cases submitted for resolution.

Petitioner thereafter filed before the CA a Petition for Prohibition and Certiorari assailing the jurisdiction of the DOJ Panel over the complaints against her. At the time of the promulgation of this decision, these petitions were still pending before the CA. The DOJ Panel, in the absence of any restraining order issued by the CA recommended the filing of informations against petitioner. Accordingly, 3 informations were filed against her. Petitioner thereafter filed a Motion to Quash these informations.

Respondent judge thereafter issued the assailed Order finding probable cause for the issuance of warrants of arrest against petitioner. Accordingly, the warrant was issued and served on petitioner who was committed to the PNP Custodial Center.

Petitioner thereafter filed the instant petition before the Supreme Court praying that the court grant a writ of certiorari to annul the Order by respondent judge which issued that warrant of arrest, grant a writ of prohibition to enjoin respondent judge from further proceeding with the case until petitioner's Motion to Quash has been resolved, and the issuance of a status quo pro ante order to restore petitioner to her liberty and freedom.

#### **ISSUES:**

- 1. Whether or not petitioner is excused from compliance with the rule on the hierarchy of courts.
- 2. Whether or not the pendency of the Motion to Quash renders the present petition premature.
- 3. Whether or not petitioner violated the rule on forum shopping.

#### **RULING:**

The doctrine that requires respect for the hierarchy of courts was created by this court to ensure that every level of the judiciary performs its designated roles in an effective and efficient manner. Nonetheless, there are recognized exceptions to this rule and direct resort to this Court were allowed in some instances. Immediate resort to this Court may be allowed when any of the following grounds are present: (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy.

Unfortunately, none of these exceptions were sufficiently established in the present petition so as to convince this court to brush aside the rules on the hierarchy of courts. Petitioner's allegation that her case has sparked national and international interest is obviously not covered by the exceptions to the rules on hierarchy of courts. That the petitioner is a senator of the republic does not also merit a special treatment of her case. The right to equal treatment before the law accorded to every Filipino also forbids the elevation of petitioner's cause on account of her position and status in the government.

The court also held the present petition is premature. Nowhere in the prayer did petitioner explicitly ask for the dismissal of criminal case against her. What is clear is she merely asked the respondent judge to rule on her Motion to Quash before issuing the warrant of arrest. As such, there is no other recourse but to dismiss the instant petition and let the respondent judge rule on the said motion.

Petitioner likewise violated the rule on forum shopping. The test to determine the existence of forum shopping is whether the elements of litis pendentia, or whether a final judgment in one case amounts to res judicata in the other. Forum shopping therefore exists when the following elements are present: (a) identity of parties, or at least such parties representing the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same

facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.

In this case, the parties in the present Petition and in the Motion to Quash are the same. The arguments raised in the two pleadings are likewise the same. With the presence of these two requisites, the third one necessarily obtains.

# AUDI AG, Petitioner, v. HON. JULES A. MEJIA, in his capacity as Executive Judge of the Regional Trial Court, Alaminos City; AUTO PROMINENCE CORPORATION; and PROTON PILIPINAS CORPORATION, Respondents.

G.R. NO. 167533, July 27, 2007, FIRST DIVISION, SANDOVAL-GUTIERREZ, J.

Petitioner, by filing directly with this Court its petition, has ignored the established rule on hierarchy of courts. It must be stressed that the Court of Appeals and the Supreme Court have original concurrent jurisdiction over petitions for certiorari. The rule on hierarchy of courts determines the venue of appeals. Such rule is necessary to prevent inordinate demands upon the Court's precious time and attention which are better devoted to matters within its exclusive jurisdiction, and to prevent further overcrowding of the Court's docket. Thus, petitioner should have filed with the Court of Appeals its petition, not directly with this Court.

#### **FACTS:**

Audi AG, petitioner, is a non-resident foreign company engaged in the manufacture of "Audi" brand cars. It is not licensed to do business in the Philippines but is suing on an isolated transaction. Auto Prominence Corporation and Proton Pilipinas Corporation, respondents, are corporations duly organized and existing under Philippine laws engaged in the business of assembling, buying, selling, distributing, importing, marketing, and servicing of motor vehicles. They have a common principal office at Barangay Alos, Alaminos City.

Respondents filed with the RTC, Alaminos City a complaint for specific performance and injunction against petitioner Audi AG. The complaint alleges inter alia that on August 1, 1996, petitioner appointed respondent Proton as its sole assembler and distributor of Audi cars in the Philippines under an Assembly Agreement and a Distributorship Agreement; that respondent Proton was induced to open, promote, develop and sell Audi brand cars in the Philippines upon petitioner's representations that Proton will be the exclusive assembler and distributor of Audi cars and local parts manufacturer for export purposes, for a period of 12 months and, thereafter, for an indefinite period upon the establishment of the assembly and distributorship network; that respondent Proton, relying upon petitioner's representations, was enticed to: (a) borrow money to establish the assembly plant and building for petitioner; (b) buy tools and equipment for its assembly plant and distributorship; (c) spend for its showrooms and offices; and (d) pay its license fees, technical brochure and other expenses; that it turned out that petitioner did not include the Philippines in its ASEAN Assembly Strategy program, but only Malaysia, thus frustrating respondent Proton's assembly preparations; that with evident bad faith, petitioner has been negotiating for the transfer of the distributorship of the Audi cars to a third party; and that both respondents were surprised

when they received from petitioner a letter dated September 27, 2004 terminating the assembly and the distributorship agreements for reasons which to them are unjustified.

Respondent Executive Judge issued the Order in question directing the issuance of a TRO effective for twenty days. Hence, the instant petition.

#### **ISSUE:**

Whether or not the petition should be dismissed.

#### **RULING:**

Petitioner, by filing directly with this Court its petition, has ignored the established rule on hierarchy of courts. It must be stressed that the Court of Appeals and the Supreme Court have original concurrent jurisdiction over petitions for certiorari. The rule on hierarchy of courts determines the venue of appeals. Such rule is necessary to prevent inordinate demands upon the Court's precious time and attention which are better devoted to matters within its exclusive jurisdiction, and to prevent further overcrowding of the Court's docket. Thus, petitioner should have filed with the Court of Appeals its petition, not directly with this Court. While such rule may be relaxed for special and important reasons clearly and specifically set out in the petition, however, in the instant case, petitioner failed to discharge that burden.

Once again, we stress that the rules of procedure exist for a noble purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitors may be heard following judicial procedure and in the correct forum. Public order and our system of justice are well served by a conscientious observance by the parties of the procedural rules.

# DESIDERIO DE LOS REYES and MYRNA VILLANUEVA, Petitioners, v. PEOPLE OF THE PHILIPPINES and HON. ANTONIO M. EUGENIO, JR., Presiding Judge, Regional Trial Court, Calamba, Laguna, Branch 34, Respondents.

G.R. NO. 138297, January 27, 2006, SECOND DIVISION, SANDOVAL-GUTIERREZ, J.

There was no procedural lapse when petitioners initially appealed the RTC Orders to the Court of Appeals. But what they should have done after the Appellate Court rendered its Decision affirming the RTC Orders was to seasonably file with this Court an appeal via a Petition for Review on Certiorari pursuant to Rule 45 of the 1997 Rules of Civil Procedure, as amended. Instead, as earlier mentioned, what they filed with this Court is this petition for certiorari under Rule 65 of the same Rules. Time and again, we have ruled that certiorari is not a substitute for a lost appeal.

#### **FACTS:**

The instant case stemmed from a complaint filed with the Municipal Trial Court of Calauan, Laguna by the Philippine Coconut Authority against Desiderio De los Reyes and Myrna Villanueva, petitioners, and several others for violation of Republic Act No. 8048, otherwise known as The Coconut Preservation Act of 1995, docketed as Criminal Case No. 6768. The complaint reads:

That on August, September and October 1996 in Brgy. Imok, Calauan, Laguna, the above named respondents did then and there willfully, unlawfully and feloniously cut down and processed more or less FOUR HUNDRED and FORTY coconut trees without the required permit to cut from the Philippine Coconut Authority in gross violation of the provisions of R.A. 8048 or the Coconut Preservation Act of 1995.

The MTC ordered the accused to file their counter-affidavits within ten (10) days from notice. Petitioners, instead of submitting their counter-affidavits, filed a Motion for Preliminary Investigation.

The MTC denied the motion on the ground that in cases cognizable by the MTCs, an accused is not entitled to a preliminary investigation.

Petitioners filed a Motion To Quash the complaint on the ground that the allegations therein do not constitute an offense.

The MTC issued an Order denying the motion and requiring anew all the accused to file their counter-affidavits within five (5) days from notice.

Petitioners then filed a petition for certiorari, prohibition, and mandamus with the RTC, docketed as Civil Case No. 2494-97-C. They alleged that the MTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied their Motion To Quash.

The RTC dismissed the petition and ruled that the MTC did not gravely abuse its discretion, as the allegations, if hypothetically admitted, are sufficient to constitute the elements of the offense.

Petitioners seasonably filed a motion for reconsideration, but this was denied by the RTC. Petitioners then interposed an appeal to the Court of Appeals.

The Appellate Court affirmed the RTC Orders, holding that since petitioners are raising a question of law, they should have filed a Petition for Review on Certiorari with the Supreme Court.

Petitioners filed a motion for reconsideration but it was denied by the Court of Appeals.

Thus, petitioners filed with this Court the instant petition for certiorari assailing the Orders of the RTC in dismissing their petition for certiorari on the ground that the MTC did not gravely abuse its discretion.

#### **ISSUE:**

Whether it was proper for petitioners to have appeal the RTC orders to the Court of Appeals

#### **RULING:**

There was no procedural lapse when petitioners initially appealed the RTC Orders to the Court of Appeals. But what they should have done after the Appellate Court rendered its Decision affirming the RTC Orders was to seasonably file with this Court an appeal via a Petition for Review on Certiorari pursuant to Rule 45 of the 1997 Rules of Civil Procedure, as amended. Instead, as earlier mentioned, what they filed with this Court is this petition for certiorari under Rule 65 of the same Rules. Time and again, we have ruled that certiorari is not a substitute for a lost appeal.

Even assuming that the instant petition for certiorari is in order, still we have to dismiss the same. Petitioners failed to observe the principle of hierarchy of courts. They should have filed their petition for certiorari with the Court of Appeals. Pursuant to Section 9 of Batas Pambansa Blg. 129, as amended, the Court of Appeals has original jurisdiction to issue, among others, a writ of certiorari.

Moreover, records indicate that they filed with this Court the instant petition for certiorari on May 6, 1999. They received a copy of the RTC Order denying their motion to dismiss on March 2, 1998. On April 21, 1998, they received a copy of the Order denying their motion for reconsideration. Under Section 4, Rule 65 of the same Rules, they had sixty days from April 21, 1998 to file this petition for certiorari. However, they filed it only on May 6, 1999, or after one year.

Even on the merits of the case, this petition is vulnerable to dismissal. It is a dictum that when a motion to quash in a criminal case is denied, the remedy is not certiorari, but for petitioners to go to trial without prejudice to reiterating the special defenses invoked in their motion to quash. In the event that an adverse decision is rendered after trial on the merits, an appeal therefrom is the next legal step.

COMMISSION ON ELECTIONS, COMELEC CHAIRMAN ALFREDO L. BENIPAYO, COMELEC COMMISSIONERS RESURRECCION Z. BORRA and FLORENTINO A. TUASON, JR., Petitioners, v. JUDGE MA. LUISA QUIJANO-PADILLA, REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 215 and PHOTOKINA MARKETING CORP., Respondents.

G.R. No. 151992. September 18, 2002, EN BANC, SANDOVAL-GUTIERREZ, J.

Anent the alleged breach of the doctrine of hierarchy of courts, suffice it to say that it is not an ironclad dictum. On several instances where this Court was confronted with cases of national interest and of serious implications, it never hesitated to set aside the rule and proceed with the judicial determination of the case. The case at bar is of similar import. It is in the interest of the State that questions relating to government contracts be settled without delay. This is more so when the contract, as in this case, involves the disbursement of public funds and the modernization of our country's election process, a project that has long been overdue.

#### **FACTS:**

In 1996, the Philippine Congress passed Republic Act No. 8189, otherwise known as the "Voter's Registration Act of 1996. The COMELEC issued invitations to pre-qualify and bid for the supply and installation of information technology equipment and ancillary services for its VRIS Project.

Private respondent Photokina Marketing Corporation pre-qualified and was allowed to participate as one of the bidders. After the public bidding was conducted, PHOTOKINA's bid in the amount of P6.588 Billion Pesos garnered the highest total weighted score and was declared the winning bidder. Thus, on September 28, 2000, the COMELEC issued Resolution No. 3252 approving the Notice of Award to PHOTOKINA, which, in turn, immediately accepted the same.

However, under R.A. No. 8760 the budget appropriated by Congress for the COMELEC's modernization project was only One Billion Pesos and that the actual available funds under the Certificate of Availability of Funds issued by the Chief Accountant of the COMELEC was only P1.2 Billion Pesos.

On February 2, 2001, the term of former Chairman Demetriou and those of Commissioners Julio F. Desamito and Teresita Dy-Liacco Flores expired. Appointed as their successors were Alfredo L. Benipayo as Chairman and Resurreccion Z. Borra and Florentino A. Tuason, Jr. as Commissioners. Meanwhile, PHOTOKINA, as the winning bidder, wrote several letters to the COMELEC requesting the formal execution of the contract, but to no avail.

Then Chairman Benipayo, through various press releases and public statements, announced that the VRIS Project has been "scrapped, dropped, junked, or set aside." He further announced his plan to "re-engineer" the entire modernization program of the COMELEC, emphasizing his intention to replace the VRIS Project with his own version, the "Triple E Vision."

Unsatisfied with the adverse turn of events, PHOTOKINA filed with the Regional Trial Court, Branch 215, Quezon City a petition for mandamus, prohibition and damages against the COMELEC and all its Commissioners. PHOTOKINA alleged three causes of action: first, the deliberate refusal of the COMELEC and its Commissioners to formalize the contract rendered nugatory the perfected contract between them; second, in announcing that the VRIS Project has been junked and that he has plans to re-engineer the COMELEC's entire modernization program, Chairman Benipayo committed grave abuse of discretion; and third, the COMELEC's failure to perform its duty under the contract has caused PHOTOKINA to incur damages since it has spent substantial time and resources in the preparation of the bid and the draft contract.

Respondent Judge Ma. Luisa Quijano-Padilla issued the first assailed Resolution granting PHOTOKINA's application for a writ of preliminary prohibitory injunction,

Both parties filed their respective motions for reconsideration. PHOTOKINA reiterated its plea for a writ of preliminary mandatory injunction. For their part, the COMELEC and its Commissioners, through the Solicitor General, prayed that the writ of preliminary prohibitory injunction be set aside and that the petition for mandamus, prohibition and damages be dismissed.

Respondent judge issued the second assailed Resolution denying the COMELEC's Omnibus Motion and, this time, granting PHOTOKINA's application for a writ of preliminary mandatory injunction. Hence, the instant petition for certiorari filed by the Office of the Solicitor General.

PHOTOKINA filed a Comment with Motion to Dismiss on the ground that the petition violates the doctrine of hierarchy of courts.

#### **ISSUE:**

Whether or not the petition violates the doctrine of hierarchy of courts. (NO)

#### **RULING:**

Anent the alleged breach of the doctrine of hierarchy of courts, suffice it to say that it is not an ironclad dictum. On several instances where this Court was confronted with cases of national interest and of serious implications, it never hesitated to set aside the rule and proceed with the judicial determination of the case. The case at bar is of similar import. It is in the interest of the State that questions relating to government contracts be settled without delay. This is more so when the contract, as in this case, involves the disbursement of public funds and the modernization of our country's election process, a project that has long been overdue.

UNITED CLAIMANTS ASSOCIATION OF NEA (UNICAN), represented by its representative BIENVENIDO R. LEAL, in his official capacity as its President and in his own individual capacity, EDUARDO R. LACSON, ORENCIO F. VENIDA, JR., THELMA V. OGENA, BOBBY M. CARANTO, MARILOU B. DE JESUS, EDNA G. RAÑA, and ZENAIDA P. OLIQUINO, in their own capacities and in behalf of all those similarly situated officials and employees of the National Electrification Administration, Petitioners, -versus- NATIONAL ELECTRIFICATION ADMINISTRATION (NEA), NEA BOARD OF ADMINISTRATORS (NEA BOARD), ANGELO T. REYES as Chairman of the NEA Board of Administrators, EDITHA S. BUENO, Ex-Officio Member and NEA Administrator, and WILFRED L. BILLENA, JOSPEPH D. KHONGHUN, and FR. JOSE VICTOR E. LOBRIGO, Members, NEA Board, Respondents.

G.R. No. 187107, EN BANC, January 31, 2012, VELASCO, JR., J.

A becoming regard for judicial hierarchy indicates that petitions for the issuance of extraordinary writs against first level courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. Such reasons exist in the instant case, involving as it does the employment of the entire plantilla of NEA, more than 700 employees all told, who were effectively dismissed from employment in one swift stroke.

#### **FACTS:**

The case is an original action for Injunction to restrain and/or prevent the implementation of Resolution Nos. 46 and 59, dated July 10, 2003 and September 3, 2003, respectively, otherwise known as the National Electrification Administration (NEA) Termination Pay Plan, issued by respondent NEA Board of Administrators (NEA Board). Petitioners are former employees of NEA who were terminated from their employment with the implementation of the assailed resolutions. Respondent essentially argues that petitioners violated the principle of hierarchy of courts, pursuant to which the instant petition should have been filed with the Regional Trial Court first rather than with the Supreme Court directly.

#### **ISSUE:**

Whether the Supreme Court has jurisdiction over the case. (YES)

#### **RULING:**

A becoming regard for judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition.

Evidently, the instant petition should have been filed with the RTC. However, as an exception to this general rule, the principle of hierarchy of courts may be set aside for special and important reasons. Such reason exists in the instant case involving as it does the employment of the entire plantilla of NEA, more than 700 employees all told, who were effectively dismissed from employment in one swift stroke.

### EMMANUEL A. DE CASTRO, Petitioner, -versus- EMERSON S. CARLOS, Respondent. G.R. No. 194994, EN BANC, April 16, 2013, SERENO, C.J.

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. A direct invocation of this Court's jurisdiction is allowed only when there are special and important reasons that are clearly and specifically set forth in a petition. A disregard of the doctrine of hierarchy of courts warrants, as a rule, the outright dismissal of a petition. Hence, De Castro should not have filed a petition for quo warranto under Rule 66 directly with the Supreme Court.

#### **FACTS:**

Petitioner Emmanuel De Castro filed petition for the issuance of a writ of quo warranto seeking to oust respondent Emerson Carlos from the position of assistant general manager for operations (AGMO) of the Metropolitan Manila Development Authority (MMDA). De Castro filed the petition directly with the Supreme Court citing urgent demands of public interest, particularly the veritable need for stability in the civil service and the protection of the rights of civil servants. Moreover, considering that no other than the President of the Philippines is the appointing authority, De Castro doubts if a trial court judge or an appellate court justice, with a prospect of promotion in the judiciary would be willing to go against a presidential appointment.

#### **ISSUE:**

Whether a presidential appointee can file a petition for quo warranto under Rule 66 directly with the Supreme Court. (NO)

#### **RULING:**

Although Section 5(1) of Article VIII of the 1987 Constitution explicitly provides that the Supreme Court has original jurisdiction over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus, the jurisdiction of this Court is not exclusive but is concurrent with that of the Court of Appeals and regional trial court and does not give petitioner unrestricted freedom of choice of court forum. The hierarchy of courts must be strictly observed.

Settled is the rule that "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." A disregard of the doctrine of hierarchy of courts warrants, as a rule, the outright dismissal of a petition.

A direct invocation of this Court's jurisdiction is allowed only when there are special and important reasons that are clearly and specifically set forth in a petition. The rationale behind this policy arises from the necessity of preventing (1) inordinate demands upon the time and attention of the Court, which is better devoted to those matters within its exclusive jurisdiction; and (2) further overcrowding of the Court's docket.

In this case, De Castro justified his act of directly filing with this Court only when he filed his Reply and after Carlos had already raised the procedural infirmity that may cause the outright dismissal of the present Petition. De Castro likewise cites stability in the civil service and protection of the rights of civil servants as rationale for disregarding the hierarchy of courts.

De Castro's excuses are not special and important circumstances that would allow a direct recourse to this Court. More so, mere speculation and doubt to the exercise of judicial discretion of the lower

courts are not and cannot be valid justifications to hurdle the hierarchy of courts. Thus, the Petition must be dismissed.

UNITED CLAIMANTS ASSOCIATION OF NEA (UNICAN), represented by its representative BIENVENIDO R. LEAL, in his official capacity as its President and in his own individual capacity, EDUARDO R. LACSON, ORENCIO F. VENIDA, JR., THELMA V. OGENA, BOBBY M. CARANTO, MARILOU B. DE JESUS, EDNA G. RAÑA, and ZENAIDA P. OLIQUINO, in their own capacities and in behalf of all those similarly situated officials and employees of the National Electrification Administration, *Petitioners*, -versus- NATIONAL ELECTRIFICATION ADMINISTRATION (NEA), NEA BOARD OF ADMINISTRATORS (NEA BOARD), ANGELO T. REYES as Chairman of the NEA Board of Administrators, EDITHA S. BUENO, Ex-Officio Member and NEA Administrator, and WILFRED L. BILLENA, JOSPEPH D. KHONGHUN, and FR. JOSE VICTOR E. LOBRIGO, Members, NEA Board, *Respondents*.

G.R. No. 187107, EN BANC, January 31, 2012, VELASCO, JR., J.

A becoming regard for judicial hierarchy indicates that petitions for the issuance of extraordinary writs against first level courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. Such reasons exist in the instant case, involving as it does the employment of the entire plantilla of NEA, more than 700 employees all told, who were effectively dismissed from employment in one swift stroke.

#### **FACTS:**

The case is an original action for Injunction to restrain and/or prevent the implementation of Resolution Nos. 46 and 59, dated July 10, 2003 and September 3, 2003, respectively, otherwise known as the National Electrification Administration (NEA) Termination Pay Plan, issued by respondent NEA Board of Administrators (NEA Board). Petitioners are former employees of NEA who were terminated from their employment with the implementation of the assailed resolutions. Respondent essentially argues that petitioners violated the principle of hierarchy of courts, pursuant to which the instant petition should have been filed with the Regional Trial Court first rather than with the Supreme Court directly.

#### **ISSUE:**

Whether the Supreme Court has jurisdiction over the case. (YES)

#### **RULING:**

A becoming regard for judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial

Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition.

Evidently, the instant petition should have been filed with the RTC. However, as an exception to this general rule, the principle of hierarchy of courts may be set aside for special and important reasons. Such reason exists in the instant case involving as it does the employment of the entire plantilla of NEA, more than 700 employees all told, who were effectively dismissed from employment in one swift stroke.

### PHILIPPINE SINTER CORPORATION and PHIVIDEC INDUSTRIAL AUTHORITY, Petitioners, - versus- CAGAYAN ELECTRIC POWER and LIGHT CO., INC., Respondent.

G.R. No. 127371, THIRD DIVISION, April 25, 2002, SANDOVAL-GUTIERREZ, J.

An injunction to stay a final and executory decision is unavailing except only after a showing that facts and circumstances exist which would render execution unjust or inequitable, or that a change in the situation of the parties occurred. Here, no such exception exists as shown by the facts earlier narrated. To disturb the final and executory decision of the ERB in an injunction suit is to brazenly disregard the rule on finality of judgments.

#### **FACTS:**

On January 21, 1987, President Corazon C. Aquino and her Cabinet approved a Cabinet Reform Policy for the power sector and issued a Cabinet Memorandum. Pursuant to such Cabinet Memorandum, respondent Cagayan Electric Power and Light, Co. (CEPALCO), grantee of a legislative franchise to distribute electric power to the municipalities of Villanueva, Jasaan and Tagoloan, and the city of Cagayan de Oro, all of the province of Misamis Oriental, filed with the Energy Regulatory Board (ERB) a petition entitled "In Re: Petition for Implementation of Cabinet Policy Reforms in the Power Sector." The petition sought the discontinuation of all existing direct supply of power by the National Power Corporation (NPC, now NAPOCOR) within CEPALCO's franchise area.

The ERB rendered a decision granting the petition. NAPOCOR filed a motion for reconsideration, which the ERB denied. Thereafter, NAPOCOR filed a petition for review with the Court of Appeals, which dismissed the petition. On a petition for review on certiorari, the Supreme Court affirmed the Resolution of the Court of Appeals. Judgment was entered, thus rendering final the decision of the ERB.

To implement the decision, CEPALCO wrote Philippine Sinter Corporation (PSC), petitioner, and advised the latter of its desire "to have the power supply of PSC, directly taken from NPC (NAPOCOR), disconnected, cut and transferred" to CEPALCO. PSC is an entity operating its business

within the PHIVIDEC Industrial Estate. PSC refused CEPALCO's request, citing its contract for power supply with NAPOCOR.

To restrain the execution of the ERB Decision, PSC and PIA filed a complaint for injunction against CEPALCO with the Regional Trial Court.

#### **ISSUE:**

Whether injunction lies against the final and executory judgment of the ERB. (NO)

#### **RULING:**

An injunction to stay a final and executory decision is unavailing except only after a showing that facts and circumstances exist which would render execution unjust or inequitable, or that a change in the situation of the parties occurred. Here, no such exception exists as shown by the facts earlier narrated. To disturb the final and executory decision of the ERB in an injunction suit is to brazenly disregard the rule on finality of judgments.

Corollarily, Section 10 of Executive Order No. 172 (the law creating the ERB) provides that a review of its decisions or orders is lodged in the Supreme Court. Settled is the rule that where the law provides for an appeal from the decisions of administrative bodies to the Supreme Court or the Court of Appeals, it means that such bodies are co-equal with the Regional Trial Courts in terms of rank and stature, and logically, beyond the control of the latter. Hence, the trial court, being co-equal with the ERB, cannot interfere with the decision of the latter. It bears stressing that this doctrine of non-interference of trial courts with co-equal administrative bodies is intended to ensure judicial stability in the administration of justice whereby the judgment of a court of competent jurisdiction may not be opened, modified or vacated by any court of concurrent jurisdiction.

### VINCENT E. OMICTIN, *Petitioner*, -versus- HON. COURT OF APPEALS (Special Twelfth Division) and GEORGE I. LAGOS, *Respondents*.

G.R. No. 148004, FIRST DIVISION, January 22, 2007, AZCUNA, J.

The court cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to resolving the same, where the question demands the exercise of sound administrative discretion requiring special knowledge, experience and services in determining technical and intricate matters of fact. Here, the issues raised, particularly the status of Saag Phils., Inc. vis-à-vis Saag (S) Pte. Ltd., as well as the question regarding the supposed authority of the latter to make a demand on behalf of the company, are proper subjects for the determination of the tribunal hearing the intra-corporate case which in this case is the RTC of Mandaluyong. These issues would have been referred to the expertise of the SEC in accordance with the doctrine of primary jurisdiction had the case not been transferred to the RTC of Mandaluyong.

#### **FACTS:**

George Lagos was charged with the estafa before the RTC of Makati City on the basis of the complaint filed by Vincent Omictin, Operations Manager Ad Interim of Saag Phils., Inc. It was alleged that Lagos, despite repeated demands, refused to return the two company vehicles entrusted to him when he was still the president of Saag Phils., Inc. Lagos filed a motion to suspend proceedings on the basis of a prejudicial question because of a pending petition with the SEC involving the same parties. In the said petition, he raised among others the nullity of the respective appointments of Alex Tan and Omictin as President Ad Interim and Operations Manager Ad Interim. However, his motion was denied by the RTC. The CA, on appeal, granted his motion and ordered the suspension of the proceedings in the criminal case.

Incidentally, the SEC case was transferred to the RTC of Mandaluyong City, pursuant to A.M. No. 00-11-03-SC, vesting in the RTCs jurisdiction over intra-corporate disputes.

#### **ISSUE:**

Whether there is a prejudicial question. (YES)

#### **RULING:**

The case which was lodged originally before the SEC and which is now pending before the RTC of Mandaluyong City involves facts that are intimately related to those upon which the criminal prosecution is based. One of the elements of the crime of estafa with abuse of confidence under Article 315, par. 1(b) of the RPC is a demand made by the offended party to the offender. Since the alleged offended party is Saag Phils., Inc., the validity of the demand for the delivery of the subject vehicles rests upon the authority of the person making such a demand on the company's behalf. Lagos is challenging petitioner's authority to act for Saag Phils., Inc. in the corporate case pending before the RTC. If the supposed authority of petitioner is found to be defective, it is as if no demand was ever made, hence, the prosecution for estafa cannot prosper.

Likewise, by analogy, the doctrine of primary jurisdiction may be applied in this case. The issues raised by petitioner particularly the status of Saag Phils., Inc. vis-à-vis Saag (S) Pte. Ltd., as well as the question regarding the supposed authority of the latter to make a demand on behalf of the company, are proper subjects for the determination of the tribunal hearing the intra-corporate case which in this case is the RTC of Mandaluyong. These issues would have been referred to the expertise of the SEC in accordance with the doctrine of primary jurisdiction had the case not been transferred to the RTC of Mandaluyong.

Strictly speaking, the objective of the doctrine of primary jurisdiction is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative

agency has determined some question or some aspect of some question arising in the proceeding before the court. The court cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to resolving the same, where the question demands the exercise of sound administrative discretion requiring special knowledge, experience and services in determining technical and intricate matters of fact.

# REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, COMMISSION ON AUDIT and THE NATIONAL TREASURER, *Petitioner*, -versus-CARLITO LACAP, doing business under the name and style CARWIN CONSTRUCTION AND CONSTRUCTION SUPPLY, *Respondent*.

G.R. No. 158253, THIRD DIVISION, March 2, 2007, AUSTRIA-MARTINEZ, J.

The doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. Two exceptions are applicable to the present case. First, there was an unreasonable delay or official inaction that will irretrievably prejudice the complainant. Notwithstanding the legal opinions of the DPWH Legal Department rendered in 1993 and 1994 that payment to a contractor with an expired contractor's license is proper, respondent remained unpaid for the completed work despite repeated demands. Secondly, whether a contractor with an expired license at the time of the execution of its contract is entitled to be paid for completed projects, clearly is a pure question of law. Thus, the complaint for specific performance and damages was within the jurisdiction of the RTC to resolve, despite the failure to exhaust administrative remedies.

#### **FACTS:**

This is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court assailing the Decision of the Court of Appeals (CA) which affirmed with modification the Decision of the Regional Trial Court, granting the complaint for Specific Performance and Damages filed by Carlito Lacap against the Republic of the Philippines.

Carwin Construction was awarded for the construction of Sitio 5 Bahat Pare. However, upon completion, it was discovered that the license to operate by Carwin has already expired. Thus, the Republic did not pay Carwin despite repeated demands which then prompted Carwin in filing a case for specific performance against the Republic.

#### **ISSUE:**

Whether the complaint for specific performance and damages was within the jurisdiction of the RTC to resolve. (YES)

#### **RULING:**

The doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. Two exceptions are applicable to the present case.

First, there was an unreasonable delay or official inaction that will irretrievably prejudice the complainant. Notwithstanding the legal opinions of the DPWH Legal Department rendered in 1993 and 1994 that payment to a contractor with an expired contractor's license is proper, respondent remained unpaid for the completed work despite repeated demands. Clearly, there was unreasonable delay and official inaction to the great prejudice of respondent.

Secondly, the question involved is purely legal and will ultimately have to be decided by the courts of justice. Whether a contractor with an expired license at the time of the execution of its contract is entitled to be paid for completed projects, clearly is a pure question of law. It does not involve an examination of the probative value of the evidence presented by the parties. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, and not as to the truth or the falsehood of alleged facts. Said question at best could be resolved only tentatively by the administrative authorities. The final decision on the matter rests not with them but with the courts of justice. Exhaustion of administrative remedies does not apply, because nothing of an administrative nature is to be or can be done. The issue does not require technical knowledge and experience but one that would involve the interpretation and application of law.

GABRIEL ABAD, PIO AGANON, MARIO ALARCIO, JOSE AQUINO, CESAR ATANACIO, LEONARDO AURELIO, SOTERO BERNARDO, AURELIO CABRAL, JESUS CARREON, ABELARDO CARILLO, ET AL., Petitioners, -versus- REGIONAL TRIAL COURT OF MANILA, BRANCH LII — HON. DAVID G. NITAFAN and THE PHILIPPINE AMERICAN GENERAL INSURANCE COMPANY, INC., Respondents.

G.R. No. L-65505, SECOND DIVISION, October 12, 1987, PARAS, J.

The rule of adherence of jurisdiction until a cause is finally resolved or adjudicated does not apply when the change in jurisdiction is curative in character.

One of the important features in the Judiciary Reorganization effected through B.P. Blg. 129 is the addition of paragraph (6), Sec. 19, in defining the jurisdiction of RTCs, reading as follows: "In all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising judicial or quasijudicial functions." Art. 217 of the Labor Code provides that monetary claims of labor are within the jurisdiction of the NLRC and the LAs. Hence, the RTC which took the place of the abolished CFI no longer has jurisdiction over the case even if the CFI had previously acquired jurisdiction.

#### **FACTS:**

Petitioner filed a complaint against respondent Philippines American General Insurance Company, Inc. (PHILAMGEN) for the enforcement of contract and recovery of loss of money basically praying for, among other things, payment of the money value of the respective accumulated sick leave with pay of the separated employees of respondent company either thru retirement, retrenchment or resignation. Instead of filing an answer thereto, PHILAMGEN moved to dismiss the complaint, which the trial court granted. After a denial of their motion to reconsider the aforesaid order by the trial court, petitioners filed before the Supreme Court (SC) a petition for Certiorari. A decision was rendered by the SC reinstating the dismissed complaint and directing the trial court to conduct further proceedings for the disposition of the case.

The case was remanded to the trial court for further proceedings. Unfortunately, fire destroyed the sala wherein the entire records of the case were kept. However, the records of the case were reconstituted. Thereafter, respondent Philamgen filed its Answer to the complaint.

Judicial reorganization took place by the passage of Executive Order No. 864 and the case at bar was re-raffled to respondent Regional Trial Court (RTC) of Manila. Respondent court motu proprio dismissed the complaint, declaring that it lacked jurisdiction over the subject matter, being money claims arising from employer-employee relations. Art. 217 of the Labor Code provides that the same is within the jurisdiction of the National Labor Relations Commission (NLRC) and the Labor Arbiters (LAs).

#### **ISSUE:**

Whether the RTC has jurisdiction over the monetary claim of labor. (NO)

#### **RULING:**

One of the important features in the Judiciary Reorganization effected through B.P. Blg. 129 is the addition of paragraph (6), Sec. 19, in defining the jurisdiction of RTCs (which took the place of the abolished CFIs), reading as follows:

"In all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions."

This is a provision not found in Sec. 44 of the Judiciary Act of 1948. It was the intention of the legislative body to unclog the courts of cases which may be adjudicated, in the first instance, by officials or bodies exercising quasi-judicial adjudicatory powers like the LAs or the NLRC a specialized body or bodies on labor related provisions and are not restricted by the technical rules of pleading and evidence.

The RTCs of today are actually the same courts that functioned as CFIs before the Judiciary Reorganization Act (Batas Pambansa Bilang 129). There might have been a change in the name and in some incidental features, but essentially, they are the same. However, whereas before jurisdiction over money claims of laborers and employees appertained to CFIs, the same are now to be taken cognizance of by proper entities in the Department of Labor and Employment.

The rule of adherence of jurisdiction until a cause is finally resolved or adjudicated does not apply when the change in jurisdiction is curative in character. Thus, in the instant case, there is nothing wrong in holding that CFIs / RTCs no longer have jurisdiction over aforesaid monetary claims of labor.

### OPTIMA REALTY CORPORATION, Petitioner, -versus- HERTZ PHIL. EXCLUSIVE CARS, INC., Respondent.

G.R. No. 183035, FIRST DIVISION, January 9, 2013, SERENO, CJ.

In civil cases, jurisdiction over the person of the defendant may be acquired either by service of summons or by the defendant's voluntary appearance in court and submission to its authority. Special appearance operates as an exception to the general rule on voluntary appearance. Accordingly, objections to the jurisdiction of the court over the person of the defendant must be explicitly made, i.e., set forth in an unequivocal manner. Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief if filed and submitted to the court for resolution.

In this case, the following statement appeared in respondent's Motion for Leave to File Answer: "[I]n spite of the defective service of summons, [it] opted to file the instant Answer with Counterclaim with Leave of Court." Furthermore, the Answer with Counterclaim filed by Hertz never raised the defense of improper service of summons. Finally, it even asserted its own counterclaim against Optima. Hence, by virtue of the voluntary appearance of respondent Hertz before the MeTC, the trial court acquired jurisdiction over respondent.

#### **FACTS:**

Petitioner Optima Realty Corporation (Optima) is engaged in the business of leasing and renting out commercial spaces and buildings to its tenants. It entered into a Contract of Lease with respondent Hertz Phil. Exclusive Cars, Inc. (Hertz) for a period of two years and five months, commencing on 1 October 2003 and ending on 28 February 2006.

On 21 December 2005, Hertz wrote a letter belatedly advising Optima of the former's desire to negotiate and extend the lease. However, as the Contract of Lease provided that the notice to negotiate its renewal must be given by the lessee at least 90 days prior to the expiration of the contract, petitioner no longer entertained respondent's notice.

On 1 March 2006, Optima, through counsel, wrote Hertz a letter requiring the latter to surrender and vacate the leased premises in view of the expiration of the Contract of Lease on 28 February 2006. Hertz, however, refused to vacate the leased premises. As a result, Optima was constrained to file before the MeTC a Complaint for Unlawful Detainer and Damages with Prayer for the Issuance of a TRO and/or Preliminary Mandatory Injunction (Unlawful Detainer Complaint) against Hertz. Summons for the Unlawful Detainer Complaint was served on Henry Bobiles, quality control supervisor of Hertz, who complied with the telephone instruction of manager Rudy Tirador to receive the Summons.

Hertz filed a Motion for Leave of Court to file Answer with Counterclaim and to Admit Answer with Counterclaim (Motion for Leave to File Answer). In that Motion, Hertz stated that, "in spite of the defective service of summons, [it] opted to file the instant Answer with Counterclaim with Leave of Court." In the Answer, Hertz raised the defenses of litis pendentia, pari delicto, performance of its obligations, and lack of cause of action.

#### **ISSUE:**

Whether the MeTC properly acquired jurisdiction over the person of respondent Hertz. (YES)

#### **RULING:**

In civil cases, jurisdiction over the person of the defendant may be acquired either by service of summons or by the defendant's voluntary appearance in court and submission to its authority. In this case, the MeTC acquired jurisdiction over the person of respondent Hertz by reason of the latter's voluntary appearance in court.

Special appearance operates as an exception to the general rule on voluntary appearance. Accordingly, objections to the jurisdiction of the court over the person of the defendant must be explicitly made, i.e., set forth in an unequivocal manner. Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief if filed and submitted to the court for resolution.

In this case, the records show that the following statement appeared in respondent's Motion for Leave to File Answer: "[I]n spite of the defective service of summons, [it] opted to file the instant Answer with Counterclaim with Leave of Court." Furthermore, the Answer with Counterclaim filed by Hertz never raised the defense of improper service of summons. Finally, it even asserted its own counterclaim against Optima. Hence, by virtue of the voluntary appearance of respondent Hertz before the MeTC, the trial court acquired jurisdiction over respondent.

### ABUBAKAR A. AFDAL and FATIMA A. AFDAL, *Petitioners*, -versus- ROMEO CARLOS, *Respondent*.

G.R. No. 173379, SECOND DIVISION, December 1, 2010, CARPIO, J.

Service of summons upon the defendant shall be by personal service first and only when the defendant cannot be promptly served in person will substituted service be availed of. Here, the indorsements failed to state that prompt and personal service on petitioners was rendered impossible. Likewise, nowhere in the return of summons or in the records of the case was it shown that Gary Acob, the person on whom substituted service of summons was effected, was a person of suitable age and discretion residing in petitioners' residence. Hence, petitioners were not validly served with summons and the complaint by substituted service.

#### **FACTS:**

Respondent Romeo Carlos (respondent) filed a complaint for unlawful detainer and damages against petitioners, Zenaida Guijabar (Guijabar), John Doe, Peter Doe, Juana Doe, and all persons claiming rights under them before the MTC. Respondent alleged that petitioners, Guijabar, and all other persons claiming rights under them were occupying, by mere tolerance, a parcel of land in respondent's name. Respondent demanded that petitioners, Guijabar, and all persons claiming rights under them turn over the property to him because he needed the property for his personal use. Respondent alleged that petitioners refused to heed his demand and he was constrained to file a complaint before the Lupon ng Tagapamayapa (Lupon). According to respondent, petitioners ignored the notices and the Lupon issued a "certificate to file action." Then, respondent filed the complaint before the MTC.

There were three attempts to serve the summons to the defendants. The first indorsement dated 14 January 2004 carried the annotation that it was "unsatisfied / given address cannot be located." The second indorsement dated 3 February 2004 stated that the summons was "duly served as evidenced by his signature of one Gary Acob (relative)." The last indorsement dated 18 February 2004 carried the annotation that it was "duly served but refused to sign" without specifying to whom it was served.

Petitioners failed to file an answer. Hence, the MTC rendered judgment in favor of respondent. Thereafter, petitioners filed a petition for relief before the RTC. Petitioners pointed out that they never received respondent's demand letter nor were they informed of, much less participated in, the proceedings before the Lupon. Moreover, petitioners said they were not served a copy of the summons and the complaint.

#### **ISSUE:**

Whether the MTC acquired jurisdiction over the person of the petitioners. (NO)

#### **RULING:**

An action for unlawful detainer or forcible entry is a real action and in personam. In an action in personam, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case.

Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. If the defendant does not voluntarily appear in court, jurisdiction can be acquired by personal or substituted service of summons. Service of summons upon the defendant shall be by personal service first and only when the defendant cannot be promptly served in person will substituted service be availed of.

In this case, the indorsements failed to state that prompt and personal service on petitioners was rendered impossible. It failed to show the reason why personal service could not be made. Likewise, nowhere in the return of summons or in the records of the case was it shown that Gary Acob, the person on whom substituted service of summons was effected, was a person of suitable age and discretion residing in petitioners' residence.

In sum, petitioners were not validly served with summons and the complaint by substituted service. Hence, the MTC failed to acquire jurisdiction over the person of the petitioners.

JOSEPH O. REGALADO, *Petitioner*, -versus- EMMA DE LA RAMA VDA. DE LA PENA, JESUSA DE LA PENA, JOHNNY DE LA PENA, JOHNNA DE LA PENA, JOSE DE LA PENA, JESSICA DE LA PENA, and JAIME ANTONIO DE LA PENA, *Respondents*.

G.R. No. 202448, FIRST DIVISION, December 13, 2017, DEL CASTILLO, J.

Jurisdiction is conferred <mark>only by law. It cannot be presumed o</mark>r implied and must distinctly appear from the law.

The material averments in the complaint and the law in effect at the time of the commencement of action determine which court has jurisdiction over the case. Here, there is no clear showing that the RTC has jurisdiction over the case as the complaint did not specify the value of the subject properties.

#### **FACTS:**

Respondents Jesusa, Johnny, Johanna, Jose, Jessica, and Jaime de la Pena were the registered owners of two parcels of land with a total area of 44 hectares located in Murcia, Negros Occidental. Sometime in 1994, petitioner, without the knowledge and consent of the respondents entered, took possession of, and planted sugar cane on the subject properties without paying rent to the respondents. Respondents discovered such entry in the crop year 1995-6 and promptly demanded petitioner to vacate the subject properties to no avail.

The parties appeared before the Barangay Office but failed to arrive at an amicable settlement. Thus, the Lupon Tagapamayapa issued a certificate to file action dated September 29, 1997. Respondents filed a case for recovery of possession in the RTC on March 9, 1998.

Petitioner, in his Answer, claims that respondents already renounced their rights to the subject properties in favor of Jaime, and Jaime, in turn, waived his rights and interests therein to petitioner. Petitioner also filed a Motion to Dismiss for lack of jurisdiction as the case was for ejectment and was filed within a year from the barangay conciliation proceedings, and thus, the MTC has jurisdiction.

Respondents, in their Reply, argue that the waiver of rights to Jaime was conditioned on the payment of their P6.7 million loan with the Republic Planters Bank and the Philippine National Bank. They further claim that the subsequent waiver by Jaime to petitioner was also conditioned on the same consideration. As there was no payment to the banks, the waivers of right should be considered void. Respondents also argue that the demand to vacate was already made in the crop year of 1995-6.

The RTC denied the motion to dismiss and held that as the area of the subject properties was 44 hectares, it was safe to assume that value is P20,000.00. The RTC ruled in favor of respondents and held that petitioner was not entitled to the properties as he failed to pay the consideration. The CA affirmed the RTC and noted that the latter had jurisdiction over the case because the parties stipulated the jurisdiction of the RTC, and that the presumed value of the subject properties exceed P20,000.00.

# **ISSUE:**

Whether the RTC has jurisdiction over the case. (NO)

#### **RULING:**

The material averments in the complaint and the law in effect at the time of the commencement of action determine which court has jurisdiction over the case. A complaint for forcible entry must allege the plaintiff's prior possession, and that he was deprived of the same through force, intimidation, thread, strategy, or stealth, and that the action must be filed within a year of knowledge of dispossession. A complaint for unlawful detainer, on the other hand, must state that the defendant is unlawfully withholding possession of the real property after the expiration or termination of his right to possess it, and that is also filed within a year from such time possession became unlawful. The complaint in this case had none of these averments. In the absence of the required jurisdiction facts, the case cannot be considered as one for ejectment.

There is no clear showing that the RTC has jurisdiction over the case as the complaint did not specify the value of the subject properties. In the absence of this material fact, it cannot be determined which court has original exclusive jurisdiction over the action.

UNION BANK OF THE PHILIPPINES, Petitioner, -versus- THE HONORABLE REGIONAL AGRARIAN REFORM OFFICER, THE HONORABLE PROVINCIAL AGRARIAN REFORM OFFICER, THE HONORABLE MUNICIPAL AGRARIAN REFORM OFFICER, MIGUEL L. CARASOCHO, GERARDO G. CARAAN, CATALINO P. CARAAN, PASCUAL N. CABRERA, FRANCISCO L. CABRERA, EMILIANA M. CABRERA, CESAR N. CABRERA, PONCIANO R. GARCIA, PEDRO R. GARCIA, MARCELINO R. GARCIA, AGUSTIN M. MARANAN, EUGENIO J. MARANAN, SILVERIO D. MARANAN, ARMANDO T. MARUDO, NENITA L. MARUDO, GUILLERMO C. NARVACAN, DAVID M. TERRENAL, DOROTEO C. TERRENAL, SARDO C. TERRENAL, CARMELITA M. DELA CRUZ, REMEGIO R. VILLAMAYOR, ANICETO C. DEJAN, MACARIO N. DEJAN, EULOGIA L. DIVINA, CELIA C. GARCIA, JOSEFA G. LARENA, MIGUEL M. LUMBRES, JUANITO E. NARVACAN, LUZVIMINDA PEREZ, SEBASTINO C. DELA CRUZ, DANILO P. GARCIA, HERMOGENES L. MARANAN, LEOPOLDO T. MARUDO, MIGUEL C. NATANAUAN, JOSE C. NATANAUAN, ARCADIO C. RIVERA, MAMERTO B. DEJAN, SEGUNDO C. DEJAN, GREGORIO N. ENRIQUEZ, SIMEON L. ALCANTARA, GAUDENCIO S. ALVEZ, AVELINO G. DE JESUS, GAUDENCIO P. DIMAPILIS, NEMESIO L. DIVINA, RODOLFO L. GARCIA, VALENTIN N. LERON, LEONA N. LLARENA, PONCIANO L. LLARENA, SERGIO N. LLARENA, PABLITO M. LUMBRES, VICTORIA L. MADAJAS, RODOLFO L. MARANAN, ANDRES S. MARANAN, MELECIA T. MARANAN, APOLONIA VILLAMAYOR, JUANITO O. MERCADO, ARSENIO V. NATIVIDAD, CRISPIN M. NATIVIDAD, DANTE A. NATIVIDAD, ELADIO U. NATIVIDAD, FULGENCIO U. NATIVIDAD, GAUDENCIO M. NATIVIDAD, JUAN T. NATIVIDAD, PEDRO M. NATIVIDAD, JUAN P. CABRERA, BARTOLOME M. MICO, EDUARDO M. ONA, LUCAS G. ONA, JULIUS T. PODONAN, FELICISIMO T. RAMILO, FELIPE C. REDONDO, FELINO M. REDONDO, CLEMENTE R. SANGALANG, DOMINGA R. SUAREZ, ARMANDO V. VISPO, ALBERTO P. SALVADOR, FRANC<mark>ISCO S. CARANDANG, AVELINO L. LLARENA, CELE</mark>STINO M. LLARENA, FRISCO N. LLARENA, GREGORIO N. LLARENA, CASIANO N. CABRERA, FLAVIANO N. CABRERA, SEDORO C. CABRERA<mark>, SIXTO M. CABRERA, VALERIANO L. CARING</mark>AL, MARITA C. DEJAN, SOFRONIO V. CARAA<mark>N, CONRADO K. MERCADO, LEONIZA N. N</mark>ARVACAN, JUANITO E. NARVACAN, FELICIANO N. NARVACAN, FERNANDO C. MATANGUIHAN, LEONIDES A. MATANGUIHAN, NILO L. MATANGUIHAN, JUANITO A. NATIVIDAD, SERGIO M. NATANAUAN, BARTOLOME C. MATANGUIHAN, MARTIN M. NATANAUAN, FERNANDO G. MEDINA, LUCIA R. NATANAUAN, LOPE N. NATANAUAN, JUANA F. NATANAUAN, FRANCISCO G. NATANAUAN, BUENAVENTURA G. NATANAUAN, ANDRES M. NATANAUAN, CORNELIO L. NARVAEZ, LEONIZA T. ANNOYO, BRICCIO N. LUMBRES, CALIXTO R. LUMBRES, RODOLFO U. LLARENA, BENITA L. MADAJAS, MERCEDES L. MADAJAS, REMEDIOS A. MARUDO, FILOMENA D. MARANAN, ROLANDO N. MEDINA, RICARDO L. MARANAN, ANGEL A. UMANDAP, LUCIDO G. MEDINA, MENARDO G. MEDINA, MARIANO N. REGALADO, MARCIANO C. REDONDO, DAMASA D. REDONDO, LEONIDA R. RAMILO, SERGIO O. NATIVIDAD, RAFAEL T. MARANAN, DEMETRIO M. QUIJANO, LITA L. NARVAEZ, PETRONILO V. ARSENIO, CESARIO N. LLARENA, JUAN D. NARVAEZ, ANSELMO N. LLARENA, MACARIO N. DIJAN, FERNANDO M. ROBLES, LEONARDO N.

# TERRIBLE, LEONORA N. RIVERA, ELENA N. RIVERA, CATALINO P. CARAON, JUAN S. MARASIGAN, CELSO A. MERCADO, and ERNESTO MANGUIAT, *Respondents*.

G.R. No. 200369, THIRD DIVISION, March 1, 2017, JARDELEZA, J.

Jurisdiction over the subject matter is determined by the allegations of the complaint. For the PARAD and DARAB to acquire jurisdiction over the case, there must be a prima facie showing that there is a tenurial arrangement or tenancy relationship between the parties.

#### **FACTS:**

Petitioner Union Bank of the Philippines (Union Bank) is the duly registered owner of the subject land covered by Transfer Certificate of Title (TCT) Nos. T-137846 and T-156610. Union Bank offered these parcels of land to the Department of Agrarian Reform (DAR) through the Voluntary Offer to Sell (VOS) arrangement under the Comprehensive Agrarian Reform Program (CARP) of the government.

The DAR started issuing Certificates of Land Ownership Award (CLOAs) in the names of private respondents as agrarian reform beneficiaries for the land covered by TCT No. T-156610. Union Bank filed a "Motion to Withdraw Voluntary Offer To Sell On Property from CARP Coverage" in the land valuation proceedings for the land covered by TCT No. T-156610 pending before the Regional Agrarian Reform Adjudicator (RARAD). Union Bank submitted a letter to the DAR requesting that its VOS be withdrawn and that the properties be exempted from CARP coverage. Union Bank alleged that the properties had a slope exceeding 18% and were undeveloped, thus, exempt from CARP pursuant to Section 10 of the Comprehensive Agrarian Reform Law.

The DAR secretary denied Union Bank's request for failing to prove by substantial evidence that the properties were underdeveloped. Union Bank filed a petition for review under Rule 43 with the Court of Appeals (CA), which later on sustained the DAR secretary.

In another petition for cancellation of CLOAs filed by the Union Bank which eventually reached the Court of Appeals, the CA ruled that the DARAB had no jurisdiction over the case because of the absence of a tenancy relationship between Union Bank and the agrarian reform beneficiaries. In its petitions before us, Union Bank insists that the DARAB is expressly granted quasi-judicial powers by Executive Order (EO) No. 229.

# **ISSUE:**

Whether PARAD/DARAP has jurisdiction over the case. (NO)

#### **RULING:**

The jurisdiction of a court or tribunal over the nature and subject matter of an action is conferred by law. Section 50 of the CARL and Section 17 of EO No. 229 vested upon the DAR primary-jurisdiction to determine and adjudicate agrarian reform matters, as well as original jurisdiction over all matters involving the implementation of agrarian reform. Through EO No. 129-A, the power to adjudicate agrarian reform cases was transferred to the DARAB, and jurisdiction over the implementation of agrarian reform was delegated to the DAR regional offices. To simplify, the jurisdiction conferred to the DAR was twofold: (1) primary jurisdiction over the adjudication of agrarian disputes; and (2) original jurisdiction over agrarian reform implementation. EO No. 129-A effectively split these two jurisdictions between the newly created DARAS with respect to the former and to the DAR regional offices as regards the latter.

In Heirs of Candido Del Rosario v. Del Rosario, the Court held that consistent with the DARAB Rules of Procedure, the agrarian reform cases that fall within the jurisdiction of the PARAD and DARAB are those that involve agrarian disputes. Section 3(d) of the CARL defines an "agrarian dispute" as any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture. Given the technical legal meaning of the term "agrarian dispute," it follows that not all cases involving agricultural lands automatically fall within the jurisdiction of the PARAD and DARAB.

Jurisdiction over the subject matter is determined by the allegations of the complaint. For the PARAD and DARAB to acquire jurisdiction over the case, there must be a *prima facie* showing that there is a tenurial arrangement or tenancy relationship between the parties. The essential requisites of a tenancy relationship are key jurisdictional allegations that must appear on the face of the complaint. These essential requisites are: (1) the parties are the landowner and the tenant; (2) the subject is agricultural land; (3) there is consent; (4) the purpose is agricultural production; (5) there is personal cultivation; and (6) there is sharing of harvests.

The records clearly show that the two petitions filed by Union Bank with the PARAD did not involve agrarian disputes. Specifically, Union Bank's petitions failed to sufficiently allege-or even hint atany tenurial or agrarian relations that affect the subject parcels of land. In both petitions, Union Bank merely alleged that respondents were beneficiaries of the CLOAs. That Union Bank questions the qualifications of the beneficiaries suggest that the latter were not known to, much less tenants of, Union Bank prior to the dispute. There was no tenancy relationship between the parties. Consequently, the PARAD did not have jurisdiction over the case.

As held in Valcurza v. Tamparong, Jr., in cases concerning the cancellation of CLO As that involve parties who are not agricultural tenants or lessees - cases related to the administrative implementation of agrarian reform laws, rules and regulations – the jurisdiction is with the DAR, and not the DARAB.

Thus, in the absence of a tenancy relationship between Union Bank and private respondents, the PARAD/DARAB has no jurisdiction over the petitions for cancellation of the CLOAs.

Absent a showing that the executive is guilty of "gross abuse of discretion, manifest injustice or palpable excess of authority," the general rule applies that discretion cannot be checked via this petition for continuing mandamus. Hence, the continuing mandamus cannot issue.

JONATHAN Y. DEE, Petitioner, -versus- HARVEST ALL INVESTMENT LIMITED, VICTORY FUND LIMITED, BONDEAST PRIVATE LIMITED, and ALBERT HONG HIN KAY, as Minority Shareholders of ALLIANCE SELECT FOODS INTERNATIONAL, INC., and HEDY S.C. YAP-CHUA, as Director and Shareholder of ALLIANCE SELECT FOODS INTERNATIONAL, INC., Respondents.

HARVEST ALL INVESTMENT LIMITED, VICTORY FUND LIMITED, BONDEAST PRIVATE LIMITED, ALBERT HONG HIN KAY, as Minority Shareholders of Alliance Select Foods International, Inc., and HEDY S.C. YAP-CHUA, as a Director and Shareholder of Alliance Select Foods International, Inc., Petitioners, -versus- ALLIANCE SELECT FOODS INTERNATIONAL, INC., GEORGE E. SYCIP, JONATHAN Y. DEE, RAYMUND K.H. SEE, MARY GRACE T. VERA-CRUZ, ANTONIO C. PACIS, ERWIN M. ELECHICON, and BARBARA ANNE C. MIGALLOS, Respondents. G.R. No. 224834 and 224871, FIRST DIVISION, March 15, 2017, PERLAS-BERNABE, J

The mere mention of Alliance's impending SRO valued at Pl Billion cannot transform the nature of Harvest All, et al.'s action to one capable of pecuniary estimation, considering that: (a) Harvest All, et al. do not claim ownership of, or much less entitlement to, the shares subject of the SRO; and (b) such mention was merely narrative or descriptive in order to emphasize the severe dilution that their voting interest as minority shareholders would suffer if the 2015 ASM were to be held after the SRO was completed.

# **FACTS:**

Harvest All Investment Limited, Victory Fund Limited, Bondeast Private Limited, Albert Hong Hin Kay, and Hedy S.C. Yap Chua (Harvest All, et al.) are, in their own capacities, minority stockholders of Alliance Select Foods International, Inc. (Alliance), with Hedy S.C. Yap Chua acting as a member of Alliance's Board of Directors. As per Alliance's by-laws, its Annual Stockholders' Meeting (ASM) is held every June 15. However, in a Special Board of Directors Meeting held at three (3) o'clock in the afternoon of May 29, 2015, the Board of Directors, over Hedy S.C. Yap Chua's objections, passed a Board Resolution indefinitely postponing Alliance's 2015 ASM pending complete subscription to its Stock Rights Offering (SRO) consisting of shares with total value of ₱l Billion which was earlier approved in a Board Resolution passed on February 17, 2015. As per Alliance's Disclosure dated May 29, 2015 filed before the Philippine Stock Exchange, such postponement was made "to give the stockholders of [Alliance] better representation in the annual meeting, after taking into consideration their subscription to the SRO of Alliance." This prompted Harvest All, et al. to file the

instant Complaint (with Application for the Issuance of a Writ of Preliminary Mandatory Injunction and Temporary Restraining Order/Writ of Preliminary Injunction) involving an intra-corporate controversy against Alliance, and its other Board members, namely, George E. Sycip, Jonathan Y. Dee, Raymund K.H. See, Mary Grace T. Vera-Cruz, Antonio C. Pacis, Erwin M. Elechicon, and Barbara Anne C. Migallos (Alliance Board). In said complaint, Harvest All, et al. principally claimed that the subscription to the new shares through the SRO cannot be made a condition precedent to the exercise by the current stockholders of their right to vote in the 2015 ASM; otherwise, they will be deprived of their full voting rights proportionate to their existing shareholdings. Thus, Harvest All, et al., prayed for, inter alia, the declaration of nullity of the Board Resolution dated May 29, 2015 indefinitely postponing the 2015 ASM, as well as the Board Resolution dated February 17, 2015 approving the SRO. The Clerk of Court of the RTC assessed Harvest All, et al. with filing fees amounting to ₱8,860.00 which they paid accordingly. Later on, Harvest All, et al. filed an Amended Complaint: (a) deleting its prayer to declare null and void the Board Resolution dated February 17, 2015 approving the SRO; and (b) instead, prayed that the Alliance Board be enjoined from implementing and carrying out the SRO prior to and as a condition for the holding of the 2015 ASM.

For its part, the Alliance Board raised the issue of lack of jurisdiction on the ground of Harvest All, et al.'s failure to pay the correct filing fees. It argued that the latter should have paid P20 Million, more or less, in filing fees based on the SRO which was valued at Pl Billion. However, Harvest All, et al. did not mention such capital infusion in their prayers and, as such, were only made to pay the measly sum of ₱8,860.00. On the other hand, Harvest All, et al. maintained that they paid the correct filing fees, considering that the subject of their complaint is the holding of the 2015 ASM and not a claim on the aforesaid value of the SRO. Harvest All et al. likewise pointed out that they simply relied on the assessment of the Clerk of Court and had no intention to defraud the government. RTC dismissed the instant complaint for lack of jurisdiction due to Harvest All, et al.'s failure to pay the correct filing fees. Aggrieved, Harvest All, et al. appealed to the CA. The CA reversed the RTC's order of dismissal and, accordingly, reinstated the case and remanded the same to the court a quo for further proceedings after payment of the proper legal fees. The parties moved for reconsideration, which were denied. Hence, these consolidated petitions.

# **ISSUE:**

Whether Harvest All, et al.'s complaint involves matters capable of pecuniary estimation, and, thus, paid insufficient filing fees for their complaint. (NO)

#### **RULING:**

Certainly, Harvest All, et al.'s prayer for nullity, as well as the concomitant relief of holding the 2015 ASM as scheduled in the by-laws, do not involve the recovery of sum of money. The mere mention of Alliance's impending SRO valued at ₱l Billion cannot transform the nature of Harvest All, et al.'s action to one capable of pecuniary estimation, considering that: (a) Harvest All, et al. do not claim ownership of, or much less entitlement to, the shares subject of the SRO; and (b) such mention was

merely narrative or descriptive in order to emphasize the severe dilution that their voting interest as minority shareholders would suffer if the 2015 ASM were to be held after the SRO was completed. If, in the end, a sum of money or anything capable of pecuniary estimation would be recovered by virtue of Harvest All, et al.'s complaint, then it would simply be the consequence of their principal action. Clearly therefore, Harvest All, et al.'s action was one incapable of pecuniary estimation.

While the Court is not unaware that the amendments brought by A.M. No. 04-02-04-SC dated October 5, 2016 only came after the filing of the complaint subject of this case, such amendments may nevertheless be given retroactive effect so as to make them applicable to the resolution of the instant consolidated petitions as they merely pertained to a procedural rule, i.e., Rule 141, and not substantive law. In view of the foregoing, and having classified Harvest All, et al.'s action as one incapable of pecuniary estimation, the Court finds that Harvest All, et al. should be made to pay the appropriate docket fees in accordance with the applicable fees provided under Section 7 (b) (3) of Rule 141 [fees for all other actions not involving property] of the Revised Rules of Court, in conformity with A.M. No. 04-02-04-SC dated October 5, 2016. The matter is therefore remanded to the RTC in order: (a) to FIRST Determine if Harvest, et al.'s payment of filing fees in the amount of ₱8,860.00, as initially assessed by the Clerk of Court, constitutes sufficient compliance with A.M. No. 04-02-04-SC; (b) if Harvest All, et al.'s payment of ₱8,860.00 is insufficient, to require Harvest, et al.' s payment of any discrepancy within a period of fifteen (15) days from notice, and after such payment, proceed with the regular proceedings of the case with dispatch; or (c) if Harvest All, et al.'s payment of ₱8,860.00 is already sufficient, proceed with the regular proceedings of the case with dispatch.

FE V. RAPSING, TITA C. VILLANUEVA and ANNIE F. APAREJADO, represented by EDGAR APAREJADO, *Petitioners*, -versus- HON. JUDGE MAXIMINO R. ABLES, of RTC-Branch 47, Masbate City; SSGT. EDISON RURAL, CAA JOSE MATU, CAA MORIE FLORES, CAA GUILLIEN TOPAS, CAA DANDY FLORES, CAA LEONARDO CALIMUTAN and CAA RENE ROM, *Respondents*. G.R. No. 171855, THIRD DIVISION, October 15, 2012, PERALTA, *J*.

Jurisdiction over the subject matter of the case is conferred by law and is determined by the allegations of the complaint irrespective of whether the plaintiff is entitled to recover upon all or some of the claims asserted therein. Here, the information states that respondents are accused of murder, which is punishable under the RPC. Hence, irrespective of whether the killing was actually justified or not, jurisdiction to try the crime charged against the respondents has been vested upon the RTC by law.

#### **FACTS:**

Respondents SSgt. Edison Rural, CAA Jose Matu, CAA Morie Flores, CAA Guillien Topas, CAA Dandy Flores, CAA Leonardo Calimutan and CAA Rene Rom are members of the Alpha Company, 22nd Infantry Battalion, 9th Division of the Philippine Army based at Cabangcalan Detachment, Aroroy,

Masbate. Petitioners, on the other hand, are the widows of Teogenes Rapsing, Teofilo Villanueva and Edwin Aparejado, who were allegedly killed in cold blood by the respondents.

Respondents alleged that they received information about the presence of armed elements reputed to be New People's Army partisans in Sitio Gaway-gaway, Barangay Lagta, Baleno, Masbate. Acting on the information, they coordinated with the Philippine National Police and proceeded to the place. Thereat, they encountered armed elements which resulted in an intense firefight. When the battle ceased, seven persons were found sprawled on the ground lifeless. The post-incident report of the Philippine Army states that a legitimate military operation was conducted and in the course of which, the victims, armed with high-powered firearms, engaged in a shoot-out with the military. On the other hand, petitioners complained that there was no encounter that ensued and that the victims were summarily executed in cold blood by respondents.

#### **ISSUE:**

Whether the case falls within the RTC's jurisdiction. (YES)

# **RULING:**

It is an elementary rule of procedural law that jurisdiction over the subject matter of the case is conferred by law and is determined by the allegations of the complaint irrespective of whether the plaintiff is entitled to recover upon all or some of the claims asserted therein. In the case at bar, the information states that respondents, "conspiring together and mutually helping with one another, taking advantage of their superior strength, as elements of the Philippine Army, armed with their government-issued firearms with intent to kill, by means of treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot the [victims], hitting them on different parts of their bodies, thereby inflicting upon them multiple gunshot wounds which caused their deaths." Murder is a crime punishable under Article 248 of the Revised Penal Code (RPC), as amended, and is within the jurisdiction of the RTC. Hence, irrespective of whether the killing was actually justified or not, jurisdiction to try the crime charged against the respondents has been vested upon the RTC by law.

In view of the provisions of R.A. 7055, the military tribunals cannot exercise jurisdiction over respondents' case since the offense for which they were charged is not included in the enumeration of "service-connected offenses or crimes" as provided for under Section 1 thereof. The said law is very clear that the jurisdiction to try members of the AFP who commit crimes or offenses covered by the RPC, and which are not service-connected, lies with the civil courts.

# JOSE MENDOZA, *Petitioner*, -versus- NARCISO GERMINO and BENIGNO GERMINO, *Respondents.*

G.R. No. 165676, THIRD DIVISION, November 22, 2010, BRION, *J.* 

Jurisdiction is not affected by the pleas or the theories set up by the defendant in an answer or a motion to dismiss. Otherwise, jurisdiction would become dependent almost entirely upon the whims of the defendant. Here, based on the allegations and reliefs prayed, it is clear that the action in the MTC was for forcible entry. Although respondent averred tenancy as an affirmative and/or special defense in his answer, this did not automatically convert the action into an agrarian dispute and divest the MTC of jurisdiction.

# **FACTS:**

Petitioner and Aurora C. Mendoza (plaintiffs) filed a complaint with the Municipal Trial Court (MTC) against respondent Narciso Germino for forcible entry. After several postponements, the plaintiffs filed a motion to remand the case to the Department of Agrarian Reform Adjudication Board (DARAB), in view of the tenancy issue raised by respondent Narciso in his answer.

# **ISSUE:**

Whether the DARAB has jurisdiction over the case. (NO)

#### **RULING:**

It is a basic rule that jurisdiction over the subject matter is determined by the allegations in the complaint. Under Batas Pambansa Blg. 129, as amended by R.A. No. 7691, 25 the MTC shall have exclusive original jurisdiction over cases of forcible entry and unlawful detainer. Under Section 50 of R.A. No. 6657, as well as Section 34 of Executive Order No. 129-A, the DARAB has primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program, and other agrarian laws and their implementing rules and regulations.

Based on the allegations and reliefs prayed, it is clear that the action in the MTC was for forcible entry. Although respondent Narciso averred tenancy as an affirmative and/or special defense in his answer, this did not automatically divest the MTC of jurisdiction over the complaint. It continued to have the authority to hear the case precisely to determine whether it had jurisdiction to dispose of the ejectment suit on its merits. After all, jurisdiction is not affected by the pleas or the theories set up by the defendant in an answer or a motion to dismiss. Otherwise, jurisdiction would become dependent almost entirely upon the whims of the defendant.

# REMEDIOS ANTONINO, *Petitioner*, -versus- THE REGISTER OF DEEDS OF MAKATI CITY and TAN TIAN SU, *Respondents*.

G.R. No. 185663, SECOND DIVISION, June 20, 2012, REYES, J.

First, a petition for annulment of judgment cannot serve as a substitute for the lost remedy of an appeal. Here, Antonino did not proffer any explanation for her failure to appeal the RTC's Orders. Secondly, a petition for annulment of judgment can only be based on "extrinsic fraud" and "lack of jurisdiction" and cannot prosper on the basis of "grave abuse of discretion."

#### **FACTS:**

Petitioner Remedios Antonino (Antonino) had been leasing a residential property located at Makati City and owned by private respondent Tan Tian Su (Su). Under the governing lease contract, Antonino was accorded with the right of first refusal in the event Su would decide to sell the subject property. The parties executed a document denominated as Undertaking Agreement where Su agreed to sell to Antonino the subject property. However, in view of a disagreement as to who between them would shoulder the payment of the capital gains tax, the sale did not proceed as intended.

On July 9, 2004, Antonino filed a complaint against Su with the Regional Trial Court (RTC) of Makati City, for the reimbursement of the cost of repairs on the subject property and payment of damages. Later that same day, Antonino filed an amended complaint to enforce the Undertaking Agreement and compel Su to sell to her the subject property.

In an Order dated December 8, 2004, the RTC dismissed Antonino's complaint on the grounds of improper venue and non-payment of the appropriate docket fees. According to the RTC, Antonino's complaint is one for specific performance, damages and sum of money, which are personal actions that should have been filed in the court of the place where any of the parties resides. Antonino and Su reside in Muntinlupa and Manila, respectively, thus Makati City is not the proper venue. The RTC also ruled that it did not acquire jurisdiction over Antonino's complaint in view of her failure to pay the correct amount of docket fees.

On January 3, 2005, Antonino filed a Motion for Reconsideration, claiming that her complaint is a real action and the location of the subject property is determinative of its venue. This was denied by the RTC in an Order 14 dated January 6, 2005, holding that there was non-compliance with Sections 4 and 5 of Rule 15 of the Rules of Court.

Antonino thus filed a Motion for Reconsideration dated January 21, 2005, claiming that there was due observance of the rules on motions. In a Joint Resolution dated February 24, 2005, the RTC denied Antonino's Motion for Reconsideration.

On April 1, 2005, Antonino filed with the CA a petition for annulment of judgment. Antonino prayed for the nullification of the aforementioned Orders and Joint Resolution by the RTC. According to Antonino, the RTC committed grave abuse of discretion amounting to lack of jurisdiction when it ruled that her action for the enforcement of the Undertaking Agreement is personal and when it deprived her of an opportunity to pay the correct amount of docket fees. The RTC's grave abuse of discretion, Antonino posited, was likewise exhibited by its strict application of the rules on motions and summary denial of her motion for reconsideration.

# **ISSUE:**

Whether Antonino's use of the remedy of a petition for annulment of judgment as against the final and executory orders of the RTC is proper. (NO)

#### **RULING:**

First, Antonino cannot pursue the annulment of the various issuances of the RTC in order to avoid the adverse consequences of their becoming final and executory because of her neglect in utilizing the ordinary remedies available. Antonino did not proffer any explanation for her failure to appeal the RTC's Orders.

Secondly, a petition for annulment of judgment can only be based on "extrinsic fraud" and "lack of jurisdiction" and cannot prosper on the basis of "grave abuse of discretion." "Lack of jurisdiction" as a ground for the annulment of judgments pertains to lack of jurisdiction over the person of the defending party or over the subject matter of the claim. It does not contemplate "grave abuse of discretion" considering that "jurisdiction" is different from the exercise thereof.

LOLOY UNDURAN, BARANGAY CAPTAIN ROMEO PACANA, NESTOR MACAPAYAG, RUPERTO DOGIA, JIMMY TALINO, ERMELITO ANGEL, PETOY BESTO, VICTORINO ANGEL, RUEL BOLING, JERMY ANGEL, BERTING SULOD, RIO BESTO, BENDIJO SIMBALAN, and MARK BRAZIL, Petitioners, -versus- RAMON ABERASTURI, CRISTINA C. LOPEZ, CESAR LOPEZ JR., DIONISIO A. LOPEZ, MERCEDES L. GASTON, AGNES H. LOPEZ, EUSEBIO S. LOPEZ, JOSE MARIA S. LOPEZ, ANTON B. ABERASTURI, MA. RAISSA A. VELEZ, ZOILO ANTONIO A. VELEZ, CRISTINA ABERASTURI, EDUARDO LOPEZ, JR., ROSARIO S. LOPEZ, JUAN S. LOPEZ, CESAR ANTHONY R. LOPEZ, VENANCIO L. GASTON, ROSEMARIE S. LOPEZ, JAY A. ASUNCION, NICOLO ABERASTURI, LISA A. ASUNCION, INEZ A. VERAY, HERNAN A. ASUNCION, ASUNCION LOPEZ, THOMAS A. VELEZ, LUIS ENRIQUE VELEZ, ANTONIO H. LOPEZ, CHARLES H. LOPEZ, ANA L. ZAYCO, PILAR L. QUIROS, CRISTINA L. PICAZO, RENATO SANTOS, GERALDINE AGUIRRE, MARIA CARMENCITA T. LOPEZ, and as represented by attorney-in-fact RAMON ABERASTURI, Respondents.

G.R. No. 181284, EN BANC, April 18, 2017, PERALTA, J.

Jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint. Here, the allegations in respondents' original complaint make up for an accion

reivindicatoria, a civil action which involves an interest in a real property with an assessed value of P683,760.00, while the allegations in their amended complaint make out a case for injunction, a civil action which is incapable of pecuniary estimation.

Pursuant to Section 66 of the IPRA, the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP. While most of the petitioners belong to Talaandig Tribe, respondents do not belong to the same ICC/IP. Thus, the RTC has jurisdiction.

#### **FACTS:**

Petitioners except for Brazil and Macapayag are members of Talaandig tribe who claimed to have been living since birth on the land in Bukidnon, which they inherited from their forefathers. Respondents claimed to be the lawful owners and possessor of an unregistered parcel of agricultural land which appears to be located within the ancestral domain of the Talaandig tribe. Respondents filed an original complaint for accion reivindicatoria against petitioners with the RTC. The petitioners filed a Motion to Dismiss alleging that the RTC had no jurisdiction over the case. Respondents filed a Motion to Amend the complaint to one for injunction. Petitioners filed a Motion to Dismiss alleging that the RTC had no jurisdiction over the subject matter of the case and to issue a writ of injunction therein.

# **ISSUE:**

Whether the RTC has jurisdiction over the complaint. (YES)

# **RULING:**

In resolving the pivotal issue of which between the RTC and the NCIP has jurisdiction, the Court considers the principle "that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint. In their original complaint for accion reivindicatoria, respondents traced the provenance of their title to a Chieftain of Talaandig tribe, by virtue of a Deed of Sale. Together with their predecessor-in-interest, they have religiously paid the real estate taxes and that they have been in possession of said land in the concept of owners for more than 50 years, even prior to June 12, 1945. They claimed that by means of fraud and stealth, petitioners entered the said land, caused damages and harassed respondents by indiscriminately firing upon their farm workers. In their amended complaint for injunction and damages, respondents further alleged that petitioners harassed, intimidated, threatened, and fired high-powered rifles upon respondents' farm workers to drive them away from the land, without legal or justifiable reason. After a perusal of the allegations and prayers in both original and amended complaints, the Court notes that respondents neither alleged that the parties are members of ICCs/IPs nor that the case involves a dispute or controversy over ancestral lands/domains of ICC/IPs. Rather, the allegations in respondents' original complaint make up for an accion

reivindicatoria, a civil action which involves an interest in a real property with an assessed value of P683,760.00, while the allegations in their amended complaint make out a case for injunction, a civil action which is incapable of pecuniary estimation. The mere fact that this case involves members of ICCs/IPs and their ancestral land is not enough to for it to fall under the jurisdiction of the NCIP. Pursuant to Section 66 of the IPRA, the NCIP shall have jurisdiction over claims and disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP. When such claims and disputes arise between or among parties who do not belong to the same ICC/IP, the case shall fall under the jurisdiction of the proper Courts of Justice, instead of the NCIP. In this case, while most of the petitioners belong to Talaandig Tribe, respondents do not belong to the same ICC/IP. Thus, the RTC has jurisdiction.

# DELFIN LAMSIS, MAYNARD MONDIGUING, JOSE VALDEZ, JR. and Heirs of AGUSTIN KITMA, represented by EUGENE KITMA, *Petitioners*, -versus- MARGARITA SEMON DONG-E, *Respondent*.

G.R. No. 173021, FIRST DIVISION, October 20, 2010, DEL CASTILLO, J.

As a rule, an objection over subject-matter jurisdiction may be raised at any time of the proceedings. As an exception to this rule, laches will prevent a party from raising the court's lack of jurisdiction. Here, there is laches, for it is only before the SC, eight years after the filing of the complaint, that petitioners introduced their jurisdictional objection.

# **FACTS:**

This case involves a conflict of ownership and possession over an untitled parcel of land, denominated as Lot No. 1. While petitioners are the actual occupants of Lot No. 1, respondent is claiming ownership thereof and is seeking to recover its possession from petitioners.

The complaint was first filed by respondent in 1998. Petitioners filed a motion to dismiss on the ground that the value of the property did not meet the jurisdictional value for the RTC. When the amended complaint was filed in 1998, the petitioners no longer raised the issue of the trial court's lack of jurisdiction. Instead, they proceeded to trial. When petitioners recoursed to the appellate court, they only raised as errors the trial court's appreciation of the evidence and the conclusions that it derived therefrom.

In this Petition for Review before the Supreme Court (SC), petitioners maintain that the reivindicatory action should be dismissed for lack of jurisdiction in light of the enactment of the IPRA, which gives original and exclusive jurisdiction over disputes involving ancestral lands and domains to the NCIP. They assert that the customary laws of the Ibaloi tribe of the Benguet Province should be applied to their dispute as mandated by Section 65, Chapter IX of RA 8371, which states: "When disputes involve ICCs/IPs, 51 customary laws and practices shall be used to resolve the dispute."

#### **ISSUE:**

Whether the trial court has jurisdiction to decide the case in light of the effectivity of RA 8371 or the Indigenous People's Rights Act of 1997 at the time that the complaint was instituted. (YES)

#### **RULING:**

As a rule, an objection over subject-matter jurisdiction may be raised at any time of the proceedings. As an exception to this rule, laches will prevent a party from raising the court's lack of jurisdiction. There is laches when a party is aware, even in the early stages of the proceedings, of a possible jurisdictional objection, and has every opportunity to raise said objection, but fails to do so, even on appeal.

Here, the presence of laches cannot be ignored. It is only before the Supreme Court, eight years after the filing of the complaint, after the trial court had already conducted a full-blown trial and rendered a decision on the merits, after the appellate court had made a thorough review of the records, and after petitioners have twice encountered adverse decisions from the trial and the appellate courts — that petitioners now want to expunge all the efforts that have gone into the litigation and resolution of their case and start all over again. This practice cannot be allowed.

# CORAZON JALBUENA DE LEON, *Petitioner*, -versus- HON. COURT OF APPEALS (SPECIAL SECOND DIVISION) and ULDARICO INAYAN, *Respondents*.

G.R. No. 96107, THIRD DIVISION, June 19, 1995, ROMERO, J.

The principle of estoppel may be used as a defense to a jurisdictional error. The case at bench falls within the ambit of justifiable cases where estoppel may be applied. The trial court's recourse to agrarian procedure was undoubtedly provoked by private respondent Inayan's insistence on the existence of a tenancy relationship with petitioner. He cannot now use these same misrepresentations to assert the court's lack of jurisdiction.

# **FACTS:**

The subject property in the case at bench involves two parcels of irrigated Riceland. Jesus Jalbuena, the owner of the land, entered into a verbal lease contract in 1970 with Uldarico Inayan, for one year renewable for the same period. Inayan, private respondent herein, bound himself to deliver 252 cavans of palay each year as rental to be paid during the first ten days of January. Private respondent who was a godson of Jesus Jalbuena, was allowed to continue with the lease from year to year. Petitioner Corazon Jalbuena de Leon is the daughter of Jesus Jalbuena and the transferee of the subject property.

Although private respondent cultivated the subject property through hired men, the cavans of palay were paid annually until 1983 when Inayan ceased paying the agreed rental and instead, asserted

dominion over the land. When asked by the petitioner to vacate the land, he refused to do so. Petitioner thus filed a complaint against private respondent before the Regional Trial Court for "Termination of Civil Law Lease; Recovery of Possession; Recovery of Unpaid Rentals and Damages." Private respondent, in his Answer, claimed that the land had been tenanted by his father since 1938.

The lower court issued an order adopting the procedure in agrarian cases. It then ruled in favor of petitioner De Leon. On appeal to the Court of Appeal, private respondents raised the sole issue of jurisdiction and alleged that the lower court, acting as Court of Agrarian Relations, had no jurisdiction over the action. The respondent appellate court affirmed the trial court's decision. It held that while jurisdiction must exist as a matter of law, private respondent's attack on the jurisdiction of the lower court must fail for he is guilty of estoppel. Despite several opportunities to question the jurisdiction of the lower court, he failed to do so. Moreover, it was he who insisted, through his misrepresentation, that the case, involving, as it does, purely agrarian issues, should be referred to the Ministry of Agrarian Reform.

Private respondent's motion to reconsider the above decision was granted by the Court of Appeals. Respondent court then set aside its earlier decision and dismissed the civil case filed by petitioner for want of jurisdiction. In its amended decision, the appellate court held that petitioner's complaint was anchored on acción interdictal. To make private respondent a deforciant so that the unlawful detainer suit may be properly filed, it is necessary to allege when demand to pay rent and to vacate were made. The court found that this requisite was not specifically met in petitioner's complaint. Such failure on her part is fatal to her cause since the one-year period within which a detainer suit may be instituted had not yet elapsed when the case was filed. Therefore, the court was devoid of jurisdiction to entertain the case.

#### **ISSUE:**

Whether the trial court, acting as a court of agrarian relations employing agrarian procedure, has jurisdiction to try the suit filed by petitioner. (YES)

#### **RULING:**

In the past, the principle of estoppel has been used by the courts to avoid a clear case of injustice. Its use as a defense to a jurisdictional error is more of an exception rather than the rule. The circumstances outlining estoppel must be unequivocal and intentional, for it is an exception to standard legal norms and is generally applied only in highly exceptional and justifiable cases.

The case at bench falls within the ambit of justifiable cases where estoppel may be applied. The trial court's recourse to agrarian procedure was undoubtedly provoked by private respondent Inayan's insistence on the existence of a tenancy relationship with petitioner. Private respondent cannot now use these same misrepresentations to assert the court's lack of jurisdiction. He cannot invoke

the court's jurisdiction to secure affirmative relief against petitioner and, after failing to obtain such relief, repudiate or question that same jurisdiction.

# SERAFIN TIJAM, ET AL., *Plaintiffs-appellees*, -versus- MAGDALENO SIBONGHANOY ALIAS GAVINO SIBONGHANOY, ET AL., *Defendants*, MANILA SURETY AND FIDELITY CO., INC. (CEBU BRANCH) bonding Company and *Defendant-Appellant*.

G.R. No. L-21450, EN BANC, April 15, 1968, DIZON, J.

A party may be estopped or barred from raising a question by laches, which is failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier. Here, the Surety could have raised the issue of lack of jurisdiction in the trial court, but it only did so after receiving the appellate court's adverse decision. Hence, it is barred by laches.

# **FACTS:**

On July 19, 1948 — barely one month after the effectivity of Republic Act No. 296 known as the Judiciary Act of 1948 — the spouses Serafin Tijam and Felicitas Tagalog commenced a case in the Court of First Instance (CFI) against the spouses Magdaleno Sibonghanoy and Lucia Baguio to recover from them the sum of P1,908.00, with legal interest thereon. As prayed for in the complaint, a writ of attachment was issued by the court against defendants' properties, but the same was soon dissolved upon the filing of a counter-bond by defendants and the Manila Surety and Fidelity Co., Inc. hereinafter referred to as the Surety, on the 31st of the same month.

After trial upon the issues thus joined, the CFI rendered judgment in favor of the plaintiffs and, after the same had become final and executory, upon motion of the latter, the CFI issued a writ of execution against the defendants. The writ having been returned unsatisfied, the plaintiffs moved for the issuance of a writ of execution against the Surety's bond against which the Surety filed a written opposition. The CFI denied this motion on the ground solely that no previous demand had been made on the Surety for the satisfaction of the judgment. Thereafter, the necessary demand was made, and upon failure of the Surety to satisfy the judgment, the plaintiffs filed a second motion for execution against the counter-bond. Upon the Surety's failure to file an answer to the motion, the CFI granted the motion for execution and the corresponding writ was issued.

Subsequently, the Surety moved to quash the writ on the ground that the same was issued without the required summary hearing provided for in Section 17 of Rule 59 of the Rules of Court. As the CFI denied the motion, the Surety appealed to the Court of Appeals (CA) from such order of denial and from the one denying its motion for reconsideration. Not one of the assignment of errors raises the question of lack of jurisdiction, neither directly nor indirectly.

The CA decided the case affirming the orders appealed from. After the Surety received notice of the decision, it filed a pleading entitled MOTION TO DISMISS, alleging substantially that appellees'

action was filed in the CFI of Cebu on July 19, 1948 for the recovery of the sum of P1,908.00 only; that a month before that date Republic Act No. 296, otherwise known as the Judiciary Act of 1948, had already become effective, Section 88 of which placed within the original exclusive jurisdiction of inferior courts all civil actions where the value of the subject matter or the amount of the demand does not exceed P2,000.00, exclusive of interest and costs; that the CFI therefore had no jurisdiction to try and decide the case.

#### **ISSUE:**

Whether the Surety is barred from raising the jurisdictional issue by laches. (YES)

# **RULING:**

A party may be estopped or barred from raising a question in different ways and for different reasons. Thus, we speak of estoppel in pais, of estoppel by deed or by record, and of estoppel by laches. Laches, in a general sense, is failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

The facts of this case show that from the time the Surety became a quasi-party on July 31, 1948, it could have raised the question of the lack of jurisdiction of the CFI of Cebu to take cognizance of the present action by reason of the sum of money involved which, according to the law then in force, was within the original exclusive jurisdiction of inferior courts. It failed to do so. Instead, at several stages of the proceedings in the court a quo as well as in the CA, it invoked the jurisdiction of said courts to obtain affirmative relief and submitted its case for a final adjudication on the merits. It was only after an adverse decision was rendered by the CA that it finally woke up to raise the question of jurisdiction. If such conduct is to be sanctioned, the SC would in effect be declaring as useless all the proceedings had in the present case since it was commenced on July 19, 1948 and compel the judgment creditors to go up their Calvary once more.

# ATTY. RESTITUTO G. CUDIAMAT, ERLINDA P. CUDIAMAT and CORAZON D. CUDIAMAT, Petitioners, -versus- BATANGAS SAVINGS AND LOAN BANK, INC., and THE REGISTER OF DEEDS, NASUGBU, BATANGAS, Respondents.

G.R. No. 182403, FIRST DIVISION, March 9, 2010, CARPIO MORALES, J.

While it is well-settled that lack of jurisdiction on the subject matter can be raised at any time and is not lost by estoppel by laches, the present case is an exception. To compel petitioners to re-file and relitigate their claims before the Nasugbu RTC when the parties had already been given the opportunity to present their respective evidence in a full-blown trial before the Balayan RTC which had, in fact, decided petitioners complaint would be an exercise in futility and would unjustly burden petitioners.

# **FACTS:**

Atty. Restituto Cudiamat and his brother Perfecto were the registered co-owners of the disputed property located in Balayan, Batangas. Perfecto mortgaged the said property to Batangas Savings and Loan Bank, Inc. (the bank) as security for a loan he obtained therefrom but this was made without the knowledge and consent of Atty. & Mrs. Restituto Cudiamat. Eventually, the same was foreclosed. A complaint for quietingof title with damages was consequently filed by Restituto, et al with the RTC of Balayan. In its Answer, the bank alleged that the Balayan RTC had no jurisdiction over the case as the bank had been placed under receivership and under liquidation by the PDIC to which a petition for assistance in the liquidation has been filed with the RTC of Nasugbu. Thus, it is the latter court which jurisdiction to adjudicate disputed claims against it. The Balayan RTC rendered a judgment in favor of Restituto et al. Upon appeal, the CA ruled in favor of the bank. Hence, this petition.

#### **ISSUE:**

Whether the Balayan RTC had jurisdiction over the complaint for quieting of title. (NO)

# **RULING:**

Estoppel bars the bank from raising the issue of lack of jurisdiction of the Balayan RTC. In the present case, the Balayan RTC, sitting as a court of general jurisdiction, had jurisdiction over the complaint for quieting of title filed by petitioners in 1999. The Nasugbu RTC, as a liquidation court, assumed jurisdiction over the claims against the bank only in 2000, when PDICs petition for assistance in the liquidation was raffled thereat and given due course. While it is well-settled that lack of jurisdiction on the subject matter can be raised at any time and is not lost by estoppel by laches, the present case is an exception. To compel petitioners to re-file and relitigate their claims before the Nasugbu RTC when the parties had already been given the opportunity to present their respective evidence in a full-blown trial before the Balayan RTC which had, in fact, decided petitioners complaint (about two years before the appellate court rendered the assailed decision) would be an exercise in futility and would unjustly burden petitioners.

# FIRST CORPORATION, Petitioner, -versus- FORMER SIXTH DIVISION OF THE COURT OF APPEALS, BRANCH 218 OF THE REGIONAL TRIAL COURT OF QUEZON CITY, EDUARDO M. SACRIS, and CESAR A. ABILLAR, Respondents.

G.R. No. 171989, THIRD DIVISION, July 4, 2007, CHICO-NAZARIO, J.

An error of judgment is one which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of certiorari. Certiorari will not be issued

to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. Here, the issues raised by the petitioner corporation in its Petition for Certiorari are mainly factual. Thus, the remedy of certiorari will not lie to annul or reverse the Decision of the RTC.

#### **FACTS:**

The corporate officers of the petitioner corporation, including herein private respondent Abillar, convinced private respondent Sacris to invest in their business as the petitioner corporation needed a fresh equity infusion. The petitioner corporation made a promise of turning such equity into shareholding in the petitioner corporation. While the conversion of such investment into shareholding was still pending, private respondent Sacris and the petitioner corporation agreed to consider the same as a loan. From 1991 up to 1997, the total loan extended by private respondent Sacris to the petitioner corporation reached a total amount of P2.2 million. All loans were given by private respondent Sacris to herein private respondent Abillar, as the latter was then the President and Chairman of the Board of Directors of the petitioner corporation.

Petitioner corporation failed to convert private respondent Sacris's investment/loan into equity or shareholding in the petitioner corporation. In the meantime, a Special Stockholders' Meeting of the petitioner corporation was held to elect the members of the Board of Directors and also to elect a new set of officers. The stockholders of the petitioner corporation no longer re-elected private respondent Abillar as President and member of the Board of Directors. Thereby, private respondent Abillar was ousted from the petitioner corporation.

Private respondent Sacris filed a Complaint for Sum of Money with Damages before the RTC of Quezon City against the petitioner corporation to recover his alleged collectible amount from the petitioner corporation. The RTC of Quezon City rendered a Decision in favor of the private respondents. Hence, petitioner corporation filed the present petition for certiorari.

In the Memorandum filed by the petitioner corporation, it avers that:

- 1. The RTC of Quezon City and the appellate court erred in holding that private respondents' claim of the existence of the purported loans was supported by a preponderance of evidence, despite the fact that the pieces of documentary evidence presented by the private respondents were tainted with irregularities.
- 2. The conclusion made by the RTC of Quezon City and the appellate court that it benefited from the loans obtained from private respondent Sacris had no basis in fact and in law. More so, it was grave abuse of discretion on the part of the RTC of Quezon City and the Court of Appeals to conclude that the alleged loans were reflected in its financial statements.
- 3. It was grave abuse of discretion for the RTC and the appellate court to hold that private respondent Abillar was authorized by the petitioner corporation to borrow money from private respondent Sacris, deliberately ignoring the provisions of the by-laws of petitioner

corporation which only authorized private respondent Abillar, as President, to act as its signatory of negotiable instruments and contracts.

# **ISSUE:**

Whether petitioner corporation availed of the correct mode of appeal. (NO)

#### **RULING:**

An error of judgment is one which the court may commit in the exercise of its jurisdiction. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of certiorari. Certiorari will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law.

Since the issues raised by the petitioner corporation in its Petition for Certiorari are mainly factual, as it would necessitate an examination and re-evaluation of the evidence on which the RTC and the appellate court based their Decisions, the Petition should not be given due course. Thus, the remedy of certiorari will not lie to annul or reverse the Decision of the RTC.

TGN Realty Corporation v. Villa Teresa Homeowners Association (VTHA)
G.R. No. 164795, THIRD DIVISION, April 19, 2017, BERSAMIN, J.:

Ordinarily, the appeal by petition for review on certiorari should not involve the consideration and resolution of factual issues. Section 1, Rule 45 of the Rules of Court limits the appeal to questions of law because the Court, not being a trier of facts, should not be expected to re-evaluate the sufficiency of the evidence introduced in the fora below.

# **FACTS**

Petitioner TGN Realty Corporation owned and developed starting on August 22, 1966 the Villa Teresa Subdivision on a parcel of land situated in Barangays Sto. Rosario and Cutcut, Angeles City, Pampanga. The project soon had many lot buyers who built or bought residential units thereon. Respondent Villa Teresa Homeowners Association, Inc. (VTHAI) was the association of the residents and homeowners of the subdivision. In a letter dated September 2, 1997,2 VTHAI, through counsel, made known to the petitioner the following complaints and demands, such as the immediate opening of Aureo St. and the closed section of Flora Avenue, completion of all fencing at the perimeter of Villa Teresa, including the perimeter fencing along property line from Gate #2 to Sto. Rosario (section of the Flora Avenue) which is being used, against the objection of the residents, as parking for vehicles which constricts the entry and exit to and from the subdivision, etc. Allegedly, VTHAI tried to discuss the complaints and demands but the petitioner failed and

refused to meet in evident disregard of the latter's obligations as the owner and developer of the project.

In its letter dated September 22, 1997,3 the petitioner specifically answered the complaints and demands of VTHAI. In view of the failure and refusal of the pet1t10ner to heed its demands, VTHAI filed with the Housing and Land Use Regulatory Board (HLURB) its complaint for specific performance and for violation of Presidential Decree (P.D.) No. 957 and P.D. No. 1216. On December 10, 1997, the petitioner filed its answer with counterclaim,<sup>5</sup> whereby it reiterated the explanations contained in its letter dated September 22, 1997, and urged that the complaint be dismissed. It insisted that it should be granted moral damages of 100,000.00 for discrediting its goodwill, and attorney's fees of P30,000.00 plus P2,000.00/appearance per hearing because the complaint was malicious.

On September 25, 1998, HLURB Arbiter Jose A. Atencio, Jr. rendered his decision in favor of respondents. By petition for review,<sup>7</sup> the petitioner elevated the adverse decision to the Board of Commissioners of the HLURB. On September 3, 1999, the Board of Commissioners of the HLURB affirmed the HLURB arbiter with modification. he petitioner appealed the adverse decision to the OP (docketed as OP Case No. 20-A-8933) on "grounds of errors in the finding of facts and appreciation of evidence and, grave abuse of discretion."<sup>11</sup>

On June 19, 2003, however, the OP affirmed the judgement. The CA affirmed the OP.

# **ISSUE**

Whether or not the CA erred in upholding the decision of the OP (YES)

#### **RULING:**

Ordinarily, the appeal by petition for review on *certiorari* should not involve the consideration and resolution of factual issues. Section 1, Rule 45 of the *Rules of Court* limits the appeal to questions of law because the Court, not being a trier of facts, should not be expected to re-evaluate the sufficiency of the evidence introduced in the fora below.<sup>36</sup> For this purpose, the distinction between a question of law and a question of fact is well defined. In *Century Iron Works, Inc. v. Banas*,<sup>37</sup> this Court has stated:chanRoblesvirtualLawlibrary

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any or them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.

Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the

issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

There may be exceptions to the limitation of the review to question of law, such as the following: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those by the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.<sup>38</sup>

Yet, none of the foregoing exceptions to the limitation applies to this case. As a consequence it seems foregone that the Court would be justified in now rejecting the appeal of the petitioner, and in upholding the CA adversely against the petitioner.

But the attention of the Court has been directed to the conflict in the findings on the state of the development of the project.

According to the decision dated September 25, 1998 of the HLURB arbiter, an ocular inspection of the premises was conducted on March 13, 1998 in order to verify the status of the development of the project. It was found at the time that "proper development and maintenance of all subdivision facilities should be undertaken by the owner/developer. And fencing of unfinished perimeter fence especially those leading to the squatter area. Cleaning of clogging canal and help the association in maintaining the subdivision a safe, clean and healthy place to live in (are) the requests of the residents." Being the agency that has acquired the expertise on the matter in question, the HLURB's findings should be respected.<sup>39</sup>

# CHESTER DE JOYA, Petitioner, vs. JUDGE PLACIDO C. MARQUEZ, in his capacity as Presiding Judge of Branch 40, Manila-RTC, PEOPLE OF THE PHILIPPINES and THE SECRETARY OF THE DEPARTMENT OF JUSTICE, Respondents.

G.R. No. 163416, SECOND DIVISION, January 31, 2006, AZCUNA, J

In two cases, the court acquires jurisdiction to try the case, even if it has not acquired jurisdiction over the person of a nonresident defendant, as long as it has jurisdiction over the res, as when the action involves the personal status of the plaintiff or property in the Philippines in which the defendant claims an interest. In such cases, the service of summons by publication and notice to the defendant is merely to comply with due process requirements. Under Sec. 133 of the Corporation Code, while a foreign corporation doing business in the Philippines without a license cannot sue or intervene in any action here, it may be sued or proceeded against before our courts or administrative tribunals.<sup>11</sup>

Again, there is no exceptional reason in this case to allow petitioner to obtain relief from the courts without submitting to its jurisdiction. On the contrary, his continued refusal to submit to the court's jurisdiction should give this Court more reason to uphold the action of the respondent judge.

#### **FACTS**

This is a petition for certiorari and prohibition that seeks the Court to nullify and set aside the warrant of arrest issued by respondent judge against petitioner in Criminal Case No. 03-219952 for violation of Article 315, par. 2(a) of the Revised Penal Code in relation to Presidential Decree (P.D.) No. 1689. Petitioner asserts that respondent judge erred in finding the existence of probable cause that justifies the issuance of a warrant of arrest against him and his co-accused.

# **ISSUE**

Whether or not the Court acquired jurisdiction over the defendant (No)

# HELD

In addition, it may not be amiss to note that petitioner is not entitled to seek relief from this Court nor from the trial court as he continuously refuses to surrender and submit to the court's jurisdiction. Justice Florenz D. Regalado explains the requisites for the exercise of jurisdiction and how the court acquires such jurisdiction, thus:

x x x Requisites for the exercise of jurisdiction and how the court acquires such jurisdiction:

a. *Jurisdiction over the plaintiff or petitioner:* This is acquired by the filing of the complaint, petition or initiatory pleading before the court by the plaintiff or petitioner.

b. Jurisdiction over the defendant or respondent: This is acquired by the voluntary appearance or submission by the defendant or respondent to the court or by coercive process issued by the court to him, generally by the service of summons.

c. *Jurisdiction over the subject matter:* This is conferred by law and, unlike jurisdiction over the parties, cannot be conferred on the court by the voluntary act or agreement of the parties.

d. *Jurisdiction over the issues of the case*: This is determined and conferred by the pleadings filed in the case by the parties, or by their agreement in a pre-trial order or stipulation, or, at times by their implied consent as by the failure of a party to object to evidence on an issue not covered by the pleadings, as provided in Sec. 5, Rule 10.

e. *Jurisdiction over the res (or the property or thing which is the subject of the litigation).* This is acquired by the actual or constructive seizure by the court of the thing in question, thus placing it in *custodia legis*, as in attachment or garnishment; or by provision of law which recognizes in the court the power to deal with the property or subject matter within its territorial jurisdiction, as in land registration proceedings or suits involving civil status or real property in the Philippines of a non-resident defendant.

Justice Regalado continues to explain:

In two cases, the court acquires jurisdiction to try the case, even if it has not acquired jurisdiction over the person of a nonresident defendant, as long as it has jurisdiction over the *res*, as when the action involves the personal status of the plaintiff or property in the Philippines in which the defendant claims an interest. In such cases, the service of summons by publication and notice to the defendant is merely to comply with due process requirements. Under Sec. 133 of the Corporation Code, while a foreign corporation doing business in the Philippines without a license cannot sue or intervene in any action here, it may be sued or proceeded against before our courts or administrative tribunals.<sup>11</sup>

Again, there is no exceptional reason in this case to allow petitioner to obtain relief from the courts without submitting to its jurisdiction. On the contrary, his continued refusal to submit to the court's jurisdiction should give this Court more reason to uphold the action of the respondent judge. The purpose of a warrant of arrest is to place the accused under the custody of the law to hold him for trial of the charges against him. His evasive stance shows an intent to circumvent and frustrate the object of this legal process. It should be remembered that he who invokes the court's jurisdiction must first submit to its jurisdiction.

# FERDINAND R. MARCOS, JR v. REPUBLIC/ IMELDA ROMUALDEZ-MARCOS v. REPUBLIC G.R. No. 189434/ G.R. No. 189505, March 12, 2014, Sereno, J.

In order that the court may exercise power over the res, it is not necessary that the court should take actual custody of the property, potential custody thereof being sufficient. There is potential custody when, from the nature of the action brought, the power of the court over the property is impliedly recognized by law.

#### Facts:

The Supreme Court rendered a decision affirming the decision of Sandiganbayan declaring all the assets of Arelma, S.S., an entity created by the late Ferdinand Marcos, forfeited in favor of the Republic of the Philippines. The anti graft court found that the totality of assets and the properties acquired by the Marcos spouses was manifestly and grossly disproportionate to their aggregate salaries as public officials and that the petitioners were unable to overturn the prima facie presumption of ill-gotten wealth, pursuant to Sec. 2 of RA 1379 (forfeiture law). Petitioners seek reconsideration of the denial of their petition, reiterating among others, that the Sandiganbayan does not possess territorial jurisdiction over the res or the Arelma proceeds which are held by Merill Lynch in the United States.

#### **Issue:**

Whether the Sandiganbayan has jurisdiction over the Arelma proceeds.

# **Ruling:**

Yes. The Sandiganbayan has jurisdiction despite the fact that the Arelma account and proceeds are held abroad. To rule otherwise contravenes the intent of the forfeiture law, and indirectly privileges violators who are able to hide public assets abroad: beyond the reach of the courts and their recovery by the State. Forfeiture proceedings, as we have already discussed exhaustively in our Decision, are actions considered to be in the nature of proceedings in rem or quasi in rem, such that Jurisdiction over the res is acquired either (a) by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or (b) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective. In the latter condition, the property, though at all times within the potential power of the court, may not be in the actual custody of said court.

The concept of potential jurisdiction over the res, advanced by respondent, is not at all new. As early as Perkins v. Dizon, deciding a suit against a non-resident, the Court held that in order that the court may exercise power over the res, it is not necessary that the court should take actual custody of the property, potential custody thereof being sufficient. There is potential custody when, from the nature of the action brought, the power of the court over the property is impliedly recognized by law.

# SUPAPO v. SPOUSES DE JESUS, ET AL. G.R. No. 198356, April 20, 2015, Brion, J.

That all cases of recovery of possession or accion publiciana lies with the regional trial courts regardless of the value of the property no longer holds true. As things now stand, a distinction must be made between those properties the assessed value of which is below P20, 000.00, if outside Metro Manila; and P50,000.00, if within. In this regard, the complaint must allege the assessed value of the real property subject of the complaint or the interest thereon to determine which court has jurisdiction over the action.

# Facts:

The Spouses Supapo are the registered owners of the disputed property located in Novaliches, Quezon City over which the Spouses De Jesus, et al. were allegedly squatting. The land has an assessed value of P39,980.00. Consequently, the former filed a criminal case against the latter for violation of PD No. 772 (Anti-Squatting Law) in which the trial court convicted the respondents. While their appeal was pending with the CA, RA 8638 repealed PD 772 which resulted to the dismissal of the criminal case. Notwithstanding the dismissal, the Spouses Supapo moved for the execution of the respondents' civil liability, praying that the latter vacate the subject lot to which the RTC granted and issued the writ of execution. The respondents moved for the quashal of the writ but the RTC denied the same. The respondents thus filed with the CA a petition for certiorari which the CA granted. However, the CA noted that recourse may be had in court by filing the proper action for recovery of possession. The Spouses Supapo thus filed the complaint for accion

publiciana with the Metropolitan Trial Court (MeTC) of Caloocan City in which the said court ruled in favor of Spouses Supapo. Thereafter, the respondents filed a petition for certiorari with the RTC which granted the same. Upon appeal, the CA affirmed the RTC ruling. Hence, this petition.

#### Issue:

Whether the MeTC has jurisdiction to try the present case of accion publiciana.

# **Ruling:**

Yes. Under Batas Pambansa Bilang 129, the jurisdiction of the RTC over actions involving title to or possession of real property is plenary. RA No. 7691, however, divested the RTC of a portion of its jurisdiction and granted the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts the exclusive and original jurisdiction to hear actions where the assessed value of the property does not exceed Twenty Thousand Pesos (P20,000.00), or Fifty Thousand Pesos (P50,000.00), if the property is located in Metro Manila. In view of these amendments, jurisdiction over actions involving title to or possession of real property is now determined by its assessed value. The assessed value of real property is its fair market value multiplied by the assessment level. It is synonymous to taxable value.

In the present case, the Spouses Supapo alleged that the assessed value of the subject lot, located in Metro Manila, is P39,980.00. This is proven by the tax declaration issued by the Office of the City Assessor of Caloocan. The respondents do not deny the genuineness and authenticity of this tax declaration. Given that the Spouses Supapo duly complied with the jurisdictional requirements, we hold that the MeTC of Caloocan properly acquired jurisdiction over the complaint for accion publiciana.

# Trinidad Diaz-Enriquez vs. Director of Lands

G.R. No. 168065/G.R. No. 168070, THIRD DIVISION, September 6, 2017, MARTIRES, J.

[T]he appellate court is accorded a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned. It is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal. Inasmuch as the Court of Appeals may consider grounds other than those touched upon in the decision of the trial court and uphold the same on the basis of such other grounds, the Court of Appeals may, with no less authority, reverse the decision of the trial court on the basis of grounds other than those raised as errors on appeal. In this case, there is no doubt that the application for registration of title hinges upon the determination of whether the subject lands are alienable and disposable. Further, this is consistent with the appellate court's authority to review the totality of the controversy brought on appeal.

#### **FACTS**

Geronimo, Josefino, and Rodrigo, all surnamed Saclolo (*the Saclolos*) filed before the then Court of First Instance, now Regional Trial Court, Naic, Cavite, a joint application for registration of title over three (3) parcels of land (*subject lands*), with a total area of 3,752,142 square meters (375.2)

hectares) and located at Sitio Sinalam, Bario Sapang, Ternate, Cavite. The Saclolos averred that they had acquired title to the subject lands through purchase and that together with their predecessors-in-interest, they had been in actual and exclusive possession, occupation, and cultivation of the subject lands since time immemorial.

The government, thru the Director of Lands, Abdon Riego de Dios, and Angelina Samson filed oppositions to the application.<sup>8</sup> The Director of Lands argued that the subject lands are not alienable and disposable because: they are located within the Calumpang Point Naval Reservation, segregated from the public domain by Proclamation No. 307, dated November 20, 1967; that by virtue of Republic Act (*R.A.*) No. 6236, the right to judicial confirmation of imperfect title under Section 48 of the Public Land Law, with respect to lands having an area of more than 144 hectares, has expired; that the Saclolos had not acquired title over the subject lands through any recognized mode of acquisition of title; that the Saclolos and their predecessors-in-interest had not been in open, continuous, exclusive, and notorious possession and occupation of the subject lands for at least 30 years immediately preceding the filing of the application; and that PSU 68, 69, and 70, the plans which cover the subject lands, have not been verified by the Bureau of Lands as required by Presidential Decree (*P.D.*) No. 239.<sup>9</sup>

On 27 December 1993, Trinidad Diaz-Enriquez (Enriquez) filed a motion for intervention alleging that the Saclolos had sold to her all their interests and rights over the subject lands on 19 September 1976. RTC ruled that the subject lands are alienable and disposable lands of the public domain because Proclamation No. 307 itself stressed that the segregation of the Calumpang Point Naval Reservation was subject to private rights. CA reversed.

#### **ISSUE**

Whether the appellate court may resolve issues which are not raised as errors on appeal (YES)

#### **RULING**

As a general rule, only matters assigned as errors in the appeal may be resolved. Section 8, Rule 51 of the Rules of Court provides:

SECTION 8. Questions that May Be Decided. — No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

The exceptions to this rule have been enumerated in Catholic Bishop of Balanga v. Court of Appeals:21

[T]he appellate court is accorded a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned. It is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal. Inasmuch as the Court of Appeals may consider grounds other than those touched upon in the decision of the trial court and uphold the same on the basis of such other grounds, the Court of Appeals may, with no less authority, reverse the decision of the trial court on the basis of grounds other than those raised as errors on appeal. We have applied this rule, as a matter of exception, in the following instances:

- (1) Grounds not assigned as errors but affecting jurisdiction over the subject matter;
- (2) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;
- (3) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice;
- (4) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;
- (5) Matters not assigned as errors on appeal but closely related to an error assigned; and
- (6) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.22 (citations omitted)

  In this case, there is no doubt that the application for registration of title hinges upon the determination of whether the subject lands are alienable and disposable. Further, this is consistent

Philippine Bank of Communications, Petitioner, vs. Hon. Court of Appeals, Hon. Honorio E. Guanlao, Jr., In his capacity as Presiding Judge of the Regional Trial Court, Makati City, Branch 56, Traveller Kids Inc., Cely L. Gabaldon-Co and Jeannie L. Lugmoc, Respondents,

with the appellate court's authority to review the totality of the controversy brought on appeal.

G.R. No. 218901, February 15, 2017

In Salvan v. People,<sup>33</sup> this Court held that the power of the RTC to dismiss an appeal is limited to the instances specified in the afore-quoted provision. In other words, the RTC has no jurisdiction to deny a notice of appeal on an entirely different ground - such as "that an appeal is not a proper remedy."

The authority to dismiss an appeal for being an improper remedy is specifically vested upon the CA and not the RTC. In fine, the assailed RTC Order, denying due course to PBCOM's notice of appeal on the ground that it was a wrong remedy, is a patent nullity. The RTC acted without or in excess of its jurisdiction.

#### **FACTS**

This case originated from a Complaint<sup>5</sup> for collection of a sum of money in the amount of P8,971,118.06 filed by PBCOM against private respondents before the RTC of Makati City, Branch 56 and docketed as Civil Case No. 10-185.

Private respondents moved for the dismissal of the Complaint alleging that their obligation had already been paid in full and that the RTC had no jurisdiction over the case because PBCOM failed to pay the correct docket fees.<sup>6</sup>

On September 29, 2010, the RTC issued an Order<sup>7</sup> directing PBCOM to pay additional docket fees in the amount of P24,765.70, within fifteen days from receipt of thereof.

On October 21, 2010, PBCOM paid the additional docket fees but filed its Compliance with the RTC only on November 11,2010.8

In the interim, however, the RTC issued an Order dated November 4, 2010,9 dismissing PBCOM's Complaint. PBCOM filed a Motion for Reconsideration dated November 22, 2010,11 stating that it had paid the additional docket fees within the period prescribed by the court as evidenced by the Official Receipt attached thereto.

In an Order dated May 3, 2011,<sup>12</sup> the RTC denied PBCOM's motion for reconsideration. Undaunted, PBCOM timely filed a Notice of Appeal dated May 26, 2011.<sup>14</sup>

On June 2, 2011, the RTC issued an Order (Assailed Order), denying due course to PBCOM's Notice of Appeal on the ground that said appeal is not the proper remedy. 15 Without filing a motion for reconsideration, PBCOM filed a Petition for Certiorari and Mandamus with the CA. 16 On July 31, 2014, the CA issued the assailed Decision 17 denying PBCOM's Petition for Certiorari and Mandamus and affirming the order of the RTC

On August 26, 2014, PBCOM filed a Motion for Reconsideration<sup>18</sup> of the aforesaid Decision, but the same was denied by the CA for having been filed out of time.<sup>19</sup>

Hence, the present petition for *certiorari* and mandamus

# **ISSUE**

Whether or not CA erred in dismissing its Petition for Certiorari and Mandamus (YES)

# **RULING**

In the assailed Decision, the CA appears to have confused the RTC Order dismissing PBCOM's complaint with the RTC Order denying PBCOM's notice of appeal, and mistakenly ruled that the petition for certiorari and mandamus filed by PBCOM was a wrong mode of appeal.

Notably, in its petition before the CA, PBCOM assailed the RTC Order denying due course to its notice of appeal. In *Neplum, Inc. v. Orbeso*,<sup>28</sup> this Court ruled that a trial court's order disallowing a notice of appeal, which is tantamount to a disallowance or dismissal of the appeal itself, is not a decision or final order from which an appeal may be taken. The suitable remedy for the aggrieved party is to elevate the matter through a special civil action under Rule 65.<sup>29</sup> Clearly, contrary to theCA's finding, PBCOM availed itself of the correct remedy in questioning the disallowance of its notice of appeal.

Moreover, while it is a settled rule that a special civil action for certiorari under Rule 65 will not lie unless a motion for reconsideration is filed before the respondent court;<sup>30</sup> there are well-defined exceptions established by jurisprudence, such as (a) **where the order is a patent nullity, as where the court** *a* **quo has no jurisdiction;** (b) where the questions raised in

the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.<sup>31</sup>

The first exception applies in this case.

Rule 41, Section 13 of the 1997 Rules on Civil Procedure states:chanRoblesvirtualLawlibrary

SEC. 13. *Dismissal of appeal*. - Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may, *motu proprio* or on motion, dismiss the appeal for having been taken out of time or for non-payment of the docket and other lawful fees within the reglementary period.<sup>32</sup>

In *Salvan v. People*,<sup>33</sup> this Court held that the power of the RTC to dismiss an appeal is limited to the instances specified in the afore-quoted provision. In other words, the RTC has no jurisdiction to deny a notice of appeal on an entirely different ground - such as "that an appeal is not a proper remedy."

The authority to dismiss an appeal for being an improper remedy is specifically vested upon the CA and not the RTC. In fine, the assailed RTC Order, denying due course to PBCOM's notice of appeal on the ground that it was a wrong remedy, is a patent nullity. The RTC acted without or in excess of its jurisdiction.

# Mercedita C. Coombs v. Victoria C. Castaneda, Virgilio Veloso Santos, Sps. Pancho &

Edith Leviste, BPI Family Savings Bank and the Register of Deeds of Muntinlupa City, G.R. No. 192353, FIRST DIVISION, March 15, 2017, LEONARDO-DE CASTRO, J.

In a long line of cases,<sup>23</sup> the Court has held that the RTC has no jurisdiction when the certificate sought to be reconstituted was never lost or destroyed but is in fact in the possession of another person. In other words, the fact of loss of the duplicate certificate is jurisdictional.

In the present case, petitioner Coombs' Petition for Annulment of Judgment was grounded on lack of jurisdiction. Based on our review of the records, she annexed to her petition the owner's duplicate copy of TCT No. 6715 and the RTC Decision - which sufficiently support the petition's cause of action. A copy of the TCT alleged (in LRC Case No. 04-035) to have been missing supports the claim that the same was never lost. In the same vein, a copy of the RTC Decision, in conjunction with supporting jurisprudence, supports petitioner Coombs' averment that said decision was rendered without jurisdiction. Her

allegations coupled with the appropriate supporting documents give rise to a prima facie case that the RTC did not have jurisdiction over the subject matter in LRC Case No. 04-035.

# **FACTS**

This case stemmed from a petition for annulment of judgment to declare the Decision<sup>3</sup> dated August 26, 2004 of the Regional Trial Court (RTC), Branch 206, Muntinlupa City in LRC Case No. 04-035 as null and void, filed by herein petitioner Mercedita C. Coombs (Coombs) before the Court of Appeals. Petitioner Coombs narrated in the said petition that she is the owner of the real property covered by Transfer Certificate of Title (TCT) No. 6715 situated on Apitong Street, Ayala Alabang, Muntinlupa City; that sometime in March 2005, when she tried to pay the real property tax due relative to the real property covered by TCT No. 6715, she was told that said real property was no longer listed under her pame; that upon further verification, she came to know that TCT No. 6715 had already been cancelled and had been replaced by TCT No. 14115 issued in the name of herein respondent Virgilio Veloso Santos (Santos); that TCT No. 6715 was ordered cancelled by the RTC in a Decision dated August 26, 2004 in LRC Case No. 04-035, entitled "In Re: Petition for the Issuance of Second Owner's Duplicate Copy of Transfer Certificate of Title No. 6715, [by J Mercedita C. Coombs, represented by her Atty.-in-Fact Victoria C. Castaneda"; that she neither authorized Victoria C. Castaneda (Castaneda) to file petition for issuance of a second owner's duplicate copy of TCT No. 6715 sometime in 2004, nor asked her to sell the subject property to herein respondent Santos; that Santos, in tum, sold the same to herein respondents Pancho and Edith Leviste (spouses Leviste); that the spouses Leviste executed a real estate mortgage over the subject property in favor of herein respondent Bank of the Philippine Islands Family Savings Bank (BPI Family).<sup>5</sup>

Petitioner Coombs anchored her prayer for the annulment of the R TC Decision on the ground that, since the owner's duplicate copy of TCT No. 6715 had never been lost as it had always been in her custody, the RTC did not acquire jurisdiction over the subject matter of LRC Case No. 04-035. The Court of Appeals dismissed the petition for annulment of judgment.

# **ISSUE**

Whether or not the Court of Appeals erred when it dismissed outright petitioner Coombs' petition for annulment of judgment. (YES)

#### **RULING**

The petition is meritorious. The Court of Appeals erred when it dismissed outright the petition for annulment of judgment. The grounds for annulment of judgment are set forth in Section 2, Rule 47 of the Rules of Court, *viz.*:

Section 2. Grounds for annulment. - The annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction.

Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

Contrary to the findings of the Court of Appeals, the Petition for Annulment of Judgment filed by petitioner Coombs was clearly grounded on lack of jurisdiction of the RTC over the subject matter of the case, and not extrinsic fraud.

In her petition, petitioner Coombs averred as follows:

13. Since the owner's duplicate copy of TCT No. 6715 is not lost or destroyed, but is in fact in the possession of the petitioner, there is no necessity for the petition filed in the trial court. The Regional Trial Court Branch 206 in Muntinlupa City never acquired jurisdiction to entertain the petition and order the issuance of a new owner's duplicate certificate. Hence, the newly issued duplicate of TCT No. 6715 is null and void. $\frac{20}{3}$ 

Simply stated, petitioner Coombs sought to annul the RTC Decision for being rendered without jurisdiction. According to her, the RTC did not acquire jurisdiction over the subject matter of LRC Case No. 04-035-one for the reconstitution of a lost certificate of title-because the owner's duplicate copy of TCT No. 6715 was never lost in the first place, which argument has been upheld by the Court in a catena of cases that she cited to support her assertion. In *Manila v. Manzo,21* the Court held that in a petition for annulment of judgment grounded on lack of jurisdiction, it is not enough that there is an abuse of jurisdictional discretion. It must be shown that the court should not have taken cognizance of the case because the law does not confer it with jurisdiction over the subject matter.

It is doctrinal that jurisdiction over the nature of the action or subject matter is conferred by law. Section 10 of Republic Act No. 26<sup>22</sup> vests the RTC with jurisdiction over the judicial reconstitution of a lost or destroyed owner's duplicate of the certificate of title. However, the Court of Appeals erred when it ruled that the subject matter of LRC Case No. 04-035 was within the RTC's jurisdiction, being a court of general jurisdiction.

In a long line of cases,<sup>23</sup> the Court has held that the RTC has no jurisdiction when the certificate sought to be reconstituted was never lost or destroyed but is in fact in the possession of another person. In other words, the fact of loss of the duplicate certificate is jurisdictional.

In the present case, petitioner Coombs' Petition for Annulment of Judgment was grounded on lack of jurisdiction. Based on our review of the records, she annexed to her petition the owner's duplicate copy of TCT No. 6715 and the RTC Decision - which sufficiently support the petition's cause of action. A copy of the TCT alleged (in LRC Case No. 04-035) to have been missing supports the claim that the same was never lost. In the same vein, a copy of the RTC Decision, in conjunction with supporting jurisprudence, supports petitioner Coombs' averment that said decision was rendered without jurisdiction. Her allegations coupled with the appropriate supporting documents give rise to a *prima facie* case that the RTC did not have jurisdiction over the subject matter in LRC Case No. 04-035.



The Municipality Of Tangkal, Province Of Lanao Del Norte, Petitioner, Vs. Hon. Rasad B. Balindong, in his capacity as Presiding Judge, Shari'a District Court, 4th Judicial District,

# Marawi City, and Heirs Of The Late Macalabo Alompo, represented by Sultan Dimnang B. Alompo Respondents,

G.R. No. 193340, THIRD DIVISION, January 11, 2017, JARDELEZA J

# **FACTS**

The private respondents, heirs of the late Macalabo Alompo, filed a Complaint<sup>2</sup> with the Shari'a District Court of Marawi City (Shari'a District Court) against the petitioner, Municipality of Tangkal, for recovery of possession and ownership of a parcel of land with an area of approximately 25 hectares located at Barangay Banisilon, Tangkal, Lanao del Norte. They alleged that Macalabo was the owner of the land, and that in 1962, he entered into an agreement with the Municipality of Tangkal allowing the latter to "borrow" the land to pave the way for the construction of the municipal hall and a health center building. The agreement allegedly imposed a condition upon the Municipality of Tangkal to pay the value of the land within 35 years, or until 1997; otherwise, ownership of the land would revert to Macalabo. Private respondents claimed that the Municipality of Tangkal neither paid the value of the land within the agreed period nor returned the land to its owner. Thus, they prayed that the land be returned to them as successors-in-interest of Macalabo. The Municipality of Tangkal filed an Urgent Motion to Dismiss<sup>3</sup> on the ground of improper venue and lack of jurisdiction. It argued that since it has no religious affiliation and represents no cultural or ethnic tribe, it cannot be considered as a Muslim under the Code of Muslim Personal Laws. Shari'a Distric.t Court denied the Municipality of Tangkal's motion to dismiss. Municipality of Tangkal elevated the case to us via petition for *certiorari*, prohibition, and *mandamus* with prayer for a temporary restraining order<sup>8</sup> (TRO)

#### **ISSUE**:

Whether or not the Sharia Court has jurisdiction over the case? (No)

#### **HELD**:

The complaint below, which is a real action<sup>28</sup> involving title to and possession of the land situated at Barangay Banisilon, Tangkal, was filed by private respondents before the Shari' a District Court pursuant to the general jurisdiction conferred by Article 143(2)(b). In determining whether the Shari' a District Court has jurisdiction over the case, the threshold question is whether both parties are Muslims. There is no disagreement that private respondents, as plaintiffs below, are Muslims. The only dispute is whether the requirement is satisfied because the mayor of the defendant municipality is also a Muslim. When Article 143(2)(b) qualifies the conferment of jurisdiction to actions "wherein the parties involved are Muslims," the word "parties" necessarily refers to the real parties in interest.1âwphi1 It is clear from the title and the averments in the complaint that Mayor Batingolo was impleaded only in a representative capacity, as chief executive of the local government of Tangkal. When an action is defended by a representative, that representative is notand neither does he become-a real party in interest. To satisfy the requirement, it is the real party defendant, the Municipality of Tangkal, who must be a Muslim. Such a proposition, however, is a legal impossibility. The Shari' a District Court appears to have understood the foregoing principles, as it conceded that the Municipality of Tangkal "is neither a Muslim nor a Christian." 37 Yet it still proceeded to attribute the religious affiliation of the mayor to the municipality. This is manifest error on the part of the Shari' a District Court. It is an elementary principle that a municipality has a personality that is separate and distinct from its mayor, vice-mayor, sanggunian, and other officers

composing it.<sup>38</sup> And under no circumstances can this corporate veil be pierced on purely religious considerations-as the Shari' a District Court has done-without running afoul the inviolability of the separation of Church and State enshrined in the Constitution.

In view of the foregoing, the Shari' a District Court had no jurisdiction under the law to decide private respondents' complaint because not all of the parties involved in the action are Muslims

# A.L. Ang Network, Inc. v. Emma Mondejar, et al., G.R. No. 200804, SECOND DIVISION, January 22, 2014, PERLAS-BERNABE, J.

#### **FACTS**

Petitioner filed a complaint<sup>5</sup> for sum of money under the Rule of Procedure for Small Claims Cases<sup>6</sup> before the MTCC, seeking to collect from respondent the amount of ₱23,111.71 which represented her unpaid water bills. Petitioner claimed that it was duly authorized to supply water to and collect payment therefor from the homeowners of Regent Pearl Subdivision, one of whom is respondent. Respondent assailed that she religiously paid the monthly charges of P75.00. She claimed that the increased rate of P113.00 for every 10 cubic meter of water plus an additional P11.60 for every cubicmeter thereafter was not valid because the petitioner unilaterally made the increase without informing the residents therein. The MTCC ruled in favour of the respondent. The petitioner can only charge the respondent the agreed flat rate for the period 1 June 2002 to 7 August 2003 since the Certificate of Public Convenience was only issued on the latter date. Respondent should be considered to have fully paid.

Aggrieved, petitioner filed a petition for certiorari<sup>20</sup> under Rule 65 of the Rules of Court before the RTC. RTC issued a Decision<sup>21</sup> dismissing the petition for certiorari, finding that the said petition was only filed to circumvent the non-appealable nature of small claims cases as provided under Section 23<sup>22</sup> of the Rule of Procedure on Small Claims Cases.

#### ISSUE:

Whether or not the RTC erred in dismissing petitioner's recourse under Rule 65 of the Rules of Court assailing the propriety of the MTCC Decision in the subject small claims case (YES)

#### HELD

Considering the final nature of a small claims case decision under the above-stated rule, the remedy of appeal is not allowed, and the prevailing party may, thus, immediately move for its execution. Nevertheless, the proscription on appeals in small claims cases, similar to other proceedings where appeal is not an available remedy, does not preclude the aggrieved party from filing a petition for certiorari under Rule 65 of the Rules of Court. The extraordinary writ of certiorari is always available where there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. Likewise, the Court finds that petitioner filed the said petition before the proper forum (i.e., the RTC). 1âwphi1 To be sure, the Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue a writ of certiorari. Such concurrence of jurisdiction, however, does not give a party unbridled freedom to choose the venue of his action lest he ran afoul of the doctrine of hierarchy of courts. Instead, a becoming regard for judicial hierarchy dictates that petitions for the issuance of writs of certiorari against first level courts should be filed

with the Regional Trial Court, and those against the latter, with the Court of Appeals, before resort may be had before the Court.

# Fiorello R. Jose v. Roberto Alfuerto, et al.,

G.R. No. 69380, SECOND DIVISION, November 26, 2012, BRION, J

In unlawful detainer, the possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of an express or implied contract between... them. However, the defendant's possession became illegal when the plaintiff demanded that the defendant vacate the subject property due to the expiration or termination of the right to possess under the contract, and the defendant refused to heed such demand. A case... for unlawful detainer must be instituted one year from the unlawful withholding of possession.

#### Facts:

The dispute involves a parcel of land registered in the name of Rodolfo Chua Sing under Transfer Certificate of Title No. 52594,[3] with an area of 1919 square meters, located in Barangay San Dionisio, Parañaque City. Chua Sing purchased the land in 1991. On April 1, 1999, Chua Sing leased the property to the petitioner. Their contract of lease was neither notarized nor registered with the Parañaque City Registry of Deeds. Significantly, the respondents already occupied the property even before the lease contract was executed.

On April 28, 1999, soon after Chua Sing and the petitioner signed the lease contract, the petitioner demanded in writing that the respondents vacate the property within 30 days and that they pay a monthly rental of P1,000.00 until they fully vacate the property.

The respondents refused to vacate and to pay rent. On October 20, 1999, the petitioner filed an ejectment case against the respondents

After the required position papers, affidavits and other pieces of evidence were submitted, the MeTC resolved the case in the petitioner's favor.

The RTC affirmed the MeTC decision of January 27, 2003. On March 14, 2005, the Court of Appeals reversed the RTC and MeTC decisions.

#### **Issues:**

Whether an action for unlawful detainer is the proper remedy (NO)

# **Ruling:**

In unlawful detainer, the possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of an express or implied contract between them. However, the defendant's possession became illegal when the plaintiff demanded that the defendant vacate the subject property due to the expiration or termination of the right to possess under the contract, and the defendant refused to heed such demand. A case for unlawful detainer must be instituted one year from the unlawful withholding of possession.

The allegations in the complaint determine both the nature of the action and the jurisdiction of the court. The complaint must specifically allege the facts constituting unlawful detainer. In the absence of these allegations of facts, an action for unlawful detainer is not... the proper remedy and the municipal trial court or the MeTC does not have jurisdiction over the case.

The petitioner's allegations in the amended complaint run counter to the requirements for unlawful detainer. In an unlawful detainer action, the possession of the defendant was originally legal and his possession was permitted by the owner through an express or implied contract.

In this case, paragraph 7 makes it clear that the respondents' occupancy was unlawful from the start and was bereft of contractual or legal basis.

The Court has consistently adopted this position: tolerance or permission must have been present at the beginning of possession; if the possession was unlawful from the start, an action for unlawful detainer would not be the proper remedy and should be dismissed.

# Republic of the Philippines v. Valentina Espinosa, Registrar of Deeds of Negros Occidental et.al.,

G.R. No. 186603, THIRD DIVISION, April 5, 2017, JARDELEZA, J.

Reversion is the remedy where the State, pursuant to the Regalian doctrine, seeks to revert land back to the mass of the public domain. <sup>34</sup> It is proper when public land is fraudulently awarded and disposed of to private individuals or corporations. <sup>35</sup> There are also instances when we granted reversion on grounds other than fraud, such as when a "person obtains a title under the Public Land Act which includes, by oversight, lands which cannot be registered under the Torrens system, or when the Director of Lands did not have jurisdiction over the same because it is of the public domain."

# **FACTS**

On October 26, 1955, Cadastral Decree No. N-31626 was issued to Valentina Espinosa (Espinosa) in Cadastral Case No. 39, L.R.C. Cadastral Record No. 980. It covered a 28,880-square meter lot located at Lot No. 3599 of Cadastral Record No. 980, Poblacion, Sipalay City, Negros Occidental (property). By virtue of the decree, Original Certificate of Title (OCT) No. 191-N was issued on October 15, 1962 in the name ofEspinosa. On June 17, 1976, Espinosa sold the property to Leonila B. Caliston (Caliston), who was later issued Transfer Certificate of Title (TCT) No. T- 91117½ on June 29, 1976. On January 13, 2003, the State, represented by the Regional Executive Director of the Department of Environment and Natural Resources (DENR), Region VI, Iloilo City, through the Office of the Solicitor General (OSG), filed a Complaint for annulment of title and/or reversion of land with the RTC, Branch 61 of Kabankalan City, Negros Occidental. The State claimed that the property is inalienable public land because it fell within a timberland area indicated under Project No. 27-C, Block C per Land Classification (LC) Map No. 2978, as certified by the Director of Forestry on January 17, 1986.

The spouses Dioscoro and Estrella Escarda (spouses Escarda) intervened, 11 alleging that they have been occupying the property since 1976 on the belief that it belongs to the State.  $^{12}$  They prayed that Caliston be ordered to cease and desist from ejecting them.  $^{13}$ 

In answer, Caliston countered that the property is not timberland.

The trial court ruled in favor of the State and ordered the reversion of the property. Caliston's motion for reconsideration <sup>19</sup> was denied in an Order<sup>20</sup> dated July 16, 2004. On August 5, 2004, Caliston filed a Notice of Appeal<sup>21</sup> with the RTC. On the other hand, the spouses Escarda did not file a notice of appeal. Records were then forwarded to the CA, where proceedings ensued. The CA rendered a Decision<sup>24</sup> dated July 25, 2008 modifying the RTC Decision. It upheld the validity of OCT No. 191-N and TCT No. 91117 issued in the names of Espinosa and Caliston, respectively, and affirmed the award of damages, attorney's fees, and expenses of litigation in favor of Caliston.

# **ISSUE**

Whether the State has sufficiently proved that the property is part of inalienable forest land at the time Espinosa was granted the cadastral decree and issued a title. (NO)

# **RULING**

Reversion is the remedy where the State, pursuant to the Regalian doctrine, seeks to revert land back to the mass of the public domain. <sup>34</sup> It is proper when public land is fraudulently awarded and disposed of to private individuals or corporations. <sup>35</sup> There are also instances when we granted reversion on grounds other than fraud, such as when a "person obtains a title under the Public Land Act which includes, by oversight, lands which cannot be registered under the Torrens system, or when the Director of Lands did not have jurisdiction over the same because it is of the public domain." <sup>36</sup>

In this case, the State, through the Solicitor General, alleges neither fraud nor misrepresentation in the cadastral proceedings and in the issuance of the title in Espinosa's favor. The argument for the State is merely that the property was unlawfully included in the certificate of title because it is of the public domain.

Since the case is one for reversion and not one for land registration, the burden is on the State to prove that the property was classified as timberland or forest land *at the time it was decreed to Espinosa*.<sup>37</sup> To reiterate, there is no burden on Caliston to prove that the property in question is alienable and disposable land. <sup>38</sup> At this stage, it is reasonable to presume that Espinosa, from whom Caliston derived her title, had already established that the property is alienable and disposable land considering that she succeeded in obtaining the OCT over it.<sup>39</sup> In this reversion proceeding, the State must prove that there was an oversight or mistake in the inclusion of the property in Espinosa's title because it was of public dominion. This is consistent with the rule that the burden of proof rests on the party who, as determined by the pleadings or the nature of the case, asserts the affirmative of an issue.<sup>40</sup>

Here, the State hinges its whole claim on its lone piece of evidence, the land classification map prepared in 1986.

The records show, however, that LC Map No. 2978 was not formally offered in evidence. The rules require that documentary evidence must be formally offered in evidence after the presentation of testimonial evidence, and it may be done orally, or if allowed by the court, in writing.<sup>41</sup> Due process

requires a formal offer of evidence for the benefit of the adverse party, the trial court, and the appellate courts.<sup>42</sup> This gives the adverse party the opportunity to examine and oppose the admissibility of the evidence.<sup>43</sup> When evidence has not been formally offered, it should not be considered by the court in arriving at its decision.<sup>44</sup> Not having been offered formally, it was error for the trial court to have considered the survey map. Consequently, it also erred in ordering the reversion of the property to the mass of the public domain on the basis of the same.

Moreover, even assuming that the survey *can* be admitted in evidence, this will not help to further the State's cause. *lâwphi1*This is because the only fact proved by the map is one already admitted by the State, that is, that the land was reclassified in 1986. <sup>45</sup> This fact does not address the presumption/conclusion that Espinosa has, at the time of the cadastral proceedings conducted in 1955, proved that the land is alienable and disposable, as evidenced by the decree issued in his favor *in 1962*.

# Gegare v. CA

G.R. No. 83907, FIRST DIVISION September 13, 1989, GANCAYCO, J.

True it is that the Board is a government instrumentality but the petitioner and private respondent who are also contending parties in the case are residents of the same barangay so Section 6 of Presidential Decree No. 1508 should apply to them

# **FACTS**

The center of controversy is Lot 5989, Ts-217 with an area of about 270 square meters situated at Dadiangas, General Santos City. This lot was titled in the name of Paulino Elma under Original Certificate of Title No. (P-29947) (P-11503) P-1987 issued by the Office of the Register of Deeds of General Santos City and Miscellaneous Sales Patent No. V-635. A reversion case was filed by the Republic of the Philippines against Paulino Elma in the Court of First Instance of South Cotabato docketed as Civil Case No. 950, wherein in due course a decision was rendered on January 29, 1973 declaring the title of Paulino Elma null and void and the same was ordered cancelled. The lot was reverted to the mass of public domain subject to disposition and giving preferential right to its actual occupant, Napoleon Gegare.

This decision was affirmed by this Court when We dismissed the petition for review on certiorari filed by the heirs of Elma on March 13, 1974 in G.R. No. L-38069. Thereafter, the writ of execution was issued and the title of Elma to the property was cancelled.

Both petitioner and private respondent filed an application for this lot in the Board of Liquidators (Board for short) in 1975. On June 15, 1976, Resolution No. 606, Series of 1976 was passed by the Board disposing of the lot in favor of petitioner by way of a negotiated sale in conformity with the decision in Civil Case No. 950. Private respondent protested against the application of petitioner and on August 8, 1978, the Board adopted Resolution No. 611, Series of 1978 denying private respondent's protest for the same reason. Private respondent paid for the value of 1/2 of the lot and applied for the issuance of a patent. In Resolution No. 185, Series of 1985 adopted on October 7, 1985, the Board gave due course to the application of private respondent and for the issuance of a patent to 1/2 portion of the lot. On November 27, 1985, petitioner filed an action for "Annulment and Cancellation of Partition of Lot 5989, Ts-217, situated at Dadiangas, General Santos City and Annulment of Resolutions No. 272 and 185 and/or to Declare them Null and Void" against private

respondent and the Board. On February 11, 1985, private respondent filed a motion to dismiss the complaint on the following grounds: (1) lack of jurisdiction over the subject matter.

# **ISSUE**

W/N it was erroneous for the appellate court to hold that the case should be dismissed by the lower court for failure to comply with a provision of Presidential Decree No. 1508 before filing the complaint (NO)

# **RULING**

True it is that the Board is a government instrumentality but the petitioner and private respondent who are also contending parties in the case are residents of the same barangay so Section 6 of Presidential Decree No. 1508 should apply to them as it provides---

Section 6. Conciliation, pre-condition to filing of complaint. No complaint, petition, action or proceeding involving any matter within the authority of the Lupon as provided in Section 2 hereof shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached as certified by the Lupon Secretary or the Pangkat Secretary attested by the Lupon or Pangkat Chairman, or unless the settlement has been repudiated.

The purpose of this confrontation is to enable the parties to settle their differences amicably. If the other only contending party is the government or its instrumentality or subdivision the case falls within the exception but when it is only one of the contending parties, a confrontation should still be undertaken among the other parties.

# Sanchez v. Tupaz, G.R. No. 76690, SECOND DIVISION, February 29, 1988, PARAS, J.

Presidential Decree No. 1508 requires that the parties who actually reside in the same city or municipality should bring their controversy first to the Barangay Court for possible amicable settlement before filing a complaint in court. This requirement is compulsory (as ruled in the cited case of Morato vs. Go, 125 SCRA 444), [1983] and non-compliance of the same could affect the sufficiency of the cause of action and make the complaint vulnerable to dismissal on the ground of lack of cause of action or prematurity (Peregrina vs. Panis, 133 SCRA 75). [1984] It must be borne in mind that the purpose of the conciliation process at the barangay level is to discourage indiscriminate filing of cases in court in order to decongest the clogged dockets and in the process enhance the quality of justice dispensed by courts

## **FACTS**

Herein petitioner and private respondent are both occupants of a public agricultural land Identified as Lot 595, Cad-102 located at Budbud, Tibungco, Davao City. Petitioner claims that the area of 450 square meters, more or less, has been in her possession since 1947, long before private respondent came in and occupied another portion of Lot 595. On the other hand, private respondent claims that the area being claimed by petitioner is a part of his three-fourth (3/4) of a hectare parcel, the right

to which he acquired from its former possessor and owner of the improvements thereon. Sometime in 1966, out of charity and upon their agreement that petitioner will vacate the premises upon demand, he granted petitioner's request to build her house inside the land occupied by him. On September 18,1980, private respondent filed with the City Court of Davao an ejectment case against petitioner. The case was docketed therein as Civil Case No.1710-D.

On March 26,1982, the City Court of Davao rendered a "Judgment by Compromise."

On January 25, 1985, petitioner filed with the Regional Trial Court of Davao a petition to annul the aforesaid judgment of the City Court of Davao . In the same, petitioner alleged, among others, that she is an illiterate, that sometime before March 26, 1982, her lawyer, Atty. Jose M. Madrazo came to her residence at Budbud, Bunawan, Davao City, bringing a certain document which she signed by her thumbmark after being told that she cannot be ejected anymore during her lifetime; that thereafter, her lawyer came back to her residence and furnished her a copy of the said decision of the City Court of Davao; that it is only on March 30, 1984 when she learned for the first time that what she had signed with her thumbmark was a compromise agreement, wherein she recognized private respondent's prior occupancy of the land in question, when she received an Order of Guillermo C. Ferraris, OIC Regional Director of Lands, dropping her petition, together with the petitions of three others, based, allegedly, on their withdrawal, of their claims over the disputed land; that she had never intended to recognize the private respondent as having prior possession and occupancy of the land. In an Order dated October 10, 1986 (*Ibid.*, pp. 38-39), respondent Judge sustained private respondent's Motion to Dismiss by dismissing the case for lack of cause of action or prematurity for not having passed the Barangay Court.

#### **ISSUE**

Whether or not respondent Judge erred in dismissing petitioner's action for annulment of judgment simply because said action did not pass the Barangay Court. (YES)

# RULING

Presidential Decree No. 1508 requires that the parties who actually reside in the same city or municipality should bring their controversy first to the Barangay Court for possible amicable settlement before filing a complaint in court. This requirement is compulsory (as ruled in the cited case of Morato vs. Go, 125 SCRA 444), [1983] and non-compliance of the same could affect the sufficiency of the cause of action and make the complaint vulnerable to dismissal on the ground of lack of cause of action or prematurity (Peregrina vs. Panis, 133 SCRA 75). [1984] It must be borne in mind that the purpose of the conciliation process at the barangay level is to discourage indiscriminate filing of cases in court in order to decongest the clogged dockets and in the process enhance the quality of justice dispensed by courts (Morato, vs. Go, supra).

In the instant case, it will be noted that the ejectment case in the City Court of Davao, Civil Case No. 17-10-D, was filed on September 18, 1980, when Presidential Decree No. 1508 was already enforced. However, the records do not show that there was an opposition to the filing of the said ejectment case on the ground that the dispute had not been submitted to the Barangay Court for possible amicable settlement under P.D. 1508. The only logical conclusion therefore is that either such requirement had already been complied with or had been waived. Under either circumstance, there appears to be no reason, much less a requirement that this case be subjected to the provisions of P.D. 1508. In fact, the present controversy is an action for annulment of a compromise judgment

which as a general rule is immediately executory (De Guzman vs. Court of Appeals, 137 SCRA 730,[1985]), and accordingly, beyond the authority of the Barangay Court to change or modify.

Normally, the instant case should be remanded to the lower court for further proceedings. Nevertheless, a close examination of the records shows that such time-consuming procedure may be dispensed with in resolving the issue at hand.

# Vda. De Borromeo v. Pogoy,

G.R. No. L-63277, SECOND DIVISION, November 29, 1983, ESCOLIN, J.

Under Section 4(a) of PD No. 1508, referral of a dispute to the Barangay Lupon is required only where the parties thereto are "individuals." An "individual" means "a single human being as contrasted with a social group or institution." 5 Obviously, the law applies only to cases involving natural persons, and not where any of the parties is a juridical person such as a corporation, partnership, corporation sole, testate or intestate, estate, etc.

In Civil Case No. R-23915, plaintiff Ricardo Reyes is a mere nominal party who is suing in behalf of the Intestate Estate of Vito Borromeo. While it is true that Section 3, Rule 3 of the Rules of Court allows the administrator of an estate to sue or be sued without joining the party for whose benefit the action is presented or defended, it is indisputable that the real party in interest in Civil Case No. R-23915 is the intestate estate under administration. Since the said estate is a juridical person 6 plaintiff administrator may file the complaint directly in court, without the same being coursed to the Barangay Lupon for arbitration.

#### **FACTS**

Petitioner herein seeks to stop respondent Judge Julian B. Pogoy of the Municipal Trial Court of Cebu City from taking cognizance of an ejectment suit for failure of the plaintiff to refer the dispute to the Barangay Lupon for conciliation.

The intestate estate of the late Vito Borromeo is the owner of a building bearing the deceased's name, located at F. Ramos St., Cebu City. Said building has been leased and occupied by petitioner Petra Vda. de Borromeo at a monthly rental of P500.00 payable in advance within the first five days of the month.

On August 28, 1982, private respondent Atty. Ricardo Reyes, administrator of the estate and a resident of Cebu City, served upon petitioner a letter demanding that she pay the overdue rentals corresponding to the period from March to September 1982, and thereafter to vacate the premises. As petitioner failed to do so, Atty. Reyes instituted on September 16, 1982 an ejectment case against the former in the Municipal Trial Court of Cebu City. The complaint was docketed as Civil Case No. R-23915 and assigned to the sala of respondent judge.

On November 12, 1982, petitioner moved to dismiss the case, advancing, among others, the want of jurisdiction of the trial court. Pointing out that the parties are residents of the same city, as alleged in the complaint, petitioner contended that the court could not exercise jurisdiction over the case for failure of respondent Atty. Reyes to refer the dispute to the Barangay Court, as required by PD No. 1508, otherwise known as Katarungang Pambarangay Law.chanroblesvirtualawlibrary

Respondent judge denied the motion to dismiss.

# **ISSUE**

Whether or not Katarungang Pambarangay Law must first be complied with (NO)

# **RULING**

With certain exceptions, PD 1508 makes the conciliation process at the Barangay level a condition precedent for filing of actions in those instances where said law applies. For this reason, Circular No. 22 addressed to "ALL JUDGES OF THE COURTS OF FIRST INSTANCE, CIRCUIT CRIMINAL COURTS, JUVENILE AND DOMESTIC RELATIONS COURT, COURTS OF AGRARIAN RELATIONS, CITY COURTS, MUNICIPAL COURTS AND THEIR CLERKS OF COURT" was issued by Chief Justice Enrique M. Fernando on November 9, 1979. Said Circular reads:chanrobles.com:cralaw:red

"Effective upon your receipt of the certification by the Minister of Local Government and Community Development that all the barangays within your respective jurisdictions have organized their Lupons provided for in Presidential Decree No. 1508, otherwise known as the Katarungang Pambarangay Law, in implementation of the barangay system of settlement of disputes, you are hereby directed to desist from receiving complaints, petitions, actions or proceedings in cases falling within the authority of said Lupons."cralaw virtua1aw library

While respondent acknowledged said Circular in his order of December 14, 1982, he nevertheless chose to overlook the failure of the complaint in Civil Case No. R-23915 to allege compliance with the requirement of PD 1508. Neither did he cite any circumstance as would place the suit outside the operation of said law. Instead, he insisted on relying upon the pro tanto presumption of regularity in the performance by the clerk of court of his official duty, which to Our mind has been sufficiently overcome by the disclosure by the Clerk of Court that there was no certification to file action from the Lupon or Pangkat secretary attached to the complaint. 4

Be that as it may, the instant petition should be dismissed. Under Section 4(a) of PD No. 1508, referral of a dispute to the Barangay Lupon is required only where the parties thereto are "individuals." An "individual" means "a single human being as contrasted with a social group or institution." 5 Obviously, the law applies only to cases involving natural persons, and not where any of the parties is a juridical person such as a corporation, partnership, corporation sole, testate or intestate, estate, etc.

In Civil Case No. R-23915, plaintiff Ricardo Reyes is a mere nominal party who is suing in behalf of the Intestate Estate of Vito Borromeo. While it is true that Section 3, Rule 3 of the Rules of Court allows the administrator of an estate to sue or be sued without joining the party for whose benefit the action is presented or defended, it is indisputable that the real party in interest in Civil Case No. R-23915 is the intestate estate under administration. Since the said estate is a juridical person 6 plaintiff administrator may file the complaint directly in court, without the same being coursed to the Barangay Lupon for arbitration.

**Peregrina v. Panis,** 133 SCRA 75, FIRST DIVISION, MELENCIO-HERRERA, J.

Thus, Morata vs. Go, 125 SCRA 444 (1,,983), and Vda. de Borromeo vs. Pogoy, 126 SCRA 217 (1983) have held that P.D. No. 1508 makes the conciliation process at the Barangay level a condition

precedent for the filing of a complaint in Court. Non-compliance with that condition precedent could affect the sufficiency of the plaintiff's cause of action and make his complaint vulnerable to dismissal on the ground of lack of cause of action or prematurity. <sup>2</sup>The condition is analogous to exhaustion of administrative remedies, <sup>3</sup> or the lack of earnest efforts to compromise suits between family members, <sup>4</sup> lacking which the case can be dismissed. <sup>5</sup>

The parties herein fall squarely within the ambit of P.D. No. 1508. They are actual residents in the same barangay and their dispute does not fall under any of the excepted cases. <sup>6</sup>

# **FACTS**

The Complaint filed below by the SPOUSES Procopio and Carmelita Sanchez against PETITIONERS Elmer, Adelaida and Cecilia, all surnamed Peregrina, is a civil action for damages for alleged disrespect for the dignity, privacy and peace of mind of the SPOUSES under Article 26 of the Civil Code, and for alleged defamation under Article 33 of the same Code.

Admittedly, the parties are actual residents of the same barangay in Olongapo City. In fact, they are neighbors. Unquestionably, too, no conciliation proceedings were filed before the Lupon. It is not surprising then that the Complaint is silent regarding compliance with the mandatory requirement, nor does it allege that the dispute falls within the excepted cases. **1** 

PETITIONERS, as defendants below, moved for the dismissal of the Complaint. Before firing an Opposition, the SPOUSES applied for a Writ of Preliminary Attachment. Thereafter, the SPOUSES presented their Opposition claiming that, under Section 6(3) of P.D. No. 1508, the parties may go directly to the Courts if the action is coupled with a provisional remedy such as preliminary attachment.

In resolving the Motion to Dismiss, respondent Judge at first, dismissed the Complaint for failure of the SPOUSES to comply with the pre-condition for amicable settlement under P.D. No. 1508

# **ISSUE**

W/N the parties fall squarely within the ambit of P.D. No. 1508. (YES)

# **RULING**

Section 3 of P.D. No. 1508 specifically provides: *têñ.£îhqwâ£* 

Disputes between or among persons actually respectively in the same barangay shall be brought for amicable settlement before the Lupon of said barangay. ...

It is also mandated by Section 6 of the same law: têñ.£îhqwâ£

SECTION 6. Conciliation, pre-condition to filing of complaint. — No complaint, petition, action or proceeding involving any matter within the authority of the Lupon as provided. in Section 2 hereof shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or

settlement has been reached as certified by the Lupon Secretary or the Pangkat Secretary, attested by the Lupon or Pangkat Chairman, or unless the settlement has been repudiated....

Thus, *Morata vs. Go*, 125 SCRA 444 (1,,983), and *Vda. de Borromeo vs. Pogoy*, 126 SCRA 217 (1983) have held that P.D. No. 1508 makes the conciliation process at the Barangay level a condition precedent for the filing of a complaint in Court. Non-compliance with that condition precedent could affect the sufficiency of the plaintiff's cause of action and make his complaint vulnerable to dismissal on the ground of lack of cause of action or prematurity.  ${}^{2}$ The condition is analogous to exhaustion of administrative remedies,  ${}^{3}$  or the lack of earnest efforts to compromise suits between family members,  ${}^{4}$  lacking which the case can be dismissed.  ${}^{5}$ 

The parties herein fall squarely within the ambit of P.D. No. 1508. They are actual residents in the same barangay and their dispute does not fall under any of the excepted cases. 6

It will have to be held, therefore, that respondent Judge erred in reconsidering his previous Order of dismissal on the ground that the provisional remedy of attachment was seasonably filed. Not only was the application for that remedy merely an afterthought to circumvent the law, but also, fundamentally, a Writ of Attachment is not available in a suit for damages where the amount, including moral damages, is contingent or unliquidated. I Prior referral to the Lupon for conciliation proceedings, therefore, was indubitably called for.

Librada M. Aquino v. Ernest Aure G.R. No. 153567, THIRD DIVISION, February 18, 2008, CHICO-NAZARIO,

It is true that the precise technical effect of failure to comply with the requirement of Section 412 of the Local Government Code on barangay conciliation (previously contained in Section 5 of Presidential Decree No. 1508) is much the same effect produced by non-exhaustion of administrative remedies - the complaint becomes afflicted with the vice of pre-maturity; and the controversy there alleged is not ripe for judicial determination. The complaint becomes vulnerable to a motion to dismiss. 22 Nevertheless, the conciliation process is not a jurisdictional requirement, so that non-compliance therewith cannot affect the jurisdiction which the court has otherwise acquired over the subject matter or over the person of the defendant.

#### **FACTS**

The subject of the present controversy is a parcel of land situated in Roxas District, Quezon City, with an area of 449 square meters and covered by Transfer Certificate of Title (TCT) No. 205447 registered with the Registry of Deeds of Quezon City (subject property).<sup>2</sup>

Aure and E.S. Aure Lending Investors, Inc. (Aure Lending) filed a Complaint for ejectment against Aquino before the MeTC docketed as Civil Case No. 17450. In their Complaint, Aure and Aure Lending alleged that they acquired the subject property from Aquino and her husband Manuel (spouses Aquino) by virtue of a Deed of Sale<sup>§</sup> executed on 4 June 1996. Aure claimed that after the

spouses Aquino received substantial consideration for the sale of the subject property, they refused to vacate the same.

MeTC rendered a Decision in Civil Case No. 17450 in favor of Aquino and dismissed the Complaint for ejectment of Aure. On appeal, the RTC affirmed the dismissal of the Complaint on the same ground Court of Appeals rendered a Decision, reversing the MeTC and RTC

#### **ISSUE**

WHETHER OR NOT NON-COMPLIANCE WITH THE BARANGAY CONCILIATION PROCEEDINGS IS A JURISDICTIONAL DEFECT THAT WARRANTS THE DISMISSAL OF THE COMPLAINT. (NO)

# **RULING**

The *barangay* justice system was established primarily as a means of easing up the congestion of cases in the judicial courts. This could be accomplished through a proceeding before the *barangay* courts which, according to the conceptor of the system, the late Chief Justice Fred Ruiz Castro, is essentially arbitration in character, and to make it truly effective, it should also be compulsory. With this primary objective of the *barangay* justice system in mind, it would be wholly in keeping with the underlying philosophy of Presidential Decree No. 1508, otherwise known as the Katarungang Pambarangay Law, and the policy behind it would be better served if an out-of-court settlement of the case is reached voluntarily by the parties.

There is no dispute herein that the present case was never referred to the Barangay Lupon for conciliation before Aure and Aure Lending instituted Civil Case No. 17450. In fact, no allegation of such *barangay* conciliation proceedings was made in Aure and Aure Lending's Complaint before the MeTC. The only issue to be resolved is whether non-recourse to the *barangay* conciliation process is a jurisdictional flaw that warrants the dismissal of the ejectment suit filed with the MeTC.

Aquino posits that failure to resort to *barangay* conciliation makes the action for ejectment premature and, hence, dismissible. She likewise avers that this objection was timely raised during the pre-trial and even subsequently in her Position Paper submitted to the MeTC. We do not agree.

It is true that the precise technical effect of failure to comply with the requirement of Section 412 of the Local Government Code on *barangay* conciliation (previously contained in Section 5 of Presidential Decree No. 1508) is much the same effect produced by non-exhaustion of administrative remedies - - the complaint becomes afflicted with the vice of pre-maturity; and the controversy there alleged is not ripe for judicial determination. The complaint becomes vulnerable to a motion to dismiss. Nevertheless, the conciliation process is not a jurisdictional requirement, so that non-compliance therewith cannot affect the jurisdiction which the court has otherwise acquired over the subject matter or over the person of the defendant.

# CrisantaAlcaraz Miguel v. Jerry D. Montanez,

G.R. No. 191336, January 25, 2012

It is true that an amicable settlement reached at the barangay conciliation proceedings, like the Kasunduang Pag-aayos in this case, is binding between the contracting parties and, upon its perfection, is immediately executory insofar as it is not contrary to law, good morals, good customs, public order and public policy.<sup>[16]</sup> This is in accord with the broad precept of Article 2037 of the Civil Code, viz:

A compromise has upon the parties the effect and authority of res judicata; but there shall be no execution except in compliance with a judicial compromise.

#### **FACTS**

On February 1, 2001, respondent Jerry Montanez (Montanez) secured a loan of One Hundred Forty-Three Thousand Eight Hundred Sixty-Four Pesos (P143,864.00), payable in one (1) year, or until February 1, 2002, from the petitioner. The respondent gave as collateral therefor his house and lot located at Block 39 Lot 39 Phase 3, Palmera Spring, Bagumbong, Caloocan City.

Due to the respondent's failure to pay the loan, the petitioner filed a complaint against the respondent before the *Lupong Tagapamayapa* of *Barangay* San Jose, Rodriguez, Rizal. The parties entered into a *Kasunduang Pag-aayos* wherein the respondent agreed to pay his loan in installments in the amount of Two Thousand Pesos (P2,000.00) per month, and in the event the house and lot given as collateral is sold, the respondent would settle the balance of the loan in full. However, the respondent still failed to pay, and on December 13, 2004, the *Lupong Tagapamayapa* issued a certification to file action in court in favor of the petitioner.

On April 7, 2005, the petitioner filed before the Metropolitan Trial Court (MeTC) of Makati City, Branch 66, a complaint for Collection of Sum of Money. In his Answer with Counterclaim, [3] the respondent raised the defense of improper venue considering that the petitioner was a resident of Bagumbong, Caloocan City while he lived in San Mateo, Rizal.

# **ISSUE**

Whether or not a complaint for sum of money is the proper remedy for the petitioner, notwithstanding the *Kasunduang Pag-aayos* (YES)

# **RULING**

The petitioner contends that the CA erred in ruling that she should have followed the procedure for enforcement of the amicable settlement as provided in the *Revised Katarungang Pambarangay Law*, instead of filing a collection case. The petitioner points out that the cause of action did not arise from the *Kasunduang Pag-aayos* but on the respondent's breach of the original loan agreement.<sup>[15]</sup>

This Court agrees with the petitioner.

It is true that an amicable settlement reached at the *barangay* conciliation proceedings, like the *Kasunduang Pag-aayos* in this case, is binding between the contracting parties and, upon its perfection, is immediately executory insofar as it is not contrary to law, good morals, good customs, public order and public policy.<sup>[16]</sup> This is in accord with the broad precept of Article 2037 of the Civil Code, *viz*:

A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise.

Being a by-product of mutual concessions and good faith of the parties, an amicable settlement has the force and effect of *res judicata* even if not judicially approved.<sup>[17]</sup> It transcends being a mere contract binding only upon the parties thereto, and is akin to a judgment that is subject to execution in accordance with the Rules.<sup>[18]</sup> Thus, under Section 417 of the Local Government Code,<sup>[19]</sup> such amicable settlement or arbitration award may be enforced by execution by the *Barangay Lupon* within six (6) months from the date of settlement, or by filing an action to enforce such settlement in the appropriate city or municipal court, if beyond the six-month period.

Under the first remedy, the proceedings are covered by the Local Government Code and the *Katarungang Pambarangay* Implementing Rules and Regulations. The *Punong Barangay* is called upon during the hearing to determine solely the fact of non-compliance of the terms of the settlement and to give the defaulting party another chance at voluntarily complying with his obligation under the settlement. Under the second remedy, the proceedings are governed by the Rules of Court, as amended. The cause of action is the amicable settlement itself, which, by operation of law, has the force and effect of a final judgment.<sup>[20]</sup>

# Flores v. Mallare-Phillips, 144 SCRA 377, SECOND DIVISION, September 24, 1986, FERIA, *J.:*

# **FACTS:**

Petitioner Remegio Flores filed a complaint against respondent Ignacio Binongcal for refusing to pay the amount of P11,643.00 representing cost of truck tires which he purchased on credit from petitioner on various occasions. In the same complaint, and as second cause of action, petitioner alleges that respondent Fernando Calion for allegedly refusing to pay the amount of P10,212.00 representing cost of truck tires which he purchased on credit from petitioner on several occasions. The counsel for respondent Binongcal filed a Motion to Dismiss on the ground of lack of jurisdiction since the amount of the demand against said respondent was only P11, 643.00, and under Section 19(8) of BP 129 the regional trial court shall exercise exclusive original jurisdiction if the amount of the demand is more than twenty thousand pesos (P20,000.00). It was further averred in said motion that although another person, Fernando Calion, was allegedly indebted to petitioner in the amount of P10,212.00, his obligation was separate and distinct from that of the other respondent. At the hearing of said Motion to Dismiss, counsel for respondent Calion joined in moving for the dismissal of the complaint on the ground of lack of jurisdiction.

The trial court dismissed the complaint for lack of jurisdiction.

Petitioner has appealed by certiorari from the order of Judge Heilia S. Mallare-Phillipps of the Regional Trial Court of Baguio City which dismissed his complaint for lack of jurisdiction. Petitioner maintains that the lower court has jurisdiction over the case following the "novel" totality rule introduced in Section 33(1) of BP 129 and Section 11 of the Interim Rules.

# **ISSUE:**

Whether applying the totality rule is proper and thus, the court has jurisdiction

# **HELD:**

This argument is partly correct. Where a plaintiff sues a defendant on two or more separate causes of action, the amount of the demand shall be the totality of the claims in all the causes of action irrespective of whether the causes of action arose out of the same or different transactions. If the total demand exceeds twenty thousand pesos, then the regional trial court has jurisdiction. Needless to state, if the causes of action are separate and independent, their joinder in one complaint is permissive and not mandatory, and any cause of action where the amount of the demand is twenty thousand pesos or less may be the subject of a separate complaint filed with a metropolitan or municipal trial court.

Under the present law, the totality rule is applied also to cases where two or more plaintiffs having separate causes of action against a defendant join in a single complaint, as well as to cases where a plaintiff has separate causes of action against two or more defendants joined in a single complaint. However, the causes of action in favor of the two or more plaintiffs or against the two or more defendants should arise out of the same transaction or series of transactions and there should be a common question of law or fact, as provided in Section 6 of Rule 3.

The application of the totality rule under Section 33(1) of Batas Pambansa Blg. 129 and Section 11 of the Interim Rules is subject to the requirements for the permissive joinder of parties under Section 6 of Rule 3 which provides as follows: "Permissive joinder of parties. - All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrassed or put to expense in connection with any proceedings in which he may have no interest."

In cases of permissive joinder of parties, whether as plaintiffs or as defendants, under Section 6 of Rule 3, the total of all the claims shall now furnish the jurisdictional test. Needless to state also, if instead of joining or being joined in one complaint separate actions are filed by or against the parties, the amount demanded in each complaint shall furnish the jurisdictional test. In the case at bar, the lower court correctly held that the jurisdictional test is subject to the rules on joinder of parties pursuant to Section 5 of Rule 2 and Section 6 of Rule 3 of the Rules of Court and that after a careful scrutiny of the complaint, it appears that there is a misjoinder of parties for the reason that the claims against respondents Binongcal and Calion are separate and distinct and neither of which falls within its jurisdiction.

RAMON S. CHING AND PO WING PROPERTIES, INC. -versus-HON. JANSEN R. RODRIGUEZ, in his capacity as Presiding Judge of the RTC-Br.6 of Manila, et al.

G.R. No. 192828, SECOND DIVISION, 28 November 2011, Reyes, J.

A special proceeding is a remedy by which a party seeks to establish a status, a right, or a particular fact. It is distinguished from an ordinary civil action where a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong. To initiate a special proceeding, a petition and not a complaint should be filed.

#### Facts:

Joseph Cheng, *et.al.* filed a Complaint against Ching, *et. al* and all persons claiming rights or titles from Ramon Ching (Ramon) and his successors-in-interest. In the Complaint, they alleged six causes of action, emphasizing on Ramon Ching's fraudulent acts which resulted to the latter claiming the entire estate of the late Antonio Ching, Cheng *et. al*'s predecessor-in-interest.

Ching, *et.al* filed with the Regional Trial Court (RTC) a Motion to Dismiss. The RTC denied said motion. Thereafter, Cheng, *et.al* filed an amended complaint adding a seventh cause of action (release of CPPA totalling P4M in the custody of Metrobank) and impleading a new party-defendant (Metrobank). Ching, *et.al* again filed a Motion to Dismiss the Amended Complaint on the alleged ground of the RTC's lack of jurisdiction over the subject matter of the Complaint. They argued that jurisdiction pertains to a probate or intestate court and not to the RTC acting as an ordinary court. The RTC denied the said motion. The Court of Appeals (CA) affirmed. Hence, this petition.

## Issue:

Whether or not the CA erred in affirming the RTC's denial of the Amended Complaint as the latter arguably sought the release of the trust funds c/o of Metrobank to Cheng *et.al.*, the latter's declaration as heirs of Antonio, and the propriety of Ramon's disinheritance, which suit partakes of the nature of a special proceeding and not an ordinary action for declaration of nullity. (No)

# **RULING:**

Although the Complaint and Amended Complaint sought, among others, the disinheritance of Ramon and the release in favor of the Cheng, *et.al* of the CPPA now under Metrobank's custody, the civil case remains to be an ordinary civil action, and not a special proceeding pertaining to a settlement court. An action for reconveyance and annulment of title with damages is a civil action, whereas matters relating to settlement of the estate of a deceased person such as advancement of property made by the decedent, partake of the nature of a special proceeding. Under Article 916 of the NCC, disinheritance can be effected only through a will wherein the legal cause therefor shall be specified. This Court agrees with the RTC and the CA that while the Complaint and Amended Complaint sought the disinheritance of Ramon, no will or any instrument supposedly effecting the disposition of Antonio's estate was ever mentioned. Hence, despite the prayer for Ramon's disinheritance, the civil case does not partake of the nature of a special proceeding and does not call for the probate court's exercise of its limited jurisdiction.

They also argue that the prayers in the Amended Complaint, seeking the release of the CPPA under Metrobank's custody and the nullification of the instruments subject of the complaint, necessarily require the determination of the status as Antonio's heirs. It bears stressing that what was prayed for was the declaration as the rightful owners of the CPPA which was in Mercedes' possession prior to the execution of the Agreement and Waiver. The respondents also prayed for the alternative relief of securing the issuance by the RTC of a hold order relative to the CPPA to preserve Antonio's

deposits with Metrobank during the pendency of the case. It can thus be said that the prayer relative to the CPPA was premised on Mercedes' prior possession of and their alleged collective ownership of the same, and not on the declaration of their status as Antonio's heirs. Further, it also has to be emphasized that the respondents were parties to the execution of the Agreement and Waiver prayed to be nullified. Hence, even without the necessity of being declared as heirs of Antonio, Cheng, *et.al.* have the standing to seek for the nullification of the instruments in the light of their claims that there was no consideration for their execution, and that Ramon exercised undue influence and committed fraud against them.

In sum, the Court agrees with the CA that the nullification of the subject documents could be achieved in an ordinary civil action, which in this specific case was instituted to protect the respondents from the supposedly fraudulent acts of Ramon. In the event that the RTC will find grounds to grant the reliefs prayed for, the only consequence will be the reversion of the properties subject of the dispute to the estate of Antonio. The civil case was not instituted to conclusively resolve the issues relating to the administration, liquidation and distribution of Antonio's estate, hence, not the proper subject of a special proceeding for the settlement of the estate of a deceased person under Rules 73-91 of the Rules of Court.

Paglaum Management & Development Corp. And Health Marketing Technologies, Inc., Petitioners, -versus- Union Bank Of The Philippines, Notary Public John Doe, And Register Of Deeds Of Cebu City And Cebu Province, Respondents.

G.R. No. 179018, SECOND DIVISION, June 18, 2012, SERENO, J.

Under Section 4 (b) of Rule 4 of the 1997 Rules of Civil Procedure, the general rules on venue of actions shall not apply where the parties, before the filing of the action, have validly agreed in writing on an exclusive venue. The mere stipulation on the venue of an action, however, is not enough to preclude parties from bringing a case in other venues. The parties must be able to show that such stipulation is exclusive. In the absence of qualifying or restrictive words, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place.

In this case, the phrase waiving any other venue plainly shows that the choice of Makati City as the venue for actions arising out of or in connection with the Restructuring Agreement and the Collateral, with the Real Estate Mortgages being explicitly defined as such, is exclusive.

# **FACTS:**

Paglaum Management & Development Corporation (Paglaum) is the registered owner of three parcels of land in Cebu. These lots are also co-owned by Benjamin B. Dy, the president of petitioner Health Marketing Technologies, Inc. (HealthTech), and his mother and siblings.

Union Bank of the Philippines (Union Bank) extended to HealthTech a credit line. Consequently, Paglaum executed three Real Estate Mortgages (REM) on behalf of HealthTech and in favor of Union Bank. The first REM contained a stipulation that the venue of all suits should be in Makati City, with both parties waiving any other venue. Meanwhile, other REM executed on different dates stipulate that it should be in Cebu City.

Later, HealthTech entered into a Restructuring Agreement with Union Bank wherein it was stipulated that the venue for all actions should be commenced in Makati City, with both parties waiving any other venue.

HealthTech failed to fulfill its obligation. Consequently, Union Bank extra-judicially foreclosed the mortgaged properties, was issued a Certificate of Sale and filed for Consolidation of Title. HealthTech then filed a Complaint against Union Bank in Makati City. Union Bank filed a Motion to Dismiss on the ground of improper venue, among others. Union Bank contended that the Restructuring Agreement governs the choice of venue between parties.

# **ISSUE:**

Whether Makati City is the proper venue to assail the foreclosure of the real estate mortgage. (No)

## **RULING:**

In *Sps. Lantin v. Lantion*, this Court explained that a venue stipulation must contain words that show exclusivity or restrictiveness, as follows:

"At the outset, we must make clear that under Section 4 (b) of Rule 4 of the 1997 Rules of Civil Procedure, the general rules on venue of actions shall not apply where the parties, before the filing of the action, have validly agreed in writing on an exclusive venue. The mere stipulation on the venue of an action, however, is not enough to preclude parties from bringing a case in other venues. The parties must be able to show that such stipulation is exclusive. In the absence of qualifying or restrictive words, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place."

The Restructuring Agreement was entered into by HealthTech and Union Bank to modify the entire loan obligation. The provisions of the Real Estate Mortgages and the later Restructuring Agreement clearly reveal the intention of the parties to implement a restrictive venue stipulation, which applies not only to the principal obligation, but also to the mortgages. The phrase waiving any other venue plainly shows that the choice of Makati City as the venue for actions arising out of or in connection with the Restructuring Agreement and the Collateral, with the Real Estate Mortgages being explicitly defined as such, is exclusive.

# United Alloy Philipines Corporation, Spouses David C. Chua and Luten Chua, Petitioners, - versus-United Coconut Planters Bank, Respondent.

G.R. No. 175949, SECOND DIVISION, January 30, 2017, PERALTA, J.

In general, personal actions must be commenced and tried (i) where the plaintiff or any of the principal plaintiffs resides, (ii) where the defendant or any of the principal defendants resides, or (iii) in the case of a resident defendant where he may be found, at the election of the plaintiff. Nevertheless, the parties may agree in writing to limit the venue of future actions between them to a specified place.

# **FACTS:**

UNIALLOY applied for and was granted a credit accommodation by UCPB. Part of UNIALLOY's obligation under the Credit Agreement was secured by a Surety Agreement executed by UNIALLOY's officers: Chairman Van Der Sluis, President David Chua and his spouse, Luten Chua (Spouses Chua), and one Yang. Six Promissory Notes, were later executed by UNIALLOY in UCPB's favor. In addition, as part of the consideration for the credit accommodation, UNIALLOY and UCPB also entered into a "lease-purchase" contract wherein the former assured the latter that it will purchase several real properties which UCPB co-owns with the DBP.

Subsequently, UNIALLOY failed to pay its loan obligations. As a result, UCPB filed against UNIALLOY and its officers an action for Sum of Money with Prayer for Preliminary Attachment with the RTC of Makati. Consequently, UCPB also unilaterally rescinded its lease-purchase contract with UNIALLOY. On the other hand, UNIALLOY filed against UCPB, UCPB Vice-President Chua and Van Der Sluis a complaint for Annulment and/or Reformation of Contract with Damages, with Prayer for a Writ of Preliminary Injunction or Temporary Restraining Order. Claiming that it holds office and conducts its business operations in Tagoloan, Misamis Oriental, UNIALLOY filed the case with the RTC of CDO. UNIALLOY contended that Van Der Sluis, in cahoots with UCPB Vice-President Chua, committed fraud, manipulation and misrepresentation to obtain the subject loan for their own benefit. UNIALLOY prayed, among others, that three of the six Promissory Notes it executed be annulled or reformed or that it be released from liability thereon.

UNIALLOY filed an Urgent Motion to Dismiss the collection case filed by UCPB on the ground of litis pendentia and forum shopping. UNIALLOY contended that its complaint for annulment of contract and the collection case filed by UCPB involves the same parties and causes of action. The RTC of Makati denied the motion. In the meantime, UCPB and its co-defendants also filed a Motion to Dismiss UNIALLOY's complaint for annulment of contract on the grounds of improper venue, forum shopping, litis pendentia, and harassment or nuisance suit. The RTC of CDO dismissed UNIALLOY's complaint for annulment of contract.

UNIALLOY then filed a petition for *certiorari* and mandamus with the CA and also prayed for the issuance of a writ of preliminary injunction. The CA granted UNIALLOY's prayer for the issuance of a writ of preliminary injunction. UCPB filed a petition for *certiorari* with the SC which restrained the CA from enforcing its Resolution granting the issuance of the writ of preliminary injunction. Eventually, the SC rendered its Decision denying UCPB's petition for *certiorari* and affirming the CA Resolution granting the writ of preliminary injunction.

Thereafter, the CA dismissed UNIALLOY's *certiorari* petition and affirmed the RTC of CDO. UNIALLOY then filed a petition for review on *certiorari*, which the SC denied. Meanwhile, UNIALLOY filed with the RTC of Makati an omnibus motion praying for the suspension of the proceedings of the collection case in the said court on the ground of pendency of the *certiorari* petition it filed with the SC. However, the RTC denied UNIALLOY's motion. Subsequently, the RTC of Makati rendered Judgment in the collection case in favor of UCPB. The CA affirmed.

## **ISSUES:**

- (1) Whether UNIALLOY's complaint for annulment of contract should be dismissed on the ground of improper venue. (Yes)
- (2) Whether UNIALLOY, together with their co-defendants Van Der Sluis and Yang, are liable to pay UCPB the amounts awarded by the RTC of Makati. (Yes)

# **RULING:**

(1) The RTC was correct in dismissing UNIALLOY's Complaint on the ground of improper venue. In the case at bench, paragraph 18 of the LPA expressly provides that "[a]ny legal action arising out of or in connection with this Agreement shall be brought exclusively in the proper courts of Makati City, Metro Manila." Hence, UNIALLOY should have filed its complaint before the RTC of Makati City, and not with the RTC of Cagayan de Oro City. But to justify its choice of venue, UNIALLOY insists that the subject matter of its Complaint in Civil Case No. 2001-219 is not the LPA, but the fictitious loans that purportedly matured on April 17, 2001. UNIALLOY's insistence lacks merit. Its Complaint unequivocally sought to declare "as null and void the unilateral rescission made by defendant UCPB of its subsisting Lease Purchase Agreement with [UNIALLOY]." What UCPB unilaterally rescinded is the LPA and without it there can be no unilateral rescission to speak of. Hence, the LPA is the subject matter or at least one of the subject matters of the Complaint. Moreover, and to paraphrase the aforecited paragraph 18 of the LPA, as long as the controversy arises out of or is connected therewith, any legal action should be filed exclusively before the proper courts of Makati City. Thus, even assuming that the LPA is not the main subject matter, considering that what is being sought to be annulled is an act connected and inseparably related thereto, the Complaint should have been filed before the proper courts in Makati City.

(2)UNIALLOY and its officers do not deny their liability under the Surety Agreement. As correctly held by both the RTC and the CA, Article 1159 of the Civil Code expressly provides that "[o]bligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." The RTC as well as the CA found nothing which would justify or excuse UNIALLOY and its officers from non-compliance with their obligations under the contract they have entered into. Thus, it becomes apparent that they are merely attempting to evade or, at least, delay the inevitable performance of their obligation to pay under the Surety Agreement and the subject promissory notes which were executed in UCPB's favor.

The Court notes, however, that the interest rates imposed on the subject promissory notes were made subject to review and adjustment at the sole discretion and under the exclusive will of UCPB. Moreover, aside from the Consolidated Statement of Account attached to the demand letters addressed to spouses Chua and their co-defendants, no other competent evidence was shown to prove the total amount of interest due on the above promissory notes. In fact, based on the attached Consolidated Statement of Account, UCPB has already imposed a 24% interest rate on the total amount due on UCPB's peso obligation for a short period of six months. Settled is the rule that any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void. Any stipulation regarding the validity or compliance of the contract which is left solely to the will of one of the parties, is likewise, invalid.

Moreover, courts have the authority to strike down or to modify provisions in promissory notes that grant the lenders unrestrained power to increase interest rates, penalties and other charges at the latter's sole discretion and without giving prior notice to and securing the consent of the borrowers. This unilateral authority is anathema to the mutuality of contracts and enable lenders to take undue advantage of borrowers. Although the Usury Law has been effectively repealed, courts may still reduce iniquitous or unconscionable rates charged for the use of money. Furthermore, excessive interests, penalties and other charges not revealed in disclosure statements issued by banks, even if stipulated in the promissory notes, cannot be given effect under the Truth in Lending Act.

SPS. DOMINGO M. BELEN and DOMINGA P. BELEN, herein represented by their attorney-in-fact NERY B. AVECILLA, petitioners, -versus- HON. PABLO R. CHAVEZ, Presiding Judge, RTC-Branch 87, Rosario, Batangas and all other persons acting under his orders and SPS. SILVESTRE N. PACLEB and PATRICIA A. PACLEB, represented herein by their attorney-in-fact JOSELITO RIOVEROS, respondents.

G.R. No. 175334, SECOND DIVISION, March 26, 2008, TINGA, J.

An action for the enforcement of a foreign judgment in a complaint for breach of contract whereby the defendants were ordered to pay the monetary award is in the nature of an action in personam. In an action in personam, jurisdiction over the person of the defendant who does not voluntarily submit himself to the authority of the court is necessary for the court to validly try and decide the case through personal service or, if this is not possible and he cannot be personally served, substituted service as provided in Rule 14, Sections 6-7.

In this case, where the records reveal that the defendants have been permanent residents of California, U.S.A. since the filing of the action up to the present, service of summons on their purported address in the Philippines was defective and did not serve to vest in court jurisdiction over their person. Even if the service of summons was defective upon non-resident defendants, the appearance of a lawyer impliedly authorized by the defendants to appear on their behalf, and his filing of numerous pleadings were sufficient to vest jurisdiction over the persons of said defendants, and it amounts to voluntary appearance.

# Facts:

The instant petition originated from the action for the enforcement of a foreign judgment against herein petitioners, spouses Domingo and Dominga Belen, filed by private respondent spouses Silvestre and Patricia Pacleb, represented by their attorney-in-fact, Joselito Rioveros, before the RTC of Rosario, Batangas.

The complaint alleged that private respondents secured a judgment by default in Case No. NC021205 rendered by a certain Judge John W. Green of the Superior Court of the State of California. The judgment ordered petitioners to pay private respondents the amount of \$56,204.69 representing loan repayment and share in the profits plus interest and costs of suit. The summons was served on petitioners' address in San Gregorio, Alaminos, Laguna, as was alleged in the complaint, and received by a certain Marcelo M. Belen.

On 5 December 2000, Atty. Reynaldo Alcantara entered his appearance as counsel for petitioners, stating that his legal services were retained at the instance of petitioners' relatives. Atty. Alcantara subsequently filed an answer, alleging that contrary to private respondents' averment, petitioners were actually residents of California, USA. The answer also claimed that petitioners' liability had been extinguished *via* a release of abstract judgment issued in the same collection case.

In view of petitioners' failure to attend the scheduled pre-trial conference, the RTC ordered the *ex parte* presentation of evidence for private respondents before the branch clerk of court. On 16 March 2001, before the scheduled *ex parte* presentation of evidence, Atty. Alcantara filed a motion to dismiss, citing the judgment of dismissal issued by the Superior Court of the State of California, which allegedly dismissed Case No. NC021205. The RTC held in abeyance the *ex parte* presentation of evidence of private respondents and the resolution of Atty. Alcantara's motion pending the

submission of a copy of the judgment of dismissal.

For failure to present a copy of the alleged judgment of dismissal, the RTC denied the motion to dismiss in an Order dated 19 February 2002. Through a motion, Atty. Alcantara sought the reinstatement of the motion to dismiss by attaching a copy of the said foreign judgment.

On 5 August 2003, the RTC ruled in favor of the plaintiff. On appeal, the CA dismissed the petition for certiorari under Rule 65 of the Rules of Court filed by the petitioner. Hence, the present petition.

#### **Issue:**

Whether the RTC acquired jurisdiction over the persons of petitioners through either the proper service of summons or the appearance of the late Atty. Alcantara on behalf of petitioners. (Yes)

# **Ruling:**

In an action *in personam* wherein the defendant is a non-resident who does not voluntarily submit himself to the authority of the court, personal service of summons within the state is essential to the acquisition of jurisdiction over her person. This method of service is possible if such defendant is physically present in the country. If he isnot found therein, the court cannot acquire jurisdiction over his person and therefore cannot validly try and decide the case against him. An exception was laid down in *Gemperle v. Schenker* wherein a non-resident was served with summons through his wife, who was a resident of the Philippines and who was his representative and attorney-in-fact in a prior civil case filed by him; moreover, the second case was a mere offshoot of the first case.

The action filed against petitioners, prior to the amendment of the complaint, is for the enforcement of a foreign judgment in a complaint for breach of contract whereby petitioners were ordered to pay private respondents the monetary award. It is in the nature of an action *in personam* because private respondents are suing to enforce their personal rights under said judgment.

Applying the foregoing rules on the service of summons to the instant case, in an action *in personam*, jurisdiction over the person of the defendant who does not voluntarily submit himself to the authority of the court is necessary for the court to validly try and decide the case through personal service or, if this is not possible and he cannot be personally served, substituted service as provided in Rule 14, Sections 6-7.

The records of the case reveal that herein petitioners have been permanent residents of California, U.S.A. since the filing of the action up to the present. From the time Atty. Alcantara filed an answer purportedly at the instance of petitioners' relatives, it has been consistently maintained that petitioners were not physically present in the Philippines. In the answer, Atty. Alcantara had already averred that petitioners were residents of California, U.S.A. and that he was appearing only upon the instance of petitioners' relatives.<sup>[13]</sup> In addition, private respondents' attorney-in-fact, Joselito Rioveros, testified during the *ex parte*presentation of evidence that he knew petitioners to be *former residents* of Alaminos, Laguna but are now living in California, U.S.A.<sup>[14]</sup> That being the case, the service of summons on petitioners' purported address in San Gregorio, Alaminos, Laguna was defective and did not serve to vest in court jurisdiction over their persons.

Nevertheless, the Court of Appeals correctly concluded that the appearance of Atty. Alcantara and his filing of numerous pleadings were sufficient to vest jurisdiction over the persons of petitioners.

Through certain acts, Atty. Alcantara was impliedly authorized by petitioners to appear on their behalf. For instance, in support of the motion to dismiss the complaint, Atty. Alcantara attached thereto a duly authenticated copy of the judgment of dismissal and a photocopy of the identification page of petitioner Domingo Belen's U.S. passport. These documents could have been supplied only by petitioners, indicating that they have consented to the appearance of Atty. Alcantara on their behalf. In sum, petitioners voluntarily submitted themselves through Atty. Alcantara to the jurisdiction of the RTC.

# PLANTERS DEVELOPMENT BANK, *Petitioner*, -versus- JULIE CHANDUMAL, *Respondent*. G.R. No. 195619, FIRST DIVISION, September 5, 2012, REYES, *J*.

Where the action is in personam and the defendant is in the Philippines, service of summons may be made through personal service, that is, summons shall be served by handing to the defendant in person a copy thereof, or if he refuses to receive and sign for it, by tendering it to him. If the defendant cannot be personally served with summons within a reasonable time, it is then that substituted service may be made.

In this case, the sheriff's return failed to justify a resort to substituted service of summons. The Return of Summons does not specifically show or indicate in detail the actual exertion of efforts or any positive step taken by the officer or process server in attempting to serve the summons personally to the defendant. The return merely states the alleged whereabouts of the defendant without indicating that such information was verified from a person who had knowledge thereof.

# Facts:

PDB filed an action for judicial confirmation of notarial rescission and delivery of possession against Chandumal. Summons was issued and served by deputy sheriff. According to his return, the Sheriff attempted to personally serve the summons upon Chandumal on three separate instances but it was unavailing as she was always out of the house on said dates. Hence, the sheriff caused substituted service of summons by serving the same through Chandumal's mother who acknowledged receipt thereof.

For her failure to file an answer within the prescribed period, Chandumal was declared in default. Chandumal then filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer. The RTC denied Motion and rendered a Judgment against Chandumal. On appeal, Chandumal claimed, among others, that the RTC failed to acquire jurisdiction over her person.

# **Issues:**

- 1. Whether there was a valid substituted service of summons. (No)
- 2. Whether Chandumal voluntarily submitted to the jurisdiction of the trial court. (Yes)

# **Ruling:**

1. Where the action is in personam and the defendant is in the Philippines, service of summons may be made through personal service, that is, summons shall be served by handing to the defendant in person a copy thereof, or if he refuses to receive and sign for it, by tendering it to him. If the defendant cannot be personally served with summons within a reasonable time, it is then that substituted service may be made. Personal service of summons should and always be the first

option, and it is only when the said summons cannot be served within a reasonable time can the process server resort to substituted service.

In this case, the sheriff's return failed to justify a resort to substituted service of summons. The Return of Summons does not specifically show or indicate in detail the actual exertion of efforts or any positive step taken by the officer or process server in attempting to serve the summons personally to the defendant. The return merely states the alleged whereabouts of the defendant without indicating that such information was verified from a person who had knowledge thereof. Indeed, the sheriff's return shows a mere perfunctory attempt to cause personal service of the summons on Chandumal. There was no indication if he even asked Chandumal's mother as to her specific whereabouts except that she was "out of the house", where she can be reached or whether he even tried to await her return. The "efforts" exerted by the sheriff clearly do not suffice to justify substituted service and his failure to comply with the requisites renders such service ineffective.

2. Despite that there was no valid substituted service of summons, the Court, nevertheless, finds that Chandumal voluntarily submitted to the jurisdiction of the trial court. When Chandumal filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer, she effectively submitted her person to the jurisdiction of the trial court as the filing of a pleading where one seeks an affirmative relief is equivalent to service of summons and vests the trial court with jurisdiction over the defendant's person.

# MA. TERESA CHAVES BIACO, petitioner, -versus- PHILIPPINE COUNTRYSIDE RURAL BANK, respondent. Biaco vs. Philippine Countryside Rural Bank, 515 SCRA 106, G.R. No. 161417 February 8, 2007

G.R. No. 161417, SECOND DIVISION, February 8, 2007, TINGA, J.

In an action in personam, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case, while in a proceeding in rem or quasi in rem, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court provided that the court acquires jurisdiction over the res.

In this case, the judicial foreclosure proceeding instituted by respondent PCRB undoubtedly vested the trial court with jurisdiction over the res. A judicial foreclosure proceeding is an action quasi in rem. As such, jurisdiction over the person of petitioner is not required, it being sufficient that the trial court is vested with jurisdiction over the subject matter. However, where the trial court only acquired jurisdiction over the res, its jurisdiction is limited to a rendition of judgment on the res—it cannot extend its jurisdiction beyond the res and issue a judgment enforcing a party's personal liability. In doing so without first having acquired jurisdiction over the person of petitioner, as it did, the trial court violated her constitutional right to due process, warranting the annulment of the judgment rendered in the case.

#### Facts:

Ernesto Biaco is the husband of petitioner Ma. Teresa Chaves Biaco. While employed in the Philippine Countryside Rural Bank (PCRB) as branch manager, Ernesto obtained several loans from the respondent bank.

As security for the payment of the said loans, Ernesto executed a real estate mortgage in favor of the bank covering the parcel of land described in Original Certificate of Title (OCT) No. P-14423.

The real estate mortgages bore the signatures of the spouses Biaco. When Ernesto failed to settle the above-mentioned loans on its due date, respondent bank through counsel sent him a written demand on September 28, 1999.

On February 22, 2000, respondent bank filed a complaint for foreclosure of mortgage against the spouses Ernesto and Teresa Biaco before the RTC of Misamis Oriental. Summons was served to the spouses Biaco through Ernesto at his office (Export and Industry Bank) located at Jofelmor Bldg., Mortola Street, Cagayan de Oro City.

Ernesto received the summons but for unknown reasons, he failed to file an answer. Hence, the spouses Biaco were declared in default upon motion of the respondent bank. The respondent bank was allowed to present its evidence ex parte before the Branch Clerk of Court who was then appointed by the court as Commissioner.

Arturo Toring, the branch manager of the respondent bank, testified that the spouses Biaco had been obtaining loans from the bank since 1996 to 1998. The loans for the years 1996-1997 had already been paid by the spouses Biaco, leaving behind a balance of P1,260,304.33 representing the 1998 loans. The amount being claimed is inclusive of interests, penalties and service charges as agreed upon by the parties. The appraisal value of the land subject of the mortgage is only P150,000.00 as reported by the Assessor's Office.

On July 12, 2000, the sheriff personally served the judgment to Ernesto Biaco at his office at Export and Industry Bank requiring the spouses Biaco to pay within a period of 90 days otherwise; the mortgaged lot will be sold at the public auction. The spouses Biaco did not appeal from the adverse decision of the trial court. On October 13, 2000, the respondent bank filed an ex parte motion for execution to direct the sheriff to sell the mortgaged lot at public auction. The respondent bank alleged that the order of the court requiring the spouses Biaco to pay within a period of 90 days had passed, thus making it necessary to sell the mortgaged lot at public auction, as previously mentioned in the order of the court. The motion for execution was granted by the trial court per Order dated October 20, 2000.

The amount of the property sold at public auction being insufficient to cover the full amount of the obligation, the respondent bank filed an "ex parte motion for judgment" praying for the issuance of a writ of execution against the other properties of the spouses Biaco for the full settlement of the remaining obligation. Granting the motion, the court ordered that a writ of execution be issued against the spouses Biaco to enforce and satisfy the judgment of the court for the balance.

Petitioner sought the annulment of the Regional Trial Court decision contending that extrinsic fraud prevented her from participating in the judicial foreclosure proceedings. One of her contentions is that the trial court failed to acquire jurisdiction because summons were served on her through her husband without any explanation as to why personal service could not be made.

On the validity of the service of summons, the appellate court ruled that judicial foreclosure proceedings are actions quasi in rem. As such, jurisdiction over the person of the defendant is not essential as long as the court acquires jurisdiction over the res. Her motion for reconsideration having been denied, petitioner filed the instant Petition for Review.

#### Issue:

Whether the trial court has jurisdiction in ordering the petitioner to pay the remaining balance of the loan. (No)

# **Ruling:**

In an action in personam, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. In a proceeding in rem or quasi in rem, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court provided that the court acquires jurisdiction over the res. Jurisdiction over the res is acquired either (1) by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or (2) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective.

In this case, the judicial foreclosure proceeding instituted by respondent PCRB undoubtedly vested the trial court with jurisdiction over the res. A judicial foreclosure proceeding is an action quasi in rem. As such, jurisdiction over the person of petitioner is not required, it being sufficient that the trial court is vested with jurisdiction over the subject matter.

There is a dimension to this case though that needs to be delved into. Petitioner avers that she was not personally served summons. Instead, summons was served to her through her husband at his office without any explanation as to why the particular surrogate service was resorted to.

Without ruling on petitioner's allegation that her husband and the sheriff connived to prevent summons from being served upon her personally, we can see that petitioner was denied due process and was not able to participate in the judicial foreclosure proceedings as a consequence. The violation of petitioner's constitutional right to due process arising from want of valid service of summons on her warrants the annulment of the judgment of the trial court.

There is more. The trial court granted respondent PCRB's ex parte motion for deficiency judgment and ordered the issuance of a writ of execution against the spouses Biaco to satisfy the remaining balance of the award. In short, the trial court went beyond its jurisdiction over the res and rendered a personal judgment against the spouses Biaco. This cannot be countenanced.

Significantly, the Court went on to rule, citing De Midgely v. Ferandos, et al. and Perkins v. Dizon, et al. that in a proceeding in rem or quasi in rem, the only relief that may be granted by the court against a defendant over whose person it has not acquired jurisdiction either by valid service of summons or by voluntary submission to its jurisdiction, is limited to the res.

Similarly, in this case, while the trial court acquired jurisdiction over the res, its jurisdiction is limited to a rendition of judgment on the res. It cannot extend its jurisdiction beyond the res and issue a judgment enforcing petitioner's personal liability. In doing so without first having acquired jurisdiction over the person of petitioner, as it did, the trial court violated her constitutional right to due process, warranting the annulment of the judgment rendered in the case.

SPS. ERNESTO V. YU and ELSIE ONG YU, petitioners, -versus- BALTAZAR N. PACLEB, (Substituted by ANTONIETA S. PACLEB, LORNA PACLEB-GUERRERO, FLORENCIO C. PACLEB, and MYRLA C. PACLEB), respondents.

G.R. No. 172172, FIRST DIVISION, February 24, 2009, PUNO, C.J.

A proceeding in personam is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person, although it may involve his right to, or the exercise of ownership of, specific property, or seek to compel him to control or dispose of it in accordance with the mandate of the court. While 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.

An action for specific performance praying for the execution of a deed of sale in connection with an undertaking in a contract, such as the contract to sell, in this instance, is an action in personam. Being a judgment in personam, Civil Case No. 741-93 is binding only upon the parties properly impleaded therein and duly heard or given an opportunity to be heard. Therefore, it cannot bind respondent since he was not a party therein. Neither can respondent be considered as privy thereto since his signature and that of his late first wife, Angelita Chan, were forged in the deed of sale.

# Facts:

Respondent Baltazar N. Pacleb and his late first wife, Angelita Chan, are the registered owners of an 18,000-square meter parcel of land in Barrio Langcaan, Dasmariñas, Cavite, covered by Transfer Certificate of Title (TCT) No. T-1183754 (Langcaan Property).

In 1992, the Langcaan Property became the subject of three (3) documents purporting to transfer its ownership. On February 27, 1992, a Deed of Absolute Sale5 was entered into between Spouses Baltazar N. Pacleb and Angelita Chan and Rebecca Del Rosario. On May 7, 1992, a Deed of Absolute Sale6 was entered into between Rebecca Del Rosario and Ruperto L. Javier (Javier). On November 10, 1992, a Contract to Sell7 was entered into between Javier and petitioner Spouses Ernesto V. Yu and Elsie Ong Yu. In their contract, petitioner Spouses Yu agreed to pay Javier a total consideration of P900,000. Six hundred thousand pesos (P600,000) (consisting of P200,000 as previous payment and P400,000 to be paid upon execution of the contract) was acknowledged as received by Javier and P300,000 remained as balance. Javier undertook to deliver possession of the Langcaan Property and to sign a deed of absolute sale within thirty (30) days from execution of the contract. All the aforementioned sales were not registered.

On April 23, 1993, petitioner Spouses Yu filed with the Regional Trial Court of Imus, Cavite, a Complaint8 for specific performance and damages against Javier, docketed as Civil Case No. 741-93, to compel the latter to deliver to them ownership and possession, as well as title to the Langcaan Property. Javier did not appear in the proceedings and was declared in default. On September 8, 1994, the trial court rendered a Decision in favor of the petitioner.

On October 12, 1995, respondent filed a Complaint for annulment of deed of sale and other documents arising from it, docketed as Civil Case No. 1199-95. He alleged that the deed of sale purportedly executed between him and his late first wife and Rebecca Del Rosario was spurious as their signatures thereon were forgeries.

On May 29, 1996, respondent filed the instant case for removal of cloud from title with damages to cancel Entry No. 2676-75 and Entry No. 2677-75, the annotated Decision in Civil Case No. 741-93 and its Certificate of Finality, from the title of the Langcaan Property.20 Respondent alleged that the deed of sale between him and his late first wife and Rebecca Del Rosario, who is not known to them, could not have been possibly executed on February 27, 1992, the date appearing thereon. He

alleged that on said date, he was residing in the United States21 and his late first wife, Angelita Chan, died twenty (20) years ago.

On December 27, 2002, the trial court dismissed respondent's case and held that petitioner spouses are purchasers in good faith. On appeal, the CA reversed and set aside the decision of the trial court. It ruled that petitioner spouses are not purchasers in good faith and that the Decision in Civil Case No. 741-93 did not transfer ownership of the Langcaan Property to them. Accordingly, the appellate court ordered the cancellation of the annotation of the Decision in Civil Case No. 741-93 on the title of the Langcaan Property. The Court of Appeals denied reconsideration of said decision. Hence, this Petition.

Petitioner spouses argue that the decision of the Regional Trial Court in Civil Case No. 741-93 as to the rightful owner of the Langcaan Property is conclusive and binding upon respondent even if the latter was not a party thereto since it involved the question of possession and ownership of real property, and is thus not merely an action in personam but an action quasi in rem.

#### Issue:

Whether ownership over the Langcaan Property was properly vested in petitioner spouses by virtue of the Decision in Civil Case No. 741-93. (No)

# **Ruling:**

Civil Case No. 741-93 is an action for specific performance and damages filed by petitioner spouses against Javier to compel performance of the latter's undertakings under their Contract to Sell. As correctly held by the Court of Appeals, its object is to compel Javier to accept the full payment of the purchase price, and to execute a deed of absolute sale over the Langcaan Property in their favor. The obligations of Javier under the contract to sell attach to him alone, and do not burden the Langcaan Property.

We have held in an unbroken string of cases that an action for specific performance is an action in personam.37 In Cabutihan v. Landcenter Construction and Development Corporation,38 we ruled that an action for specific performance praying for the execution of a deed of sale in connection with an undertaking in a contract, such as the contract to sell, in this instance, is an action in personam.

Being a judgment in personam, Civil Case No. 741-93 is binding only upon the parties properly impleaded therein and duly heard or given an opportunity to be heard. Therefore, it cannot bind respondent since he was not a party therein. Neither can respondent be considered as privy thereto since his signature and that of his late first wife, Angelita Chan, were forged in the deed of sale.

MANCHESTER DEVELOPMENT CORPORATION, ET AL., petitioners, -versus- COURT OF APPEALS, CITYLAND DEVELOPMENT CORPORATION, STEPHEN ROXAS, ANDREW LUISON, GRACE LUISON and JOSE DE MAISIP, respondents.

G.R. No. L-75919, EN BANC, May 7, 1987, GANCAYCO, J.

The Court acquires jurisdiction over any case only upon the payment of the prescribed docket fee. An amendment of the complaint or similar pleading will not thereby vest jurisdiction in the Court, much less the payment of the docket fee based on the amounts sought in the amended pleading.

Manchester's defense that this case is primarily an action for specific performance is not merited. The Supreme Court ruled that based on the allegations and the prayer of the complaint, this case is an action for damages and for specific performance. Hence, it is capable of pecuniary estimation. Further, the amount for damages in the original complaint was already provided in the body of the complaint. Its omission in the PRAYER clearly constitutes an attempt to evade the payment of the proper filing fees. For failure of Manchester to pay the required docket fees as a requisite for the court to acquire jurisdiction, the case has been dismissed.

# **Facts:**

A complaint for specific performance was filed by Manchester Development Corporation against City Land Development Corporation to compel the latter to execute a deed of sale in favor Manchester. Manchester also alleged that City Land forfeited the former's tender of payment for a certain transaction thereby causing damages to Manchester amounting to P78,750,000.00. This amount was alleged in the BODY of their Complaint but it was not reiterated in the PRAYER of same complaint. Manchester paid a docket fee of P410.00 only. Said docket fee is premised on the allegation of Manchester that their action is primarily for specific performance, hence it is incapable of pecuniary estimation. The court ruled that there is an under assessment of docket fees hence it ordered Manchester to amend its complaint. Manchester complied but what it did was to lower the amount of claim for damages to P10M. Said amount was however again not stated in the PRAYER.

# Issue:

Whether the amended complaint should be admitted. (No)

# **Ruling:**

The docket fee, its computation, should be based on the original complaint. A case is deemed filed only upon payment of the appropriate docket fee regardless of the actual date of filing in court. Here, since the proper docket fee was not paid for the original complaint, it's as if there is no complaint to speak of. As a consequence, there is no original complaint duly filed which can be amended. So, any subsequent proceeding taken in consideration of the amended complaint is void.

Manchester's defense that this case is primarily an action for specific performance is not merited. The Supreme Court ruled that based on the allegations and the prayer of the complaint, this case is an action for damages and for specific performance. Hence, it is capable of pecuniary estimation.

Further, the amount for damages in the original complaint was already provided in the body of the complaint. Its omission in the PRAYER clearly constitutes an attempt to evade the payment of the proper filing fees. To stop the happenstance of similar irregularities in the future, the Supreme Court ruled that from this case on, all complaints, petitions, answers and other similar pleadings should specify the amount of damages being prayed for not only in the body of the pleading but also in the prayer, and said damages shall be considered in the assessment of the filing fees in any case. Any pleading that fails to comply with this requirement shall not bib accepted nor admitted, or shall otherwise be expunged from the record.

# SUN INSURANCE OFFICE, LTD., (SIOL), E.B. PHILIPPS AND D.J. WARBY, petitioners, vs. HON. MAXIMIANO C. ASUNCION, Presiding Judge, Branch 104, Regional Trial Court, Quezon City and MANUEL CHUA UY PO TIONG, respondents.

G.R. Nos. 79937-38, EN BANC, February 13, 1989, GANCAYCO, J.

It is not only the filing of the complaint, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Also, Permissive counter-claims, third-party claims and the like shall not be considered filed until and unless the prescribed filing fee is paid. Further, When the judgment of the courts awards a claim not specified in the pleading, the additional filing fee shall constitute a lien on the judgment.

Even if there is deficiency in the payment of docket fees, a more liberal interpretation of the rules is called is applied in the present case considering that, unlike Manchester, private respondent demonstrated his willingness to abide by the rules by paying the additional docket fees as required.

## Facts:

Petitioner Sun Insurance Office filed a complaint for the consignation of a premium refund on a fire insurance policy with a prayer for the judicial declaration of its nullity against private respondent Manuel Uy Po Tiong. Private respondent was declared in default for failure to file the required answer within the reglementary period. On the other hand, private respondent filed a complaint for the refund of premiums and the issuance of a writ of preliminary attachment against petitioner.:

Although the prayer in the complaint did not quantify the amount of damages sought said amount may be inferred from the body of the complaint to be about Fifty Million Pesos. Only the amount of P210.00 was paid by private respondent as docket fee which prompted petitioners' counsel to raise his objection, which was disregarded by respondent Judge. The Court thereafter returned the said records to the trial court with the directive that they be re-raffled to the other judges to the exclusion of Judge Castro. The Court issued a Resolution directing the judges to reassess the docket fees and requires all clerks of court to issue certificates of re-assessment of docket fees. All litigants were likewise required to specify in their pleadings the amount sought to be recovered. Judge Maximiano Asuncion, to whom Civil Case was thereafter assigned, issued an Order requiring the parties in the case to comment on the Clerk of Court's letter-report.

Petitioners then filed a petition for certiorari with the Court of Appeals questioning the said order of Judge Asuncion. Court of Appeals rendered a decision ruling, among others, Denying due course to the petition insofar as it seeks annulment of the order

# **Issue:**

Whether or not a court acquires jurisdiction over a case when the correct and proper docket fee has not been paid. (No)

# **Ruling:**

The present case is among the several cases of under-assessment of docket fee which were investigated by this Court together with Manchester. The facts and circumstances of this case are similar to Manchester. In the body of the original complaint, the total amount of damages sought amounted to about P50 Million. In the prayer, the amount of damages asked for was not stated. The

action was for the refund of the premium and the issuance of the writ of preliminary attachment with damages. The amount of only P210.00 was paid for the docket fee. On January 23, 1986, private respondent filed an amended complaint wherein in the prayer it is asked that he be awarded no less than P10,000,000.00 as actual and exemplary damages but in the body of the complaint the amount of his pecuniary claim is approximately P44,601,623.70. Said amended complaint was admitted and the private respondent was reassessed the additional docket fee of P39,786.00 based on his prayer of not less than P10,000,000.00 in damages, which he paid.

On April 24, 1986, private respondent filed a supplemental complaint alleging an additional claim of P20,000,000.00 in damages so that his total claim is approximately P64,601,620.70. On October 16, 1986, private respondent paid an additional docket fee of P80,396.00. After the promulgation of the decision of the respondent court on August 31, 1987 wherein private respondent was ordered to be reassessed for additional docket fee, and during the pendency of this petition, and after the promulgation of Manchester, on April 28, 1988, private respondent paid an additional docket fee of P62,132.92. Although private respondent appears to have paid a total amount of P182,824.90 for the docket fee considering the total amount of his claim in the amended and supplemental complaint amounting to about P64,601,620.70, petitioner insists that private respondent must pay a docket fee of P257,810.49.

The principle in Manchester could very well be applied in the present case. The pattern and the intent to defraud the government of the docket fee due it is obvious not only in the filing of the original complaint but also in the filing of the second amended complaint.

However, in Manchester, petitioner did not pay any additional docket fee until the case was decided by this Court on May 7, 1987. Thus, in Manchester, due to the fraud committed on the government, this Court held that the court a quo did not acquire jurisdiction over the case and that the amended complaint could not have been admitted inasmuch as the original complaint was null and void.

In the present case, a more liberal interpretation of the rules is called for considering that, unlike Manchester, private respondent demonstrated his willingness to abide by the rules by paying the additional docket fees as required. The promulgation of the decision in Manchester must have had that sobering influence on private respondent who thus paid the additional docket fee as ordered by the respondent court. It triggered his change of stance by manifesting his willingness to pay such additional docket fee as may be ordered.

Nevertheless, petitioners contend that the docket fee that was paid is still insufficient considering the total amount of the claim. This is a matter which the clerk of court of the lower court and/or his duly authorized docket clerk or clerk in-charge should determine and, thereafter, if any amount is found due, he must require the private respondent to pay the same. Thus, the Court rules as follows:

- 1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject-matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.
- 2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The

court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.

3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.

# EDEN BALLATAN and SPS. BETTY MARTINEZ and CHONG CHY LING, petitioners, -versus-COURT OF APPEALS, GONZALO GO, WINSTON GO, LI CHING YAO, ARANETA INSTITUTE OF AGRICULTURE and JOSE N. QUEDDING, respondents.

G.R. No. 125683, SECOND DIVISION, March 2, 1999, PUNO, J.

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. Where the fees prescribed for the real action have been paid but the fees of certain related damages are not, the court, although having jurisdiction over the real action, may not have acquired jurisdiction over the accompanying claim for damages. However, if there are unspecified claims, the determination of which may arise after the filing of the complaint or similar pleading, the additional filing fee thereon shall constitute a lien on the judgment award. The same rule also applies to third-party claims and other similar pleadings.

# Facts:

On April 1, 1986, petitioner Ballatan instituted against respondents Go Civil Case No. 772-MN for recovery of possession before the Regional Trial Court, Malabon, Branch 169. The Go's filed their "Answer with Third-Party Complaint" impleading as third-party defendants respondents Li Ching Yao, the AIA and Engineer Quedding.

The third-party complaint filed by respondents Go was incorporated in their answer to the complaint. The third-party complaint sought the same remedy as the principal complaint but added a prayer for attorney's fees and costs without specifying their amounts. The Answer with Third-Party Complaint was admitted by the trial court without the requisite payment of filing fees, particularly on the Go's prayer for damages.19 The trial court did not award the Go's any damages. It dismissed the third-party complaint. The Court of Appeals, however, granted the third-party complaint in part by ordering third-party defendant Jose N. Quedding to pay the Go's the sum of P5,000.00 as attorney's fees.

Petitioners question the admission by respondent Court of Appeals of the third-party complaint by respondents Go against the AIA, Jose Quedding and Li Ching Yao. Petitioners claim that the third-party complaint should not have been considered by the Court of Appeals for lack of jurisdiction due to third-party plaintiffs' failure to pay the docket and filing fees before the trial court.

# Issue:

Whether the CA erred in giving consideration to the third-party complaint for plaintiff's failure to pay the docket and filing fees before the trial court. (No)

# **Ruling:**

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. In real actions, the docket and filing fees are based on the value of the property and the amount of damages claimed, if any.12 If the complaint is filed but the fees are not paid at the time of filing, the court acquires jurisdiction upon full payment of the fees within a reasonable time as the court may grant, barring prescription.13 Where the fees prescribed for the real action have been paid but the fees of certain related damages are not, the court, although having jurisdiction over the real action, may not have acquired jurisdiction over the accompanying claim for damages.14 Accordingly, the court may expunge those claims for damages, or allow, on motion, a reasonable time for amendment of the complaint so as to allege the precise amount of damages and accept payment of the requisite legal fees. If there are unspecified claims, the determination of which may arise after the filing of the complaint or similar pleading, the additional filing fee thereon shall constitute a lien on the judgment award. The same rule also applies to third-party claims and other similar pleadings.

Contrary to petitioners' claim, the Court of Appeals did not err in awarding damages despite the Go's failure to specify the amount prayed for and pay the corresponding additional filing fees thereon. The claim for attorney's fees refers to damages arising after the filing of the complaint against the Go's. The additional filing fee on this claim is deemed to constitute a lien on the judgment award.

THE HEIRS OF THE LATE RUBEN REINOSO, SR., represented by Ruben Reinoso Jr., petitioners, -versus- COURT OF APPEALS, PONCIANO TAPALES, JOSE GUBALLA, and FILWRITERS GUARANTY ASSURANCE CORPORATION,\*\* respondent.

G.R. No. 116121, THIRD DIVISION, July 18, 2011, MENDOZA, J.

The rule is that payment in full of the docket fees within the prescribed period is mandatory; Where the party does not deliberately intend to defraud the court in payment of docket fees, and manifests its willingness to abide by the rules by paying additional docket fees when required by the court, the liberal doctrine enunciated in Sun Insurance Office, Ltd. v. Asuncion, and not the strict regulations set in Manchester v. Court of Appeals will apply.

In this case, there is a need to suspend the strict application of the rules because while the case was at the level of RTC, the matter of non-payment of docket fees was never an issue. It was only the CA which motu propio dismissed the case for said reason. The Court also takes into account the fact that the case was filed before the Manchester ruling came out. Even if said ruling could be applied retroactively, liberality should be accorded to the petitioners in view of the recency then of the ruling.

#### Facts:

The complaint for damages arose from the collision of a passenger *jeepney* and a truck at around 7:00 o'clock in the evening of June 14, 1979 along E. Rodriguez Avenue, Quezon City. As a result, a passenger of the *jeepney*, Ruben Reinoso, Sr. (*Reinoso*), was killed. The passenger *jeepney* was owned by Ponciano Tapales (*Tapales*) and driven by Alejandro Santos (*Santos*), while the truck was owned by Jose Guballa (*Guballa*) and driven by Mariano Geronimo (*Geronimo*).

On November 7, 1979, the heirs of Reinoso *(petitioners)* filed a complaint for damages against Tapales and Guballa.In turn, Guballa filed a third party complaint againstFilwriters Guaranty Assurance Corporation (FGAC) underPolicy Number OV-09527.

On March 22, 1988, the RTC rendered a decision infavor of the petitioners and against Guballa. On appeal, the CA, in its Decision dated May 20, 1994, set aside and reversed the RTC decision and dismissed the complaint on the ground of non-payment of docket fees pursuant to the doctrine laid down in *Manchester v. CA*.4 In addition, the CA ruled that since prescription had set in, petitioners could no longer pay the required docket fees. Petitioners filed a motion for reconsideration of the CA decision but it was denied in a resolution dated June 30, 1994. Hence, this appeal

# **Issue:**

Whether the case should be dismissed for failure of the plaintiff-petitioner to pay the required filing and docket fee.

# **Ruling:**

The rule is that payment in full of the docket fees within the prescribed period is mandatory. In Manchester v. Court of Appeals, it was held that a court acquires jurisdiction over any case only upon the payment of the prescribed docket fee. The strict application of this rule was, however, relaxed two (2) years after in the case of Sun Insurance Office, Ltd. v. Asuncion, wherein the Court decreed that where the initiatory pleading is not accompanied by the payment of the docket fee, the court may allow payment of the fee within a reasonable period of time, but in no case beyond the applicable prescriptive or reglementary period. This ruling was made on the premise that the plaintiff had demonstrated his willingness to abide by the rules by paying the additional docket fees required. Thus, in the more recent case of United Overseas Bank v. Ros, the Court explained that where the party does not deliberately intend to defraud the court in payment of docket fees, and manifests its willingness to abide by the rules by paying additional docket fees when required by the court, the liberal doctrine enunciated in *Sun InsuranceOffice, Ltd.*, and not the strict regulations set in *Manchester*, will apply. It has been on record that the Court, in several instances, allowed the relaxation of the rule on non-payment of docket fees in order to afford the parties the opportunity to fully ventilate their cases on the merits.

In this case, it cannot be denied that the case was litigated before the RTC and said trial court had already rendered a decision. While it was at that level, the matter of non-payment of docket fees was never an issue. It was only the CA which motu propio dismissed the case for said reason. Considering the foregoing, there is a need to suspend the strict application of the rules so that the petitioners would be able to fully and finally prosecute their claim on the merits at the appellate level rather than fail to secure justice on a technicality, for, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice. However, the petitioners, however, are liable for the difference between the actual fees paid and the correct payable docket fees to be assessed by the clerk of court which shall constitute a lien on the judgment. The Court also takes into account the fact that the case was filed before the Manchester ruling came out. Even if said ruling could be applied retroactively, liberality should be accorded to the petitioners in view of the recency then of the ruling.

# RE: IN THE MATTER OF CLARIFICATION OF EXEMPTION FROM PAYMENT OF ALL COURT AND SHERIFF'S FEES OF COOPERATIVES DULY REGISTERED IN ACCORDANCE WITH REPUBLIC ACT NO. 9520 OTHERWISE KNOWN AS THE PHILIPPINE COOPERATIVE CODE OF 2008, PERPETUAL HELP COMMUNITY COOPERATIVE (PHCCI), petitioner.

A.m. No. 12-2-03-0, EN BANC, March 13, 2012, PEREZ, J.

The power to promulgate the Rules of Court is no longer shared by the Court with Congress, more so, with the Executive. Hence, the exemption of cooperatives from payment of court and sheriff's fees no longer stands. Cooperatives can no longer invoke Republic Act No. 6938, as amended by Republic Act No. 9520, as basis for exemption from the payment of legal fees.

# Facts:

In a Petition dated 24 October 2011, Perpetual Help Community Cooperative (PHCCI), through counsel, requests for the issuance of a court order to clarify and implement the exemption of cooperatives from the payment of court and sheriff's fees pursuant to Republic Act No. 6938, as amended by Republic Act No. 9520, otherwise known as the *Philippine Cooperative Act of 2008*.

PHCCI contends that as a cooperative it enjoys the exemption provided for under Section 6, Article 61 of Republic Act No. 9520, which states:

(6) Cooperatives shall be exempt from the payment of all court and sheriff's fees payable to the Philippine Government for and in connection with all actions brought under this Code, or where such actions is brought by the Authority before the court, to enforce the payment of obligations contracted in favor of the cooperative.

It avers that despite the exemptions granted by the aforesaid laws and issuances, PHCCI had been continuously assessed and required to pay legal and other fees whenever it files cases in court.

# **Issue:**

Whether cooperatives are exempt from the payment of court and sheriff's fees. (No)

# **Ruling:**

The term "all court fees" under Section 6, Article 61 of Republic Act No. 9520 refers to the totality of "legal fees" imposed under Rule 141 of the Rules of Court as an incident of instituting an action in court. These fees include filing or docket fees, appeal fees, fees for issuance of provisional remedies, mediation fees, sheriff's fees, stenographer's fees and commissioner's fees.

With regard to the term "sheriff's fees," this Court, in an extended minute Resolution dated 1 September 2009, held that the exemptions granted to cooperatives under Section 2, paragraph 6 of Republic Act No. 6938; Section 6, Article 61 of Republic Act No. 9520; and OCA Circular No. 44-2007 clearly do not cover the amount required "to defray the actual travel expenses of the sheriff, process server or other court-authorized person in the service of summons, subpoena and other court processes issued relative to the trial of the case, which are neither considered as court and sheriff's fees nor are amounts payable to the Philippine Government. In fine, the 1 September 2009 Resolution exempted the cooperatives from court fees but not from sheriff's fees/ expenses.

On 11 February 2010, however, the Supreme Court *En Banc* issued a Resolution in A.M. No. 08-2-01-0,8 whichdenied the petition of the Government Service InsuranceSystem (GSIS) for recognition of its exemption frompayment of legal fees imposed under Section 22 of Rule 141of the Rules of Court. In the *GSIS* case, the Court citing *Echegaray v. Secretary of Justice*,9 stressed that the 1987Constitution molded an even stronger and moreindependent judiciary; took away the power of Congress torepeal, alter, or supplement rules concerning pleading,practice and procedure; and held that the power topromulgate these Rules is no longer shared by the Courtwith Congress, more so, with the Executive.

In a decision dated 26 February 2010 in Baguio Market Vendors Multi-Purpose Cooperative (BAMARVEMPCO) v. Cabato-Cortes,18 this Court reiterated its ruling in the GSIS case when it denied the petition of the cooperative to be exempted from the payment of legal fees under Section 7(c) of Rule 141 of the Rules of Court relative to fees in petitions for extra-judicial foreclosure.

On 10 March 2010, relying again on the GSIS ruling, the Court En Banc issued a resolution clarifying that the National Power Corporation is not exempt from the payment of legal fees.

With the foregoing categorical pronouncements of the Supreme Court, it is evident that the exemption of cooperatives from payment of court and sheriff's fees no longer stands. Cooperatives can no longer invoke Republic Act No. 6938, as amended by Republic Act No. 9520, as basis for exemption from the payment of legal fees.

RICARDO RIZAL, POTENCIANA RIZAL, SATURNINA RIZAL, ELENA RIZAL, and BENJAMIN RIZAL, petitioners, -versus- LEONCIA NAREDO, ANASTACIO LIRIO, EDILBERTO CANTAVIEJA, GLORIA CANTAVIEJA, CELSO CANTAVIEJA, and the HEIRS of MELANIE CANTAVIEJA, respondents.

G.R. No. 151898, SECOND DIVISION, March 14, 2012, REYES, J.

In Manchester Development Corporation v. Court of Appeals, the court held "to put a stop to this irregularity, henceforth all complaints, petitions, answers and other similar pleadings should specify the amount of damages being prayed for not only in the body of the pleading but also in the prayer, and said damages shall be considered in the assessment of the filing fees in any case. Any pleading that fails to comply with this requirement shall not be accepted nor admitted, or shall otherwise be expunged from the record."

# **Facts:**

The petitioners commenced a Civil Case against the respondents before the Court of First Instance (CFI) of Laguna involving the accretion of two (2) hectares of land. In a decision rendered on May 22, 1947, the CFI ruled in favor of the petitioners. The CFI awarded the ownership of the two-hectare accretion to the petitioners and ordered the defendants therein to vacate the said land and to pay P500.00 a year from 1943 as reasonable rent for their occupancy thereof. Both the CA and the Supreme Court upheld the decision.

To satisfy the money judgment, the sheriff levied upon the two lots of the respondents. Later on, the respondents question the validity of the execution sale of the said lots. They claimed that these properties were exempt from execution. However, the CFI declared valid the execution sale.

The petitioners then filed a Civil Case for partition, account, and recovery of possession of the lot. The parties entered into a compromise agreement which was approved by CFI. Ten years after, the respondent instituted a Civil Case assailing the compromise agreement on the ground of forgery. However, the Court dismissed the case without prejudice to the plaintiffs failure to prosecute.

Thereafter, the respondents instituted another case for enforcement of judgment, partition, and segregation of shares with damages over the lot. The court dismissed the complaint on the ground of prescription. Then, the petitioners filed a complaint before the RTC for immediate segregation, partition, and recovery of shares and ownership over the lot. However, the court dismissed the case on the ground of res judicata.

Aggrieved, the petitioners appealed to the CA, docketed as CA-G.R. CV No. 26109. The CA dismissed the appeal. The CA found that the appellants' brief neither contained the required page references to the records, as provided in Section 13 of Rule 44 of the Rules of Court; nor was it specified, both in the prayer and in the body of the complaint, the specific amounts of the petitioners' claim for actual, moral, exemplary and compensatory damages, as enunciated in Manchester Development Corporation v. Court of Appeals.

## Issue:

Whether the CA erred in applying the ruling in the Manchester case regarding docket fees. (No)

# **Ruling:**

The petitioners also failed to pay the correct docket fees; in which case, jurisdiction did not vest in the trial court. In Siapno v. Manalo, this Court has made it abundantly clear that any complaint, petition, answer and other similar pleading, which does not specify both in its body and prayer the amount of damages being claimed, should not be accepted or admitted, or should be expunged from the records, as may be the case.

In *Siapno*, the complaint alleged in its body the aggregate sum of P4,500,000 in moral and exemplary damages and attorney's fees, but the prayer portion did not mention these claims, nor did it even pray for the payment of damages. This Court held that such a complaint should be dismissed outright; or if already admitted, should be expunged from the records. The Court explained that the rule—requiring the amount of damages claimed to be specified not only in the body of the pleading but also in its prayer portion—was intended to put an end to the then prevailing practice of lawyers where the damages prayed for were recited only in the body of the complaint, but not in the prayer, in order to evade payment of the correct filing fees. As held by the Court in *Manchester*:

"To put a stop to this irregularity, henceforth all complaints, petitions, answers and other similar pleadings should specify the amount of damages being prayed for not only in the body of the pleading but also in the prayer, and said damages shall be considered in the assessment of the filing fees in any case. Any pleading that fails to comply with this requirement shall not be accepted nor admitted, or shall otherwise be expunged from the record."

With the exception of pauper litigants, without the payment of the correct docket or filing fees within the reglementary period, jurisdiction over the subject-matter or nature of the action will not vest in the trial court. In fact, a pauper litigant may still have to pay the docket fees later, by way of a lien on the monetary or property judgment that may accrue to him.

MANUEL C. UBAS, SR. petitioner, -versus- WILSON CHAN, respondent. G.R. No. 215910, FIRST DIVISION, February 6, 2017, PERLAS-BERNABE, J.

Cause of action is defined as the act or omission by which a party violates a right of another. It is well-settled that the existence of a cause of action is determined by the allegations in the complaint. In this case, petitioner's cause of action is anchored on his claim that respondent personally entered into a contract with him for the delivery of construction materials amounting to P1,500,000.00, which was, however, left unpaid. He also avers that respondent is guilty of fraud in the performance of said obligation because the subject checks issued to him by respondent were dishonored on the ground of stop payment. As proof, petitioner offered in evidence, among others, the demand letter he sent to respondent detailing the serial numbers of the checks that were issued by the latter, including the dates and amounts thereof. He also offered the dishonored checks which were in his possession.

# **Facts:**

This case stemmed from a Complaint for Sum of Money with Application for Writ of Attachment3 (Complaint) filed by petitioner against respondent Wilson Chan (respondent) before the Regional Trial Court of Catarman, Northern Samar, Branch 19 (RTC), docketed as Civil Case No. C-1071. In his Complaint, petitioner alleged that respondent, "doing business under the name and style of UNIMASTER," was indebted to him in the amount of P1,500,000.00, representing the price of boulders, sand, gravel, and other construction materials allegedly purchased by respondent from him for the construction of the Macagtas Dam in *Barangay* Macagtas, Catarman, Northern Samar (Macagtas Dam project). He claimed that the said obligation has long become due and demandable and yet, respondent unjustly refused to pay the same despite repeated demands.4 Further, he averred that respondent had issued three (3) bank checks, payable to "CASH" in the amount of P500,000.00 each, on January 31, 1998, March 13, 1998, and April 3, 1998, respectively (subject checks),5 but when petitioner presented the subject checks for encashment on June 29, 1998, the same were dishonored due to a stop payment order. As such, respondent was guilty of fraud in incurring the obligation.

Respondent filed an Answer with Motion to Dismiss,7 seeking the dismissal of the case on the following grounds: (a) the complaint states no cause of action, considering that the checks do not belong to him but to Unimasters Conglomeration, Inc. (Unimasters); (b) there is no contract that ever existed between him and petitioner; and (c) if petitioner even had a right of action at all, the complaint should not have been filed against him but against Unimasters, a duly registered construction company which has a separate juridical personality from him.

The RTC ruled that petitioner had a cause of action against respondent. However, on appeal, the CA the CA reversed and set aside the RTC's ruling, dismissing petitioner's complaint on the ground of lack of cause of action.

### Issue:

Whether the CA erred in dismissing petitioner's complaint for lack of cause of action.

# **Ruling:**

Cause of action is defined as the act or omission by which a party violates a right of another. It is well-settled that the existence of a cause of action is determined by the allegations in the complaint.

In this case, petitioner's cause of action is anchored on his claim that respondent personally entered into a contract with him for the delivery of construction materials amounting to P1,500,000.00, which was, however, left unpaid. He also avers that respondent is guilty of fraud in the performance of said obligation because the subject checks issued to him by respondent were dishonored on the ground of stop payment. As proof, petitioner offered in evidence, among others, the demand letter he sent to respondent detailing the serial numbers of the checks that were issued by the latter, including the dates and amounts thereof. He also offered the dishonored checks which were in his possession.

Respondent neither disputes the fact that he had indeed signed the subject checks nor denies the demand letter sent to him by petitioner. Nevertheless, he claims that the checks were not issued to petitioner but to the project engineer of Unimasters who, however, lost the same. He also disclaims any personal transaction with petitioner, stating that the subject checks were in fact, issued by Unimasters and not him. Besides, petitioner failed to present any documentary proof that he or his firm delivered construction materials for the Macagtas Dam project. Hence, the Court finds for petitioner.

GOODLAND COMPANY, INC., petitioner, -versus- ASIA UNITED BANK, CHRISTINE T. CHAN, FLORANTE DEL MUNDO, ENGRACIO M. ESCASINAS, JR., in his official capacity as Clerk of Court & Ex-Officio Sheriff in the Regional Trial Court of Makati City, NORBERTO B. MAGSAJO, in his official capacity as Sheriff IV of the Regional Trial Court of Makati City, and RONALD A. ORTILE, in his official capacity as the Register of Deeds for Makati City, respondents.

G.R. No. 195546, FIRST DIVISION, March 14, 2012, VILLARAMA, JR., J.

With respect to identity of cause of action, a cause of action is defined in Section 2, Rule 2 of the Rules of Court as the act or omission by which a party violates the right of another. This Court has laid down the test in determining whether or not the causes of action in the first and second cases are identical, to wit: would the same evidence support and establish both the present and former cause of action? If so, the former recovery is a bar; if otherwise, it does not stand in the way of the former action.

In the first case, petitioner alleged the fraudulent and irregular execution and registration of the REM which violated its right as owner who did not consent thereto, while in the second case petitioner cited further violation of its right as owner when AUB foreclosed the property, consolidated its ownership and obtained a new TCT in its name. Considering that the aforesaid violations of petitioner's right as owner in the two cases both hinge on the binding effect of the REM, i.e., both cases will rise or fall on the issue of the validity of the REM, it follows that the same evidence will support and establish the first and second causes of action.

#### **Facts:**

Goodland Company mortgaged its two parcels of land situated in Sta. Rosa, Laguna through a Third Party Real Estate Mortgage (REM) with Smartnet to secure the loans extended by Asia United Bank (AUB). Petitioner also executed another REM for its Makati properties. Both the REMs were signed by its President Gilbert Guy. AUB registered the mortgages with the Registry of Deed at the concerned properties. Afterwards, Goodland repudiated the REMs. Hence, Goodland filed a complaint for annulment of mortgage before the RTC of Binan, Laguna on the ground that the REM was falsified and against the agreement that the blank mortgage would only serve as a comfort document and not to be registered by AUB.

Smartnet defaulted on its loan obligation which prompted AUB to extra-judicially foreclose the REM and then was issued a Certificate of Sale registered with the Registry of Deeds. Goodland filed another case seeking for the annulment of the foreclosure sale and enjoin consolidation of the title in favor of AUB. AUB moved to dismiss both the cases filed by Goodland on the ground of forum shopping and litis pendentia. It was granted. On appeal, the decision of the RTC were reversed. As to the Makati properties, the same case was filed by Goodland including the President of AUB and the notarizing lawyer whose signature was falsified. The same was contradicted by AUB but this time, the motion to dismiss on the ground of forum shopping, non-payment of proper docket fees, and litis pendentia were denied. AUB argued that there was no service of summons, thus the court never acquired jurisdiction over the persons of the respondents. On appeal, the CA held Goodland guilty of forum shopping for failing to inform AUB of the other case filed while the case on the REM is pending.

#### Issue:

Whether Goodland Company is guilty of forum shopping. (Yes)

# **Ruling:**

There is forum shopping when the following elements are present: "(a) identity of parties, or at least such parties as represent the same interests 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[,] such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration; said requisites [are] also constitutive of the requisites for auter action pendant or lis pendens."23 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 a favorable judgment, through means other than by appeal or certiorari. All the foregoing elements are present in this case.

There can be no dispute that the prayer for relief in the two cases was based on the same attendant facts in the execution of REMs over petitioner's properties in favor of AUB. While the extrajudicial foreclosure of mortgage, consolidation of ownership in AUB and issuance of title in the latter's name were set forth only in the second case, these were simply the expected consequences of the REM transaction in the first case. There is also identity of parties. The parties in the first and second case are substantially the same as they represent the same interest and offices. Goodland's argument that the certification and verification appended to its complaint satisfactorily conforms with the requirements of the required certificate of non-forum shopping. However, the Supreme Court disagrees. Goodland filed a certificate which is partly false and misleading.

With respect to identity of cause of action, a cause of action is defined in Section 2, Rule 2 of the Rules of Court as the act or omission by which a party violates the right of another. This Court has laid down the test in determining whether or not the causes of action in the first and second cases are identical, to wit: would the same evidence support and establish both the present and former cause of action? If so, the former recovery is a bar; if otherwise, it does not stand in the way of the former action.

In the first case, petitioner alleged the fraudulent and irregular execution and registration of the REM which violated its right as owner who did not consent thereto, while in the second case petitioner cited further violation of its right as owner when AUB foreclosed the property, consolidated its ownership and obtained a new TCT in its name. Considering that the aforesaid violations of petitioner's right as owner in the two cases both hinge on the binding effect of the REM, i.e., both cases will rise or fall on the issue of the validity of the REM, it follows that the same evidence will support and establish the first and second causes of action.

Based on the foregoing, Goodland Company is guilty of forum shopping.

# IMELDA RELUCIO, petitioner, -versus- ANGELINA MEJIA LOPEZ, respondent. G.R. No. 138497, FIRST DIVISION, January 16, 2002, PARDO, J.

A cause of action is an act or omission of one party the defendant in violation of the legal right of the other." The elements of a cause of action are: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.

In this case, the complaint is by an aggrieved wife against her husband. Nowhere in the allegations does it appear that relief is sought against petitioner. Respondent's causes of action were all against her husband. Hence, for lack of cause of action against the petitioner, the case was dismissed.

### **Facts:**

On September 15, 1993, herein private respondent Angelina Mejia Lopez (plaintiff below) filed a petition for "APPOINTMENT AS SOLE ADMINISTRATRIX OF CONJUGAL PARTNERSHIP OF PROPERTIES, FORFEITURE, ETC.," against defendant Alberto Lopez and petitioner Imelda Relucio, docketed as Spec. Proc. M-3630, in the Regional Trial Court of Makati, Branch 141. In the petition, private-respondent alleged that sometime in 1968, defendant Lopez, who is legally married to the private respondent, abandoned the latter and their four legitimate children; that he arrogated unto himself full and exclusive control and administration of the conjugal properties, spending and using the same for his sole gain and benefit to the total exclusion of the private respondent and their four children; that defendant Lopez, after abandoning his family, maintained an illicit relationship and cohabited with herein petitioner since 1976.

It was further alleged that defendant Lopez and petitioner Relucio, during their period of cohabitation since 1976, have amassed a fortune consisting mainly of stockholdings in Lopez owned or controlled corporations, residential, agricultural, commercial lots, houses, apartments and buildings, cars and other motor vehicles, bank accounts and jewelry. These properties, which

are in the names of defendant Lopez and petitioner Relucio singly or jointly or their dummies and proxies, have been acquired principally if not solely through the actual contribution of money, property and industry of defendant Lopez with minimal, if not nil, actual contribution from petitioner Relucio.

In order to avoid defendant Lopez obligations as a father and husband, he excluded the private respondent and their four children from sharing or benefiting from the conjugal properties and the income or fruits there from. As such, defendant Lopez either did not place them in his name or otherwise removed, transferred, stashed away or concealed them from the private-respondent. He placed substantial portions of these conjugal properties in the name of petitioner Relucio.

It was also averred that in the past twenty-five years since defendant Lopez abandoned the private-respondent, he has sold, disposed of, alienated, transferred, assigned, canceled, removed or stashed away properties, assets and income belonging to the conjugal partnership with the private-respondent and either spent the proceeds thereof for his sole benefit and that of petitioner Relucio and their two illegitimate children or permanently and fraudulently placed them beyond the reach of the private-respondent and their four children.

On December 8, 1993, a Motion, to Dismiss the Petition was filed by herein petitioner on the ground that private respondent has no cause of action against her. "An Order dated February 10, 1994 was issued by herein respondent Judge denying petitioner Relucio's Motion to Dismiss on the ground that she is impleaded as a necessary or indispensable party because some of the subject properties are registered in her name and defendant Lopez, or solely in her name.

Subsequently thereafter, petitioner Relucio filed a Motion for Reconsideration to the Order of the respondent Judge dated February 10, 1994 but the same was likewise denied in the Order dated May 31, 1994. On appeal, the CA dismissed the petition for certiorari assailing the trial court's denial of her motion to dismiss. Hence, this appeal.

#### Issue:

Whether respondent's petition for appointment as sole administratrix of the conjugal property, accounting, etc. against her husband Alberto J. Lopez established a cause of action against petitioner. (No)

# **Ruling:**

A cause of action is an act or omission of one party the defendant in violation of the legal right of the other." The elements of a cause of action are:

- 1. a right in favor of the plaintiff by whatever means and under whatever law it arises or is created:
- 2. an obligation on the part of the named defendant to respect or not to violate such right; and
- 3. an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages.

In order to sustain a motion to dismiss for lack of cause of action, the complaint must show that the claim for relief does not exist, rather than that a claim has been merely defectively stated or is ambiguous, indefinite or uncertain.

In this case, the complaint is by an aggrieved wife against her husband. Nowhere in the allegations does it appear that relief is sought against petitioner. Respondent's causes of action were all against her husband.

The first cause of action is for judicial appointment of respondent as administratrix of the conjugal partnership or absolute community property arising from her marriage to Alberto J. Lopez. Petitioner is a complete stranger to this cause of action. The second cause of action is for an accounting "by respondent husband." The accounting of conjugal partnership arises from or is an incident of marriage. Petitioner has nothing to do with the marriage between respondent Alberto J. Lopez. Hence, no cause of action can exist against petitioner on this ground. The third cause of action is essentially for forfeiture of Alberto J. Lopez' share in property co-owned by him and petitioner. It does not involve the issue of validity of the coownership between Alberto J. Lopez and petitioner. The issue is whether there is basis in law to forfeit Alberto J. Lopez' share, if any there be, in property co-owned by him with petitioner. The respondent also sought support. Support cannot be compelled from a stranger.

Based on the foregoing, for lack of cause of action established against the petitioner, the case was dismissed.

JUANA COMPLEX I HOMEOWNERS ASSOCIATION, INC., ANDRES C. BAUTISTA, BRIGIDO DIMACULANGAN, DOLORES P. PRADO, IMELDA DE LA CRUZ, EDITHA C. DY, FLORENCIA M. MERCADO, LEOVINO C. DATARIO, AIDA A. ABAYON, NAPOLEON M. DIMAANO, ROSITA G. ESTIGOY and NELSON A. LOYOLA, petitioners, -versus- FIL-ESTATE LAND, INC., FIL ESTATE ECOCENTRUM CORPORATION, LA PAZ HOUSING AND DEVELOPMENT CORPORATION, WARBIRD SECURITY AGENCY, ENRIQUE RIVILLA, MICHAEL E. JETHMAL and MICHAEL ALUNAN, respondents.

G.R. No. 152272, THIRD DIVISION, March 5, 2012, MENDOZA, J.

Section 2, Rule 2 of the Rules of Court defines a cause of action as an act or omission by which a party violates the right of another. A complaint states a cause of action when it contains three (3) essential elements of a cause of action, namely: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right.

In the present case, the Court finds the allegations in the complaint sufficient to establish a cause of action. First, JCHA, et al.'s averments in the complaint show a demandable right over La Paz Road. Second, there is an alleged violation of such right committed by Fil-Estate, et al. when they excavated the road and prevented the commuters and motorists from using the same. Third, JCHA, et al. consequently suffered injury and that a valid judgment could have been rendered in accordance with the relief sought therein.

### **Facts:**

On January 20, 1999, Juana Complex I Homeowners Association, Inc. (JCHA), together with individual residents of Juana Complex I and other neighboring subdivisions (collectively referred as JCHA, et al.), instituted a complaint5 for damages, in its own behalf and as a class suit representing

the regular commuters and motorists of Juana Complex I and neighboring subdivisions who were deprived of the use of La Paz Road, against Fil-Estate Land, Inc. (Fil-Estate), Fil-estate Ecocentrum Corporation (FEEC), La Paz Housing & Development Corporation (La Paz), and Warbird Security Agency and their respective officers (collectively referred as Fil-Estate, et al.).

The complaint alleged that JCHA, et al. were regular commuters and motorists who constantly travelled towards the direction of Manila and Calamba; that they used the entry and exit toll gates of South Luzon Expressway (SLEX) by passing through right-of-way public road known as La Paz Road; that they had been using La Paz Road for more than ten (10) years; that in August 1998, Filestate excavated, broke and deliberately ruined La Paz Road that led to SLEX so JCHA, et al. would not be able to pass through the said road; that La Paz Road was restored by the residents to make it passable but Fil-estate excavated the road again; that JCHA reported the matter to the Municipal Government and the Office of the Municipal Engineer but the latter failed to repair the road to make it passable and safe to motorists and pedestrians; that the act of Fil-estate in excavating La Paz Road caused damage, prejudice, inconvenience, annoyance, and loss of precious hours to them, to the commuters and motorists because traffic was re-routed to narrow streets that caused terrible traffic congestion and hazard; and that its permanent closure would not only prejudice their right to free and unhampered use of the property but would also cause great damage and irreparable injury.

Accordingly, JCHA, et al. also prayed for the immediate issuance of a Temporary Restraining Order (TRO) or a writ of preliminary injunction (WPI) to enjoin Fil-Estate, et al. from stopping and intimidating them in their use of La Paz Road.

On February 10, 1999, a TRO was issued ordering Fil- Estate, et al., for a period of twenty (20) days, to stop preventing, coercing, intimidating or harassing the commuters and motorists from using the La Paz Road. Subsequently, the RTC conducted several hearings to determine the propriety of the issuance of a WPI. On February 26, 1999, Fil-Estate, et al. filed a motion to dismiss7 arguing that the complaint failed to state a cause of action and that it was improperly filed as a class suit. On

On March 3, 1999, the RTC issued an Order granting the WPI and required JCHA, et al. to post a bond. On March 19, 1999, Fil-Estate, et al. filed a motion for reconsideration arguing, among others, that JCHA, et al. failed to satisfy the requirements for the issuance of a WPI. The RTC then issued its June 16, 2000 Omnibus Order, denying both the motion to dismiss and the motion for reconsideration filed by Fil-Estate, et al.

On appeal, the CA ruled that the complaint sufficiently stated a cause of action when JCHA, et al. alleged in their complaint that they had been using La Paz Road for more than ten (10) years and that their right was violated when Fil-Estate closed and excavated the road. Hence, this appeal.

#### Issue:

Whether the complaint sufficiently states a cause of action. (Yes)

#### **Ruling:**

Section 2, Rule 2 of the Rules of Court defines a cause of action as an act or omission by which a party violates the right of another. A complaint states a cause of action when it contains three (3) essential elements of a cause of action, namely:

- (1) the legal right of the plaintiff,
- (2) the correlative obligation of the defendant, and
- (3) the act or omission of the defendant in violation of said legal right.

The question of whether the complaint states a cause of action is determined by its averments regarding the acts committed by the defendant.19 Thus, it must contain a concise statement of the ultimate or essential facts constituting the plaintiff's cause of action.20 To be taken into account are only the material allegations in the complaint; extraneous facts and circumstances or other matters aliunde are not considered.

The test of sufficiency of facts alleged in the complaint as constituting a cause of action is whether or not admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of said complaint. Stated differently, if the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be asserted by the defendant.

In the present case, the Court finds the allegations in the complaint sufficient to establish a cause of action. *First*, JCHA, et al.'s averments in the complaint show a demandable right over La Paz Road. These are: (1) their right to use the road on the basis of their allegation that they had been using the road for more than 10 years; and (2) an easement of a right of way has been constituted over the said roads. There is no other road as wide as La Paz Road existing in the vicinity and it is the shortest, convenient and safe route towards SLEX Halang that the commuters and motorists may use. *Second*, there is an alleged violation of such right committed by Fil-Estate, et al. when they excavated the road and prevented the commuters and motorists from using the same. *Third*, JCHA, et al. consequently suffered injury and that a valid judgment could have been rendered in accordance with the relief sought therein.

# Asia Brewery Inc. and Charles Go, *Petitioners*, -versus- Equitable PCI Bank (now BDO), Respondents.

G.R. No. 190432, FIRST DIVISION, April 25, 2017, Sereno, C.J.

If the Complaint fails to state a cause of action, a motion to dismiss must be made before a responsive pleading is filed; and the issue can be resolved only on the basis of the allegations in the initiatory pleading. On the other hand, if the Complaint lacks a cause of action, the motion to dismiss must be filed after the plaintiff has rested its case.

### **FACTS:**

Petitioners filed a complaint for payment, reimbursement or restitution against respondents. Petitioners alleged that 10 to 16 crossed checks were issued in the name of Charlie Go. However, none of the checks were received by Go. Instead a certain Raymond Keh was able to receive the said checks and deposited the same to Respondent bank pretending to be Go. In demanding payment from respondent, petitioners relied on Associated Bank v. CA, in which this Court held "the possession of check on a forged or unauthorized indorsement is wrongful, and when the money is

collected on the check, the bank can be held for moneys had and received." The RTC, however, dismissed the complaint for lack of cause of action.

#### **ISSUE**:

Whether or not the CA correctly dismissed the case. (No)

#### **RULING:**

A reading of the Order dated 30 January 2008 reveals that the RTC dismissed the Complaint for lack of cause of action prior to trial. At that time, this Court, in the 2003 case Bank of America NT&SA v. CA, had already emphasized that lack or absence of cause of action is not a ground for the dismissal of a complaint; and that the issue may only be raised after questions of fact have been resolved on the basis of stipulations, admissions or evidence presented.

Failure to state a cause of action is not the same as lack of cause of action; the terms are not interchangeable. It may be observed that lack of cause of action is not among the grounds that may be raised in a motion to dismiss under Rule 16 of the Rules of Court. The dismissal of a Complaint for lack of cause of action is based on Section 1 of Rule 33.

We said that "dismissal due to lack of cause of action may be raised any time after the questions of fact have been resolved on the basis of stipulations, admissions, or evidence presented by the plaintiff." In the case at bar, the action has not even reached the pre-trial stage. Even assuming that the trial court merely used the wrong terminology, that it intended to dismiss the Complaint on the ground of failure to state a cause of action, the Complaint would still have to be reinstated.

BUTUAN DEVELOPMENT CORPORATION (BDC), Petitioner, -versus- THE TWENTY-FIRST DIVISION OF THE HONORABLE COURT OF APPEALS (MINDANAO STATION), MAX ARRIOLA, JR., DE ORO RESOURCES, INC. (DORI) AND LOUIE A. LIBARIOS, Respondents.

G.R. No. 197358, THIRD DIVISION, April 5, 2017, Reyes, J.

Failure to state a cause of action is different from lack of cause of action. Failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the Rules of Court. On the other hand, lack of cause action refers to a situation where the evidence does not prove the cause of action alleged in the pleading. The remedy in the first is to move for the dismissal of the pleading, while the remedy in the second is to demur to the evidence.

# **FACTS**:

While BDC was still in the process of incorporation, a certain Max Arriola armed with a notarized Resolution of BDC board of directors, mortgaged a property owned and bought for BDC to De Oro Resources Inc. (DORI) After incorporation, BDC filed a complaint for declaration of nullity of the

real estate mortgage (REM) against Arriola and DORI alleging that the Arriola's misrepresented themselves as the owners and directors of the BDC. DORI claims that the case should be dismissed for failure to state a cause of action, because at the time the REM was constituted, BDC had not yet existed as a corporation. The RTC ruled in favour of BDC but was reversed by the CA.

#### **ISSUE**:

Whether or not BDC has a cause of action. (Yes)

#### **RULING:**

The elements of a cause of action are: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.

Based on the foregoing allegations, BDC's complaint sufficiently stated a cause of action for declaration of nullity of the REM. Basically, BDC alleged in its complaint that it is the owner of the subject property as evidenced by TCT No. RT-4724, which was issued in its name after it purchased the subject property, through Satorre, from the Spouses Sering on March 31, 1966. It bears stressing that a certificate of title issued is an absolute and indefeasible evidence of ownership of the property in favor of the person whose name appears therein. BDC further alleged that the subject property was mortgaged to DORI and Libarios without their knowledge or consent and that the Arriolas were not in any way connected with BDC.

The respondents' affirmative defense that BDC, at the time of the execution of the REM, had no right to hold the subject property in its name being merely an unincorporated association, if at all, amounts to an allegation that BDC has no cause of action against the respondents. However, failure to state a cause of action is different from lack of cause of action. Failure to state a cause of action refers to the insufficiency of the pleading, and is a ground for dismissal under Rule 16 of the Rules of Court. On the other hand, lack of cause action refers to a situation where the evidence does not prove the cause of action alleged in the pleading. The remedy in the first is to move for the dismissal of the pleading, while the remedy in the second is to demur to the evidence.

Miguel "Lucky" Guillermo and AV Manila Creative Production Co., *Petitioners,* -versus-Philippine Information Agency and Department of Public Works and Highways, Respondents.

G.R. No. 223751, SECOND DIVISION, March 15, 2017, LEONEN, J.

Sections 46, 47, and 48 of Book V, Title I, Subtitle B, Chapter 8 of the Administrative Code expressly declares void a contract that fails to comply with the two requirements, namely, an appropriation law funding the contract and a certification of appropriation and fund availability. The clear purpose of these requirements is to insure that government contracts are never signed unless supported by the corresponding appropriation law and fund availability.

#### **FACTS:**

In the last few months of Former President Gloria Macapagal-Arroyo's administration (Arroyo Administration), then Acting Secretary of the Department of Public Works and Highways (DPWH) Victor Domingo (Acting Secretary Domingo) consulted and discussed with Miguel "Lucky" Guillermo (Guillermo) and AV Manila Creative Production, Co. (AV Manila) allegedly for the urgent need for an advocacy campaign (Campaign) to counteract the public's negative perception of the performance of the outgoing Arroyo Administration. Guillermo and AV Manila formally submitted in a letter-proposal dated February 26, 2010 the concept of "Joyride," a documentary film showcasing milestones of the Arroyo Administration. Acting Secretary Domingo signed a marginal note on the letter-proposal, which read, "OK, proceed!" Petitioners alleged that under the foregoing exchanges, they committed to the following deliverables: reproduction and distribution of (a) a revised, expanded, and more comprehensive "Joyride" documentary; (b) "Joyride" coffee table book; (c) "Joyride" comics; (d) "Joyride" infomercial entitled "Sa Totoo Lang!"; and (e) "Joyride" infomercial entitled "Sa Totoo Lang-GFX", which was a representation of improved government services. On April 20, 2010, Guillermo and AV Manila submitted samples and storyboards of the foregoing to DPWH. They further alleged that Acting Secretary Domingo informed them that the total consideration of ₱25,000,000.00 for their services and deliverable items was acceptable and approved. A Memorandum addressed to Former President Gloria Macapagal-Arroyo pertaining to the "Joyride" materials was issued by Acting Secretary Domingo.

Thereafter, Joan Marzan, Philippine Information Agency's (PIA) representative, advised that, in light of the foregoing agreement, a separate written contract was no longer necessary. Thus, the Philippine Information Agency instructed Guillermo to send billings directly to the Philippine Information Agency.Guillermo and AV Manila averred to have delivered copies of the "Joyride" documentary, and thereafter, the "Joyride" comics. No funds were released by the Philippine Information Agency, Guillermo and AV Manila alleged that because of lack of funds, petitioner Guillermo had to secure financial assistance to deliver the subsequent deliverable items to DPWH and PIA. Thus, Guillermo and AV Manila delivered copies of the "Joyride" coffee table book with DVD inserts, and comics, to the DPWH. After all the deliverables had been delivered, petitioners followed up on the payment from the PIA. Despite several demands, no payments were made. Guillermo and AV Manila said that they made demands through letters dated August 19, September 20, and October 12, 2010, to various officials of the PIA, under the Administration of Former President Benigno Aquino III. However, it refused and failed to pay the amount of ₱25,000,000.00. December 10, 2010, Guillermo and AV Manila filed a Complaint for a sum of money and damages before the Regional Trial Court of Marikina. The Office of the Solicitor General moved to dismiss the Complaint for failure to state a cause of action and for failure to exhaust administrative remedies.

On August 14, 2012, the RTC granted the OSG's Motion to Dismiss, finding that, although a contract existed, this contract was not binding because of absence of legal requirements for entering into a contract with the government. Guillermo and AV Manila moved for reconsideration but were

denied. They appealed to the Court of Appeals, but it affirmed the RTC's Order of dismissal holding that the Complaint sought to enforce a legal right based on a contract, however, Guillermo and AV Manila failed to prove the existence of a contract, considering that the elements of a contract were absent. The C A also found the doctrine of *quantum meruit* inapplicable because of absence of any contract or legal right in favor of petitioners. MR denied.

#### ISSUE:

Whether or not the Complaint was properly dismissed for failure to state a cause of action. (Yes)

#### **RULING:**

A complaint states a cause of action if it sufficiently avers the existence of the three (3) essential elements of a cause of action, namely: (a) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (b) an obligation on the part of the named defendant to respect or not to violate such right; and (c) an act or omission, on the part of the named defendant, violative of the right of the plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages. If the allegations of the complaint do not state the concurrence of these elements, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.

It is well to point out that the plaintiff's cause of action should not merely be "stated" but, importantly, the statement thereof should be "sufficient." This is why the elementary test in a motion to dismiss on such ground is whether or not the complaint alleges facts which if true would justify the relief demanded. As a corollary, it has been held that only ultimate facts and not legal conclusions or evidentiary facts are considered for purposes of applying the test. This is consistent with Section 1, Rule 8 of the Rules of Court which states that the complaint need only allege the ultimate facts or the essential facts constituting the plaintiffs cause of action. A fact is essential if they cannot be stricken out without leaving the statement of the cause of action inadequate. Since the inquiry is into the sufficiency, not the veracity, of the material allegations, it follows that the analysis should be confined to the four comers of the complaint, and no other. Thus, to determine the sufficiency of a cause of action in a motion to dismiss, only the facts alleged in the complaint should be considered, in relation to whether its prayer may be granted.

Sections 46, 47, and 48 of Book V, Title I, Subtitle B, Chapter 8 of the Administrative Code expressly declares void a contract that fails to comply with the two requirements, namely, an appropriation law funding the contract and a certification of appropriation and fund availability. The clear purpose of these requirements is to insure that government contracts are never signed unless supported by the corresponding appropriation law and fund availability. The Complaint, however, completely ignored the foregoing requisites for the validity of contracts involving expenditure of public funds. The RTC could not order the enforcement of the alleged contract on the basis of the Complaint, and the same was properly dismissed for failure to state a cause of action.

Finally, the invocation of the principle of *quantum meruit* could not save the Complaint from dismissal. A careful reading reveals that the Complaint does not mention the principle of *quantum meruit*, or any facts showing that the public has derived any benefit from the "Joyride" project. Even

assuming that basis exists to reimburse petitioners under the principle of *quantum meruit*, no factual basis for its application was laid down in the Complaint. Its belated invocation does not retroactively make the Complaint sufficient. However, petitioners are not without recourse. Under the Administrative Code, officers who enter into contracts contrary to the Administrative Code are liable to the government or to the other contracting party for damages. Thus, assuming petitioners are able to prove a contract was entered into, they may go after the officers who entered into said contract and hold them personally liable.

# JOSE DIAZ, JR. AND ADELINA D. McMULLEN, Petitioners, -versus- SALVADOR VALENCIANO, JR., Respondent.

G.R. 209376, SECOND DIVISION, December 6, 2017, Peralta, J.

In Bachrach Corporation v. CA, to ascertainthe identity of causes of action, the test is to look into whether or not the same evidence fully supports and establishes both the present and the former causes of action. If the answer is in the affirmative, the former judgment would be a bar; otherwise, that prior judgment would not serve as such a bar to the subsequent action.

However, in this case where a person occupies the land of another at the latter's tolerance or permission, without any contract between them, what must be proven is that such possession is by mere tolerance, and that there was a breach of implied promise to vacate the land upon demand.

The refusal to comply with the earlier demand letter sent to Salvador, Sr. creates a different cause of action different from the one created by the refusal to comply with the second demand letter by Salvador, Sr. The first deals with possession by mere tolerance while the second refers to possession by tolerance which only arose when they neglected to execute the earlier judgment.

#### **FACTS:**

Petitioners Diaz and McMullen filed a case for unlawful detainer against Salvador, Sr., father of respondent Salvador, Jr. Petitioners in that complaint allege that they are the owner of the subject property. On the other hand, respondent Salvador Jr. countered that his father and the rest of his family have been in open, peaceful, and continuous possession of the subject property from when Diaz mortgaged it to his father. The parties in this case entered in to a compromise agreement where they agreed to amicably settle the case provided that Salvador, Sr. will vacate the and surrender the property to petitioner Diaz within a period of 1 and ½ years, and that Diaz shall pay to Salvador, Sr. the sum of P1,600.00.

Salvador, Sr. failed to vacate the subject property. As such, Diaz field an ex parte Motion for Execution which the MTCC granted. A writ of execution was then issued to cause Salvador, Sr. to surrender possession of the subject property to Diaz. However, petitioners by sheer tolerance chose not to implement the writ and allowed Salvador, Sr. and his family to stay, subject to the condition that they will cavate when petitioners need it. Salvador, Sr. eventually passed away.

15 years after, petitioners sent a demand letter to Salvador, Jr., who refused to vacate. This led petitioners to filed a new case for unlawful detainer. In his Answer, Salvador, Jr. contended that the complaint was barred by res judicata in view of the compromise agreement. He also claimed that he

and his predecessor in interest have been occupying the subject property in the concept of an owner for more than 45 years already.

The MTCC held that the present complaint is already barred by res judicata because the same evidence in the first action would support and establish the cause of action in the second one. The RTC held that res judicata does not apply because the compromise agreement was not a judgment on the merits. The CA reinstated the MTCC decision.

#### **ISSUE:**

Whether or not there is an identity of cause of action?

#### **RULING:**

Be that as it may, petitioners are partly correct that there is no identity of cause of action between the first and second unlawful detainer cases, but not for the reason that Salvador Jr.'s occupation is akin to forcible entry made through stealth and strategy — an allegation that is nowhere to be found in the Complaints.

The Rules of Court defines cause of action as an act or omission by which a party violates a right of another. One of the tests to determine the identity of causes of action so as to warrant application of *res judicata* is the "same evidence rule."

In Bachrach Corporation v. CA, to ascertain the identity of causes of action, the test is to look into whether or not the same evidence fully supports and establishes both the present and the former causes of action. In an unlawful detainer case, the evidence needed to establish the cause of action would be the lease contract and the violation of that lease.

However, in this case where a person occupies the land of another at the latter's tolerance or permission, without any contract between them, what must be proven is that such possession is by mere tolerance, and that there was a breach of implied promise to vacate the land upon demand.

The refusal to comply with the earlier demand letter sent to Salvador, Sr. creates a different cause of action different from the one created by the refusal to comply with the second demand letter by Salvador, Sr. The first deals with possession by mere tolerance while the second refers to possession by tolerance which only arose when they neglected to execute the earlier judgment.

The CA thus committed reversible error when it overlooked that fact that the cause of action in the first unlawful detainer case is Salvador Sr.'s breach of the implied promise to vacate the property being occupied by his family by mere tolerance of petitioners, whereas the cause of action in the second case is another breach of implied promise to vacate the same property by Salvador Jr., the son and successor-in-interest of Salvador Sr., despite the judicially-approved Compromise Agreement which petitioners neglected to enforce even after the issuance of a writ of execution.

# MISAMIS OCCIDENTAL II COOPERATIVE, INC., Petitioner, -versus- VIRGILIO S. DAVID, Respondent.

G.R. NO. 129928, SECOND DIVISION, August 25, 2005, TINGA, J.

In The Consolidated Bank and Trust Corp. v. Hon. Court of Appeals it held that if the allegations in a complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defenses that may be averred by the defendants. The test of sufficiency of facts alleged in the complaint as constituting a cause of action is whether or not admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of said complaint.

It has been hypothetically admitted that the parties had entered into a contract sale David bound himself to supply MOELCI II (1) unit 10 MVA Power transformer with accessories for a total price of P5,200,000.00 plus 69 KV Line Accessories for a total price of P2,169,500.00; that despite written and verbal demands, MOELCI II has failed to pay the price thereof plus the custom duties and incidental expenses of P272,722.27; and that apart from the previously stated contract of sale, David regularly delivered various electrical hardware to MOELCI II which, despite demands, has an outstanding balance of P281,939.76. We believe all the foregoing sufficiently lay out a cause of action. Even extending our scrutiny to Annex "A," which is after all deemed a part of the Amended Complaint, will not result to a change in our conclusion.

# **FACTS:**

Private respondent Virgilio S. David (hereinafter, David), a supplier of electrical hardware, filed a case for specific performance and damages against MOELCI II, a rural electric cooperative in Misamis Occidental, docketed as Civil Case No. 94-69402 entitled "Virgilio David v. Misamis Occidental II Electric Cooperative, Inc. (MOELCI II)." The said case, which was essentially a collection suit, pending before Judge Felixberto Olalia (hereinafter, Judge Olalia) of the Regional Trial Court of Manila, Branch 8 (the trial court), was predicated on a document attached as Annex "A" to the Amended Complaint that according to David is the contract pursuant to which he sold to MOELCI II one (1) unit of 10 MVA Transformer.

MOELCI II filed its Answer to Amended Complaint which pleaded, among others, affirmative defenses which also constitute grounds for dismissal of the complaint. These grounds were lack of cause of action, there being allegedly no enforceable contract between David and MOELCI II under the Statute of Frauds pursuant to Section 1 (g) and (i), Rule 16 of the Rules of Court, and improper venue.

In accordance with Section 5, Rule 16 of the Rules of Court, (now Section 6, Rule 16 of the 1997 Rules of Civil Procedure) MOELCI II filed with the trial court a Motion (For Preliminary Hearing of Affirmative Defenses and Deferment of Pre-TrialConference) (hereinafter referred to as Motion). In said Motion, MOELCI II in essence argued that the document attached as Annex "A" to the Amended Complaint was only a quotation letter and not a contract as alleged by David.

Thus, it contends that David's Amended Complaint is dismissible for failure to state a cause of action.

In his opposition to MOELCI II's Motion, David contended in the main that because a motion to dismiss on the ground of failure to state a cause of action is required to be based only on the allegations of the complaint, the "quotation letter," being merely an attachment to the complaint and not part of its allegations, cannot be inquired into.

MOELCI II filed a rejoinder to the opposition. After the parties filed their respective memoranda, Judge Olalia issued an order dated 16 November 1995 denying MOELCI II's motion for preliminary hearing of affirmative defenses. MOELCI II's motion for reconsideration of the said order was likewise denied in another order issued by Judge Olalia on 13 March 1996. MOELCI II elevated this incident to the Court of Appeals by way of a special civil action for certiorari, alleging grave abuse of discretion on the part of Judge Olalia in the issuance of the two aforesaid orders.

On 14 March 1997, the Court of Appeals dismissed MOELCI II's petition holding that the allegations in David's complaint constitute a cause of action. The appellate court further declared that when the trial court is confronted with a motion to dismiss on the ground of lack of cause of action, it is mandated to confine its examination for the resolution thereof to the allegations of the complaint and is specifically enjoined from receiving evidence for that purpose. With the denial of its Motion for Reconsideration, petitioner is now before this Court seeking a review of the appellate court's pronouncements.

#### ISSUE:

Whether David's complaint constitute a cause of action?

#### **RULING:**

To determine the existence of a cause of action, only the statements in the complaint may be properly considered. It is error for the court to take cognizance of external facts or hold preliminary hearings to determine their existence. In The Consolidated Bank and Trust Corp. v. Hon. Court of Appeals it held that if the allegations in a complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defenses that may be averred by the defendants. The test of sufficiency of facts alleged in the complaint as constituting a cause of action is whether or not admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of said complaint.

It has been hypothetically admitted that the parties had entered into a contract sale David bound himself to supply MOELCI II (1) unit 10 MVA Power transformer with accessories for a total price of P5,200,000.00 plus 69 KV Line Accessories for a total price of P2,169,500.00; that despite written and verbal demands, MOELCI II has failed to pay the price thereof plus the custom duties and incidental expenses of P272,722.27; and that apart from the previously stated contract of sale, David regularly delivered various electrical hardware to MOELCI II which, despite demands, has an outstanding balance of P281,939.76. We believe all the foregoing sufficiently lay out a cause of action. Even extending our scrutiny to Annex "A," which is after all deemed a part of the Amended Complaint, will not result to a change in our conclusion.

Contrary to MOELCI II's assertion, Annex "A" is not an "undisguised quotation letter." While Annex "A" is captioned as such, the presence of the signatures of both the General Manager and the Chairman of the Committee of Management immediately below the word "CONFORME" appearing on the document's last page lends credulity to David's contention that there was, or might have been, a meeting of minds on the terms embodied therein. Thus, the appendage of Annex "A" does not entirely serve to snuff out David's claims. In fact, the ambiguity of the import and nature of Annex "A" which necessitates a resort to its proper interpretation, fortifies the propriety of the trial court's denial of MOELCI II's Motion. The interpretation of a document requires introduction of evidence which is precisely disallowed in determining whether or not a complaint states a cause of

action. The Court of Appeals therefore correctly dismissed MOELCI II's petition and upheld the trial court's ruling.

# JUANA COMPLEX I HOMEOWNERS ASSOCIATION, Petitioner, -versus- FIL-ESTATE LAND, Respondent.

GR No. 152272, THIRD DIVISION, March 05, 2012, MENDOZA, J.

As provided in Misamis Occidental II Cooperative, Inc. v. David, the test of sufficiency of facts alleged in the complaint as constituting a cause of action is whether or not admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of said complaint. Stated differently, in Makati Stock Exchange, Inc. v. Campo, if the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be asserted by the defendant.

In the present case, the Court finds the allegations in the complaint sufficient to establish a cause of action. First, JCHA, et al.'s averments in the complaint show a demandable right over La Paz Road. These are: (1) their right to use the road on the basis of their allegation that they had been using the road for more than 10 years; and (2) an easement of a right of way has been constituted over the said roads. There is no other road as wide as La Paz Road existing in the vicinity and it is the shortest, convenient and safe route towards SLEX Halang that the commuters and motorists may use. Second, there is an alleged violation of such right committed by Fil-Estate, et al. when they excavated the road and prevented the commuters and motorists from using the same. Third, JCHA, et al. consequently suffered injury and that a valid judgment could have been rendered in accordance with the relief sought therein.

#### **FACTS:**

On January 20, 1999, Juana Complex I Homeowners Association, Inc. (JCHA), together with individual residents of Juana Complex I and other neighboring subdivisions (collectively referred as JCHA, et. al.), instituted a complaint for damages, in its own behalf and as a class suit representing the regular commuters and motorists of Juana Complex I and neighboring subdivisions who were deprived of the use of La Paz Road, against Fil-Estate Land, Inc. (Fil-Estate), Fil-estate Ecocentrum Corporation (FEEC), La Paz Housing & Development Corporation (La Paz), and Warbird Security Agency and their respective officers (collectively referred as Fil-Estate, et al.).

The complaint alleged that JCHA, et al. were regular commuters and motorists who constantly travelled towards the direction of Manila and Calamba; that they used the entry and exit toll gates of South Luzon Expressway (SLEX) by passing through right-of-way public road known as La Paz Road; that they had been using La Paz Road for more than ten (10) years; that in August 1998, Filestate excavated, broke and deliberately ruined La Paz Road that led to SLEX so JCHA, et al. would not be able to pass through the said road; that La Paz Road was restored by the residents to make it passable but Fil-estate excavated the road again; that JCHA reported the matter to the Municipal Government and the Office of the Municipal Engineer but the latter failed to repair the road to make it passable and safe to motorists and pedestrians; that the act of Fil-estate in excavating La Paz Road caused damage, prejudice, inconvenience, annoyance, and loss of precious hours to them, to

the commuters and motorists because traffic was re-routed to narrow streets that caused terrible traffic congestion and hazard; and that its permanent closure would not only prejudice their right to free and unhampered use of the property but would also cause great damage and irreparable injury. Accordingly, JCHA, et al. also prayed for the immediate issuance of a Temporary Restraining Order (TRO) or a writ of preliminary injunction (WPI) to enjoin Fil-Estate, et al. from stopping and intimidating them in their use of La Paz Road.

On February 10, 1999, a TRO was issued ordering Fil-Estate, et al, for a period of twenty (20) days, to stop preventing, coercing, intimidating or harassing the commuters and motorists from using the La Paz Road. Subsequently, the RTC conducted several hearings.

On February 26, 1999, Fil-Estate, et al. filed a motion to dismiss arguing that the complaint failed to state a cause of action and that it was improperly filed as a class suit.

On March 5, 1999, JCHA, et al. filed their comment on the motion to dismiss to which respondents filed a reply.

On March 3, 1999, the RTC issued an Order granting the WPI and required JCHA, et al. to post a bond.

On March 19, 1999, Fil-Estate, et al. filed a motion for reconsideration. The RTC then issued its June 16, 2000 Omnibus Order, denying both the motion to dismiss and the motion for reconsideration filed by Fil-Estate, et al. Not satisfied, Fil-Estate, et al. filed a petition for certiorari and prohibition before the CA. They contended that the complaint failed to state a cause of action and that it was improperly filed as a class suit. With regard to the issuance of the WPI, the defendants averred that JCHA, et al. failed to show that they had a clear and unmistakable right to the use of La Paz Road; and further claimed that La Paz Road was a torrens registered private road and there was neither a voluntary nor legal easement constituted over it.

The CA ruled that the complaint sufficiently stated a cause of action when JCHA, et al. alleged in their complaint that they had been using La Paz Road for more than ten (10) years and that their right was violated when Fil-Estate closed and excavated the road. It sustained the RTC ruling that the complaint was properly filed as a class suit as it was shown that the case was of common interest and that the individuals sought to be represented were so numerous that it was impractical to include all of them as parties. The CA, however, annulled the WPI for failure of JCHA, et al. to prove their clear and present right over La Paz Road. The CA ordered the remand of the case to the RTC for a full-blown trial on the merits. Hence, these petitions for review.

### **ISSUE:**

Whether or not the complaint states a cause of action?

#### **RULING:**

Section 2, Rule 2 of the Rules of Court defines a cause of action as an act or omission by which a party violates the right of another. A complaint states a cause of action when it contains three (3) essential elements of a cause of action, namely:

- (1) the legal right of the plaintiff,
- (2) the correlative obligation of the defendant, and

(3) the act or omission of the defendant in violation of said legal right.

The question of whether the complaint states a cause of action is determined by its averments regarding the acts committed by the defendant. Thus, it must contain a concise statement of the ultimate or essential facts constituting the plaintiff's cause of action. To be taken into account are only the material allegations in the complaint; extraneous facts and circumstances or other matters aliunde are not considered.

As provided in Misamis Occidental II Cooperative, Inc. v. David, the test of sufficiency of facts alleged in the complaint as constituting a cause of action is whether or not admitting the facts alleged, the court could render a valid verdict in accordance with the prayer of said complaint. Stated differently, in Makati Stock Exchange, Inc. v. Campo, if the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be asserted by the defendant.

In the present case, the Court finds the allegations in the complaint sufficient to establish a cause of action. First, JCHA, et al.'s averments in the complaint show a demandable right over La Paz Road. These are: (1) their right to use the road on the basis of their allegation that they had been using the road for more than 10 years; and (2) an easement of a right of way has been constituted over the said roads. There is no other road as wide as La Paz Road existing in the vicinity and it is the shortest, convenient and safe route towards SLEX Halang that the commuters and motorists may use. Second, there is an alleged violation of such right committed by Fil-Estate, et al. when they excavated the road and prevented the commuters and motorists from using the same. Third, JCHA, et al. consequently suffered injury and that a valid judgment could have been rendered in accordance with the relief sought therein. WHEREFORE, the petitions are DENIED.

# BANGKO SENTRAL NG PILIPINAS, *Petitioner*, -versus-FELICIANO P. LEGASPI, *Respondent*. G.R. No. 205966, THIRD DIVISION, March 02, 2016, PERALTA, *J*.

In Fluor Daniel, Inc.-Philippines v. E.B. Villarosa and Partners Co., Ltd., this Court ruled that in determining the sufficiency of a cause of action, the courts should also consider the attachments to the complaint thus:

We have ruled that a complaint should not be dismissed for insufficiency of cause of action if it appears clearly from the complaint and its attachments that the plaintiff is entitled to relief. The converse is also true. The complaint may be dismissed for lack of cause of action if it is obvious from the complaint and its annexes that the plaintiff is not entitled to any relief.

Hence, being an annex to BSP's complaint, the tax declaration showing the assessed value of the property is deemed a part of the complaint and should be considered together with it in determining that the RTC has exclusive original jurisdiction.

#### **FACTS:**

Petitioner BSP filed a Complaint for annulment of title, revocation of certificate and damages (with application for TRO/writ of preliminary injunction). Respondent Legaspi filed a Motion to Dismiss alleging that the RTC failed to acquire jurisdiction over the action because the complaint, a real action, failed to allege the assessed value of the subject property. Petitioner BSP claimed that since the subject property contains an area of 4,838,736 square meters, it is unthinkable that said property would have an assessed value of less than P20,000.00 which is within the jurisdiction of

the Municipal Trial Courts. Petitioner BSP further stated that a tax declaration showing the assessed value of P28,538,900.00 and latest zonal value of P145,162,080.00 was attached to the complaint. RTC denied the Motion. The CA reversed and dismissed BSP's complaint. Hence, this Petition.

#### **ISSUE:**

Whether the RTC has exclusive original jurisdiction over the subject matter of Civil Case No. 209-M-2008?

# **RULING:**

YES.

Under Batas Pambansa Bilang 129, as amended by Republic Act No. 7691, the RTC has exclusive original jurisdiction over civil actions which involve title to possession of real property, or any interest therein, where the assessed value of the property involved exceeds Twenty Thousand Pesos (P20,000.00). Petitioner BSP insists that the property involved has an assessed value of more than P20,000.00, as shown in a Tax Declaration attached to the complaint. Incidentally, the complaint, on its face, is devoid of any amount that would confer jurisdiction over the RTC.

The non-inclusion on the face of the complaint of the amount of the property, however, is not fatal because attached in the complaint is a tax declaration of the property in question showing that it has an assessed value of P215,320.00. It must be emphasized that annexes to a complaint are deemed part of, and should be considered together with the complaint. In Fluor Daniel, Inc.-Philippines v. E.B. Villarosa and Partners Co., Ltd., this Court ruled that in determining the sufficiency of a cause of action, the courts should also consider the attachments to the complaint thus:

We have ruled that a complaint should not be dismissed for insufficiency of cause of action if it appears clearly from the complaint and its attachments that the plaintiff is entitled to relief. The converse is also true. The complaint may be dismissed for lack of cause of action if it is obvious from the complaint and its annexes that the plaintiff is not entitled to any relief.

Hence, being an annex to BSP's complaint, the tax declaration showing the assessed value of the property is deemed a part of the complaint and should be considered together with it in determining that the RTC has exclusive original jurisdiction.

In connection therewith, the RTC, therefore, committed no error in taking judicial notice of the assessed value of the subject property. A court will take judicial notice of its own acts and records in the same case, of facts established in prior proceedings in the same case, of the authenticity of its own records of another case between the same parties, of the files of related cases in the same court, and of public records on file in the same court. Since a copy of the tax declaration, which is a public record, was attached to the complaint, the same document is already considered as on file with the court, thus, the court can now take judicial notice of such.

Considering that the area of the subject land is four million eight hundred thirty-eight thousand seven hundred and thirty-six (4,838,736) square meters, the RTC acted properly when it took judicial notice of the total area of the property involved and the prevailing assessed value of the

titled property, and it would also be at the height of absurdity if the assessed value of the property with such an area is less than P20,000.00.

# GOODLAND COMPANY, Petitioner, -versus- ASIA UNITED BANK, Respondent.

GR No. 195546, FIRST DIVISION, March 14, 2012, VILLARAMA, JR., J.

The Court in Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank provides that there is forum shopping when the following elements are present:

- (a) identity of parties, or at least such parties as represent the same interests 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[,] such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration; said requisites [are] also constitutive of the requisites for auter action pendant or lis pendens."

All the foregoing elements are present in this case. There can be no dispute that the prayer for relief in the two cases was based on the same attendant facts in the execution of REMs over petitioner's properties in favor of AUB. There is also identity of parties notwithstanding that in the first case, only one bank officer (Co), the notary public (Pelicano) and the Register of Deeds were impleaded along with AUB as defendants, whereas in the second case, AUB and its two officers (Chan and Del Mundo), along with the RTC Clerk of Court (Escasinas, Jr.), Sheriff (Magsajo) and the Register of Deeds of Makati City (Ortile) were the named defendants. The parties in both cases are substantially the same as they represent the same interests and offices/positions, and who were impleaded in their respective capacities with corresponding liabilities/duties under the claims asserted. With respect to identity of cause of action, a cause of action is defined in Section 2, Rule 2 of the Rules of Court as the act or omission by which a party violates the right of another.

#### Facts:

Goodland Company mortgaged its two parcels of land situated in Sta. Rosa, Laguna through a Third Party Real Estate Mortgage (REM) with Smartnet to secure the loans extended by Asia United Bank (AUB). Petitioner also executed another REM for its Makati properties. Both the REMs were signed by its President Gilbert Guy. AUB registered the mortgages with the Registry of Deed at the concerned properties. Afterwards, Goodland repudiated the REMs. Hence, Goodland filed a complaint for annulment of mortgage before the RTC of Bian, Laguna on the ground that the REM was falsified and against the agreement that the blank mortgage would only serve as a comfort document and not to be registered by AUB.

Smartnet defaulted on its loan obligation which prompted AUB to extra-judicially foreclose the REM and then was issued a Certificate of Sale registered with the Registry of Deeds. Goodland filed another case seeking for the annulment of the foreclosure sale and enjoin consolidation of the title in favor of AUB. AUB moved to dismiss both the cases filed by Goodland on the ground of forum shopping and *litis pendentia*. It was granted. On appeal, the decision of the RTC were reversed. As to the Makati properties, the same case was filed by Goodland including the President of AUB and the notarizing lawyer whose signature was falsified. The same was contradicted by AUB but this time, the motion to dismiss on the ground of forum shopping, non-payment of proper docket fees, and litis pendentia were denied. AUB argued that there was no service of summons, thus the court

never acquired jurisdiction over the persons of the respondents. On appeal, the CA held Goodland guilty of forum shopping for failing to inform AUB of the other case filed while the case on the REM is pending.

Petitioner filed before this Court two separate petitions through different counsels assailing the same CA decision dismissing their two appeals and resolution denying their twin motions for reconsideration.

Petitioner argues that there was no forum shopping involved because contrary to the CA's view, a judgment in either of the two cases will not amount to res judicata in the other, stating that there are two probable outcomes for each case; thus, the REM may be declared either null and void or valid, and the extrajudicial foreclosure may likewise be declared either null and void or valid.

Petitioner further notes that it did not fail to disclose as in fact it asserted the pendency of Civil Case No. 03-045 in Civil Case No. 06-1032 when it alleged the surreptitious foreclosure by the respondents during the pendency of Civil Case No. 03-045. The first case (Civil Case No. 03-045) was also disclosed by petitioner in the Certificate of Non-Forum Shopping appended to its complaint in Civil Case No. 06-1032. On the other hand, respondents maintain that the CA was correct in holding that petitioner is guilty of forum shopping as any ruling of either court on the identical issue of falsity of the REM would amount to res judicata in the other case. They also stress that forum shopping already exists when the cases involve the same or related causes and the same or substantially the same reliefs.

#### **ISSUE:**

Whether petitioner was guilty of forum shopping?

## **RULING:**

The petitions must fail.

The Court in Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank provides that there is forum shopping when the following elements are present:

- (a) identity of parties, or at least such parties as represent the same interests 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[,] such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration; said requisites [are] also constitutive of the requisites for auter action pendant or lis pendens."

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 a favorable judgment, through means other than by appeal or certiorari.

All the foregoing elements are present in this case. There can be no dispute that the prayer for relief in the two cases was based on the same attendant facts in the execution of REMs over petitioner's properties in favor of AUB. While the extrajudicial foreclosure of mortgage, consolidation of ownership in AUB and issuance of title in the latter's name were set forth only in the second case (Civil Case No. 06-1032), these were simply the expected consequences of the REM transaction in the first case (Civil Case No. 03-045).

Undeniably then, the injunctive relief sought against the extrajudicial foreclosure, as well as the cancellation of the new title in the name of the creditor-mortgagee AUB, were all premised on the alleged nullity of the REM due to its allegedly fraudulent and irregular execution and registration the same facts set forth in the first case. In both cases, petitioner asserted its right as owner of the property subject of the REM, while AUB invoked the rights of a foreclosing creditor-mortgagee.

There is also identity of parties notwithstanding that in the first case, only one bank officer (Co), the notary public (Pelicano) and the Register of Deeds were impleaded along with AUB as defendants, whereas in the second case, AUB and its two officers (Chan and Del Mundo), along with the RTC Clerk of Court (Escasinas, Jr.), Sheriff (Magsajo) and the Register of Deeds of Makati City (Ortile) were the named defendants. The parties in both cases are substantially the same as they represent the same interests and offices/positions, and who were impleaded in their respective capacities with corresponding liabilities/duties under the claims asserted.

With respect to identity of cause of action, a cause of action is defined in Section 2, Rule 2 of the Rules of Court as the act or omission by which a party violates the right of another. This Court has laid down the test in determining whether or not the causes of action in the first and second cases are identical, to wit: would the same evidence support and establish both the present and former cause of action? If so, the former recovery is a bar; if otherwise, it does not stand in the way of the former action.

In the first case, petitioner alleged the fraudulent and irregular execution and registration of the REM which violated its right as owner who did not consent thereto, while in the second case petitioner cited further violation of its right as owner when AUB foreclosed the property, consolidated its ownership and obtained a new TCT in its name. Considering that the aforesaid violations of petitioner's right as owner in the two cases both hinge on the binding effect of the REM, i.e., both cases will rise or fall on the issue of the validity of the REM, it follows that the same evidence will support and establish the first and second causes of action.

The procedural infirmities or non-compliance with legal requirements for extrajudicial foreclosure raised in the second case were but additional grounds in support of the injunctive relief sought against the foreclosure which was, in the first place, illegal on account of the mortgage contract's nullity. Evidently, petitioner never relied solely on the alleged procedural irregularities in the extrajudicial foreclosure when it sought the reliefs in the second case.

On this point, it is relevant to quote similar findings of this Court in G.R. No. 191388, which case involved, contrary to petitioner's asseveration and as clearly shown in the factual antecedents herein set forth, the same parties, issues and causes of action founded on the same real estate mortgage transaction albeit covering properties of petitioner located in another province (Laguna), to wit:

The cause of action in the earlier Annulment Case is the alleged nullity of the REM (due to its allegedly falsified or spurious nature) which is allegedly violative of Goodland's right to the mortgaged property. It serves as the basis for the prayer for the nullification of the REM. The Injunction Case involves the same cause of action, inasmuch as it also invokes the nullity of the REM as the basis for the prayer for the nullification of the extrajudicial foreclosure and for injunction against consolidation of title. While the main relief sought in the Annulment Case (nullification of the REM) is ostensibly different from the main relief sought in the Injunction Case (nullification of

the extrajudicial foreclosure and injunction against consolidation of title), the cause of action which serves as the basis for the said reliefs remains the same the alleged nullity of the REM.

There can be no determination of the validity of the extrajudicial foreclosure and the propriety of injunction in the Injunction Case without necessarily ruling on the validity of the REM, which is already the subject of the Annulment Case. The identity of the causes of action in the two cases entails that the validity of the mortgage will be ruled upon in both, and creates a possibility that the two rulings will conflict with each other. This is precisely what is sought to be avoided by the rule against forum shopping.

The substantial identity of the two cases remains even if the parties should add different grounds or legal theories for the nullity of the REM or should alter the designation or form of the action. The well-entrenched rule is that "a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated.

In the above-cited case, the Court also called attention to its earlier ruling in G.R. No. 190231 which involved substantially the same parties, and which constitutes another reason why the petition must fail, stating that "[t]he issue that Goodland committed deliberate forum shopping when it successively filed the Annulment and Injunction Cases against AUB and its officer was decided with finality therein. This ruling is conclusive on the petitioners and Goodland considering that they are substantially the same parties in that earlier case.

Given the similar factual circumstances in the institution by herein petitioner of Civil Case Nos. 03-045 and 06-1032 (Makati Property case) before the RTC, with those two cases (Civil Case Nos. B-6242 and B-7110) subject of the petitions in G.R. Nos. 190231 and 191388 involving the Laguna Properties covered by the same real estate mortgage transaction between AUB and petitioner, the findings and conclusion of this Court in G.R. No.190231 on the factual issue of whether the petitioner engaged in willful and deliberate forum shopping should be controlling to wit: Rule 7, Section 5 of the Rules of Court requires every litigant to notify the court of the filing or pendency of a complaint involving the same or similar action or claim within five days of learning of that fact. While both Civil Case Nos. B-6242 and B-7110 were raffled to the same court, the RTC of Biñan, Laguna, Branch 25, respondent did not report the filing of Civil Case No. B-7110 in the proceedings of Civil Case No. 6242. This fact clearly established respondent's furtive intent to conceal the filing of Civil Case No. B-7110 for the purpose of securing a favorable judgment. For this reason, Civil Case No. 6242 was correctly dismissed with prejudice

We find that the above certification still fell short of the requirement of the rule on forum shopping. While petitioner disclosed the pendency of Civil Case No. 03-045 it filed earlier, it qualified the nature of the said case by lumping it together with other pending related cases. Petitioner's simultaneous attestation that it has not commenced "any other action or filed any claim, involving the same issues in any court" implies that the pending related cases mentioned therein do not involve the same issues as those raised by it in the subsequently filed Civil Case No. 06-1032. Consequently, petitioner has filed a certificate that is partly false and misleading because Civil Case No. 06-1032 squarely raised the issue of the nullity of the REM, which was in fact the principal issue in Civil Case No. 03-045.

Moreover, there was no showing that petitioner promptly reported to the RTC Branch 133 in which Civil Case No. 03-045 was pending, its subsequent filing of Civil Case No. 06-1032, as required by the Rules. It was at the instance of AUB that the two cases were consolidated.

# PHILIPPINE NATIONAL BANK, Petitioner, -versus- GATEWAY PROPERTY HOLDINGS, INC., Respondent.

G.R. No. 181485, FIRST DIVISIO, February 15, 2012, LEONARDO-DE CASTRO, J.

*Carlet v. Court of Appeals states that:* 

As regards identity of causes of action, the test often used in determining whether causes of action are identical is to ascertain whether the same evidence which is necessary to sustain the second action would have been sufficient to authorize a recovery in the first, even if the forms or nature of the two actions be different. If the same facts or evidence would sustain both actions, the two actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not.

In the case at bar, a perusal of the allegations in Civil Case Nos. TM-1022 (Annulment of the Real Estate Mortgage) and TM-1108 (Annulment of the Foreclosure Sale) reveal that the said cases invoke the same fundamental issue, i.e., the temporary nature of the security that was to be provided by the mortgaged properties of GPHI. To repeat, in the original complaint in Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage), GPHI's main argument was that the agreement between GEC and PNB was that the mortgaged properties of GPHI would merely stand as temporary securities pending the outcome of Civil Case No. 98-782, the case filed by GEC against LBP.

#### **FACTS:**

On July 27, 2000, herein respondent Gateway Property Holdings, Inc. (GPHI) filed a Complaint with Application for the Issuance of a Writ of Preliminary Injunction against herein petitioner Philippine National Bank (PNB). The case was docketed as Civil Case No. TM-1022 in the RTC of Trece Martires City, Branch 23.

According to the complaint, GPHI was a subsidiary company of Gateway Electronics Company (GEC). In 1995 and 1996, GEC obtained long term loans from the Land Bank of the Philippines (LBP) in the amount of P600,000,000.00. The loans were secured by mortgages executed by GEC over its various properties. Subsequently, LBP offered to provide additional funds to GEC by inviting other banking institutions to lend money therefor. LBP allegedly agreed to submit the properties mortgaged to it by GEC as part of the latter's assets that will be covered by a Mortgage Trust Indenture (MTI), ensuring that "all participating banks in the loan syndicate will have equal security position."

Before the formal execution of an MTI, LBP and a consortium of banks entered into a Memorandum of Understanding (MOU), whereby LBP agreed to release the mortgaged properties to the consortium of banks on the basis of an MTI. Relying on the said undertaking, the participating banks released funds in favor of GEC. PNB later became part of this consortium of creditor banks.

Thereafter, GEC allegedly encountered difficulties in paying its obligations to the banks, including those owed to PNB. GEC then requested PNB to convert its long-term loans into a Convertible Omnibus Credit Line. As part of the requirements of PNB, GPHI was made a co-borrower in the

agreement and was obligated to execute in favor of PNB a real estate mortgage over two parcels of land covered by Transfer Certificates of Title (TCT) Nos. T-636816 and T-636817.

In March 1998, LBP allegedly refused to abide by its undertaking to share the mortgaged properties of GEC with the consortium of creditor banks. GEC, thus, filed a complaint for specific performance against LBP, which was docketed as Civil Case No. 98-782.

On or about June 19, 2000, PNB purportedly demanded from GEC the full payment of the latter's obligations. Thereafter, GPHI learned of PNB's supposedly underhanded registration of the real estate mortgage with intent to foreclose the same.

GPHI principally alleged in its complaint that "[t]he understanding between GEC and PNB is that the GPHI properties would stand merely as a 'temporary security' pending the outcome of Civil Case No. 98-782 which was filed by GEC against LBP. The GPHI Property was never contemplated at any time as a collateral for GEC's loan obligations to PNB." Also, GPHI argued that "[t]he execution of a Real Estate Mortgage in favor of [PNB] over the GPHI Property did not reflect the true intention of the parties thereto, GEC and PNB. The documents attached as Annexes to [the complaint] clearly show the interim or temporary nature of the mortgage arrangement." GPHI contended that PNB had no legal right to effect the foreclosure of the mortgaged properties. GPHI, thus, prayed that upon receipt of the complaint by the trial court, a temporary restraining order (TRO) be issued to enjoin PNB from foreclosing on the properties of GPHI covered by TCT Nos. T-636816 and T-636817, as well as from registering the fact of foreclosure or performing any act that would deprive GPHI of its ownership of the said properties.

It appears that the RTC did not issue a TRO in favor of GPHI in the above case such that, on May 3, 2001, PNB initiated extrajudicial foreclosure proceedings on the properties covered by TCT Nos. T-636816 and T-636817.

On August 14, 2001, GPHI filed a Petition for Annulment of Foreclosure of Mortgage with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction. Docketed as Civil Case No. TM-1108, the petition was also raffled in Branch 23 of the RTC of Trece Martires City. GPHI argued that, in conducting the foreclosure proceedings, the sheriff failed to observe the requirement of Section 4 of Act No. 3135 that the "sale shall be made at public auction." The entries in the minutes of the foreclosure sale allegedly did not indicate that a valid public auction was carried out in keeping with the requirements of the law. GPHI, thereafter, sought for a judgment: (1) perpetually prohibiting PNB from divesting GPHI of its possession and ownership of the mortgaged properties, as well as taking possession, administration and ownership thereof; (2) declaring the foreclosure sale conducted on June 20, 2001 as null and void; (3) ordering PNB to pay GPHI P2,000,000.00 as moral damages, P1,000,000.00 as exemplary damages, P500,000.00 as attorney's fees and costs of suit.

On September 11, 2001, PNB filed a Motion to Dismiss the above petition, and contended that there was another action pending between the same parties for the same cause of action. Essentially, PNB argued that GPHI resorted to a splitting of a cause of action by first filing a complaint for the annulment of the contract of real estate mortgage and then filing a petition for the annulment of the subsequent foreclosure of the mortgage. PNB further alleged that the subsequent petition of GPHI failed to state a cause of action.

On December 20, 2001, the RTC ordered the dismissal of Civil Case No. TM-1108. GPHI filed a Motion for Reconsideration but the trial court denied the motion. GPHI, thus, filed a Notice of

Appeal, which was given due course by the trial court. In the interregnum, after the parties presented their respective evidence in Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage), GPHI filed a Motion for Leave to Amend Complaint to Conform to the Evidence In the Amended Complaint attached therein, GPHI made mention of the foreclosure sale conducted on June 20, 2001 and the fact that the mortgaged properties were sold to PNB for P168 million. Since GPHI's liability was allegedly limited only to P112 million in accordance with the letter of PNB dated August 13, 1997 and the Amendment to the Credit Agreement between GEC, GPHI and PNB, GPHI claimed that it should be refunded the amount of P56 million. GPHI then prayed for a judgment declaring the real estate mortgage, the foreclosure and the sale of the mortgaged properties null and void; or, alternatively, for a judgment ordering PNB to return to GPHI the amount of P56 million, plus interest.

On September 28, 2007, the Court of Appeals rendered the assailed decision granting the appeal of GPHI. PNB moved for the reconsideration but the Court of Appeals denied the same in the assailed Resolution dated January 24, 2008. PNB, thus, instituted the instant petition.

#### **Issues:**

Whether there is an identity of causes of action in Civil Case Nos. TM-1022 and TM-1108?

# **Ruling:**

We grant the petition of PNB.

Section 2, Rule 2 of the Rules of Court defines a cause of action as "the act or omission by which a party violates a right of another." Section 3 of Rule 2 provides that [a] party may not institute more than one suit for a single cause of action." Anent the act of splitting a single cause of action, Section 4 of Rule 2 explicitly states that "[i]f two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others."

# Carlet v. Court of Appeals states that:

As regards identity of causes of action, the test often used in determining whether causes of action are identical is to ascertain whether the same evidence which is necessary to sustain the second action would have been sufficient to authorize a recovery in the first, even if the forms or nature of the two actions be different. If the same facts or evidence would sustain both actions, the two actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not.

In the case at bar, a perusal of the allegations in Civil Case Nos. TM-1022 (Annulment of the Real Estate Mortgage) and TM-1108 (Annulment of the Foreclosure Sale) reveal that the said cases invoke the same fundamental issue, i.e., the temporary nature of the security that was to be provided by the mortgaged properties of GPHI. To repeat, in the original complaint in Civil Case No. TM-1022 (Annulment of the Real Estate Mortgage), GPHI's main argument was that the agreement between GEC and PNB was that the mortgaged properties of GPHI would merely stand as temporary securities pending the outcome of Civil Case No. 98-782, the case filed by GEC against LBP. The mortgaged properties were never contemplated to stand as bona fide collateral for the loan obligations of GEC to PNB. Also, GPHI claimed that the execution of the real estate mortgage over the properties of GPHI did not reflect the true intention of GEC and PNB. As such, GPHI

concluded that PNB had no legal right to pursue the remedy of foreclosure of the mortgaged properties in light of the inability of GEC to pay its loan obligations to PNB.

On the other hand, in its petition in Civil Case No. TM-1108 (Annulment of the Foreclosure Sale), GPHI asserted that PNB knew that the mortgaged properties were "never intended to be used as permanent collateral for GEC, but one which was simply used as an unregistered security until [GPHI] incurs in default if sold and the proceeds of which should be used in payment for the obligation of GEC."

In addition, GPHI argued that the letter of PNB dated August 13, 1997 was clear in that the real estate mortgage was to remain unregistered until an "event of default" occurs and PNB shall possess the titles covering the properties "until the condition of assigning the sales proceeds of the mentioned real properties up to a minimum of US\$ equivalent of PhP112,000,000.00 to [PNB] is complied with."

Therefore, in essence, the cause of action of GPHI in both cases is the alleged act of PNB of reneging on a prior agreement or understanding with GEC and GPHI vis-à-vis the constitution, purpose and consequences of the real estate mortgage over the properties of GPHI. While the reliefs sought in Civil Case Nos. TM-1022 (Annulment of the Real Estate Mortgage) and TM-1108 (Annulment of the Foreclosure Sale) are seemingly different, the ultimate question that the trial court would have to resolve in both cases is whether the real estate mortgage over the properties of GPHI was actually intended to secure the loan obligations of GEC to PNB so much so that PNB can legally foreclose on the mortgaged properties should GEC fail to settle its loan obligations. In this regard, GPHI made reference to the letter of PNB dated August 13, 1997 and the Amendment to the Credit Agreement between GEC, GPHI and PNB as the primary documents upon which GPHI based its arguments regarding the supposed intention of the parties in both Civil Case Nos. TM-1022 (Annulment of the Real Estate Mortgage) and TM-1108 (Annulment of the Foreclosure Sale). Thus, the same documentary evidence would necessarily sustain both cases.

# JOVITO R. SALONGA, plaintiff-appellee, -versus- WARNER, defendant-appellant. G.R. No. L-2246, EN BANC, January 31, 1951, BAUTISTA ANGELO, J.

In Salmon & Pacific Commercial Co. vs. Tan Cueco, the Court held that an action must be brought against the real party in interest, or against a party which may be bound by the judgment to be rendered therein. The real party in interest is the party who would be benefited or injured by the judgment, or the "party entitled to the avails of the suit"

And in the case at bar, the defendant issued upon in its capacity as agent of Westchester Fire Insurance Company of New York in spite of the fact that the insurance contract has not been signed by it.

#### **FACTS:**

Westchester Fire Insurance Company of New York entered into a contract with Tina J. Gamboa for the shipment of one case of rayon yardage. Upon arrival, it was discovered that there were a shortage of 1,723.12 pesos on the shipment from San Francisco, California, on steamer Clovis Victory, to Manila. Consignee, Jovito Salonga, demanded from American President Lines agents of the ship Clovis Victory, demanding settlement, and when apparently no action was taken on this claim, plaintiff demanded payment thereof from Warner, Barnes and Co., Ltd., as agent of the

insurance company in the Philippines to pay him the excess amount. In the meantime, American President Lines agreed to pay to the plaintiff the amount under its liability in the bill of lading, and when this offer was rejected, the claim was finally settled. As a result, the amount claimed in the complaint as the ultimate liability of the defendant under the insurance contract was reduced to P717.82 only. The trial court held that defendant, as agent of Westchester Fire Insurance is responsible upon the insurance claim subject to the suit. The motion for reconsideration filed by the defendant having been denied, the case was appealed to this court.

# **ISSUE**:

Whether or not the defendant is the real party in interest?

#### **HELD**:

Counsel next contends that Warner, Barnes and Co., Ltd., is not the real party in interest against whom the suit should be brought. It is claimed that this action should have been filed against its principal, the Westchester Fire Insurance Company of New York. This point is also well taken. Section 2, Rule 3 of the Rules of Court requires that "every action must be prosecuted in the name of the real party in interest."

A corollary proposition to this rule is that an action must be brought against the real party in interest, or against a party which may be bound by the judgment to be rendered therein (Salmon & Pacific Commercial Co. vs. Tan Cueco, 36 Phil., 556). The real party in interest is the party who would be benefited or injured by the judgment, or the "party entitled to the avails of the suit" (1 Sutherland, Court Pleading Practice & Fornts, p. 11).

And in the case at bar, the defendant issued upon in its capacity as agent of Westchester Fire Insurance Company of New York in spite of the fact that the insurance contract has not been signed by it. As we have said, the defendant did not assume any obligation thereunder either as agent or as a principal. It cannot, therefore, be made liable under said contract, and hence it can be said that this case was filed against one who is not the real party in interest.

# CARLOS O. FORTICH, *Petitioners*, -versus- RENATO C. CORONA, *Respondent*. G.R. No. 131457, SECOND DIVISION, April 24, 1998, MARTINEZ, *J.*

In Garcia vs. David, the Court stated that the rule in this jurisdiction is that a real party in interest is a party who would be benefited or injured by the judgment or is the party entitled to the avails of the suit. Real interest means a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate or consequential interest.

Undoubtedly, movants' interest over the land in question is a mere expectancy. Ergo, they are not real parties in interest. Furthermore, the challenged resolution upon which movants based their motion is, as intimated earlier, null and void. Hence, their motion for intervention has no leg to stand on.

### **FACTS:**

This case involves a 144-hectare land located at San Vicente, Sumilao, Bukidnon, owned by the Norberto. Quisumbing, Sr. Management and Development Corporation (NQSRMDC), one of the petitioners.

In 1984, the land was leased as a pineapple plantation to the Philippine Packing Corporation, now Del Monte Philippines, Inc. (DMPI) for a period of ten (10) years. The lease expired in April, 1994. During the existence of the lease, the Department of Agrarian Reform (DAR) placed the entire 144-hectare property under compulsory acquisition and assessed the land value at P2.38 million.

NQSRMDC sought and was granted by the DAR Adjudication Board (DARAB), through its Provincial Agrarian Reform Adjudicator (PARAD) a writ of prohibition with preliminary injunction which ordered the DAR Region X Director, the Provincial Agrarian Reform Officer (PARO) of Bukidnon, the Municipal Agrarian Reform Office (MARO) of Sumilao, Bukidnon, the Land Bank of the Philippines (Land Bank), and their authorized representatives "to desist from pursuing any activity or activities" concerning the subject land "until further orders."

Despite the DARAB order of March 31, 1992, the DAR Regional Director issued a memorandum directing the Land Bank to open a trust account for P2.38 million in the name of NQSRMDC and to conduct summary proceedings to determine the just compensation of the subject property. NQSRMDC objected to these moves and filed an Omnibus Motion to enforce the DARAB order of March 31, 1992 and to nullify the summary proceedings undertaken by the DAR Regional Director and Land Bank on the valuation of the subject property.

DARAB acted favorably on the Omnibus Motion. Land Bank complied with the DARAB. In the meantime, the Provincial Development Council (PDC) of Bukidnon, headed by Governor Carlos O. Fortich, passed Resolution No. 6, dated January 7, 1993, designating certain areas along Bukidnon-Sayre Highway as part of the Bukidnon Agro-Industrial Zones where the subject property is situated.

Pursuant to Section 20 of R.A. No. 7160, otherwise known as the Local Government Code, the Sangguniang Bayan of Sumilao, Bukidnon, on March 4, 1993, enacted Ordinance No. 24 converting or re-classifying 144 hectares of land in Bgy. San Vicente, said Municipality, from agricultural to industrial/institutional with a view of providing an opportunity to attract investors who can inject new economic vitality, provide more jobs and raise the income of its people. Under said section, 4th to 5th class municipalities may authorize the classification of five percent (5%) of their agricultural land area and provide for the manner of their utilization or disposition.

On 11 December 1993, the instant application for conversion was filed by Mr. Gaudencio Beduya in behalf of NQSRMDC/BAIDA (Bukidnon Agro-Industrial Development Association). This was favorably recommended by a lot government officials. The people of the affected barangay even rallied behind their respective officials in endorsing the project. Notwithstanding the foregoing favorable recommendation, however, on November 14, 1994, the DAR, thru Secretary Garilao, invoking its powers to approve conversion of lands under Section 65 of R.A. No. 6657, issued an Order denying the instant application for the conversion of the subject land from agricultural to agro-industrial and, instead, placed the same under the compulsory coverage of CARP and directed the distribution thereof to all qualified beneficiaries.

Motion for Reconsideration of the aforesaid Order was filed by applicant but the same was denied. Thus, the DAR Secretary ordered the DAR Regional Director "to proceed with the compulsory acquisition and distribution of the property."

Governor Carlos O. Fortich of Bukidnon appealed" the order of denial to the Office of the President and prayed for the conversion/reclassification of the subject land as the same would be more beneficial to the people of Bukidnon. NQSRMDC filed with the Court of Appeals a petition for certiorari, prohibition with preliminary injunction.

Meanwhile, on July 25, 1995, the Honorable Paul G. Dominguez, then Presidential Assistant for Mindanao, after conducting an evaluation of the proposed project, sent a memorandum to the President favorably endorsing the project with a recommendation that the DAR Secretary reconsider his decision in denying the application of the province for the conversion of the land.

On October 23, 1995, the Court of Appeals issued a Resolution ordering the parties to observe status quo pending resolution of the petition. In resolving the appeal, the Office of the President, through then Executive Secretary Ruben D. Torres, issued a Decision in OP Case No. 96-C-6424, dated March 29, 1996, reversing the DAR Secretary's decision. It stated that: deciding in favor of NQSRMDC, the DARAB correctly pointed out that under Section 8 of R.A. No. 6657, the subject property could not validly be the subject of compulsory acquisition until after the expiration of the lease contract with Del Monte Philippines, a Multi-National Company, or until April 1994. xxx the language of Section 20 of R.A. No. 7160, *supra*, is clear and affords no room for any other interpretation. By unequivocal legal mandate, it grants local government units autonomy in their local affairs including the power to convert portions of their agricultural lands and provide for the manner of their utilization and disposition to enable them to attain their fullest development as self-reliant communities.

On September 11, 1996, in compliance with the OP decision of March 29, 1996, NQSRMDC and the Department of Education, Culture and Sports (DECS) executed a Memorandum of Agreement whereby the former donated four (4) hectares from the subject land to DECS for the establishment of the NQSR High School. When NQSRMDC was about to transfer the title over the 4-hectare donated to DECS, it discovered that the title over the subject property was no longer in its name. It soon found out that during the pendency of both the Petition for *Certiorari*, Prohibition, with Preliminary Injunction it filed against DAR in the Court of Appeals and the appeal to the President filed by Governor Carlos O. Fortich, the DAR, without giving just compensation, caused the cancellation of NQSRMDC's title on August 11, 1995 and had it transferred in the name of the Republic of the Philippines.

On September 25, 1995, DAR caused the issuance of Certificates of Land Ownership Award (CLOA) No. 00240227 and had it registered in the name of 137 farmer-beneficiaries.

On April 10, 1997, NQSRMDC filed a complaint with the Regional Trial Court (RTC) of Malaybalay, Bukidnon for annulment and cancellation of title, damages and injunction against DAR and 141 others. RTC then issued a Temporary Restraining Order and a Writ of Preliminary Injunction restraining the DAR and 141 others from entering, occupying and/or wresting from NQSRMDC the possession of the subject land.

On August 12, 1997, the said writ of preliminary injunction issued by the RTC was challenged by some alleged farmers before the Court of Appeals through a petition for Quezon City to protest the OP Decision of March 29, 1996.

On October 9, 1997, some alleged farmer-beneficiaries began their hunger strike in front of the DAR Compound in Quezon City to protest the OP Decision of March 29, 1996. On October 10, 1997, some

persons claiming to be farmer-beneficiaries of the NQSRMDC property filed a motion for intervention (styled as Memorandum In Intervention) in O.P. Case No. 96-C-6424, asking that the OP Decision allowing the conversion of the entire 144-hectare property be set aside.

President Fidel V. Ramos then held a dialogue with the strikers and promised to resolve their grievance within the framework of the law. He created an eight (8)-man Fact Finding Task Force (FFTF) chaired by Agriculture Secretary Salvador Escudero to look into the controversy and recommend possible solutions to the problem.

On November 7, 1997, the Office of the President resolved the strikers' protest by issuing the so-called "Win/Win" Resolution penned by then Deputy Executive Secretary Renato C. Corona.

A copy of the "Win-Win" Resolution was received by Governor Carlos O. Fortich of Bukidnon, Mayor Rey B. Baula of Sumilao, Bukidnon, and NQSRMDC on November 24, 1997 and, on December 4, 1997, they filed the present petition for certiorari, prohibition (under Rule 65 of the Revised Rules of Court) and injunction with urgent prayer for a temporary restraining order and/or writ of preliminary injunction (under Rule 58, ibid.), against then Deputy Executive Secretary Renato C. Corona and DAR Secretary Ernesto D. Garilao.

On December 12, 1997, a Motion For Leave To Intervenewas filed by alleged farmer-beneficiaries, through counsel, claiming that they are real parties in interest as they were "previously identified by respondent DAR as agrarian reform beneficiaries on the 144-hectare" property subject of this case. The motion was vehemently opposed by the petitioners.

Respondents, through the Solicitor General, opposed the petition and prayed that it be dismissed outright.

## **ISSUE:**

Whether or not the movants are real parties in interest?

### **RULING:**

In their motion, movants contend that they are the farmer-beneficiaries of the land in question, hence, are real parties in interest. To prove this, they attached as Annex "I" in their motion a Master List of Farmer-Beneficiaries. Apparently, the alleged master list was made pursuant to the directive in the dispositive portion of the assailed "Win-Win" Resolution which directs the DAR "to carefully and meticulously determine who among the claimants are qualified farmer-beneficiaries." However, a perusal of the said document reveals that movants are those purportedly "Found Qualified and Recommended for Approval." In other words, movants are merely recommendee farmer-beneficiaries

In Garcia vs. David, the Court stated that the rule in this jurisdiction is that a real party in interest is a party who would be benefited or injured by the judgment or is the party entitled to the avails of the suit. Real interest means a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate or consequential interest.

Undoubtedly, movants' interest over the land in question is a mere expectancy. Ergo, they are not real parties in interest. Furthermore, the challenged resolution upon which movants based their

motion is, as intimated earlier, null and void. Hence, their motion for intervention has no leg to stand on.

#### ANTONIO SAMANIEGO v. VIC ALVAREZ AGUILA

G.R. No. 125567, SECOND DIVISION, June 27, 2000, MENDOZA, J.

Florenz D. Regalado in his "Remedial Law Compendium", on the other hand, wrote that a nominal or pro forma party is one who is joined as a plaintiff or defendant, not because such party has any real interest in the subject matter or because any relief is demanded, but merely because the technical rules of pleadings require the presence of such party on the record.

In the case at bar, even assuming that the Office of the President should have been impleaded by petitioner, it is clear that the Office of the President is merely a pro forma party, in the same way that a respondent court is a pro forma party in special civil actions for certiorari.

#### **FACTS:**

Petitioners are tenants in a landholding with an aggregate area of 10.4496 hectares, more or less, in Patul (now Malvar), Santiago, Isabela. The land belongs to Salud Aguila, whose children, Vic Alvarez Aguila and Josephine Taguinod, are private respondents.

It appears that the land in question was identified by the Department of Agrarian Reform (DAR)-Region 2 as covered by the Operation Land Transfer Program of the government. In 1976, Aguila, in behalf of her children, herein private respondents, filed a petition for exemption from the coverage of P.D. No. 27. Petitioners opposed the application on the ground that Aguila's transfer of the title to the lands to her children was in violation of the rules and regulations of the DAR.

In its August 21, 1991 decision, the Regional Director granted the application for exemption. On appeal to the DAR, the decision was affirmed in a decision dated September 28, 1992. However, on motion of petitioners, the DAR reversed its ruling and denied private respondents' application for exemption and declared petitioners the rightful farmer-beneficiaries of the land.

Private respondents appealed to the Office of the President which the Order of the Department of Agrarian Reform is hereby SET ASIDE. The earlier order of that Department is hereby CONFIRMED and REINSTATED with a modification that subject landholdings are not covered by the OLT program of the government pursuant to P.D. No. 27.

Petitioners appealed to the Court of Appeals, but their petition was dismissed. Petitioners moved for a reconsideration, contending that under Administrative Circular No. 1-95, the Office of the President need not be impleaded. However, their motion was denied. Hence, this petition.

#### ISSUE:

Whether the Office of the President is an indispensable party in an appeal from its decision and, therefore, must be impleaded pursuant to the Rules of Civil Procedure?

# **RULING:**

We hold that it is not; accordingly, we remand the case to the Court of Appeals for review on the merits.

The Court of Appeals held that in appeals from decisions of the Office of the President, the latter is an indispensable party. This is error. Under Rule 7, §3 of the Rules of Civil Procedure, an indispensable party is a party in interest without whom no final determination can be had of an action without that party being impleaded. Indispensable parties are those with such an interest in the controversy that a final decree would necessarily affect their rights, so that the court cannot proceed without their presence. "Interest", within the meaning of this rule, should be material, directly in issue and to be affected by the decree, as distinguished from a mere incidental interest in the question involved.

Florenz D. Regalado in his "Remedial Law Compendium", on the other hand, wrote that a nominal or pro forma party is one who is joined as a plaintiff or defendant, not because such party has any real interest in the subject matter or because any relief is demanded, but merely because the technical rules of pleadings require the presence of such party on the record.

In the case at bar, even assuming that the Office of the President should have been impleaded by petitioner, it is clear that the Office of the President is merely a pro forma party, in the same way that a respondent court is a pro forma party in special civil actions for certiorari.

The issue in the petition before the Court of Appeals is whether a private land should be exempted from the coverage of P.D. No 27. Whatever happens to that case and whoever wins would not bring any prejudice or gain to the government. The only participation of the Office of the President in this case is its role as the office which entertains appeals from decisions of the DAR. Indeed, the very reason that the appellate court excused the Office of the Solicitor General from filing a comment is that it deemed that the case involved "purely private interests."

WHEREFORE, the decision of the Court of Appeals, dated January 25, 1996, and its resolution, dated July 5, 1996, are hereby REVERSED and the Court of Appeals is ORDERED to decide the case on the merits with deliberate speed.

# THEODORE AND NANCY ANG, REPRESENTED BY ELDRIGE MARVIN B. ACERON, Petitioners, - versus- SPOUSES ALAN AND EM ANG, Respondents.

G.R. No. 186993, SECOND DIVISION, August 22, 2012, REYES, J.

As stated in Uy v. Court of Appeals, A real party in interest is the party who, by the substantive law, has the right sought to be enforced. Section 2, Rule 3 of the Rules of Court reads:

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.

Interest within the meaning of the Rules of Court means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved.

Applying the foregoing rule, it is clear that Atty. Aceron is not a real party in interest in the case below as he does not stand to be benefited or injured by any judgment therein. He was merely appointed by

the petitioners as their attorney-in-fact for the limited purpose of filing and prosecuting the complaint against the respondents. Such appointment, however, does not mean that he is subrogated into the rights of petitioners and ought to be considered as a real party in interest.

#### **FACTS:**

Petitioner and respondents (both surnamed Ang) entered into a contract of loan with respondents as debtors. Respondents executed a promissory note with a stipulated interest of 10%. However, despite repeated demands, the respondents failed to pay the petitioners.

A complaint for collection of sum of money was filed with the RTC of Quezon City. Respondents moved for the dismissal of the complaint on the grounds of improper venue. They asserted that the complaint against them may only be filed in the court of the place where either they or the petitioners reside. They averred that they reside in Bacolod City while the petitioners reside in Los Angeles, California, USA.

On April 12, 2007, the RTC of Quezon City denied the respondents' motion to dismiss explaining that:

Attached to the complaint is the Special Power of Attorney which clearly states that plaintiff Nancy Ang constituted Atty. Aceron as her duly appointed attorney-in-fact to prosecute her claim against herein defendants. Considering that the address given by Atty. Aceron is in Quezon City, hence, being the plaintiff, venue of the action may lie where he resides as provided in Section 2, Rule 4 of the 1997 Rules of Civil Procedure.

The respondents sought reconsideration asserting that there is no law which allows the filing of a complaint in the court of the place where the representative, who was appointed as such by the plaintiffs through a Special Power of Attorney, resides. The respondents' motion for reconsideration was denied by the RTC of Quezon City. The respondents then filed with the CA a petition for certiorari

On August 28, 2008, the CA rendered the herein Decision which annulled and set aside the Orders dated April 12, 2007 and August 27, 2007 of the RTC of Quezon City and, accordingly, directed the dismissal of the complaint filed by the petitioners. The CA held that the complaint below should have been filed in Bacolod City and not in Quezon City. The petitioners sought a reconsideration but it was denied by the CA.

Hence, the instant petition. Petitioners maintain that their complaint for collection of sum of money against the respondents may be filed in the RTC of Quezon City. Invoking Section 3, Rule 3 of the Rules of Court, they insist that Atty. Aceron, being their attorney-in-fact, is deemed a real party in interest in the case below and can prosecute the same before the RTC. Such being the case, the petitioners assert, the said complaint for collection of sum of money may be filed in the court of the place where Atty. Aceron resides, which is the RTC of Quezon City.

On the other hand, the respondents assert that the petitioners are proscribed from filing their complaint in the RTC of Quezon City. They assert that the residence of Atty. Aceron, being merely a representative, is immaterial to the determination of the venue of the petitioners' complaint.

#### **ISSUE:**

Whether Atty. Aceron, being their attorney-in-fact, is a real party in interest?

#### **RULING:**

Here, the petitioners are residents of Los Angeles, California, USA while the respondents reside in Bacolod City. Applying the foregoing principles, the petitioners' complaint against the respondents may only be filed in the RTC of Bacolod City – the court of the place where the respondents reside. The petitioners, being residents of Los Angeles, California, USA, are not given the choice as to the venue of the filing of their complaint.

**Atty. Aceron is not a real party in interest in the case below**; thus, his residence is immaterial to the venue of the filing of the complaint. Contrary to the petitioners' claim, Atty. Aceron, despite being the attorney-in-fact of the petitioners, is not a real party in interest in the case below.

As stated in Uy v. Court of Appeals, A real party in interest is the party who, by the substantive law, has the right sought to be enforced. Section 2, Rule 3 of the Rules of Court reads:

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.

*Interest* within the meaning of the Rules of Court means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved.

Applying the foregoing rule, it is clear that Atty. Aceron is not a real party in interest in the case below as he does not stand to be benefited or injured by any judgment therein. He was merely appointed by the petitioners as their attorney-in- fact for the limited purpose of filing and prosecuting the complaint against the respondents. Such appointment, however, does not mean that he is subrogated into the rights of petitioners and ought to be considered as a real party in interest.

Being merely a representative of the petitioners, Atty. Aceron in his personal capacity does not have the right to file the complaint below against the respondents. He may only do so, as what he did, in behalf of the petitioners the real parties in interest. To stress, the right sought to be enforced in the case below belongs to the petitioners and not to Atty. Aceron. Clearly, an attorney-in-fact is not a real party in interest.

Nowhere in the rule cited above is it stated or, at the very least implied, that the representative is likewise deemed as the real party in interest. The said rule simply states that, in actions which are allowed to be prosecuted or defended by a representative, the beneficiary shall be deemed the real party in interest and, hence, should be included in the title of the case.

**TEODULFO E. LAO,** *Petitioner***, -versus- LGU OF CAGAYAN DE ORO CITY,** *Respondent.* G.R. No. 187869, THIRD DIVISION, September 13, 2017, Leonen, *J.* 

As explained in City Council of Cebu v. Cuizon:

It seems clearly self-evident from the foregoing recitation of the undisputed antecedents and factual background that the lower court gravely erred in issuing its dismissal order on the ground of plaintiffs' alleged lack of interest or legal standing as city councilors or as taxpayers to maintain the case at bar. The lower court founded its erroneous conclusion on the equally erroneous premise of citing and applying Article 1397 of the Civil Code that "the action for the annulment of contracts may be instituted (only) by all who are thereby obliged principally or subsidiarily."

The lower court's fundamental error was in treating plaintiffs' complaint as a personal suit on their own behalf and applying the test in such cases that plaintiffs should show personal interest as parties who would be benefited or injured by the judgment sought. Plaintiffs' suit is patently not a personal suit. Plaintiffs clearly and by the express terms of their complaint filed the suit as a representative suit on behalf and for the benefit of the city of Cebu.

The real party in interest which may file a case, questioning the validity of a contract entered into by the city mayor, who is alleged to have no authority to do so, is the city itself. It is the local government unit which stands to be injured or benefited by any judgment that may be made in this case. As the City Council is the source of the mayor's power to execute contracts for the city, its members have the authority, interest, and even duty to file cases in behalf of the city to restrain the execution of contracts entered into in violation of the Local Government Code. Here, it is undisputed that petitioners are members of the City Council of Cagayan De Oro.

# **FACTS:**

On March 19, 2007, the City Council of Cagayan De Oro passed an ordinance which approved See's unsolicited proposal "for the redevelopment of Agora Complex into a Modern Integrated Terminal, Public Market, and Vegetable Landing Area." The redevelopment would be under a build-operate-transfer scheme.

At the time, the City Mayor was Vicente Y. Emano. On January 27, 2009, Mega Farm, through See, and the then newly elected Mayor Jaraula executed the Build-Operate-Transfer Contract for the Redevelopment of Agora.

On March 19, 2009, petitioners filed their Complaint for Declaration of Nullity of the Re-Development of Agora Market and Terminal Contract Under Build-Operate-Transfer (BOT) Scheme and All Ordinances, Resolutions and Motions of the City Council Relative Thereto with Prayer for Temporary Restraining Order (TRO) & Preliminary Prohibitory Injunction with Damages with the RTC of Misamis Oriental. This complaint was filed against City Government of Cagayan De Oro and the incumbent Cagayan De Oro City officials, in their personal and official capacities. In their complaint, petitioners, as public officers and in their personal capacity, questioned the execution and the contents of the Agora Complex BOT Contract. They alleged that it was issued in bad faith and with fraudulent maneuvers between Mega Farm and the City Government of Cagayan De Oro.

#### **ISSUE:**

Whether the local government unit is a real party in interest?

#### **RULING:**

YES.

The dismissal by the trial court of the complaint due to petitioners' lack of personality to file suit is erroneous. Petitioners, as members of the City Council of Cagayan De Oro, may file a case to question a contract entered into by the city mayor allegedly without the City Council's authority.

Rule 3. Section 2 of the Rules of Court defines the real party in interest that may institute a case: Section 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.

The real party in interest which may file a case, questioning the validity of a contract entered into by the city mayor, who is alleged to have no authority to do so, is the city itself. It is the local government unit which stands to be injured or benefited by any judgment that may be made in this case. The city councilors merely represent the city in the suit. As explained in City Council of Cebu v. Cuizon:

It seems clearly self-evident from the foregoing recitation of the undisputed antecedents and factual background that the lower court gravely erred in issuing its dismissal order on the ground of plaintiffs' alleged lack of interest or legal standing as city councilors or as taxpayers to maintain the case at bar. The lower court founded its erroneous conclusion on the equally erroneous premise of citing and applying Article 1397 of the Civil Code that "the action for the annulment of contracts may be instituted (only) by all who are thereby obliged principally or subsidiarily."

The lower court's fundamental error was in treating plaintiffs' complaint as a personal suit on their own behalf and applying the test in such cases that plaintiffs should show personal interest as parties who would be benefited or injured by the judgment sought. Plaintiffs' suit is patently not a personal suit. Plaintiffs clearly and by the express terms of their complaint filed the suit as a representative suit on behalf and for the benefit of the city of Cebu.

City councilors may file a suit for the declaration of nullity of a contract on the basis that the city mayor had no authority to do so because the city mayor's authority to bind the city to obligations must emanate from the City Council. Under Title III, Chapter III, Article I, Section 455(b)(l)(vi) of Republic Act No. 7160, otherwise known as the Local Government Code, the city mayor may sign all bonds, contracts, and obligations on behalf of a city only upon authority of the sanggumang panlungsod or pursuant to law or ordinance.

As the City Council is the source of the mayor's power to execute contracts for the city, its members have the authority, interest, and even duty to file cases in behalf of the city to restrain the execution of contracts entered into in violation of the Local Government Code.

Here, it is undisputed that petitioners are members of the City Council of Cagayan De Oro. They have alleged that public respondent Mayor Jaraula entered into the Agora Complex BOT Contract without being authorized by the City Cquncil of Cagayan De Oro, in violation of the requirement in Title III, Chapter III, Article I, Section 455(b)(l)(vi) of the Local Government Code. Clearly, as they are part of the very body in which authority is allegedly being undermined by the city mayor, they have the right and duty to question the basis of the mayor's authority to sign a contract which binds the city.

#### MOST REV. PEDRO D. ARIGO, Petitioner, -versus- SCOTT H. SWIFT, Respondent.

G.R. No. 206510, EN BANC, September 16, 2014, VILLARAMA, JR., J.

On the novel element in the class suit filed by the petitioners minors in Oposa v. Factoran, this Court ruled that not only do ordinary citizens have legal standing to sue for the enforcement of environmental rights, they can do so in representation of their own and future generations. Thus: Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the "rhythm and harmony of nature." Nature means the created world in its entirety. Such rhythm and harmony indispensably include, inter alia, 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 to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.

In this case, the above-named petitioners on their behalf and in representation of their respective sector/organization and others, including minors or generations yet unborn, filed the present petition against Scott H. Swift.

#### **FACTS:**

The USS Guardian is an Avenger-class mine countermeasures ship of the US Navy. In December 2012, the US Embassy in the Philippines requested diplomatic clearance for the said vessel "to enter and exit the territorial waters of the Philippines and to arrive at the port of Subic Bay for the purpose of routine ship replenishment, maintenance, and crew liberty."

On January 6, 2013, the ship left Sasebo, Japan for Subic Bay, arriving on January 13, 2013 after a brief stop for fuel in Okinawa, Japan.

On January 15, 2013, the USS Guardian departed Subic Bay for its next port of call in Makassar, Indonesia. On January 17, 2013 at 2:20 a.m. while transiting the Sulu Sea, the ship ran aground on the northwest side of South Shoal of the Tubbataha Reefs, about 80 miles east-southeast of Palawan. No one was injured in the incident, and there have been no reports of leaking fuel or oil.

Petitioners claim that the grounding, salvaging and post-salvaging operations of the USS Guardian cause and continue to cause environmental damage of such magnitude as to affect the provinces of Palawan, Antique, Aklan, Guimaras, Iloilo, Negros Occidental, Negros Oriental, Zamboanga del Norte, Basilan, Sulu, and Tawi-Tawi, which events violate their constitutional rights to a balanced and healthful ecology.

They also seek a directive from this Court for the institution of civil, administrative and criminal suits for acts committed in violation of environmental laws and regulations in connection with the grounding incident. Specifically, petitioners cite the following violations committed by US

respondents under R.A. No. 10067: unauthorized entry (Section 19); non-payment of conservation fees (Section 21); obstruction of law enforcement officer (Section 30); damages to the reef (Section 20); and destroying and disturbing resources (Section 26[g]). Furthermore, petitioners assail certain provisions of the Visiting Forces Agreement (VFA) which they want this Court to nullify for being unconstitutional.

#### ISSUE:

Whether or not petitioners have legal standing?

#### **RULING:**

Yes.

Locus standi is "a right of appearance in a court of justice on a given question." Specifically, it is "a party's personal and substantial interest in a case where he has sustained or will sustain direct injury as a result" of the act being challenged, and "calls for more than just a generalized grievance." However, the rule on standing is a procedural matter which this Court has relaxed for non-traditional plaintiffs like ordinary citizens, taxpayers and legislators when the public interest so requires, such as when the subject matter of the controversy is of transcendental importance, of overreaching significance to society, or of paramount public interest.

In the landmark case of Oposa v. Factoran, Jr., we recognized the "public right" of citizens to "a balanced and healthful ecology which, for the first time in our constitutional history, is solemnly incorporated in the fundamental law." We declared that the right to a balanced and healthful ecology need not be written in the Constitution for it is assumed, like other civil and political rights guaranteed in the Bill of Rights, to exist from the inception of mankind and it is an issue of transcendental importance with intergenerational implications. Such right carries with it the correlative duty to refrain from impairing the environment.

On the novel element in the class suit filed by the petitioners minors in Oposa v. Factoran, this Court ruled that not only do ordinary citizens have legal standing to sue for the enforcement of environmental rights, they can do so in representation of their own and future generations. Thus:

Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation and for the succeeding generations, file a class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the "rhythm and harmony of nature." Nature means the created world in its entirety. Such rhythm and harmony indispensably include, *inter alia*, 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 to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.

In this case, the above-named petitioners on their behalf and in representation of their respective sector/organization and others, including minors or generations yet unborn, filed the present petition against Scott H. Swift. The liberalization of standing first enunciated in *Oposa*, insofar as it refers to minors and generations yet unborn, is now enshrined in the Rules which allows the filing of a citizen suit in environmental cases. The provision on citizen suits in the Rules "collapses the traditional rule on personal and direct interest, on the principle that humans are stewards of nature."

#### RESIDENT MARINE MAMMALS OF PROTECTED SEASCAPE TANON STRAIT, Petitioner, -versus-SECRETARY ANGELO REYES, Respondent.

G.R. No. 180771, EN BANC, April 21, 2015, LEONARDO-DE CASTRO, J.

In Oposa v. Factoran, we allowed the suit to be brought in the name of generations yet unborn "based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned." Furthermore, we said that the right to a balanced and healthful ecology, a right that does not even need to be stated in our Constitution as it is assumed to exist from the inception of humankind, carries with it the correlative duty to refrain from impairing the environment.

In light of the foregoing, the need to give the Resident Marine Mammals legal standing has been eliminated by our Rules, which allow any Filipino citizen, as a steward of nature, to bring a suit to enforce our environmental laws. It is worth noting here that the Stewards are joined as real parties in the Petition and not just in representation of the named cetacean species. The Stewards, Ramos and Eisma-Osorio, having shown in their petition that there may be possible violations of laws concerning the habitat of the Resident Marine Mammals, are therefore declared to possess the legal standing to file this petition.

#### **FACTS:**

Herein petitioners, resident marine mammals are the toothed whales, dolphins, porpoises and other cetacean species which inhabit the waters in and around the Tanon Strait (islands of Negros and Cebu) They are joined by Gloria ramos and Rose Osorio collectively know as the stewards who seek the protection of these marine species.

In this case, the petitioners seek to nullify the service contract which permits exploration, development and exploitation by Japan petroleum exploration within the Tanon Strait. As we have discussed in NIPAS act, tanon strait is a protected seascape. Originally the contract was entered by the government with JAPEX for geophysical survey and exploration. However it was converted into a service contract by the DOE and JAPEX. JAPEX had started its operations through conducting a survey and exploration of the areas. While in the second sub-phase of the project, JAPEX apply for Environmental impact assessment since it knew that the areas the contract covers are within the protected seascapes. Thereafter, JAPEX obtain a Environmental Compliance Certificate.

#### ISSUE:

Whether or not the petitioners in the case have a legal standing?

#### **RULING:**

The Resident Marine Mammals, through the Stewards, "claim" that they have the legal standing to file this action since they stand to be benefited or injured by the judgment in this suit. Citing Oposa v. Factoran, Jr., they also assert their right to sue for the faithful performance of international and municipal environmental laws created in their favor and for their benefit. In this regard, they propound that they have the right to demand that they be accorded the benefits granted to them in multilateral international instruments that the Philippine Government had signed, under the concept of stipulation pour autrui.

In opposition, public respondents argue that the Resident Marine Mammals have no standing because Section 1, Rule 3 of the Rules of Court requires parties to an action to be either natural or juridical persons, viz.:

Section 1. Who may be parties; plaintiff and defendant. - Only natural or juridical persons, or entities authorized by law may be parties in a civil action. The term "plaintiff may refer to the claiming party, the counter-claimant, the cross-claimant, or the third (fourth, etc.)-party plaintiff. The term "defendant" may refer to the original defending party, the defendant in a counterclaim, the cross-defendant, or the third (fourth, etc.)-party defendant.

The public respondents also contest the applicability of Oposa, pointing out that the petitioners therein were all natural persons, albeit some of them were still unborn.

It had been suggested by animal rights advocates and environmentalists that not only natural and juridical persons should be given legal standing because of the difficulty for persons, who cannot show that they by themselves are real parties-in-interests, to bring actions in representation of these animals or inanimate objects. For this reason, many environmental cases have been dismissed for failure of the petitioner to show that he/she would be directly injured or affected by the outcome of the case. However, in our jurisdiction, locus standi in environmental cases has been given a more liberalized approach. While developments in Philippine legal theory and jurisprudence have not progressed as far as Justice Douglas's paradigm of legal standing for inanimate objects, the current trend moves towards simplification of procedures and facilitating court access in environmental cases.

Recently, the Court passed the landmark Rules of Procedure for Environmental Cases, which allow for a "citizen suit," and permit any Filipino citizen to file an action before our courts for violations of our environmental laws:

SEC. 5. Citizen suit. - Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.

Citizen suits filed under R.A. No. 8749 and R.A. No. 9003 shall be governed by their respective provisions.

Although this petition was filed in 2007, years before the effectivity of the Rules of Procedure for Environmental Cases, it has been consistently held that rules of procedure "may be retroactively

applied to actions pending and undetermined at the time of their passage and will not violate any right of a person who may feel that he is adversely affected, inasmuch as there is no vested rights in rules of procedure."

Moreover, even before the Rules of Procedure for Environmental Cases became effective, this Court had already taken a permissive position on the issue of locus standi in environmental cases. In Oposa v. Factoran, we allowed the suit to be brought in the name of generations yet unborn "based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned." Furthermore, we said that the right to a balanced and healthful ecology, a right that does not even need to be stated in our Constitution as it is assumed to exist from the inception of humankind, carries with it the correlative duty to refrain from impairing the environment.

In light of the foregoing, the need to give the Resident Marine Mammals legal standing has been eliminated by our Rules, which allow any Filipino citizen, as a steward of nature, to bring a suit to enforce our environmental laws. It is worth noting here that the Stewards are joined as real parties in the Petition and not just in representation of the named cetacean species. The Stewards, Ramos and Eisma-Osorio, having shown in their petition that there may be possible violations of laws concerning the habitat of the Resident Marine Mammals, are therefore declared to possess the legal standing to file this petition.

## PHILIPPINE VETERANS BANK, Petitioner, -versus- SPOUSES RAMON AND ANNABELLE SABADO, Respondents.

G.R. No. 224204, SECOND DIVISION, August 30, 2017, Perlas-Bernabe, J.

In Regner v. Logarta, the Court laid down the parameters in determining whether or not one is an indispensable party, viz.:

An indispensable party is a party who has x x x an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.

A person is not an indispensable party, however, if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him and those already parties to the action, or if he has no interest in the subject matter of the action. It is not a sufficient reason to declare a person to be an indispensable party that his presence will avoid multiple litigation

In this case, the CA erred in holding that HTPMI is an indispensable party to the ejectment suit filed by petitioner against respondents. Under the Deed of Assignment, HTPMI assigned its rights to petitioner under the Contract to Sell. By this assignment, the ASSIGNEE hereby acquires all rights of the ASSIGNOR under the Contracts to Sell and under the law, including the right to endorse any and all

terms and conditions of the Contracts to Sell and the right to collect the amounts due thereunder from the purchaser of the Property.

#### **FACTS:**

HTPMI and respondents entered into a Contract to Sell6whereby HTPMI agreed to sell a real property to respondents. In consideration therefor, respondents paid HTPMI the total amount of P869,400.00, consisting of a P174,400.00 down payment and the balance of P695,000.00 payable in 120 equal monthly instalments. The parties further agreed that respondents' failure to pay any amount within the stipulated period of time shall mean the forfeiture of the down payment and any other payments made in connection thereto, as well as the cancellation and rescission of the Contract to Sell in accordance with law.

Petitioner, through a Notice of Cancellation by Notarial Act, cancelled or rescinded respondents' Contract to Sell due to the latter's failure to pay their outstanding obligations thereunder. Consequently, petitioner demanded that respondents vacate the subject property, but to no avail. Hence, a Complaint was filed.

The CA reversed and set aside the RTC's ruling in this case, and accordingly: (a) remanded the case to the MTCC for HTPMI to be impleaded therein; and (b) directed the MTCC to proceed with the trial of the case with dispatch. The CA also ruled that HTPMI is an indispensable party to the case.

#### **ISSUE:**

Whether or not the CA correctly ruled that HTPMI is an indispensable party to petitioner's ejectment suit against respondents and, thus, must be impleaded therein?

#### **RULING:**

No, the CA erred in ruling that HTPMI is an indispensable party.

Section 7, Rule 3 of the Rules of Court mandates that all indispensable parties should be joined in a suit, viz.:

SEC. 7. Compulsory joinder of indispensable parties. - Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

Case law defines an indispensable party as "one whose interest will be affected by the court's action in the litigation, and without whom no final determination of the case can be had. The party's interest in the subject matter of the suit and in the relief sought are so inextricably intertwined with the other parties' that his legal presence as a party to the proceeding is an absolute necessity. In his absence, there cannot be a resolution of the dispute of the parties before the court which is effective, complete, or equitable." "Thus, the absence of an indispensable party renders all subsequent actions of the court null and void, for want of authority to act, not only as to the absent parties but even as to those present."

In Regner v. Logarta, the Court laid down the parameters in determining whether or not one is an indispensable party, viz.:

An indispensable party is a party who has  $x \times x$  an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.

A person is not an indispensable party, however, if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him and those already parties to the action, or if he has no interest in the subject matter of the action. It is not a sufficient reason to declare a person to be an indispensable party that his presence will avoid multiple litigation

In this case, the CA erred in holding that HTPMI is an indispensable party to the ejectment suit filed by petitioner against respondents. Under the Deed of Assignment, HTPMI assigned its rights to petitioner under the Contract to Sell. By this assignment, the ASSIGNEE hereby acquires all rights of the ASSIGNOR under the Contracts to Sell and under the law, including the right to endorse any and all terms and conditions of the Contracts to Sell and the right to collect the amounts due thereunder from the purchaser of the Property.

## SPRING HOMES SUBDIVISION CO., INC., SPOUSES PEDRO L. LUMBRES AND REBECCA T. ROARING, Petitioners, -versus- SPOUSES PEDRO TABLADA, JR. AND ZENAIDA TABLADA, Respondents.

G.R. No. 200009, SECOND DIVISION, January 23, 2017, PERALTA, J.

In Seno, et. al. v. Mangubat, et. al., the Court ruled in the negative, viz.:

The first issue We need to resolve is whether or not defendants Andres Evangelista and Bienvenido Mangubat are indispensable parties. Plaintiffs contend that said defendants being more dummies of defendant Marcos Mangubat and therefore not real parties in interest, there is no room for the application of Sec. 7, Rule 3 of the Revised Rules of Court.

In the present case, there are no rights of defendants Andres Evangelista and Bienvenido Mangubat to be safeguarded if the sale should be held to be in fact an absolute sale nor if the sale is held to be an equitable mortgage. Defendant Marcos Mangubat became the absolute owner of the subject property by virtue of the sale to him of the shares of the aforementioned defendants in the property. Said defendants no longer have any interest in the subject property. However, being parties to the instrument sought to be reformed, their presence is necessary in order to settle all the possible issues of tile controversy. Whether the disputed sale be declared an absolute sale or an equitable mortgage, the rights of all the defendants will have been amply protected. Defendants-spouses Luzame in any event may enforce their rights against defendant Marcos Mangubat

In this case, by virtue of the second Deed of Absolute Sale between Spring Homes and the Spouses Lumbres, the Spouses Lumbres became the absolute and registered owner of the subject property herein. As such, they possess that certain interest in the property without which, the courts cannot proceed for settled is the doctrine that registered owners of parcels of land whose title is sought to be nullified should be impleaded as an indispensable party.

#### **FACTS:**

Pursuant to their JVA, the Spouses Lumbres transferred the titles to the parcels of land in the name of Spring Homes. In 1995, Spring Homes entered into a Contract to Sell with Spouses Tablada for the sale of a parcel of land. The Spouses Lumbres filed with the RTC a complaint for Collection of Sum of Money, Specific Performance and Damages with prayer for the issuance of a Writ of Preliminary Attachment against Spring Homes for its alleged failure to comply with the terms of the JVA. Unaware of the pending action, the Spouses Tablada began constructing their house on the subject lot and thereafter occupied the same. Spring Homes executed a Deed of Absolute Sale in favor of the Spouses Tablada, who paid Spring Homes an amount more than the purchase price. The title over the subject property, however, remained with Spring Homes for its failure to cause the cancellation of the TCT and the issuance of a new one in favor of the Spouses Tablada, who only received a photocopy of said title.

Subsequently, the Spouses Tablada discovered that the subject property was mortgaged as a security for a loan. In fact, since the loan remained unpaid, extrajudicial proceedings were instituted. Meanwhile, without waiting for trial on the specific performance and sum of money complaint, the Spouses Lumbres and Spring Homes entered into a Compromise Agreement, approved by the RTC, wherein Spring Homes conveyed the subject property, as well as several others, to the Spouses Lumbres. By virtue of said agreement, the Spouses Lumbres were authorized to collect Spring Homes' account receivables arising from the conditional sales of several properties, as well as to cancel said sales, in the event of default in the payment by the subdivision lot buyers.

In the exercise of the power granted to them, the Spouses Lumbres started collecting deficiency payments from the subdivision lot buyers, including the Spouses Tablada. When no payment was received, the Spouses Lumbres caused the cancellation of the Contract to Sell previously executed by Spring Homes in favor of the Spouses Tablada. In 2000, the Spouses Lumbres and Spring Homes executed a Deed of Absolute Sale over the subject property, and as a result, a new TCT was issued in the name of the Spouses Lumbres.

The Spouses Tablada filed a complaint for Nullification of Title, Reconveyance and Damages against Spring Homes and the Spouses Lumbres praying for the nullification of the second Deed of Absolute Sale executed in favor of the Spouses Lumbres, as well as the title issued as a consequence thereof, the declaration of the validity of the first Deed of Absolute Sale executed in their favor, and the issuance of a new title in their name. The Sheriff's Return indicated that while the original copy of the complaint and the summons were duly served upon the Spouses Lumbres, summons was not properly served upon Spring Homes because it was reportedly no longer existing as a corporate entity.

The Spouses Lumbres filed a Motion to Dismiss the case against them on the grounds of non-compliance with a condition precedent and lack of jurisdiction of the RTC over the subject matter. The Motion to Dismiss was eventually denied by the trial court. The Spouses Lumbres also filed an ejectment suit of their own before the MTCC demanding that the Spouses Tablada vacate the subject property and pay rentals due thereon. The MTCC, however, dismissed the suit ruling that the Spouses Lumbres registered their title over the subject property in bad faith. Such ruling was

reversed by the RTC which found that there was no valid deed of absolute sale between the Spouses Tablada and Spring Homes. Nevertheless, the CA, on appeal, agreed with the MTCC and reinstated the decision thereof. This was affirmed by the SC in Spouses Lumbres v. Spouses Tablada on February 23, 2007.

Meanwhile, on the nullification and reconveyance of title suit filed by the Spouses Tablada, the RTC noted that Spring Homes has not yet been summoned. This caused the Spouses Tablada to move for the discharge of Spring Homes as a party on the ground that the corporation had already ceased to exist. The Spouses Lumbres, however, opposed claiming that Spring Homes is an indispensable party. The RTC ordered the motion to be held in abeyance until the submission of proof on Spring Homes' corporate status. In the meantime, trial ensued. Eventually, it was shown that Spring Homes' certificate of registration was revoked.

The RTC dismissed Spouses Tablada's action for lack of jurisdiction over the person of Spring Homes, an indispensable party. However, the CA reversed and ruled that Spring Homes is not an indispensable party. The CA also upheld the ruling of the Court in *Spouses Lumbres v. Spouses Tablada* that notwithstanding the fact that the Spouses Lumbres, as the second buyer, registered their Deed of Absolute Sale, in contrast to the Spouses Tablada who were not able to register their Deed of Absolute Sale precisely because of Spring Home's failure to deliver the owner's copy of the TCT, the Spouses Tablada's right could not be deemed defeated as the Spouses Lumbres were in bad faith for even before their registration of their title, they were already informed that the subject property was already previously sold to the Spouses Tablada, who had already constructed their house thereon.

#### **ISSUES:**

Whether Spring Homes is an indispensable party?

#### **RULING:**

No.

Spring Homes is not an indispensable party. Section 7, Rule 3 of the Revised Rules of Court defines indispensable parties as parties-in-interest without whom there can be no final determination of an action and who, for this reason, must be joined either as plaintiffs or as defendants.

Time and again, the Court has held that a party is indispensable, not only if he has an interest in the subject matter of the controversy, but also if his interest is such that a final decree cannot be made without affecting this interest or without placing the controversy in a situation where the final determination may be wholly inconsistent with equity and good conscience. He is a person whose absence disallows the court from making an effective, complete, or equitable determination of the controversy between or among the contending parties. Conversely, a party is not indispensable to the suit if his interest in the controversy or subject matter is distinct and divisible from the interest of the other parties and will not necessarily be prejudiced by a judgment which does complete justice to the parties in court. If his presence would merely permit complete relief between him and those already parties to the action or will simply avoid multiple litigation, he is not indispensable.

As held by the CA, the pronouncement in Seno, et. al. v. Mangubat, et. al. is instructive. In said case, the petitioner therein entered into an agreement with certain respondents over a parcel of land, which agreement petitioner believed to be merely an equitable mortgage but respondents insisted to be a sale. The agreement, however, was embodied in a document entitled "Deed of Absolute Sale." Consequently, respondents were able to obtain title over the property in their names. When two of the three respondents sold their shares to the third respondent, the third respondent registered the subject property solely in his name. Thereafter, the third respondent further sold said property to another set of persons. Confronted with the issue of whether the two respondents who sold their shares to the third respondent should be impleaded as indispensable parties in an action filed by petitioner to reform the agreement and to annul the subsequent sale, the Court ruled in the negative, viz.:

The first issue We need to resolve is whether or not defendants Andres Evangelista and Bienvenido Mangubat are indispensable parties. Plaintiffs contend that said defendants being more dummies of defendant Marcos Mangubat and therefore not real parties in interest, there is no room for the application of Sec. 7, Rule 3 of the Revised Rules of Court.

In the present case, there are no rights of defendants Andres Evangelista and Bienvenido Mangubat to be safeguarded if the sale should be held to be in fact an absolute sale nor if the sale is held to be an equitable mortgage. Defendant Marcos Mangubat became the absolute owner of the subject property by virtue of the sale to him of the shares of the aforementioned defendants in the property. Said defendants no longer have any interest in the subject property. However, being parties to the instrument sought to be reformed, their presence is necessary in order to settle all the possible issues of tile controversy. Whether the disputed sale be declared an absolute sale or an equitable mortgage, the rights of all the defendants will have been amply protected. Defendants-spouses Luzame in any event may enforce their rights against defendant Marcos Mangubat

By virtue of the second Deed of Absolute Sale between Spring Homes and the Spouses Lumbres, the Spouses Lumbres became the absolute and registered owner of the subject property herein. As such, they possess that certain interest in the property without which, the courts cannot proceed for settled is the doctrine that registered owners of parcels of land whose title is sought to be nullified should be impleaded as an indispensable party.

Spring Homes, however, which has already sold its interests in the subject land, is no longer regarded as an indispensable party, but is, at best, considered to be a necessary party whose presence is necessary to adjudicate the whole controversy, but whose interests are so far separable that a final decree can be made in its absence without affecting it. This is because when Spring Homes sold the property in question to the Spouses Lumbres, it practically transferred all its interests therein to the said Spouses. In fact, a new title was already issued in the names of the Spouses Lumbres.

As such, Spring Homes no longer stands to be directly benefited or injured by the judgment in the instant suit regardless of whether the new title registered in the names of the Spouses Lumbres is cancelled in favor of the Spouses Tablada or not. Thus, contrary to the ruling of the RTC, the failure to summon Spring Homes does not deprive it of jurisdiction over the instant case for Spring Homes is not an indispensable party.

SIMNY G. GUY, GERALDINE G. GUY, GLADYS G. YAO, AND THE HEIRS OF THE LATE GRACE G. CHEU, *Petitioners* -versus- GILBERT G. GUY, *Respondent*.

G.R. No. 189486, SECOND DIVISION, September 05, 2012, PEREZ, J.

In Sps. Garcia v. Garcia, et.al., this Court held that:

An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.

It bears emphasis that Gilbert, while suing as a stockholder against his co-stockholders, should have also impleaded GoodGold as defendant. His complaint also prayed for the annulment of the 2004 stockholders' annual meeting, the annulment of the 2004 election of the board of directors and of its officers, the annulment of 2004 GIS submitted to the SEC, issuance of an order for the accounting of all monies and rentals of GoodGold, and the issuance of a writ of preliminary and mandatory injunction. We have made clear that GoodGold is a separate juridical entity distinct from its stockholders and from its directors and officers. The trial court, acting as a special commercial court, cannot settle the issues with finality without impleading GoodGold as defendant. Like Francisco, and for the same reasons, GoodGold is an indispensable party which Gilbert should have impleaded as defendant in his complaint.

#### **FACTS:**

With 519,997 shares of stock as reflected in Stock Certificate Nos. 004-014, herein respondent Gilbert G. Guy (Gilbert) practically owned almost 80 percent of the 650,000 subscribed capital stock of GoodGold Realty & Development Corporation (GoodGold), one of the multi-million corporations which Gilbert claimed to have established in his 30s. GoodGold's remaining shares were divided among Francisco Guy (Francisco) with 130,000 shares, Simny Guy (Simny), Benjamin Lim and Paulino Delfin Pe, with one share each, respectively.

Gilbert is the son of spouses Francisco and Simny. Simny, one of the petitioners, however, alleged that it was she and her husband who established GoodGold, putting the bulk of its shares under Gilbert's name. She claimed that with their eldest son, Gaspar G. Guy (Gaspar), having entered the Focolare Missionary in 1970s, renouncing worldly possessions, 2 she and Francisco put the future of the Guy group of companies in Gilbert's hands. Gilbert was expected to bring to new heights their family multimillion businesses and they, his parents, had high hopes in him.

Simny further claimed that upon the advice of their lawyers, upon the incorporation of GoodGold, they issued stock certificates reflecting the shares held by each stockholder duly signed by Francisco as President and Atty. Emmanuel Paras as Corporate Secretary, with corresponding blank endorsements at the back of each certificate including Stock Certificate Nos. 004-014 under Gilbert's name.

In 1999, the aging Francisco instructed Benjamin Lim, a nominal shareholder of GoodGold and his trusted employee, to collaborate with Atty. Emmanuel Paras, to redistribute GoodGold's shareholdings evenly among his children, namely, Gilbert, Grace Guy-Cheu (Grace), Geraldine Guy (Geraldine), and Gladys Guy (Gladys), while maintaining a proportionate share for himself and his wife, Simny.

Accordingly, some of GoodGold's certificates were cancelled and new ones were issued to represent the redistribution of GoodGold's shares of stock. The new certificates of stock were signed by Francisco and Atty. Emmanuel Paras, as President and Corporate Secretary, respectively. The shares of stock were distributed among the stockholder.

In September 2004, or five years after the redistribution of GoodGold's shares of stock, Gilbert filed with the Regional Trial Court (RTC) of Manila, a Complaint for the "Declaration of Nullity of Transfers of Shares in GoodGold and of General Information Sheets and Minutes of Meeting, and for Damages with Application for a Preliminary Injunctive Relief," against his mother, Simny, and his sisters, Geraldine, Grace, and Gladys Gilbert, however, withdrew the complaint, after the National Bureau of Investigation (NBI) submitted a report to the RTC of Manila authenticating Gilbert's signature in the endorsed certificates.

The present controversy arose, when in 2008, three years after the complaint with the RTC of Manila was withdrawn, Gilbert again filed a complaint, this time, with the RTC of Mandaluyong, captioned as "Intra- Corporate Controversy: For the Declaration of Nullity of Fraudulent Transfers of Shares of Stock Certificates, Fabricated Stock Certificates, Falsified General Information Sheets, Minutes of Meetings, and Damages with Application for the Issuance of a Writ of Preliminary and Mandatory Injunction," docketed as SEC-MC08-112, against his mother, Simny, his sisters, Geraldine, Gladys, and the heirs of his late sister Grace.

In an Order dated 30 June 2008, the RTC denied Gilbert's Motion for Injunctive Relief which constrained him to file a motion for reconsideration, and, thereafter, a Motion for Inhibition against Judge Edwin Sorongon, praying that the latter recuse himself from further taking part in the case.

In an Order dated 6 November 2008, he RTC denied the motion for inhibition. The RTC also dismissed the case, declaring it a nuisance and harassment suit. This constrained Gilbert to assail the above Order before the Court of Appeals (CA). The petition for review was docketed as CA-G.R. SP No. 106405.

In a Decision the CA upheld Judge Sorongon's refusal to inhibit from hearing the case on the ground that Gilbert failed to substantiate his allegation of Judge Sorongon's partiality and bias. The CA, in the same decision, also denied Gilbert's Petition for the Issuance of Writ of Preliminary Injunction for failure to establish a clear and unmistakable right that was violated as required under Section 3, rule 58 of the 1997 Rules of Civil Procedure. The CA, however, found merit on Gilbert's contention that the complaint should be heard on the merits.

Hence, these consolidated petitions. The denial of the petitioners' motion to defer pre-trial, compelled them to file with this Court a Petition for Certiorari with Urgent Application for the Issuance of TRO and/or A Writ of Preliminary Injunction, docketed as G.R. No. 189699. Because of the pendency of the G.R. No. 189486 before us, the petitioners deemed proper to question the said denial before us as an incident arising from the main controversy.

#### **ISSUE:**

Whether Francisco and GoodGold are indispensable party which Gilbert should have impleaded as defendant in his complaint?

#### RULING:

Suits by stockholders or members of a corporation based on wrongful or fraudulent acts of directors or other persons may be classified into individual suits, class suits, and derivative suits.

An individual suit may be instituted by a stockholder against another stockholder for wrongs committed against him personally, and to determine their individual rights this is an individual suit between stockholders. But an individual suit may also be instituted against a corporation, the same having a separate juridical personality, which by its own may be sued. It is of course, essential that the suing stockholder has a cause of action against the corporation.

Individual suits against another stockholder or against a corporation are remedies which an aggrieved stockholder may avail of and which are recognized in our jurisdiction as embedded in the Interim Rules on Intra- Corporate Controversy. Together with this right is the parallel obligation of a party to comply with the compulsory joinder of indispensable parties whether they may be stockholders or the corporation itself.

The absence of an indispensable party in a case renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.

It bears emphasis that this controversy started with Gilbert's complaint filed with the RTC of Mandaluyong City in his capacity as stockholder, director and Vice-President of GoodGold. Gilbert's complaint essentially prayed for the return of his original 519,997 shares in GoodGold, by praying that the court declare that "there were no valid transfers [of the contested shares] to defendants and Francisco."

It baffles this Court, however, that Gilbert omitted Francisco as defendant in his complaint. While Gilbert could have opted to waive his shares in the name of Francisco to justify the latter's non-inclusion in the complaint, Gilbert did not do so, but instead, wanted everything back and even wanted the whole transfer of shares declared fraudulent. This cannot be done, without including Francisco as defendant in the original case. The transfer of the shares cannot be, as Gilbert wanted, declared entirely fraudulent without including those of Francisco who owns almost a third of the total number.

Francisco, in both the 2004 and 2008 complaints, is an indispensable party without whom no final determination can be had for the following reasons: (a) the complaint prays that the shares now under the name of the defendants and Francisco be declared fraudulent; (b) Francisco owns 195,000 shares some of which, Gilbert prays be returned to him; (c) Francisco signed the certificates of stocks evidencing the alleged fraudulent shares previously in the name of Gilbert. The inclusion of the shares of Francisco in the complaint makes Francisco an indispensable party. Moreover, the pronouncement about the shares of Francisco would impact on the hereditary rights of the contesting parties or on the conjugal properties of the spouses to the effect that Francisco, being husband of Simny and father of the other contesting parties, must be included for, otherwise,

in his absence, there cannot be a determination between the parties already before the court which is effective, complete, or equitable.

The definition in the Rules of Court, Section 7, Rule 3 thereof, of indispensable parties as "parties in interest without whom no final determination can be had of an action" has been jurisprudentially amplified. In Sps. Garcia v. Garcia, et.al., this Court held that:

An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.

Settled is the rule that joinder of indispensable parties is compulsory being a sine qua non for the exercise of judicial power and, it is precisely "when an indispensable party is not before the court that the action should be dismissed" for such absence renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.

It bears emphasis that Gilbert, while suing as a stockholder against his co-stockholders, should have also impleaded GoodGold as defendant. His complaint also prayed for the annulment of the 2004 stockholders' annual meeting, the annulment of the 2004 election of the board of directors and of its officers, the annulment of 2004 GIS submitted to the SEC, issuance of an order for the accounting of all monies and rentals of GoodGold, and the issuance of a writ of preliminary and mandatory injunction. We have made clear that GoodGold is a separate juridical entity distinct from its stockholders and from its directors and officers. The trial court, acting as a special commercial court, cannot settle the issues with finality without impleading GoodGold as defendant. Like Francisco, and for the same reasons, GoodGold is an indispensable party which Gilbert should have impleaded as defendant in his complaint.

## LIVING @ SENSE, INC., PETITIONER, VS. MALAYAN INSURANCE COMPANY, INC., RESPONDENT. G.R. No. 193753, SECOND DIVISION, September 26, 2012, PERLAS-BERNABE, J.

As explained in Lotte Phil. Co., Inc. v. Dela Cruz, an indispensable party is a party-in-interest without whom no final determination can be had of an action, and who shall be joined mandatorily either as plaintiffs or defendants. The presence of indispensable parties is necessary to vest the court with jurisdiction, thus, without their presence to a suit or proceeding, the judgment of a court cannot attain real finality. The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.

In this case, DMI is not an indispensable party because petitioner can claim indemnity directly from respondent, having made itself jointly and severally liable with DMI for the obligation under the bonds. Therefore, the failure to implead DMI is not a ground to dismiss the case, even if the same was without prejudice.

#### **FACTS:**

Records show that petitioner was the main contractor of the FOC Network Project of Globe Telecom in Mindanao. In connection with the project, petitioner entered into a Sub-Contract Agreement (Agreement) with DMI, under which the latter was tasked to undertake an underground opentrench work. Petitioner required DMI to give a bond, in the event that DMI fails to perform its obligations under the Agreement. Thus, DMI secured surety and performance bonds, both in the amount of P5,171,488.00, from respondent Malayan Insurance Company, Inc. (respondent) to answer: (1) for the unliquidated portion of the downpayment, and (2) for the loss and damage that petitioner may suffer, respectively, should DMI fail to perform its obligations under the Agreement. Under the bonds, respondent bound itself jointly and severally liable with DMI.

During the course of excavation and restoration works, the Department of Public Works and Highways (DPWH) issued a work-stoppage order against DMI after finding the latter's work unsatisfactory. Notwithstanding the said order, however, DMI still failed to adopt corrective measures, prompting petitioner to terminate indemnification from respondent in the total amount of P1,040,895.34. However, respondent effectively denied petitioner's claim on the ground that the liability of its principal, DMI, should first be ascertained before its own liability as a surety attaches. Hence, the instant complaint, premised on respondent's liability under the surety and performance bonds secured by DMI.

Seeking the dismissal of the complaint, respondent claimed that DMI is an indispensable party that should be impleaded and whose liability should first be determined before respondent can be held liable.

On the other hand, petitioner asserted, that respondent is a surety who is directly and primarily liable to indemnify petitioner, and that the bond is "callable on demand" in the event DMI fails to perform its obligations under the Agreement.

In its April 8, 2010 Order, the RTC dismissed the complaint without prejudice, for failure to implead DMI as a party defendant. It ruled that before respondent could be held liable on the surety and performance bonds, it must first be established that DMI, with whom petitioner had originally contracted, had indeed violated the Agreement. DMI, therefore, is an indispensable party that must be impleaded in the instant suit.

On August 25, 2010, the RTC denied petitioner's motion for reconsideration for failure to set the same for hearing as required under the rules.

#### **ISSUE:**

Whether DMI is an indispensable party in this case?

#### **RULING:**

The petition is meritorious.

Records show that when DMI secured the surety and performance bonds from respondent in compliance with petitioner's requirement, respondent bound itself "jointly and severally" with DMI for the damages and actual loss that petitioner may suffer should DMI fail to perform its obligations under the Agreement, The term "jointly and severally" expresses a solidary obligation granting petitioner, as creditor, the right to proceed against its debtors, i.e., respondent or DMI.

The nature of the solidary obligation under the surety does not make one an indispensable party. As explained in Lotte Phil. Co., Inc. v. Dela Cruz, an indispensable party is a party-in-interest without whom no final determination can be had of an action, and who shall be joined mandatorily either as plaintiffs or defendants. The presence of indispensable parties is necessary to vest the court with jurisdiction, thus, without their presence to a suit or proceeding, the judgment of a court cannot attain real finality. The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.

In this case, DMI is not an indispensable party because petitioner can claim indemnity directly from respondent, having made itself jointly and severally liable with DMI for the obligation under the bonds. Therefore, the failure to implead DMI is not a ground to dismiss the case, even if the same was without prejudice.

Moreover, even on the assumption that DMI was, indeed, an indispensable party, the RTC committed reversible error in dismissing the complaint. Failure to implead an indispensable party is not a ground for the dismissal of an action, as the remedy in such case is to implead the party claimed to be indispensable, considering that parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action.

Accordingly, the Court finds that the RTC erred in holding that DMI is an indispensable party and, consequently, in dismissing the complaint filed by petitioner without prejudice.

## PHILIP L. GO, PACIFICO Q. LIM AND ANDREW Q. LIM, *Petitioners*, -versus- DISTINCTION PROPERTIES DEVELOPMENT AND CONSTRUCTION, INC. *Respondent*.

G.R. No. 194024, THIRD DIVISION, April 25, 2012, MENDOZA, J.

In the recent case of Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-OLALIA-KMU) v. Keihin Philippines Corporation, the Court had the occasion to state that:

Under Section 7, Rule 3 of the Rules of Court, "parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants." If there is a failure to implead an indispensable party, any judgment rendered would have no effectiveness. It is "precisely 'when an indispensable party is not before the court (that) an action should be dismissed.' The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even to those present." The purpose of the rules on joinder of indispensable parties is a complete determination of all issues not only between the parties themselves, but also as regards other persons who may be affected by the judgment. A decision valid on its face cannot attain real finality where there is want of indispensable parties.

From all indications, PHCC is an indispensable party and should have been impleaded, either as a plaintiff or as a defendant, in the complaint filed before the HLURB as it would be directly and adversely affected by any determination therein. To belabor the point, the causes of action, or the acts complained of, were the acts of PHCC as a corporate body. Note that in the judgment rendered by the HLURB, the dispositive portion in particular, DPDCI was ordered (1) to pay P998,190.70, plus interests and surcharges, as condominium dues in arrears and turnover the administration office to PHCC; and (2) to refund to PHCC P1,277,500.00, representing the cost of the deep well, with interests and surcharges. Also, the HLURB declared as illegal the agreement regarding the conversion of the 22 storage units and Units GF4-A and BAS, to which agreement PHCC was a party.

#### **FACTS:**

Philip L. Go, Pacifico Q. Lim and Andrew Q. Lim (petitioners) are registered individual owners of condominium units in Phoenix Heights Condominium located at H. Javier/Canley Road, Bo. Bagong Ilog, Pasig City, Metro Manila.

Respondent Distinction Properties Development and Construction, Inc. (DPDCI) is a corporation existing under the laws of the Philippines with principal office at No. 1020 Soler Street, Binondo, Manila. It was incorporated as a real estate developer, engaged in the development of condominium projects, among which was the Phoenix Heights Condominium.

In February 1996, petitioner Pacifico Lim, one of the incorporators and the then president of DPDCI, executed a Master Deed and Declaration of Restrictions (MDDR)[ of Phoenix Heights Condominium, which was filed with the Registry of Deeds. As the developer, DPDCI undertook, among others, the marketing aspect of the project, the sale of the units and the release of flyers and brochures. Thereafter, Phoenix Heights Condominium Corporation (PHCC) was formally organized and incorporated.

Sometime in 2000, DPDCI turned over to PHCC the ownership and possession of the condominium units, except for the two saleable commercial units/spaces. Although used by PHCC, DPDCI was assessed association dues for these two units.

Meanwhile, in March 1999, petitioner Pacifico Lim, as president of DPDCI, filed an Application for Alteration of Plan. The application, however, was disapproved as the proposed alteration would obstruct light and ventilation. PHCC approved a settlement offer from DPDCI for the set-off of the latter's association dues arrears with the assignment of title over. The said settlement between the two corporations likewise included the reversion of the 22 storage spaces into common areas. With the conformity of PHCC, DPDCI's application for alteration (conversion of unconstructed 22 storage units and units GF4-A and BAS from saleable to common areas) was granted by the Housing and Land Use Regulatory Board (HLURB).

In August 2008, petitioners, as condominium unit-owners, filed a complaint before the HLURB against DPDCI for unsound business practices and violation of the MDDR. In defense, DPDCI denied that it had breached its promises and representations to the public concerning the facilities in the condominium.

After due hearing, the HLURB rendered its decision in favor of petitioners. It held as invalid the agreement entered into between DPDCI and PHCC, as to the alteration or conversion of the subject units into common areas, which it previously approved, for the reason that it was not approved by the majority of the members of PHCC as required under Section 13 of the MDDR.

The HLURB further stated that the case was not a derivative suit but one which involved contracts of sale of the respective units between the complainants and DPDCI, hence, within its jurisdiction pursuant to Section 1, Presidential Decree (P.D.) No. 957 (The Subdivision and Condominium Buyers' Protective Decree), as amended. Aggrieved, DPDCI filed with the CA its Petition for Certiorari and Prohibition.

On March 17, 2010, the petition is GRANTED. The CA held that jurisdiction over PHCC, an indispensable party, was neither acquired nor waived by estoppel. Petitioners filed a motion for reconsideration he motion, however, was denied by the CA in its Resolution dated October 7, 2010. Hence, petitioners interpose the present petition before this Court.

#### **ISSUE:**

Whether PHCC is an indispensable party?

#### **RULING:**

An indispensable party is defined as one who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest.

In the recent case of Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-OLALIA-KMU) v. Keihin Philippines Corporation, the Court had the occasion to state that:

Under Section 7, Rule 3 of the Rules of Court, "parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants." If there is a failure to implead an indispensable party, any judgment rendered would have no effectiveness. It is "precisely 'when an indispensable party is not before the court (that) an action should be dismissed.' The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even to those present." The purpose of the rules on joinder of indispensable parties is a complete determination of all issues not only between the parties themselves, but also as regards other persons who may be affected by the judgment. A decision valid on its face cannot attain real finality where there is want of indispensable parties.

Similarly, in the case of Plasabas v. Court of Appeals, the Court held that a final decree would necessarily affect the rights of indispensable parties so that the Court could not proceed without their presence. In support thereof, the Court in Plasabas cited People, et al. v. Rodriguez, et al., wherein it explains that when an indispensable party is not before the court, the action should be dismissed.

From all indications, PHCC is an indispensable party and should have been impleaded, either as a plaintiff or as a defendant, in the complaint filed before the HLURB as it would be directly and adversely affected by any determination therein. To belabor the point, the causes of action, or the acts complained of, were the acts of PHCC as a corporate body. Note that in the judgment rendered by the HLURB, the dispositive portion in particular, DPDCI was ordered (1) to pay P998,190.70, plus interests and surcharges, as condominium dues in arrears and turnover the administration office to PHCC; and (2) to refund to PHCC P1,277,500.00, representing the cost of the deep well, with interests and surcharges. Also, the HLURB declared as illegal the agreement regarding the conversion of the 22 storage units and Units GF4-A and BAS, to which agreement PHCC was a party.

Evidently, the cause of action rightfully pertains to PHCC. Petitioners cannot exercise the same except through a derivative suit. In the complaint, however, there was no allegation that the action was a derivative suit. In fact, in the petition, petitioners claim that their complaint is not a derivative suit.

Without PHCC as a party, there can be no final adjudication of the HLURB's judgment. The CA was, thus, correct in ordering the dismissal of the case for failure to implead an indispensable party.

### **PEDRO SEPULVEDA,** *Petitioner, -***versus- ATTY. PACIFICO S. PELAEZ,** *Respondent.* G.R. NO. 152195, SECOND DIVISION, January 31, 2005, CALLEJO, SR., *J.*

As stated in Lozano v. Ballesteros, the failure of the private respondent to implead the other heirs as parties-plaintiffs constituted a legal obstacle to the trial court and the appellate court's exercise of judicial power over the said case, and rendered any orders or judgments rendered therein a nullity.

In the present action, the private respondent, as the plaintiff in the trial court, failed to implead the following indispensable parties: his father, Rodolfo Pelaez; the heirs of Santiago Sepulveda, namely, Paz Sepulveda and their children; and the City of Danao which purchased the property covered by T.D. 19804 (T.D. No. 35090) from Pedro Sepulveda, Sr. and maintained that it had failed to pay for the purchase price of the property. Rodolfo Pelaez is an indispensable party he being entitled to a share in usufruct, equal to the share of the respondent in the subject properties. There is no showing that Rodolfo Pelaez had waived his right to usufruct.

#### **FACTS:**

On December 6, 1972, private respondent Atty. Pacifico Pelaez filed a complaint against his granduncle, Pedro Sepulveda, Sr., with the then Court of First Instance (CFI) of Cebu, for the recovery of possession and ownership of his one-half (1/2) undivided share of several parcels of land covered by Tax Declaration (T.D.) Nos. 28199, 18197, 18193 and 28316; his undivided one-third (1/3) share in several other lots covered by T.D. Nos. 28304, 35090, 18228, 28310, 26308, 28714, 28311, 28312 and 28299 (all located in Danao, Cebu); and for the partition thereof among the co-owners. The case was docketed as Civil Case No. SF-175.

The eleven (11) lots were among the twenty-five (25) parcels of land which the private respondent's mother, Dulce Sepulveda, inherited from her grandmother, Dionisia Sepulveda under the Project of Partition dated April 16, 1937 submitted by Pedro Sepulveda, Sr. as the administrator of the former's estate, duly approved by the then CFI of Cebu in Special Proceeding No. 778-0.

Under the said deed, Pedro Sepulveda, Sr. appeared to be the owner of an undivided portion of Lot No. 28199, while his brother and Dulce's uncle Santiago Sepulveda, was the undivided owner of one-half (1/2) of the parcels of land covered by T.D. Nos. 18197, 18193 and 28316. Dulce and her uncles, Pedro and Santiago, were likewise indicated therein as the co-owners of the eleven other parcels of land, each with an undivided one-third (1/3) share thereof.

In his complaint, the private respondent alleged that his mother Dulce died intestate on March 2, 1944, and aside from himself, was survived by her husband Rodolfo Pelaez and her mother Carlota Sepulveda. Dulce's grandfather Vicente Sepulveda died intestate on October 25, 1920, According to the private respondent, his grandmother Carlota repeatedly demanded the delivery of her mother's share in the eleven (11) parcels of land, but Pedro Sepulveda, Sr. who by then was the Municipal Mayor of Tudela, refused to do so. Dulce, likewise, later demanded the delivery of her share in the eleven parcels of land, but Pedro Sepulveda, Sr. still refused, claiming that he needed to continue to possess the property to reap the produce therefrom which he used for the payment of the realty

taxes on the subject properties. The private respondent alleged that he himself demanded the delivery of his mother's share in the subject properties on so many occasions, the last of which was in 1972, to no avail.

The private respondent further narrated that his granduncle executed an affidavit stating that he was the sole heir of Dionisia when she died intestate on June 5, 1921, when, in fact, the latter was survived by her three sons, Santiago, Pedro and Vicente. Pedro Sepulveda, Sr. also executed a Deed of Absolute Sale on July 24, 1968 over the property covered by T.D. No. 19804 (T.D. No. 35090) in favor of the City of Danao for P7,492.00. According to the private respondent, his granduncle received this amount without his (private respondent's) knowledge.

The private respondent prayed that, after due hearing, judgment be rendered in his favor. During the trial, Pedro Sepulveda, Sr. died intestate. A petition for the settlement of his estate was filed on May 8, 1975 with the RTC of Cebu, docketed as Special Proceeding No. SF-37.

According to the petitioner, Dulce and Pedro Sepulveda, Sr. had a verbal agreement wherein the eleven parcels of land covered by the complaint would serve as the latter's compensation for his services as administrator of Dionisia's estate. Thus, upon the termination of Special Proceeding No. 778-0, and subsequent to the distribution of the shares of Dionisia's heirs, Pedro Sepulveda, Sr. then became the sole owner of Dulce's shares. The petitioner likewise adduced evidence that Santiago Sepulveda died intestate and was survived by his wife, Paz Velez Sepulveda and their then minor children. It was pointed out that the private respondent failed to implead Paz Sepulveda and her minor children as parties-defendants in the complaint.

On June 7, 1993, the trial court rendered judgment in favor of the private respondent. The petitioner appealed the decision to the CA, which rendered judgment on January 31, 2002, affirming the appealed decision with modification. The petitioner now comes to the Court via a petition for review on certiorari

#### **ISSUE:**

Whether or not the complaint should be dismissed?

#### **RULING:**

Yes.

The petition is granted for the sole reason that the respondent failed to implead as parties, all the indispensable parties in his complaint. Section 1, Rule 69 of the Rules of Court provides that in an action for partition, all persons interested in the property shall be joined as defendants.

Section 1. Complaint in action for partition of real estate. - A person having the right to compel the partition of real estate may do so as in this rule prescribed, setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all the other persons interested in the property.

Thus, all the co-heirs and persons having an interest in the property are indispensable parties; as such, an action for partition will not lie without the joinder of the said parties. The mere fact that Pedro Sepulveda, Sr. has repudiated the co-ownership between him and the respondent does not deprive the trial court of jurisdiction to take cognizance of the action for partition, for, in a

complaint for partition, the plaintiff seeks, first, a declaration that he is a co-owner of the subject property; and, second, the conveyance of his lawful shares. As the Court ruled in De Mesa v. Court of Appeals:

The first stage of an action for judicial partition and/or accounting is concerned with the determination of whether or not a co-ownership in fact exists and a partition is proper, that is, it is not otherwise legally proscribed and may be made by voluntary agreement of all the parties interested in the property. This phase may end in a declaration that plaintiff is not entitled to the desired partition either because a co-ownership does not exist or a partition is legally prohibited. It may also end, on the other hand, with an adjudgment that a co-ownership does in truth exist, that partition is proper in the premises, and that an accounting of rents and profits received by the defendant from the real estate in question is in order. In the latter case, "the parties may, if they are able to agree, make partition among themselves by proper instruments of conveyance, and the court shall confirm the partition so agreed upon by all the parties." In either case, whether the action is dismissed or partition and/or accounting is decreed, the order is a final one and may be appealed by any party aggrieved thereby.

The second stage commences when the parties are unable to agree upon the partition ordered by the court. In that event, partition shall be effected for the parties by the court with the assistance of not more than three (3) commissioners. This second phase may also deal with the rendition of the accounting itself and its approval by the Court after the parties have been accorded the opportunity to be heard thereon, and an award for the recovery by the party or parties thereto entitled of their just shares in the rents and profits of the real estate in question.

In the present action, the private respondent, as the plaintiff in the trial court, failed to implead the following indispensable parties: his father, Rodolfo Pelaez; the heirs of Santiago Sepulveda, namely, Paz Sepulveda and their children; and the City of Danao which purchased the property covered by T.D. 19804 (T.D. No. 35090) from Pedro Sepulveda, Sr. and maintained that it had failed to pay for the purchase price of the property.

Rodolfo Pelaez is an indispensable party he being entitled to a share in usufruct, equal to the share of the respondent in the subject properties. There is no showing that Rodolfo Pelaez had waived his right to usufruct.

Section 7, Rule 3 of the Rules of Court reads:

SEC. 7. Compulsory joinder of indispensable parties. Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

Indeed, the presence of all indispensable parties is a condition sine qua non for the exercise of judicial power. It is precisely when an indispensable party is not before the court that the action should be dismissed. Thus, the plaintiff is mandated to implead all the indispensable parties, considering that the absence of one such party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. One who is a party to a case is not bound by any decision of the court, otherwise, he will be deprived of his right to due process. Without the presence of all the other heirs as plaintiffs, the trial court could not validly render judgment and grant relief in favor of the private respondent. The failure of the private respondent to implead the other heirs as parties-plaintiffs constituted a legal obstacle to the

trial court and the appellate court's exercise of judicial power over the said case, and rendered any orders or judgments rendered therein a nullity.( *Lozano v. Ballesteros*)

To reiterate, the absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present Hence, the trial court should have ordered the dismissal of the complaint.

## SOCORRO LIMOS, ET AL., *Petitioners, -versus-SPOUSES ODONES, ET AL., Respondents.* G.R. No. 186979, SECOND DIVISION, August 11, 2010, Nachura, *J.*

In Plasabas et al., v. Court of Appeals, the Court stated that it is only when the plaintiff refuses to implead an indispensable party despite the order of the court, that the latter may dismiss the complaint. In this case, no such order was issued by the trial court.

In this case, no such order was issued by the trial court.

#### **FACTS:**

Respondent Spouses Odones filed a complaint for Annulment of Deed, Title and Damages against Petitioners Socorro Limos, et al. The complaint alleged that spouses Odones are the owners of the disputed property by virtue of an Extrajudicial Succession of Estate and Sale executed by the heirs of Donata Lardizabal who is the registered owner thereof. However, it was later found out that the same had already been cancelled and registered in the names of Socorro Limos, et al. In their answer, the latter pleaded affirmative defenses which also constitute grounds for dismissal of the complaint one among which is the non-joinder of the other heirs of Donata Lardizabal as indispensable parties.

Spouses Ordones, in their reply, denied the foregoing affirmative defenses and insisted that the Extrajudicial Succession of Estate and Sale was valid. Socorro Limos, et al thereafter served upon the Spouses Ordones a Request for Admission of matters in support of their defense. Spouses Ordones failed to respond to the Request for Admission, prompting Socorro Limos, et al to file a Motion to Set for Preliminary Hearing on the Special and Affirmative Defenses. The RTC denied the Motion which was likewise affirmed by the CA. Hence, this petition.

#### **ISSUE:**

Whether the non-joinder of the other heirs of Donata Lardizabal as indispensable parties a ground for the dismissal of the action?

#### **RULING:**

No. It is settled that the non-joinder of indispensable parties is not a ground for the dismissal of an action. The remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or such times as are just.

In Plasabas et al., v. Court of Appeals, the Court stated that it is only when the plaintiff refuses to implead an indispensable party despite the order of the court, that the latter may dismiss the

complaint. In this case, no such order was issued by the trial court. In this case, no such order was issued by the trial court.

## HEIRS OF FAUSTINO MESINA AND GENOVEVA S. MESINA, REP. BY NORMAN MESINA, Petitioners, -versus- HEIRS OF DOMINGO FIAN, SR., REP. BY THERESA FIAN YRAY, ET AL., Respondents.

G.R. No. 201816, THIRD DIVISION, April 8, 2013, Velasco, Jr., J.

Having settled that, Our pronouncement in Pamplona Plantation Company, Inc. v. Tinghil is instructive as regards the proper course of action on the part of the courts in cases of non-joinder of indispensable parties, viz:

The non-joinder of indispensable parties is not a ground for the dismissal of an action. At any stage of a judicial proceeding and/or at such times as are just, parties may be added on the motion of a party or on the initiative of the tribunal concerned. If the plaintiff refuses to implead an indispensable party despite the order of the court, that court may dismiss the complaint for the plaintiff's failure to comply with the order. The remedy is to implead the non-party claimed to be indispensable.

Thus, the dismissal of the case for failure to state a cause of action is improper. What the trial court should have done is to direct petitioner Norman Mesina to implead all the heirs of Domingo Fian, Sr. as defendants within a reasonable time from notice with a warning that his failure to do so shall mean dismissal of the complaint.

#### **FACTS:**

The late spouses Mesina, during their lifetime, bought from the spouses Fian two (2) parcels of land on installment. Upon the death of the latter, their heirs refused to acknowledge the sale and remained in the possession of the property despite demands by the Mesina heirs for them to vacate. Thus, Norman S. Mesina, as attorney-in-fact of his siblings (Mesina heirs) filed an action for quieting of title and damages naming only Theresa Fian Yray (Theresa) as the representative of the Heirs of Fian.

Theresa filed a Motion to Dismiss the complaint, arguing that the complaint states no cause of action since the names of all the heirs of the late spouses Mesina and spouses Fian were not individually named, thus they could not be deemed as the real parties in interest in violation of Sections 1 and 2, Rule 3 of the Rules of Court. She claims that the "Heirs of Mesina" could not be considered as a juridical person or entity authorized by law to file a civil action. Neither could the "Heirs of Fian" be made as defendant, not being a juridical person as well. That for failure to name or implead all the heirs of the late spouses Fian who are indispensable parties to the case, the same warrants the dismissal of the complaint. The RTC dismissed the complaint.

On December 27, 2005, petitioners moved for reconsideration of the November 22, 2005 Order of the RTC. The next day, or on December 28, 2005, respondent Theresa filed her Vehement Opposition to the motion for reconsideration. On February 29, 2006, the RTC issued its Resolution denying the motion for reconsideration. Aggrieved, petitioners appealed to the CA.

In affirming the RTC, the CA, on April 29, 2011, rendered its Decision, ruling that all the heirs of the spouses Fian are indispensable parties and should have been impleaded in the complaint. The appellate court explained that this failure to implead the other heirs of the late spouses Fian is a

legal obstacle to the trial court's exercise of judicial power over the case and any order or judgment that would be rendered is a nullity in view of the absence of indispensable parties. Petitioners filed their Motion for Reconsideration, which was denied by the CA in its Resolution dated April 12, 2012. Hence, this petition.

#### ISSUE:

Whether all the heirs of the spouses Fian are indispensable parties and should have been impleaded in the complaint?

#### **Ruling:**

Yes. As regards the issue on failure to state a cause of action, the CA ruled that the complaint states no cause of action because all the heirs of the spouses Fian are indispensable parties; hence, they should have been impleaded in the complaint.

Failure to state a cause of action refers to the insufficiency of the pleading. A complaint states a cause of action if it avers the existence of the three essential elements of a cause of action, namely:

- (a) The legal right of the plaintiff;
- (b) The correlative obligation of the defendant; and
- (c) The act or omission of the defendant in violation of said right.

By a simple reading of the elements of a failure to state a cause of action, it can be readily seen that the inclusion of Theresa's co-heirs does not fall under any of the above elements. The infirmity is, in fact, not a failure to state a cause of action but a non-joinder of an indispensable party.

Non-joinder means the "failure to bring a person who is a necessary party or in this case an indispensable party into a lawsuit." An indispensable party, on the other hand, is a party-in-interest without whom no final determination can be had of the action, and who shall be joined either as plaintiff or defendant.

As such, this is properly a non-joinder of indispensable party, the indispensable parties who were not included in the complaint being the other heirs of Fian, and not a failure of the complaint to state a cause of action.

Having settled that, Our pronouncement in Pamplona Plantation Company, Inc. v. Tinghil is instructive as regards the proper course of action on the part of the courts in cases of non-joinder of indispensable parties, viz:

The non-joinder of indispensable parties is not a ground for the dismissal of an action. At any stage of a judicial proceeding and/or at such times as are just, parties may be added on the motion of a party or on the initiative of the tribunal concerned. If the plaintiff refuses to implead an indispensable party despite the order of the court, that court may dismiss the complaint for the plaintiff's failure to comply with the order. The remedy is to implead the non-party claimed to be indispensable.

Thus, the dismissal of the case for failure to state a cause of action is improper. What the trial court should have done is to direct petitioner Norman Mesina to implead all the heirs of Domingo Fian, Sr. as defendants within a reasonable time from notice with a warning that his failure to do so shall mean dismissal of the complaint.

# POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM), Petitioner, -versus- COURT OF APPEALS (21ST DIVISION), AND FRANCISCO LABAO, AS GENERAL MANAGER OF SAN MIGUEL PROTECTIVE SECURITY AGENCY (SMPSA), Respondents. G.R. No. 194226, THIRD DIVISION, February 15, 2017, BERSAMIN, J.

In Regner v. Logarta, an indispensable party is one who has such an interest in the controversy or subject matter that a final adjudication cannot be made in its absence without injuring or affecting that interest.

As such owner, PSALM was an indispensible party without whom no final determination could be had if it was not joined. As such, Labao should have impleaded PSALM in the proceedings in the RTC, or the RTC should have itself seen to PSALM 's inclusion as an indispensable party.

#### **FACTS:**

National Power Corporation (NPC) set a public bidding for the security package in NPC MinGen. Among the participating bidders was San Miguel Protective Security Agency (SMPSA), represented by Labao. However, NPC's Bids and Awards Committee (BAC) disqualified SMPSA for its alleged failure to meet the equipage requirements. The disqualification prompted Labao, as the general manager of SMPSA, to bring a petition for certiorari against NPC and its officials in the Regional Trial Court (RTC) in Lanao del Norte. On January 30, 2009, the RTC issued a temporary restraining order (TRO) directing NPC and its officials to desist from awarding the security package, as well as from declaring a failure of bidding. On February 17, 2009, the RTC issued the writ of preliminary injunction enjoining NPC and its officials from committing said acts.

On August 17, 2009, the RTC, ruling in favor of SMPSA, made the injunction permanent. In due course, NPC appealed to the CA. In the meantime, on March 9, 2009, NPC and PSALM entered into an operation and maintenance agreement (OMA) whereby the latter, as the owner of all assets of NPC by virtue of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA), had the obligation to provide for the security of all the plants, assets and other facilities.

Accordingly, on March 29, 2009, PSALM conducted a public bidding of its own for the security package of various power plants and facilities in Mindanao, including those of NPC MinGen. During the public bidding, Tiger Investigation, Detective & Security Agency (TISDA) was declared the winning bidder for the package corresponding to NPC MinGen.

On April 7, 2010, PSALM received the TRO issued by the CA on April 5, 2010. It is noted, however, that Labao did not furnish PSALM a copy of SMPSA's Urgent Motion for the Issuance of a TRO and/or Preliminary Prohibitory Injunction.

Notwithstanding the fact that PSALM was not a party in the case brought by Labao against NPC, and the fact that PSALM was not furnished a copy of Labao 's Urgent Motion for the Issuance of a TRO and/or Preliminary Prohibitory Injunction, the CA issued the assailed resolution granting the TRO in order to maintain the status quo, and expressly included PSALM as subject of the writ. Hence, PSALM has come to the Court by petition for certiorari, insisting that the CA thereby acted without

or in excess of jurisdiction, or gravely abused its discretion amounting to lack or excess of jurisdiction.

#### **ISSUE:**

Whether or not the CA erred in issuing a writ of preliminary injunction enjoining the petitioner from offering or bidding out or accepting bid proposals for the procurement of security services for the MinGen Headquarters despite the fact that private respondent Labao is not entitled to the injunctive relief?

#### **RULING:**

YES.

First of all, Section 49 of Republic Act No. 9136, or EPIRA, expressly created PSALM as a corporate entity separate and distinct from NPC. Accordingly, the CA blatantly erred in holding that PSALM, without being made a party itself, was subject of the writ of injunction issued against NPC. PSALM and NPC, despite being unquestionably invested by law with distinct and separate personalities, were intolerably confused with each other.

Secondly, Labao was quite aware that under EPIRA, PSALM became the owner as early as in mid-2001 of all of NPC's existing generation assets, liabilities, IPP contracts, real estate and all other disposable assets, as well as all facilities of NPC. NPC-MinGen was among the assets or properties coming under the ownership of PSALM.

In Regner v. Logarta, an indispensable party is one who has such an interest in the controversy or subject matter that a final adjudication cannot be made in its absence without injuring or affecting that interest. As such owner, PSALM was an indispensible party without whom no final determination could be had if it was not joined. As such, Labao should have impleaded PSALM in the proceedings in the RTC, or the RTC should have itself seen to PSALM 's inclusion as an indispensable party.

## THEODORE AND NANCY ANG, REPRESENTED BY ELDRIGE MARVIN B. ACERON, Petitioners, - versus- SPOUSES ALAN AND EM ANG, Respondents.

G.R. No. 186993, SECOND DIVISION, August 22, 2012, REYES, J.

The Court in Filipinas Industrial Corp., et al. v. Hon. San Diego stated that clearly, an attorney-in-fact is not a real party in interest.

Being merely a representative of the petitioners, Atty. Aceron in his personal capacity does not have the right to file the complaint below against the respondents. He may only do so, as what he did, in behalf of the petitioners the real parties in interest. To stress, the right sought to be enforced in the case below belongs to the petitioners and not to Atty. Aceron.

The petitioner's reliance on Section 3, Rule 3 of the Rules of Court to support their conclusion that Atty. Aceron is likewise a party in interest in the case below is misplaced. Nowhere in the rule cited above is it stated or, at the very least implied, that the representative is likewise deemed as the real party in interest. The said rule simply states that, in actions which are allowed to be prosecuted or defended by

a representative, the beneficiary shall be deemed the real party in interest and, hence, should be included in the title of the case.

#### **FACTS:**

Petitioner and respondents (both surnamed Ang) entered into a contract of loan with respondents as debtors. Respondents executed a promissory note with a stipulated interest of 10%. However, despite repeated demands, the respondents failed to pay the petitioners.

A complaint for collection of sum of money was filed with the RTC of Quezon City. Respondents moved for the dismissal of the complaint on the grounds of improper venue. They asserted that the complaint against them may only be filed in the court of the place where either they or the petitioners reside. They averred that they reside in Bacolod City while the petitioners reside in Los Angeles, California, USA.

On April 12, 2007, the RTC of Quezon City denied the respondents' motion to dismiss explaining that:

Attached to the complaint is the Special Power of Attorney which clearly states that plaintiff Nancy Ang constituted Atty. Aceron as her duly appointed attorney-in-fact to prosecute her claim against herein defendants. Considering that the address given by Atty. Aceron is in Quezon City, hence, being the plaintiff, venue of the action may lie where he resides as provided in Section 2, Rule 4 of the 1997 Rules of Civil Procedure.

The respondents sought reconsideration asserting that there is no law which allows the filing of a complaint in the court of the place where the representative, who was appointed as such by the plaintiffs through a Special Power of Attorney, resides. The respondents' motion for reconsideration was denied by the RTC of Quezon City. The respondents then filed with the CA a petition for certiorari

On August 28, 2008, the CA rendered the herein Decision which annulled and set aside the Orders dated April 12, 2007 and August 27, 2007 of the RTC of Quezon City and, accordingly, directed the dismissal of the complaint filed by the petitioners. The CA held that the complaint below should have been filed in Bacolod City and not in Quezon City. The petitioners sought a reconsideration but it was denied by the CA.

Hence, the instant petition. Petitioners maintain that their complaint for collection of sum of money against the respondents may be filed in the RTC of Quezon City. Invoking Section 3, Rule 3 of the Rules of Court, they insist that Atty. Aceron, being their attorney-in-fact, is deemed a real party in interest in the case below and can prosecute the same before the RTC. Such being the case, the petitioners assert, the said complaint for collection of sum of money may be filed in the court of the place where Atty. Aceron resides, which is the RTC of Quezon City.

On the other hand, the respondents assert that the petitioners are proscribed from filing their complaint in the RTC of Quezon City. They assert that the residence of Atty. Aceron, being merely a representative, is immaterial to the determination of the venue of the petitioners' complaint.

#### **ISSUE:**

Whether Atty. Aceron, being merely a representative of the petitioners, is a real party in interest?

#### **RULING:**

No. The Court in Filipinas Industrial Corp., et al. v. Hon. San Diego stated that clearly, an attorney-infact is not a real party in interest. Being merely a representative of the petitioners, Atty. Aceron in his personal capacity does not have the right to file the complaint below against the respondents. He may only do so, as what he did, in behalf of the petitioners the real parties in interest. To stress, the right sought to be enforced in the case below belongs to the petitioners and not to Atty. Aceron.

The petitioner's reliance on Section 3, Rule 3 of the Rules of Court to support their conclusion that Atty. Aceron is likewise a party in interest in the case below is misplaced. Section 3, Rule 3 of the Rules of Court provides that:

Sec. 3. Representatives as parties. – Where the action is allowed to be prosecuted and defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real property in interest. A representative may be a trustee of an expert trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal.

Nowhere in the rule cited above is it stated or, at the very least implied, that the representative is likewise deemed as the real party in interest. The said rule simply states that, in actions which are allowed to be prosecuted or defended by a representative, the beneficiary shall be deemed the real party in interest and, hence, should be included in the title of the case.

Indeed, to construe the express requirement of residence under the rules on venue as applicable to the attorney-in-fact of the plaintiff would abrogate the meaning of a "real party in interest", as defined in Section 2 of Rule 3 of the 1997 Rules of Court vis-à-vis Section 3 of the same Rule.

#### On this score, the CA aptly observed that:

As may be unerringly gleaned from the foregoing provisions, there is nothing therein that expressly allows, much less implies that an action may be filed in the city or municipality where either a representative or an attorney-in-fact of a real party in interest resides. Sec. 3 of Rule 3 merely provides that the name or names of the person or persons being represented must be included in the title of the case and such person or persons shall be considered the real party in interest. In other words, the principal remains the true party to the case and not the representative. Under the plain meaning rule, or verba legis, if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation.

At this juncture, it bears stressing that the rules on venue, like the other procedural rules, are designed to insure a just and orderly administration of justice or the impartial and even-handed determination of every action and proceeding. Obviously, this objective will not be attained if the plaintiff is given unrestricted freedom to choose the court where he may file his complaint or petition. The choice of venue should not be left to the plaintiff's whim or caprice. He may be impelled by some ulterior motivation in choosing to file a case in a particular court even if not allowed by the rules on venue.

# CRISANTA F. SENO, CAROLA SENO SANTOS, MANUEL SENO, JR., DIANA SENO CONDER, EMILY SENO and WALTER SENO, *Plaintiffs*, -versus- MARCOS MANGUBAT and SPOUSES FRANCISCO LUZAME and VERGITA PENAFLOR, ANDRES EVANGELISTA and BIENVENIDO MANGUBAT, *Defendants.*

G.R. No. L-44339, FIRST DIVISION, December 02, 1987, GANCAYCO, J.

Under Section 7 [Rule 3], indispensable parties must always be joined either as plaintiffs or defendants, for the court cannot proceed without them. Necessary parties must be joined, under Section 8, in order to adjudicate the whole controversy and avoid multiplicity of suits.

Indispensable parties are those with such an interest in the controversy that a final decree would necessarily affect their rights, so that the courts cannot proceed without their presence. Necessary parties are those whose presence is necessary to adjudicate the whole controversy, but whose interests are so far separable that a final decree can be made in their absence without affecting them.

In the present case, there are no rights of defendants Andres Evangelista and Bienvenido Mangubat to be safeguarded. Defendant Marcos Mangubat became the absolute owner of the subject property by virtue of the sale to him of the shares of the aforementioned defendants in the property. Said defendants no longer have any interest in the subject property. However, being parties to the instrument sought to be reformed, their presence is necessary in order to settle all the possible issues of the controversy.

#### **FACTS:**

Plaintiff Crisanta Seno approached defendant Marcos Mangubat sometime in 1961 to negotiate with him a mortgage over the subject parcel of land so she can pay off a previous indebtedness; she and herein defendant agreed on a mortgage for the sum of P15,000 with interest of 2% a month payable every month and that as long as the interest is being paid, the mortgage over the property will not be foreclosed.

On the assurance of Marcos Mangubat, a practicing lawyer, that he will respect their true agreement on the mortgage, Seno agreed to the execution of a Deed of Absolute Sale over the subject property for a consideration of P5,000 in favor of defendant Marcos Mangubat and certain Andres Evangelista and Bienvenido Mangubat.

Later, Andres Evangelista and Bienvenido Mangubat executed a Deed of Absolute Sale transferring their share in the subject property to defendant Marcos Mangubat while Seno continued paying defendant Marcos Mangubat the usurious 2% interest per month.

When Seno failed to pay the monthly interest of 2%, she was sued for ejectment by Marcos Mangubat alleging non-payment of rentals. Sometime later, Seno learned that defendant Marcos Mangubat sold the subject property in favor of spouses Francisco Luzame and Vergita Penaflor.

On motion of defendant spouses Luzame and Penaflor, the trial court ordered the inclusion as defendants of Andres Evangelista and Bienvenido Mangubat on the ground that they are indispensable parties.

The newly impleaded defendants moved for the dismissal of the case against them on the ground of prescription which motion was granted by the court.

Defendants Luzame and Penaflor in their motion for reconsideration and defendant Marcos Mangubat in his Supplement to motion for reconsideration asked the court to dismiss the case against all the defendants. The court a quo reconsidered its order and dismissed the case against all the defendants holding that the court is no longer in a position to grant plaintiffs' demands, principally the reformation of subject Deed of Absolute Sale.

#### **ISSUE:**

Whether defendants Andres Evangelista and Bienvenido Mangubat are indispensable parties in the case without whom no action can be properly taken thereon. (NO)

#### **RULING:**

Plaintiffs contend that said defendants being mere dummies of defendant Marcos Mangubat and therefore not real parties in interest, there is no room for the application of Sec. 7, Rule 3 of the Rules of Court.

For the determination of this issue, it is necessary to consider the distinction between indispensable and proper parties as clearly stated in Sections 7 and 8, Rule 3 of the Revised Rules of Court which provide:

"Sec. 7. Compulsory joinder of indispensable parties. - Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants."

"Sec. 8. Joinder of proper parties. - When persons who are not indispensable but who ought to be parties if complete relief is to be accorded as between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue, the court shall order them summoned to appear in the action. But the court may, in its discretion, proceed in the action without making such persons parties, and the judgment rendered therein shall be without prejudice to the rights of such persons."

Under Section 7, indispensable parties must always be joined either as plaintiffs or defendants, for the court cannot proceed without them. Necessary parties must be joined, under Section 8, in order to adjudicate the whole controversy and avoid multiplicity of suits.

Indispensable parties are those with such an interest in the controversy that a final decree would necessarily affect their rights, so that the courts cannot proceed without their presence. Necessary parties are those whose presence is necessary to adjudicate the whole controversy, but whose interests are so far separable that a final decree can be made in their absence without affecting them.

In the present case, there are no rights of defendants Andres Evangelista and Bienvenido Mangubat to be safeguarded. Defendant Marcos Mangubat became the absolute owner of the subject property by virtue of the sale to him of the shares of the aforementioned defendants in the property. Said defendants no longer have any interest in the subject property. However, being parties to the instrument sought to be reformed, their presence is necessary in order to settle all the possible issues of the controversy.

# IN THE MATTER OF THE HEIRSHIP (INTESTATE ESTATES) OF THE LATE HERMOGENES RODRIGUEZ, ANTONIO RODRIGUEZ, MACARIO J. RODRIGUEZ, DELFIN RODRIGUEZ and CONSUELO M. RODRIGUEZ and SETTLEMENT OF THEIR ESTATES, RENE B. PASCUAL, Petitioner, -versus- JAIME M. ROBLES, Respondent.

G.R. No. 182645, SPECIAL THIRD DIVISION, December 15, 2010, PERALTA, J.

In the case at bar, Robles is an indispensable party. He stands to be injured or benefited by the outcome of the petition. He has an interest in the controversy that a final decree would necessarily affect his rights, such that the courts cannot proceed without his presence. Moreover, as provided for under the aforequoted Section 5, Rule 65 of the Rules of Court, Robles is interested in sustaining the assailed CA Decision, considering that he would benefit from such judgment. As such, his non-inclusion would render the petition for certiorari defective.

Petitioner, thus, committed a mistake in failing to implead Robles as respondent.

The rule is settled that the non-joinder of indispensable parties is not a ground for the dismissal of an action. The remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just. If petitioner refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the plaintiff's/petitioner's failure to comply therewith.

#### **FACTS:**

In 1989, Henry Rodriguez (Henry), Certeza Rodriguez (Certeza), and Rosalina Pellosis (Rosalina) fileda petition for Declaration of Heirship and Appointment of Administrator and Settlement of the Estates of the Late Hermogenes Rodriguez (Hermogenes) and Antonio Rodriguez (Antonio) filed before the RTC of Iriga City. Henry, Certeza and Rosalina sought that they be declared the sole and surviving heirs of the late Antonio Rodriguez and Hermogenes Rodriguez alleging they are the great grandchildren of Antonio.

Having no oppositors to the petition, the RTC entered a general default against the whole world, except the Republic of the Philippines.

Subsequently, six groups of oppositors entered their appearances either as a group or individually, namely:

- (1) The group of Judith Rodriguez;
- (2) The group of Carola Favila-Santos;
- (3) Jaime Robles;
- (4) Florencia Rodriguez;
- (5) Victoria Rodriguez; and
- (6) Bienvenido Rodriguez

Only the group of Judith Rodriguez had an opposing claim to the estate of Antonio, while the rest filed opposing claims to the estate of Hermogenes. In his opposition, Jamie Robles likewise prayed that he be appointed regular administrator to the estates of Antonio and Hermogenes and be allowed to sell a certain portion of land included in the estate of Hermogenes.

After hearing on Jamie Robles' application for appointment as regular administrator, the RTC issued an Order declaring him to be an heir and next of kin of decedent Hermogenes and thus qualified to be the administrator. Accordingly, the said order appointed Jaime Robles as regular administrator of the entire estate of Hermogenes and allowed him to sell the property.

In 1999, the RTC rendered a decision declaring Carola Favila-Santos and her co-heirs as heirs in the direct descending line of Hermogenes and reiterated its ruling declaring Henry, Certeza and Rosalina as heirs of Antonio. The decision dismissed the oppositions of Jamie Robles, Victoria Rodriguez, Bienvenido Rodriguez, and Florencia Rodriguez, for their failure to substantiate their respective claims of heirship to the late Hermogenes.

The RTC subsequently issued an Amended Decision reversing its earlier finding as to Carola Favila-Santos. This time, the RTC found Carola Favila-Santos and company not related to the decedent Hermogenes. The RTC further decreed that Henry, Certeza and Rosalina are the heirs of Hermogenes. The RTC also re-affirmed its earlier verdict dismissing the oppositions of Jaime Robles, Victoria Rodriguez, Bienvenido Rodriguez, and Florencia Rodriguez.

The basic contention of Robles in the instant Motion is that he is a party-in-interest who stands to be adversely affected or injured or benefited by the judgment in the instant case. He also argues that the failure of service upon him of a copy of the instant petition as well as petitioner's memorandum, and the fact that he was not required or given the opportunity to file his comment or answer to the said petition nor served with any order, resolution or any other process issued by this Court in the instant petition, is a clear denial of his right to due process.

In his Comment and Opposition, petitioner contends that Robles has no legal standing to participate in the instant petition. Petitioner argues that in an original action for certiorari, the parties are the aggrieved party against the lower court and the prevailing party. Petitioner claims, however, that Robles was never impleaded, because he was not the prevailing party in the assailed Decision of the CA as well as the questioned Order of the RTC. Petitioner further avers that the inclusion of Robles' name as respondent in the caption of the instant petition was a result of a clerical error which was probably brought about by numerous cases filed with this Court involving Robles and the subject estate.

#### **ISSUE:**

Whether Robles is an indispensible party (YES) and the failure to implead him is a valid ground for dismissal of the action. (NO)

#### RULING:

Section 5, Rule 65 of the Rules of Court provides:

Section 5. Respondents and costs in certain cases. - When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join as private respondent or respondents with such

public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

In Lotte Phil. Co., Inc. v. Dela Cruz, this Court ruled as follows:

An indispensable party is a party-in-interest without whom no final determination can be had of an action, and who shall be joined either as plaintiffs or defendants. The joinder of indispensable parties is mandatory. The presence of indispensable parties is necessary to vest the court with jurisdiction, which is "the authority to hear and determine a cause, the right to act in a case." Thus, without the presence of indispensable parties to a suit or proceeding, judgment of a court cannot attain real finality. The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.

In the case at bar, Robles is an indispensable party. He stands to be injured or benefited by the outcome of the petition. He has an interest in the controversy that a final decree would necessarily affect his rights, such that the courts cannot proceed without his presence. Moreover, as provided for under the aforequoted Section 5, Rule 65 of the Rules of Court, Robles is interested in sustaining the assailed CA Decision, considering that he would benefit from such judgment. As such, his non-inclusion would render the petition for *certiorari* defective.

Petitioner, thus, committed a mistake in failing to implead Robles as respondent.

The rule is settled that the non-joinder of indispensable parties is not a ground for the dismissal of an action. The remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just. If petitioner refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the plaintiff's/petitioner's failure to comply therewith.

### VICTORIANO BORLASA ET AL., *Plaintiffs and Appellants*, -versus- VICENTE POLISTICO ET AL., *Defendants and Appellees.*

G.R. No. 22909, NO DIVISION, January 28, 1925, STREET, J.

The general rule with reference to the making of parties in a civil action requires the joinder of all necessary parties wherever possible, and the joinder of all indispensable parties under any and all conditions, the presence of those latter being a sine qua non of the exercise of judicial power. The class suit contemplates an exceptional situation where there are numerous persons all in the same plight and all together constituting a constituency whose presence in the litigation is absolutely indispensable to the administration of justice. Here the strict application of the rule as to indispensable parties would require that each and every individual in the class should be present. But at this point the practice is so far relaxed as to permit the suit to proceed, when the class is sufficiently represented to enable the court to deal properly and justly with that interest and with all other interests involved in the suit. In the class suit, then, representation of a class interest which will be affected by the

judgment is indispensable; but it is not indispensable to make each member of the class an actual party.

The addition of some hundreds of persons to the number of the plaintiffs, made in the amendment to the complaint was unnecessary, and as the presence of so many parties is bound to prove embarrassing to the litigation from death or removal, it is suggested that upon the return of this record to the lower court for further proceedings, the plaintiff shall again amend their complaint by dismissing as to unnecessary parties plaintiffs, but retaining a sufficient number of responsible persons to secure liability for costs and fairly to represent all the members of the association.

#### **FACTS:**

In 1911, the plaintiffs and defendants, together with several hundred other persons, formed an association under the name of *Turnuhan Polistico & Co*. Vicente Polistico, the principal defendant herein, was elected president and treasurer of the association.

Under the by-laws each member obligated himself to pay to Vicente Polistico, as president-treasurer every Sunday the sum of 50 centavos. It is alleged that from April 1911, until April 1917, the sums of money were paid weekly by all of the members of the society with few irregularities. The inducement to these weekly contributions was found in provisions of the by-laws to the effect that a lottery should be conducted weekly among the members of the association and that the successful member should be paid the amount collected each week, from which, however, the president-treasurer of the society was to receive the sum of P200, to be held by him as funds of the society.

It is further alleged that by virtue of these weekly lotteries Vicente Polistico, as president-treasurer of the association, received sums of money amounting to P74,000, more or less, in the period stated, which he still retains in his power or has applied to the purchase of real property largely in his own name and partly in the names of others.

Victoriano Borlasa and others filed an action against defendants for the dissolution of the association, and to compel them to account for and surrender the money and property of the association in order that its affairs may be liquidated and its assets applied according to law.

The defendants raised the question of lack of parties and set out a list of some hundreds of persons.

The defendants raised the question of lack of parties and set out a list of some hundreds of persons whom they alleged should be brought in as parties defendant on the ground, among others, that they were in default in the payment of their dues to the association.

The court ordered the plaintiffs to amend their complaint within a stated period so as to include *all* of the members of the *Turnuhan Polistico & Co.* either as plaintiffs or defendants.

The plaintiffs excepted to this order, but acquiesced to the extent of amending their complaint by adding as additional parties plaintiff some hundreds of persons, residents of Lilio, said to be members of the association and desirous of being joined as plaintiffs. Some of these new plaintiffs had not been named in the list submitted by the defendants with their amended answer; and on the other hand many names in said list were here omitted, it being claimed by the plaintiffs that the persons omitted were not residents of Lilio but residents of other places and that their relation to the society, so far as the plaintiffs could discover, was fictitious.

The defendants demurred to the amended complaint on the ground that it showed on its face a lack of necessary parties and this demurrer was sustained, with the ultimate result of, the dismissal of the action.

#### **ISSUE:**

Whether all the members of the *Turnuhan Polistico & Co.* should be brought in either plaintiffs or defendants. (NO)

#### RULING:

The situation involved is precisely the one contemplated in section 118 of the Code of Civil Procedure, where one or more may sue for the benefit of all. It is evident from the showing made in the complaint, and from the proceedings in the court below, that it would be impossible to make all of the persons in interest parties to the case and to require all of the members of the association to be joined as parties would be tantamount to a denial of justice.

The general rule with reference to the making of parties in a civil action requires the joinder of all necessary parties wherever possible, and the joinder of all indispensable parties under any and all conditions, the presence of those latter being a *sine qua non* of the exercise of judicial power. The class suit contemplates an exceptional situation where there are numerous persons all in the same plight and all together constituting a constituency whose presence in the litigation is absolutely indispensable to the administration of justice. Here the strict application of the rule as to indispensable parties would require that each and every individual in the class should be present. But at this point the practice is so far relaxed as to permit the suit to proceed, when the class is sufficiently represented to enable the court to deal properly and justly with that interest and with all other interests involved in the suit. In the class suit, then, representation of a class interest which will be affected by the judgment is indispensable; but it is not indispensable to make each member of the class an actual party.

The addition of some hundreds of persons to the number of the plaintiffs, made in the amendment to the complaint was unnecessary, and as the presence of so many parties is bound to prove embarrassing to the litigation from death or removal, it is suggested that upon the return of this record to the lower court for further proceedings, the plaintiff shall again amend their complaint by dismissing as to unnecessary parties plaintiffs, but retaining a sufficient number of responsible persons to secure liability for costs and fairly to represent all the members of the association. There is another feature of the complaint which makes a slight amendment desirable, which is, that the complaint should be made to show on its face that the action is intended to be litigated as a class suit. We accordingly recommend that the plaintiffs further amend by adding after the names of the parties plaintiffs the words, "in their own behalf and in behalf of other members of *Turnuhan Polistico & Co.*"

NEWSWEEK, INC., Petitioner, -versus- THE INTERMEDIATE APPELLATE COURT, and NATIONAL FEDERATION OF SUGARCANE PLANTERS INC., BINALBAGAN-ISABELA PLANTERS ASSOCIATION, INC., ASOCIACION DE AGRICULTORES DE LA CARLOTA, LA CASTELLANA Y PONTEVEDRA, INC., DONEDCO PLANTERS ASSOCIATION INC., ARMANDO GUSTILO, ENRIQUE ROJAS, ALFREDO MONTELIBANO, JR., PABLO SOLA, JOSE MONTALVO, VICENTE GUSTILO, JOSEPH MARANON, ROBERTO CUENCA, JOSE SICANGCO, FLORENCIO ALONSO, MIGUEL GATUSLAO, PEDRO YULO, MARINO RUBIN and BENJAMIN BAUTISTA, Respondent.

G.R. No. 63559, EN BANC, May 30, 1986, FERIA, J.

Private respondents filed a "class suit" in representation of all the 8,500 sugarcane planters of Negros Occidental. Petitioner disagrees and argues that the absence of any actionable basis in the complaint cannot be cured by the filing of a class suit on behalf of the aforesaid sugar planters.

The SC however held that the case at bar is not a class suit. It is not a case where one or more may sue for the benefit of all (Mathay vs. Consolidated Bank and Trust Company, 58 SCRA 559) or where the representation of class interest affected by the judgment or decree is indispensable to make each member of the class an actual party (Borlaza vs. Polistico, 47 Phil. 348). We have here a case where each of the plaintiffs has a separate and distinct reputation in the community. They do not have a common or general interest in the subject matter of the controversy.

### **FACTS:**

In 1981, private respondents, incorporated associations of sugarcane planters in Negros Occidental claiming to have 8,500 members and several individual sugar planters, filed a civil case in their own behalf and/or as a class suit in behalf of all sugarcane planters in the province of Negros Occidental, against petitioner Newsweek Inc. and two of petitioners' non-resident correspondents/reporters Fred Bruning and Barry Came. The complaint alleged that petitioner and the other defendants committed libel against them by the publication of the article "An Island of Fear" in the February 23, 1981 issue of petitioner's weekly news magazine Newsweek.

Petitioner filed a motion to dismiss on the grounds that the printed article sued upon is not actionable in fact and in law; and the complaint is bereft of allegations that state, much less support a cause of action.

The trial court denied the motion to dismiss. Petitioner's motion for reconsideration was denied.

Petitioner filed a petition for *certiorari* with the Intermediate Appellate Court seeking the annulment of the trial court's orders for having been issued with such a grave abuse of discretion and praying for the dismissal of the complaint for failure to state a cause of action. The respondent Court however affirmed the trial court's Orders and ordered the case to be tried on the merits. Subsequently, the respondent Court denied petitioner's Motion for Reconsideration.

### **ISSUE:**

Whether a civil case for defamation can be filed under a class suit. (NO)

### **RULING:**

In the case of *Corpus vs. Cuaderno, Sr.* the SC ruled that "in order to maintain a libel suit, it is essential that the victim be identifiable although it is not necessary that he be named." In an earlier case, this Court declared that "x x x defamatory matter which does not reveal the identity of the person upon whom the imputation is cast, affords no ground of action unless it be shown that the readers of the libel could have identified the personality of the individual defamed."

This principle has been recognized to be of vital importance, especially where a group or class of persons, as in the case at bar, claim to have been defamed, for it is evident that the larger the collectivity, the more difficult it is for the individual member to prove that the defamatory remarks apply to him.

In the case of Uy Tioco vs. Yang Shu Wen, the SC said:

Defamatory remarks directed at a class or group of persons in general language only, are not actionable by individuals composing the class or group unless the statements are sweeping; and it is very probable that even then no action would lie where the body is composed of so large a number of persons that common sense would tell those to whom the publication was made that there was room for persons connected with the body to pursue an upright and law abiding course and that it would be unreasonable and absurd to condemn all because of the actions of a part.

It is evident from the above ruling that where the defamation is alleged to have been directed at a group or class, it is essential that the statement must be so sweeping or all-embracing as to apply to every individual in that group or class, or sufficiently specific so that each individual in the class or group can prove that the defamatory statement specifically pointed to him, so that he can bring the action separately, if, need be.

Private respondents filed a "class suit" in representation of all the 8,500 sugarcane planters of Negros Occidental. Petitioner disagrees and argues that the absence of any actionable basis in the complaint cannot be cured by the filing of a class suit on behalf of the aforesaid sugar planters.

The SC however held that the case at bar is not a class suit. It is not a case where one or more may sue for the benefit of all (*Mathay vs. Consolidated Bank and Trust Company*, 58 SCRA 559) or where the representation of class interest affected by the judgment or decree is indispensable to make each member of the class an actual party (*Borlaza vs. Polistico*, 47 Phil. 348). We have here a case where each of the plaintiffs has a separate and distinct reputation in the community. They do not have a common or general interest in the subject matter of the controversy.

The disputed portion of the article which refers to plaintiff Sola and which was claimed to be libelous never singled out plaintiff Sola as a sugar planter. The news report merely stated that the victim had been arrested by members of a special police unit brought into the area by Pablo Sola, the mayor of Kabankalan. Hence, the report, referring as it does to an official act performed by an elective public official, is within the realm of privilege and protected by the constitutional guarantees of free speech and press.

The article further stated that Sola and the commander of the special police unit were arrested. The Court takes judicial notice of this fact.

JUAN ANTONIO, ANNA ROSARIO and JOSE ALFONSO, ALL SURNAMED OPOSA, MINORS, and REPRESENTED BY THEIR PARENTS ANTONIO and RIZALINA OPOSA, ROBERTA NICOLE SADIUA, MINOR, REPRESENTED BY HER PARENTS, CALVIN and ROBERTA SADIUA, CARLO, AMANDA SALUD and PATRISHA, ALL SURNAMED FLORES, MINORS and REPRESENTED BY THEIR PARENTS ENRICO and NIDA FLORES, GIANINA DITA R. FORTUN, MINOR, REPRESENTED BY HER PARENTS SIGFRID and DOLORES FORTUN, GEORGE II and MA. CONCEPCION, ALL SURNAMED MISA, MINORS and REPRESENTED BY THEIR PARENTS GEORGE and MYRA MISA, BENJAMIN ALAN V. PESIGAN, MINOR, REPRESENTED BY HIS PARENTS ANTONIO and ALICE PESIGAN, JOVIE MARIE ALFARO, MINOR, REPRESENTED BY HER PARENTS JOSE and MARIA VIOLETA ALFARO, MARIA CONCEPCION T. CASTRO, MINOR, REPRESENTED BY HER PARENTS FREDENIL and JANE CASTRO, JOHANNA DESAMPARADO,

MINOR, REPRESENTED BY HER PARENTS IOSE and ANGELA DESAMPARADO, CARLO IOAOUIN T. NARVASA, MINOR, REPRESENTED BY HIS PARENTS GREGORIO II and CRISTINE CHARITY NARVASA, MA. MARGARITA, JESUS IGNACIO, MA. ANGELA and MARIE GABRIELLE, ALL SURNAMED SAENZ, MINORS, REPRESENTED BY THEIR PARENTS ROBERTO AND AURORA SAENZ, KRISTINE, MARY ELLEN, MAY, GOLDA MARTHE and DAVID IAN, ALL SURNAMED KING, MINORS, REPRESENTED BY THEIR PARENTS MARIO and HAYDEE KING, DAVID, FRANCISCO and THERESE VICTORIA, ALL SURNAMED ENDRIGA, MINORS, REPRESENTED BY THEIR PARENTS BALTAZAR and TERESITA ENDRIGA, JOSE MA. and REGINA MA., ALL SURNAMED ABAYA, MINORS, REPRESENTED BY THEIR PARENTS ANTONIO and MARICA ABAYA, MARILIN, MARIO, IR. and MARIETTE, ALL SURNAMED CARDAMA, MINORS, REPRESENTED BY THEIR PARENTS MARIO and LINA CARDAMA, CLARISSA, ANN MARIE, NAGEL and IMEE LYN, ALL SURNAMED OPOSA, MINORS and REPRESENTED BY THEIR PARENTS RICARDO and MARISSA OPOSA, PHILIP JOSEPH, STEPHEN JOHN and ISAIAH JAMES, ALL SURNAMED OUIPIT, MINORS, REPRESENTED BY THEIR PARENTS JOSE MAX and VILMI QUIPIT, BUGHAW CIELO, CRISANTO, ANNA, DANIEL and FRANCISCO, ALL SURNAMED BIBAL, MINORS, REPRESENTED BY THEIR PARENTS FRANCISCO, JR. and MILAGROS BIBAL, and THE PHILIPPINE ECOLOGICAL NETWORK, INC, Petitioners, -versus- THE HONORABLE FULGENCIO S. FACTORAN, JR., IN HIS CAPACITY AS THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT and NATURAL RESOURCES, and THE HONORABLE ERIBERTO U. ROSARIO, PRESIDING JUDGE OF THE RTC. MAKATI, BRANCH 66, Respondents.

G.R. No. 101083, EN BANC, July 30, 1993, DAVIDE, JR., J.

Petitioners instituted present case as a class suit. The original defendant and the present respondents did not take issue with this matter. Nevertheless, the SC ruled that the said civil case is indeed a class suit. The subject matter of the complaint is of common and general interest not just to several, but to all citizens of the Philippines. Consequently, since the parties are so numerous, it becomes impracticable, if not totally impossible, to bring all of them before the court. The plaintiffs therein are numerous and representative enough to ensure the full protection of all concerned interests. Hence, all the requisites for the filing of a valid class suit under Section 12, Rule 3 of the Revised Rules of Court are present both in the said civil case and in the instant petition, the latter being but an incident to the former.

This case, however, has a special and novel element. Petitioners minors assert that they represent their generation as well as generations yet unborn. They can, for themselves, for others of their generation and for the succeeding generations, file class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the "rhythm and harmony of nature." Nature means the created world in its entirety. Such rhythm and harmony indispensably include, inter alia, 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 to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.

### **FACTS:**

The controversy has its genesis in Civil Case No. 90-777 which was filed before the Makati RTC. The principal plaintiffs therein, now the principal petitioners, are all minors duly represented and joined by their respective parents. The complaint was instituted as a taxpayers' class suit and alleges that the plaintiffs "are all citizens of the Republic of the Philippines, taxpayers, and entitled to the full benefit, use and enjoyment of the natural resource treasure that is the country's virgin tropical rainforests." The same was filed for themselves and others who are equally concerned about the preservation of said resource but are "so numerous that it is impracticable to bring them all before the Court." The minors further asseverate that they "represent their generation as well as generations yet unborn."

The original defendant, DENR Secretary Factoran, filed a Motion to Dismiss the complaint based on two grounds, namely: the plaintiffs have no cause of action against him and the issue raised by the plaintiffs is a political question which properly pertains to the legislative or executive branches of Government.

The respondent Judge issued an order granting the motion to dismiss. In the said order, not only was the defendant's claim -- that the complaint states no cause of action against him and that it raises a political question -- sustained, the respondent Judge further ruled that the granting of the reliefs prayed for would result in the impairment of contracts which is prohibited by the fundamental law of the land.

Petitioners contend that the complaint clearly and unmistakably states a cause of action as it contains sufficient allegations concerning their right to a sound environment based on Articles 19, 20 and 21 of the Civil Code, Section 4 of Executive Order No. 192 creating the DENR, Section 3 of Presidential Decree No. 1151, Section 16, Article II of the 1987 Constitution recognizing the right of the people to a balanced and healthful ecology, the concept of generational genocide in Criminal Law and the concept of man's inalienable right to self-preservation and self-perpetuation embodied in natural law. Petitioners likewise rely on the respondent's correlative obligation, per Section 4 of E.O. No. 192, to safeguard the people's right to a healthful environment.

### **ISSUE:**

Whether petitioners have locus standi to institute the present case. (YES)

### **RULING:**

Petitioners instituted present case as a class suit. The original defendant and the present respondents did not take issue with this matter. Nevertheless, the SC ruled that the said civil case is indeed a class suit. The subject matter of the complaint is of common and general interest not just to several, but to all citizens of the Philippines. Consequently, since the parties are so numerous, it becomes impracticable, if not totally impossible, to bring all of them before the court. The plaintiffs therein are numerous and representative enough to ensure the full protection of all concerned interests. Hence, all the requisites for the filing of a valid class suit under Section 12, Rule 3 of the Revised Rules of Court are present both in the said civil case and in the instant petition, the latter being but an incident to the former.

This case, however, has a special and novel element. Petitioners minors assert that they represent their generation as well as generations yet unborn. They can, for themselves, for others of their generation and for the succeeding generations, file class suit. Their personality to sue in behalf of the succeeding generations can only be based on the concept of intergenerational responsibility

insofar as the right to a balanced and healthful ecology is concerned. Such a right, as hereinafter expounded, considers the "rhythm and harmony of nature." Nature means the created world in its entirety. Such rhythm and harmony indispensably include, *inter alia*, 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 to the end that their exploration, development and utilization be equitably accessible to the present as well as future generations. Needless to say, every generation has a responsibility to the next to preserve that rhythm and harmony for the full enjoyment of a balanced and healthful ecology. Put a little differently, the minors' assertion of their right to a sound environment constitutes, at the same time, the performance of their obligation to ensure the protection of that right for the generations to come.

ORTIGAS & COMPANY, LIMITED PARTNERSHIP, Petitioner, -versus- XXXHON. VIVENCIO M. RUIZ, IN HIS CAPACITY AS JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL (BRANCH XV), INOCENCIO BERNARDO, EUGENIO C. SANTOS, ANACLETO ALEJANDRO, MOISES JAVIER, ALEJANDRO STA. ANA, JOSE SANTOS, DOMINGO INOCENCIO, BLAS CRUZ, CENON RAYMUNDO, ESPERIDION SANTOS, BENIGNO TUAZON, ZOILO CRUZ, FLORENCIO EBREO, DOMINGO LEGASPI, LUCIO MENDOZA, JUAN REYES, BALBINO SANTOS, FELIPE REYES, ONISIMO J. SANTIAGO, MANUEL ESPIRITU, TORIBIO BERNARDO, FELIMON REYES, GUILLERMO BERNAL, ALFREDO ESPIRITU, CELESTINO CRUZ, VICTORIO SANTOS, MAXIMIANO INOCENCIO, ANTONINO CRUZ, PASCUAL ALEJANDRO, FRANCISCA AGUIRRE, ELADIO SANTOS, EDUVIJIS ALEJANDRO, POLICARPIO LEGASPI, ALEJANDRO SANTIAGO, GENARO CRUZ, MARIANO SANTOS, FLORENCIA CARASCO, DIONISIA CRUZ, ROSARIO SANTIAGO, IGNACIA TUAZON, EUSEBIA MOLINA, ROSARIO ALEJANDRO and FELIPA BERNAL, Respondents. G.R. No. L-33952, SECOND DIVISION, March 09, 1987, PARAS, J.

Petitioner argues that a class suit is not proper in this case as such presupposes a common and general interest by several plaintiffs in a single specific thing (Section 12, Rule 3, Rules of Court). Consequently, it cannot be maintained when each of those impleaded as alleged plaintiffs "has only a special or

particular interest in the specific thing completely different from another thing in which the defendants have a like interest" (Berces v. Villanueva).

Petitioner's contention is meritorious. This is not a case where one or more may sue for the benefit of all (Mathay v. Consolidated Bank and Trust Company) or where the representation of class interest affected by the judgment or decree is indispensable to make each member of the class an actual party (Borlaza v. Polistico; Newsweek, Inc. v. The Intermediate Appellate Court).

In the case at bar, a class suit wou<mark>ld not lie because each of the de</mark>fendants has an interest only in the particular portion of the land he is actually occupying, and not in the portions individually occupied by the other defendants. They do not have a common or general interest in the subject matter of the controversy.

### **FACTS:**

Petitioner Ortigas & Company, Limited Partnership is the duly registered owner of several adjacent parcels of land situated in Pasig containing an area of 162 hectares, more or less, consolidated into one parcel. Said parcel is a portion of the Mandaluyon Estate over which Petitioner, thru its

predecessor-in-interest, has been in continuous possession since 1862 or 125 years ago, as confirmed by the Court in an earlier case.

Sometime in 1967, a Civil Case No. 7-M was filed against petitioner by a certain Pedro del Rosario and three others, in their own behalf and in behalf of 104 others, as a class suit, in the Court of First Instance of Rizal, seeking, among other things, the declaration of petitioner's titles null and void, allegedly for lack of publication in the land registration proceeding from which they were derived and for alleged fraud employed in registering certain parcels of agricultural land in Quezon City and Pasig, Rizal which form part of the Mandaloyon Estate and the declaration of plaintiffs thereon as lawful owners and possessors of their respective landholdings.

In 1971, Civil Case No. 678-M was filed by Inocencio Bernardo and five others for and in their own behalf and in behalf of 37 others against petitioner, filed as a class suit concerning another portion of the Mandaloyon Estate. The complaint is generally identical to that of Civil Case No. 7-M. Petitioner filed with the lower court an omnibus motion praying for the Court to order the dropping of persons as plaintiffs, except Inocencio Bernardo for improper class suit pursuant to Section 11, Rule 3 of the Rules of Court.

### ISSUE:

Whether a class suit is proper in this case. (NO)

### **RULING:**

Petitioner argues that a class suit is not proper in this case as such presupposes a common and general interest by several plaintiffs in a single specific thing (Section 12, Rule 3, Rules of Court). Consequently, it cannot be maintained when each of those impleaded as alleged plaintiffs "has only a special or particular interest in the specific thing completely different from another thing in which the defendants have a like interest" (*Berces v. Villanueva*).

Petitioner's contention is meritorious. This is not a case where one or more may sue for the benefit of all (*Mathay v. Consolidated Bank and Trust Company*) or where the representation of class interest affected by the judgment or decree is indispensable to make each member of the class an actual party (*Borlaza v. Polistico*; *Newsweek, Inc. v. The Intermediate Appellate Court*).

In the case at bar, a class suit would not lie because each of the defendants has an interest only in the particular portion of the land he is actually occupying, and not in the portions individually occupied by the other defendants. They do not have a common or general interest in the subject matter of the controversy.

Hence, there is merit in petitioner's contention that only the principal plaintiff named in the complaint Inocencio Bernardo can remain as party plaintiff, and all the rest must be dropped from the case, pursuant to Section 11, Rule 38 of the Rules of Court. And since Bernardo does not pretend to own almost two million square meters involved in the case, the restraining order of respondent Judge granting that it could be maintained must be co-extensive with the boundaries of Bernardo's claim. Otherwise stated, respondent Judge cannot restrain petitioner from performing acts of ownership or dominion over the entire 200 hectares involved in this case.

ATTY. SYLVIA BANDA, CONSORICIA O. PENSON, RADITO V. PADRIGANO, JEAN R. DE MESA, LEAH P. DELA CRUZ, ANDY V. MACASAQUIT, SENEN B. CORDOBA, ALBERT BRILLANTES, GLORIA BISDA, JOVITA V. CONCEPCION, TERESITA G. CARVAJAL, ROSANNA T. MALIWANAG, RICHARD ODERON, CECILIA ESTERNON, BENEDICTO CABRAL, MA. VICTORIA E. LAROCO, CESAR ANDRA, FELICISIMO GALACIO, ELSA R. CALMA, FILOMENA A. GALANG, JEAN PAUL MELEGRITO, CLARO G. SANTIAGO, JR., EDUARDO FRIAS, REYNALDO O. ANDAL, NEPHTALIE IMPERIO, RUEL BALAGTAS, VICTOR R. ORTIZ, FRANCISCO P. REYES, JR., ELISEO M. BALAGOT, IR., JOSE C. MONSALVE, IR., ARTURO ADSUARA, F.C. LADRERO, JR., NELSON PADUA, MARCELA C. SAYAO, ANGELITO MALAKAS, GLORIA RAMENTO, JULIANA SUPLEO, MANUEL MENDRIQUE, E. TAYLAN, CARMELA BOBIS, DANILO VARGAS, ROY-LEO C. PABLO, ALLAN VILLANUEVA, VICENTE R. VELASCO, JR., IMELDA ERENO, FLORIZA M. CATIIS, RANIEL R. BASCO, E. JALIJALI, MARIO C. CARAAN, DOLORES M. AVIADO, MICHAEL P. LAPLANA, GUILLERMO G. SORIANO, ALICE E. SOIO, ARTHUR G. NARNE, LETICIA SORIANO, FEDERICO RAMOS, IR., PETERSON CAAMPUED, RODELIO L. GOMEZ, ANTONIO D. GARCIA, JR., ANTONIO GALO, A. SANCHEZ, SOL E. TAMAYO, JOSEPHINE A.M. COCJIN, DAMIAN QUINTO, JR., EDLYN MARIANO, M.A. MALANUM, ALFREDO S. ESTRELLA, and JESUS MEL SAYO, Petitioners, -versus- EDUARDO R. ERMITA, IN HIS CAPACITY AS EXECUTIVE SECRETARY, THE DIRECTOR GENERAL OF THE PHILIPPINE INFORMATION AGENCY and THE NATIONAL TREASURER, Respondents. G.R. No. 166620, EN BANC, April 20, 2010, LEONARDO-DE CASTRO, J.

*In Mathay v. The Consolidated Bank and Trust Company, the Court held that:* 

An action does not become a class suit merely because it is designated as such in the pleadings. Whether the suit is or is not a class suit depends upon the attending facts, and the complaint, or other pleading initiating the class action should allege the existence of the necessary facts, to wit, the existence of a subject matter of common interest, and the existence of a class and the number of persons in the alleged class, in order that the court might be enabled to determine whether the members of the class are so numerous as to make it impracticable to bring them all before the court, to contrast the number appearing on the record with the number in the class and to determine whether claimants on record adequately represent the class and the subject matter of general or common interest.

Here, the petition failed to state the number of NPO employees who would be affected by the assailed Executive Order and who were allegedly represented by petitioners. It was the Solicitor General, as counsel for respondents, who pointed out that there were about 549 employees in the NPO. The 67 petitioners undeniably comprised a small fraction of the NPO employees whom they claimed to represent. Subsequently, 32 of the original petitioners executed an Affidavit of Desistance, while one signed a letter denying ever signing the petition, ostensibly reducing the number of petitioners to 34. We note that counsel for the petitioners challenged the validity of the desistance or withdrawal of some of the petitioners and insinuated that such desistance was due to pressure from people "close to the seat of power." Still, even if we were to disregard the affidavit of desistance filed by some of the petitioners, it is highly doubtful that a sufficient, representative number of NPO employees have instituted this purported class suit. A perusal of the petition itself would show that of the 67 petitioners who signed the Verification/Certification of Non-Forum Shopping, only 20 petitioners were in fact mentioned in the jurat as having duly subscribed the petition before the notary public. In other words, only 20 petitioners effectively instituted the present case.

### **FACTS:**

The present controversy arose from a Petition for *Certiorari* challenging the constitutionality of Executive Order No. 378 issued by President Gloria Macapagal Arroyo in 2004. Petitioners characterize their action as a class suit filed on their own behalf and on behalf of all their coemployees at the National Printing Office (NPO)

The National Printing Office (NPO) was formed in 1987, during the term of former President Corazon C. Aquino, by virtue of Executive Order No. 285 which provided, among others, the creation of the NPO from the merger of the Government Printing Office and the relevant printing units of the Philippine Information Agency (PIA).

In 2004, President Arroyo issued the herein assailed Executive Order No. 378, amending Section 6 of Executive Order No. 285 by, *inter alia*, removing the exclusive jurisdiction of the NPO over the printing services requirements of government agencies and instrumentalities.

Pursuant to Executive Order No. 378, government agencies and instrumentalities are allowed to source their printing services from the private sector through competitive bidding, subject to the condition that the services offered by the private supplier be of superior quality and lower in cost compared to what was offered by the NPO. Executive Order No. 378 also limited NPO's appropriation in the General Appropriations Act to its income.

Perceiving Executive Order No. 378 as a threat to their security of tenure as employees of the NPO, petitioners now challenge its constitutionality, contending that it is beyond the executive powers of President Arroyo to amend or repeal Executive Order No. 285 issued by former President Aquino when the latter still exercised legislative powers; and Executive Order No. 378 violates petitioners' security of tenure, because it paves the way for the gradual abolition of the NPO.

### **ISSUE:**

Whether the petition indeed qualifies as a class suit. (NO)

### **RULING:**

In *Board of Optometry v. Colet*, the SC held that "[c]ourts must exercise utmost caution before allowing a class suit, which is the exception to the requirement of joinder of all indispensable parties. For while no difficulty may arise if the decision secured is favorable to the plaintiffs, a quandary would result if the decision were otherwise as those who were deemed impleaded by their self-appointed representatives would certainly claim denial of due process."

Section 12, Rule 3 of the Rules of Court defines a class suit, as follows:

Sec. 12. *Class suit.* - When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest.

From the foregoing definition, the requisites of a class suit are: 1) the subject matter of controversy is one of common or general interest to many persons; 2) the parties affected are so numerous that

it is impracticable to bring them all to court; and 3) the parties bringing the class suit are sufficiently numerous or representative of the class and can fully protect the interests of all concerned.

In *Mathay v. The Consolidated Bank and Trust Company*, the Court held that:

An action does not become a class suit merely because it is designated as such in the pleadings. Whether the suit is or is not a class suit depends upon the attending facts, and the complaint, or other pleading initiating the class action should allege the existence of the necessary facts, to wit, the existence of a subject matter of common interest, and the existence of a class and the number of persons in the alleged class, in order that the court might be enabled to determine whether the members of the class are so numerous as to make it impracticable to bring them all before the court, to contrast the number appearing on the record with the number in the class and to determine whether claimants on record adequately represent the class and the subject matter of general or common interest.

Here, the petition failed to state the number of NPO employees who would be affected by the assailed Executive Order and who were allegedly represented by petitioners. It was the Solicitor General, as counsel for respondents, who pointed out that there were about 549 employees in the NPO. The 67 petitioners undeniably comprised a small fraction of the NPO employees whom they claimed to represent. Subsequently, 32 of the original petitioners executed an Affidavit of Desistance, while one signed a letter denying ever signing the petition, ostensibly reducing the number of petitioners to 34. We note that counsel for the petitioners challenged the validity of the desistance or withdrawal of some of the petitioners and insinuated that such desistance was due to pressure from people "close to the seat of power." Still, even if we were to disregard the affidavit of desistance filed by some of the petitioners, it is highly doubtful that a sufficient, representative number of NPO employees have instituted this purported class suit. A perusal of the petition itself would show that of the 67 petitioners who signed the Verification/Certification of Non-Forum Shopping, only 20 petitioners were in fact mentioned in the *jurat* as having duly subscribed the petition before the notary public. In other words, only 20 petitioners effectively instituted the present case.

Indeed, in *MVRS Publications, Inc. v. Islamic Da'wah Council of the Philippines, Inc.*, we observed that an element of a class suit or representative suit is the **adequacy of representation**. In determining the question of fair and adequate representation of members of a class, the court must consider (a) whether the interest of the named party is coextensive with the interest of the other members of the class; (b) the proportion of those made a party, as it so bears, to the total membership of the class; and (c) any other factor bearing on the ability of the named party to speak for the rest of the class.

Previously, we held in *Ibañes v. Roman Catholic Church* that where the interests of the plaintiffs and the other members of the class they seek to represent are diametrically opposed, the class suit will not prosper.

It is worth mentioning that a Manifestation of Desistance, to which the previously mentioned Affidavit of Desistance was attached, was filed by the President of the National Printing Office Workers Association (NAPOWA). The said manifestation expressed NAPOWA's opposition to the filing of the instant petition in any court. Even if we take into account the contention of petitioners'

counsel that the NAPOWA President had no legal standing to file such manifestation, the said pleading is a clear indication that there is a divergence of opinions and views among the members of the class sought to be represented, and not all are in favor of filing the present suit. There is here an apparent conflict between petitioners' interests and those of the persons whom they claim to represent. Since it cannot be said that petitioners sufficiently represent the interests of the entire class, the instant case cannot be properly treated as a class suit.

JUANA COMPLEX I HOMEOWNERS ASSOCIATION, INC., ANDRES C. BAUTISTA, BRIGIDO DIMACULANGAN, DOLORES P. PRADO, IMELDA DE LA CRUZ, EDITHA C. DY, FLORENCIA M. MERCADO, LEOVINO C. DATARIO, AIDA A. ABAYON, NAPOLEON M. DIMAANO, ROSITA G. ESTIGOY and NELSON A. LOYOLA, *Petitioners*, -versus- FIL-ESTATE LAND, INC., FIL ESTATE ECOCENTRUM CORPORATION, LA PAZ HOUSING AND DEVELOPMENT CORPORATION, WARBIRD SECURITY AGENCY, ENRIQUE RIVILLA, MICHAEL E. JETHMAL and MICHAEL ALUNAN, *Respondents*.

G.R. No. 152272, THIRD DIVISION, March 05, 2012, MENDOZA, J.

FIL-ESTATE LAND, INC., FIL ESTATE ECOCENTRUM CORPORATION, LA PAZ HOUSING AND DEVELOPMENT CORPORATION, WARBIRD SECURITY AGENCY, ENRIQUE RIVILLA, MICHAEL E. JETHMAL and MICHAEL ALUNAN, Petitioners, -versus- JUANA COMPLEX I HOMEOWNERS ASSOCIATION, INC., ANDRES C. BAUTISTA, BRIGIDO DIMACULANGAN, DOLORES P. PRADO, IMELDA DE LA CRUZ, EDITHA C. DY, FLORENCIA M. MERCADO, LEOVINO C. DATARIO, AIDA A. ABAYON, NAPOLEON M. DIMAANO, ROSITA G. ESTIGOY and NELSON A. LOYOLA, Respondents. G.R. No. 152272, THIRD DIVISION, March 05, 2012, MENDOZA, J.

The necessary elements for the maintenance of a class suit are: 1) the subject matter of controversy is one of common or general interest to many persons; 2) the parties affected are so numerous that it is impracticable to bring them all to court; and 3) the parties bringing the class suit are sufficiently numerous or representative of the class and can fully protect the interests of all concerned.

In this case, the suit is clearly one that benefits all commuters and motorists who use La Paz Road. The subject matter of the instant case, i.e., the closure and excavation of the La Paz Road, is initially shown to be of common or general interest to many persons. The records reveal that numerous individuals have filed manifestations with the lower court, conveying their intention to join private respondents in the suit and claiming that they are similarly situated with private respondents for they were also prejudiced by the acts of petitioners in closing and excavating the La Paz Road. Moreover, the individuals sought to be represented by private respondents in the suit are so numerous that it is impracticable to join them all as parties and be named individually as plaintiffs in the complaint. These individuals claim to be residents of various barangays in Biñan, Laguna and other barangays in San Pedro, Laguna.

### **FACTS:**

In 1999, Juana Complex I Homeowners Association, Inc. (JCHA), together with individual residents of Juana Complex I and other neighboring subdivisions (collectively referred as JCHA, et. al.), instituted a complaint for damages, in its own behalf and as a class suit representing the regular commuters and motorists of Juana Complex I and neighboring subdivisions who were deprived of the use of La Paz Road, against Fil-Estate Land, Inc. (Fil-Estate), Fil-estate Ecocentrum Corporation (FEEC), La Paz Housing & Development Corporation (La Paz), and Warbird Security Agency and their respective officers (collectively referred as Fil-Estate, et al.).

The complaint alleged that JCHA, et al. were regular commuters and motorists who constantly travelled towards the direction of Manila and Calamba; that they used the entry and exit toll gates of South Luzon Expressway (SLEX) by passing through right-of-way public road known as La Paz Road; that they had been using La Paz Road for more than ten years; that in August 1998, Fil-estate excavated, broke and deliberately ruined La Paz Road that led to SLEX so JCHA, et al. would not be able to pass through the said road; that La Paz Road was restored by the residents to make it passable but Fil-estate excavated the road again; that JCHA reported the matter to the Municipal Government and the Office of the Municipal Engineer but the latter failed to repair the road to make it passable and safe to motorists and pedestrians; that the act of Fil-estate in excavating La Paz Road caused damage, prejudice, inconvenience, annoyance, and loss of precious hours to them, to the commuters and motorists because traffic was re-routed to narrow streets that caused terrible traffic congestion and hazard; and that its permanent closure would not only prejudice their right to free and unhampered use of the property but would also cause great damage and irreparable injury.

Fil-Estate et al. contended that the complaint was improperly filed as a class suit for it failed to show that JCHA, et al. and the commuters and motorists they are representing have a well-defined community of interest over La Paz Road. They claim that the excavation of La Paz Road would not necessarily give rise to a common right or cause of action for JCHA, et al. against them since each of them has a separate and distinct purpose and each may be affected differently than the others.

### **ISSUE:**

Whether the complaint has been properly filed as a class suit. (YES)

### **RULING:**

Section 12, Rule 3 of the Rules of Court defines a class suit, as follows:

Sec. 12. *Class suit.* – When the subject matter of the controversy is one of common or general interest to many persons so numerous that it is impracticable to join all as parties, a number of them which the court finds to be sufficiently numerous and representative as to fully protect the interests of all concerned may sue or defend for the benefit of all. Any party in interest shall have the right to intervene to protect his individual interest.

The necessary elements for the maintenance of a class suit are: 1) the subject matter of controversy is one of common or general interest to many persons; 2) the parties affected are so numerous that it is impracticable to bring them all to court; and 3) the parties bringing the class suit are sufficiently numerous or representative of the class and can fully protect the interests of all concerned.

In this case, the suit is clearly one that benefits all commuters and motorists who use La Paz Road. The subject matter of the instant case, i.e., the closure and excavation of the La Paz Road, is initially shown to be of common or general interest to many persons. The records reveal that numerous individuals have filed manifestations with the lower court, conveying their intention to join private respondents in the suit and claiming that they are similarly situated with private respondents for they were also prejudiced by the acts of petitioners in closing and excavating the La Paz Road. Moreover, the individuals sought to be represented by private respondents in the suit are so

numerous that it is impracticable to join them all as parties and be named individually as plaintiffs in the complaint. These individuals claim to be residents of various barangays in Biñan, Laguna and other barangays in San Pedro, Laguna.

PHILIPPINE CHARTER INSURANCE CORPORATION, *Petitioner*, -versus- EXPLORER MARITIME CO., LTD., OWNER OF THE VESSEL M/V "EXPLORER", WALLEM PHILS. SHIPPING, INC., ASIAN TERMINALS, INC. and FOREMOST INTERNATIONAL PORT SERVICES, INC., *Respondents*.

G.R. No. 175409, FIRST DIVISION, September 07, 2011, LEONARDO-DE CASTRO, J.

Section 14, Rule 3 of the Rules of Court provides:

Section 14. Unknown identity or name of defendant - Whenever the identity or name of a defendant is unknown, he may be sued as the unknown owner, heir, devisee, or by such other designation as the case may require; when his identity or true name is discovered, the pleading must be amended accordingly.

In the Amended Complaint, PCIC alleged that defendant "Unknown Owner of the vessel M/V `Explorer'" is a foreign corporation whose identity or name or office address are unknown to PCIC but is doing business in the Philippines through its local agent, co-defendant Wallem Philippines Shipping, Inc., a domestic corporation. PCIC then added that both defendants may be served with summons and other court processes in the address of Wallem Philippines Shipping, Inc., which was correctly done pursuant to Section 12, Rule 14 of the Rules of Court, which provides:

Sec. 12. Service upon foreign private juridical entity. - When the defendant is a foreign private juridical entity which has transacted business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.

As all the parties have been properly impleaded, the resolution of the Motion to Disclose was unnecessary for the purpose of setting the case for pre-trial.

### **FACTS:**

In 1995, petitioner Philippine Charter Insurance Corporation (PCIC), as insurer-subrogee, filed with the RTC of Manila a Complaint against respondents, to wit: the unknown owner of the vessel M/V "Explorer" (common carrier), Wallem Philippines Shipping, Inc. (ship agent), Asian Terminals, Inc. (arrastre), and Foremost International Port Services, Inc. (broker). PCIC sought to recover from the respondents the sum of P342,605, allegedly representing the value of lost or damaged shipment paid to the insured, interest and attorney's fees. The case was docketed as Civil Case No. 95-73340 and was raffled to Branch 37.

On the same date, PCIC filed a similar case against respondents Wallem Philippines Shipping, Inc., Asian Terminals, Inc., and Foremost International Port Services, Inc., but, this time, the fourth defendant is "the unknown owner of the vessel M/V "Taygetus." This second case was docketed as Civil Case No. 95-73341 and was raffled to Branch 38.

PCIC filed an *ex parte* motion to set the case for pre-trial conference, which was granted by the trial court. However, before the scheduled date of the pre-trial conference, PCIC filed its Amended

Complaint. The "Unknown Owner" of the vessel M/V "Explorer" and Asian Terminals, Inc. filed anew their respective answers with counterclaims

Respondent common carrier, "the Unknown Owner" of the vessel M/V "Explorer," and Wallem Philippines Shipping, Inc. filed a Motion to Dismiss on the ground that PCIC failed to prosecute its action for an unreasonable length of time. PCIC allegedly filed its Opposition, claiming that the trial court has not yet acted on its Motion to Disclose which it purportedly filed in 1997. In said motion, PCIC supposedly prayed for the trial court to order respondent Wallem Philippines Shipping, Inc. to disclose the true identity and whereabouts of defendant "Unknown Owner of the Vessel M/V `Explorer.'"

The trial court issued an Order dismissing Civil Case No. 95-73340 for failure of petitioner to prosecute for an unreasonable length of time. Upon receipt of the order of dismissal on March 20, 2001, PCIC allegedly realized that its Motion to Disclose was inadvertently filed with Branch 38 of the RTC of Manila, where the similar case involving the vessel M/V "Taygetus" (Civil Case No. 95-73341) was raffled to, and not with Branch 37, where the present case (Civil Case No. 95-73340) was pending.

In the case at bar, the alleged Motion to Disclose was filed on November 19, 1997. Respondents filed the Motion to Dismiss on December 5, 2000. By that time, PCIC's inaction was thus already almost three years. There is therefore no question that the failure to prosecute in the case at bar was for an unreasonable length of time. The only explanation that the PCIC can offer for its omission is that it was waiting for the resolution of its Motion to Disclose, which it allegedly filed with another branch of the court. According to PCIC, it was premature for it to move for the setting

### ISSUE:

Whether Respondent Explorer Maritime which was then referred to as the "Unknown Owner of the vessel M/V `Explorer,'" had already been properly impleaded pursuant to Section 14, Rule 3 of the Rules of Court. (YES)

### **RULING:**

Section 14, Rule 3 of the Rules of Court provides:

Section 14. *Unknown identity or name of defendant* - Whenever the identity or name of a defendant is unknown, he may be sued as the unknown owner, heir, devisee, or by such other designation as the case may require; when his identity or true name is discovered, the pleading must be amended accordingly.

In the Amended Complaint, PCIC alleged that defendant "Unknown Owner of the vessel M/V `Explorer'" is a foreign corporation whose identity or name or office address are unknown to PCIC but is doing business in the Philippines through its local agent, co-defendant Wallem Philippines Shipping, Inc., a domestic corporation. PCIC then added that both defendants may be served with summons and other court processes in the address of Wallem Philippines Shipping, Inc., which was correctly done pursuant to Section 12, Rule 14 of the Rules of Court, which provides:

Sec. 12. Service upon foreign private juridical entity. - When the defendant is a foreign private juridical entity which has transacted business in the Philippines, service may be

made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines.

As all the parties have been properly impleaded, the resolution of the Motion to Disclose was unnecessary for the purpose of setting the case for pre-trial.

Furthermore, Section 3, Rule 3 of the Rules of Court likewise provides that an agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal. Since Civil Case No. 95-73340 was an action for damages, the agent may be properly sued without impleading the principal. Thus, even assuming that petitioner had filed its Motion to Disclose with the proper court, its pendency did not bar PCIC from moving for the setting of the case for pre-trial as required under Rule 18, Section 1 of the Rules of Court.

RIVIERA FILIPINA, INC, Petitioner, -versus- COURT OF APPEALS, JUAN L. REYES, (NOW DECEASED), SUBSTITUTED BY HIS HEIRS, NAMELY, ESTEFANIA B. REYES, JUANITA R. DE LA ROSA, JUAN B. REYES, JR. and FIDEL B. REYES, PHILIPPINE CYPRESS CONSTRUCTION & DEVELOPMENT CORPORATION, CORNHILL TRADING CORPORATION and URBAN DEVELOPMENT BANK, Respondent.

G.R. No. 117355, SECOND DIVISION, April 05, 2002, DE LEON, JR., J.

On the error attributed to the CA which is the effect on the jurisdiction of the appellate court of the non-substitution of Reyes, who died during the pendency of the appeal, the SC notes that when Riviera filed its petition with this Court and assigned this error, it later filed on October 27, 1994 a Manifestation with the CA stating that it has discovered that Reyes is already dead, in view of which the appellate court issued a Resolution dated December 16, 1994 which noted the manifestation of Riviera and directed the counsel of Reyes to submit a copy of the latter's death certificate and to file the proper motion for substitution of party. Complying therewith, the necessary motion for substitution of deceased Reyes, who died on January 7, 1994, was filed by the heirs. Acting on the motion for substitution, the Court of Appeals granted the same.

Notwithstanding the foregoing, Section 16 and 17 of Rule 3 of the Revised Rules of Court, upon which Riviera anchors its argument, has already been amended by the 1997 Rules of Civil Procedure. Even applying the old Rules, the failure of a counsel to comply with his duty under Section 16 of Rule 3 of the Revised Rules of Court, to inform the court of the death of his client and no substitution of such is effected, will not invalidate the proceedings and the judgment thereon if the action survives the death of such party, as this case does, since the death of Reyes did not extinguish his civil personality. The appellate court was well within its jurisdiction to proceed as it did with the case since the death of a party is not subject to its judicial notice. Needless to stress, the purpose behind the rule on substitution of parties is the protection of the right of every party to due process. This purpose has been adequately met in this case since both parties argued their respective positions through their pleadings in the trial court and the appellate court. Besides, the Court has already acquired jurisdiction over the heirs of Reyes by voluntarily submitting themselves to our jurisdiction.

### **FACTS:**

In 1989, Riviera Filipina, Inc. (Riviera) instituted Civil Case No. Q-89-3371 to compel the defendants Juan Reyes, now deceased, Philippine Cypress Construction & Development Corporation (Cypress), Cornhill Trading Corporation (Cornhill) and Urban Development Bank to transfer the title covering

a 1,018 square meter parcel of land located along EDSA, Quezon City for alleged violation of Riviera's right of first refusal.

The trial court dismissed the complaint ruling that the defendants therein did not violate Riviera's right of first refusal.

Both parties appealed to the Court of Appeals. The appellate court affirmed the decision of the trial court in its entirety.

Riviera interposed the instant petition raising the following issue:

### **ISSUE:**

Whether the CA erred in deciding petitioner's appeal at a time when the principal appellee is allegedly dead and no proper substitution of the alleged deceased party has been made; hence, the decision of the CA and its resolution denying reconsideration, is null and void. (NO)

### **RULING:**

On the error attributed to the CA which is the effect on the jurisdiction of the appellate court of the non-substitution of Reyes, who died during the pendency of the appeal, the SC notes that when Riviera filed its petition with this Court and assigned this error, it later filed on October 27, 1994 a Manifestation with the CA stating that it has discovered that Reyes is already dead, in view of which the appellate court issued a Resolution dated December 16, 1994 which noted the manifestation of Riviera and directed the counsel of Reyes to submit a copy of the latter's death certificate and to file the proper motion for substitution of party. Complying therewith, the necessary motion for substitution of deceased Reyes, who died on January 7, 1994, was filed by the heirs. Acting on the motion for substitution, the Court of Appeals granted the same.

Notwithstanding the foregoing, Section 16 and 17 of Rule 3 of the Revised Rules of Court, upon which Riviera anchors its argument, has already been amended by the 1997 Rules of Civil Procedure. Even applying the old Rules, the failure of a counsel to comply with his duty under Section 16 of Rule 3 of the Revised Rules of Court, to inform the court of the death of his client and no substitution of such is effected, will not invalidate the proceedings and the judgment thereon if the action survives the death of such party, as this case does, since the death of Reyes did not extinguish his civil personality. The appellate court was well within its jurisdiction to proceed as it did with the case since the death of a party is not subject to its judicial notice. Needless to stress, the purpose behind the rule on substitution of parties is the protection of the right of every party to due process. This purpose has been adequately met in this case since both parties argued their respective positions through their pleadings in the trial court and the appellate court. Besides, the Court has already acquired jurisdiction over the heirs of Reyes by voluntarily submitting themselves to our jurisdiction.

SOCORRO SEPULVEDA LAWAS, *Petitioner*, -versus- COURT OF APPEALS, HON. BERNARDO LL. SALAS, [AS JUDGE, CFI, CEBU, BRANCH VIII], and PACIFICO PELAEZ, *Respondents*.

G.R. No. L-45809, SECOND DIVISION, December 12, 1986, FERIA, J.

*Section 16 of Rule 3 provides as follows:* 

Duty of attorney upon death, incapacity, or incompetency of party. - Whenever a party to a pending case dies, becomes incapacitated or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency, and to give the name and residence of his executor, administrator, guardian or other legal representative.

The former counsels for the deceased defendant, Pedro Sepulveda, complied with this rule by filing a notice of death on May 21, 1975. They also correctly manifested in open court at the hearing of the case on November 27, 1975, that with the death of their client their contract with him was also terminated and none of the heirs of the deceased had renewed the contract, and the heirs had instead engaged the services of other lawyers in the intestate proceedings.

Both the respondent trial judge and the CA erred in considering the former counsels of the deceased defendant as counsels for the heirs of the deceased. The statement in the decision of the CA that "the appearance of the lawyers of their deceased father in court on January 13, 1976 carries the presumption that they were authorized by the heirs of the deceased defendant" is erroneous. As this Court held in People vs. Florendo, "the attorneys for the offended party ceased to be the attorneys for the deceased upon the death of the latter, the principal." Moreover, such a presumption was not warranted in view of the manifestation of said lawyers in open court on November 27, 1975 that they were not representing the heirs of the deceased defendant.

Consequently, when on the same date, November 27,1975, the respondent trial judge issued an order setting the continuation of the trial of the case on January 13, 1976, with notices sent to Atty. Almase for the plaintiff and Attys. Antigua and Branzuela for the deceased defendant, he acted with grave abuse of discretion amounting to excess of jurisdiction.

### **FACTS:**

Private respondent Pacifico Pelaez filed a Complaint in 1972 against petitioner Socorro Sepulveda Lawas' father, Pedro Sepulveda, for ownership and partition of certain parcels of land. During the presentation of evidence for the plaintiff, the defendant died on March 25, 1975.

On May 5, 1975, petitioner filed a petition for letters of administration and she was appointed judicial administratrix of the estate of her late father.

On May 21, 1975, counsels for the deceased defendant filed a notice of death were enumerated the thirteen children and surviving spouse of the deceased.

At the hearing of the case on November 27, 1975, Attys. Domingo Antigua and Serafin Branzuela, former counsels for the deceased defendant, manifested in open court that with the death of their client, their contract with him was also terminated and none his 13children nor the surviving spouse had renewed the contract, but instead they had engaged the services of other lawyers in the intestate proceedings.

Notwithstanding the manifestation of the former counsels of the deceased defendant, the respondent trial judge set the case for hearing and sent the notice of hearing to said counsels.

After trial, the respondent trial judge rendered a decision against the heirs of the deceased defendant.

### **ISSUE:**

Whether the proceedings conducted by the respondent trial judge after the death of the deceased defendant are null and void. (YES)

### **RULING:**

Section 16 of Rule 3 provides as follows:

Duty of attorney upon death, incapacity, or incompetency of party. - Whenever a party to a pending case dies, becomes incapacitated or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency, and to give the name and residence of his executor, administrator, guardian or other legal representative.

The former counsels for the deceased defendant, Pedro Sepulveda, complied with this rule by filing a notice of death on May 21, 1975. They also correctly manifested in open court at the hearing of the case on November 27, 1975, that with the death of their client their contract with him was also terminated and none of the heirs of the deceased had renewed the contract, and the heirs had instead engaged the services of other lawyers in the intestate proceedings.

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Consequently, when on the same date, November 27,1975, the respondent trial judge issued an order setting the continuation of the trial of the case on January 13, 1976, with notices sent to Atty. Almase for the plaintiff and Attys. Antigua and Branzuela for the deceased defendant, he acted with grave abuse of discretion amounting to excess of jurisdiction.

As stated, petitioner had as early as May 5, 1975 filed a petition for letters of administration, and the same was granted in July, 1975. Section 17 of Rule 3 provides as follows:

Death of party. - After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian *ad litem* for the minor heirs.

### As this Court has held:

x x x Under the Rule, it is the court that is called upon, after notice of a party's death and the claim is not thereby extinguished, to order upon proper notice the legal representative of the deceased to appear within a period of 30 days or such time as it may grant. Since no administrator of the estate of the deceased appellant had yet been appointed as the same was still pending determination in the Court of First Instance of Quezon City, the motion of the deceased's counsel for the suspension of the running of the period within which to file appellant's brief was well-taken. More, under the Rule, it should have set a period for the substitution of the deceased party with her legal representative or heirs, failing which, the court is called upon to order the opposing party to procure the appointment of a legal representative of the deceased at the cost of the deceased's estate, and such representative shall then 'immediately appear for and on behalf of the interest of the deceased.'

"Respondent court gravely erred in not following the Rule and requiring the appearance of the legal representative of the deceased and instead dismissing the appeal of the deceased who yet had to be substituted in the pending appeal. Thus, it has been held that when a party dies in an action that survives and no order is issued by the court for the appearance of the legal representative or of the heirs of the deceased in substitution of the deceased, and as a matter of fact no such substitution has ever been effected, the trial held by the court without such legal representatives or heirs and the judgment rendered after such trial are null and void because the court acquired no jurisdiction over the persons of the legal representatives or of the heirs upon whom the trial and the judgment would be binding. (Ordoveza vs. Raymundo, 63 Phil. 275 [1936]; Obut vs. Court of Appeals, et al., 70 SCRA 546] (Vda. de Haberer vs. Court of Appeal)

Under the said Rule, priority is given to the legal representative of the deceased, that is, the executor or administrator of his estate. It is only in cases of unreasonable delay in the appointment of an executor or administrator, or in cases where the heirs resort to an extrajudicial settlement of the estate, that the court may adopt the alternative of allowing the heirs of the deceased to be substituted for the deceased.

In the case at bar, in view of the pendency of Special Proceeding No. 37-SF, Intestate Estate of Pedro Sepulveda, and the pending application of petitioner to be appointed judicial administratrix of the estate, the respondent trial judge should have awaited the appointment of petitioner and granted her motion to substitute the deceased defendant.

While the lower courts correctly held that the death of Pedro Sepulveda did not obliterate his verified Answer to the Complaint filed by private respondent and that the Answer filed by the ten heirs and the Answer filed by the Administratrix were both unnecessary, the said heirs or the administratrix could, with leave of court, file an Amended Answer.

CONCHITA S. UY, CHRISTINE UY DY, SYLVIA UY SY, JANE UY TAN, JAMES LYNDON S. UY, IRENE S. UY,\* ERICSON S. UY, JOHANNA S. UY, and JEDNATHAN S. UY, *Petitioners*, -versus- CRISPULO DEL CASTILLO, SUBSTITUTED BY HIS HEIRS PAULITA MANATAD-DEL CASTILLO, CESAR DEL CASTILLO, AVITO DEL CASTILLO, NILA C. DUEÑAS, NIDA C. LATOSA, LORNA C. BERNARDO, GIL DEL CASTILLO, LIZA C. GUNGOB, ALMA DEL CASTILLO, and GEMMA DEL CASTILLO, *Respondents*.

G.R. No. 223610, FIRST DIVISION, July 24, 2017, JJJJ, J.

Here, <u>Jaime died on March 4, 1990, or six (6) years be(ore private respondents filed the Quieting of Title Case</u>. Thus, after Conchita filed an Answer informing the RTC of Jaime's death in 1990, the complaint was amended to implead the Uy siblings. Accordingly, the Rules of Court provisions on substitution upon the death of a party do not apply and the Uy siblings were not merely substituted in place of Jaime in the Quieting of Title Case. Instead, they were impleaded in their personal capacities. In this regard, petitioners' argument that they cannot be held solidarily liable for the satisfaction of any monetary judgment or award must necessarily fail.

In this light, petitioners can no longer invoke Section 20, Rule 3 of the Rules of Court, which reads:\

Section 20. Action and contractual money claims. - When the action is for recovery of money arising from contract, express or implied, and the **defendant dies before entry of final judgment in the court in which the action was pending at the time of such death**, it shall not be dismissed but shall instead be allowed to continue until entry of final judgment. A favorable judgment obtained by the plaintiff therein shall be enforced in the manner especially provided in these Rules for prosecuting claims against the estate of a deceased person.

A cursory reading of the foregoing provision readily shows that like Section 16, Rule 3 of the Rules of Court, it applies in cases where the defendant dies while the case is pending and not before the case was even filed in court, as in this case.

### **FACTS:**

In 1996, Crispulo Del Castillo (Crispulo) filed an action for quieting of title, reconveyance, and damages against Jaime Uy (Jaime) and his wife, Conchita, docketed as Civil Case No. MAN-2797 (Quieting of Title Case). However, since Jaime had died six years earlier in 1990, Crispulo amended his complaint and impleaded Jaime's children, the Uy siblings, as defendants.

Meanwhile, Crispulo died during the pendency of the action and hence, was substituted by his heirs, respondents Paulita Manalad-Del Castillo, Cesar Del Castillo, Avito Del Castillo, Nila C. Duenas, Nida C. Latosa, Lorna C. Bernardo, Gil Del Castillo, Liza C. Gungob, Alma Del Castillo, and Gemma Del Castillo (respondents).

After due proceedings, the RTC rendered a Decision in respondents' favor, and accordingly declared them as the true and lawful owners of the lot. Aggrieved, petitioners appealed before the CA, and subsequently, to the SC, but the same were denied for lack of merit.

Respondents filed a Motion for Issuance of Writ of Execution. The RTC granted the motion and ordered the issuance of a writ of execution. A Writ of Execution was issued, to which the sheriff issued a Notice of Garnishment.

Threatened by the Notice of Garnishment, petitioners filed an Omnibus Motion praying that the writ of execution be quashed and set aside.

Dissatisfied, petitioners filed a petition for *certiorari* with the CA, contending that the writ of execution was void because it made them liable beyond their inheritance from Jaime. They maintain that the estate of Jaime should instead be held liable for the adjudged amount and that respondents

should have brought their claim against the estate, in accordance with Section 20, Rule 3 of the Rules of Court.

### **ISSUE:**

Whether respondents should have proceeded against the Jaime Uy's estate instead of the petitioners, pursuant to Section 20, Rule 3 of the Rules of Court. (NO)

### **RULING:**

Based on the records, the Uy siblings were not merely substituted in Jaime's place as defendant; rather, they were impleaded in their personal capacities. Under Section 16, Rule 3 of the Rules of Court, substitution of parties takes place when the party to the action dies *pending* the resolution of the case and the claim is not extinguished, *viz*.:

Section 16. *Death of party; duty of counsel*. - Whenever **a party to a pending action dies, and the claim is not thereby extinguished**, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.

**The heirs of the deceased may be allowed to be substituted** for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

Here, <u>Jaime died on March 4, 1990, or six (6) years before private respondents filed the Quieting of Title Case</u>. Thus, after Conchita filed an Answer informing the RTC of Jaime's death in 1990, the complaint was amended to implead the Uy siblings. Accordingly, the Rules of Court provisions on substitution upon the death of a party do not apply and the Uy siblings were not merely substituted in place of Jaime in the Quieting of Title Case. Instead, they were impleaded in their personal capacities. In this regard, petitioners' argument that they cannot be held solidarily liable for the satisfaction of any monetary judgment or award must necessarily fail.

In this light, petitioners can no longer invoke Section 20, Rule 3 of the Rules of Court, which reads:\

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A favorable judgment obtained by the plaintiff therein shall be enforced in the manner especially provided in these Rules for prosecuting claims against the estate of a deceased person.

A cursory reading of the foregoing provision readily shows that like Section 16, Rule 3 of the Rules of Court, it applies in cases where the defendant dies **while the case is pending and not before the case was even filed in court**, as in this case.

# SPOUSES AMADO O. IBAÑEZ and ESTHER R. IBAÑEZ, *Petitioners*, -versus- JAMES HARPER AS REPRESENTATIVE OF THE HEIRS OF FRANCISCO MUÑOZ, SR., THE REGISTER OF DEEDS OF MANILA and THE SHERIFF OF MANILA, *Respondents*.

G.R. No. 194272, THIRD DIVISION, February 15, 2017, JARDELEZA, J.

The rationale behind the rule on substitution is to apprise the heir or the substitute that he is being brought to the jurisdiction of the court in lieu of the deceased party by operation of law. It serves to protect the right of every party to due process. It is to ensure that the deceased party would continue to be properly represented in the suit through the duly appointed legal representative of his estate. Non-compliance with the rule on substitution would render the proceedings and the judgment of the trial court infirm because the court acquires no jurisdiction over the persons of the legal representatives or of the heirs on whom the trial and the judgment would be binding.

Nevertheless, there are instances when formal substitution may be dispensed with. In Vda. de Salazar v. Court of Appeals, we ruled that the defendant's failure to effect a formal substitution of heirs before the rendition of judgment does not invalidate the court's judgment where the heirs themselves appeared before the trial court, participated in the proceedings, and presented evidence in defense of the deceased defendant. The court there found it undeniably evident that the heirs themselves sought their day in court and exercised their right to due process.

Similarly, in Berot v. Siapno, we ruled that the continued appearance and participation of Rodolfo, the estate's representative, in the proceedings of the case dispensed with the formal substitution of the heirs in place of the deceased.

Here, while there may have been a failure to strictly observe the provisions of the rules and there was no formal substitution of heirs, the heirs of Francisco, represented by James, voluntarily appeared and actively participated in the case, particularly in the enforcement of the Hatol. As the records show, they have filed multiple pleadings and moved several times to implement the Hatol to protect Francisco's interest. Following our rulings in Vda. de Salazar and Berot, a formal substitution of parties is no longer required under the circumstances.

### **FACTS:**

In 1996, the spouses Amado and Esther Ibañez (spouses Ibañez) borrowed from Francisco Muñoz, Sr. (Francisco), Consuelo Estrada (Consuelo) and Ma. Consuelo Muñoz (Ma. Consuelo) the amount of P1,300,000 payable in three months, with interest at the rate of 3% a month.

The spouses Ibañez issued a Promissory Note binding themselves jointly and severally to pay Ma. Consuelo and Consuelo the loan amount with interest. As security, the spouses Ibañez executed a Deed of Real Estate Mortgage in favor of Ma. Consuelo and Consuelo.

Alleging that the conditions of the mortgage have been violated and that all check payments were dishonored by the drawee, Ma. Consuelo and Consuelo moved to foreclosure the real estate mortgage.

The spouses Ibañez filed an Amended Complaint. They alleged that the public auction was conducted, with Francisco, Ma. Consuelo and Consuelo as the highest bidders and prayed that the *Ex-Officio* Sheriff and the Sheriff-in-Charge be enjoined from executing the certificate of sale in favor of Francisco, Ma. Consuelo and Consuelo. In the event the certificate of sale is already issued, they alternatively prayed for that the Register of Deeds of Manila be enjoined from registering the certificate of sale.

The RTC issued a *status quo* order. The parties subsequently filed a Joint Motion for Approval of Amended Compromise Agreement.

Francisco, Ma. Consuelo and Consuelo, then filed an Omnibus Motion for Execution and Lifting of the *Status Quo* Order and for the Issuance of Writ of Possession alleging that the spouses Ibañez failed to comply with their obligation under the Amended Compromise Agreement.

The RTC granted the motion. The spouses Ibañez moved to reconsider this order on the following grounds: (1) Francisco died in June 2004; and (2) Atty. Prospero Anave (Atty. Anave), counsel on record of Francisco, Ma. Consuelo and Consuelo, failed to inform the court of such fact; thus, there was no valid substitution of parties.

The RTC granted the spouses Ibañez' Motion for Reconsideration. It held that: (1) Atty. Anave's failure to report Francisco's death to the court for purposes of substitution rendered the proceedings thereat null and void; (2) Atty. Anave's subsequent conformity to Atty. Bermejo's actions did not cure the initial defect in the filing of the Omnibus Motion; neither did it mean the withdrawal, dismissal or substitution of Atty. Anave by Atty. Bermejo; and (3) a formal entry of appearance with Atty. Anave's conformity is necessary before Atty. Bermejo can legally act as collaborating counsel.

The spouses Ibañez filed a Motion for the Implementation of the Amended Compromise Agreement. They argued that since there was no proper substitution of the heirs of Francisco, the proper parties to substitute him are Ma. Consuelo and Consuelo.

### ISSUE:

Whether Atty. Anave's failure to report respondent Francisco's death to the court for purposes of substitution rendered the proceedings thereat null and void. (NO)

### **RULING:**

Section 16, Rule 3 of the Revised Rules of Court provides:

Sec. 16. Death of party; duly of counsel. – Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

The rationale behind the rule on substitution is to apprise the heir or the substitute that he is being brought to the jurisdiction of the court in lieu of the deceased party by operation of law. It serves to protect the right of every party to due process. It is to ensure that the deceased party would continue to be properly represented in the suit through the duly appointed legal representative of his estate. Non-compliance with the rule on substitution would render the proceedings and the judgment of the trial court infirm because the court acquires no jurisdiction over the persons of the legal representatives or of the heirs on whom the trial and the judgment would be binding.

Nevertheless, there are instances when formal substitution may be dispensed with. In *Vda. de Salazar v. Court of Appeals*, we ruled that the defendant's failure to effect a formal substitution of heirs before the rendition of judgment does not invalidate the court's judgment where the heirs themselves appeared before the trial court, participated in the proceedings, and presented evidence in defense of the deceased defendant. The court there found it undeniably evident that the heirs themselves sought their day in court and exercised their right to due process.

Similarly, in *Berot v. Siapno*, we ruled that the continued appearance and participation of Rodolfo, the estate's representative, in the proceedings of the case dispensed with the formal substitution of the heirs in place of the deceased.

Here, while there may have been a failure to strictly observe the provisions of the rules and there was no formal substitution of heirs, the heirs of Francisco, represented by James, voluntarily appeared and actively participated in the case, particularly in the enforcement of the *Hatol*. As the records show, they have filed multiple pleadings and moved several times to implement the *Hatol* to protect Francisco's interest. Following our rulings in *Vda. de Salazar* and *Berot*, a formal substitution of parties is no longer required under the circumstances.

## PLANTERS DEVELOPMENT BANK, Petitioner, -versus- VICTORIANO and MELANIE RAMOS, Respondents.

G.R. No. 228617, SECOND DIVISION, September 20, 2017, JJJJ, J.

In view of the predilection to view a stipulation on venue as merely permissive, the parties must therefore employ words in the contract that would clearly evince a contrary intention. In Spouses Lantin v. Judge Lantion, the Court emphasized that "the mere stipulation on the venue of an action is not enough to preclude parties from bringing a case in other venues. The parties must be able to show that such stipulation is exclusive. In the absence of qualifying or restrictive words, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place."

In the instant case, there is an identical stipulation in the real estate mortgages executed by the parties, pertaining to venue. It reads as follows:

18. In the event of suit arising from out of or in connection with this mortgage and/or the promissory note/s secured by this mortgage, the parties hereto agree to bring their causes of action **exclusively** in the proper court/s of Makati, Metro Manila, the **MORTGAGOR waiving** for this purpose any other venue.

In Spouses Lantin, the Court ruled that "the words exclusively and waiving for this purpose any other venue are restrictive." Therefore, the employment of the same language in the subject mortgages signifies the clear intention of the parties to restrict the venue of any action or suit that may arise out of the mortgage to a particular place, to the exclusion of all other jurisdictions.

### **FACTS:**

In 2012, Spouses Victoriano and Melanie Ramos (Spouses Ramos) applied for several credit lines with Planters Development Bank (PDB) for the construction of a warehouse in Barangay Santo Tomas, Nueva Ecija. The said application was approved and was secured by Real Estate Mortgage over properties owned by the spouses.

Due to financial woes, Spouses Ramos were not able to pay their obligations as they fell due. They appealed to PDB for the deferment of debt servicing and requested for a restructuring scheme but the parties failed to reach an agreement.

PDB filed a Petition for Extra-judicial Foreclosure of Real Estate Mortgage under Act 3135, as amended, before the RTC of San Jose City, Nueva Ecija.

The Spouses Ramos filed a Complaint for Annulment of Real Estate Mortgages against PDB and its officers also before the RTC of San Jose City, Nueva Ecija.

Instead of filing an Answer, PDB filed an Urgent Motion to Dismiss, alleging that the venue of the action was improperly laid considering that the real estate mortgages signed by the parties contained a stipulation that any suit arising therefrom shall be filed in Makati City only.

The RTC denied the Motion to Dismiss, ruling that pursuant to autonomy of contract, Venue can be waived. Rule 5, Section 4(d) of the 1997 Rules of Civil Procedure allows parties to validly agree in writing before the filing of the action on the exclusive venue thereof. Indeed, on the defendants they have the contract where the venue allegedly agreed upon by them with the plaintiffs is Makati City. However, one of the contentions of the plaintiffs is that the contracts between them and the defendants take the form of an adhesion contract. As such, this Court has to apply Section 1, Rule 4 of the 1997 Rules of Civil Procedure regarding the venue of real actions to avoid ruling on the merits without any evidence that would sufficiently support the same.

Unyielding, PDB filed a motion for reconsideration of the Order, instead of filing an answer to the complaint. This prompted Spouses Ramos to file a motion to declare PDB in default.

Aggrieved, PDB filed a petition for *certiorari* with the CA, imputing grave abuse of discretion on the RTC for denying its motion to dismiss, despite the fact that the venue was clearly improperly laid. The CA denied the petition.

### **ISSUE:**

Whether the stipulation on venue should govern the parties. (YES)

### **RULING:**

Rule 4 of the Rules of Civil Procedure provides the rules on venue in filing an action, to wit:

**Section 1.** *Venue of real actions.* — Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.

Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated.

**Section 2.** Venue of personal actions. — All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

**Section 4.***When Rule not applicable.* — This Rule shall not apply.

- (a) In those cases where a specific rule or law provides otherwise; or
- (b) Where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof

Based on the foregoing, the general rules on venue admit of exceptions in Section 4 thereof, *i.e.*, where a specific rule or law provides otherwise, or when the parties agreed in writing before the filing of the action on the exclusive venue thereof.

Stipulations on venue, however, may either be permissive or restrictive. "Written stipulations as to venue may be restrictive in the sense that the suit may be filed only in the place agreed upon, or merely permissive in that the parties may file their suit not only in the place agreed upon but also in the places fixed by law..."

Further, in *Unimasters Conglomeration, Inc. v. Court of Appeals*, the Court elaborated, thus:

Since convenience is the *raison d'etre* of the rules of venue, it is easy to accept the proposition that normally, venue stipulations should be deemed permissive merely, and that interpretation should be adopted which most serves the parties' convenience. In other words, stipulations designating venues other than those assigned by Rule 4 should be interpreted as designed to make it more convenient for the parties to institute actions arising from or in relation to their agreements; that is to say, as simply adding to or expanding the venues indicated in said Rule 4.

On the other hand, because restrictive stipulations are in derogation of this general policy, the language of the parties must be so clear and categorical as to leave no doubt of their

intention to limit the place or places, or to fix places other than those indicated in Rule 4, for their actions, x x x.

In view of the predilection to view a stipulation on venue as merely permissive, the parties must therefore employ words in the contract that would clearly evince a contrary intention. In *Spouses Lantin v. Judge Lantion*, the Court emphasized that "the mere stipulation on the venue of an action is not enough to preclude parties from bringing a case in other venues. The parties must be able to show that such stipulation is *exclusive*. In the absence of qualifying or restrictive words, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place."

In the instant case, there is an identical stipulation in the real estate mortgages executed by the parties, pertaining to venue. It reads as follows:

18. In the event of suit arising from out of or in connection with this mortgage and/or the promissory note/s secured by this mortgage, the parties hereto agree to bring their causes of action **exclusively** in the proper court/s of Makati, Metro Manila, the **MORTGAGOR waiving for this purpose any other venue**.

In *Spouses Lantin*, the Court ruled that "the words *exclusively* and *waiving for this purpose any other venue* are restrictive." Therefore, the employment of the same language in the subject mortgages signifies the clear intention of the parties to restrict the venue of any action or suit that may arise out of the mortgage to a particular place, to the exclusion of all other jurisdictions.

## PILIPINAS SHELL PETROLEUM CORPORATION, Petitioner, -versus- ROYAL FERRY SERVICES, INC., Respondent.

G.R. No. 188146, SECOND DIVISION, February 01, 2017, LEONEN, J.

Petition for Voluntary Insolvency, Royal Ferry alleged that its principal office was then found in Manila. On the other hand, Pilipinas Shell argues that filing the petition before the Regional Trial Court of Manila was a patent jurisdictional defect as the Regional Trial Court of Manila did not have territorial jurisdiction over respondent's residence. Pilipinas Shell confuses the concepts of jurisdiction and venue. Wrong venue is merely a procedural infirmity, not a jurisdictional impediment. Jurisdiction is a matter of substantive law, while venue is a matter of procedural law. Jurisdiction is conferred by law, and the Insolvency Law vests jurisdiction in the Court of First Instance – now the Regional Trial Court. Jurisdiction is acquired based on the allegations in the complaint.

Section 14 of the Insolvency Law specifies that the proper venue for a petition for voluntary insolvency is the Regional Trial Court of the province or city where the insolvent debtor has resided in for six (6) months before the filing of the petition. In this case, the issue of which court is the proper venue for Royal Ferry's Petition for Voluntary Insolvency comes from the confusion on an insolvent corporation's residence.

As there is a specific law that covers the rules on venue, the Rules of Court do not apply.

### **FACTS:**

According to its Articles of Incorporation, Royal Ferry's principal place of business is located at 2521 A. Bonifacio Street, Bangkal, Makati City. However, it currently holds office at Room 203, BF Condominium Building, Andres Soriano comer Solano Streets, Intramuros, Manila. It filed a verified Petition for Voluntary Insolvency before the RTC of Manila, which declared Royal Ferry insolvent. Pilipinas Shell filed before the RTC of Manila a Formal Notice of Claim and a Motion to Dismiss. In the Notice of Claim, Pilipinas Shell asserted that Royal Ferry owed them a sum of money. In its Motion to Dismiss, Pilipinas Shell alleged that the Petition should have been filed before the RTC of Makati and not before the RTC of Manila as Royal Ferry's Articles of Incorporation stated that the corporation's principal office is located in Makati City. The RTC of Manila denied Pilipinas Shell's Motion to Dismiss for lack of merit. However, the RTC reconsidered the denial of the Motion to Dismiss. It held that a corporation cannot change its place of business without amending its Articles of Incorporation. The RTC thus granted the dismissal of the Petition for Voluntary Insolvency.

The CA reinstated the insolvency proceedings and held that the Motion to Dismiss failed to comply with Section 81 of the Insolvency Law, which required the written consent of all creditors before a petition for insolvency can be dismissed. It overturned the grant of the Motion to Dismiss since Pilipinas Shell failed to secure the written consent of all the creditors of Royal Ferry. Pilipinas Shell moved for reconsideration, but the Motion was denied. Hence, Pilipinas Shell filed the instant Petition.

Royal Ferry moved to dismiss the case on the ground that it entered into a Compromise Agreement with Pilipinas, which was duly approved by the CA, thus making the present petition moot and academic. However, Pilipinas Shell claimed that the Compromise Agreement was only between Pilipinas Shell, and Antonino R. Gascon, Jr., and Jonathan D. Gascon (the Gascons). Royal Ferry was not a party to the agreement. Pilipinas Shell argued that it had agreed to waive any action against Royal Ferry's officers, directors, employees, stockholders, and successors-in-interest, but that it did not agree to waive its claim against Royal Ferry.

### **ISSUE:**

Whether the Petition for Insolvency was properly filed. (YES)

### **RULING:**

The Petition for Insolvency was properly filed before the Regional Trial Court of Manila. The first insolvency law, Republic Act No. 1956, was entitled "An Act Providing for the Suspension of Payments, the Relief of Insolvent Debtors, the Protection of Creditors, and the Punishment of Fraudulent Debtors (Insolvency Law)". With the enactment of Republic Act No. 10142, otherwise known as the Financial Rehabilitation and Insolvency Act of 2010 (FRIA), the Insolvency Law was expressly repealed on July 18, 2010. The FRIA is currently the special law that governs insolvency. However, because the relevant proceedings in this case took place before the enactment of the FRIA, the case needs to be resolved under the provisions of the Insolvency Law.

Royal Ferry argues that the Regional Trial Court of Manila obtained jurisdiction because in its Petition for Voluntary Insolvency, Royal Ferry alleged that its principal office was then found in Manila. On the other hand, Pilipinas Shell argues that filing the petition before the Regional Trial Court of Manila was a patent jurisdictional defect as the Regional Trial Court of Manila did not have territorial jurisdiction over respondent's residence. Pilipinas Shell confuses the concepts of jurisdiction and venue. Wrong venue is merely a procedural infirmity, not a jurisdictional impediment. Jurisdiction is a matter of substantive law, while venue is a matter of procedural law.

Jurisdiction is conferred by law, and the Insolvency Law vests jurisdiction in the Court of First Instance – now the Regional Trial Court. Jurisdiction is acquired based on the allegations in the complaint.

Section 14 of the Insolvency Law specifies that the proper venue for a petition for voluntary insolvency is the Regional Trial Court of the province or city where the insolvent debtor has resided in for six (6) months before the filing of the petition. In this case, the issue of which court is the proper venue for Royal Ferry's Petition for Voluntary Insolvency comes from the confusion on an insolvent corporation's residence.

As there is a specific law that covers the rules on venue, the Rules of Court do not apply.

The old Insolvency Law provides that in determining the venue for insolvency proceedings, the insolvent corporation should be considered a resident of the place where its actual place of business is located six (6) months before the filing of the petition. If there is a conflict between the place stated in the articles of incorporation and the physical location of the corporation's main office, the actual place of business should control. Requiring a corporation to go back to a place it has abandoned just to file a case is the very definition of inconvenience. There is no reason why an insolvent corporation should be forced to exert whatever meager resources it has to litigate in a city it has already left. Moreover, the six (6)-month qualification of the law's requirement of residence shows intent to find the most accurate location of the debtor's activities. If the address in a corporation's articles of incorporation is proven to be no longer accurate, then legal fiction should give way to fact.

We cannot sustain the ruling of the Court of Appeals that the "petition for voluntary insolvency [was filed] in the proper venue since the cities of Makati and Manila are part of one region[.]" This is untenable. Section 14 of Batas Pambansa Blg. 129 provides several judges to preside over the different branches assigned to Manila and Makati. Thus, the two venues are distinct. Despite being in the same region, Makati and Manila are treated as two distinct venues. To deem them as interchangeable venues for being in the same region has no basis in law.

Royal Ferry is a resident of Manila. The law should be read to lay the venue of the insolvency proceeding in the actual location of the debtor's activities. If it is uncontroverted that Royal Ferry's address in its Articles of Incorporation is no longer accurate, legal fiction should give way to fact. Thus, the Petition was correctly filed before the Regional Trial Court of Manila.

## ARMAND NOCUM and THE PHILIPPINE DAILY INQUIRER, INC., Petitioners, -versus- LUCIO TAN, Respondent.

G.R. No. 145022, SECOND DIVISION, September 23, 2005, CHICO-NAZARIO, J.

It is settled that jurisdiction is **conferred by law** based on the facts alleged. From the allegations in the complaint, it is clear that respondent's cause of action is for damages arising from libel, the jurisdiction of which is vested with the RTC as provided for by Art 360 of the RPC.

Petitioners are **confusing jurisdiction with venue**. Hon. Florenz D. Regalado, differentiated jurisdiction and venue as follows: (a) Jurisdiction is the authority to hear and determine a case; venue is the place where the case is to be heard or tried; (b) Jurisdiction is a matter of substantive law; venue, of procedural law; (c) Jurisdiction establishes a relation between the court and the subject matter; venue, a relation between plaintiff and defendant, or petitioner and respondent; and, (d) Jurisdiction is

fixed by law and cannot be conferred by the parties; venue may be conferred by the act or agreement of the parties.

The amendment to the complaint was **not intended to vest jurisdiction to the lower court but merely to establish the proper venue** for the action. It is a well-established rule that venue has nothing to do with jurisdiction, except in criminal actions.

#### **FACTS:**

Lucio Tan filed a complaint against reporter Armand Nocum and Inquirer with the Makati RTC, seeking moral and exemplary damages for the alleged malicious and defamatory imputations contained in a news article.

However, upon motion, the RTC dismissed the complaint without prejudice on the ground of improper venue.

Aggrieved by the dismissal, Lucio Tan filed an Omnibus Motion seeking reconsideration of the dismissal and admission of the amended complaint. In the amended complaint, it is alleged that *This article was printed and first published in the City of Makati*.

The RTC, after having the case dismissed for improper venue, admitted the amended complaint and deemed set aside the previous order of dismissal.

Dissatisfied, petitioners appealed the RTC decision to the CA.

The CA however affirmed the RTC and denied the subsequent MR. Hence this petition raising the issue of:

### **ISSUE:**

Whether the lower court acquired jurisdiction over the civil case upon the filing of the original complaint for damages. (YES)

### **RULING:**

It is settled that jurisdiction is **conferred by law** based on the facts alleged. From the allegations in the complaint, it is clear that respondent's cause of action is for damages arising from libel, the jurisdiction of which is vested with the RTC as provided for by Art 360 of the RPC.

Petitioners are **confusing jurisdiction with venue**. Hon. Florenz D. Regalado, differentiated jurisdiction and venue as follows: (a) Jurisdiction is the authority to hear and determine a case; venue is the place where the case is to be heard or tried; (b) Jurisdiction is a matter of substantive law; venue, of procedural law; (c) Jurisdiction establishes a relation between the court and the subject matter; venue, a relation between plaintiff and defendant, or petitioner and respondent; and, (d) Jurisdiction is fixed by law and cannot be conferred by the parties; venue may be conferred by the act or agreement of the parties.

The amendment to the complaint was **not intended to vest jurisdiction to the lower court but merely to establish the proper venue** for the action. It is a well-established rule that venue has nothing to do with jurisdiction, except in criminal actions.

The SC held that dismissal of the complaint by the lower court was proper considering that the complaint, indeed, on its face, failed to allege neither the residence of the complainant nor the place where the libelous article was printed and first published. Nevertheless, before the finality of the dismissal, the same may still be amended as in fact the amended complaint was admitted, in view of the court *a quos* jurisdiction, of which it was never divested. In so doing, the court acted properly and without any grave abuse of discretion.

Petitioners argument that the lower court has no jurisdiction over the case because respondent failed to allege the place where the libelous articles were printed and first published would have been **tenable if the case filed were a criminal case**. The failure of the original complaint to contain such information would be fatal because this fact involves the issue of venue which goes into the territorial jurisdiction of the court. This is not to be because the case before us is a civil action where venue is not jurisdictional.

PAGLAUM MANAGEMENT & DEVELOPMENT CORP. and HEALTH MARKETING TECHNOLOGIES, INC., Petitioners, -versus- UNION BANK OF THE PHILIPPINES, NOTARY PUBLIC JOHN DOE, and REGISTER OF DEEDS OF CEBU CITY and CEBU PROVINCE, Respondents.

G.R. No. 179018, SECOND DIVISION, June 18, 2012, SERENO, J.

According to the Rules, real actions shall be commenced and tried in the court that has jurisdiction over the area where the property is situated. In this case, all the mortgaged properties are located in the Province of Cebu. Thus, following the general rule, PAGLAUM and HealthTech should have filed their case in Cebu, and not in Makati.

However, the Rules provide an exception, in that real actions can be commenced and tried in a court other than where the property is situated in instances where the parties have previously and validly agreed in writing on the exclusive venue thereof. In the case at bar, the parties claim that such an agreement exists. The only dispute is whether the venue that should be followed is that contained in the Real Estate Mortgages, as contended by Union Bank, or that in the Restructuring Agreement, as posited by PAGLAUM and HealthTech. This Court rules that the venue stipulation in the Restructuring Agreement should be controlling.

These provisions of the Real Estate Mortgages and the later Restructuring Agreement clearly reveal the intention of the parties to implement a restrictive venue stipulation, which applies not only to the principal obligation, but also to the mortgages. The phrase "waiving any other venue" plainly shows that the choice of Makati City as the venue for actions arising out of or in connection with the Restructuring Agreement and the Collateral, with the Real Estate Mortgages being explicitly defined as such, is exclusive.

Even if this Court were to consider the venue stipulations under the Real Estate Mortgages, it must be underscored that those provisions did not contain words showing exclusivity or restrictiveness. In fact, in the Real Estate Mortgages dated 11 February 1994, the phrase "parties hereto waiving" – from the entire phrase "the parties hereto waiving any other venue" – was stricken from the final executed contract. Following the ruling in Sps. Lantin as earlier quoted, in the absence of qualifying or restrictive words, the venue stipulation should only be deemed as an agreement on an additional forum, and not as a restriction on a specified place.

### **FACTS:**

Petitioner Paglaum Management and Development Corporation (PAGLAUM) owns three parcels of land located in the province of Cebu. These lots are co-owned by Benjamin B. Dy, the president of petitioner Health Marketing Technologies, Inc. (Health Tech).

In 1994, respondent Union Bank of the Philippines (Union Bank) extended HealthTech a credit line in the amount of P10,000,000. To secure this obligation, PAGLAUM executed three Real Estate Mortgages over the said properties on behalf of HealthTech and in favor of Union Bank. The Real Estate Mortgage, on the provision regarding the venue of all suits and actions arising out of or in connection therewith, **originally** stipulates:

Section 9. Venue. – The venue of all suits and actions arising out of or in connection with this Mortgage shall be in **Makati**, Metro Manila or in the place where any of the Mortgaged Properties is located, at the absolute option of the Mortgagee, **the parties hereto waiving any other venue**.

However, under the two Real Estate Mortgages dated 11 February 1994, the following version appears:

Section 9. Venue. – The venue of all suits and actions arising out of or in connection with this Mortgage shall be in **Cebu City** Metro Manila or in the place where any of the Mortgaged Properties is located, at the absolute option of the Mortgagee, the xxxxxxxxxxx any other venue.

Meanwhile, the same provision in the Real Estate Mortgage dated 22 April 1998 contains the following:

Section 9. Venue. – The venue of all suits and actions arising out of or in connection with this Mortgage shall be in \_\_\_\_\_ or in the place where any of the Mortgaged Properties is located, at the absolute option of the Mortgagee, the parties hereto waiving any other venue.

Owing to financial difficulties suffered by HealthTech, both parties entered into a Restructuring Agreement, which states that any action or proceeding arising out of or in connection therewith shall be commenced in Makati City, with both parties waiving any other venue.

However, HealthTech still defaulted on its payment prompting Union Bank to cause the extrajudicial foreclosure and sale of the mortgaged properties and caused. In response, HealthTech filed a Complaint for Annulment of Sale and Titles and Damages against Union Bank before the Makati City RTC.

### **ISSUE:**

Whether Makati City is the proper venue to assail the foreclosure of the subject real estate mortgage. (YES)

### **RULING:**

The present action being an action for Annulment of Sale and Titles resulting from the extrajudicial foreclosure by Union Bank of the mortgaged real properties, is classified as a real action. Being a real action, the filing and trial of the case should be governed by the following relevant provisions of the Rule 4 of the Rules of Court:

Section 1. Venue of real actions. – Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.

Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated.

Sec. 3. When Rule not applicable. - This Rule shall not apply -

- (a) In those cases where a specific rule or law provides otherwise; or
- (b) Where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof.

In *Sps. Lantin v. Lantion*, this Court explained that a venue stipulation must contain words that show exclusivity or restrictiveness, as follows:

At the outset, we must make clear that under Section 4 (b) of Rule 4 of the 1997 Rules of Civil Procedure, the general rules on venue of actions shall not apply where the parties, before the filing of the action, have validly agreed in writing on an exclusive venue. The mere stipulation on the venue of an action, however, is not enough to preclude parties from bringing a case in other venues. The parties must be able to show that such stipulation is exclusive. In the absence of qualifying or restrictive words, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place.

Clearly, the words "exclusively" and "waiving for this purpose any other venue" are restrictive and used advisedly to meet the requirements.

According to the Rules, real actions shall be commenced and tried in the court that has jurisdiction over the area where the property is situated. In this case, all the mortgaged properties are located in the Province of Cebu. Thus, following the general rule, PAGLAUM and HealthTech should have filed their case in Cebu, and not in Makati.

However, the Rules provide an exception, in that real actions can be commenced and tried in a court other than where the property is situated in instances **where the parties have previously** 

and validly agreed in writing on the exclusive venue thereof. In the case at bar, the parties claim that such an agreement exists. The only dispute is whether the venue that should be followed is that contained in the Real Estate Mortgages, as contended by Union Bank, or that in the Restructuring Agreement, as posited by PAGLAUM and HealthTech. This Court rules that the venue stipulation in the Restructuring Agreement should be controlling.

The Real Estate Mortgages were executed by PAGLAUM in favor of Union Bank to secure the credit line extended by the latter to HealthTech. All three mortgage contracts contain a dragnet clause, which secures succeeding obligations, including renewals, extensions, amendments or novations thereof, incurred by HealthTech from Union Bank.

On the other hand, the Restructuring Agreement was entered into by HealthTech and Union Bank to modify the entire loan obligation. Meanwhile, Section 20 of the Restructuring Agreement as regards the venue of actions state:

20. <u>Venue</u> – Venue of any action or proceeding arising out of or connected with this **Restructuring Agreement, the Note, the Collateral and any and all related documents** shall be in Makati City, [HealthTech] and [Union Bank] hereby waiving any other venue.

These quoted provisions of the Real Estate Mortgages and the later Restructuring Agreement clearly reveal the intention of the parties to implement a restrictive venue stipulation, which applies not only to the principal obligation, but also to the mortgages. The phrase "waiving any other venue" plainly shows that the choice of Makati City as the venue for actions arising out of or in connection with the Restructuring Agreement and the Collateral, with the Real Estate Mortgages being explicitly defined as such, is exclusive.

Even if this Court were to consider the venue stipulations under the Real Estate Mortgages, it must be underscored that those provisions did not contain words showing exclusivity or restrictiveness. In fact, in the Real Estate Mortgages dated 11 February 1994, the phrase "parties hereto waiving" – from the entire phrase "the parties hereto waiving any other venue" – was stricken from the final executed contract. Following the ruling in *Sps. Lantin* as earlier quoted, in the absence of qualifying or restrictive words, the venue stipulation should only be deemed as an agreement on an additional forum, and not as a restriction on a specified place.

## THEODORE and NANCY ANG, represented by ELDRIGE MARVIN B. ACERON, *Petitioners*, versus- SPOUSES ALAN and EM ANG, *Respondents*.

G.R. No. 186993, SECOND DIVISION, August 22, 2012, REYES, J.

It is a legal truism that the rules on the venue of personal actions are fixed for the convenience of the plaintiffs and their witnesses. Equally settled, however, is the principle that choosing the venue of an action is not left to a plaintiff's caprice; the matter is regulated by the Rules of Court.

The petitioners' complaint for collection of sum of money against the respondents is a personal action as it primarily seeks the enforcement of a contract. The Rules give the plaintiff the option of choosing where to file his complaint. He can file it in the place (1) where he himself or any of them resides, or (2) where the defendant or any of the defendants resides or may be found. The plaintiff or the defendant must be residents of the place where the action has been instituted at the time the action is commenced.

However, if the plaintiff does not reside in the Philippines, the complaint in such case may only be filed in the court of the place where the defendant resides. This Court held that there can be no election as to the venue of the filing of a complaint when the plaintiff has no residence in the Philippines. In such case, the complaint may only be filed in the court of the place where the defendant resides.

Here, the petitioners are residents of Los Angeles, California, USA while the respondents reside in Bacolod City. Applying the foregoing principles, the petitioners' complaint against the respondents may only be filed in the RTC of Bacolod City – the court of the place where the respondents reside. The petitioners, being residents of Los Angeles, California, USA, are not given the choice as to the venue of the filing of their complaint.

### **FACTS:**

Petitioner and respondents (both surnamed Ang) entered into a contract of loan with respondents as debtors. Respondents executed a promissory note with a stipulated interest of 10%. However, despite repeated demands, the respondents failed to pay the petitioners.

A complaint for collection of sum of money was filed with the RTC of Quezon City. Respondents moved for the dismissal of the complaint on the grounds of improper venue. They asserted that the complaint against them may only be filed in the court of the place where either they or the petitioners reside. They averred that they reside in Bacolod City while the petitioners reside in Los Angeles, California, USA. The RTC denied respondent's motion to dismiss explaining that:

"Attached to the complaint is the Special Power of Attorney which clearly states that plaintiff Nancy Ang constituted Atty. Aceron as her duly appointed attorney-in-fact to prosecute her claim against herein defendants. Considering that the address given by Atty. Aceron is in Quezon City, hence, being the plaintiff, venue of the action may lie where he resides as provided in Section 2, Rule 4 of the 1997 Rules of Civil Procedure."

Petitioners maintain that their complaint for collection of sum of money against the respondents may be filed in the RTC of Quezon City. Invoking Section 3, Rule 3 of the Rules of Court, they insist that Atty. Aceron, being their attorney-in-fact, is deemed a real party in interest in the case below and can prosecute the same before the RTC. Such being the case, the petitioners assert, the said complaint for collection of sum of money may be filed in the court of the place where Atty. Aceron resides, which is the RTC of Quezon City.

On the other hand, the respondents assert that the petitioners are proscribed from filing their complaint in the RTC of Quezon City. They assert that the residence of Atty. Aceron, being merely a representative, is immaterial to the determination of the venue of the petitioners' complaint.

### **ISSUE:**

Whether the complaint must be dismissed on the ground that venue was not properly laid.

### **RULING:**

The petitioners' complaint should have been filed in the RTC of Bacolod City, the court of the place where the respondents reside, and not in RTC of Quezon City.

It is a legal truism that the rules on the venue of personal actions are fixed for the convenience of the plaintiffs and their witnesses. Equally settled, however, is the principle that choosing the venue of an action is not left to a plaintiff's caprice; the matter is regulated by the Rules of Court.

The petitioners' complaint for collection of sum of money against the respondents is a personal action as it primarily seeks the enforcement of a contract. The Rules give the plaintiff the option of choosing where to file his complaint. He can file it in the place (1) where he himself or any of them resides, or (2) where the defendant or any of the defendants resides or may be found. The plaintiff or the defendant must be residents of the place where the action has been instituted at the time the action is commenced.

However, if the plaintiff does not reside in the Philippines, the complaint in such case may only be filed in the court of the place where the defendant resides. This Court held that there can be no election as to the venue of the filing of a complaint when the plaintiff has no residence in the Philippines. In such case, the complaint may only be filed in the court of the place where the defendant resides.

Here, the petitioners are residents of Los Angeles, California, USA while the respondents reside in Bacolod City. Applying the foregoing principles, the petitioners' complaint against the respondents may only be filed in the RTC of Bacolod City – the court of the place where the respondents reside. The petitioners, being residents of Los Angeles, California, USA, are not given the choice as to the venue of the filing of their complaint.

Atty. Aceron is not a real party in interest in the case below; thus, his residence is immaterial to the venue of the filing of the complaint.

Contrary to the petitioners' claim, Atty. Aceron, despite being the attorney-in-fact of the petitioners, is not a real party in interest in the case below. Section 2, Rule 3 of the Rules of Court reads:

"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."

Interest within the meaning of the Rules of Court means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved. A real party in interest is the party who, by the substantive law, has the right sought to be enforced.

Applying the foregoing rule, it is clear that Atty. Aceron is not a real party in interest in the case below as he does not stand to be benefited or injured by any judgment therein. He was merely appointed by the petitioners as their attorney-in-fact for the limited purpose of filing and prosecuting the complaint against the respondents. Such appointment, however, does not mean that he is subrogated into the rights of petitioners and ought to be considered as a real party in interest.

The petitioner's reliance on Section 3, Rule 3 of the Rules of Court to support their conclusion that Atty. Aceron is likewise a party in interest in the case below is misplaced. Section 3, Rule 3 of the Rules of Court provides that:

"Sec. 3. Representatives as parties. – Where the action is allowed to be prosecuted and defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real property in interest. A representative may be a trustee of an expert trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal."

Nowhere in the rule cited above is it stated or, at the very least implied, that the representative is likewise deemed as the real party in interest. The said rule simply states that, in actions which are allowed to be prosecuted or defended by a representative, the beneficiary shall be deemed the real party in interest and, hence, should be included in the title of the case.

Indeed, to construe the express requirement of residence under the rules on venue as applicable to the attorney-in-fact of the plaintiff would abrogate the meaning of a "real party in interest", as defined in Section 2 of Rule 3 of the 1997 Rules of Court vis-à-vis Section 3 of the same Rule.

### SPOUSES TEODORO and ROSARIO SARAZA and FERNANDO SARAZA, Petitioners, -versus-WILLIAM FRANCISCO, Respondent.

G.R. No. 198718, FIRST DIVISION, November 27, 2013, REYES, J.

Although the end result of the respondent's claim was the transfer of the subject property to his name, the suit was still essentially for specific performance, a personal action, because it sought Fernando's execution of a deed of absolute sale based on a contract which he had previously made. A case for specific performance with damages is a personal action which may be filed in a court where any of the parties reside.

RULE 4: Venue of Actions

"Section 1.Venue of real actions. — Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.

Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated."

"Section 2.Venue of personal actions. — All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff."

Considering the respondent's statement in his complaint that he resides in Imus, Cavite, the filing of his case with the RTC of Imus was proper.

#### **FACTS:**

On September 1, 1999, Francisco and Fernando executed an agreement which provides that Fernando was to sell his 100-sqm share in a lot in Bangkal, Makati City (Makati property) to Francisco which at that time was still registered in the name of one Emilia Serafico for a total consideration of P3.2M.

The amount of P1.2M was paid upon the Agreement's execution, while the balance of P2M was to be paid on installments to the PNB, to cover a loan of Spouses Saraza, Fernando's parents, with the bank. A final deed of sale conveying the property was to be executed by Fernando upon full payment of the PNB loan.

It was also agreed upon that should the Sarazas fail for any reason to transfer the subject property to Francisco, Rosario and Fernando's 136-sqm property (2nd property) and mortgaged to PNB to secure the loan to be paid by the respondent shall be collateral in favor of the Francisco. Francisco was also allowed to take immediate possession of the 2nd property through a contract of lease.

When the remaining balance of the PNB loan reached P226,582.13, the respondent asked for the petitioners' issuance of a Special Power of Attorney that would authorize him to receive from PNB the owner's duplicate copy of the 2nd property upon full payment of the loan. The petitioners denied the request.

Upon inquiry from PNB, the respondent found out that the petitioners had instead executed an Amended Authority, which provided that the owner's copy of the 2nd property title should be returned to the mortgagors upon full payment of the loan. Spouses Saraza also caused the eviction of the respondent from the  $2^{nd}$  property. These prompted the respondent to institute the civil case for specific performance, sum of money and damages with the RTC of Imus, Cavite on December 7, 2004.

The petitioners admitted the existence of the Agreement and the Authority which was addressed to PNB. They, nonetheless, opposed the respondent's complaint on the ground that the respondent did not pay the P1.2M he had to pay at the execution of the Agreement. They nonetheless did not formally demand payment from him but merely waited for him to pay the amount.

The RTC rendered a Decision in favor of the respondent. Fernando questioned the RTC Decision before the CA. In addition to the defenses which he raised during the proceedings before the RTC, he argued that the RTC of Imus lacked jurisdiction over the case as it involved an adjudication of ownership of a property situated in Makati City.

The CA affirmed the RTC rulings. On the issue of jurisdiction, the CA cited Fernando's failure to seasonably file before the lower court a motion to dismiss stating that the action should have been filed in Makati City. More importantly, the Court explained that the case was a personal action since it did not involve a claim of ownership of the subject property, but only sought Fernando's execution of a deed of sale in the respondent's favor. Thus, the venue for the action was the residence of the plaintiff or the defendant, at the plaintiff's option.

#### **ISSUE:**

Whether the proper venue for the action is in Makati or in Imus. (IMUS)

#### **RULING:**

Although the end result of the respondent's claim was the transfer of the subject property to his name, the suit was still essentially for specific performance, a personal action, because it sought Fernando's execution of a deed of absolute sale based on a contract which he had previously made. A case for specific performance with damages is a personal action which may be filed in a court where any of the parties reside.

#### RULE 4: Venue of Actions

"Section 1.Venue of real actions. — Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated. Forcible entry and detainer actions shall be commenced and tried in the municipal trial court of the municipality or city wherein the real property involved, or a portion thereof, is situated."

"Section 2.Venue of personal actions. — All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff."

Considering the respondent's statement in his complaint that he resides in Imus, Cavite, the filing of his case with the RTC of Imus was proper.

# PLANTERS DEVELOPMENT BANK, *Petitioner*, -versus- SPOUSES VICTORIANO and MELANIE RAMOS, *Respondents*.

G.R. No. 228617, SECOND DIVISION, September 20, 2017, REYES, JR., J.

The general rules on venue admit of exceptions in Section 4, Rule 4 of the Rules Court, i.e., where a specific rule or law provides otherwise, or when the parties agreed in writing before the filing of the action on the exclusive venue thereof. Written stipulations as to venue may be restrictive in the sense that the suit may be filed only in the place agreed upon, or merely permissive in that the parties may file their suit not only in the place agreed upon but also in the places fixed by law. The parties must be able to show that such stipulation is exclusive. In the absence of qualifying or restrictive words, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place.

In the instant case, the stipulation in the real estate mortgages executed by the parties pertaining to venue reads as follows: "In the event of suit arising from out of or in connection with this mortgage and/or the promissory note/s secured by this mortgage, the parties hereto agree to bring their causes of action **exclusively** in the proper court/s of Makati, Metro Manila, the **MORTGAGOR waiving for** this purpose any other venue." Thus, Spouses Ramos had validly waived their right to choose the venue for any suit or action arising from the mortgages or promissory notes when they agreed to the limit the same to Makati City only and nowhere else.

#### **FACTS:**

Spouses Ramos obtained a loan with Planters Development Bank (PDB) amounting to P40 million for the construction of a warehouse. It was secured by several Real Estate Mortgages (REMs) over Spouses Ramos' properties. Unfortunately, Spouses Ramos were unable to pay the loans. PDB sought to foreclose the REMs extrajudicially in San Jose City, Nueva Ecija. Spouses Ramos, on the other hand, filed a complaint to annul the REMs in the RTC of San Jose City, Nueva Ecija. PDB moved to dismiss the complaint of Spouses Ramos alleging improper venue. PDB argued that the REMs contained an exclusive venue clause limiting actions arising therefrom to Makati City. However, the RTC denied PDB's Motion to Dismiss. The CA affirmed the RTC's denial when PDB elevated the matter through Rule 65. Hence, this appeal before the SC.

#### **ISSUE:**

Whether or not venue was improperly laid in San Jose City, Nueva Ecija despite the stipulation of the REMs limiting the venue to Makati City. (YES)

#### **RULING:**

The general rules on venue admit of exceptions in Section 4, Rule 4 of the Rules Court, *i.e.*, where a specific rule or law provides otherwise, or when the parties agreed in writing before the filing of the

action on the exclusive venue thereof. Written stipulations as to venue may be restrictive in the sense that the suit may be filed only in the place agreed upon, or merely permissive in that the parties may file their suit not only in the place agreed upon but also in the places fixed by law. The parties must be able to show that such stipulation is *exclusive*. In the absence of qualifying or restrictive words, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place.

In the instant case, the stipulation in the real estate mortgages executed by the parties pertaining to venue reads as follows: "In the event of suit arising from out of or in connection with this mortgage and/or the promissory note/s secured by this mortgage, the parties hereto agree to bring their causes of action exclusively in the proper court/s of Makati, Metro Manila, the MORTGAGOR waiving for this purpose any other venue." Thus, Spouses Ramos had validly waived their right to choose the venue for any suit or action arising from the mortgages or promissory notes when they agreed to the limit the same to Makati City only and nowhere else.

True enough, the stipulation on the venue was couched in a language showing the intention of the parties to restrict the filing of any suit or action to the designated place only. It is crystal clear that the intention was not just to make the said place an additional forum or venue but the only jurisdiction where any suit or action pertaining to the mortgage contracts may be filed. There being no showing that such waiver was invalid or that the stipulation on venue was against public policy, the agreement of the parties should be upheld. It is therefore a grave abuse of discretion on the part of the RTC to deny the motion to dismiss filed by PDB on the ground of improper venue, especially when the said issue had been raised at the most opportune time, that is, within the time for but before the filing of an answer. The CA should have given this matter a more serious consideration and not simply brushed it aside.

LEY CONSTRUCTION AND DEVELOPMENT CORPORATION, represented by its President, JANET C. LEY, *Petitioner*, -versus- MARVIN MEDEL SEDANO, doing business under the name and style "LOLA TABA LOLO PATO PALENGKE AT PALUTO SA SEA SIDE", *Respondent*.

G.R. No. 222711, SECOND DIVISION, August 23, 2017, PERLAS-BERNABE, *J.* 

The law provides that the venue for personal actions shall - as a general rule - lie with the court which has jurisdiction where the plaintiff or the defendant resides, at the election of the plaintiff. As an exception, parties may, through a written instrument, restrict the filing of said actions in a certain exclusive venue.

In this case, it is undisputed that petitioner's action was one for collection of sum of money in an amount that falls within the exclusive jurisdiction of the RTC. Since the lease contract already provided that all actions or cases involving the breach thereof should be filed with the RTC of Pasay City, and that petitioner's complaint purporting the said breach fell within the RTC's exclusive original jurisdiction, the latter should have then followed the contractual stipulation and filed its complaint

before the RTC of Pasay City...; hence, the same is clearly dismissible on the ground of improper venue, without prejudice, however, to its refiling in the proper court.

#### **FACTS:**

A Complaint for Collection of Sum of Money and Damages against respondent Marvin Medel Sedano, respondent, was instituted by the defendant, Philippine National Construction Corporation (PNCC). PNCC subleased a parcel of land to the respondent, however, the latter failed to pay the rent due for the period August 2011 to December 2011 amounting to P 8 828 025. 46 and despite demands, refused to settle his obligation, hence the complaint.

In his Answer with Third-Party Complaint, respondent pointed out that the venue was improperly laid pursuant to a stipulation in the lease contract which provided that ""[a]ll actions or case[s] filed in connection with this case shall be filed with the Regional Trial Court of Pasay City, exclusive of all others."

In its Comment/Opposition—to respondent's affirmative defense of improper venue, petitioner argued that Section 21 of the lease contract is not a stipulation as to venue, but a stipulation on jurisdiction which is void.

#### **ISSUE:**

Whether or not the Valenzuela-RTC erred in ruling that venue was improperly laid. (NO)

#### **RULING:**

Valenzuela-RTC did not err in ruling that the venue was improperly laid.

The law provides that the venue for personal actions shall - as a general rule - lie with the court which has jurisdiction where the plaintiff or the defendant resides, at the election of the plaintiff. As an exception, parties may, through a written instrument, restrict the filing of said actions in a certain exclusive venue.

In this case, it is undisputed that petitioner's action was one for collection of sum of money in an amount that falls within the exclusive jurisdiction of the RTC. Since the lease contract already provided that all actions or cases involving the breach thereof should be filed with the RTC of Pasay City, and that petitioner's complaint purporting the said breach fell within the RTC's exclusive original jurisdiction, the latter should have then followed the contractual stipulation and filed its complaint before the RTC of Pasay City...; hence, the same is clearly dismissible on the ground of improper venue, without prejudice, however, to its refiling in the proper court.

# PAGLAUM MANAGEMENT & DEVELOPMENT CORP. and HEALTH MARKETING TECHNOLOGIES, INC, *Petitioners*, -versus- UNION BANK OF THE PHILIPPINES, NOTARY PUBLIC JOHN DOE, and REGISTER OF DEEDS of Cebu City and Cebu Province, *Respondents*.

G.R. No. 179018, SPECIAL SECOND DIVISION, April 17, 2013, SERENO, J.

In Sps. Lantin v. Lantion, this Court explained that a venue stipulation must contain words that show exclusivity or restrictiveness, as follows:

"At the outset, we must make clear that under Section 4 (b) of Rule 4 of the 1997 Rules of Civil Procedure, the general rules on venue of actions shall not apply where the parties, before the filing of the action, have validly agreed in writing on an exclusive venue. The mere stipulation on the venue of an action, however, is not enough to preclude parties from bringing a case in other venues. The parties must be able to show that such stipulation is exclusive. In the absence of qualifying or restrictive words, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place."

The Restructuring Agreement was entered into by HealthTech and Union Bank to modify the entire loan obligation. The provisions of the Real Estate Mortgages and the later Restructuring Agreement clearly reveal the intention of the parties to implement a restrictive venue stipulation, which applies not only to the principal obligation, but also to the mortgages. The phrase waiving any other venue plainly shows that the choice of Makati City as the venue for actions arising out of or in connection with the Restructuring Agreement and the Collateral, with the Real Estate Mortgages being explicitly defined as such, is exclusive.

#### **FACTS:**

Paglaum Management & Development Corporation (Paglaum) is the registered owner of three parcels of land in Cebu. These lots are also co-owned by Benjamin B. Dy, the president of petitioner Health Marketing Technologies, Inc. (HealthTech), and his mother and siblings.

Union Bank of the Philippines (Union Bank) extended to HealthTech a credit line. Consequently, Paglaum executed three Real Estate Mortgages (REM) on behalf of HealthTech and in favor of Union Bank. The first REM contained a stipulation that the venue of all suits should be in Makati City, with both parties waiving any other venue. Meanwhile, other REM executed on different dates stipulate that it should be in Cebu City.

Later, HealthTech entered into a Restructuring Agreement with Union Bank wherein it was stipulated that the venue for all actions should be commenced in Makati City, with both parties waiving any other venue.

HealthTech failed to fulfill its obligation. Consequently, Union Bank extrajudicially foreclosed the mortgaged properties, was issued a Certificate of Sale and filed for Consolidation of Title. HealthTech then filed a Complaint against Union Bank in Makati City. Union Bank filed a Motion to

Dismiss on the ground of improper venue, among others. Union Bank contended that the Restructuring Agreement governs the choice of venue between parties.

#### **ISSUE:**

Whether Makati City is the proper venue to assail the foreclosure of the real estate mortgage. (NO) **RULING:** 

In Sps. Lantin v. Lantion, this Court explained that a venue stipulation must contain words that show exclusivity or restrictiveness, as follows:

"At the outset, we must make clear that under Section 4 (b) of Rule 4 of the 1997 Rules of Civil Procedure, the general rules on venue of actions shall not apply where the parties, before the filing of the action, have validly agreed in writing on an exclusive venue. The mere stipulation on the venue of an action, however, is not enough to preclude parties from bringing a case in other venues. The parties must be able to show that such stipulation is exclusive. In the absence of qualifying or restrictive words, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place."

The Restructuring Agreement was entered into by HealthTech and Union Bank to modify the entire loan obligation. The provisions of the Real Estate Mortgages and the later Restructuring Agreement clearly reveal the intention of the parties to implement a restrictive venue stipulation, which applies not only to the principal obligation, but also to the mortgages. The phrase waiving any other venue plainly shows that the choice of Makati City as the venue for actions arising out of or in connection with the Restructuring Agreement and the Collateral, with the Real Estate Mortgages being explicitly defined as such, is exclusive.

# POLYTRADE CORPORATION, *Plaintiff-Appellee*, -versus- VICTORIANO BLANCO, *Defendant-Appellant*.

G.R. No. L-27033, EN BANC, October 31, 1969, SANCHEZ, J.

According to Section 2 (b), Rule 4 of the Rules of Court on venue of personal actions triable by courts of first instance — and this is one — provides that such "actions may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff." Qualifying this provision in Section 3 of the same Rule which states that venue may be stipulated by written agreement — "By written agreement of the parties the venue of an action may be changed or transferred from one province to another." No such stipulation appears in the contracts covering the first two causes of action. The general rule set forth in Section 2 (b), Rule 4, governs, and as to said two causes of action, venue was properly laid in Bulacan, the province of defendant's residence. The stipulation adverted to is only found in the agreements covering the third and fourth causes of action. An accurate reading, however, of the

stipulation, "The parties agree to sue and be sued in the Courts of Manila," does not preclude the filing of suits in the residence of plaintiff or defendant. The plain meaning is that the parties merely consented to be sued in Manila. Qualifying or restrictive words which would indicate that Manila and Manila alone is the venue are totally absent therefrom.

#### **FACTS:**

Petitioner initiated a suit for collection of money against Victoriano Blanco, in the Court of First Instance of Bulacan of the place where the latter resided. Blanco filed a motion to dismiss the action on the ground of improper venue since, he claims, according to the contract, suit may be lodged in the courts of Manila. This Motion was denied by the CFI of Bulacan and rendered judgment against Victoriano.

#### **ISSUE:**

Whether or not venue was properly laid in Bulacan

#### **HELD:**

According to Section 2 (b), Rule 4 of the Rules of Court on venue of personal actions triable by courts of first instance — and this is one — provides that such "actions may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff." Qualifying this provision in Section 3 of the same Rule which states that venue may be stipulated by written agreement — "By written agreement of the parties the venue of an action may be changed or transferred from one province to another." No such stipulation appears in the contracts covering the first two causes of action. The general rule set forth in Section 2 (b), Rule 4, governs, and as to said two causes of action, venue was properly laid in Bulacan, the province of defendant's residence. The stipulation adverted to is only found in the agreements covering the third and fourth causes of action. An accurate reading, however, of the stipulation, "The parties agree to sue and be sued in the Courts of Manila," does not preclude the filing of suits in the residence of plaintiff or defendant. The plain meaning is that the parties merely consented to be sued in Manila. Qualifying or restrictive words which would indicate that Manila and Manila alone is the venue are totally absent therefrom. We cannot read into that clause that plaintiff and defendant bound themselves to file suits with respect to the last two transactions in question only or exclusively in Manila. For, that agreement did not change or transfer venue. It simply is permissive. The parties solely agreed to add the courts of Manila as tribunals to which they may resort. They did not waive their right to pursue remedy in the courts specifically mentioned in Section 2(b) of Rule 4. Renuntiatio non praesumitur.

SWEET LINE, INC., *Petitioner*, -versus- HON. BERNARDO TEVES, Presiding Judge, CFI of Misamis Oriental, Branch VII, LEOVIGILDO TANDOG, JR., and ROGELIO TIRO, *Respondents.*. G.R. No. L-37750, SECOND DIVISION, May 19, 1978, SANTOS, *J.* 

Condition No. 14 is subversive of public policy on transfers of venue of actions. For, although venue may be changed or transferred from one province to another by agreement of the parties in writing pursuant to Rule 4, Section 3, of the Rules of Court, such an agreement will not be held valid where it practically negates the action of the claimants, such as the private respondents herein. The philosophy underlying the provisions on transfer of venue of actions is the convenience of the plaintiffs as well as his witnesses and to promote the ends of justice. Considering the expense and trouble a passenger residing outside of Cebu City would incur to prosecute a claim in the City of Cebu, he would most probably decide not to file the action at all. The condition will thus defeat, instead of enhance, the ends of justice. Upon the other hand, petitioner has branches or offices in the respective ports of call of its vessels and can afford to litigate in any of these places. Hence, the filing of the suit in the CFI of Misamis Oriental, as was done in the instant case, will not cause inconvenience to, much less prejudice, petitioner.

#### **FACTS:**

Private respondents Atty. Leovigildo Tandog and Rogelio Tiro, a contractor by professions, bought tickets for Voyage 90 on December 31, 1971 at the branch office of petitioner. Respondents were to board petitioner's vessel, M/S "Sweet Hope" bound for Tagbilaran City via the port of Cebu. Upon learning that the vessel was not proceeding to Bohol, since many passengers were bound for Surigao, private respondents per advice, went to the branch office for proper relocation to M/S "Sweet Town". Because the said vessel was already filled to capacity, they were forced to agree "to hide at the cargo section to avoid inspection of the officers of the Philippine Coastguard."

Private respondents alleged that they were, during the trip," "exposed to the scorching heat of the sun and the dust coming from the ship's cargo of corn grits," and that the tickets they bought at Cagayan de Oro City for Tagbilaran were not honored and they were constrained to pay for other tickets. In view thereof, private respondents sued petitioner for damages and for breach of contract of carriage. Petitioner moved to dismiss the complaint on the ground of improper venue. This motion was premised on the condition printed at the back of the tickets, i.e., Condition No. 14, which reads:

"14. It is hereby agreed and understood that any and all actions arising out of the conditions and provisions of this ticket, irrespective of where it is issued, shall be filed in the competent courts in the City of Cebu. "

The motion was denied by the trial court.

#### **ISSUE:**

May a common carrier engaged in inter-island shipping stipulate thru condition printed at the back of passage tickets to its vessels that any and all actions arising out of the contract of carriage should be filed only in a particular province or city, in this case the City of Cebu, to the exclusion of all others? (NO)

#### **RULING:**

There is no question that there was a valid contract of carriage entered into by petitioner and private respondents and that the passage tickets, upon which the latter based their complaint, are the best evidence thereof. All the essential elements of a valid contract, i.e., consent, cause or consideration and object, are present.

It should be borne in mind, however, that with respect to the fourteen (14) conditions - one of which is "Condition No. 14" which is in issue in this case - printed at the back of the passage tickets, these are commonly known as "contracts of adhesion," the validity and/or enforceability of which will have to be determined by the peculiar circumstances obtaining in each case and the nature of the conditions or terms sought to be enforced.

Considered in the light of the foregoing norms and in the context of circumstances prevailing in the inter-island shipping industry in the country today, We find and hold that Condition No. 14 printed at the back of the passage tickets should be held as void and unenforceable for the following reasons: first, under circumstances obligation in the inter-island shipping industry, it is not just and fair to bind passengers to the terms of the conditions printed at the back of the passage tickets, on which Condition No. 14 is Printed in fine letters, and second, Condition No. 14 subverts the public policy on transfer of venue of proceedings of this nature, since the same will prejudice rights and interests of innumerable passengers in different s of the country who, under Condition No. 14, will have to file suits against petitioner only in the City of Cebu.

It should be noted that Condition No. 14 was prepared solely by the petitioner, respondents had no say in its preparation. Neither did the latter have the opportunity to take it into account prior to the purpose chase of their tickets. Their alleged adhesion is presumed only from the fact that they purchased the tickets.

Condition No. 14 is subversive of public policy on transfers of venue of actions. For, although venue may be changed or transferred from one province to another by agreement of the parties in writing pursuant to Rule 4, Section 3, of the Rules of Court, such an agreement will not be held valid where it practically negates the action of the claimants, such as the private respondents herein. The philosophy underlying the provisions on transfer of venue of actions is the convenience of the plaintiffs as well as his witnesses and to promote the ends of justice. Considering the expense and trouble a passenger residing outside of Cebu City would incur to prosecute a claim in the City of Cebu, he would most probably decide not to file the action at all. The condition will thus defeat,

instead of enhance, the ends of justice. Upon the other hand, petitioner has branches or offices in the respective ports of call of its vessels and can afford to litigate in any of these places. Hence, the filing of the suit in the CFI of Misamis Oriental, as was done in the instant case, will not cause inconvenience to, much less prejudice, petitioner.

# PHILIP L. GO, PACIFICO Q. LIM and ANDREW Q. LIM, *Petitioners*, -versus- DISTINCTION PROPERTIES DEVELOPMENT AND CONSTRUCTION, INC., *Respondent*.

G.R. No. 194024, THIRD DIVISION, April 25, 2012, MENDOZA, J.

#### FACTS:

Philip L. Go, Pacifico Q. Lim and Andrew Q. Lim are registered individual owners of condominium units in Phoenix Heights Condominium. Petitioner Pacifico Lim, one of the incorporators and the then president of DPDCI, executed a *Master Deed and Declaration of Restrictions (MDDR)* of Phoenix Heights Condominium, which was filed with the Registry of Deeds. As the developer, DPDCI undertook, among others, the marketing aspect of the project, the sale of the units and the release of flyers and brochures.

Meanwhile, in March 1999, petitioner Pacifico Lim, as president of DPDCI, filed an *Application for Alteration of Plan* pertaining to the construction of 22 storage units in the spaces adjunct to the parking area of the building. The application, however, was disapproved.

PHCC approved a settlement offer from DPDCI for the set-off of the latter's association dues arrears with the assignment of title over CCT Nos. 21030 and PT-27396/C-136-II and their conversion into common areas. Thus, CCT Nos. PT-43400 and PT-43399 were issued by the Registrar of Deeds of Pasig City in favor of PHCC in lieu of the old titles. The said settlement between the two corporations likewise included the reversion of the 22 storage spaces into common areas. With the conformity of PHCC, DPDCI's application for alteration was granted by the Housing and Land Use Regulatory Board (*HLURB*).

Petitioners filed a complaint before the HLURB against DPDCI for unsound business practices and violation of the MDDR. They alleged that DPDCI committed misrepresentation in their circulated flyers and brochures as to the facilities or amenities that would be available in the condominium and failed to perform its obligation to comply with the MDDR. DPDCI denied that it had breached its promises and representations to the public concerning the facilities in the condominium. It alleged that the brochure attached to the complaint was "a mere preparatory draft" and not the official one actually distributed to the public, and that the said brochure contained a disclaimer as to the binding effect of the supposed offers therein.

The HLURB rendered its decision in favor of petitioners. It held as invalid the agreement entered into between DPDCI and PHCC, as to the alteration or conversion of the subject units into common

areas, which it previously approved, for the reason that it was not approved by the majority of the members of PHCC as required under Section 13 of the MDDR.

The CA rendered the assailed decision which disposed of the case in favor of DPDCI. The CA ruled that the HLURB had no jurisdiction over the complaint filed by petitioners. The CA also held that jurisdiction over PHCC, an indispensable party, was neither acquired nor waived by estoppel. Hence, petitioners interpose the present petition.

#### **ISSUES:**

- (I) Whether the HLURB has jurisdiction over the complaint filed by the petitioners.
- (II) Whether PHCC is an indispensable party.



Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.

The HLURB is given a wide latitude in characterizing or categorizing acts which may constitute unsound business practice or breach of contractual obligations in the real estate trade. This grant of expansive jurisdiction to the HLURB does not mean, however, that all cases involving subdivision lots or condominium units automatically fall under its jurisdiction.

In this case, the complaint filed by petitioners alleged causes of action that apparently are not cognizable by the HLURB considering the nature of the action and the reliefs sought. A perusal of the complaint discloses that petitioners are actually seeking to nullify and invalidate the duly constituted acts of PHCC - the April 29, 2005 Agreement entered into by PHCC with DPDCI and its Board Resolution which authorized the acceptance of the proposed offsetting/settlement of DPDCI's indebtedness and approval of the conversion of certain units from saleable to common areas. All these were approved by the HLURB.

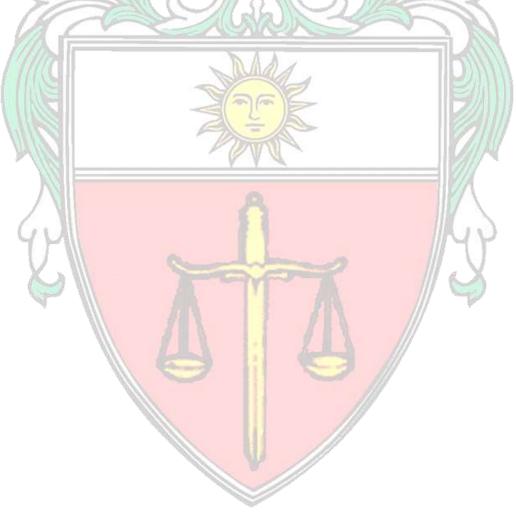
(II)

As it is clear that the acts being assailed are those of PHHC, this case cannot prosper for failure to implead the proper party, PHCC.

An indispensable party is defined as one who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest.

From all indications, PHCC is an indispensable party and should have been impleaded, either as a plaintiff or as a defendant, in the complaint filed before the HLURB as it would be directly and adversely affected by any determination therein. To belabor the point, the causes of action, or the acts complained of, were the acts of PHCC as a corporate body.

Without PHCC as a party, there can be no final adjudication of the HLURB's judgment. The CA was, thus, correct in ordering the dismissal of the case for failure to implead an indispensable party.



REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- HONORABLE SANDIGANBAYAN (SPECIAL FIRST DIVISION), FERDINAND E. MARCOS (REPRESENTED BY HIS ESTATE/HEIRS: IMELDA R. MARCOS, MARIA IMELDA [IMEE] MARCOS-MANOTOC, FERDINAND R. MARCOS, JR. AND IRENE MARCOS-ARANETA) AND IMELDA ROMUALDEZ MARCOS, *Respondents*.

G.R. No. 152154, EN BANC, July 15, 2003, CORONA, J.

The rule is settled that forfeiture proceedings are actions in rem and therefore civil in nature. The proceedings under RA 1379 do not terminate in the imposition of a penalty but merely in the forfeiture of the properties illegally acquired in favor of the State.

In short, there is a petition, then an answer and lastly, a hearing. The preliminary investigation required prior to the filing of the petition, in accordance with Section 2 of the Act, is expressly provided to be similar to a preliminary investigation in a criminal case. The similarity, however, ends there for, if the investigation were akin to that in a criminal case but all the other succeeding steps were those for a civil proceeding, then the process as a whole is definitely not criminal. Were it a criminal proceeding, there would be, after preliminary investigation, a reading of the information, a plea of guilty or not guilty, a trial and a reading of judgment in the presence of respondents. But, these steps, as above set forth, are clearly not provided for in the law.

Prescinding from the foregoing discussion, save for annulment of marriage or declaration of its nullity or for legal separation, summary judgment is applicable to all kinds of actions.

#### **FACTS:**

Respondents Imelda R. Marcos, Irene Marcos-Araneta, Ma. Imelda Marcos and Ferdinand R. Marcos, Jr., filed motions seeking reconsideration of our decision dated July 15, 2003 which ordered the forfeiture in favor of the Republic of the Philippines of the Swiss deposits in escrow at the Philippine National Bank (PNB) in the estimated aggregate amount of US\$658,175,373.60 as of January 31, 2002. Respondent Imelda Marcos further alleges that our July 15, 2003 decision will prejudice the criminal cases filed against her.Respondents Ferdinand, Jr. and Imee Marcos also pray that the said decision be set aside and the case be remanded to the Sandiganbayan to give petitioner Republic the opportunity to present witnesses and documents and to afford respondent Marcoses the chance to present controverting evidence. Respondent Irene Araneta, in her motion for reconsideration, merely reiterates the arguments previously raised in the pleadings she filed in this Court and prays that the Court's decision dated July 15, 2003 be set aside.

#### **ISSUE:**

Is summary judgment in forfeiture proceedings a violation of due process?

#### **RULING:**

At the outset, we note that respondents, in their motions for reconsideration, do not raise any new matters for the Court to resolve. The arguments in their motions for reconsideration are mere

reiterations of their contentions fully articulated in their previous pleadings, and exhaustively probed and passed upon by the Court.

Respondent Marcoses argue that the letter and intent of RA 1379 forbid and preclude summary judgment as the process to decide forfeiture cases under the law. It provides for specific jurisdictional allegations in the petition and mandates a well-defined procedure to be strictly observed before a judgment of forfeiture may be rendered.

The issue of the propriety of summary judgment was painstakingly discussed and settled in our July 15, 2003 decision:

"A summary judgment is one granted upon motion of a party for an expeditious settlement of the case, it appearing from the pleadings, depositions, admissions and affidavits that there are no important questions or issues of fact posed and, therefore, the movant is entitled to a judgment as a matter of law. A motion for summary judgment is premised on the assumption that the issues presented need not be tried either because these are patently devoid of substance or that there is no genuine issue as to any pertinent fact. It is a method sanctioned by the Rules of Court for the prompt disposition of a civil action where there exists no serious controversy. Summary judgment is a procedural devise for the prompt disposition of actions in which the pleadings raise only a legal issue, not a genuine issue as to any material fact."

Due process of law has two aspects: substantive and procedural due process. In order that a particular act may not be impugned as violative of the due process clause, there must be compliance with both substantive and the procedural requirements thereof. Insofar as substantive due process is concerned, there is no showing that RA 1379 is unfair, unreasonable or unjust. In other words, respondent Marcoses are not being deprived of their property through forfeiture for arbitrary reasons or on flimsy grounds. A careful study of the provisions of RA 1379 readily discloses that the forfeiture proceedings in the Sandiganbayan did not violate the substantive rights of respondent Marcoses. These proceedings are civil in nature, contrary to the claim of the Marcoses that it is penal in character.

The rule is settled that forfeiture proceedings are actions in rem and therefore civil in nature. The proceedings under RA 1379 do not terminate in the imposition of a penalty but merely in the forfeiture of the properties illegally acquired in favor of the State.

In short, there is a petition, then an answer and lastly, a hearing. The preliminary investigation required prior to the filing of the petition, in accordance with Section 2 of the Act, is expressly provided to be similar to a preliminary investigation in a criminal case. The similarity, however, ends there for, if the investigation were akin to that in a criminal case but all the other succeeding steps were those for a civil proceeding, then the process as a whole is definitely not criminal. Were it a criminal proceeding, there would be, after preliminary investigation, a reading of the information, a plea of guilty or not guilty, a trial and a reading of judgment in the presence of respondents. But, these steps, as above set forth, are clearly not provided for in the law.

Prescinding from the foregoing discussion, save for annulment of marriage or declaration of its nullity or for legal separation, summary judgment is applicable to all kinds of actions.

The proceedings in RA 1379 and EO No. 14 were observed in the prosecution of the petition for forfeiture. Section 1 of EO No. 14-A, dated August 18, 1986, amending Section 3 of EO No. 14, provides that civil suits to recover unlawfully acquired property under RA 1379 may be proven by preponderance of evidence. Under RA 1379 and EO Nos. 1 and 2, the Government is required only to state the known lawful income of respondents for the prima facie presumption of illegal provenance to attach. As we fully explained in our July 15, 2003 decision, petitioner Republic was able to establish this prima facie presumption. Thus, the burden of proof shifted, by law, to the respondents to show by clear and convincing evidence that the Swiss deposits were lawfully acquired and that they had other legitimate sources of income. This, respondent Marcoses did not do. They failed — or rather, refused — to raise any genuine issue of fact warranting a trial for the reception of evidence therefor. For this reason and pursuant to the State policy to expedite recovery of ill-gotten wealth, petitioner Republic moved for summary judgment which the Sandiganbayan appropriately acted on.

Respondents also claim that summary judgment denies them their right to a hearing and to present evidence purposely granted under Section 5 of RA 1379.Respondents were repeatedly accorded full opportunity to present their case, their defenses and their pleadings. Not only did they obstinately refuse to do so. Respondents time and again tried to confuse the issues and the Court itself, and to delay the disposition of the case.

For twelve long years, respondent Marcoses tried to stave off this case with nothing but empty claims of "lack of knowledge or information sufficient to form a belief," or "they were not privy to the transactions," or "they could not remember (because the transactions) happened a long time ago" or that the assets "were lawfully acquired." And they now allege deprivation of their right to be heard and present evidence in their defense? It would be repulsive to our basic concepts of justice and fairness to allow respondents to further delay the adjudication of this case and defeat the judgment of this Court which was promulgated only after all the facts, issues and other considerations essential to a fair and just determination had been judiciously evaluated.

#### The Provincial Government of Surigao Del Sur

G.R. No. 220211, FIRST DIVISION, June 5, 2017, PERLAS-BERNABE, J.

Except for the defenses of: (a) lack of jurisdiction over the subject matter of the case; (b) litis pendentia; (c) res judicata; and/or (d) prescription, other defenses must be invoked when an answer or a motion to dismiss is filed in order to prevent awaiver thereof. Otherwise stated, if a defendant fails to raise a defense not specifically excepted in Section 1, Rule 9 of the Rules of Court either in a motion to dismiss or in the answer, such defense shall be deemed waived, and consequently, defendant is already estopped from relying upon the same in further proceedings.

In the instant case, a judicious review of the records reveals that respondent's Answer with Counterclaim dated January 6, 2009 did not raise as an issue or as a defense petitioners' non-execution

of the sworn statement pertained to in Paragraph 4.3, Article IV of the construction agreements. In fact, such matter was only raised in its Motion to Dismiss filed more than a year later after the Answer, or on May 24, 2010, to support the ground relied upon in the said Motion, which is failure to state a cause of action. More importantly, such matter/ defense raised in the motion does not fall within the exceptions laid down in Section 1, Rule 9 of the Rules of Court.

#### **FACTS:**

Petitioner filed an action for specific performance against respondent, alleging that they entered into 3 separate construction agreements to build a Learning Resource Center of Tandag, Tandag Bus Terminal and Tandag Public Market. That despite completion of the projects and demands for payment, the Respondent refuse to pay them. The latter on the other hand, claim that they have no unpaid balance; that the Petitioners were the ones liable to them for defective works and that their claim is already barred by prescription. The respondents also filed a Motion to Dismiss on the ground of failure to state a cause of action. The motion however was denied. The RTC ruled in favour of the Petitioner which was however, reversed by the CA.

#### **ISSUE**:

Whether or not the dismissal for lack of cause of action was proper. (NO)

#### **RULING**:

Except for the defenses of: (a) lack of jurisdiction over the subject matter of the case; (b) litis pendentia; (c) res judicata; and/or (d) prescription, other defenses must be invoked when an answer or a motion to dismiss is filed in order to prevent awaiver thereof. Otherwise stated, if a defendant fails to raise a defense not specifically excepted in Section 1, Rule 9 of the Rules of Court either in a motion to dismiss or in the answer, such defense shall be deemed waived, and consequently, defendant is already estopped from relying upon the same in further proceedings.

In the instant case, a judicious review of the records reveals that respondent's Answer with Counterclaim dated January 6, 2009 did not raise as an issue or as a defense petitioners' non-execution of the sworn statement pertained to in Paragraph 4.3, Article IV of the construction agreements. In fact, such matter was only raised in its Motion to Dismiss filed more than a year later after the Answer, or on May 24, 2010, to support the ground relied upon in the said Motion, which is failure to state a cause of action. More importantly, such matter/ defense raised in the motion does not fall within the exceptions laid down in Section 1, Rule 9 of the Rules of Court.

In light of the foregoing, the CA erred in dismissing petitioners' complaint on a ground belatedly and improperly raised by respondent. Thus, the Court is constrained to overturn said dismissal and in tum, uphold the RTC's finding of liability on the part of respondents, especially considering that it issued Certificates of Final Acceptance essentially stating that the projects were satisfactorily completed, free from major defects, and that it was formally accepting the same.

# MANUEL C. BUNGCAYAO, SR, *Petitioner*, -versus- FORT ILOCANDIA PROPERTY HOLDINGS, AND DEVELOPMENT CORPORATION, *Respondent*.

G.R. No. 170483, SECOND DIVISION, April 19, 2010, CARPIO, J.

The criteria to determine whether the counterclaim is compulsory or permissive are as follows:

- (a) Are issues of fact and law raised by the claim and by the counterclaim largely the same?
- (b) Would res judicata bar a subsequent suit on defendant's claim, absent the compulsory rule?
- (c) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim?
- (d) Is there any logical relations between the claim and the counterclaim?

A positive answer to all four questions would indicate that the counterclaim is compulsory.

In this case, the only issue in the complaint is whether Manuel, Jr. is authorized to sign the Deed of Assignment, Release, Waiver and Quitclaim in favor of respondent without petitioner's express approval and authority. In an Order dated 6 November 2003, the trial court confirmed the agreement of the parties to cancel the Deed of Assignment, Release, Waiver and Quitclaim and the return of ₱400,000 to respondent. The only claim that remained was the claim for damages against respondent. The trial court resolved this issue by holding that any damage suffered by Manuel, Jr. was personal to him. The trial court ruled that petitioner could not have suffered any damage even if Manuel, Jr. entered into an agreement with respondent since the agreement was null and void.

Respondent filed three counterclaims. The only counterclaim that remained was for the recovery of possession of the subject property. While this counterclaim was an offshoot of the same basic controversy between the parties, it is very clear that it will not be barred if not set up in the answer to the complaint in the same case. Respondent's second counterclaim, contrary to the findings of the trial court and the Court of Appeals, is only a permissive counterclaim. It is not a compulsory counterclaim. It is capable of proceeding independently of the main case.

#### **FACTS:**

Bungcayao, Sr. claimed to be one of the two entrepreneurs who introduced improvements on the foreshore area of Calayab Beach in 1978 when Fort Ilocandia Hotel started its construction in the area. Thereafter, other entrepreneurs began setting up their own stalls in the foreshore area. They later formed themselves into the D'Sierto Beach Resort Owner's Association, Inc. (D'Sierto).

In July 1980, six parcels of land in Barrio Balacad (now Calayad) were transferred, ceded, and conveyed to the Philippine Tourism Authority (PTA) pursuant to Presidential Decree No. 1704. Fort Ilocandia Resort Hotel was erected on the area. Petitioner and other D'Sierto members applied for a foreshore lease and was granted a provisional permit. Fort Ilocandia Property Holdings and Development Corporation (respondent) filed a foreshore application over a 14-hectare area abutting the Fort Ilocandia Property, including the 5-hectare portion applied for by D'Sierto members. The foreshore applications became the subject matter of a conflict case. DENR Regional Executive Director Victor J. Ancheta denied the foreshore lease applications of the D'Sierto members, including petitioner, on the ground that the subject area applied for fell either within the titled property or within the foreshore areas applied for by respondent.

Respondent, through its Public Relations Manager Arlene de Guzman, invited the D'Sierto members to a luncheon meeting to discuss common details beneficial to all parties concerned. Petitioner alleged that his son, Manuel Bungcayao, Jr., who attended the meeting, manifested that he still had to consult his parents about the offer but upon the undue pressure exerted by Atty. Marcos, he accepted the payment and signed the Deed of Assignment, Release, Waiver and Quitclaim in favor of respondent.

Petitioner then filed an action for declaration of nullity of contract before the Regional Trial Court of Laoag. The trial court ruled that the alleged pressure on petitioner's sons could not constitute force, violence or intimidation that could vitiate consent. As regards respondent's counterclaim, the trial court ruled that based on the pleadings and admissions made, it was established that the property occupied by petitioner was within the titled property of respondent.

The CA affirmed the decision in toto. The Court of Appeals ruled that the counterclaims raised by respondent were compulsory in nature, as they arose out of or were connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and did not require for its adjudication the presence of third parties of whom the court could not acquire jurisdiction. The Court of Appeals ruled that respondent was the rightful owner of the subject property and as such, it had the right to recover its possession from any other person to whom the owner has not transmitted the property, including petitioner.

#### **ISSUE:**

Whether respondent's counterclaim is compulsory.

#### **RULING:**

A compulsory counterclaim is any claim for money or any relief, which a defending party may have against an opposing party, which at the time of suit arises out of, or is necessarily connected with, the same transaction or occurrence that is the subject matter of the plaintiff's complaint. It is compulsory in the sense that it is within the jurisdiction of the court, does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, and will be barred in the future if not set up in the answer to the complaint in the same case. Any other counterclaim is permissive.

The criteria to determine whether the counterclaim is compulsory or permissive are as follows:

- (a) Are issues of fact and law raised by the claim and by the counterclaim largely the same?
- (b) Would *res judicata* bar a subsequent suit on defendant's claim, absent the compulsory rule?
- (c) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim?
- (d) Is there any logical relations between the claim and the counterclaim?

A positive answer to all four questions would indicate that the counterclaim is compulsory.

In this case, the only issue in the complaint is whether Manuel, Jr. is authorized to sign the Deed of Assignment, Release, Waiver and Quitclaim in favor of respondent without petitioner's express approval and authority. In an Order dated 6 November 2003, the trial court confirmed the agreement of the parties to cancel the Deed of Assignment, Release, Waiver and Quitclaim and the return of ₹400,000 to respondent. The only claim that remained was the claim for damages against respondent. The trial court resolved this issue by holding that any damage suffered by Manuel, Jr. was personal to him. The trial court ruled that petitioner could not have suffered any damage even if Manuel, Jr. entered into an agreement with respondent since the agreement was null and void. Respondent filed three counterclaims. The only counterclaim that remained was for the recovery of possession of the subject property. While this counterclaim was an offshoot of the same basic controversy between the parties, it is very clear that it will not be barred if not set up in the answer to the complaint in the same case. Respondent's second counterclaim, contrary to the findings of the trial court and the Court of Appeals, is only a permissive counterclaim. It is not a compulsory counterclaim. It is capable of proceeding independently of the main case.

The rule in permissive counterclaim is that for the trial court to acquire jurisdiction, the counterclaimant is bound to pay the prescribed docket fees. Any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court. In this case, respondent did not dispute the non-payment of docket fees. Respondent only insisted that its claims were all compulsory counterclaims. As such, the judgment by the trial court in relation to the second counterclaim is considered null and void<sup>22</sup> without prejudice to a separate action which respondent may file against petitioner.

# PHILTRANCO SERVICE ENTERPRISES, INC., Petitioner, -versus- FELIX PARAS AND INLAND TRAILWAYS, INC., and HON. COURT OF APPEALS, Respondents.

G.R. No. 161909, FIRST DIVISION, April 25, 2012, BERSAMIN, J.

#### **FACTS:**

Felix Paras boarded a bus owned and operated by Inland Trailways. Inc. and driven by Calvin Coner. While it was travelling along Maharlika Highway, Tiaong, Quezon, it was bumped at the rear by a Philtranco bus driven by Apolinar Miralles which caused the Inland bus to smash to a parked cargo truck. Paras filed a complaint for damages based on breach of contract of carriage against Inland. Inland filed a third-party complaint against Philtranco and Apolinar Miralles. RTC ruled that Philtranco and Apolinar Miralles are liable. The CA affirmed the decision and denied the subsequent motion for reconsideration.

#### **ISSUE:**

Whether the third-party defendants are solely liable to Paras. (YES)

#### **RULING:**

The apparent objective of Inland was not to merely subrogate the third-party defendants for itself, as Philtranco appears to suggest, but, rather, to obtain a different relief whereby the third-party defendants would be held directly, fully and solely liable to Paras and Inland for whatever damages

each had suffered from the negligence committed by Philtranco and its driver. In other words, Philtranco and its driver were charged here as joint tortfeasors who would be jointly and severally be liable to Paras and Inland. Impleading Philtranco and its driver through the third-party complaint filed on March 2, 1990 was correct. Paras' cause of action against Inland (breach of contract of carriage) did not need to be the same as the cause of action of Inland against Philtranco and its driver (tort or quasi-delict) in the impleader. It is settled that a defendant in a contract action may join as third-party defendants those who may be liable to him in tort for the plaintiffs claim against him, or even directly to the plaintiff.

# FELIX MARTOS, et. al., *Petitioners,* -versus- NEW SAN JOSE BUILDERS, INC., *Respondent*. G.R. No. 192650, THIRD DIVISION, October 24, 2012, MENDOZA, *J.*

The verification requirement is significant, as it is intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. Verification is deemed substantially complied with when, as in this case, one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct. The absence of a proper verification is cause to treat the pleading as unsigned and dismissible.

The lone signature of Martos would have been sufficient if he was authorized by his co-petitioners to sign for them. Unfortunately, petitioners failed to adduce proof that he was so authorized. Considering that the dismissal of the other complaints by the LA was without prejudice, the other complainants should have taken the necessary steps to rectify their procedural mistake after the decision of the LA was rendered. They should have corrected this procedural flaw by immediately filing another complaint with the correct verification this time. Surprisingly, they did not even attempt to correct this technical blunder. Worse, they committed the same procedural error when they filed their appealwith the NLRC.

#### **FACTS:**

New San Jose Builders, Inc. (hereafter petitioner) is a domestic corporation duly organized and existing under the laws of the Philippines and is engaged in the construction of road, bridges, buildings, and low cost houses primarily for the government. One of the projects of petitioner is the San Jose Plains Project (hereafter SJPP), located in Montalban, Rizal. SJPP, which is also known as the "Erap City" calls for the construction of low cost housing, which are being turned over to the National Housing Authority to be awarded to deserving poor families. Private respondents alleged that, on various dates, petitioner hired them on different positions.

Sometime in 2000, petitioner was constrained to slow down and suspend most of the works on the SJPP project due to lack of funds of the National Housing Authority. Thus, the workers were informed that many of them [would] be laid off and the rest would be reassigned to other projects. On different dates, three (3) Complaints for Illegal Dismissal and for money claims were filed before the NLRC against petitioner and Jose Acuzar, by private respondents.

Petitioner denies that private respondents were illegally dismissed, and alleged that they were project employees, whose employments were automatically terminated upon completion of the project for which they were hired. On the other hand, private respondents claim that petitioner hired them as regular employees, continuously and without interruption, until their dismissal on February 28, 2002.

LA handed down a decision declaring, among others, that petitioner Felix Martos (Martos) was illegally dismissed. The NLRC resolved the appeal by dismissing the one filed by respondent and partially granting that of the other petitioners.

The CA rendered a decision reversing and setting aside the July 30, 2008 Decision and the October 28, 2008 Resolution of the NLRC and reinstating the May 23, 2003 Decision of the LA. The CA explained that the NLRC committed grave abuse of discretion in reviving the complaints of petitioners despite their failure to verify the same. Out of the 102 complainants, only Martos verified the position paper and his counsel never offered any explanation for his failure to secure the verification of the others.

#### **ISSUE:**

Whether or not the CA was correct in dismissing the complaints filed by those petitioners who failed to verify their position papers. (YES)

#### **RULING:**

Sections 4 and 5 of Rule 7 of the 1997 Rules of Civil Procedure provide:

"SEC. 4. Verification. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleadings and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief" or lacks a proper verification, shall be treated as an unsigned pleading.

SEC. 5. Certification against forum shopping. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith:

(a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report

that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions."

The verification requirement is significant, as it is intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. Verification is deemed substantially complied with when, as in this case, one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct. The absence of a proper verification is cause to treat the pleading as unsigned and dismissible.

The lone signature of Martos would have been sufficient if he was authorized by his co-petitioners to sign for them. Unfortunately, petitioners failed to adduce proof that he was so authorized. Considering that the dismissal of the other complaints by the LA was without prejudice, the other complainants should have taken the necessary steps to rectify their procedural mistake after the decision of the LA was rendered. They should have corrected this procedural flaw by immediately filing another complaint with the correct verification this time. Surprisingly, they did not even attempt to correct this technical blunder. Worse, they committed the same procedural error when they filed their appeal with the NLRC.

# GEORGIA T. ESTEL, Petitioner, -versus- RECAREDO P. DIEGO, SR. and RECAREDO R. DIEGO, JR., Respondents.

G.R. No. 174082, THIRD DIVISION, January 16, 2012, PERALTA, J.

Section 4, Rule 7 of the Rules of Court, as amended by A.M. No. 00-2-10-SC provides:

"Sec. 4. Verification. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief" or lacks a proper verification, shall be treated as an unsigned pleading.

A reading of respondents' verification reveals that they complied with the abovequoted procedural rule. Respondents confirmed that they had read the allegations in the Complaint which were true and correct based on their personal knowledge. The addition of the words "to the best" before the phrase "of our own personal knowledge" did not violate the requirement under Section 4, Rule 7, it being sufficient that the respondents declared that the allegations in the complaint are true and correct based on their personal knowledge.

Verification is deemed substantially complied with when, as in the instant case, one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

#### **FACTS:**

The present petition originated from a Complaint for Forcible Entry, Damages and Injunction with Application for Temporary Restraining Order filed by herein respondents Recaredo P. Diego, Sr., and Recaredo R. Diego, Jr. with the Municipal Trial Court in Cities (MTCC) of Gingoog City, Misamis Oriental. Respondents alleged that on April 16, 1991, they entered into a contract of sale of a 306 – square-meter parcel of land, denominated as Lot 19, with petitioner; after receiving the amount of ₱17,000.00 as downpayment, petitioner voluntarily delivered the physical and material possession of the subject property to respondents; respondents had been in actual, adverse and uninterrupted possession of the subject lot since then and that petitioner never disturbed, molested, annoyed nor vexed respondents with respect to their possession of the said property; around 8:30 in the morning of July 20, 1995, petitioner, together with her two grown-up sons and five other persons, uprooted the fence surrounding the disputed lot, after which they entered its premises and then cut and destroyed the trees and plants found therein; respondent Recaredo R. Diego, Jr. witnessed the incident but found himself helpless at that time. Respondents prayed for the restoration of their possession, for the issuance of a permanent injunction against petitioner as well as payment of damages, attorney's fees and costs of suit.

The MTCC rendered a Decision in favour of respondents. The RTC rendered its Decision affirming the assailed Decision of the MTCC. The CA promulgated its Decision which affirmed the Decision of the RTC.

#### **ISSUE:**

Whether the Court of Appeals erred in not recognizing that the RTC Branch 27 of Gingoog City failed to make a finding of fact that the complaint states no cause of action.

#### **RULING:**

Petitioner avers that the complaint states no cause of action because the verification and certificate of non-forum shopping accompanying the complaint are defective and, as such, the complaint should be treated as an unsigned pleading. As to the verification, petitioner contends that it should be based on respondent's personal knowledge or on authentic record and not simply upon

"knowledge, information and belief." With respect to the certificate of non-forum shopping, petitioner claims that its defect consists in respondents' failure to make an undertaking therein that if they should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals or any other tribunal or agency, they shall report that fact within five (5) days therefrom to the court or agency wherein the original pleading and sworn certification have been filed.

The Court does not agree.

The Court notes that this issue was not raised before the MTCC. Even granting that this matter was properly raised before the court *a quo*, the Court finds that there is no procedural defect that would have warranted the outright dismissal of respondents' complaint as there is compliance with the requirement regarding verification.

Section 4, Rule 7 of the Rules of Court, as amended by A.M. No. 00-2-10-SC provides:

"Sec. 4. *Verification*. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief" or lacks a proper verification, shall be treated as an unsigned pleading.

A reading of respondents' verification reveals that they complied with the abovequoted procedural rule. Respondents confirmed that they had read the allegations in the Complaint which were true and correct based on their personal knowledge. The addition of the words "to the best" before the phrase "of our own personal knowledge" did not violate the requirement under Section 4, Rule 7, it being sufficient that the respondents declared that the allegations in the complaint are true and correct based on their personal knowledge.

Verification is deemed substantially complied with when, as in the instant case, one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

As to respondents' certification on non-forum shopping, a reading of respondents' Verification/Certification reveals that they, in fact, certified therein that they have not commenced any similar action before any other court or tribunal and to the best of their knowledge no such other action is pending therein. The only missing statement is respondents' undertaking that if they should thereafter learn that the same or similar action has been filed or is pending, they shall report such fact to the court. This, notwithstanding, the Court finds that there has been substantial compliance on the part of respondents.

It is settled that with respect to the contents of the certification against forum shopping, the rule of substantial compliance may be availed of. This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. It does not thereby interdict substantial compliance with its provisions under justifiable circumstances, as the Court finds in the instant case.

## ATTY. EMMANUEL D. AGUSTIN, et al. vs. ALEJANDRO CRUZ-HERRERA G.R. NO. 174564, FIRST DIVISION, FEBRUARY 12, 2014, REYES, J.

The petition is dismissible outright for being accompanied by a defective certification of non-forum shopping having been signed by Atty. Agustin instead of the complainants as the principal parties. Obviously **it is the petitioner**, and not always the counsel whose professional services have been retained for a particular case, **who is in the best position to know whether he or it actually filed or caused the filing of a petition in that case**. Hence, a certification against forum shopping by counsel is a defective certification.

It has been repeatedly emphasized that in the case of natural persons, the certification against forum shopping must be signed by the principal parties themselves and not by the attorney. The certification against forum shopping must be signed by the plaintiff or any of the principal parties and not by the attorney. For such certification is a peculiar personal representation on the part of the principal party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action. Hence, the petition is dismissible outright for being accompanied by a defective certification of non-forum shopping having been signed by Atty. Agustin instead of the complainants as the principal parties.

#### **FACTS:**

Respondent Herrera was the President of Podden while complainants were assemblers and/or line leader assigned at the production department. In 1993, the complainants were terminated from employment due to financial reverses. Upon verification, however, with the Department of Labor and Employment, no such report of financial reverses or even retrenchment was filed. This prompted the complainants to file a complaint for illegal dismissal, monetary claims and damages against Podden and Herrera. They engaged the services of Atty. Agustin to handle the case.

The Labor Arbiter issued an order to immediately reinstate the complainants to their former positions without loss of seniority rights and other privileges with full backwages from date of dismissal up to actual date of reinstatement. Podden and Herrera were further ordered to pay complainants their money claims representing their underpayment of wages, 13th month pay, premium pay for holidays and rest days and service incentive leave pay to be computed by the Fiscal Examiner of the Research, Information and Computation Unit of the Commission in due time. Podden and Herrera were furthermore ordered to pay each complainant moral and exemplary damages, as well as ten (10%) of the total awards as attorney's fee.

No appeal was taken from the foregoing judgment hence, a motion for execution was filed. Herrera filed a Manifestation and Motion to deny issuance of the writ stating, among others, that Podden ceased operations on almost four years before judgment was rendered by the LA on the illegal dismissal complaint and that nine of the eleven employees have executed Waivers and Quitclaims rendering any execution of the judgment inequitable.

Atty. Agustin opposed Herrera's motion and argued that the issuance of a writ of execution is ministerial because the LA decision has long been final and executory there being no appeal taken therefrom. He further claimed that the alleged Waivers and Quitclaims were part of a scheme adopted by Podden to evade its liability and defraud the complainants.

The LA denied the motion for the issuance of a writ of execution. The LA sustained as valid the Waivers and Quitclaims signed by all and not just nine of the complainants. The NLRC reversed the LA Order for the reason that it unlawfully amended, altered and modified the final and executory LA Decision. The quitclaims were also held invalid based on the unconscionably low amount received by each of the complainants as against the judgment award for each individual complainant. Herrera filed a petition for certiorari before the CA assailing the issuances of the NLRC. During the pendency of the petition, a joint compromise agreement was submitted to the CA. The CA approved the joint compromise agreement and entered judgment in accordance therewith. Hence, this petition.

#### **ISSUE:**

Whether the petition filed by Atty. Agustin is meritorious. (NO)

#### RULING:

The petition is dismissible outright for being accompanied by a defective certification of non-forum shopping having been signed by Atty. Agustin instead of the complainants as the principal parties. Obviously it is the petitioner, and not always the counsel whose professional services have been retained for a particular case, who is in the best position to know whether he or it actually filed or caused the filing of a petition in that case. Hence, a certification against forum shopping by counsel is a defective certification.

It has been repeatedly emphasized that in the case of natural persons, the certification against forum shopping must be signed by the principal parties themselves and not by the attorney. The certification against forum shopping must be signed by the plaintiff or any of the principal parties and not by the attorney. For such certification is a peculiar personal representation on the part of the principal party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action. Hence, the petition is dismissible outright for being accompanied by a defective certification of non-forum shopping having been signed by Atty. Agustin instead of the complainants as the principal parties.

The Court has espoused leniency and overlooked such procedural misstep in cases bearing substantial merit complemented by the written authority or general power of attorney granted by the parties to the actual signatory. However, no analogous justifiable reasons exist in the case at bar neither do the claims of Atty. Agustin merit substantial consideration to justify a relaxation of the rule.

It cannot be said that Herrera negotiated for the compromise agreement in bad faith. It remains undisputed that Podden has ceased operations almost four years before the LA Decision was rendered. In view thereof, the implementation of the award became unfeasible and a compromise settlement was more beneficial to the complainants as it assured them of reparation, albeit at a reduced amount. This was the same situation prevailing at the time when Herrera manifested and

reiterated before the CA that a concession has been reached by the parties. Thus, the motivating force behind the settlement was not to deprive or prejudice Atty. Agustin of his fees, but rather the inability of a dissolved corporation to fully abide by its adjudged liabilities and the certainty of payment on the part of the complainants.

### PASCUAL AND SANTOS, INC. VS. THE MEMBERS OF THE TRAMO WAKAS NEIGHBORHOOD ASSOCIATION, INC.

G.R. No. 144880, THIRD DIVISION, November 17, 2004, CARPIO MORALES, J.

The requirement under the Rules of Court that the petitioner should sign the certificate of non-forum shopping applies even to corporations, considering that the mandatory directives of the Rules of Court make no distinction between natural and juridical persons.

This Court has ruled that the subsequent submission of proof of authority to act on behalf of a petitioner corporation justifies the relaxation of the Rules for the purpose of allowing its petition to be given due course. It must also be kept in mind that while the requirement of the certificate of non-forum shopping is mandatory, nonetheless the requirements must not be interpreted too literally and thus defeat the objective of preventing the undesirable practice of forum shopping.

#### **FACTS:**

The Members of Tramo Wakas Neighborhood Association, represented by Dominga Magno (respondents), lodged before the Presidential Action Center a petition praying that ownership over three parcels of land be awarded to them.

In their petition, respondents alleged that petitioner claims ownership of the subject lots which they have openly, peacefully and continuously occupied since 1957. The petition was referred to the Land Management Bureau (LMB) for investigation and hearing. The petition was eventually decided by the Director of the LMB in favor of the respondents. Its Motion for Reconsideration having been denied, petitioner lodged an appeal before the Office of the DENR Secretary, which was subsequently dismissed for lack of merit and affirmed the decision of the Director of the LMB. Petitioner's appeal to the Office of the President was likewise dismissed.

Petitioner subsequently filed its Petition for Review with the CA, praying that judgment be rendered (1) reversing and setting aside the OP Decision and the DENR, and (2) declaring the subject lots as no longer forming part of the public domain and have been validly acquired by petitioner; or in the alternative, (1) allowing it to present additional evidence in support of its claim to the subject lots, (2) reversing and setting aside the aforementioned Decisions and Order of the OP and the DENR, and (3) declaring the subject lots as no longer forming part of the public domain and have been validly acquired by petitioner.

By Resolution, the CA dismissed the appeal due to infirm Verification and Certification of non-forum shopping. The Verification and Certification of non-forum shopping was signed merely by Estela Lombos and Anita Pascual who allege that they are the duly authorized representatives of petitioner corporation, without showing any proof whatsoever of such authority. For another, and importantly, the petition for review was filed a day after the period petitioner corporation was supposed to do so.

Petitioner filed a Motion for Reconsideration, arguing that there was no showing that the persons acting on its behalf were not authorized to do so. Attached to the Motion was a Secretary's Certificate showing that petitioner's Board of Directors approved a Resolution on appointing Estela Lombos and Anita Pascual, incumbent directors of the corporation, as its duly authorized representatives who may sign all papers, execute all documents, and do such other acts as may be necessary to prosecute the petition for review. CA denied the MR. Hence, petitioner filed a Petition for Review on Certiorari to the SC.

#### **ISSUE:**

Whether or not the persons who executed the verification and certification of non-forum shopping attached to PSI's manifestation/petition for review filed with the CA were authorized to do so. (YES)

#### **RULING:**

The requirement under the Rules of Court that the petitioner should sign the certificate of non-forum shopping applies even to corporations, considering that the mandatory directives of the Rules of Court make no distinction between natural and juridical persons.

It is undisputed that when the petition for certiorari was filed with the CA, there was no proof attached thereto that Lombos and Pascual were authorized to sign the verification and non-forum shopping certification. Subsequent to the CA's dismissal of the petition, however, petitioner filed a motion for reconsideration to which it attached a certificate issued by its board secretary stating that on February 11, 2000 or prior to the filing of the petition, Lombos and Pascual had been authorized by petitioner's board of directors to file the petition before the CA.

This Court has ruled that the subsequent submission of proof of authority to act on behalf of a petitioner corporation justifies the relaxation of the Rules for the purpose of allowing its petition to be given due course. It must also be kept in mind that while the requirement of the certificate of non-forum shopping is mandatory, nonetheless the requirements must not be interpreted too literally and thus defeat the objective of preventing the undesirable practice of forum shopping.

### ELSA D. MEDADO, Petitioner, vs. HEIRS OF THE LATE ANTONIO CONSING, as represented by DR. SOLEDAD CONSING, Respondents.

G.R. No. 186720, SECOND DIVISION, February 8, 2012, REYES, J.

In any case, we reiterate that where the petitioners are immediate relatives, who share a common interest in the property subject of the action, the fact that only one of the petitioners executed the verification or certification of forum shopping will not deter the court from proceeding with the action. In Heirs of Domingo Hernandez, Sr. v. Mingoa, Sr., we held:

Even if only petitioner Domingo Hernandez, Jr. executed the Verification/Certification against forum-shopping, this will not deter us from proceeding with the judicial determination of the issues in this petition. As we ratiocinated in Heirs of Olarte v. Office of the President:

The general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs in a case and the signature of only one of them is insufficient. However, **the** 

Court has also stressed that the rules on forum shopping were designed to promote and facilitate the orderly administration of justice and thus should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective. The rule of substantial compliance may be availed of with respect to the contents of the certification. This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. Thus, under justifiable circumstances, the Court has relaxed the rule requiring the submission of such certification considering that although it is obligatory, it is not jurisdictional.

Here, all the petitioners are immediate relatives who share a common interest in the land sought to be reconveyed and a common cause of action raising the same arguments in support thereof. There was sufficient basis, therefore, for Domingo Hernandez, Jr. to speak for and in behalf of his co-petitioners when he certified that they had not filed any action or claim in another court or tribunal involving the same issues. Thus, the Verification/Certification that Hernandez, Jr. executed constitutes substantial compliance under the Rules.

#### **FACTS:**

Spouses Medado and Estate of Consing executed Deeds of Sale with Assumption of Mortgage of the property identified as Hacienda. As part of the deal, Spouses Medado undertook to assume the estate's loan with PNB. Subsequent to the sale, however, the Estate of Consing offered the subject lots to the government. Estate of Consing also instituted with the RTC, an action for rescission and damages against Spouses Medado due to the alleged failure of the spouses to meet the conditions in their agreement.

In the meantime while the case for rescission was pending, Land Bank issued in favor of the Estate of Consing a certificate of deposit of cash as compensation for the lots. Spouses Medado feared that LBP would release the full proceeds thereof to the Estate of Consing, they institute an action for injunction to restrain LBP from releasing the remaining amount of the proceeds of the lots to Estate of Consing, and restraining the Estate of Consing from receiving these proceeds RTC granted the injunction and the Writ of Preliminary Injunction was issued.

The writ was implemented 1 day before the hearing for the motion for reconsideration filed by Heirs of Consing Feeling aggrieved, the heirs of the late Antonio Consing questioned the RTC's order via a petition for certiorari filed with the CA. They sought, among other reliefs, the dismissal of the complaint for injunction for violation of the rules on litis pendentia and forum shopping. On the matter of the absence of a motion for reconsideration of the trial court's order before resorting to a petition for certiorari, the heirs explained that the implementation of the questioned writs rendered their motion for reconsideration moot and academic. The heirs argued that their case was within the exceptions to the general rule that a petition under Rule 65 will not lie unless a motion for reconsideration is first filed.

The CA set aside the ruling of RTC. The CA ruled that the RTC gravely abused its discretion in taking cognizance of Civil Case for injunction during the pendency of Civil Case for rescission and damages as this violates the rule against forum shopping.

#### **ISSUE:**

Whether or not the requirement for verification and certification against forum shopping were complied with by the heirs of Consing when the same is solely signed by Soledad administratix. (YES)

#### **RULING:**

Before us, the petitioner contended that the consolidated verification and certification against forum shopping of the petition filed with the CA was defective: first, for being signed only by Soledad, instead of by all the petitioners, and second, its jurat cites a mere community tax certificate of Soledad, instead of a government-issued identification card required under the 2004 Rules on Notarial Practice. The second ground was never raised by herein petitioner in her comment on the CA petition, thus, it cannot be validly raised by the petitioner at this stage.

As regards the first ground, records show that Soledad signed the verification and certification against forum shopping on behalf of her co-petitioners by virtue of a SPA attached to the petition filed with the CA. The SPA, signed by her co-heirs Ma. Josefa Consing Saguitguit, Ma. Carmela Consing Lopez, Ma. Lourdes Consing Gonzales and Mary Rose Consing Tuason, provides that their attorney-in-fact Soledad is authorized:

To protect, sue, prosecute, defend and adopt whatever action necessary and proper relative and with respect to our right, interest and participation over said properties, particularly those described in previous titles under TCT No. T-498, TCT No. T-31275, TCT No. T-31276 and TCT No. T-31277 of the [R]egister of Deeds, Cadiz City, covering a total area of 73.6814 square meters, and declared in the name of said Antonio Consing and located in Brgy. Magsaysay, Cadiz City, Negros Occidental, the same parcels of land are the subject of judicial litigation before the [R]egional Trial [Court], Branch 44, Bacolod City, docketed as Civil [C]ase No. 11320, and docketed as Civil Case No. 797-C; pending in said court and which cases may at anytime be elevated to the Court of Appeals and/or Supreme Court as the circumstances so warrant.

As may be gleaned from the foregoing, the authority of Soledad includes the filing of an appeal before the CA, including the execution of a verification and certification against forum shopping therefor, being acts necessary "to protect, sue, prosecute, defend and adopt whatever action necessary and proper" in relation to their rights over the subject properties.

In addition, the allegations and contentions embodied in the CA petition do not deviate from the claims already made by the heirs in Civil Case Nos. 00-11320 and 797-C, both specifically mentioned in the SPA. We emphasize that the verification requirement is simply intended to secure an assurance that the allegations in the pleading are true and correct, and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. We rule that there was no deficiency in the petition's verification and certification against forum shopping filed with the CA.

In any case, we reiterate that where **the petitioners are immediate relatives, who share a common interest in the property subject of the action, the fact that only one of the petitioners executed the verification or certification of forum shopping will not deter the court from proceeding with the action.** In Heirs of Domingo Hernandez, Sr. v. Mingoa, Sr., we held:

Even if only petitioner Domingo Hernandez, Jr. executed the Verification/Certification against forum-shopping, this will not deter us from proceeding with the judicial determination of the issues in this petition. As we ratiocinated in Heirs of Olarte v. Office of the President:

The general rule is that the certificate of non-forum shopping must be signed by all the plaintiffs in a case and the signature of only one of them is insufficient. However, the Court has also stressed that the rules on forum shopping were designed to promote and facilitate the orderly administration of justice and thus should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective. The rule of substantial compliance may be availed of with respect to the contents of the certification. This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded. Thus, under justifiable circumstances, the Court has relaxed the rule requiring the submission of such certification considering that although it is obligatory, it is not jurisdictional.

Here, all the petitioners are immediate relatives who share a common interest in the land sought to be reconveyed and a common cause of action raising the same arguments in support thereof. There was sufficient basis, therefore, for Domingo Hernandez, Jr. to speak for and in behalf of his co-petitioners when he certified that they had not filed any action or claim in another court or tribunal involving the same issues. Thus, the Verification/Certification that Hernandez, Jr. executed constitutes substantial compliance under the Rules.

Furthermore, we have consistently held that verification of a pleading is a formal, not a jurisdictional, requirement intended to secure the assurance that the matters alleged in a pleading are true and correct. Thus, the court may simply order the correction of unverified pleadings or act on them and waive strict compliance with the rules. It is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification; and when matters alleged in the petition have been made in good faith or are true and correct. It was based on this principle that this Court had also allowed herein petitioner, via our Resolution dated April 22, 2009, a chance to submit a verification that complied with Section 4, Rule 7 of the Rules of Court, as amended, instead of us dismissing the petition outright.

## VIVIAN RAMIREZ, et al. vs. MAR FISHING CO., INC., MIRAMAR FISHING CO., INC., ROBERT BUEHS AND JEROME SPITZ.

G.R. No. 168208, SECOND DIVISION, June 13, 2012, SERENO, J.

The Rules of Court provide that a petition for certiorari must be verified and accompanied by a sworn certification of non-forum shopping. Failure to comply with these mandatory requirements shall be sufficient ground for the dismissal of the petition. Considering that only 3 of the 228 named petitioners signed the requirement, the CA dismissed the case against them, as they did not execute a Verification and Certification against forum shopping.

Indeed, the general rule is that subsequent compliance with the requirements will not excuse a party's failure to comply in the first instance. Thus, on procedural aspects, the appellate court correctly dismissed the case. However, this Court has recognized that the merit of a case is a **special circumstance or compelling reason that justifies the relaxation of the rule** requiring verification and certification of non-forum shopping.

#### **FACTS:**

Mar Fishing Co., Inc. engaged in the business of fishing and canning of tuna, sold its principal assets to co-respondent Miramar through public bidding. Proceeds of the sale were paid to the Trade and Investment Corp. to cover Mar Fishing's outstanding obligation in the amount of ₱ 897,560,041. In view of that transfer, Mar Fishing issued a Memorandum informing all its workers that the company would cease to operate by the end of the month. It notified the DOLE of the closure of its business operations.

Then, Mar Fishing's labor union, Mar Fishing Workers Union – NFL – and Miramar entered into a Memorandum of Agreement for the acquiring company, Miramar, to absorb Mar Fishing's regular rank and file employees whose performance was satisfactory, without loss of seniority rights and privileges previously enjoyed. Unfortunately, petitioners, who worked as rank and file employees, were not hired or given separation pay by Miramar, so they filed Complaints for illegal dismissal with money claims before the Arbitration Branch of the NLRC.

The LA granted separation pay but not claims for illegal dismissal. The NLRC modified the LA's Decision and ruled for the petitioners. The CA Dismissed the action for certiorari against the 225 other petitioners without ruling on the substantive aspects of the case in finding that only 3 of the 228 petitioners signed the Verification and Certification against forum shopping. Petitioners asked the CA to reconsider by invoking the rule that technical rules do not strictly apply to labor cases. The CA still denied petitioners' contentions.

#### **ISSUE:**

Whether or not the CA erred in dismissing their Petition for Review on the ground that their pleading lacked a Verification and Certification against forum shopping? (NO)

#### **RULING:**

The Rules of Court provide that a petition for certiorari must be verified and accompanied by a sworn certification of non-forum shopping. Failure to comply with these mandatory requirements shall be sufficient ground for the dismissal of the petition. Considering that only 3 of the 228 named petitioners signed the requirement, the CA dismissed the case against them, as they did not execute a Verification and Certification against forum shopping.

Petitioners invoke substantial compliance with procedural rules when their Manifestation already contains a Verification and Certification against forum shopping executed by 161 signatories. They heavily rely on Jaro v. Court of Appeals, citing Piglas-Kamao v. National Labor Relations Commission and Cusi-Hernandez v. Diaz, in which we discussed that the subsequent submission of the missing documentary attachments with the Motion for Reconsideration amounted to substantial compliance.

However, this very case does not involve a failure to attach the Annexes. Rather, the procedural infirmity consists of omission – the failure to sign a Verification and Certification against forum shopping. Addressing this defect squarely, we have already resolved that because of noncompliance with the requirements governing the certification of non-forum shopping, no error could be validly attributed to the CA when it ordered the dismissal of the special civil action for certiorari. The lack of certification against forum shopping is not curable by mere amendment of a complaint, but shall be a cause for the dismissal of the case without prejudice.

Indeed, the general rule is that subsequent compliance with the requirements will not excuse a party's failure to comply in the first instance. Thus, on procedural aspects, the appellate court correctly dismissed the case. However, this Court has recognized that the merit of a case is a **special circumstance or compelling reason that justifies the relaxation of the rule** requiring verification and certification of non-forum shopping.

MALAYAN INSURANCE CO., INC., YVONNE S. YUCHENGCO, ATTY. EMMANUEL G. VILLANUEVA, SONNY RUBIN, ENGR. FRANCISCO MONDELO, AND MICHAEL REQUIJO, PETITIONERS. VS. EMMA CONCEPCION L. LIN, RESPONDENT.

G.R. No. 207277, FIRST DIVISION, January 16, 2017, DEL CASTILLO, J.

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 a favorable judgment. It exists where the elements of litis pendentia are present or where a final judgment in one case will amount to res judicata in another. On the other hand, for litis pendentia to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to res judicata in the other case.

While the possibility that these two bodies will come up with conflicting resolutions on the same issue is not far-fetched, the finding or conclusion of one would not necessarily be binding on the other given the difference in the issues involved, the quantum of evidence required and the procedure to be followed. Moreover, public interest and public policy demand the speedy and inexpensive disposition of administrative cases. Hence, Adm. Case No. RD-156 may proceed alongside Civil Case No. Q-95-23135.

#### **FACTS:**

Emma Concepcion Lin filed a collection suit with damages against Malayan Insurance, alleging that she obtained various loans from RCBC secured by six clustered warehouses located at Plaridel, Bulacan; that the five warehouses were insured with Malayan against fire for ₱56 million while the remaining warehouse was insured for ₱2 million; that on February 24, 2008, the five warehouses were gutted by fire; that on April 8, 2008 the Bureau of Fire Protection (BFP) issued a Fire Clearance Certification to her (April 8, 2008 FCC) after having determined that the cause of fire was accidental; that despite the foregoing, her demand for payment of her insurance claim was denied since the forensic investigators hired by Malayan claimed that the cause of the fire was arson and not accidental; that she sought assistance from the Insurance Commission (IC) which, after a meeting among the parties and a conduct of reinvestigation into the cause/s of the fire,

recommended that Malayan pay Lin's insurance claim and/or accord great weight to the BFP's findings; that in defiance thereof, Malayan still denied or refused to pay her insurance claim; and that for these reasons, Malayan's corporate officers should also be held liable for acquiescing to Malayan's unjustified refusal to pay her insurance claim.

Lin also filed an administrative case before the Insurance Commission against Malayan, claiming that since it had been conclusively found that the cause of the fire was "accidental," the only issue left to be resolved is whether Malayan should be held liable for unfair claim settlement practice under Section 241 in relation to Section 247 of the Insurance Code due to its unjustified refusal to settle her claim; and that in consequence of the foregoing failings, Malayan's license to operate as a non-life insurance company should be revoked or suspended, until such time that it fully complies with the IC Resolution ordering it to accord more weight to the BFP's findings.

#### **ISSUE:**

Whether or not Lin committed forum shopping. (NO)

#### **RULING:**

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 a favorable judgment. It exists where the elements of litis pendentia are present or where a final judgment in one case will amount to res judicata in another. On the other hand, for litis pendentia to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties, or at least such parties who represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to res judicata in the other case.

The settled rule is that criminal and civil cases are altogether different from administrative matters, such that the disposition in the first two will not inevitably govern the third and vice versa." In the context of the case at bar, matters handled by the IC are delineated as either regulatory or adjudicatory, both of which have distinct characteristics.

#### Go v. Office of the Ombudsman is apropos:

The findings of the trial court will not necessarily foreclose the administrative case before the [IC], or [vice versa]. True, the parties are the same, and both actions are predicated on the same set of facts, and will require identical evidence. But the issues to be resolved, the quantum of evidence, the procedure to be followed[,] and the reliefs to be adjudged by these two bodies are different.

Petitioner's causes of action in Civil Case No. Q-95-23135 are predicated on the insurers' refusal to pay her fire insurance claims despite notice, proofs of losses and other supporting documents. Thus, petitioner prays in her complaint that the insurers be ordered to pay the full-insured value of the losses, as embodied in their respective policies. Petitioner also sought payment of interests and damages in her favor caused by the alleged delay and refusal of the insurers to pay her claims. The principal issue then that must be resolved by the trial court is whether or not petitioner is entitled

to the payment of her insurance claims and damages. The matter of whether or not there is unreasonable delay or denial of the claims is merely an incident to be resolved by the trial court, necessary to ascertain petitioner's right to claim damages, as prescribed by Section 244 of the Insurance Code.

On the other hand, the core, if not the sole bone of contention in Adm. Case No. RD-156, is the issue of whether or not there was unreasonable delay or denial of the claims of petitioner, and if in the affirmative, whether or not that would justify the suspension or revocation of the insurers' licenses. Moreover, in Civil Case No. Q-95-23135, petitioner must establish her case by a *preponderance of evidence*, or simply put, such evidence that is of greater weight, or more convincing than that which is offered in opposition to it. In Adm. Case No. RD-156, the degree of proof required of petitioner to establish her claim is *substantial evidence*, which has been defined as that amount of relevant evidence that a reasonable mind might accept as adequate to justify the conclusion.

In addition, the procedure to be followed by the trial court is governed by the Rules of Court, while the [IC] has its own set of rules and it is not bound by the rigidities of technical rules of procedure. These two bodies conduct independent means of ascertaining the ultimate facts of their respective cases that will serve as basis for their respective decisions.

If, for example, the trial court finds that there was no unreasonable delay or denial of her claims, it does not automatically mean that there was in fact no such unreasonable delay or denial that would justify the revocation or suspension of the licenses of the concerned insurance companies. It only means that petitioner failed to prove by preponderance of evidence that she is entitled to damages. Such finding would not restrain the [IC], in the exercise of its regulatory power, from making its own finding of unreasonable delay or denial as long as it is supported by substantial evidence.

While the possibility that these two bodies will come up with conflicting resolutions on the same issue is not far-fetched, the finding or conclusion of one would not necessarily be binding on the other given the difference in the issues involved, the quantum of evidence required and the procedure to be followed. Moreover, public interest and public policy demand the speedy and inexpensive disposition of administrative cases. Hence, Adm. Case No. RD-156 may proceed alongside Civil Case No. Q-95-23135.

### ATTY. FE Q. PALMIANO-SALVADOR vs.CONSTANTINO ANGELES, substituted by LUZ G. ANGELES

G.R. No. 171219, THIRD DIVISION, September 3, 2012, PERALTA, J.

There is nothing on record to show that Diaz had been authorized by respondent to initiate the action against petitioner. The SPA of Diaz was executed more than a month after the complaint was filed and there was no certification from the Philippine Consulate General in San Francisco, California, U.S.A, that McGuirre is indeed a notary public in Santa Clara County, California. Verily, the court cannot give full faith and credit to the official acts of said Robert McGuire, and hence, no evidentiary weight or value can be attached to the document designated as an SPA.

What then, is the effect of a complaint filed by one who has not proven his authority to represent a plaintiff in filing an action? In Tamondong v. Court of Appeals, the Court categorically stated that "[i]f a complaint is filed for and in behalf of the plaintiff [by one] who is not authorized to do so, the complaint is not deemed filed. An unauthorized complaint does not produce any legal effect.

Hence, the court should dismiss the complaint on the ground that it has no jurisdiction over the complaint and the plaintiff."

#### **FACTS:**

Respondent Constantino Angeles, thru one Rosauro Diaz, Jr., filed a complaint for ejectment. The complaint was filed in the name of Angeles, but it was one Rosauro Diaz who executed the verification and certification, alleging therein that he was respondent's attorney-in-fact. There was, however, no copy of any document attached to the complaint to prove Diaz's allegation regarding the authority supposedly granted to him. This prompted petitioner Salvador to raise in her Answer and in her Position Paper, the issue of Diaz's authority to file the case. More than a year after the complaint was filed, respondent attached to his Reply a document entitled SPA supposedly executed by respondent in favor of Rosauro Diaz. Said SPA was executed more than a month after the complaint was filed, appearing to have been notarized by one Robert F. McGuire of Santa Clara County.

#### **ISSUE:**

Whether the court has jurisdiction over the complaint and the plaintiff. (NO)

#### RULING:

There is **nothing on record to show that Diaz had been authorized by respondent to initiate the action against petitioner.** The SPA of Diaz was executed more than a month after the complaint was filed and there was no certification from the Philippine Consulate General in San Francisco, California, U.S.A, that McGuirre is indeed a notary public in Santa Clara County, California. Verily, the court cannot give full faith and credit to the official acts of said Robert McGuire, and hence, no evidentiary weight or value can be attached to the document designated as an SPA.

What then, is the effect of a complaint filed by one who has not proven his authority to represent a plaintiff in filing an action? In *Tamondong v. Court of Appeals*, the Court categorically stated that "[i]f a complaint is filed for and in behalf of the plaintiff [by one] who is not authorized to do so, the complaint is not deemed filed. An unauthorized complaint does not produce any legal effect. Hence, the court should dismiss the complaint on the ground that it has no jurisdiction over the complaint and the plaintiff."

Pursuant to the foregoing ruling, therefore, the MeTC never acquired jurisdiction over this case and all proceedings before it were null and void. The courts could not have delved into the very merits of the case, because legally, there was no complaint to speak of. The court's jurisdiction cannot be deemed to have been invoked at all.

# CEROFERR REALTY CORPORATION vs. COURT OF APPEALS and ERNESTO D. SANTIAGO G.R. No. 139539. FIRST DIVISION, February 5, 2002, PARDO, J.

The rules of procedure require that the complaint must state a concise statement of the ultimate facts or the essential facts constituting the plaintiffs cause of action. A fact is essential if it cannot be stricken out without leaving the statement of the cause of action inadequate. A complaint states a cause of action only when it has its three indispensable elements, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on

the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages. If these elements are not extant, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.

In this case, **petitioner Ceroferrs cause of action has been sufficiently averred in the complaint.** If it were admitted that the right of ownership of petitioner Ceroferr to the peaceful use and possession of Lot 68 was violated by respondent Santiagos act of encroachment and fencing of the same, then petitioner Ceroferr would be entitled to damages.

# **FACTS:**

Plaintiff (Ceroferr Realty Corporation) filed with the RTC, a complainti against defendant Ernesto D. Santiago (Santiago), for damages and injunction, with preliminary injunction. In the complaint, Ceroferr prayed that Santiago and his agents be enjoined from - claiming possession and ownership over Lot No. 68 of the Tala Estate Subdivision, Quezon City,; that Santiago and his agents be prevented from making use of the vacant lot as a jeepney terminal; that Santiago be ordered to pay Ceroferr P650.00 daily as lost income for the use of the lot until possession is restored to the latter; and that Santiago be directed to pay plaintiff Ceroferr moral, actual and exemplary damages and attorney's fees, plus expenses of litigation.

In his answer, defendant Santiago alleged that the vacant lot referred to in the complaint was within Lot No. 90 of the Tala Estate Subdivision and that he had the legal right to fence since this belonged to him.

In the course of the proceedings, there was a verification survey, followed by a relocation survey, whereby it would appear that the vacant lot is inside Lot No. 68. The outcome of the survey, however, was vigorously objected to by defendant who insisted that the area is inside his lot. Defendant, in his manifestation dated November 2, 1994, adverted to the report of a geodetic engineer. Mariano V. Flotildes, to the effect that the disputed portion is inside the boundaries of Lot No. 90 of the Tala Estate Subdivision which is separate and distinct from Lot No. 68, and that the two lots are separated by a concrete fence.

Defendant filed a motion to dismiss the complaint premised primarily on his contention that the trial court cannot adjudicate the issue of damages without passing over the conflicting claims of ownership of the parties over the disputed portion.

The trial court dismissed the case for lack of cause of action and lack of jurisdiction. The court held that plaintiff was in effect impugning the title of defendant which could not be done in the case for damages and injunction before it. It concluded that it could not proceed to decide plaintiffs claim for damages and injunction for lack of jurisdiction because its judgment would depend upon a determination of the validity of defendants title and the identity of the land covered by it. From this ruling, plaintiff appealed to this court insisting that the complaint stated a valid cause of action which was determinable from the face thereof

# **ISSUE:**

Whether Ceroferrs complaint states a sufficient cause of action. (YES)

#### **RULING:**

The rules of procedure require that the complaint must state a concise statement of the ultimate facts or the essential facts constituting the plaintiffs cause of action. A fact is essential if it cannot be stricken out without leaving the statement of the cause of action inadequate. A complaint states a cause of action only when it has its three indispensable elements, namely: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of plaintiff or constituting a breach of the obligation of defendant to the plaintiff for which the latter may maintain an action for recovery of damages. If these elements are not extant, the complaint becomes vulnerable to a motion to dismiss on the ground of failure to state a cause of action.

These elements are present in the case at bar. The complaint alleged that petitioner Ceroferr owned Lot 68 covered by TCT No. RT-90200 (334555). Petitioner Ceroferr used a portion of Lot 68 as a jeepney terminal. The complaint further alleged that respondent Santiago claimed the portion of Lot 68 used as a jeepney terminal since he claimed that the jeepney terminal was within Lot 90 owned by him and covered by TCT No. RT-781 10 (3538) issued in his name.

Despite clarification from petitioner Ceroferr that the jeepney terminal was within Lot 68 and not within Lot 90, respondent Santiago persisted in his plans to have the area fenced. He applied for and was issued a fencing permit by the Building Official, Quezon City. It was even alleged in the complaint that respondentSantiago was preventing petitioner Ceroferr and its agents from entering the property under threats of bodily harm and destroying existing structures thereon.

A defendant who moves to dismiss the complaint on the ground of lack of cause of action, as in this case, hypothetically admits all the averments thereof. The test of sufficiency of the facts found in a complaint as constituting a cause of action is whether or not admitting the facts alleged the court can render a valid judgement upon the same in accordance with the prayer thereof. The hypothetical admission extends to the relevant and material facts well pleaded in the complaint and inferences fairly deducible therefrom. Hence, if the allegations in the complaint furnish sufficient basis by which the complaint can be maintained, the same should not be dismissed regardless of the defense that may be assessed by the defendants.

In this case, **petitioner Ceroferrs cause of action has been sufficiently averred in the complaint**. If it were admitted that the right of ownership of petitioner Ceroferr to the peaceful use and possession of Lot 68 was violated by respondent Santiagos act of encroachment and fencing of the same, then petitioner Ceroferr would be entitled to damages.

# ASIAN CONSTRUCTION AND DEVELOPMENT CORPORATION v. LOURDES K. MENDOZA

G.R. No. 176949, FIRST DIVISION, June 27, 2012, Del Castillo, J.

Based on the foregoing provision, a document is actionable when an action or defense is grounded upon such written instrument or document. In the instant case, the Charge Invoices are not actionable documents per se as these "only provide details on the alleged transactions." These documents need not be attached to or stated in the complaint as these are evidentiary in nature. In fact, respondent's cause of action is not based on these documents but on the contract of sale between the parties.

But although the Charge Invoices are not actionable documents, we find that these, along with the Purchase Orders, are sufficient to prove that petitioner indeed ordered supplies and materials from Highett and that these were delivered to petitioner.

It bears stressing that in civil cases, only a preponderance of evidence or "greater weight of the evidence" is required. In this case, except for a bare denial, no other evidence was presented by petitioner to refute respondent's claim. Thus, we agree with the CA that the evidence preponderates in favor of respondent.

#### **FACTS:**

Lourdes K. Mendoza, sole proprietor of Highett Steel Fabricators filed before the RTC of Caloocan City, a Complaint for a sum of money against Asian Construction and Development Corporation.

In the complaint, respondent alleged that from the period August 7, 1997 to March 4, 1998, petitioner purchased from Highett various fabricated steel materials and supplies amounting to ₱1,206,177.00, exclusive of interests;5 that despite demand, petitioner failed and/or refused to pay;6 and that due to the failure and/or refusal of petitioner to pay the said amount, respondent was compelled to engage the services of counsel.

ASDC moved for a bill of particulars on the ground that no copies of the purchase orders and invoices were attached, but it was denied. Later, the RTC ruled in favor of Mendoza. This was affirmed with modification by the CA.

#### **ISSUE:**

Whether the charge invoices are actionable document. (NO)

#### **RULING:**

The charge invoices are not actionable documents

Section 7 of Rule 8 of the Rules of Court states:

SEC. 7. Action or defense based on document. – Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

Based on the foregoing provision, a document is actionable when an action or defense is grounded upon such written instrument or document. In the instant case, the Charge Invoices are not actionable documents per se as these "only provide details on the alleged transactions." These documents need not be attached to or stated in the complaint as these are evidentiary in nature. In fact, respondent's cause of action is not based on these documents but on the contract of sale between the parties.

Delivery of the supplies and materials was duly proved

But although the Charge Invoices are not actionable documents, we find that these, along with the Purchase Orders, are sufficient to prove that petitioner indeed ordered supplies and materials from Highett and that these were delivered to petitioner.

Moreover, contrary to the claim of petitioner, the Charge Invoices were properly identified and authenticated by witness Tejero who was present when the supplies and materials were delivered to petitioner and when the invoices were stamped received by petitioner's employee, Roel Barandon.

It bears stressing that in civil cases, **only a preponderance of evidence or "greater weight of the evidence" is required.** In this case, except for a bare denial, no other evidence was presented by petitioner to refute respondent's claim. Thus, we agree with the CA that the evidence preponderates in favor of respondent.

# SPOUSES FERNANDO AND MA. ELENA SANTOS vs. LOLITA ALCAZAR, REPRESENTED BY HER ATTORNEY-IN-FACT DELFIN CHUA

G.R. NO. 183034, SECOND DIVISION, MARCH 12, 2014, DEL CASTILLO, J.

While it is a basic rule of evidence that the original copy prevails over a mere photocopy, there is no harm if in a case, both the original and a photocopy thereof are authenticated, identified and formally offered in evidence by the party proponent. Hence, Respondent's failure to present the original copy of the Acknowledgment during the taking of her testimony for the second time, and the presentation of a mere photocopy thereof at said hearing, does not materially affect the outcome of the case. Moreover, the rule that the genuineness and due execution of the instrument shall be deemed admitted, unless the adverse party specifically denies them under oath, applies only to parties to such instrument. Hence only Fernando may be held liable for the judgment amount of P1,456,000.00, since Ma. Elena was not a signatory to the Acknowledgment.

# **FACTS:**

Alcazar, proprietor of LCC, instituted through her attorney-in-fact Delfin Chua a Complaint for sum of money against the spouses Santos, to collect the value of paint and construction materials obtained by the latter from LCC amounting to P1,456,000.00, which remained unpaid despite written demand. The case was docketed as Civil Case No. 9954 and assigned to Branch 5 of the Regional Trial Court of Legazpi City. Respondent's cause of action is based on a document entitled "Acknowledgment" apparently executed by hand by petitioner Fernando

Respondent presented her evidence and testified in court as the lone witness. Petitioners filed a Demurrer to Evidence, which respondent opposed. Petitioners argued that the Acknowledgment – respondent's Exhibit "A" which was presented in court – was not an original copy and thus inadmissible; petitioners' receipt of the written demand was not proved; the alleged deliveries of paint and construction materials were not covered by delivery receipts; and respondent's testimony was merely hearsay and uncorroborated.

The RTC denied petitioners' demurrer for lack of merit.

On March 20, 2006, or the day of the scheduled hearing, petitioners' counsel failed to appear, prompting the trial court to issue an Order 1) denying petitioners' March 15, 2006 motion to reset

for lack of merit and for violating Section 4, Rule 15 of the 1997 Rules of Civil Procedure; 2) declaring that petitioners have waived their right to present evidence; and 3) declaring that Civil Case No. 9954 is deemed submitted for decision.

Petitioners went up to the CA on certiorari. Docketed as CA-G.R. SP. No. 93889, the Petition questioned the denial of petitioners' demurrer. Meanwhile, they filed a Motion for Reconsideration of the March 20, 2006 Order denying their motion to reset, but the trial court denied the same in an Order dated April 24, 2006. The RTC rendered judgment ordering the defendants to pay the plaintiff.

In two separate dates, the CA issued decisions sustaining both the RTC's denial of their demurrer and the RTC judgment ordering the defendants to pay the plaintiff.

#### **ISSUE:**

Whether the trial court erred in denying the petitioner's demurrer to evidence. (NO)

# **RULING:**

Respondent's failure to present the original copy of the Acknowledgment during the taking of her testimony for the second time, and the presentation of a mere photocopy thereof at said hearing, does not materially affect the outcome of the case. It was a mere procedural inadvertence that could have been cured and did not affect petitioners' cause in any manner. As conceded by them and as held by the CA, the original exists and was made part of the records of the case when respondent's evidence was first taken. Though respondent now claims that she had lost the original, the CA proclaimed that the document resides in the record. This would explain then why respondent cannot find it in her possession; it is with the court as an exhibit. Besides, it evidently appears that there is no question raised on the authenticity and contents of the photocopy that was presented and identified in court; petitioners merely insist that the photocopy is inadmissible as a result of respondent's failure to present the original, which they nevertheless admit to exist and is found and included in the record of the case.

While it is a basic rule of evidence that the original copy prevails over a mere photocopy, there is no harm if in a case, both the original and a photocopy thereof are authenticated, identified and formally offered in evidence by the party proponent.

More to the point is the fact that petitioners failed to deny specifically under oath the genuineness and due execution of the Acknowledgment in their Answer. The effect of this is that the genuineness and due execution of the Acknowledgment is deemed admitted. "By the admission of the genuineness and due execution [of such document] is meant that the party whose signature it bears admits that he signed it or that it was signed by another for him with his authority; that at the time it was signed it was in words and figures exactly as set out in the pleading of the party relying upon it; that the document was delivered; and that any formal requisites required by law, such as a seal, an acknowledgment, or revenue stamp, which it lacks, are waived by him. Hence, such defenses as that the signature is a forgery x x x; or that it was unauthorized x x x; or that the party charged signed the instrument in some other capacity than that alleged in the pleading setting it out x x x; or that it was never delivered x x x, are cut off by the admission of its genuineness and due execution."

"There is no need for proof of execution and authenticity with respect to documents the genuineness and due execution of which are admitted by the adverse party." With the consequent admission engendered by petitioners' failure to properly deny the Acknowledgment in their Answer, coupled with its proper authentication, identification and offer by the respondent, not to mention petitioners' admissions in paragraphs 4 to 6 of their Answer that they are indeed indebted to respondent, the Court believes that judgment may be had solely on the document, and there is no need to present receipts and other documents to prove the claimed indebtedness. The Acknowledgment, just as an ordinary acknowledgment receipt, is "valid and binding between the parties who executed it, as a document evidencing the loan agreement they had entered into." The absence of rebutting evidence occasioned by petitioners' waiver of their right to present evidence renders the Acknowledgment as the best evidence of the transactions between the parties and the consequential indebtedness incurred.

Indeed, the effect of the admission is such that "a prima facie case is made for the plaintiff which dispenses with the necessity of evidence on his part and entitles him to a judgment on the pleadings unless a special defense of new matter, such as payment, is interposed by the defendant."

However, as correctly argued by petitioners, only Fernando may be held liable for the judgment amount of P1,456,000.00, since Ma. Elena was not a signatory to the Acknowledgment. She may be held liable only to the extent of P600,000.00, as admitted by her and Fernando in paragraph 5 of their Answer; no case against her may be proved over and beyond such amount, in the absence of her signature and an acknowledgment of liability in the Acknowledgment. The rule that the genuineness and due execution of the instrument shall be deemed admitted, unless the adverse party specifically denies them under oath, applies only to parties to the document.

# FRANCISCO S. TANTUICO, JR vs. REPUBLIC OF THE PHILIPPINES

G.R. No. 89114, EN BANC, December 2, 1991, PADILLA, J.

Where the complaint states ultimate facts that constitute the three essential elements of a cause of action, namely: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right, the complaint states a cause of action, otherwise, the complaint must succumb to a motion to dismiss on that ground of failure to state a cause of action. However, where the allegations of the complaint are vague, indefinite, or in the form of conclusions, the proper recourse would be, not a motion to dismiss, but a motion for a bill of particulars.

In this case, the complaint does not contain any allegation as to how petitioner became, or why he is perceived to be, a dummy, nominee or agent. There is no averment in the complaint how petitioner allowed himself to be used as instrument in the accumulation of ill-gotten wealth, what the concessions, orders and/or policies prejudicial to plaintiff are, why they are prejudicial, and what petitioner had to do with the granting, issuance, and or formulation of such concessions, orders, and/or policies. Moreover, the complaint does not state which corporations petitioner is supposed to be a stockholder, director, member, dummy, nominee and/or agent. More significantly, the petitioner's name does not even appear in annex of the complaint, which is a listing of the alleged "Positions and Participations of Some Defendants".

#### **FACTS:**

Petitioner Francisco S. Tantuico, Jr. was included as defendant in Civil Case No. 0035 in the Sandiganbayan entitled "Republic of the Philippines vs. Benjamin Romualdez, et al." for reconveyance, reversion, accounting, restitution and damages on the theory that: (1) he acted in unlawful concert with the principal defendants, Ferdinand E. Marcos, Imelda R. Marcos, Benjamin Romualdez and Juliette Gomez Romualdez, in the misappropriation and theft of public funds, plunder of the nation's wealth, extortion, blackmail, bribery, embezzlement and other acts of corruption, betrayal of public trust and brazen abuse of power; (2) he acted as dummy, nominee or agent, by allowing himself to be incorporator, director, board member and/or stockholder of corporations beneficially held and/or controlled by the principal defendants; (3) he acted singly or collectively, and/or in unlawful concert with one another, in flagrant breach of public trust and of their fiduciary obligations as public officers; (4) he taking undue advantage of his position as Chairman of the COA and with grave failure to perform his constitutional duties as such Chairman, acting in concert with defendants facilitated and made possible the withdrawals, disbursements and questionable use of government funds; and (5) he acted as dummy, nominee and/or agent by allowing himself to be used as instrument in accumulating ill-gotten wealth in order to conceal and prevent recovery of assets illegally obtained.

On April 11, 1988, after his motion for production and inspection of documents was denied by respondent court in its resolution dated March 8, 1988, petitioner filed a Motion for a Bill of Particulars, alleging inter alia that he is sued for acts allegedly committed by him as (a) a public officer-Chairman of the Commission on Audit, (b) as a private individual, and (c) in both capacities, in a complaint couched in too general terms and shorn of particulars that would inform him of the factual and legal basis thereof, and that to enable him to understand and know with certainty the particular acts allegedly committed by him and which he is now charged with culpability, it is necessary that plaintiff furnish him the particulars sought therein.

In his petition for certiorari, mandamus and prohibition with a prayer for the issuance of a writ of preliminary injunction and/or restraining order, the petitioner seeks to annul and set aside the resolution of the Sandiganbayan, dated April 21, 1989, denying his motion for a bill of particulars as well as its resolution, dated May 29, 1989, which denied his motion for reconsideration; to compel the respondent PCGG to prepare and file a bill of particulars, or that said respondent be ordered to exclude petitioner as defendant in Civil Case No. 0035 should they fail to submit the said bill of particulars; and to enjoin the respondent Sandiganbayan from further proceeding against petitioner until the bill of particulars is submitted, claiming that the respondent Sandiganbayan acted with grave abuse of discretion amounting to lack of jurisdiction in promulgating the aforesaid resolutions and that there is no appeal, nor any plain, speedy and adequate remedy for him in the ordinary course of law other than the present petition. As prayed for, this Court issued on August 1, 1989 a temporary restraining order "effective immediately and continuing until further orders from this Court, ordering the respondent Sandiganbayan to cease and desist from further proceeding in Civil Case No. 0035 pending before it.

#### **ISSUE:**

Whether or not the respondent Sandiganbayan acted with grave abuse of discretion in issuing the disputed resolutions, denying the petitioner for his motion for a bill of particulars. (YES)

#### **RULING:**

A complaint is defined as a concise statement of the ultimate facts constituting the plaintiff's cause or causes of action. Like all other pleadings allowed by the Rules of Court, the complaint shall contain in a methodical and logical form a plain, concise and direct statement of the ultimate facts on which the plaintiff relies for his claim, omitting the statement of mere evidentiary facts. Its office, purpose or function is to inform the defendant clearly and definitely of the claims made against him so that he may be prepared to meet the issues at the trial. The complaint should inform the defendant of all the material facts on which the plaintiff relies to support his demand; it should state the theory of a cause of action which forms the bases of the plaintiff's claim of liability.

The rules on pleading speak of two (2) kinds of facts: the first, the "ultimate facts", and the second, the "evidentiary facts." In Remitere vs. Vda. de Yulo, 21 the term "ultimate facts" was defined and explained as follows:

The term "ultimate facts" as used in Sec. 3, Rule 3 of the Rules of Court, means the essential facts constituting the plaintiffs cause of action. A fact is essential if it cannot be stricken out without leaving the statement of the cause of action insufficient. . . . (Moran, Rules of Court, Vol. 1, 1963 ed., p. 213).

Ultimate facts are important and substantial facts which either directly form the basis of the primary right and duty, or which directly make up the wrongful acts or omissions of the defendant. The term does not refer to the details of probative matter or particulars of evidence by which these material elements are to be established. It refers to principal, determinate, constitutive facts, upon the existence of which, the entire cause of action rests.

while the term "evidentiary fact" has been defined in the following tenor:

Those facts which are necessary for determination of the ultimate facts; they are the premises upon which conclusions of ultimate facts are based. Womack v. Industrial Comm., 168 Colo. 364,451 P. 2d 761, 764. Facts which furnish evidence of existence of some other fact.

Where the complaint states ultimate facts that constitute the three essential elements of a cause of action, namely: (1) the legal right of the plaintiff, (2) the correlative obligation of the defendant, and (3) the act or omission of the defendant in violation of said legal right, the complaint states a cause of action, otherwise, the complaint must succumb to a motion to dismiss on that ground of failure to state a cause of action. However, where the allegations of the complaint are vague, indefinite, or in the form of conclusions, the proper recourse would be, not a motion to dismiss, but a motion for a bill of particulars. Thus, Section 1, Rule 12 of the Rules of Court provides:

Before responding to a pleading or, if no responsive pleading is permitted by these rules, within ten (10) days after service of the pleading upon him, a party may move for a more definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading or to prepare for trial. Such motion shall point out the defects complained of and the details desired.

In this case, the complaint does not contain any allegation as to how petitioner became, or why he is perceived to be, a dummy, nominee or agent. There is no averment in the complaint

how petitioner allowed himself to be used as instrument in the accumulation of ill-gotten wealth, what the concessions, orders and/or policies prejudicial to plaintiff are, why they are prejudicial, and what petitioner had to do with the granting, issuance, and or formulation of such concessions, orders, and/or policies. Moreover, the complaint does not state which corporations petitioner is supposed to be a stockholder, director, member, dummy, nominee and/or agent. More significantly, the petitioner's name does not even appear in annex of the complaint, which is a listing of the alleged "Positions and Participations of Some Defendants".

The allegations in the complaint, above-referred to, pertaining to petitioner are, therefore, deficient in that they merely articulate conclusions of law and presumptions unsupported by factual premises. Hence, without the particulars prayed for in petitioner's motion for a bill of particulars, it can be said the petitioner can not intelligently prepare his responsive pleading and for trial.

Furthermore, the particulars prayed for such as names of persons, names of corporations, dates, amounts involved, a specification of property for identification purposes, the particular transactions involving withdrawals and disbursements, and a statement of other material facts as would support the conclusions and inferences in the complaint, are not evidentiary in nature. On the contrary, those particulars are material facts that should be clearly and definitely averred in the complaint in order that the defendant may, in fairness, be informed of the claims made against him to the end that he may be prepared to meet the issues at the trial.

# D.M. FERRER & ASSOCIATES CORPORATION, Petitioner, vs. UNIVERSITY OF SANTO TOMAS, Respondent.

G.R. No. 189496, SECOND DIVISION, February 1, 2012, SERENO, J.

In Abacan v. Northwestern University, Inc., we said:

It is settled that the existence of a cause of action is determined by the allegations in the complaint. In resolving a motion to dismiss based on the failure to state a cause of action, only the facts alleged in the complaint must be considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for. Indeed, the elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. Only ultimate facts and not legal conclusions or evidentiary facts, which should not be alleged in the complaint in the first place, are considered for purposes of applying the test.

While it is admitted that respondent UST was not a party to the contract, petitioner posits that the former is nevertheless liable for the construction costs. In support of its position, petitioner alleged that (1) UST and USTHI are one and the same corporation; (2) UST stands to benefit from the assets of USTHI by virtue of the latter's Articles of Incorporation; (3) respondent controls the business of USTHI; and (4) UST's officials have performed acts that may be construed as an acknowledgement of respondent's liability to petitioner. Obviously, these issues would have been best resolved during trial.

#### **FACTS:**

On 25 November 2005, petitioner and University of Santo Tomas Hospital, Inc. (USTHI) entered into a Project Management Contract for the renovation of the 4th and 5th floors of the Clinical

Division Building, Nurse Call Room and Medical Records, Medical Arts Tower, Diagnostic Treatment Building and Pay Division Building.

On various dates, petitioner demanded from USTHI the payment of the construction costs amounting to ₱17,558,479.39. However, on 16 April 2008, the University of Santo Tomas (UST), through its rector, Fr. Rolando V. Dela Rosa, wrote a letter informing petitioner that its claim for payment had been denied, because the Project Management Contract was without the required prior approval of the board of trustees. Thus, on 23 May 2008, petitioner filed a Complaint3 for sum of money, breach of contract and damages against herein respondent UST and USTHI when the latter failed to pay petitioner despite repeated demands.

In impleading respondent UST, petitioner alleged that the former took complete control over the business and operation of USTHI, as well as the completion of the construction project.

It also pointed out that the Articles of Incorporation of USTHI provided that, upon dissolution, all of the latter's assets shall be transferred without any consideration and shall inure to the benefit of UST. It appears that USTHI passed a Resolution on 10 January 2008 dissolving the corporation by shortening its corporate term of existence from 16 March 2057 to 31 May 2008.

Finally, petitioner alleged that respondent, through its rector, Fr. Dela Rosa, O.P., verbally assured the former of the payment of USTHI's outstanding obligations. Thus, petitioner posited in part that UST may be impleaded in the case under the doctrine of "piercing the corporate veil," wherein respondent UST and USTHI would be considered to be acting as one corporate entity, and UST may be held liable for the alleged obligations due to petitioner.

Subsequently, respondent filed its Motion to Dismiss dated 12 June 2008. It alleged that the Complaint failed to state a cause of action, and that the claim was unenforceable under the provisions of the Statute of Frauds. The RTC granted the motion and dismissed the Complaint insofar as respondent UST was concerned.

Subsequently, petitioner filed a Petition for Certiorari under Rule 65 with the CA. Petitioner alleged that the trial court committed grave abuse of discretion when it granted respondent's Motion to Dismiss on the basis of the documents submitted in support of the Complaint, and not solely on the allegations stated therein. Petitioner pointed out that the allegations raised questions of fact and law, which should have been threshed out during trial, when both parties would have been given the chance to present evidence supporting their respective allegations.

However, on 26 June 2009, the CA issued the assailed Resolution and dismissed the Petition on the ground that a petition under Rule 65 is the wrong remedy to question the RTC's Order that completely disposes of the case. Instead, petitioner should have availed itself of an appeal under Rule 41 of the Rules of Court.

On 3 September 2009, the CA denied the Motion for Reconsideration through its second assailed Resolution, holding that the motion raised no new issues or substantial grounds that would merit the reconsideration of the court. Hence this Petition.

# **ISSUE:**

Whether or not the trial court committed grave abuse of discretion when it held that the Complaint stated no cause of action. (YES)

#### **RULING:**

In Abacan v. Northwestern University, Inc., we said:

It is settled that the existence of a cause of action is determined by the allegations in the complaint. In resolving a motion to dismiss based on the failure to state a cause of action, only the facts alleged in the complaint must be considered. The test is whether the court can render a valid judgment on the complaint based on the facts alleged and the prayer asked for. Indeed, the elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. **Only ultimate facts and not legal conclusions or evidentiary facts, which should not be alleged in the complaint in the first place, are considered for purposes of applying the test.** 

While it is admitted that respondent UST was not a party to the contract, petitioner posits that the former is nevertheless liable for the construction costs. In support of its position, petitioner alleged that (1) UST and USTHI are one and the same corporation; (2) UST stands to benefit from the assets of USTHI by virtue of the latter's Articles of Incorporation; (3) respondent controls the business of USTHI; and (4) UST's officials have performed acts that may be construed as an acknowledgement of respondent's liability to petitioner. Obviously, these issues would have been best resolved during trial.

The RTC therefore committed grave abuse of discretion when it dismissed the case against respondent for lack of cause of action. The trial court relied on the contract executed between petitioner and USTHI, when the court should have instead considered merely the allegations stated in the Complaint.

# LA MALLORCA, petitioner, vs. HONORABLE COURT OF APPEALS, MARIANO BELTRAN, ET AL., respondents.

G.R. No. L-20761, EN BANC, July 27, 1966, BARRERA, J.

Even assuming arguendo that the contract of carriage has already terminated, herein petitioner can be held liable for the negligence of its driver, as ruled by the Court of Appeals, pursuant to Article 2180 of the Civil Code. Paragraph 7 of the complaint, which reads —

That aside from the aforesaid breach of contract, the death of Raquel Beltran, plaintiffs' daughter, was caused by the negligence and want of exercise of the utmost diligence of a very cautious person on the part of the defendants and their agent, necessary to transport plaintiffs and their daughter safely as far as human care and foresight can provide in the operation of their vehicle.

clearly avers an allegation for quasi-delict. The inclusion of this averment for quasi-delict, while incompatible with the other claim under the contract of carriage, is permissible under the Rules of Court, which allows a plaintiff to allege causes of action in the alternative, be they compatible with each other or not, to the end that the real matter in controversy may be resolved and determined.

#### **FACTS:**

Respondents, Mario Beltran and his wife, together with their 3 minor daughters, one of which was Raquel, about  $4\frac{1}{2}$  years old, boarded a Pambusco Bus owned and operated by petitioner La Mallorca. They were carrying with them four pieces of baggage. The conductor of the bus issued three tickets covering the full fares of the plaintiff and their eldest child. No fare was charged on Raquel and Fe, since both were below the height at which fare is charged in accordance with the appellant's rules and regulations.

When the bus reached its destination, it stopped to allow the passengers bound therefor to get off. Mariano and his family boarded off the bus and went to a shaded spot on the left pedestrian's side of the road. Afterwards, he returned to the bus to get his other bayong, which he had left behind, but in so doing, his daughter Raquel followed him, unnoticed by her father. While Mariano was on the running board of the bus waiting for the conductor to hand him his bayong, the bus, whose motor was not shut off while unloading, suddenly started moving forward, evidently to resume its trip, notwithstanding the fact that the conductor has not given the driver the customary signal to start, since said conductor was still attending to the baggage left behind by Mariano. Incidentally, when the bus was again placed into a complete stop, it had travelled about ten meters from the point where the plaintiffs had gotten off. Sensing that the bus was again in motion, Mariano immediately jumped from the running board without getting his bayong from the conductor. He landed on the side of the road almost in front of the shaded place where he left his wife and children. At that precise time, he saw people beginning to gather around the body of a child lying prostrate on the ground, her skull crushed, and without life. The child was none other than his daughter Raquel, who was run over by the bus in which she rode earlier together with her parents.

For the death of their said child, the plaintiffs commenced the present suit against the defendant seeking to recover from the latter an aggregate amount of P16,000 to cover moral damages and actual damages sustained as a result thereof and attorney's fees. After trial on the merits, the court below rendered the judgment in question.

RTC ruled in favour of Beltran. On appeal, CA affirmed. La Mallorca claimed that there could not be a breach of contract in the case for the reason that when the child met her death, she was no longer a passenger of the bus involved in the incident and, therefore, the contract of carriage had already terminated. Although the Court of Appeals sustained this theory, it nevertheless found the defendantappellant guilty of quasi-delict and held the latter liable for damages for the negligence of its driver. La Mallorca appealed on the ground that the CA should not have held them liable for quasi-delict when the complaint was one for breach of contract.

# **ISSUE:**

Whether or not respondent carrier can be held liable for breach of contract of carriage and/or quasi-delict. (YES)

# **RULING:**

Even assuming arguendo that the contract of carriage has already terminated, herein petitioner can be held liable for the negligence of its driver, as ruled by the Court of Appeals, pursuant to Article 2180 of the Civil Code. Paragraph 7 of the complaint, which reads —

That aside from the aforesaid breach of contract, the death of Raquel Beltran, plaintiffs' daughter, was caused by the negligence and want of exercise of the utmost diligence of a very cautious person on the part of the defendants and their agent, necessary to transport plaintiffs and their daughter safely as far as human care and foresight can provide in the operation of their vehicle.

clearly avers an allegation for quasi-delict. The inclusion of this averment for quasi-delict, while incompatible with the other claim under the contract of carriage, is permissible under the Rules of Court, which allows a plaintiff to allege causes of action in the alternative, be they compatible with each other or not, to the end that the real matter in controversy may be resolved and determined.

The plaintiffs sufficiently pleaded the culpa or negligence upon which the claim was predicated when it was alleged in the complaint that "the death of Raquel Beltran, plaintiffs' daughter, was caused by the negligence and want of exercise of the utmost diligence of a very cautious person on the part of the defendants and their agent." This allegation was also proved when it was established during the trial that the driver, even before receiving the proper signal from the conductor, and while there were still persons on the running board of the bus and near it, started to run off the vehicle.

The presentation of proof of the negligence of its employee gave rise to the presumption that the defendant employer did not exercise the diligence of a good father of the family in the selection and supervision of its employees. And this presumption, as the Court of Appeals found, petitioner had failed to overcome. Consequently, petitioner must be adjudged peculiarily liable for the death of the child Raquel Beltran.

# ANITA A. LEDDA, Petitioner, vs. BANK OF THE PHILIPPINE ISLANDS, Respondent. G.R. No. 200868, SECOND DIVISION, November 12, 2012, CARPIO, J.

Section 7, Rule 8 of the 1997 Rules of Civil Procedure provides:

SEC. 7. Action or defense based on document. — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

Clearly, the above provision applies when the action is based on a written instrument or document.

In this case, the complaint is an action for collection of sum of money arising from Ledda's default in her credit card obligation with BPI. BPI's cause of action is primarily based on Ledda's (1) acceptance of the BPI credit card, (2) usage of the BPI credit card to purchase goods, avail services and secure cash advances, and (3) non-payment of the amount due for such credit card transactions, despite demands. In other words, BPI's cause of action is not based only on the document containing the Terms and Conditions accompanying the issuance of the BPI credit card in favor of Ledda. Therefore, the document containing the Terms and Conditions governing the use of the BPI credit card is not an actionable document contemplated in Section 7, Rule 8 of the 1997 Rules of Civil Procedure. As such, it is not required by the Rules to be set forth in and attached to the complaint.

#### **FACTS:**

As one of BPI's valued clients, Ledda was issued a pre-approved BPI credit card. The BPI Credit Card Package, which included the Terms and Conditions governing the use of the credit card, was delivered at Ledda's residence on 1 July 2005. Thereafter, Ledda used the credit card for various purchases of goods and services and cash advances.

Ledda defaulted in the payment of her credit card obligation, which BPI claimed in their complaint amounted to P548,143.73 . Consequently, BPI sent letters 6 to Ledda demanding the payment of such amount, representing the principal obligation with 3.25% finance charge and 6% late payment charge per month.

Despite BPI's repeated demands, Ledda failed to pay her credit card obligation constraining BPI to file an action for collection of sum of money with the Regional Trial Court. The trial court declared Ledda in default for failing to file Answer within the prescribed period, despite receipt of the complaint and summons. Upon Ledda's motion for reconsideration, the trial court lifted the default order and admitted Ledda's Answer Ad Cautelam.

While she filed a Pre-Trial Brief, Ledda and her counsel failed to appear during the continuation of the Pre-Trial. Hence, the trial court allowed BPI to present its evidence ex-parte. The trial court ruled in favor of BPI.

On appeal, the Court of Appeals rejected Ledda's argument that the document containing the Terms and Conditions governing the use of the BPI credit card is an actionable document contemplated in Section 7, Rule 8 of the 1997 Rules of Civil Procedure. The Court of Appeals held that BPI's cause of action is based on "Ledda's availment of the bank's credit facilities through the use of her credit/plastic cards, coupled with her refusal to pay BPI's outstanding credit for the cost of the goods, services and cash advances despite lawful demands."

#### **ISSUE:**

Whether or not the document containing the Terms and Conditions is an actionable document.

#### **RULING:**

Section 7, Rule 8 of the 1997 Rules of Civil Procedure provides:

SEC. 7. Action or defense based on document. — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

Clearly, the above provision applies when the action is based on a written instrument or document.

In this case, the complaint is an action for collection of sum of money arising from Ledda's default in her credit card obligation with BPI. BPI's cause of action is primarily based on Ledda's (1) acceptance of the BPI credit card, (2) usage of the BPI credit card to purchase goods, avail services

and secure cash advances, and (3) non-payment of the amount due for such credit card transactions, despite demands. In other words, BPI's cause of action is not based only on the document containing the Terms and Conditions accompanying the issuance of the BPI credit card in favor of Ledda. Therefore, the document containing the Terms and Conditions governing the use of the BPI credit card is not an actionable document contemplated in Section 7, Rule 8 of the 1997 Rules of Civil Procedure. As such, it is not required by the Rules to be set forth in and attached to the complaint.

At any rate, BPI has sufficiently established a cause of action against Ledda, who admits having received the BPI credit card, subsequently used the credit card, and failed to pay her obligation arising from the use of such credit card.

# BOSTON EQUITY RESOURCES, INC. vs. COURT OF APPEALS AND LOLITA G. TOLEDO G.R. No. 173946, SECOND DIVISION, June 19, 2013, Perez, J.

Based on the foregoing provisions(Rule 9,Sec. 1 and Rule 15, Sec. 8), the "objection on jurisdictional grounds which is not waived even if not alleged in a motion to dismiss or the answer is lack of jurisdiction over the subject matter. x x x Lack of jurisdiction over the subject matter can always be raised anytime, even for the first time on appeal, since jurisdictional issues cannot be waived x x x subject, however, to the principle of estoppel by laches."

Since the defense of lack of jurisdiction over the person of a party to a case is not one of those defenses which are not deemed waived under Section 1 of Rule 9, such defense must be invoked when an answer or a motion to dismiss is filed in order to prevent a waiver of the defense. If the objection is not raised either in a motion to dismiss or in the answer, the objection to the jurisdiction over the person of the plaintiff or the defendant is deemed waived by virtue of the first sentence of the above-quoted Section 1 of Rule 9 of the Rules of Court.

The Court of Appeals, therefore, erred when it made a sweeping pronouncement in its questioned decision, stating that "issue on jurisdiction may be raised at any stage of the proceeding, even for the first time on appeal" and that, therefore, respondent timely raised the issue in her motion to dismiss and is, consequently, not estopped from raising the question of jurisdiction. As the question of jurisdiction involved here is that over the person of the defendant Manuel, the same is deemed waived if not raised in the answer or a motion to dismiss. In any case, respondent cannot claim the defense since "lack of jurisdiction over the person, being subject to waiver, is a personal defense which can only be asserted by the party who can thereby waive it by silence."

# **FACTS:**

Petitioner filed a complaint for sum of money with a prayer for the issuance of a writ of preliminary attachment against spouses Manuel and Lolita Toledo. An answer was filed, but herein respondent filed an amended answer which alleges that her husband Manuel has already died. As a result, petitioner filed a motion to require the respondent to disclose the heirs of Manuel. After the receipt of the list of heirs, petitioner filed a motion for substitution, praying that Manuel be substituted by his children as co-defendants, which was granted by the trial court.

The trial of the case then proceeded. The plaintiff, herein petitioner, presented evidence and exhibits were thereafter admitted. The reception of the evidence for the respondent was cancelled

upon agreement of the parties, and the same was given a period of fifteen days within which to file a demurrer to evidence. However, respondent instead filed a motion to dismiss.

The motion was denied by the trial court for having been filed out of time. Aggrieved, the respondent filed a petition for certiorari with the CA alleging that the trial court erred in denying her motion to dismiss despite discovery, during the trial, of evidence which constitutes as ground for dismissal of the case. The CA granted the petition of the respondent and denied the motion for reconsideration of the petitioner, hence, this appeal.

#### **ISSUE:**

Whether the CA erred in not holding that respondent is already estopped from questioning the trial court's jurisdiction. (YES)

# **RULING:**

At the outset, it must be here stated that, as the succeeding discussions will demonstrate, jurisdiction over the person of Manuel should not be an issue in this case. A protracted discourse on jurisdiction is, nevertheless, demanded by the fact that jurisdiction has been raised as an issue from the lower court, to the Court of Appeals and, finally, before this Court. For the sake of clarity, and in order to finally settle the controversy and fully dispose of all the issues in this case, it was deemed imperative to resolve the issue of jurisdiction.

Petitioner calls attention to the fact that respondent's motion to dismiss questioning the trial court's jurisdiction was filed more than six years after her amended answer was filed. According to petitioner, respondent had several opportunities, at various stages of the proceedings, to assail the trial court's jurisdiction but never did so for six straight years. Citing the doctrine laid down in the case of Tijam, et al. v. Sibonghanoy, et al. petitioner claimed that respondent's failure to raise the question of jurisdiction at an earlier stage bars her from later questioning it, especially since she actively participated in the proceedings conducted by the trial court.

Petitioner's argument is misplaced, in that, it failed to consider that 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.

The aspect of jurisdiction which may be barred from being assailed as a result of estoppel by laches is jurisdiction over the subject matter. Thus, in Tijam, the case relied upon by petitioner, the issue involved was the authority of the then Court of First Instance to hear a case for the collection of a sum of money in the amount of P1,908.00 which amount was, at that time, within the exclusive original jurisdiction of the municipal courts.

Here, what respondent was questioning in her motion to dismiss before the trial court was that court's jurisdiction over the person of defendant Manuel. Thus, the principle of estoppel by laches finds no application in this case. Instead, the principles relating to jurisdiction over the person of the parties are pertinent herein.

Based on the foregoing provisions ( $Rule\ 9$ ,  $Sec.\ 1$  and  $Rule\ 15$ ,  $Sec.\ 8$ ), the "objection on jurisdictional grounds which is not waived even if not alleged in a motion to dismiss or the answer is lack of jurisdiction over the subject matter.  $x\ x\ x\ Lack$  of jurisdiction over the subject matter can always be raised anytime, even for the first time on appeal, since jurisdictional issues cannot be waived  $x\ x\ x$  subject, however, to the principle of estoppel by laches."

Since the defense of lack of jurisdiction over the person of a party to a case is not one of those defenses which are not deemed waived under Section 1 of Rule 9, **such defense must be invoked when an answer or a motion to dismiss is filed in order to prevent a waiver of the defense**. If the objection is not raised either in a motion to dismiss or in the answer, the objection to the jurisdiction over the person of the plaintiff or the defendant is deemed waived by virtue of the first sentence of the above-quoted Section 1 of Rule 9 of the Rules of Court.

The Court of Appeals, therefore, erred when it made a sweeping pronouncement in its questioned decision, stating that "issue on jurisdiction may be raised at any stage of the proceeding, even for the first time on appeal" and that, therefore, respondent timely raised the issue in her motion to dismiss and is, consequently, not estopped from raising the question of jurisdiction. As the question of jurisdiction involved here is that over the person of the defendant Manuel, the same is deemed waived if not raised in the answer or a motion to dismiss. In any case, respondent cannot claim the defense since "lack of jurisdiction over the person, being subject to waiver, is a personal defense which can only be asserted by the party who can thereby waive it by silence."

# FINANCIAL BUILDING CORPORATION, petitioner, vs. FORBES PARK ASSOCIATION, INC., respondent.

G.R. No. 133119, SECOND DIVISION, August 17, 2000, DE LEON, JR., J.

A compulsory counterclaim is one which arises out of or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim. If it is within the jurisdiction of the court and it does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, such compulsory counterclaim is barred if it is not set up in the action filed by the opposing party.

Since Forbes Park filed a motion to dismiss in Civil Case No. 16540, its existing compulsory counterclaim at that time is now barred. A compulsory counterclaim is auxiliary to the proceeding in the original suit and derives its jurisdictional support therefrom. A counterclaim presupposes the existence of a claim against the party filing the counterclaim. Hence, where there is no claim against the counterclaimant, the counterclaim is improper and it must dismissed, more so where the complaint is dismissed at the instance of the counterclaimant.

#### **FACTS:**

The USSR owned a lot in Forbes Park and it engaged the services of Financial Building for the construction of a multi-level office and staff apartment building. Due to the USSR's representation that it would be building a residence for its Trade Representative, Forbes Park authorized its construction and work began shortly thereafter. However, Financial building submitted to the Makati City Government a second building plan for the construction of a multi-level apartment building, which was different from the first plan for the construction of a residential building

submitted to Forbes Park. Forbes Park discovered the second plan and it enjoined further construction work. Forbes Park suspended all permits of entry for the personnel and materials of

Financial Building in the said construction site. Financial Building filed in the Regional Trial Court a complaint for Injunction and Damages with a prayer for Preliminary Injunction against Forbes Park. Forbes Par, in turn, filed a Motion to Dismiss on the ground that Financial Building had no cause of action because it was not the real party-in-interest. Forbes Park won in this case thus it sought to vindicate its rights by filing a complaint for damages against Financial Building arising from the violation of its regulations. Trial court rendered a decision in favor or Forbes Park.

#### **ISSUE:**

Whether or not the alleged claims and causes of action therein are barred by prior judgment and/or are deemed waived for its failure to interpose the same as compulsory counterclaims in the earlier case. (YES)

#### RULING:

The instant case is barred due to Forbes Park's failure to set it up as a compulsory counterclaim in the earlier case.

A compulsory counterclaim is one which arises out of or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim. If it is within the jurisdiction of the court and it does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, such compulsory counterclaim is barred if it is not set up in the action filed by the opposing party.

Thus, a compulsory counterclaim cannot be the subject of a separate action but it should instead be asserted in the same suit involving the same transaction or occurrence, which gave rise to it To determine whether a counterclaim is compulsory or not, we have devised the following tests: (1) Are the issues of fact or law raised by the claim and the counterclaim largely the same? (2) Would res judicate bar a subsequent suit on defendant's claim absent the compulsory counterclaim rule? (3) Will substantially the same evidence support or refute plaintiff's claim as well as the defendant's counterclaim? and (4) Is there any logical relation between the claim and the counterclaim? Affirmative answers to the above queries indicate the existence of a compulsory counterclaim.

Since Forbes Park filed a motion to dismiss in Civil Case No. 16540, its existing compulsory counterclaim at that time is now barred. A compulsory counterclaim is auxiliary to the proceeding in the original suit and derives its jurisdictional support therefrom. A counterclaim presupposes the existence of a claim against the party filing the counterclaim. Hence, where there is no claim against the counterclaimant, the counterclaim is improper and it must dismissed, more so where the complaint is dismissed at the instance of the counterclaimant.

NATIVIDAD LIM, *Petitioner, - versus -*NATIONAL POWER CORPORATION, SPOUSES ROBERTO LL. ARCINUE and ARABELA ARCINUE, *Respondents.* 

#### G.R. No. 178789, THIRD DIVISION, November 14, 2012, ABAD, J.

The Court finds no grave abuse of discretion here. As the RTC pointed out, notwithstanding that the Arcinues' failed to explain their resort to service by registered mail rather than by personal service, the fact is that Lim's counsel expressly admitted having received a copy of the Arcinues' motion for judgment by default on December 7, 1998 or 10 days before its scheduled hearing. This means that the Arcinues were diligent enough to file their motion by registered mail long before the scheduled hearing.

Personal service is required precisely because it often happens that hearings do not push through because, while a copy of the motion may have been served by registered mail before the date of the hearing, such is received by the adverse party already after the hearing. Thus, the rules prefer personal service. But it does not altogether prohibit service by registered mail when such service, when adopted, ensures as in this case receipt by the adverse party.

#### **FACTS:**

Respondent National Power Corporation (NPC) filed an expropriation suit against petitioner Natividad Lim before the RTC. Summons was served. Upon notice to Lim, and the deposit of the provisional value of the property, the RTC ordered the issued writ of possession in NPC's favor.

However, Lim filed an omnibus motion to dismiss the action and to suspend the writ of possession, questioning the RTC's jurisdiction over Lim's person and the nature of the action. She also assailed the failure of the complaint to state a cause of action. The RTC denied the motions.

Respondent spouses Roberto and Arabela Arcinue (the Arcinues) filed a motion for leave to admit complaint in intervention, alleging that they owned and were in possession of one of the two lots subject of the expropriation. The RTC granted the Arcinues' motion and required both the NPC and Lim to answer the complaint-in-intervention within 10 days from receipt of its order.

When Lim and the NPC still did not file their answers to the complaint-in-intervention after 10 months, on December 7, 1998, the Arcinues filed a motion for judgment by default-Lim sought to expunge the motion on the ground that it lacked the requisite explanation why the Arcinues resorted to service by registered mail rather than to personal service. At the scheduled hearing of the motion, Lim's counsel did not appear. The NPC for its part manifested that it did not file an answer since its interest lay in determining who was entitled to just compensation.

The RTC issued an order of default against both Lim and the NPC. The RTC pointed out that the Arcinues' failure to explain their resort to service by registered mail had already been cured by the manifestation of Lim's counsel that he received a copy of the Arcinues' motion on December 7, 1998 or 10 days before its scheduled hearing. The CA affirmed the RTC's order of default.

#### **ISSUE:**

Whether the order of default that the RTC entered against Lim was proper. (YES)

#### **RULING:**

Lim points out that an answer-in-intervention cannot give rise to default since the filing of such an answer is only permissive. But Section 4, Rule 19 of the 1997 Rules of Civil Procedure requires the original parties to file an answer to the complaint-in-intervention within 15 days from notice of the order admitting the same, unless a different period is fixed by the court. This changes the procedure under the former rule where such an answer was regarded as optional. **Thus, Lim's failure to file the required answer can give rise to default.** 

The Court finds no grave abuse of discretion here. As the RTC pointed out, notwithstanding that the Arcinues' failed to explain their resort to service by registered mail rather than by personal service, the fact is that Lim's counsel expressly admitted having received a copy of the Arcinues' motion for judgment by default on December 7, 1998 or 10 days before its scheduled hearing. This means that the Arcinues were diligent enough to file their motion by registered mail long before the scheduled hearing.

Personal service is required precisely because it often happens that hearings do not push through because, while a copy of the motion may have been served by registered mail before the date of the hearing, such is received by the adverse party already after the hearing. Thus, the rules prefer personal service. But it does not altogether prohibit service by registered mail when such service, when adopted, ensures as in this case receipt by the adverse party.

MAGDIWANG REALTY CORPORATION, RENATO P. DRAGON and ESPERANZA TOLENTINO, *Petitioners, - versus -* THE MANILA BANKING CORPORATION, substituted by FIRST SOVEREIGN ASSET MANAGEMENT (SPV-AMC), INC., *Respondent*.

G.R. No. 195592, FIRST DIVISION, September 5, 2012, REYES, J.

We agree with the trial and appellate courts, for as the records bear, that the ten (10)-year prescriptive period to file an action based on the subject promissory notes was interrupted by the several letters exchanged between the parties. This is in conformity with the second and third circumstances under Article 1155 of the New Civil Code (NCC) which provides that the prescription of actions is interrupted when: (1) they are filed before the court; (2) there is a written extrajudicial demand by the creditors; and (3) there is any written acknowledgment of the debt by the debtor. In TMBC's complaint against the petitioners, the bank sufficiently made the allegations on its service and the petitioners' receipt of the subject demand letters, even attaching thereto copies thereof for the trial court's consideration.

#### **FACTS:**

On April 18, 2000, respondent The Manila Banking Corporation (TMBC) filed a complaint for sum of money before the RTC against petitioners Magdiwang Realty Corporation, Renato Dragon, and Esperanza Tolentino, after said petitioners allegedly defaulted in the payment of their debts under the five promissory notesthey executed in favor of TMBC.

All promissory notes included stipulations on the payment of interest and additional charges in case of default by the debtors. Despite several demands for payment made by TMBC, the petitioners allegedly failed to heed to the bank's demands, prompting the filing of the complaint for sum of money.

Instead of filing a responsive pleading with the trial court, the petitioners filed on October 12, 2000, which was notably beyond the fifteen (15)-day period allowed for the filing of a responsive

pleading, a Motion for Leave to Admit Attached Motion to Dismiss and a Motion to Dismiss, raising therein, among others, the issues of novation and lack of cause of action against individuals Dragon and Tolentino. The motions were opposed by the respondent TMBC, asking that the petitioners be declared in default for their failure to file their responsive pleading within the period allowed under the law.

The RTC declared the petitioners in default. In the meantime, TMBC's presentation of evidence ex parte proceeded. The RTC rendered a Decision in favor of TMBC.

The CA affirmed the RTC Decision. As shown by the evidence, the CA ruled that the prescriptive period was legally interrupted on September 19, 1984 when the petitioners, through several letters, proposed for the restructuring of their loans until the respondent sent its final demand letter on September 10, 1999. Indeed, the period during which the petitioners were seeking reconsideration for the non-settlement of their loans and proposing payment schemes of the same should not be reckoned against it. Consequently, when the respondent sent its final demand letter to the petitioners, thus, foreclosing all possibilities of reaching a settlement of the loans which could be favorable to both parties, the period of ten years within which to enforce the five promissory notes under Article 1142 of the New Civil Code began to run again and, therefore, the action filed on April 18, 2000 to compel the petitioners to pay their obligations under the promissory notes had not prescribed. The written communications of the petitioners proposing for the restructuring of their loans and the repayment scheme are, in our view, synonymous to an express acknowledgment of the obligation and had the effect of interrupting the prescription.

# **ISSUE:**

Whether the prescriptive period was legally interrupted when petitioners, through several letters, proposed for the restructuring of their loans until the respondent sent its final demand letter on September 10, 1999. (YES)

#### **RULING:**

Taking into consideration the bank's allegations in its complaint and the totality of the evidence presented in support thereof, coupled with the said circumstance that the petitioners, by their own inaction, failed to make their timely objection or opposition to the evidence, both documentary and testimonial, presented by TMBC to support its case, we find no cogent reason to reverse the trial and appellate courts' findings.

We agree with the trial and appellate courts, for as the records bear, that the ten (10)-year prescriptive period to file an action based on the subject promissory notes was interrupted by the several letters exchanged between the parties. This is in conformity with the second and third circumstances under Article 1155 of the New Civil Code (NCC) which provides that the prescription of actions is interrupted when: (1) they are filed before the court; (2) there is a written extrajudicial demand by the creditors; and (3) there is any written acknowledgment of the debt by the debtor. In TMBC's complaint against the petitioners, the bank sufficiently made the allegations on its service and the petitioners' receipt of the subject demand letters, even attaching thereto copies thereof for the trial court's consideration.

As against the bare denial belatedly made by the petitioners of their receipt of the written extrajudicial demands made by TMBC, especially of the letter of September 10, 1999 which was the

written demand sent closest in time to the institution of the civil case, the appreciation of evidence and pronouncements of the trial court shall stand.

In addition to these, we take note that letters prior to the letter of September 1999 also form part of the case records, and the existence of said letters were not directly denied by the petitioners. The letters that form part of the complaint and included in TMBC's formal offer of exhibits were correctly claimed by the respondents in their Comment as also containing the petitioners' acknowledgment of their debts and TMBC's demand to its debtors.

SPOUSES BENEDICT AND SANDRA MANUEL, *Petitioners*, - *versus* - RAMON ONG, *Respondent*. G.R. No. 205249, SECOND DIVISION, October 15, 2014, LEONEN, J.

We hold that jurisdiction over the persons of the Spouses Benedict and Sandra Manuel was validly acquired. This is so because, personal service of summons, via tender to petitioner Sandra Manuel, was made by Sheriff Joselito Sales on March 16, 2010.

Tendering summons is itself a means of personal service as it is contained in Rule 14, Section 6. Personal service, as provided by Rule 14, Section 6, is distinguished from its alternative — substituted service — as provided by Rule 14, Section 7.

#### **FACTS:**

Respondent Ramon Ong filed before the RTC a complaint for for accion reivindicatoria charging the petitioners, Spouses Manuel, with having constructed improvements — through force, intimidation, strategy, threats, and stealth — on a property he [Ong] supposedly owned.

Ong filed an amended complaint. Summons was issued to the Spouses Manuel. Ong moved for the declaration of default of Spouses Manuel.

Per the sheriff's return on summons, Sheriff Joselito Sales, along with Ong's counsel, Atty. Christopher Donaal, and a certain Federico Laureano, attempted to personally serve summons on the Spouses Manuel at their address in Lower Bacong, Loacan, Itogon, Benguet. The Spouses Manuel, however, requested that service be made at another time considering that petitioner Sandra Manuel's mother was then critically ill.

The sheriff's return further indicates that on March 16, 2010, another attempt at personal service was made. After Sheriff Sales had personally explained to petitioner Sandra Manuel the content of the summons and the complaint, the latter refused to sign and receive the summons and the complaint. Sheriff Sales was thus prompted to merely tender the summons and complaint to petitioner Sandra Manuel and to advise her to file their answer within fifteen (15) days.

As the Manuel's failed to file the answer, Ong asked for their default.

Spouses Manuel filed a motion to lift alleging that it was the sibling of Sandra Manuel who resided in Lower Bacong, Itogon, Benguet, while the Spouses Manuel resided in Ambiong, La Trinidad, Benguet. Thus, summons could not have been properly served on them in the former address. They surmised that Ong and his companions mistook petitioner Sandra Manuel's siblings as the defendants.

The RTC denied the motion to lift the order of default. The CA affirmed the RTC.

#### **ISSUE:**

Whether the jurisdiction over the person of the Manuels was acquired, prompting the declaration of default. (YES)

#### **RULING:**

We hold that jurisdiction over the persons of the Spouses Benedict and Sandra Manuel was validly acquired. This is so because, personal service of summons, via tender to petitioner Sandra Manuel, was made by Sheriff Joselito Sales on March 16, 2010.

Tendering summons is itself a means of personal service as it is contained in Rule 14, Section 6. Personal service, as provided by Rule 14, Section 6, is distinguished from its alternative — substituted service — as provided by Rule 14, Section 7.

The claim that they did not reside in the addressed stated is unmeritorious. The Spouses Manuel cannot capitalize on the supposed variance of address. Personal service of summons has nothing to do with the location where summons is served. A defendant's address is inconsequential. Rule 14, Section 6 of the 1997 Rules of Civil Procedure is clear in what it requires: personally handing the summons to the defendant (albeit tender is sufficient should the defendant refuse to receive and sign). What is determinative of the validity of personal service is, therefore, the person of the defendant, not the locus of service.

# PHILIPPINE TOURISM AUTHORITY, Petitioner, - versus -PHILIPPINE GOLF DEVELOPMENT & EQUIPMENT, INC., Respondent.

G.R. No. 176628, SECOND DIVISION, March 19, 2012, BRION, J.

The rule is that "a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique, and unless such acts involve gross negligence that the claiming party can prove, the acts of a counsel bind the client as if it had been the latter's acts." It is not disputed that the summons together with a copy of the complaint was personally served upon, and received by PTA through its Corporate Legal Services Department, on October 10, 2003. Thus, in failing to submit a responsive pleading within the required time despite sufficient notice, the RTC was correct in declaring PTA in default.

# **FACTS:**

Petitioner Philippine Tourism Authority (PTA), an agency of the Department of Tourism, entered into a contract with Atlantic Erectors, Inc. (AEI) for the construction of the Intramuros Golf Course Expansion Projects (PAR 60-66) for a contract price of ₱57,954,647.94.

The civil works of the project commenced. Since AEI was incapable of constructing the golf course aspect of the project, it entered into a sub-contract agreement with Philippine Golf Development & Equipment, Inc. (PHILGOLF), to build the golf course amounting to ₱27,000,000.00.

PHILGOLF filed a collection suit against PTA amounting to ₱11,820,550.53, plus interest, for the construction of the golf course. Within the period to file a responsive pleading, PTA filed a motion for extension of time to file an answer.

The RTC granted the motion for extension of time. PTA filed another motion for extension of time to file an answer. Again, the RTC granted the motion. Despite the RTC's liberality of granting two successive motions for extension of time, PTA failed to answer the complaint. Hence, the RTC rendered a judgment of default.

The PTA seasonably appealed the case to the CA. But before the appeal of PTA could be perfected, PHILGOLF already filed a motion for execution pending appeal with the RTC. The RTC granted the motion and a writ of execution pending appeal was issued against PTA. A notice of garnishment was issued against PTA's bank account at the Land Bank of the Philippines, NAIA-BOC Branch to fully satisfy the judgment.

PTA filed a petition for certiorari with the CA, imputing grave abuse of discretion on the part of the RTC for granting the motion for execution pending appeal. The CA ruled in favor of PTA and set aside the order granting the motion for execution pending appeal.

PTA withdrew its appeal of the RTC decision and, instead, filed a petitionfor annulment of judgment under Rule 47 of the Rules of Court. The petition for annulment of judgment was premised on the argument that the gross negligence of PTA's counsel prevented the presentation of evidence before the RTC. The CA dismissed the petition for annulment of judgment for lack of merit.

#### **ISSUE:**

Whether the order of default was proper. (YES)

#### **RULING:**

# PTA is bound by the inactions or negligence of its counsel

The Rules of Court specifically provides for deadlines in actions before the court to ensure an orderly disposition of cases. **PTA cannot escape these legal technicalities by simply invoking the negligence of its counsel.** The rule is that "a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique, and unless such acts involve gross negligence that the claiming party can prove, the acts of a counsel bind the client as if it had been the latter's acts."It is not disputed that the summons together with a copy of the complaint was personally served upon, and received by PTA through its Corporate Legal Services Department, on October 10, 2003. **Thus, in failing to submit a responsive pleading within the required time despite sufficient notice, the RTC was correct in declaring PTA in default.** 

#### There was no extrinsic fraud

Extrinsic fraud refers to any fraudulent act of the prevailing party in the litigation which is committed outside of the trial of the case, whereby the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent. **Under the doctrine of this cited case, we do not see the acts of PTA's counsel to be constitutive of extrinsic fraud.** The records reveal that the judgment of defaultwas sent via registered mail to PTA's counsel. However, PTA never availed of the remedy of a motion to lift the order of default.

Since the failure of PTA to present its evidence was not a product of any fraudulent acts committed outside trial, the RTC did not err in declaring PTA in default.

# Annulment of judgment is not the proper remedy

**PTA's appropriate remedy was only to appeal the RTC decision.** Annulment of judgment under Rule 47 of the Rules of Court is a recourse equitable in character and allowed only in exceptional cases where the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner.**In this case, appeal was an available remedy.** The Court is actually at a loss why PTA had withdrawn a properly filed appeal and substituted it with another petition, when PTA could have merely raised the same issues through an ordinary appeal.

LETICIA DIONA, represented by her Attorney-in-Fact, MARCELINA DIONA, *Petitioner, - versus*- ROMEO A. BALANGUE, SONNY A. BALANGUE, REYNALDO A. BALANGUE, and ESTEBAN A.
BALANGUE, JR., *Respondents.* 

G.R. No. 173559, SECOND DIVISION, January 7, 2013, DEL CASTILLO, J.

While under Section 2, Rule 47 of the Rules of Court a Petition for Annulment of Judgment may be based only on the grounds of extrinsic fraud and lack of jurisdiction, jurisprudence recognizes lack of due process as additional ground to annul a judgment.

In the case at bench, the grant of 5% monthly interest is way beyond the 12% per annum interest sought in the Complaint and smacks of violation of due process. It 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 and the Complaint before the RTC includes the interest at the rate of 12% per annum. Clearly, the RTC's award of 5% monthly interest or 60% per annum lacks basis and disregards due process.

#### **FACTS:**

Respondents Romeo, Sonny, Reynaldo and Esteban Balangue obtained a loan from Leticia Diona which was secured by a Real Estate Mortgage. When the debt became due, respondents failed to pay and thus, Diona filed with the RTC a Complaint praying that respondents be ordered to pay the principal obligation with interest at the rate of 12% per annum. The RTC ruled in Diona's favor and ordered the respondents, among others, to pay the principal obligation plus interest rate of 5% per month.

Respondents filed with the CA a Petition for Annulment of Judgment contending that the portion of the RTC Decision granting petitioner 5% monthly interest rate is in gross violation of Section 3(d) of Rule 9 of the Rules of Court and of their right to due process as the loan did not carry any interest.

The CA ruled in favor of the respondents and concluded that the awarded rate of interest is void for being in excess of the relief sought in the Complaint. Hence, this petition in which Diona argues that the remedy of Petition for Annulment of Judgment shall be based on extrinsic fraud or lack of jurisdiction and that since the allegation of the respondents was not anchored on either of such ground, then the said remedy is not proper.

#### **ISSUE:**

Whether the remedy of Petition for Annulment of Judgment is available to the respondents. (YES)

#### RULING:

While under Section 2, Rule 47 of the Rules of Court a Petition for Annulment of Judgment may be based only on the grounds of extrinsic fraud and lack of jurisdiction, jurisprudence recognizes lack of due process as additional ground to annul a judgment. A final and executory judgment may still be set aside if, upon mere inspection thereof, its patent nullity can be shown for having been issued without jurisdiction or for lack of due process of law. Furthermore, 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 the case at bench, the grant of 5% monthly interest is way beyond the 12% per annum interest sought in the Complaint and smacks of violation of due process. It 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 and the Complaint before the RTC includes the interest at the rate of 12% per annum. Clearly, the RTC's award of 5% monthly interest or 60% per annum lacks basis and disregards due process.

REBECCA T. ARQUERO, *Petitioner, - versus -*COURT OF APPEALS (Former Thirteenth Division); EDILBERTO C. DE JESUS, in his capacity as Secretary of the Department of Education; DR. PARALUMAN GIRON, Director, Regional Office IV-MIMAROPA, Department of Education; DR. EDUARDO LOPEZ, Schools Division Superintendent, Puerto Princesa City; and NORMA BRILLANTES, *Respondents*.

G.R. No. 168053, THIRD DIVISION, September 21, 2011, PERALTA, J.

Undoubtedly, a defendant declared in default retains the right to appeal from the judgment by default on the ground that the plaintiff failed to prove the material allegations of the complaint, or that the decision is contrary to law, even without need of the prior filing of a motion to set aside the order of default except that he does not regain his right to adduce evidence. The appellate court, in turn, can review the assailed decision and is not precluded from reversing the same based solely on the evidence submitted by the plaintiff. Thus, in the present case, the respondents can still appeal the RTC Decision, despite having been declared in default.

#### **FACTS:**

Petitioner Rebecca Arquero filed the Petition for Quo Warranto with Prayer for Issuance of TRO and/or Injunctive Writ before the RTC against public and private respondents. The Executive Judge issued a 72-Hour TRO. The RTC later issued the writ of preliminary injunction. Respondents failed to file their Answer. Hence, on motion of Arquero, the Court declared the respondents in default. In the same order, Arquero was allowed to present her evidence *ex parte*.

The RTC rendered a Judgment by Default in favor of Arquero. On appeal, the CA reversed and set aside the RTC Decision. Arquero insists that respondents could not have appealed the RTC Decision, having been declared in default.

#### ISSUE:

Whether the respondents can still appeal the RTC Decision despite having been declared in default. (YES)

# **RULING:**

In *Rural Bank of Sta. Catalina v. Land Bank of the Philippines*, the Court provided a comprehensive restatement of the remedies of the defending party declared in default:

It bears stressing that a defending party declared in default loses his standing in court and his right to adduce evidence and to present his defense. He, however, has the right to appeal from the judgment by default and assail said judgment on the ground, inter alia, that the amount of the judgment is excessive or is different in kind from that prayed for, or that the plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law. Such party declared in default is proscribed from seeking a modification or reversal of the assailed decision on the basis of the evidence submitted by him in the CA, for if it were otherwise, he would thereby be allowed to regain his right to adduce evidence, a right which he lost in the trial court when he was declared in default, and which he failed to have vacated.

Undoubtedly, a defendant declared in default retains the right to appeal from the judgment by default on the ground that the plaintiff failed to prove the material allegations of the complaint, or that the decision is contrary to law, even without need of the prior filing of a motion to set aside the order of default except that he does not regain his right to adduce evidence. The appellate court, in turn, can review the assailed decision and is not precluded from reversing the same based solely on the evidence submitted by the plaintiff. **Thus, in the present case, the respondents can still appeal the RTC Decision, despite having been declared in default.** 

# BENGUET ELECTRIC COOPERATIVE, INC., petitioner, - versus -NATIONAL LABOR RELATIONS COMMISSION, PETER COSALAN and BOARD OF DIRECTORS OF BENGUET ELECTRIC COOPERATIVE, INC., respondents.

G.R. No. 89070, THIRD DIVISION, May 18, 1992, FELICIANO, J.

There is no dispute about the fact that the respondent BENECO Board members received the decision of the LA on April 21, 1988. Accordingly, and because May 1, 1988 was a legal holiday, they had only up to May 2, 1988 within which to perfect their appeal by filing their memorandum on appeal. It is also not disputed that the respondent Board members' memorandum on appeal was posted by registered mail on May 3, 1988 and received by the NLRC the following day. Clearly, the memorandum on appeal was filed out of time.

Respondent Board member's contention runs counter to the established rule that transmission through a private carrier or letter-forwarder - instead of the Philippine Post Office - is not a recognized mode of filing pleadings. **The established rule is that the date of delivery of pleadings** 

to a private letter-forwarding agency is not to be considered as the date of filing thereof in court, and that in such cases, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of that pleading.

#### **FACTS:**

Private respondent Peter Cosalan was the General Manager of Petitioner Benguet Electric Cooperative, Inc. (BENECO), having been elected as such by the Board of Directors of BENECO, with the approval of the National Electrification Administrator, Mr. Pedro Dumol.

Respondent Cosalan received Audit Memorandum No. 1 issued by the Commission on Audit (COA), which noted that cash advances received by officers and employees of petitioner BENECO in the amount of P129,618.48 had been virtually written off in the books of BENECO. The COA likewise issued Audit Memorandum No. 2, addressed to respondent Peter Cosalan, inviting attention to the fact that the audit of *per diems* and allowances received by officials and members of the Board of Directors of BENECO showed substantial inconsistencies with the directives of the NEA.

Having been made aware of the serious financial condition of BENECO, and what appeared to be mismanagement, respondent Cosalan initiated implementation of the remedial measures recommended by the COA. The respondent members of the Board of BENECO reacted by adopting a series of resolutions, abolishing the housing allowance of respondent Cosalan; reducing his salary and his representation and commutable allowances; directing him to hold in abeyance all pending personnel disciplinary actions; and striking his name out as a principal signatory to transactions of petitioner BENECO.

The respondent BENECO Board members adopted another series of resolutions which resulted in the ouster of respondent Cosalan as General Manager of BENECO and his exclusion from performance of his regular duties as such, as well as the withholding of his salary and allowances.

Respondent Cosalan nevertheless continued to work as General Manager of BENECO, in the belief that he could be suspended or removed only by duly authorized officials of NEA, in accordance with provisions of P.D. No, 269, as amended by P.D. No. 1645 (the statute creating the NEA), the loan agreement between NEA and petitioner BENECO, and the NEA Memorandum. Accordingly, respondent Cosalan requested petitioner BENECO to release the compensation due him. BENECO, acting through respondent Board members, denied the written request of respondent Cosalan.

Respondent Cosalan then filed a complaint with the NLRC against respondent members of the BENECO Board, challenging the legality of the Board resolutions which ordered his suspension and termination from the service and demanding payment of his salaries and allowances. Cosalan amended his complaint to implead petitioner BENECO and respondent Board members, the latter in their respective dual capacities as Directors and as private individuals.

The LA rendered a decision: (a) confirming Cosalan's reinstatement; (b) ordering payment to Cosalan of his backwages and allowances by petitioner BENECO and respondent Board members, jointly and severally,  $x \times x$ ; and (3) ordering the individual Board members to pay, jointly and severally, to Cosalan moral damages of P50,000.00 plus attorney's fees of 10% of the wages and allowances awarded him.

Respondent Board members appealed to the NLRC, and there filed a Memorandum on Appeal. Petitioner BENECO did not appeal, but moved to dismiss the appeal filed by respondent Board members and for execution of judgment. By this time, petitioner BENECO had a new set of directors.

The NLRC modified the award rendered by the LA by declaring that petitioner BENECO *alone*, and not respondent Board members, was liable for respondent Cosalan's backwages and allowances, and by ruling that there was no legal basis for the award of moral damages and attorney's fees made by the LA.

#### **ISSUE:**

Whether the respondent Board members' appeal was filed out of time. (YES)

#### **RULING:**

There is no dispute about the fact that the respondent BENECO Board members received the decision of the LA on April 21, 1988. Accordingly, and because May 1, 1988 was a legal holiday, they had only up to May 2, 1988 within which to perfect their appeal by filing their memorandum on appeal. It is also not disputed that the respondent Board members' memorandum on appeal was posted by registered mail on May 3, 1988 and received by the NLRC the following day. **Clearly, the memorandum on appeal was filed out of time.** 

Respondent Board members, however, insist that their Memorandum on Appeal was filed on time because it was delivered for mailing on May 1, 1988 to the Garcia Communications Company, a licensed private letter carrier. The Board members in effect contend that the date of delivery to Garcia Communications was the date of filing of their appeal memorandum.

Respondent Board member's contention runs counter to the established rule that transmission through a private carrier or letter-forwarder - instead of the Philippine Post Office - is not a recognized mode of filing pleadings. The established rule is that the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court, and that in such cases, the date of actual receipt by the court, and not the date of delivery to the private carrier, is deemed the date of filing of that pleading.

Accordingly, the applicable rule was that the ten-day reglementary period to perfect an appeal is mandatory and jurisdictional in nature, that failure to file an appeal within the reglementary period renders the assailed decision final and executory and no longer subject to review. The respondent Board members had thus lost their right to appeal from the decision of the LA and the NLRC should have forthwith dismissed their appeal memorandum.

SALVADOR O. MOJAR, EDGAR B. BEGONIA, Heirs of the late JOSE M. CORTEZ, RESTITUTO GADDI, VIRGILIO M. MONANA, FREDDIE RANCES, and EDSON D. TOMAS, *Petitioners, - versus -* AGRO COMMERCIAL SECURITY SERVICE AGENCY, INC., et al., *Respondents*.

G.R. No. 187188, SECOND DIVISION, June 27, 2012, SERENO, J.

Section 3, Rule 46 provides that the petition for certiorari should be filed together with the proof of service thereof on the respondent. Under Section 13, Rule 13 of the Rules of Court, if service is made by registered mail, as in this case, proof shall be made by an affidavit of the person mailing and the

registry receipt issued by the mailing office. Section 3, Rule 46 further provides that the failure to comply with any of the requirements shall be sufficient ground for the dismissal of the petition.

There was no indication that the petitioners had been served a copy of the CA Petition. No other proof was presented by respondent to show petitioners' actual receipt of the CA Petition. In any case, this knowledge, even if presumed, would not – and could not – take the place of actual service and proof of service by respondent.

# **FACTS:**

Petitioners were employed as security guards by respondent and assigned to the various branches of the Bank of Commerce in Pangasinan, La Union and Ilocos Sur. In separate Office Orders, petitioners were relieved from their respective posts and directed to report to their new assignments in Metro Manila. They, however, failed to report for duty in their new assignments, prompting respondent to send them a letter, requiring a written explanation why no disciplinary action should be taken against them, but the letter was not heeded.

Petitioners filed a Complaint for illegal dismissal against respondent and the Bank of Commerce, before the NLRC. The LA ruled that petitioners were illegally dismissed. The NLRC affirmed the LA.

Respondent filed a Motion for Extension to file a Petition for Certiorari before the CA. The same was granted. On February 9, 2008, respondent filed its Petition for Certiorari before the CA within the reglementary period.

The CA noted that no comment on the Petition had been filed, and that the case was now deemed submitted for resolution. The CA found that the Orders transferring petitioners to Manila is a valid exercise of management prerogative. Thus, petitioners' refusal to comply with the transfer orders constituted willful disobedience of a lawful order of an employer and abandonment, which were just causes for termination under the Labor Code. However, respondent failed to observe the due process requirements in terminating them.

Petitioner Mojar filed a Manifestation before the CA, stating that he and the other petitioners had not been served a copy of the CA Petition. He also said that they were not aware whether their counsel, Atty. Jose Espinas, was served a copy thereof, since the latter had already been bedridden since December 2007 until his demise on February 25, 2008. Neither could their new counsel, Atty. Mario Aglipay, enter his appearance before the CA, as petitioners failed to get the folder from the office of Atty. Espinas, as the folder can no longer be found.

Thereafter, petitioners filed a Motion to Annul Proceedings before the CA. They moved to annul the proceedings on the ground of lack of jurisdiction. They argued that the NLRC Decision had already attained finality, since the Petition before the CA was belatedly filed, and the signatory to the certification of non-forum shopping lacked the proper authority. The CA denied the Motion to Annul Proceedings.

Respondent filed its Comment on the Petition, arguing that the CA Decision had already become final and executory, inasmuch as the Motion to Annul Proceedings, was filed 44 days after the service of the CA Decision on the counsel for petitioners. Further, Atty. Aglipay had then no legal standing to appear as counsel, considering that there was still no substitution of counsel at the time

he filed the Motion to Annul Proceedings. In any case, petitioners are bound by the actions of their counsel, Atty. Espinas.

The petitioners stated, among others, that the CA Petition did not contain the required affidavit of service, which alone should have caused the motu proprio dismissal thereof. They also argue that there is no rule on the client's substitution in case of the death of counsel. Instead, the reglementary period to file pleadings in that case must be suspended and made more lenient, considering that the duty of substitution is transferred to a non-lawyer.

#### ISSUE:

- 1. Whether there was proof of service attached to the Motion for Extension to file a Petition for Certiorari before the CA. (NO)
- 2. Whether there was a valid service of the CA Petition upon the petitioners' former counsel of record. (YES)

#### **RULING:**

#### **Affidavit of Service**

Section 3, Rule 46 provides that the petition for certiorari should be filed together with the proof of service thereof on the respondent. Under Section 13, Rule 13 of the Rules of Court, if service is made by registered mail, as in this case, proof shall be made by an affidavit of the person mailing and the registry receipt issued by the mailing office. Section 3, Rule 46 further provides that the failure to comply with any of the requirements shall be sufficient ground for the dismissal of the petition.

There was no indication that the petitioners had been served a copy of the CA Petition. No other proof was presented by respondent to show petitioners' actual receipt of the CA Petition. In any case, this knowledge, even if presumed, would not – and could not – take the place of actual service and proof of service by respondent. Indeed, while an affidavit of service is required merely as proof that service has been made on the other party, it is nonetheless essential to due process and the orderly administration of justice.

Be that as it may, it does not escape the attention of this Court that in the CA Resolution, the CA stated that their records revealed that Atty. Espinas, petitioners' counsel of record at the time, was duly served a copy of the following: (1) CA Resolution, granting respondent's Motion for Extension of Time to file the CA Petition; (2) CA Resolution, requiring petitioners to file their Comment on the CA Petition; and (3) CA Resolution, submitting the case for resolution, as no comment was filed.

Such service to Atty. Espinas, as petitioners' counsel of record, was valid despite the fact he was already deceased at the time. If a party to a case has appeared by counsel, service of pleadings and judgments shall be made upon his counsel or one of them, unless service upon the party is specifically ordered by the court. It is the duty of party-litigants to be in contact with their counsel from time to time in order to be informed of the progress of their case. It is likewise the duty of parties to inform the court of the fact of their counsel's death. Their failure to do so means that they have been negligent in the protection of their cause.

# **Substitution of Counsel**

Petitioners were negligent in the conduct of their litigation. Having known that Atty. Espinas was already bedridden as early as December 2007, they should have already obtained new counsel who could adequately represent their interests. The excuse that Atty. Aglipay could not enter his appearance before the CA because petitioners failed to get their folder from the office of Atty. Espinas is flimsy at best.

The circumstances of this case plainly show that petitioner only has himself to blame. Neither can he invoke due process. The essence of due process is simply an opportunity to be heard. Where a party, such as petitioner, was afforded this opportunity to participate but failed to do so, he cannot complain of deprivation of due process. If said opportunity is not availed of, it is deemed waived or forfeited without violating the constitutional guarantee. In this case, petitioners must bear the fruits of their negligence in the handling of their case.

# MERCEDES S. GATMAYTAN, Petitioner - versus -FRANCISCO DOLOR (SUBSTITUTED BY HIS HEIRS) AND HERMOGENA DOLOR, Respondents

G.R. No. 198120, SECOND D<mark>IVISION,</mark> February 20, 2017, LEONEN, J.

It is just as basic that a judgment can no longer be disturbed, altered, or modified as soon as it becomes final and executory. Once a case is decided with finality, the controversy is settled and the matter is laid to rest. Accordingly, a final judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.

We sustain petitioner's position that the service made on her counsel's former address was ineffectual. We find however, that petitioner failed to discharge her burden of proving the specific date - allegedly June 1, 2006 - in which service upon her counsel's updated address was actually made. Having failed to establish the reckoning point of the period for filing her Motion for Reconsideration, we cannot sustain the conclusion that petitioner insists on, and which is merely contingent on this reckoning point. We cannot conclude that her Motion for Reconsideration was timely filed. Having failed to discharge her burden of proof, we are constrained to deny her Petition.

#### **FACTS:**

The instant case stemmed from the RTC's March 27, 2006 Decision, resolving an action for reconveyance against petitioner Gatmaytan, and in favor of the respondents-spouses Francisco and Hermogena Dolor (Dolor Spouses). The RTC ordered Gatmaytan to convey the subject lot to the Dolor Spouses.

Gatmaytan filed a Motion for Reconsideration, which was denied. Gatmaytan then filed an appeal with the CA.

The CA dismissed Gatmaytan's appeal, ruling that the RTC's March 27, 2006 Decision had already attained finality as Gatmaytan filed her Motion for Reconsideration beyond the requisite 15-day period. **First**, the RTC's Decision was rendered on March 27, 2006. **Second**, per the registry return

receipt attached to the back portion of the last page of the RTC's Decision, Gatmaytan's counsel, Atty. Raymond Palad, received a copy of the same Decision on April 14, 2006. **Finally**, Gatmaytan filed her Motion for Reconsideration only on June 16, 2006.

Gatmaytan filed a Motion for Reconsideration. The CA denied the same. It emphasized that the Receipt at the back of the last page of the RTC's Decision indicated that a copy of the same Decision was received by a certain Maricel Luis, for and on behalf of Atty. Palad, on April 14, 2006. The CA added that previous orders of the RTC were likewise received by Luis, and that Luis' authority to receive for Atty. Palad had never been questioned.

Gatmaytan filed the Present Petition, insisting that the RTC's March 27, 2006 Decision has not attained finality as the April 14, 2006 service was made to her counsel's former address (at No. 117 West Avenue, Quezon City) as opposed to the address (at Unit 602, No. 42 Prince Jun Condominium, Timog Avenue, Quezon City) that her counsel indicated in a June 8, 2004 Notice of Change of Address filed with the RTC. Gatmaytan adds that the RTC noted the change of address in an Order, and directed that, from then on, service of papers, pleadings, and processes was to be made at her counsel's updated address at Unit 602, No. 42 Prince Jun Condominium, Timog Avenue, Quezon City.

#### **ISSUE:**

Whether the RTC's March 27, 2006 Decision has already attained finality, thus, precluding the filing of petitioner Gatmaytan's appeal with the CA. (YES)

#### **RULING:**

It is just as basic that a judgment can no longer be disturbed, altered, or modified as soon as it becomes final and executory. Once a case is decided with finality, the controversy is settled and the matter is laid to rest. Accordingly, a final judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.

In accordance with Rule 36, Section 2 of the 1997 Rules of Civil Procedure, unless a Motion for Reconsideration is timely filed, the judgment or final order from which it arose shall become final.In turn, Rule 37, Section 1, in relation to Rule 41, Section 3 of the 1997 Rules of Civil Procedure, allows for 15 days from notice of a judgment or final order within which a Motion for Reconsideration may be filed.

Reckoning the date when a party is deemed to have been given notice of the judgment or final order subject of his or her Motion for Reconsideration depends on the manner by which the judgment of final order was served upon the party himself or herself. When, however, a party is represented and has appeared by counsel, service shall, as a rule, be made upon his or her counsel.

While petitioner filed a Motion for Reconsideration of the RTC's March 27, 2006 Decision, there is a dispute as to the date from which the 15-day period for filing a Motion for Reconsideration must be reckoned. That is, there is a dispute as to when petitioner was given notice of the Decision.

We sustain petitioner's position that the service made on her counsel's former address was ineffectual. We find however, that petitioner failed to discharge her burden of proving the specific date - allegedly June 1, 2006 - in which service upon her counsel's updated address was actually made. Having failed to establish the reckoning point of the period for filing her Motion for Reconsideration, we cannot sustain the conclusion that petitioner insists on, and which is merely contingent on this reckoning point. We cannot conclude that her Motion for Reconsideration was timely filed. Having failed to discharge her burden of proof, we are constrained to deny her Petition.

In this case, none of the documents that petitioner adduced before this Court attests to the truth of her allegation that service to her counsel's new and correct address was made only on June 1, 2006. In her Petition, petitioner alluded to a receipt attached at the back of the RTC's March 27, 2006 decision. No copy of this receipt, however, was produced by petitioner. Lacking evidentiary basis, petitioner's contention that service upon her counsel's updated and correct address was made only on June 1, 2006 cannot be sustained. As her plea for relief hinges on this singular detail, we are constrained to deny such. Bereft of any avenue for revisiting the RTC's March 27, 2006 Decision, its findings and ruling must stand.

LISAM ENTERPRISES, INC. represented by LOLITA A. SORIANO, and LOLITA A. SORIANO, *Petitioners, - versus -*BANCO DE ORO UNIBANK, INC. (formerly PHILIPPINE COMMERCIAL INTERNATIONAL BANK),\* LILIAN S. SORIANO, ESTATE OF LEANDRO A. SORIANO, JR., REGISTER OF DEEDS OF LEGASPI CITY, and JESUS L. SARTE, *Respondents*. G.R. No. 143264, THIRD DIVISION, April 23, 2012, PERALTA, *J*.

The courts should be liberal in allowing amendments to pleadings to avoid a multiplicity of suits and in order that the real controversies between the parties are presented, their rights determined, and the case decided on the merits without unnecessary delay. This liberality is greatest in the early stages of a lawsuit, especially in this case where the amendment was made before the trial of the case, thereby giving the petitioners all the time allowed by law to answer and to prepare for trial. Hence, the RTC was directed to admit the Amended Complaint.

#### **FACTS:**

Lisam Enterprises, Inc. (LEI), represented by Lolita Soriano filed a Complaint against the respondents BDO Unibank, et. al. for Annulment of Mortgage with Prayer for TRO & Preliminary Injunction with Damages with the RTC. The RTC issued a TRO. Lilian Soriano and the Estate of Leandro Soriano, Jr. filed an Answer. Thereafter, RTC dismissed LEI and Lolita's Complaint. The latter then filed a Motion for Reconsideration (MR). While awaiting resolution of the MR, they also filed a Motion to Admit Amended Complaint. The RTC denied both the MR and the Motion to Admit Amended Complaint.

# **ISSUE:**

Whether LEI's amended complaint should be admitted. (YES)

#### **RULING:**

It should be noted that respondents Lilian Soriano and the Estate of Leandro Soriano, Jr. already filed their Answer, to petitioners' complaint, and the claims being asserted were made against said

parties. A responsive pleading having been filed, amendments to the complaint may, therefore, be made only by leave of court and no longer as a matter of right.

The granting of leave to file amended pleading is a matter particularly addressed to the sound discretion of the trial court; and that discretion is broad, subject only to the limitations that the amendments should not substantially change the cause of action or alter the theory of the case, or that it was not made to delay the action.

Nevertheless, as enunciated in *Valenzuela*, even if the amendment substantially alters the cause of action or defense, such amendment could still be allowed when it is sought to serve the higher interest of substantial justice, prevent delay, and secure a just, speedy and inexpensive disposition of actions and proceedings.

The courts should be liberal in allowing amendments to pleadings to avoid a multiplicity of suits and in order that the real controversies between the parties are presented, their rights determined, and the case decided on the merits without unnecessary delay. This liberality is greatest in the early stages of a lawsuit, especially in this case where the amendment was made before the trial of the case, thereby giving the petitioners all the time allowed by law to answer and to prepare for trial. Hence, the RTC was directed to admit the Amended Complaint.

MA. MERCEDES L. BARBA, *Petitioner, - versus -* LICEO DE CAGAYAN UNIVERSITY, *Respondent*. G.R. No. 193857, FIRST DIVISION, November 28, 2012, VILLARAMA, JR., J.

We agree with the CA's earlier pronouncement that since respondent actively participated in the proceedings before the LA and the NLRC, it is already estopped from belatedly raising the issue of lack of jurisdiction.

Under Section 6, Rule 10 of the 1997 Rules of Civil Procedure, as amended, governing supplemental pleadings, the court "may" admit supplemental pleadings, such as the supplemental petition filed by respondent before the appellate court, but the admission of these pleadings remains in the sound discretion of the court. Nevertheless, we have already found no credence in respondent's claim that petitioner is a corporate officer, consequently, the alleged lack of jurisdiction asserted by respondent in the supplemental petition is bereft of merit.

# **FACTS:**

Petitioner Dr. Ma. Mercedes Barba was chosen by respondent Liceo de Cagayan University, Inc. to be the recipient of a scholarship grant to pursue a three-year residency training in Rehabilitation Medicine at the Veterans Memorial Medical Center (VMMC). After completing her residency training with VMMC, petitioner returned to continue working for respondent. She was appointed as Acting Dean of the College of Physical Therapy and at the same time designated as Doctor-In-Charge of the Rehabilitation Clinic of the Rodolfo Pelaez Hall, City Memorial Hospital.

Petitioner's appointment as Doctor-In-Charge of the Rehabilitation Clinic was renewed and she was appointed as Dean of the College of Physical Therapy by respondent's President, Dr. Jose Ma. Golez.

Petitioner accepted her appointment and assumed the position of Dean of the College of Physical Therapy. In the school year 2003 to 2004, the College of Physical Therapy suffered a dramatic decline in the number of enrollees. This worsened in the next year.

Due to the low number of enrollees, respondent decided to freeze the operation of the College of Physical Therapy indefinitely. Respondent's President Dr. Rafaelita Pelaez-Golez wrote petitioner a letter, informing her that her services as dean of the said college will end at the close of the school year. Thereafter, the College of Physical Therapy ceased operations, and petitioner went on leave without pay. Subsequently, respondent's Executive Vice President, Dr. Mariano Lerin, sent petitioner a letter instructing petitioner to return to work and report to Ma. Chona Palomares, the Acting Dean of the College of Nursing, to receive her teaching load and assignment as a full-time faculty member in that department.

Petitioner informed Dr. Lerin that she had not committed to teach in the College of Nursing and that as far as she can recall, her employment is not dependent on any teaching load. She then requested for the processing of her separation benefits in view of the closure of the College of Physical Therapy. She did not report to Palomares.

Petitioner followed up her request for separation pay and other benefits but Dr. Lerin insisted that she report to Palomares. Otherwise, sanctions will be imposed on her. Thus, petitioner wrote Dr. Golez directly, asking for her separation pay and other benefits.

Dr. Magdale wrote petitioner a letter directing her to report for work and to teach her assigned subjects. Otherwise, she will be dismissed from employment on the ground of abandonment. Petitioner, through counsel, replied that teaching in the College of Nursing is in no way related to her scholarship and training in the field of rehabilitation medicine. Dr. Magdale sent another letter to petitioner ordering her to report for work as she was still bound by the Scholarship Contract to serve respondent for two more years. But petitioner did not do so. Hence, Dr. Magdale sent petitioner a notice terminating her services on the ground of abandonment.

Meanwhile, prior to the termination of her services, petitioner filed a complaint before the LA for illegal dismissal, among others, against respondent Dr. Magdale and Dr. Golez. She alleged that her transfer to the College of Nursing as a faculty member is a demotion amounting to constructive dismissal.

The LA found that petitioner was not constructively dismissed. The NLRC reversed the LA, ruling that petitioner was indeed constructively dismissed. Respondent went to the CA on a petition for certiorari alleging that the NLRC committed grave abuse of discretion.

Respondent also filed a Supplemental Petition raising for the first time the issue of lack of jurisdiction of the LA and the NLRC over the case. Respondent claimed that a College Dean is a corporate officer under its by-laws and petitioner was a corporate officer of respondent since her appointment was approved by the board of directors. Respondent posited that petitioner was a corporate officer since her office was created by the by-laws and her appointment, compensation, duties and functions were approved by the board of directors. Thus, respondent maintained that the jurisdiction over the case is with the regular courts and not with the labor tribunals.

The CA reversed the NLRC, reinstating the decision of the LA. The CA held that petitioner was respondent's employee. It found that the arguments in the Supplemental Petition on the matter of lack of jurisdiction of the LA and the NLRC was without merit. Dr. Barba, being a College Dean, was not a corporate officer. The CA further found that no constructive dismissal occurred nor has petitioner abandoned her work. On the issue of alleged lack of jurisdiction, the CA observed that

respondent never raised the issue of jurisdiction before the LA and the NLRC and respondent even actively participated in the proceedings below. Hence, respondent is estopped from questioning the jurisdiction of the labor tribunals.

The CA issued the assailed Amended Decision setting aside its earlier ruling. This time, the CA held that the position of a College Dean is a corporate office and therefore the labor tribunals had no jurisdiction over the complaint for constructive dismissal.

## **ISSUE:**

Whether the respondent is estopped from belatedly raising the issue of lack of jurisdiction. (YES)

## **RULING:**

We agree with the CA's earlier pronouncement that since respondent actively participated in the proceedings before the LA and the NLRC, it is already estopped from belatedly raising the issue of lack of jurisdiction. In this case, respondent filed position papers and other supporting documents to bolster its defense before the labor tribunals but in all these pleadings, the issue of lack of jurisdiction was never raised. It was only in its Supplemental Petition filed before the CA that respondent first brought the issue of lack of jurisdiction. We have consistently held that while jurisdiction may be assailed at any stage, a party's active participation in the proceedings will estop such party from assailing its jurisdiction. It is an undesirable practice of a party participating in the proceedings and submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction, when adverse.

Under Section 6, Rule 10 of the 1997 Rules of Civil Procedure, as amended, governing supplemental pleadings, the court "may" admit supplemental pleadings, such as the supplemental petition filed by respondent before the appellate court, but the admission of these pleadings remains in the sound discretion of the court. Nevertheless, we have already found no credence in respondent's claim that petitioner is a corporate officer, consequently, the alleged lack of jurisdiction asserted by respondent in the supplemental petition is bereft of merit.

# CENTRAL BANK BOARD OF LIQUIDATORS, Petitioner - versus -BANCO FILIPINO SAVINGS AND MORTGAGE BANK, Respondent

G.R. No. 173399, EN BANC, February 21, 2017, SERENO, CJ.

The prevailing rule on the amendment of pleadings is one of liberality, with the end of obtaining substantial justice for the parties. However, the option of a party-litigant to amend a pleading is not without limitation. If the purpose is to set up a cause of action not existing at the time of the filing of the complaint, amendment is not allowed. If no right existed at the time the action was commenced, the suit cannot be maintained, even if the right of action may have accrued thereafter.

In the instant case, Banco Filipino, through the Second Amended/Supplemental Complaint, attempted to raise new and different causes of action. These causes of action had no relation whatsoever to the causes of action in the original Complaint, as they involved different acts or omissions, transactions, and parties. If the Court admits the Second Amended/Supplemental Complaint under these circumstances, there will be no end to the process of amending the Complaint. For these reasons, whether viewed as an amendment or a supplement to the original Complaint, the Second Amended/Supplemental Complaint should not have been admitted. Moreover, the admission of

the Second Amended/Supplemental Complaint is inappropriate because it violates the rule on joinder of parties and causes of action.

## **FACTS:**

The Monetary Board (MB) of the then Central Bank (CB) issued MB Resolution No. 955 placing Banco Filipino under conservatorship. Respondent bank filed with the RTC a Complaint against the CB for the annulment of MB Resolution No. 955.

Thereafter, the CB issued MB Resolution No. 75 ordering the closure of Banco Filipino and placing the latter under receivership. Banco Filipino filed a Complaint with the RTC against the MB, assailing the latter's act of placing the bank under receivership.

The CB issued another Resolution placing Banco Filipino under liquidation. Respondent then filed another Complaint with the RTC to question the propriety of the liquidation.

The three cases were consolidated. Thereafter, this Court nullified MB Resolution No. 75 and ordered the CB and its MB to reorganize the bank and allow it to resume business.

During the pendency of the three consolidated cases, R.A. No. 7653, or the New Central Bank Act of 1993, took effect. Under the new law, the CB was abolished and, in its stead, the BSP was created. The new law also created the Central Bank Board of Liquidators (CB-BOL) for the purpose of administering and liquidating the CB's assets and liabilities, not all of which had been transferred to the BSP.

Banco Filipino filed a Motion to Admit Attached Amended/Supplemental Complaint in the three consolidated cases before the RTC. In its Amended/Supplemental Complaint, respondent bank sought to substitute the CB-BOL for the defunct CB and its MB.

The RTC granted the Motion to Admit filed by Banco Filipino and accordingly admitted the latter's Amended/Supplemental Complaint. Consequently, the CB-BOL was substituted for the defunct CB in respondent's civil cases, which are still pending with the RTC.

More than 10 years from the enactment of R.A. 7653, Banco Filipino again filed a Motion to Admit Second Amended/Supplemental Complaint in the consolidated civil cases before the RTC. In that Second Amended/Supplemental Complaint, respondent sought to include the BSP and its MB - "the purported successor-in-interest of the old CB" - as additional defendants.

Banco Filipino's Motion to Admit its Second Amended/Supplemental Complaint was opposed by the CB-BOL based on the following grounds: (1) Banco Filipino's Second Amended/Supplemental Complaint was not supported by a board resolution that authorized it to file the amended or supplemental complaint; (2) the second supplemental complaint raised new and independent causes of action against a new party- the BSP - which was not an original party; (3) the second supplemental complaint was violative of the rule on the joinder of causes of action, because it alleged those that did not arise from the same contract, transaction or relation between the parties - as opposed to those alleged in the complaint sought to be amended or supplemented - and differed from the causes of action cited in the original Complaint; and (4) the admission of the second supplemental complaint would expand the scope of the dispute in the consolidated civil cases to include new causes of action against new parties.

The RTC granted the Motion to Admit Banco Filipino's Second Amended/Supplemental Complaint. The CA affirmed in toto the RTC's Order.

## **ISSUE:**

Whether the admission of Banco Filipino's Second Amended/Supplemental Complaint was proper. (NO)

## **RULING:**

## The second amendment of the Complaint was improper.

The prevailing rule on the amendment of pleadings is one of liberality, with the end of obtaining substantial justice for the parties. However, the option of a party-litigant to amend a pleading is not without limitation. If the purpose is to set up a cause of action not existing at the time of the filing of the complaint, amendment is not allowed. If no right existed at the time the action was commenced, the suit cannot be maintained, even if the right of action may have accrued thereafter.

In the instant case, the causes of action subject of the Second Amended/Supplemental Complaint only arose after the original Complaint, which was based on the alleged illegal closure of Banco Filipino effected by the defunct CB and its MB. On the other hand, the Second Amended/Supplemental Complaint stemmed from the alleged oppressive and arbitrary acts committed by the BSP and its MB against Banco Filipino after respondent bank was reopened. Since the acts or omissions allegedly committed in violation of respondent's rights are different, **they constitute separate causes of action.** 

A closer examination of the Second Amended/Supplemental Complaint, in which respondent asks the Court to order the petitioner to pay, among others, actual damages of at least ₱18.8 billion "as a consequence of the acts herein complained of."

The "acts complained of" cover not just the conservatorship, receivership, closure, and liquidation of Banco Filipino, but also the alleged acts of harassment committed by the BSP and its MB after respondent bank was reopened. These acts constituted a whole new cause of action. In effect, respondent raised new causes of action and asserted a new relief in the Second Amended/Supplemental Complaint. If it is admitted, the RTC would need to look into the propriety of two entirely different causes of action. This is not countenanced by law.

In the instant case, Banco Filipino, through the Second Amended/Supplemental Complaint, attempted to raise new and different causes of action. These causes of action had no relation whatsoever to the causes of action in the original Complaint, as they involved different acts or omissions, transactions, and parties. If the Court admits the Second Amended/Supplemental Complaint under these circumstances, there will be no end to the process of amending the Complaint. For these reasons, whether viewed as an amendment or a supplement to the original Complaint, the Second Amended/Supplemental Complaint should not have been admitted.

The amendment/supplement violates the rules on joinder of parties and causes of action.

Moreover, the admission of the Second Amended/Supplemental Complaint is inappropriate because it violates the rule on joinder of parties and causes of action. If its admission is upheld, the causes of action set forth therein would be joined with those in the original Complaint. The joinder of causes of action is indeed allowed under Section 5, Rule 2 of the 1997 Rules of Court; but if there are multiple parties, the joinder is made subject to the rules on joinder of parties under Section 6, Rule 3. Specifically, before causes of action and parties can be joined in a complaint involving multiple parties: (1) the right to relief must arise out of the same transaction or series of transactions and (2) there must be a question of law or fact common to all the parties.

In the instant case, Banco Filipino is seeking to join the BSP and its MB as parties to the complaint. However, they have different legal personalities from those of the defunct CB and its MB: firstly, because the CB was abolished by R.A. 7653, and the BSP created in its stead; and secondly, because the members of each MB are natural persons. These factors make the BSP and its MB different from the CB and its MB. Since there are multiple parties involved, the two requirements mentioned in the previous paragraph must be present before the causes of action and parties can be joined. Neither of the two requirements for the joinder of causes of action and parties was met.

First, the reliefs for damages prayed for by respondent did not arise from the same transaction or series of transactions. While the damages prayed for in the first Amended/Supplemental Complaint arose from the closure of Banco Filipino by the defunct CB and its MB, the damages prayed for in the Second Amended/Supplemental Complaint arose from the alleged acts of oppression committed by the BSP and its MB against respondent.

Second, there is no common question of fact or law between the parties involved. The acts attributed by Banco Filipino to the BSP and its MB pertain to events that transpired after this Court ordered the respondent bank's reopening. These acts bear no relation to those alleged in the original Complaint, which related to the propriety of the closure and liquidation of respondent as a banking institution way back in 1985.

The only common factor in all these allegations is respondent bank itself as the alleged aggrieved party. Since the BSP and its MB cannot be joined as parties, then neither can the causes of action against them be joined.

# SPOUSES RAMON VILLUGA and MERCEDITA VILLUGA, *Petitioners, - versus -*KELLY HARDWARE AND CONSTRUCTION SUPPLY INC., represented by ERNESTO V. YU, Executive Vice-President and General Manager, *Respondent*.

G.R. No. 176570, THIRD DIVISION, July 18, 2012, PERALTA, J.

The Court agrees with the CA in holding that respondent's Second Amended Complaint supersedes only its Amended Complaint and nothing more. Section 8, Rule 10 of the Rules of Court provides:

Sec. 8. Effect of amended pleading. – An amended pleading supersedes the pleading that it amends. However, admissions in superseded pleadings may be received in evidence against the

pleader; and claims or defenses alleged therein not incorporated in the amended pleading shall be deemed waived.

From the foregoing, it is clear that respondent's Request for Admission is not deemed abandoned or withdrawn by the filing of the Second Amended Complaint.

### **FACTS:**

The respondent corporation filed with the RTC a Complaint for a Sum of Money and Damages against the petitioners-spouses Villuga, alleging that the petitioners made purchases of various construction materials from the respondent corporation in the sum of P259,809.50, which has not been paid up to the present time, both principal and stipulated interests due thereon. Respondent corporation made several demands, oral and written, for the petitioners to pay all their obligations due, but the latter failed and refused to comply.

In their Answer to Complaint, petitioners admitted having made purchases from respondent, but alleged that they do not remember the exact amount thereof as no copy of the documents evidencing the purchases were attached to the complaint. Petitioners, nonetheless, claimed that they have made payments to the respondent in the amounts of P110,301.80 and P20,000.00, and they are willing to pay the balance of their indebtedness after deducting the payments made and after verification of their account.

In a Manifestation, petitioners stated that they were willing to pay respondent the principal sum of P259,809.50, but without interests and costs, and on installment basis. Respondent signified that it was amenable to petitioners' offer to pay the principal amount of P259,809.50. However, respondent insisted that petitioners should also pay interests, as well as litigation expenses and attorney's fees, and all incidental expenses.

Subsequently, respondent filed a Motion for Partial Judgment on the Pleadings contending that petitioners were deemed to have admitted in their Answer that they owed respondent the amount of P259,809.50 when they claimed that they made partial payments amounting to P130,301.80. Based on this premise, respondent prayed that it be awarded the remaining balance of P129,507.70.

The RTC ruled that there is no clear and specific admission on the part of petitioners as to the actual amount that they owe respondent.

Respondent filed an Amended Complaint, with leave of court, alleging that petitioners purchased from it [respondent] various construction materials and supplies, the aggregate value of which is P279,809.50, and that only P20,000.00 had been paid leaving a balance of P259,809.50.

In their Answer to Amended Complaint, petitioners reiterated their allegations in their Answer to Complaint.

Respondent filed a Request for Admission asking that petitioners admit the genuineness of various documents, such as statements of accounts, delivery receipts, invoices and demand letter attached thereto as well as the truth of the allegations set forth therein. Respondent basically asked petitioners to admit that the latter's principal obligation is P279,809.50 and that only P20,000.00 was paid.

Respondent filed a Manifestation and Motion before the RTC praying that since petitioners failed to timely file their comment to the Request for Admission, they be considered to have admitted the genuineness of the documents described in and exhibited with the said Request as well as the truth of the matters of fact set forth therein, in accordance with the Rules of Court.

Petitioners filed their Comments on the Request for Admission stating their objections to the admission of the documents attached to the Request.

Respondent filed its Second Amended Complaint, again with leave of court. The amendment modified the period covered by the complaint. The amendment also confirmed petitioners' partial payment in the sum of P110,301.80, but alleged that this payment was applied to other obligations which petitioners owe respondent. Respondent reiterated its allegation that, despite petitioners' partial payment, the principal amount which petitioners owe remains P259,809.50.

Petitioners filed their Answer to the Second Amended Complaint denying the allegations therein and insisting that they have made partial payments.

Respondent filed a Motion to Expunge with Motion for Summary Judgment. The RTC granted the same. Petitioners filed a Motion for Reconsideration, but it was denied. The CA rendered affirmed the RTC.

## **ISSUE:**

Whether the respondent waived its Request for Admission when it filed its Second Amended Complaint. (NO)

## **RULING:**

The Court agrees with the CA in holding that respondent's Second Amended Complaint supersedes only its Amended Complaint and nothing more. Section 8, Rule 10 of the Rules of Court provides:

Sec. 8. *Effect of amended pleading*. – An amended pleading supersedes the pleading that it amends. However, admissions in superseded pleadings may be received in evidence against the pleader; and claims or defenses alleged therein not incorporated in the amended pleading shall be deemed waived.

From the foregoing, it is clear that respondent's Request for Admission is not deemed abandoned or withdrawn by the filing of the Second Amended Complaint.

The Court also finds no error when the CA ruled that petitioners' Comments on the Request for Admission was filed out of time. Nonetheless, the Court takes exception to the ruling of the CA that by reason of the belated filing of petitioners' Comments on the Request for Admission, they are deemed to have impliedly admitted that they are indebted to respondent in the amount of P259,809.50.

A careful examination of the said Request for Admission shows that the matters of fact set forth therein are simply a reiteration of respondent's main allegation in its Amended Complaint and that

petitioners had already set up the affirmative defense of partial payment with respect to the above allegation in their previous pleadings.

This Court has ruled that if the factual allegations in the complaint are the very same allegations set forth in the request for admission and have already been specifically denied, the required party cannot be compelled to deny them anew. A request for admission that merely reiterates the allegations in an earlier pleading is inappropriate under Rule 26 of the Rules of Court, which as a mode of discovery, contemplates of interrogatories that would clarify and tend to shed light on the truth or falsity of the allegations in the pleading. Rule 26 does not refer to a mere reiteration of what has already been alleged in the pleadings. Nonetheless, consistent with the abovementioned Rule, the party being requested should file an objection to the effect that the request for admission is improper and that there is no longer any need to deny anew the allegations contained therein considering that these matters have already been previously denied.

## PLANTERS DEVELOPMENT BANK, *Petitioner*, - *versus* -JULIE CHANDUMAL, *Respondent*. G.R. No. 195619, FIRST DIVISION, September 5, 2012, REYES, J.

The Court ruled that although there was no valid substituted service of summons, there was voluntary appearance. In Manotoc v. Court of Appeals, the Court detailed the requisites for a valid substituted service of summons. In applying the foregoing requisites in the instant case, the CA correctly ruled that the sheriff's return failed to justify a resort to substituted service of summons. The "efforts" exerted by the sheriff clearly do not suffice to justify substituted service and his failure to comply with the requisites renders such service ineffective

However, when Chandumal filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer, she effectively submitted her person to the jurisdiction of the trial court as the filing of a pleading where one seeks an affirmative relief is equivalent to service of summons and vests the trial court with jurisdiction over the defendant's person.

## **FACTS:**

The instant case stemmed from a contract to sell a parcel of land between BF Homes and respondent Julie Chandumal. BF Homes sold to Planters Development Bank (PDB) all its rights, participations and interest over the contract. While Chandumal was able to pay the monthly payments in the beginning of the contract, she later on defaulted. PDB demanded the payment averring that non-settlement will result in the rescission of the contract with waiver of rights.

Chandumal failed to pay. PDB then filed an action for judicial confirmation of notarial rescission and delivery of possession. Consequently, summons was issued and served by deputy sheriff Roberto Galing (Sheriff Galing). According to his return, Sheriff Galing attempted to personally serve the summons upon Chandumal on July 15, 19, and 22, 1999, but it was unavailing, as she was always out of the house on said dates. Hence, the sheriff caused substituted service of summons on August 5, 1999 by serving the same through Chandumal's mother who acknowledged receipt thereof.

Chandumal failed to file an answer. PDB sought to declare Chandumal in default, and the same was granted by the RTC.

Chandumal filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer. She maintained that she did not receive the summons and/or was not notified of the same. She further

alleged that her failure to file an answer within the reglementary period was due to fraud, mistake, or excusable negligence. The RTC however denied Chandumal's motion.

The RTC ruled in favor of PDB. However, the CA reversed the RTC on the ground of invalid and ineffective substituted service of summons.

### ISSUE:

Whether the jurisdiction over the person of Chandumal was validly acquired. (YES)

## **RULING:**

The Court ruled that although there was no valid substituted service of summons, there was voluntary appearance. In *Manotoc v. Court of Appeals*, the Court detailed the requisites for a valid substituted service of summons, summed up as follows:

- (1) impossibility of prompt personal service the party relying on substituted service or the sheriff must show that the defendant cannot be served promptly or there is impossibility of prompt service;
- (2) specific details in the return the sheriff must describe in the Return of Summons the facts and circumstances surrounding the attempted personal service;
- (3) a person of suitable age and discretion the sheriff must determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons, which matters must be clearly and specifically described in the Return of Summons; and
- (4) a competent person in charge, who must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons

In applying the foregoing requisites in the instant case, the CA correctly ruled that the sheriff's return failed to justify a resort to substituted service of summons. According to the CA, the Return of Summons does not specifically show or indicate in detail the actual exertion of efforts or any positive step taken by the officer or process server in attempting to serve the summons personally to the defendant. The return merely states the alleged whereabouts of the defendant without indicating that such information was verified from a person who had knowledge thereof. Indeed, the sheriff's return shows a mere perfunctory attempt to cause personal service of the summons on Chandumal. There was no indication if he even asked Chandumal's mother as to her specific whereabouts except that she was "out of the house", where she can be reached or whether he even tried to await her return. The "efforts" exerted by the sheriff clearly do not suffice to justify substituted service and his failure to comply with the requisites renders such service ineffective

However, when Chandumal filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer, she effectively submitted her person to the jurisdiction of the trial court as the filing of a pleading where one seeks an affirmative relief is equivalent to service of summons and vests the trial court with jurisdiction over the defendant's person. Thus, it was ruled that the filing of motions to admit answer, for additional time to file answer, for

reconsideration of a default judgment, and to lift order of default with motion for reconsideration is **considered voluntary submission to the trial court's jurisdiction.** 

## MA. TERESA CHAVES BIACO, PETITIONER, VS. PHILIPPINE COUNTRYSIDE RURAL BANK, RESPONDENT.

G.R. No. 161417, SECOND DIVISION, February 08, 2007, TINGA, J.

In an action in personam, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. In a proceeding in rem or quasi in rem, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court provided that the court acquires jurisdiction over the res. Jurisdiction over the res is acquired either (1) by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or (2) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective. Nonetheless, summons must be served upon the defendant not for the purpose of vesting the court with jurisdiction but merely for satisfying the due process requirements.

## FACTS:

While employed in the Philippine Countryside Rural Bank (PCRB) as branch manager, Ernesto, husband of petitioner Ma. Teresa Chaves Biaco, obtained several loans from respondent bank.

A REM was executed to secure the loans. The REM bore the signatures of the spouses Biaco.

For failure to pay, the bank filed a complaint for foreclosure of mortgage. Ernesto received the summons but he failed to file an answer. Hence, the spouses Biaco were declared upon motion. The bank presented evidence ex parte.

RTC: The RTC rendered judgment ordering spouses to pay the amount of the loan and in case of non-payment, to sell the mortgaged lot at public auction.

The judgment was personally served to Ernesto but the Spouses did not appeal. Hence, the bank filed a motion for execution to sell the mortgaged lot. This was granted.

The amount of the mortgaged lot being insufficient to cover the full amount of the obligation, the respondent bank filed an "ex parte motion for judgment" praying for the issuance of a writ of execution against the other properties of the spouses Biaco for the full settlement of the remaining obligation.

6 months after the RTC decision's finality, petitioner Ma. Teresa sought the annulment of the RTC decision contending that extrinsic fraud prevented her from participating in the judicial foreclosure proceedings. She asserted, among others, that the trial court failed to acquire jurisdiction because summons were served on her through her husband without any explanation as to why personal service could not be made.

**CA:** On the validity of the service of summons, the appellate court ruled that judicial foreclosure proceedings are actions quasi in rem. As such, jurisdiction over the person of the defendant is not essential as long as the court acquires jurisdiction over the res. Noting that the spouses Biaco were

not opposing parties in the case, the CA further ruled that the fraud committed by one against the other cannot be considered extrinsic fraud. (the concealment of the Ernesto of the foreclosure proceedings to her wife Ma. Teresa)

Hence, this petition.

Petitioner contends that extrinsic fraud was perpetrated not so much by her husband, who did not inform her of the judicial foreclosure proceedings, but by the sheriff who allegedly connived with her husband to just leave a copy of the summons intended for her at the latter's office.

## **ISSUE:**

Whether or not there was a valid service of summons to petitioner Ma. Teresa.

## **RULING:**

No. There was no valid service of summons to petitioner Ma. Teresa.

The judicial foreclosure proceeding instituted by respondent PCRB undoubtedly vested the trial court with jurisdiction over the res. A judicial foreclosure proceeding is an action quasi in rem. As such, jurisdiction over the person of petitioner is not required, it being sufficient that the trial court is vested with jurisdiction over the subject matter.

However, petitioner Ma. Teresa was not personally served summons. Instead, summons was served to her through her husband at his office without any explanation as to why the particular surrogate service was resorted to.

Without ruling on petitioner's allegation that her husband and the sheriff connived to prevent summons from being served upon her personally, we can see that petitioner was denied due process and was not able to participate in the judicial foreclosure proceedings as a consequence. The violation of petitioner's constitutional right to due process arising from want of valid service of summons on her warrants the annulment of the judgment of the trial court.

There is more, the trial court granted respondent PCRB's ex-parte motion for deficiency judgment and ordered the issuance of a writ of execution against the spouses Biaco to satisfy the remaining balance of the award. In short, the trial court went beyond its jurisdiction over the res and rendered a personal judgment against the spouses Biaco. This cannot be countenanced.

While the trial court acquired jurisdiction over the res, its jurisdiction is limited to a rendition of judgment on the res. It cannot extend its jurisdiction beyond the res and issue a judgment enforcing petitioner's personal liability. In doing so without first having acquired jurisdiction over the person of petitioner, as it did, the trial court violated her constitutional right to due process, warranting the annulment of the judgment rendered in the case.

# BOBIE ROSE D. V. FRIAS, AS REPRESENTED BY MARIE REGINE F. FUJITA, PETITIONER, VS. ROLANDO F. ALCAYDE, RESPONDENT. G.R. No. 194262, FIRST DIVISION, February 28, 2018, TIJAM, J.

It is elementary that courts acquire jurisdiction over the plaintiff or petitioner once the complaint or petition is filed. On the other hand, there are two ways through which jurisdiction over the defendant or respondent is acquired through coercive process - either through the service of summons upon them or through their voluntary appearance in court. For purposes of summons, this Court holds that the nature of a petition for annulment of judgment is in personam.

Where the action is in personam and the defendant is in the Philippines, as in this case, the service of summons may be done by personal or substituted service as laid out in Sections 6 and 7 of Rule 14. Indeed, the preferred mode of service of summons is personal service. A perusal, however, of Sheriff Tolentino's Return discloses that the following circumstances, as required in Manotoc, were not clearly-established: (a) personal service of summons within a reasonable time was impossible; (b) efforts were exerted to locate the party; and (c) the summons was served upon a person of sufficient age and discretion residing at the party's residence or upon a competent person in charge of the party's office or place of business. The Officer's Return likewise revealed that no diligent effort was exerted and no positive step was taken to locate and serve the summons personally on the petitioner. Thus, Sheriff Tolentino fell short of the required standards. For her failure to faithfully, strictly, and fully comply with the requirements of substituted service, the same is rendered ineffective.

As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority. In this case, it is readily apparent that the petitioner did not acquiesce to the jurisdiction of the trial court. It is noteworthy that when the petitioner filed those pleadings and motions, it was only in a "special" character, conveying the fact that her appearance before the trial court was with a qualification, i.e., to defy the RTC's lack of jurisdiction over her person.

## **FACTS:**

Petitioner Bobie Rose D.V. Frias, as lessor, and respondent Rolando Alcayde, as lessee, entered into a Contract of Lease involving a residential house and lot located at No. 589 Batangas East, Ayala Alabang Village, Muntinlupa City, for a period of one year with a monthly rental of P30,000.00. Respondent refused to perform any of his contractual obligations, which had accumulated for 24 months in rental arrearages.

This prompted petitioner to file a Complaint for Unlawful Detainer with the MeTC Muntinlupa against the respondent. As per the Process Server's Return, Tobias N. Abellano tried to personally serve the summons to respondent, but to no avail. Through substituted service, summons was served upon respondent's caretaker, May Ann Fortiles.

The MeTC, in its Decision on July 26, 2006, ruled in favor of the petitioner and ordered respondent to vacate the subject premises and to pay the petitioner the accrued rentals at 12% legal interest, plus P10,000 in attorney's fees. Thereafter, the MeTC issued an Order, granting petitioner's Motion to execute the July 26, 2006 Decision, and denying respondent's Omnibus Motion thereto.

Respondent then filed a Petition for Annulment of Judgment with Prayer for Issuance of TRO and/or Injunction with the RTC Muntinlupa. Respondent averred that the MeTC's July 26, 2006 Decision does not bind him since the court did not acquire jurisdiction over his person. Respondent likewise averred that the MeTC lacked jurisdiction over the case for two reasons: (1) petitioners' complaint has no cause of action for failure to make a prior demand to pay and to vacate; and (2) petitioner's non-referral of the case before the barangay.

A copy of the petition for annulment of judgment was allegedly served to the petitioner. Based on the Officer's Return, Sheriff IV Jocelyn S. Tolentino (Sheriff Tolentino) caused the service of a Notice of Raffle and Summons together with a copy of the complaints and its annexes to the petitioner, through Sally Gonzales (Ms. Gonzales), the secretary of petitioner's counsel, Atty. Daniel S. Frias (Atty. Frias).

Petitioner, through her representative, Marie Regine F. Fujita (Ms. Fujita), filed a Preliminary Submission to Dismiss Petition - Special Appearance Raising Jurisdictional Issues (Preliminary Submission), on the ground of lack of jurisdiction over her person. She pointed out that the defect in the service of summons is immediately apparent on the Officer's Return, since it did not indicate the impossibility of a personal service within a reasonable time. It did not specify the efforts exerted by Sheriff Tolentino to locate the petitioner, and it did not certify that the person in the office who received the summons in petitioner's behalf was one with whom the petitioner had a relation of confidence ensuring that the latter would receive or would be notified of the summons issued in her name.

## **ISSUE:**

Whether or not the respondent's petition for annulment of judgment should be dismissed on the ground of lack of jurisdiction over the person of the petitioner.

## **RULING:**

Yes. The respondent's petition for annulment of judgment should be dismissed on the ground of lack of jurisdiction over the person of the petitioner.

It is elementary that courts acquire jurisdiction over the plaintiff or petitioner once the complaint or petition is filed. On the other hand, there are two ways through which jurisdiction over the defendant or respondent is acquired through coercive process - either through the service of summons upon them or through their voluntary appearance in court.

## Nature of a petition for annulment of judgment for purposes of service of summons

For a proper perspective, it is crucial to underscore the necessity of determining first whether the action subject of this appeal is in personam, in rem, or quasi in rem because the rules on service of summons under Rule 14 apply according to the nature of the action.

An action in personam is a proceeding to enforce personal rights and obligations brought against the person and is based on the jurisdiction of the person. Actions in rem are actions against the thing itself. They are binding upon the whole world. 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.

In actions in personam, the judgment is for or against a person directly. Jurisdiction over the parties is required in actions in personam because they seek to impose personal responsibility or liability upon a person. In a proceeding in rem or quasi in rem, jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided that the latter has jurisdiction over the res. Jurisdiction over the res is acquired either (a) by the seizure of the property under legal process, whereby it is brought into actual custody of the law; or (b) as a result of the institution of legal proceedings, in which the power of the court is recognized and made effective.

Here, respondent filed a petition to annul the MeTC's July 26, 2006 Decision, which ordered him to vacate the premises of the subject property and to pay the petitioner the accrued rentals thereon, in violation of the parties' lease contract.

Annulment of judgment, as provided for in Rule 47, is based only on the grounds of extrinsic fraud and lack of jurisdiction. Jurisprudence, however, recognizes lack of due process as an additional ground to annul a judgment. It is unlike a motion for reconsideration, appeal or even a petition for relief from judgment, because annulment is not a continuation or progression of the same case, as in fact the case it seeks to annul is already final and executory. Rather, it is an extraordinary remedy that is equitable in character and is permitted only in exceptional cases.

For purposes of summons, this Court holds that the nature of a petition for annulment of judgment is in personam, on the basis of the following reasons:

First, a petition for annulment of judgment is an original action, which is separate, distinct and independent of the case where the judgment sought to be annulled is rendered. Thus, regardless of the nature of the original action in the decision sought to be annulled, be it in personam, in rem or quasi in rein, the respondent should be duly notified of the petition seeking to annul the court's decision over which the respondent has a direct or indirect interest.

Second, a petition for annulment of judgment and the court's subsequent decision thereon will affect the parties alone. Any judgment therein will eventually bind only the parties properly impleaded. In this case, had the RTC granted the respondent's petition, the MeTC's July 26 2006 judgment would have been declared a nullity. This would have resulted to the following consequences: as to the respondent, he would no longer be required to pay the rentals and vacate the subject property; and, as to the petitioner, she would be deprived of her right to demand the rentals and to legally eject the respondent. Clearly, only the parties' interests would have been affected.

## There was neither a valid service of summons in person nor a valid substituted service of summons over the person of the petitioner

Where the action is in personam and the defendant is in the Philippines, as in this case, the service of summons may be done by personal or substituted service as laid out in Sections 6 and 7 of Rule 14. Indeed, the preferred mode of service of summons is personal service. Accordingly, this Court explained the nature and enumerated the requisites of substituted service in Manotoc v. Court of Appeals, et al., which We summarize and paraphrase below:

For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period of one (1) month which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two (2) different dates. In addition, the sheriff must cite why such efforts were unsuccessful.

If the substituted service will be effected at defendant's house or residence, it should be left with a person of suitable age and discretion then residing therein. The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipient's relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons.

If the substituted service will be done at defendant's office or regular place of business, then it should be served on a competent person in charge of the place. Thus, the person on whom the substituted service will be made must be the one managing the office or business of defendant, such as the president or manager. Such individual must have sufficient knowledge to understand the obligation of the defendant in the summons, its importance, and the prejudicial effects arising from inaction on the summons.

A perusal, however, of Sheriff Tolentino's Return discloses that the following circumstances, as required in Manotoc, were not clearly-established: (a) personal service of summons within a reasonable time was impossible; (b) efforts were exerted to locate the party; and (c) the summons was served upon a person of sufficient age and discretion residing at the party's residence or upon a competent person in charge of the party's office or place of business.

The Officer's Return likewise revealed that no diligent effort was exerted and no positive step was taken to locate and serve the summons personally on the petitioner. Upon having been satisfied that the petitioner was not present at her given address, Sheriff Tolentino immediately resorted to substituted service of summons by proceeding to the office of Atty. Frias, petitioner's counsel. Evidently, Sheriff Tolentino failed to show that she made several attempts to effect personal service for at least three times on at least two different dates. It is likewise evident that Sheriff Tolentino simply left the "Notice of Raffle and Summons" with Ms. Gonzales, the alleged secretary of Atty. Frias. She did not even bother to ask her where the petitioner might be. There were no details in the Officer's Return that would suggest that Sheriff Tolentino inquired as to the identity of Ms. Gonzales. There was no showing that Ms. Gonzales was the one managing the office or business of the petitioner, such as the president or manager, and that she has sufficient knowledge to understand the obligation of the petitioner in the summons, its importance, and the prejudicial effects arising from inaction on the summons.

Thus, Sheriff Tolentino fell short of the required standards. For her failure to faithfully, strictly, and fully comply with the requirements of substituted service, the same is rendered ineffective. As such, the presumption of regularity in the performance of official functions, which is generally accorded to a sheriff's return, does not obtain in this case.

## Special appearance to question a court's jurisdiction is not voluntary appearance

As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. This, however, is tempered by the concept of conditional appearance, such

that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority. In this case, it is readily apparent that the petitioner did not acquiesce to the jurisdiction of the trial court.

The records show that the petitioner never received any copy of the respondent's petition to annul the final and executory judgment of the MeTC in the unlawful detainer case. As explained earlier, the copy of the said petition which was served to Ms. Gonzales was defective under the Rules of Court. Consequently, in order to question the trial court's jurisdiction, the petitioner filed several pleadings and motions. However, in all these pleadings and motions, the petitioner never faltered in declaring that the trial court did not acquire jurisdiction over her person, due to invalid and improper service of summons. It is noteworthy that when the petitioner filed those pleadings and motions, it was only in a "special" character, conveying the fact that her appearance before the trial court was with a qualification, i.e., to defy the RTC's lack of jurisdiction over her person.

To recapitulate, the jurisdiction over the person of the petitioner was never vested with the RTC despite the mere filing of the petition for annulment of judgment. The manner of substituted service by the process server was apparently invalid and ineffective. As such, there was a violation of due process. Thus, as the essence of due process lies in the reasonable opportunity to be heard and to submit any evidence the defendant may have in support of her defense, the petitioner must be properly served the summons of the court. Regrettably, as had been discussed, the Constitutional right of the petitioner to be properly served the summons and be notified has been utterly overlooked by the officers of the trial court.

# ABUBAKAR A. AFDAL AND FATIMA A. AFDAL, PETITIONERS, VS. ROMEO CARLOS, RESPONDENT.

G.R. No. 173379, SECOND DIVISION, December 01, 2010, CARPIO, J.

An action for unlawful detainer or forcible entry is a real action and in personam because the plaintiff seeks to enforce a personal obligation on the defendant for the latter to vacate the property subject of the action, restore physical possession thereof to the plaintiff, and pay actual damages by way of reasonable compensation for his use or occupation of the property. In an action in personam, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. If the defendant does not voluntarily appear in court, jurisdiction can be acquired by personal or substituted service of summons as laid out under Sections 6 and 7 of Rule 14 of the Rules of Court.

## FACTS:

Respondent Carlos filed a complaint for unlawful detainer against petitioners, et. al in MTC Laguna alleging that petitioners were occupying, by tolerance, a parcel of land in Carlos' name. He claimed that Abubakar sold the property to him but that he allowed petitioners to stay.

Three attempts to serve the summons and complaint on Abubakar were made but they failed to file an answer.

Carlos filed an ex-parte motion which was granted. The MTC ruled in favor of Carlos and was issued a writ of execution.

Petitioners filed a petition for relief from judgment in RTC alleging that they own the property and denied the sale to Carlos. They added that they only learned of the MTC August 23, 2004 decision on October 27, 2004 and that they were not served a copy of the summons and the complaint. The RTC dismissed the petition for lack of jurisdiction over the petition because it should have been filed before MTC (Sec.1 of Rule 38). MR was denied.

Hence, this petition.

## **ISSUE:**

Whether or not there was an error in the filing of petition for relief from judgment.

## **RULING:**

Yes. There was an error in the filing of petition for relief from judgment.

A petition for relief from judgment in forcible entry and unlawful detainer cases, as in the present case, is a prohibited pleading. The reason for this is to achieve an expeditious and inexpensive determination of the cases subject of summary procedure.

Section 13(4) of Rule 70 of the Rules of Court provides ... Section 19(d) of the Revised Rule on Summary Procedure also provides ...

Moreover, Section 1, Rule 38 of the Rules of Court provides ...

A petition for relief from judgment, if allowed by the Rules and not a prohibited pleading, should be filed with and resolved by the court in the same case from which the petition arose.

In the present case, Abubakar cannot file the petition for relief with the MTC because it is a prohibited pleading in an unlawful detainer case. Abubakar cannot also file the petition for relief with the RTC because the RTC has no jurisdiction to entertain petitions for relief from judgments of the MTC. Therefore, the RTC did not err in dismissing the petition for relief from judgment of the MTC.

The remedy of petitioners in such a situation is to file a petition for certiorari with the RTC under Rule 65 of the Rules of Court on the ground of lack of jurisdiction of the MTC over the person of petitioners in view of the absence of summons to petitioners.

An action for unlawful detainer or forcible entry is a real action and in personam because the plaintiff seeks to enforce a personal obligation on the defendant for the latter to vacate the property subject of the action, restore physical possession thereof to the plaintiff, and pay actual damages by

way of reasonable compensation for his use or occupation of the property. In an action in personam, jurisdiction over the person of the defendant is necessary for the court to validly try and decide the case. Jurisdiction over the defendant is acquired either upon a valid service of summons or the defendant's voluntary appearance in court. If the defendant does not voluntarily appear in court, jurisdiction can be acquired by personal or substituted service of summons as laid out under Sections 6 and 7 of Rule 14 of the Rules of Court, which state:

Sec. 6. Service in person on defendant. - Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

Sec. 7. Substituted Service. - If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

# HENRY S. OAMINAL, PETITIONER, VS. PABLITO M. CASTILLO AND GUIA S. CASTILLO, RESPONDENTS. G.R. No. 152776, THIRD DIVISION, October 08, 2003, PANGANIBAN, J.

Verily, respondents did not raise in their Motion to Dismiss the issue of jurisdiction over their persons; they raised only improper venue an litis pendentia. Hence, whatever defect there was in the manner of service should be deemed waived.

Assuming arguendo that the service of summons was defective, such Law was cured and respondents are deemed to have submitted themselves to the jurisdiction of the trial court when they filed an Omnibus Motion to Admit the Motion to Dismiss and Answer with Counterclaim, an Answer with Counterclaim, a Motion to Inhibit, and a Motion for Reconsideration and Plea to Reset Pre-trial. The filing of Motions seeking affirmative relief — to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration — are considered voluntary submission to the jurisdiction of the court.

## FACTS:

Petitioner Henry Oaminal Filed a complaint for collection against Respondents Pablito and Guia Castillo.

The summons together with the complaint was served upon Ester Fraginal, secretary of Respondent Mrs. Castillo.

Respondents filed their 'Urgent Motion to Declare Service of Summons Improper and Legally Defective' alleging that the Sheriff's Return has failed to comply with Section (1), Rule 14 of the Rules of Court or substituted service of summons.

Scheduled hearing of the Motion took place.

Petitioner filed an Omnibus Motion to Declare Respondents in Default and to Render Judgment because no answer was filed by the latter.

Respondents forthwith filed the following:

- (a) Omnibus Motion Ad Cautelam to Admit Motion to Dismiss and Answer with Compulsory Counter-claim
- (b) Urgent Motion to Dismiss on the premise that . . . petitioner's complaint was barred by improper venue and litis pendentia;
- (c) Answer with Compulsory Counter-Claim

RTC. (1) denied the Motion to Admit Motion to Dismiss and Answer; (2) declared respondents in default; and (3) ordered petitioner to present evidence ex-parte within ten days from receipt of the order, [failing] which, the case will be dismissed. RTC. Rendered a decision in favor of petitioner.

Respondents filed with the CA a Petition for certiorari prohibition and injunction, with a prayer for a writ of preliminary injunction or temporary restraining order (TRO). In the main, they raised the issue of whether the trial court had validly acquired jurisdiction over them.

The CA ruled that the trial court did not validly acquire jurisdiction over respondents, because the summons had been improperly served on them. It based its finding on the Sheriffs Return, which did not contain any averment that effort had been exerted to personally serve the summons on them before substituted service was resorted to. Thus, the appellate court set aside the trial court's Decision and dismissed, without prejudice.

## ISSUE:

Whether or not the trial court acquired jurisdiction over respondents.

## **RULING:**

YES. The trial court acquired jurisdiction over respondents.

In civil cases, the trial court acquires jurisdiction over the person of the defendant either by the service of summons or by the latter's voluntary appearance and submission to the authority of the former.

Sec. 6. Service in person on defendant. — Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

Sec. 7. Substituted service. — If, for justifiable causes, the defendant cannot be served within a reasonable time as provided in the preceding section, service may be effected (a)

by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

Personal service of summons is preferred over substituted service. Resort to the latter is permitted when the summons cannot be promptly served on the defendant in person and after stringent formal and substantive requirements have been complied with.

For substituted service of summons to be valid, it is necessary to establish the following circumstances:

- (a) personal service of summons within a reasonable time was impossible;
- (b) efforts were exerted to locate the party; and
- (c) the summons was served upon a person of sufficient age and discretion residing at the party's residence or upon a competent person in charge of the party's office or regular place of business.

In the present case, the Sheriff's Return failed to state that efforts had been made to personally serve the summons on respondents. Neither did the Return indicate that it was impossible to do so within a reasonable time.

Nonetheless, nothing in the records shows that respondents denied actual receipt of the summons through their secretary, Ester Fraginal. Their "Urgent Motion to Declare Service of Summons Improper and Legally Defective" did not deny receipt thereof; it merely assailed the manner of its service. In fact, they admitted in their Motion that the "summons, together with the complaint, was served by the Sheriff on Ester Fraginal, secretary of the defendants at No. 7, 21st Avenue, Cubao, Quezon City on 30 May 2000."

That the defendants' actual receipt of the summons satisfied the requirements of procedural due process. There is likewise no showing that respondents had heretofore pursued the issue of lack of jurisdiction; neither did they reserve their right to invoke it in their subsequent pleadings. If at all, what they avoided forfeiting and waiving — both in their Omnibus Motion ad Cautelam to Admit Motion to Dismiss and Answer with Compulsory CounterClaim and in their Motion to Dismiss — was their right to invoke the grounds of improper venue and litis pendentia.

Verily, respondents did not raise in their Motion to Dismiss the issue of jurisdiction over their persons; they raised only improper venue an litis pendentia. Hence, whatever defect there was in the manner of service should be deemed waived.

Assuming arguendo that the service of summons was defective, such Law was cured and respondents are deemed to have submitted themselves to the jurisdiction of the trial court when they filed an Omnibus Motion to Admit the Motion to Dismiss and Answer with Counterclaim, an Answer with Counterclaim, a Motion to Inhibit, and a Motion for Reconsideration and Plea to Reset Pre-trial. The filing of Motions seeking affirmative relief — to admit answer, for additional time to

file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration — are considered voluntary submission to the jurisdiction of the court.

## OPTIMA REALTY CORPORATION, PETITIONER, VS. HERTZ PHIL. EXCLUSIVE CARS, INC., RESPONDENT.

G.R. No. 183035, FIRST DIVISION, January 09, 2013, SERENO, J.

Preliminarily, jurisdiction over the defendant in a civil case is acquired either by the coercive power of legal processes exerted over his person, or his voluntary appearance in court. As a general proposition, one who seeks an affirmative relief is deemed to have submitted to the jurisdiction of the court. It is by reason of this rule that we have had occasion to declare that the filing of motions to admit answer, for additional time to file answer, for reconsideration of a default judgment, and to lift order of default with motion for reconsideration, is considered voluntary submission to the court's jurisdiction. This, however, is tempered by the concept of conditional appearance, such that a party who makes a special appearance to challenge, among others, the court's jurisdiction over his person cannot be considered to have submitted to its authority.

*Prescinding from the foregoing, it is thus clear that:* 

- (1) Special appearance operates as an exception to the general rule on voluntary appearance;
- (2) Accordingly, objections to the jurisdiction of the court over the person of the defendant must be explicitly made, i.e., set forth in an unequivocal manner; and
- (3) Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution.

## **FACTS:**

Petitioner Optima is engaged in the business of leasing and renting out commercial spaces and buildings to its tenants. On December 12, 2002, Optima and Respondent Hertz entered into a Contract of Lease over an office unit and parking slot in the Optima Bulding for a period of 3 years. However, the lease agreement was amended by shortening the lease period of 2 years and 5 months. The lease period was from October 1, 2003 to February 28, 2006.

Hertz requested Optima a 50% discount on its rent for the months of Maty to August 2005 since Hertz suffered 50% drop in its monthly sales and significant decrease in its personnel's productivity due to the commencement of renovations in the building.

However, Hertz failed to pay its rentals from August to December 2005 and January to February 2006 notwithstanding the fact that Optima granted the former's request. It also failed to pay its utility bills.

Optima sent a letter to Hertz, reminding the latter if it will renew its contract by a new negotiation between them and upon written notice by the lessee to the less or at least 90 days before the termination of the lease period. Since Hertz failed to send written notice renewing its contract and it's desire to negotiate, Optima did not renew the lease.

Hertz filed a Complaint for Specific Performance, Injunction, Damages and Sum of money and prayed for the issuance of a TRO and writ of preliminary Injunction against Optima. It sought the issuance of a TRO to enjoin Optima from committing acts which would tend to disrupt it's peaceful use and possession of the leased premises and wit of preliminary injunction to order Optima to reconnect its utilities.

Thereafter, Optima demanded Hertz to surrender and vacate the leased premises and pay P420,967.28

covering rental arrearages, unpaid utility bills and other charges. Due to Hertz's refusal to vacate the leased premises, Optima filed an action before the MeTC for Unlawful Detainer and Damages with Prayer for the Issuance of a TRO and/or Preliminary Mandatory Injunction against Hertz.

MeTC rendered judgment in favor of Optima and ordered Hertz to vacate the leased premises and to oder the amount of P420,967.28 representing its rentals arrearages and utility charger as well as the payment for the monthly use and occupancy of the premises from March 2006 until possession is restored to the plaintiff in the amount of P54,200 per month.

RTC affirmed the decision of the MeTC. However, on appeal, the Court of Appeals reversed and set aside the decision of the RTC. CA ruled that, due to the improper service of summons, the MeTC failed to acquire jurisdiction over the person of respondent Hertz.

Optima then filed Petition for review on Certiorari under Rule 45 with the SC.

## **ISSUE:**

**1**<sup>st</sup> **issue:** Whether the MeTC properly acquired jurisdiction over the person of respondent Hertz. **2**<sup>nd</sup> **issue:** Whether the unlawful detainer case is barred by litis pendentia.

## **RULING:**

## 1st issue:

Yes. The MeTC properly acquired jurisdiction over the person of respondent Hertz

Jurisdiction over the person of the defendant may be acquired either by service of summons or by the defendant's voluntary appearance in court and submission to its authority.

In this case, the MeTC acquired jurisdiction over the person of respondent Hertz by reason of the latter's voluntary appearance in court. In spite of the defective service of summons, the defendant opted to file an Answer with Counterclaim with Leave of Court. Furthermore, it never raised the defense of improper service of summons in its answer with counterclaim.

## 2<sup>nd</sup> issue:

No. The unlawful detainer case is not barred by litis pendentia.

The Court ruled that while there is identity of parties in both cases, the rights asserted and the reliefs prayed for under the Complaint for Specific Performance and those under the present Unlawful Detainer Complaint are different. The Complaint for Specific Performance seeks to compel Optima to: (1) renegotiate the contract of lease; (2) reconnect the utilities at the leased premises; and (3) pay damages. On the other hand, the unlawful detainer case sought the ejectment of defendant-appellant Hertz from the leased premises and to collect arrears in rentals and utility bills. Rights asserted and the reliefs sought in the two cases are different.

# PLANTERS DEVELOPMENT BANK, PETITIONER, VS. JULIE CHANDUMAL, RESPONDENT. G.R. No. 195619, FIRST DIVISION, September 05, 2012, REYES, J.

The fundamental rule is that jurisdiction over a defendant in a civil case is acquired either through service of summons or through voluntary appearance in court and submission to its authority. If a defendant has not been properly summoned, the court acquires no jurisdiction over its person, and a judgment rendered against it is null and void.

Where the action is in personamand the defendant is in the Philippines, service of summons may be made through personal service, that is, summons shall be served by handing to the defendant in person a copy thereof, or if he refuses to receive and sign for it, by tendering it to him. If the defendant cannot be personally served with summons within a reasonable time, it is then that substituted service may be made. Personal service of summons should and always be the first option, and it is only when the said summons cannot be served within a reasonable time can the process server resort to substituted service.

## **FACTS:**

PDB filed an action for judicial confirmation of notarial rescission and delivery of possession against Chandumal. Summons was issued and served by deputy sheriff. According to his return, the Sheriff attempted to personally serve the summons upon Chandumal on three separate instances but it was unavailing as she was always out of the house on said dates. Hence, the sheriff caused substituted service of summons by serving the same through Chandumal's mother who acknowledged receipt thereof.

For her failure to file an answer within the prescribed period, Chandumal was declared in default. Chandumal then filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer. The RTC denied Motion and rendered a Judgment against Chandumal. On appeal, Chandumal claimed, among others, that the RTC failed to acquire jurisdiction over her person.

## **ISSUES:**

**1**st **issue:** Whether or not there was a valid substituted service of summons.

**2**<sup>nd</sup> **issue:** Whether or not Chandumal voluntarily submitted to the jurisdiction of the trial court.

## **RULING:**

## 1<sup>st</sup> issue:

No. There was no valid substituted service of summons

The sheriff's return failed to justify a resort to substituted service of summons. The Return of Summons does not specifically show or indicate in detail the actual exertion of efforts or any positive step taken by the officer or process server in attempting to serve the summons personally to the defendant. The return merely states the alleged whereabouts of the defendant without indicating that such information was verified from a person who had knowledge thereof. Indeed, the sheriff's return shows a mere perfunctory attempt to cause personal service of the summons on Chandumal. There was no indication if he even asked Chandumal's mother as to her specific whereabouts except that she was "out of the house", where she can be reached or whether he even tried to await her return. The "efforts" exerted by the sheriff clearly do not suffice to justify substituted service and his failure to comply with the requisites renders such service ineffective.

## 2<sup>nd</sup> issue:

Yes. Chandumal voluntarily submitted to the jurisdiction of the trial court

Despite that there was no valid substituted service of summons, the Court, nevertheless, finds that Chandumal voluntarily submitted to the jurisdiction of the trial court. When Chandumal filed an Urgent Motion to Set Aside Order of Default and to Admit Attached Answer, she effectively submitted her person to the jurisdiction of the trial court as the filing of a pleading where one seeks an affirmative relief is equivalent to service of summons and vests the trial court with jurisdiction over the defendant's person.

## MA. IMELDA M. MANOTOC, PETITIONER

VS.

HONORABLE COURT OF APPEALS and AGAPITA TRAJANO on behalf of the Estate of ARCHIMEDES TRAJANO, RESPONDENTS

G.R. No. 130974, THIRD DIVISION, August 16, 2006, VELASCO, JR., J.

The court's jurisdiction over a defendant is founded on a valid service of summons. Without a valid service, the court cannot acquire jurisdiction over the defendant, unless the defendant voluntarily submits to it. The defendant must be properly apprised of a pending action against him and assured of the opportunity to present his defenses to the suit. Proper service of summons is used to protect one's right to due process.

## **FACTS:**

In the case of Trajano vs. Manotoc for wrongful death of the deceased Archimedes Trajano committed by Military Intelligence under the command of Ma. Imelda M. Manotoc. Based upon the complaint the Regional Trial Court issued a summons at the house of Manotoc. The said Mackey dela Cruz (caretaker) received the summons. Manotoc was declared in default for failure to answer.

## **ISSUE:**

Whether or not the RTC acquire a valid jurisdiction for the service of summons over the petitioner.

## **HELD:**

No. The RTC did not acquire a valid jurisdiction for the service of summons over the petitioner.

The Regional Trial Court did not acquire jurisdiction over the petitioner, because the substituted service of summons was defective in nature or invalid at the first place. The main fact that the summons was not sent in the petitioner's dwelling, the said caretaker was not a person of suitable age and discretion and was not resided in the said address. Hence the requisites of substituted summons was not followed, therefore the RTC did not acquire jurisdiction over the petitioner at the first place.

## REMELITA M. ROBINSON, PETITIONER, VS. CELITA B. MIRALLES, RESPONDENT G.R. No. 163584, SECOND DIVISION, December 12, 2006, SANDOVAL-GUTIERREZ, J.

Although the SC have ruled that the statutory requirements of substituted service must be followed strictly, faithfully, and fully and any substituted service other than that authorized by the Rules is considered ineffective, the Court frowns upon an overly strict application of the Rules. It is the spirit, rather than the letter of the procedural rules, that governs.

### **FACTS:**

Respondent Celita Miralles filed a complaint for collection of sum of money against petitioner Remelita Robinson, alleging that \$20,054 was borrowed by Robinson, as shown in the MOA they both executed.

Summons was served on Robinson at her given address. However, per return of service of the Sheriif, petitioner no longer resides there. Thus, the trial court issued an alias summons to be served at Muntinlupa City, petitioner's new address.

Again, the Sheriff reported twice thereafter that the summons could not be served on petitioner. Sheriff Pontente, who was to serve the summons interposed that he was stopped by the Security Guard of Alabang Hills Village because they were allegedly told by Robinson not to let anyone proceed to her house if she is not around. Despite the explanations of the Sheriff, the guards didn't let him in. Thereafter, the Sheriff just left a copy of the complaint to a guard, who refused to affix his signature on the original copy, so he will be the one to give the summons to petitioner Robinson.

Eventually, petitioner Robinson was declared in default for her failure to file an answer seasonably despite service of summons. The trial court rendered its decision in favor of Miralles ordering Robinson to pay her obligations plus cost of damages. A copy of the court Order was sent to petitioner by registered mail at her new address and a writ of execution was also issued.

Robinson filed a petition for relief from the judgment by default. She claimed that summons was improperly served upon her, thus, the trial court never acquired jurisdiction over her and that all its proceedings are void. Petitioner Robinson contends that the service of the summons upon the subdivision guard is not in compliance with Section 7, Rule 14 since he is not related to her or staying at her residence, as required by the rule.

## **ISSUE:**

Whether or not the substituted service of summons effected is valid.

## **RULING:**

Yes. The substituted service of summons effected is valid.

Although the SC have ruled that the statutory requirements of substituted service must be followed strictly, faithfully, and fully and any substituted service other than that authorized by the Rules is considered ineffective, the Court frowns upon an overly strict application of the Rules. It is the spirit, rather than the letter of the procedural rules, that governs.

Obviously, it was impossible for the sheriff to effect personal or substituted service of summons upon petitioner. We note that she failed to controvert the sheriff's declaration. Nor did she deny having received the summons through the security guard. Considering her strict instruction to the security guard, she must bear its consequences. Thus, we agree with the trial court that summons has been properly served upon petitioner and that it has acquired jurisdiction over her.

Where the action is in personam and the defendant is in the Philippines, the service of summons may be made through personal or substituted service in the manner provided for in Sections 6 and 7, Rule 14 of the 1997 Rules of Procedure, as amended.

Under our procedural rules, personal service is generally preferred over substituted service, the latter mode of service being a method extraordinary in character. For substituted service to be justified, the following circumstances must be clearly established:

- (a) personal service of summons within a reasonable time was impossible;
- (b) efforts were exerted to locate the party; and
- (c) the summons was served upon a person of sufficient age and discretion residing at the party's residence or upon a competent person in charge of the party's office or place of business. Failure to do so would invalidate all subsequent proceedings on jurisdictional grounds.

# SIXTO N. CHU, PETITIONER, VS. MACH ASIA TRADING CORPORATION, RESPONDENT. G.R. No. 184333, THIRD DIVISION, April 01, 2013, PERALTA, J.

The statutory requirements of substituted service must be followed strictly, faithfully and full.

## **FACTS:**

Mach Asia Trading Corp. (MATC) filed a complaint before the RTC of Cebu City for sum of money, replevin, attorney's fees and damages against Sixto N, Chu. Sheriff Doroteo P. Cortes failed to serve the summons personally upon Chu, since the latter was not there. The Sheriff then resorted to substituted service by having the summons and the complaint received by Rolando Bonayon, a security guard of Chu. Chu failed to file any responsive pleading and was declared in default upon motion of MATC. RTC ruled in favor of MATC and was affirmed by the CA.

## **ISSUE:**

Whether or not there was a valid substituted service of summons.

**RULING:** 

No. There was no valid substituted service of summons

As a rule, summons should be personally served on the defendant. It is only when summons cannot be served personally within a reasonable period of time that substituted service may be resorted to.

It is to be noted that in case of substituted service, there should be a report indicating that the person who received the summons in the defendant's behalf was one with whom the defendant had a relation of confidence, ensuring that the latter would actually receive the summons. Also, impossibility of prompt personal service must be shown by stating that efforts have been made to find the defendant personally and that such efforts have failed. This is necessary because substituted service is in derogation of the usual method of service. It is a method extraordinary in character, hence, may be used only as prescribed and in the circumstances authorized by statute. The statutory requirements of substituted service must be followed strictly, faithfully and fully, and any substituted service other than that authorized by statute is considered ineffective.

Clearly, it was not shown that the security guard who received the summons in behalf of the petitioner was authorized and possessed a relation of confidence that petitioner would definitely receive the summons. This is not the kind of service contemplated by law. Thus, service on the security guard could not be considered as substantial compliance with the requirements of substituted service.

# CARSON REALTY & MANAGEMENT CORPORATION, PETITIONER, VS. RED ROBIN SECURITY AGENCY AND MONINA C. SANTOS, RESPONDENTS. G.R. No. 225035, THIRD DIVISION, February 08, 2017, VELASCO, JR., J.

Before substituted service of summons is resorted to, the parties must: (a) indicate the impossibility of personal service of summons within a reasonable time; (b) specify the efforts exerted to locate the

defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business of the defendant.

## **FACTS:**

On March 23, 2007, respondent Monina C. Santos (Santos) filed a Complaint for Sum of Money and Damages against petitioner Carson Realty & Management Corp. (Carson) with the Quezon City Regional Trial Court (RTC). As per the Officer's Return dated April 12, 2007 of Process Server Jechonias F. Pajila, Jr. (Process Server Pajila), a copy of the Summons dated April 11, 2007, together with the Complaint and its annexes, was served upon Carson at its business address at Unit 601 Prestige Tower Condominium, Emerald Avenue, Ortigas Center, Pasig City, through its "corporate secretary," Precilla S. Serrano. Thereafter, the appointed Corporate Secretary and legal counsel of Carson, Atty. Tomas Z. Roxas, Jr. (Atty. Roxas), filed an Appearance and Motion dated April 25, 2007 with the court wherein the latter entered his appearance and acknowledged that the Summons was served and received by one of the staff assistants of Carson. Atty. Roxas prayed for an extension of fifteen (15) days from April 27, 2007 within which to file a responsive pleading. Instead of filing a responsive pleading, Atty. Roxas moved to dismiss the complaint, alleging that the Summons dated April 11, 2007 was not served on any of the officers and personnel authorized to receive summons under the Rules of Court.

The RTC denied Carson's Motion to Dismiss and directed the issuance of an alias summons to be served anew upon the corporation. On November 9, 2007, Process Server Pajila submitted his Officer's Report stating in essence that he attempted to serve the alias Summons dated September 24, 2007 on the President and General Manager of Carson, as well as on the Board of Directors and Corporate Secretary, but they were not around. Hence, he was advised by a certain Lorie Fernandez, the "secretary" of the company, to bring the alias Summons to the law office of Atty. Roxas. Process Server Pajila attempted to serve the alias Summons at the law office of Atty. Roxas twice, but to no avail. This prompted him to resort to substituted service of the alias Summons by leaving a copy thereof with a certain Mr. JR Taganila, but the latter also refused to acknowledge receipt of the alias Summons.

## **ISSUE:**

Whether or not the RTC acquired jurisdiction over Carson.

## **RULING:**

Yes. The RTC acquired jurisdiction over Carson.

In actions *in personam*, such as the present case, the court acquires jurisdiction over the person of the defendant through personal or substituted service of summons. However, because substituted service is in derogation of the usual method of service and personal service of summons is

preferred over substituted service, parties do not have unbridled right to resort to substituted service of summons. Before substituted service of summons is resorted to, the parties must: (a) indicate the impossibility of personal service of summons within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business of the defendant.

Given the circumstances in the case at bench, We find that resort to substituted service was warranted since the impossibility of personal service is clearly apparent. A perusal of the Officer's Return dated October 28, 2008 detailing the circumstances surrounding the service of the second alias Summons dated September 9, 2008 shows that the foregoing requirements for a valid substituted service of summons were substantially complied with.

Indeed, the Return established the impossibility of personal service to Carson's officers, as shown by the efforts made by Process Server Pajila to serve the September 8, 2008 alias Summons on Carson's President/General Manager. In particular, several attempts to serve the summons on these officers were made on four separate occasions: October 2, 2008, October 16, 2008, October 27, 2008, and October 28, 2008, but to no avail.

On his fourth and final attempt, Process Server Pajila served the summons on Fernandez, Carson's receptionist, due to the unavailability and difficulty to locate the company's corporate officers. The pertinent portion of the Return states: [S]ubstituted service of summons was resorted to by leaving the copy of the Alias Summons at the company's office through its employee, MS. LORIE FERNANDEZ, however, she refused to acknowledge receipt of the process.

Based on the facts, there was a deliberate plan of Carson's for its officers not to receive the Summons. It is a legal maneuver that is in derogation of the rules on Summons. We cannot tolerate that. The facts now show that the responsible officers did not intend to receive the alias Summons through substituted service. The Summons is considered validly served.

In any event, even if We concede the invalidity of the substituted service, such is of little significance in view of the fact that the RTC had already acquired jurisdiction over Carson early on due to its voluntary submission to the jurisdiction of the court. Carson voluntarily submitted to the jurisdiction of the RTC when it filed, through Atty. Roxas, the Appearance and Motion dated April 25, 2007 acknowledging Carson's receipt of the Summons dated April 11, 2007 and seeking additional time to file its responsive pleading. As noted by the CA, Carson failed to indicate therein that the Appearance and Motion was being filed by way of a conditional appearance to question the regularity of the service of summons. Thus, by securing the affirmative relief of additional time to file its responsive pleading, Carson effectively voluntarily submitted to the jurisdiction of the RTC.

# CARMELITA T. BORLONGAN, PETITIONER, VS. BANCO DE ORO (FORMERLY EQUITABLE PCI BANK), RESPONDENT.

## ELISEO C. BORLONGAN, JR., PETITIONER, VS. BDO UNIBANK, INC. (FORMERLY EQUITABLE PCI BANK), RESPONDENT.

## G.R. No. 217617 & 218450, SPECIAL THIRD DIVISION, April 05, 2017, VELASCO, JR., J.

"Several attempts" means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

## **FACTS:**

Upon requesting a copy of their TCT, Eliseo and Carmelita Borlongan, learned that their title contained an annotation that the property was the subject of an execution sale. Apparently, BDO filed a complaint for sum of money against Tancho Corporation (Tancho) and Carmelita supposedly signed 4 security agreements to guarantee the obligation of Tancho. It appears that the RTC directed the service of summons to all the defendants at the business address of Tancho in Pasig.

BDO filed an ex-parte Motion for the Issuance of a Writ of Attachment against the defendants, including Carmelita and subsequently, a motion to conduct an auction where BDO was the highest bidder of the subject property. Eliseo filed an action for annulment of the surety agreements and notice of levy on attachment, while Carmelita filed a petition for annulment of judgement with TRO and Writ of Preliminary Injunction claiming that the court did not acquire jurisdiction over her person for failure to serve the summons. The TRO, however, was denied.

## **ISSUE**:

Whether or not the RTC has jurisdiction over Carmelita's person.

## **RULING**:

No. The RTC has no jurisdiction over Carmelita's person.

The service of summons is a vital and indispensable ingredient of due process and compliance with the rules regarding the service of the summons is as much an issue of due process as it is of jurisdiction. As a rule, summons should be personally served on a defendant. When summons cannot be served personally within a reasonable period of time, substituted service may be resorted to. Service of summons by publication can be resorted to only if the defendant's "whereabouts are unknown and cannot be ascertained by diligent inquiry. For substituted service of summons to be available, there must be several attempts by the sheriff to personally serve the summons within a reasonable period of one month which eventually resulted in failure to prove impossibility of prompt service. "Several attempts" means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.

In the case now before us, the summons was served on the petitioner by publication. Yet, the circumstances surrounding the case do not justify the resort. Immediately after this single attempt at personal service, the respondent bank moved for leave to serve the summons by publication (and not even substituted service), which motion the RTC granted. Clearly, there was no diligent effort made to find the petitioner and properly serve her the summons before the service by publication was allowed. Neither was it impossible to locate the residence of petitioner and her whereabouts.

i. Extraterritorial service, when allowed

# MARGARITA ROMUALDEZ-LICAROS, PETITIONER, VS. ABELARDO B. LICAROS, RESPONDENT. G.R. No. 150656, FIRST DIVISION, April 29, 2003, CARPIO, J.

As a rule, when the defendant does not reside and is not found in the Philippines, Philippine courts cannot try any case against him because of the impossibility of acquiring jurisdiction over his person unless he voluntarily appears in court. But when the case is one of actions in rem or quasi in rem enumerated in Section 15,Rule 14 of the Rules of Court, Philippine courts have jurisdiction to hear and decide the case. In such instances, Philippine courts have jurisdiction over the res, and jurisdiction over the person of the non-resident defendant is not essential.

Under Section 15 of Rule 14, a defendant who is a non-resident and is not found in the country may be served with summons by extraterritorial service in four instances: (1) when the action affects the personal status of the plaintiff; (2) when the action relates to, or the subject of which is property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent; (3) when the relief demanded consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; or (4) when the property of the defendant has been attached within the Philippines.

In these instances, extraterritorial service of summons may be effected under any of three modes: (1) by personal service out of the country, with leave of court; (2) by publication and sending a copy of the summons and order of the court by registered mail to the defendant's last known address, also with leave of court; or (3) by any other means the judge may consider sufficient.

## **FACTS:**

Abelardo commenced a civil case for the declaration of nullity of his marriage with Margarita, based on psychological incapacity. As Margarita was then residing at California, U.S.A., Abelardo initially moved that summons be served through the International Express Courier Service. The court a quo denied the motion. Instead, it ordered that summons be served by publication in a newspaper of general circulation once a week for three consecutive weeks, at the same time furnishing respondent a copy of the order, as well as the corresponding summons and a copy of the petition at the given address in the United States through the Department of Foreign Affairs, all at the expense of Abelardo. Respondent was given sixty (60) days after publication to file a responsive pleading.

Process Server, Maximo Dela Rosa, submitted his Officer's Return essentially indicating compliance with the court's order.

After a negative report of collusion between the parties, respondent was allowed to present evidence ex-parte.

**RTC:** The RTC handed down its decision declaring the marriage between petitioner and respondent null and void.

Almost 9 years later, petitioner commenced the instant petition on the ground that the trial court never acquired jurisdiction over her person in the petition for declaration of nullity of marriage since she was never validly served with summons.

**CA:** The CA held that there was a proper service of summons. The CA held the case involves the marital status of the parties, which is an action in rem or quasi in rem. In such an action the purpose of service of summons is not to vest the trial court with jurisdiction over the person of the defendant, but "only" to comply with due process. The Court of Appeals concluded that any irregularity in the service of summons involves due process which does not destroy the trial court's jurisdiction over the res which is the parties' marital status. Neither does such irregularity invalidate the judgment rendered in the case.

## **ISSUE:**

Whether or not Margarita was validly served with summons in the case for declaration of nullity of her marriage with Abelardo.

## **HELD:**

Yes. Margarita was validly served with summons in the case for declaration of nullity of her marriage with Abelardo.

At the time Abelardo filed the petition for nullity of the marriage in 1991, Margarita was residing in the United States. She left the Philippines in 1982 together with her two children. The trial court considered Margarita a non-resident defendant who is not found in the Philippines. Since the petition affects the personal status of the plaintiff, the trial court authorized extraterritorial service of summons under Section 15, Rule 14. The term "personal status" includes family relations, particularly the relations between husband and wife.

Applying the Section 14, Rule 15, the trial court required extraterritorial service of summons to be effected on Margarita this manner:

The summons was to be served by publication in a newspaper of general circulation once a week for three consecutive weeks, <u>at the same time</u> furnishing respondent a copy of the order, as well as the corresponding summons and a copy of the petition at the given address in the United States through the <u>Department of Foreign Affairs</u>, all at the expense of Abelardo.

The trial court's prescribed mode of extraterritorial service does not fall under the first or second mode specified in Section 15 of Rule 14, but under the third mode. This refers to "any other means that the judge may consider sufficient."

The Process Server's Return shows that the summons addressed to Margarita together with the complaint and its annexes were sent by mail to the Department of Foreign Affairs with acknowledgment of receipt. The Process Server's certificate of service of summons is prima facie evidence of the facts as set out in the certificate.

Before proceeding to declare the marriage between Margarita and Abelardo null and void, the trial court stated in its Decision that "compliance with the jurisdictional requirements have been duly established."

We hold that delivery to the Department of Foreign Affairs was sufficient compliance with the rule. After all, this is exactly what the trial court required and considered as sufficient to effect service of summons under the third mode of extraterritorial service pursuant to Section 15 of Rule 14.

# STEVEN R. PAVLOW, PETITIONER, VS. CHERRY L. MENDENILLA, RESPONDENT. G.R. No. 181489, SECOND DIVISION, April 19, 2017, LEONEN, J.

Jurisprudence has long settled that, with respect to residents temporarily out of the Philippines, the availability of extra-territorial services does not preclude substituted service

## **FACTS:**

Petitioner, an American citizen, married Maria Sheila, a Filipino. Barely 3 months into their marriage, Sheila filed a complaint for slight physical injuries including maltreatment in relation to Anti-Violence Against Women and Children Act (VAWC). Makati Assistant City Prosecutor dismissed the complaint for failure to substantiate the allegations. The mother of Petitioner, Cherry Mendenilla (Mendenilla), filed a Petition praying for the issuance of a Temporary Protection Order(TPO)or Permanent Protection Order (PPO) against the Petitioner. When the service of summons with the TPO was served, Petitioner was out of the country, hence, it was served to one of his employees who was also residing in the same building.

## **ISSUE/S**:

**1**st **issue:**Whether or not Mendenilla had the personality to file the Petition.

**2**<sup>nd</sup> **issue:**Whether or not the Court acquired jurisdiction over the Petitioner's person.

**3rd issue:** Whether or not there was forum shopping.

## **RULING:**

## 1st issue:

Yes. Mendenilla had the personality to file the Petition.

The mother of a victim of acts of violence against women and their children is expressly given personality to file a petition for the issuance of a protection order by Section 9(b) of the Anti-VAWC Law. However, the right of a mother and of other persons mentioned in Section 9 to file such a petition is suspended when the victim has filed a petition for herself. Nevertheless, in this case, respondent Mendenilla filed her petition after her daughter's complaint-affidavit had already been dismissed.

## 2<sup>nd</sup> issue:

Yes. The Court acquired jurisdiction over the Petitioner's person

We see no reason for holding as ineffectual the substituted service of Summons. Jurisprudence has long settled that, with respect to residents temporarily out of the Philippines, the availability of extraterritorial services does not preclude substituted service. Resort to substituted service has long been held to be fair, reasonable and just. This Court has noted that a contrary, restrictive view is that which defeats the ends of justice. It has been emphasized that residents who temporarily leave their residence are responsible for ensuring that their affairs are in order, and that, upon their return, they shall attend to exigencies that may have arisen. Rule 14, Section 7 stipulates that substituted service may be resorted to "if, for justifiable causes, the defendant cannot be personally served within a reasonable time."

Time was of the essence. The exigencies of this case reveal a backdrop of justifiable causes and how, by the convenience of petitioner Steven Pavlow's temporary absence, immediate personal service was rendered impossible. These exigencies justified substituted service of summons upon petitioner during his temporary absence through Monette Tolentino, a person of suitable age and discretion, who also resided at petitioner's own residence. Jurisdiction over petitioner's person was then validly acquired, and the dismissal of respondent Cherry L. Mendenilla's petition on this score was correctly held by Judge Natividad Giron-Dizon to be unwarranted.

## 3rd issue:

No. There was no forum shopping

The filing of Maria Sheila's complaint-affidavit did not even commence proceedings on her own petition for the issuance of a protection order. Preliminary investigation, or proceedings at the level of the prosecutor, does not form part of trial. It is not a judicial proceeding that leads to the issuance of a protection order. Thus, the pendency and subsequent dismissal of Maria Sheila's Complaint-

Affidavit did not engender the risk of either *litis pendentia* or *res judicata*, which would serve the basis of a finding of forum shopping by her mother.

# EXPRESS PADALA (ITALIA) S.P.A., NOW BDO REMITTANCE (ITALIA) S.P.A., PETITIONER, VS. HELEN M. OCAMPO, RESPONDENT. G.R. No. 202505, FIRST DIVISION, September 06, 2017, JARDELEZA, /.

Defendant permanently residing in a foreign country must be summoned through publication or extraterritorial service, which require leave of court. Substituted service to a defendant who permanently resides abroad is ineffective and renders the court without jurisdiction over him or her.

## **FACTS:**

Helen Ocampo was dismissed as remittance processor for BDO in September 2002 for misappropriating €24,035.60 by falsifying invoices of money payments relating to customers' money transfer orders. She was found criminally liable by the Court of Turin, Italy, which convicted and sentenced her to suffer imprisonment of six months and a penalty of €300, but granted her the benefit of suspension of the enforcement of sentence after pleading guilty.

On September 22, 2008, petitioner filed a petition for recognition of foreign judgment and cancellation or restriction of Ocampo's Philippine passport with the Mandaluyong RTC. On November 21, 2008, the sheriff tried to personally serve summons in her local address in Tanuan, Batangas, but no one lived therein; he was directed to the house of Ocampo's father, where her uncle resided. The uncle informed the sheriff Ocampo and family were already in Italy but the sheriff proceeded to serve summons upon him. After Ocampo failed to file an answer, petitioner filed a motion to declare her in default which the RTC granted.

After Ocampo received a copy of the RTC decision through her mother, she filed a petition for certiorari under Rule 65 with the Court of Appeals. The CA set aside the RTC decision, saying summons should have been served pursuant to Section 14 of Rule 14 of the Rules of Civil Procedure. The CA decided the RTC did not acquire jurisdiction over Ocampo, rendering the decision null and void.

## **ISSUE:**

Whether or not summons was properly served on Ocampo.

## **RULING:**

No. Summons was not properly served on Ocampo

The general rule is that summons must be served personally. For justifiable reasons, other modes of serving summons may be resorted to. Substituted service may be resorted to when defendant

cannot be served personally within a reasonable time after efforts to locate him or her have failed. This is effected by leaving copies of the summons at defendant's residence with a person of suitable age and discretion, or leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.

When defendant's whereabouts are unknown, the rules allow service of summons by publication. It may only be resorted to when the whereabouts of the defendant are not only unknown but cannot be ascertained by diligent inquiry. The diligence requirement means there must be prior resort to personal service under Section 7 and substituted service under Section 8, and proof these modes were ineffective before summons by publication may be allowed. Summons by publication also requires plaintiff to file a written motion for leave of court to effect service of summons by publication, supported by an affidavit of the plaintiff or some person on his behalf, setting forth the grounds for the application.

The Court held substituted service was improper because the place where the summons is being served must be the defendant's current residence or office/regular place of business. Her father's house is neither her office or her current residence. Further, Ocampo's residence in Italy is not temporary, rendering the service ineffective.

# E. B. VILLAROSA & PARTNER CO., LTD., PETITIONER, VS. HON. HERMINIO I. BENITO, IN HIS CAPACITY AS PRESIDING JUDGE, RTC, BRANCH 132, MAKATI CITY AND IMPERIAL DEVELOPMENT CORPORATION, RESPONDENT. G.R. No. 136426, THIRD DIVISION, August 06, 1999, GONZAGA-REYES, J.

Service of summons upon persons other than those mentioned in Section 13 of Rule 14 (old rule) has been held as improper.

## **FACTS:**

Petitioner E.B. Villarosa & Partner Co., Ltd. is a limited partnership with principal office at Davao City and with branch offices at Parañaque, Metro Manila and Cagayan de Oro City.

Petitioner and private respondent executed a Deed of Sale with Development Agreement wherein the former agreed to develop certain parcels of land located at Barrio Carmen, Cagayan de Oro belonging to the latter into a housing subdivision for the construction of low cost housing units. They agreed that in case of litigation regarding any dispute arising therefrom, venue shall be in the proper courts of Makati.

Private respondent, as plaintiff, filed a Complaint for Breach of Contract and Damages against petitioner, as defendant, before RTC of Makati allegedly for failure of latter to comply with its contractual obligation in that, other than a few unfinished low cost houses, there were no substantial developments therein.

Summons, together with the complaint, were served upon the defendant, through its Branch Manager Engr. Wendell Sabulbero at the stated address at Kolambog, Lapasan, Cagayan de Oro City but the Sheriff's Return of Service stated that the summons was duly served "upon defendant E.B.

Villarosa & Partner Co., Ltd. thru its Branch Manager Engr. WENDELL SALBULBERO on May 5, 1998 at their new office Villa Gonzalo, Nazareth, Cagayan de Oro City, and evidenced by the signature on the face of the original copy of the summons.

Defendant filed a Special Appearance with Motion to Dismiss alleging that on May 6, 1998, "summons intended for defendant" was served upon Engr. Wendell Sabulbero, an employee of defendant at its branch office at Cagayan de Oro City.

- Defendant prayed for the dismissal of the complaint on the ground of improper service of summons and for lack of jurisdiction over the person of the defendant.
- Trial court did not acquire jurisdiction over its person since the summons was improperly served upon its employee who is not one of those persons named in Section 11, Rule 14 RoC upon whom service of summons may be made.

Plaintiff filed a Motion to Declare Defendant in Default alleging that defendant has failed to file an Answer despite its receipt allegedly of the summons and the complaint, as shown in the Sheriffs Return.

Plaintiff then filed an Opposition to Defendant's Motion to Dismiss alleging that the records show that:

- Defendant, through its branch manager, Engr. Wendell Sabulbero actually received the summons and the complaint as evidenced by the signature appearing on the copy of the summons
- O Defendant has transferred its office from Kolambog, Lapasan, Cagayan de Oro to its new office address at Villa Gonzalo, Nazareth, Cagayan de Oro; and
- o Purpose of the rule is to bring home to the corporation notice of the filing of the action.

TC issued an Order denying defendant's MTD as well as plaintiffs Motion to Declare Defendant in Default. Defendant was given ten (10) days within which to file a responsive pleading. The trial court stated that since the summons and copy of the complaint were in fact received by the corporation through its branch manager Wendell Sabulbero, there was substantial compliance with the rule on service of summons and consequently, it validly acquired jurisdiction over the person of the defendant.

Defendant, by Special Appearance, filed a MR alleging that:

- Section 11, Rule 14 of the new Rules did not liberalize but, on the contrary, restricted the service of summons on persons enumerated therein; and
- New provision is very specific and clear in that the word "manager" was changed to "general manager", "secretary" to "corporate secretary", and excluding therefrom agent and director.

Plaintiff filed an Opposition to defendant's MR. Defendant filed a Reply contending that the changes in the new rules are substantial and not just general semantics. Defendant's MR was denied hence, this present petition.

Private respondent filed its Comment to the petition citing the cases Kanlaon Construction Enterprises Co., Inc. vs. NLRC wherein it was held that service upon a construction project manager is valid and in Gesulgon vs. NLRC which held that a corporation is bound by the service of summons upon its assistant manager.

#### **ISSUE:**

Whether or not the trial court acquired jurisdiction over the person of petitioner upon service of summons on its Branch Manager.

#### **RULING:**

No. The trial court did not acquire jurisdiction over the person of petitioner upon service of summons on its Branch Manager.

Service of summons upon the branch manager of petitioner at its branch office at Cagayan de Oro, instead of upon the general manager at its principal office at Davao City is improper

When the complaint was filed by Petitioner on April 3, 1998, the 1997 Rules of Civil Procedure was already in force. Sec. 11, Rule 14 revised the former Section 13, Rule 14 of the Rules of Court which provided that:

"Sec. 13.Service upon private domestic corporation or partnership. — If the defendant is a corporation organized under the laws of the Philippines or a partnership duly registered, service may be made on the president, manager, secretary, cashier, agent, or any of its directors. "

Petitioner contends that the enumeration of persons to whom summons may be served is "restricted, limited and exclusive" following the rule on statutory construction and argues that if the Rules of Court Revision Committee intended to liberalize the rule on service of summons, it could have easily done so by clear and concise language. We agree with petitioner.

Earlier cases have uphold service of summons upon "agents" within the contemplation of the old rule. Notably, under new Rules, service of summons upon an agent of the corporation is no longer authorized.

The designation of persons or officers who are authorized to accept summons for a domestic corporation or partnership is now limited and more clearly specified in Section 11, Rule 14 of the 1997 Rules of Civil Procedure. The rule now states "general manager" instead of only "manager"; "corporate secretary" instead of "secretary"; and "treasurer" instead of "cashier." The phrase "agent, or any of its directors" is conspicuously deleted in the new rule.

The particular revision under Section 11 of Rule 14 was explained by retired Supreme Court Justice Florenz Regalado, thus:

"... the then Sec. 13 of this Rule allowed service upon a defendant corporation to "be made on the president, manager, secretary, cashier, agent or any of its directors." The aforesaid terms were obviously ambiguous and susceptible of broad and sometimes illogical interpretations, especially the word "agent" of the corporation. The Filoil case, involving the litigation lawyer of the corporation who precisely appeared to challenge the validity of service of summons but whose very appearance for that purpose was seized upon to validate the defective service, is an illustration of the need for this revised section with limited scope and specific terminology. Thus the absurd result in the Filoil case necessitated the amendment permitting service only on the in-house counsel of the corporation who is in effect an employee of the corporation, as distinguished from an independent practitioner."

Retired Justice Oscar Herrera, who is also a consultant of the Rules of Court Revision Committee, stated that "The rule must be strictly observed. Service must be made to one named in statute

It should be noted that even prior to the effectivity of the 1997 Rules of Civil Procedure, strict compliance with the rules has been enjoined. In the case of Delta Motor Sales Corporation vs. Mangosing, the Court held:

"A strict compliance with the mode of service is necessary to confer jurisdiction of the court over a corporation. The officer upon whom service is made must be one who is named in the statute; otherwise the service is insufficient."

The purpose is to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or to insure that the summons be served on a representative so integrated with the corporation that such person will know what to do with the legal papers served on him. In other words, "to bring home to the corporation notice of the filing of the action."

The liberal construction rule cannot be invoked and utilized as a substitute for the plain legal requirements as to the manner in which summons should be served on a domestic corporation.

Service of summons upon persons other than those mentioned in Section 13 of Rule 14 (old rule) has been held as improper. Even under the old rule, service upon a general manager of a firm's branch office has been held as improper as summons should have been served at the firm's principal office.

Accordingly, we rule that the service of summons upon the branch manager of petitioner at its branch office at Cagayan de Oro, instead of upon the general manager at its principal office at Davao

City is improper. Consequently, the trial court did not acquire jurisdiction over the person of the petitioner.

## G.V. FLORIDA TRANSPORT, INC., PETITIONER, V. TIARA COMMERCIAL CORPORATION, RESPONDENT.

G.R. No. 201378, FIRST DIVISION, October 18, 2017, JARDELEZA, J.

Section 11, Rule 14 of the Rules of Court provides the procedure for the issuance of summons to a domestic private juridical entity. This enumeration is exclusive. Section 11 of Rule 14 changed the old rules pertaining to the service of summons on corporations.

While the former rule allowed service on an agent of a corporation, the current rule has provided for a list of specific persons to whom service of summons must be made.

#### **FACTS:**

The bus company Victory Liner, Inc. (VLI) filed an action for damages against GV Florida and its bus driver Arnold Vizquera (Vizquera) before the RTC.

a. This action arose out of a vehicle collision between the buses of VLI and GV Florida along Capirpiwan, Cordon, Isabela on May 1, 2007.

VLI claimed that Vizquera's negligence was the proximate cause of the collision and GV Florida failed to exercise due diligence in supervising its employee.

GV Florida alleged that the Michelin tires of its bus had factory and mechanical defects which caused a tire blow-out. This, it claimed, was the proximate cause of the vehicle collision.

GV Florida instituted a third-party complaint against Tiara Commercial Corporation (TCC).

- b. According to GV Florida, it purchased from TCC 50 brand new Michelin tires, 4 of which were installed into the bus that figured in the collision.
- c. It claimed that though Vizquera exerted all efforts humanly possible to avoid the accident, the bus nevertheless swerved to the oncoming south-bound lane and into the VLI bus.

GV Florida maintains that the "proximate cause of the accident is the tire blow out which was brought about by factory and mechanical defects in the Michelin tires which third-party plaintiff GV Florida absolutely and totally had no control over."

The RTC ordered the service of summons on TCC.

a. In the return of summons, it appears that the sheriff served the summons to a certain Cherry Gino-gino (Gino-gino) who represented herself as an accounting manager authorized by TCC to receive summons on its behalf.

TCC filed a Special Entry of Appearance with an Ex-parte Motion for Extension of Time to File

Responsive Pleading and/or Motion to Dismiss.

a. RTC granted TCC's prayer for extension of time to file a responsive pleading or a motion to dismiss.

TCC eventually filed a motion to dismiss GV Florida's third-party complaint.

TCC argues, among others, that the RTC never acquired jurisdiction over it due to improper service of summons. Under Section 11 of Rule 14, there is an exclusive list of the persons upon whom service of summons on domestic juridical entities may be made. As the summons in this case was not served on any of the persons listed in Section 11 of Rule 14, there was no proper service of summons on TCC that would vest the RTC with jurisdiction over it.

The RTC denied TCC's motion to dismiss. The MR also denied.

The CA reversed the RTC decision. The CA argued that the Section 11 of Rule 14 of the Rules of Court is exclusive, the CA found that the RTC never acquired jurisdiction over TCC because of the improper service of summons upon a person not named in the enumeration.

Hence, this petition.

#### **ISSUE:**

Whether or not the court acquired jurisdiction over Tiara Commercial Corporation.

#### **RULING:**

Yes. The court acquired jurisdiction over Tiara Commercial Corporation.

The SC ruled that summons were improperly served but courts should not automatically dismiss the complaint. Moreover, TCC voluntarily appeared.

Service of summons is the main mode through which a court acquires jurisdiction over the person of the defendant in a civil case. Through it, the defendant is informed of the action against him or her and he or she is able to adequately prepare his or her course of action.

Rules governing the proper service of summons are not mere matters of procedure. They go into a defendant's right to due process.

Strict compliance with the rules on service of summons is mandatory.

Section 11, Rule 14 of the Rules of Court provides the procedure for the issuance of summons to a domestic private juridical entity.

a. Sec. 11. Service upon domestic private juridical entity. — When the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel.

This enumeration is exclusive. Section 11 of Rule 14 changed the old rules pertaining to the service of summons on corporations.

While the former rule allowed service on an agent of a corporation, the current rule has provided for a list of specific persons to whom service of summons must be made.

The purpose of this rule is "to [e]nsure that the summons be served on a representative so integrated with the corporation that such person will know what to do with the legal papers served on him."

a. This rule requires strict compliance; the old doctrine that substantial compliance is sufficient no longer applies.

Service of summons, however, is not the only mode through which a court acquires jurisdiction over the person of the defendant. Section 20 of Rule 14 of the Rules of Court states:

a. Sec. 20. Voluntary appearance. — The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

There is voluntary appearance when

- a. a party, without directly assailing the court's lack of jurisdiction, seeks affirmative relief from the court.
- b. a party appears before the court without qualification, he or she is deemed to have waived his or her objection regarding lack of jurisdiction due to improper service of summons.

In contrast, Section 20 of Rule 14 of the Rules of Court provides that so long as a defendant raises the issue of lack of jurisdiction, he or she is allowed to include other grounds of objection. In such case, there is no voluntary appearance.

Still, improper service of summons and lack of voluntary appearance do not automatically warrant the dismissal of the complaint.

- a. A case should not be dismissed simply because an original summons was wrongfully served.
- b. An alias summons can be actually served on said defendant.

In this case, the summons was served to Gino-gino, a financial supervisor of TCC. While she is not one of the officers enumerated in Section 11 of Rule 14, SC finds that TCC has voluntarily appeared before (and submitted itself to) the RTC

- a. It filed its pre-trial brief without any reservation as to the court's jurisdiction over it.
- b. At no point in its pre-trial brief did TCC raise the issue of the RTC's jurisdiction over it.
- c. It even asked the RTC that it be allowed to reserve the presentation of additional evidence through documents and witnesses.

TCC waived any objection raised therein as to the jurisdiction of the court when it subsequently filed its pre-trial brief without any reservation and even prayed to be allowed to present additional evidence.

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, THROUGH THE HON. SECRETARY, HERMOGENES EBDANE, PETITIONER, VS. ALBERTO A. DOMINGO, RESPONDENT.

G.R. No. 175299, FIRST DIVISION, September 14, 2011, LEONARDO-DE CASTRO, J.

When the defendant is the Republic of the Philippines, service may be effected on the Solicitor General; in case of a province, city or municipality, or like public corporations, service may be effected on its executive head, or on such other officer or officers as the law or the court may direct.

#### Facts:

Domingo entered into seven contracts for the lease of his construction equipment to implement the projects of the DPWH to control the flow of lahar from Mt. Pinatubo. Domingo claimed that the unpaid rentals amounted to P6,320,163.05 but DPWH Region III failed to pay its obligations despite demands. Hence, Domingo filed a complaint for Specific Performance with Damages against DPWH, Region III. Summons was issued by the RTC with the Proof of Service of the Sheriff. Domingo filed a Motion to Declare Defendant in Default for failure of the DPWH Region III to file a responsive pleading within the reglementary period. The RTC declared the DPWH Region III in default and set the date for the reception of Domingo's evidence *ex parte* and later decided that Domingo is entitled to the reliefs prayed for. Domingo filed a Motion for Issuance of Writ of Execution which was granted. The Republic, represented by the OSG, filed a Petition for Annulment of Judgment with Prayer for the Issuance of a TRO and/or a Writ of Preliminary Injunction arguing that it was not impleaded as an indispensable party and that since no summons was issued to its representatives, the court never acquired jurisdiction over the Republic.

#### Issue:

Whether or not the service of summons upon the DPWH Region III alone was sufficient.

#### **Ruling:**

No. The service of summons upon the DPWH Region III alone was insufficient.

Section 13, Rule 14 of the Rules of Court states that: When the defendant is the Republic of the Philippines, service may be effected on the Solicitor General; in case of a province, city or municipality, or like public corporations, service may be effected on its executive head, or on such other officer or officers as the law or the court may direct. Jurisprudence further instructs that when a suit is directed against an unincorporated government agency, which, because it is unincorporated, possesses no juridical personality of its own, the suit is against the agency's principal, *i.e.*, the State.

In the instant case, the Complaint for Specific Performance with Damages filed by Domingo specifically named as defendant the DPWH Region III. As correctly argued by the Republic, the DPWH and its regional office are merely the agents of the former (the Republic), which is the real

party in interest in Civil Case No. 333-M-2002. Thus, as mandated by Section 13, Rule 14 of the Rules of Court, the summons in this case should have been served on the OSG.

Quite inexplicably, the Court of Appeals failed to apply, *nay*, to even consider, the provisions of Section 13, Rule 14 of the Rules of Court in rendering its assailed Decision. A perusal of the Decision dated May 19, 2006 shows that the appellate court mainly dissertated regarding the functions and organizational structures of the DPWH and the OSG, as provided for in the Revised Administrative Code of 1987, in an attempt to demonstrate the relationship between the DPWH and its regional offices, as well as to refute the claim that the service of summons upon the Republic should be made exclusively upon the OSG. Such an oversight on the part of the Court of Appeals is most unfortunate given the relevance and materiality of Section 13, Rule 14 of the Rules of Court to the instant case, in addition to the fact that the Republic itself quoted the aforesaid provision in its petition before the appellate court.

## UNITED PULP AND PAPER CO., INC., PETITIONER, VS. ACROPOLIS CENTRAL GUARANTY CORPORATION, RESPONDENT.

G.R. No. 171750, THIRD DIVISION, January 25, 2012, MENDOZA, J.

The law is clear that it intends for the other party to receive a copy of the written motion at least three days before the date set for its hearing. The purpose of the three (3)-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein. It is not, however, a hard and fast rule. Where a party has been given the opportunity to be heard, the time to study the motion and oppose it, there is compliance with the rule.

#### FACTS:

On May 14, 2002, United Pulp and Paper Co., Inc. (UPPC) filed a civil case for collection of the amount of P42,844,353.14 against Unibox Packaging Corporation (Unibox) and Vicente Ortega (Ortega) before the Regional Trial Court of Makati, Branch 148 (RTC). UPPC also prayed for a Writ of Preliminary Attachment against the properties of Unibox and Ortega for the reason that the latter were on the verge of insolvency and were transferring assets in fraud of creditors. On August 29, 2002, the RTC issued the Writ of Attachment after UPPC posted a bond in the same amount of its claim. By virtue of the said writ, several properties and assets of Unibox and Ortega were attached. On October 10, 2002, Unibox and Ortega filed their Motion for the Discharge of Attachment, praying that they be allowed to file a counter-bond in the amount of P42,844,353.14 and that the writ of preliminary attachment be discharged after the filing of such bond. Although this was opposed by UPPC, the RTC, in its Order dated October 25, 2002, granted the said motion for the discharge of the writ of attachment subject to the condition that Unibox and Ortega file a counter-bond. Thus, on November 21, 2002, respondent Acropolis Central Guaranty Corporation (Acropolis) issued the Defendant's Bond for Dissolution of Attachment in the amount of P42,844,353.14 in favor of Unibox.

On September 29, 2003, Unibox, Ortega and UPPC executed a compromise agreement, wherein Unibox and Ortega acknowledged their obligation to UPPC in the amount of P35,089,544.00 as of August 31, 2003, inclusive of the principal and the accrued interest, and bound themselves to pay the said amount in accordance with a schedule of payments agreed upon by the parties. Consequently, the RTC promulgated its Judgment dated October 2, 2003 approving the compromise

agreement. For failure of Unibox and Ortega to pay the required amounts for the months of May and June 2004 despite demand by UPPC, the latter filed its Motion for Execution to satisfy the remaining unpaid balance. In the July 30, 2004 Order, the RTC acted favorably on the said motion and, on August 4, 2004, it issued the requested Writ of Execution. The sheriff then proceeded to enforce the Writ of Execution. It was discovered, however, that Unibox had already ceased its business operation and all of its assets had been foreclosed by its creditor bank. Moreover, the responses of the selected banks which were served with notices of garnishment indicated that Unibox and Ortega no longer had funds available for garnishment. The sheriff also proceeded to the residence of Ortega to serve the writ but he was denied entry to the premises.

Despite his efforts, the sheriff reported in his November 4, 2008 Partial Return that there was no satisfaction of the remaining unpaid balance by Unibox and Ortega. On the basis of the said return, UPPC filed its Motion to Order Surety to Pay Amount of Counter-Bond directed at Acropolis. On November 30, 2004, the RTC issued its Order granting the motion and ordering Acropolis to comply with the terms of its counter-bond and pay UPPC the unpaid balance of the judgment in the amount of P27,048,568.78 with interest of 12% per annum from default. Thereafter, on December 13, 2004, Acropolis filed its Manifestation and Very Urgent Motion for Reconsideration, arguing that it could not be made to pay the amount of the counter-bond because it did not receive a demand for payment from UPPC. Furthermore, it reasoned that its obligation had been discharged by virtue of the novation of its obligation pursuant to the compromise agreement executed by UPPC, Unibox and Ortega. The motion, which was set for hearing on December 17, 2004, was received by the RTC and UPPC only on December 20, 2004. In the Order dated February 22, 2005, the RTC denied the motion for reconsideration for lack of merit and for having been filed three days after the date set for the hearing on the said motion. Aggrieved, Acropolis filed a petition for certiorari before the CA with a prayer for the issuance of a Temporary Restraining Order and Writ of Preliminary Injunction. On November 17, 2005, the CA rendered its Decision granting the petition, reversing the February 22, 2005 Order of the RTC, and absolving and relieving Acropolis of its liability to honor and pay the amount of its counter-attachment bond.

#### **ISSUES:**

1st issue: Whether or not UPPC failed to make the required demand and notice upon Acropolis.

2nd issue: Whether or not the execution of the compromise agreement between UPPC and Unibox and Ortega was tantamount to a novation which had the effect of releasing Acropolis from its obligation under the counter-attachment bond.

#### **RULING:**

#### 1st issue:

No. UPPC did not fail to make the required demand and notice upon Acropolis.

UPPC complied with the twin requirements of notice and demand. On the recovery upon the counter-bond, the Court finds merit in the arguments of the petitioner. UPPC argues that it complied with the requirement of demanding payment from Acropolis by notifying it, in writing and by personal service, of the hearing held on UPPC's Motion to Order Respondent-Surety to Pay the Bond. Moreover, it points out that the terms of the counter-attachment bond are clear in that Acropolis, as surety, shall jointly and solidarily bind itself with Unibox and Ortega to secure the payment of any judgment that UPPC may recover in the action.

It is evident that a surety on a counter-bond given to secure the payment of a judgment becomes liable for the payment of the amount due upon: (1) demand made upon the surety; and (2) notice and summary hearing on the same action. After a careful scrutiny of the records of the case, the Court is of the view that UPPC indeed complied with these twin requirements.

This Court has consistently held that the filing of a complaint constitutes a judicial demand. Accordingly, the filing by UPPC of the Motion to Order Surety to Pay Amount of Counter-Bond was already a demand upon Acropolis, as surety, for the payment of the amount due, pursuant to the terms of the bond. In said bond, Acropolis bound itself in the sum of P 42,844,353.14 to secure the payment of any judgment that UPPC might recover against Unibox and Ortega. Furthermore, an examination of the records reveals that the motion was filed by UPPC on November 11, 2004 and was set for hearing on November 19, 2004. Acropolis was duly notified of the hearing and it was personally served a copy of the motion on November 11, 2004, contrary to its claim that it did not receive a copy of the motion. Acropolis was given the opportunity to defend itself. That it chose to ignore its day in court is no longer the fault of the RTC and of UPPC. It cannot now invoke the alleged lack of notice and hearing when, undeniably, both requirements were met by UPPC.

#### 2nd issue:

No. The execution of the compromise agreement between UPPC and Unibox and Ortega was not tantamount to a novation which had the effect of releasing Acropolis from its obligation under the counter-attachment bond.

There was no novation despite compromise agreement; Acropolis still liable under the terms of the counter-bond. The terms of the Bond for Dissolution of Attachment issued by Unibox and Acropolis in favor of UPPC are clear and leave no room for ambiguity. Acropolis voluntarily bound itself with Unibox to be solidarily liable to answer for ANY judgment which UPPC may recover from Unibox in its civil case for collection. Its counter-bond was issued in consideration of the dissolution of the writ of attachment on the properties of Unibox and Ortega. The counter-bond then replaced the properties to ensure recovery by UPPC from Unibox and Ortega. It would be the height of injustice to allow Acropolis to evade its obligation to UPPC, especially after the latter has already secured a favorable judgment. Both questions can be solved by bearing in mind that we are dealing with a counterbond filed to discharge a levy on attachment. Rule 57, section 12, specifies that an attachment may be discharged upon the making of a cash deposit or filing a counterbond "in an amount equal to the value of the property attached as determined by the judge"; that upon the filing of the counterbond "the property attached ... shall be delivered to the party making the deposit or giving the counterbond, or the person appearing on his behalf, the deposit or counterbond aforesaid standing in place of the property so released."

Whether the judgment be rendered after trial on the merits or upon compromise, such judgment undoubtedly may be made effective upon the property released; and since the counterbond merely stands in the place of such property, there is no reason why the judgment should not be made effective against the counterbond regardless of the manner how the judgment was obtained.

The argument of Acropolis that its obligation under the counter-bond was novated by the compromise agreement is, thus, untenable. In order for novation to extinguish its obligation, Acropolis must be able to show that there is an incompatibility between the compromise agreement and the terms of the counter-bond, as required by Article 1292 of the Civil Code. Novation by presumption has never been favored. To be sustained, it need be established that the old and new contracts are incompatible in all points, or that the will to novate appears by express agreement of

the parties or in acts of similar import. All things considered, Acropolis, as surety under the terms of the counter-bond it issued, should be held liable for the payment of the unpaid balance due to UPPC.

#### Three-day notice rule, not a hard and fast rule

Although this issue has been obviated by our disposition of the two main issues, the Court would like to point out that the three-day notice requirement is not a hard and fast rule and substantial compliance is allowed. Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to insure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice. The law is clear that it intends for the other party to receive a copy of the written motion at least three days before the date set for its hearing. The purpose of the three (3)-day notice requirement, which was established not for the benefit of the movant but rather for the adverse party, is to avoid surprises upon the latter and to grant it sufficient time to study the motion and to enable it to meet the arguments interposed therein. It is not, however, a hard and fast rule. Where a party has been given the opportunity to be heard, the time to study the motion and oppose it, there is compliance with the rule. In the case at bench, the RTC gave UPPC sufficient time to file its comment on the motion. On January 14, 2005, UPPC filed its Opposition to the motion, discussing the issues raised by Acropolis in its motion. Thus, UPPC's right to due process was not violated because it was afforded the chance to argue its position.

## BERNICE JOAN TI, petitioner, -versus- MANUEL S. DIÑO, respondent. G.R. No. 219260, SECOND DIVISION, November 6, 2017, PERALTA, J.

All motions must be set for hearing and notice must be sent to adverse parties in such a manner that will ensure their receipt 3 days before the scheduled date. Failure to comply with these requirements renders a motion fatally defective which does not toll the reglementary period to appeal.

The RTC, in this case, correctly treated the March 5, 2010 as a mere scrap of paper for failure to comply with the 3-day notice rule as petitioner was only able to receive a copy 3 days after the date of hearing.

#### **FACTS:**

The City Prosecutor filed on February 19, 2008 a Resolution recommending the filing of an information against Petitioner Ti and a certain Julieta Fernandez for falsification of public documents. The MeTC reversed the ruling of the City Prosecutor. Respondent subsequently filed an MR, through a private prosecutor, which was granted by the MeTC, which found probable cause to indict petitioner and Fernandez.

Petitioner and Fernandez thus filed a Petition for Certiorari with the RTC seeking to enjoin the MeTC from proceeding with the case on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction. The RTC ruled in favor of petitioner and held that the MeTC committed grave abuse when it acted on the MR filed by respondent without the conformity of the public

prosecutor. Respondent filed an MR, dated March 5, 2010, arguing that no such conformity or concurrence by the public prosecutor was required.

Petitioner and Fernandez then filed a Motion to Expunge the MR dated March 5, 2010 for violation of the 3-day notice rule for motions. The RTC denied respondent's MR for failure to comply with the 3-day notice rule noting that petitioner was only able to receive a copy of the motion 3 days after the scheduled hearing. Respondent thereafter filed a Notice of Appeal which was disapproved by the RTC for failure to file within the reglementary period. Respondent then filed a petition for certiorari under Rule 65 with the CA claiming that the RTC committed grave abuse of discretion in not transmitting the records of the case despite the notice of appeal being filed on time. The CA granted this petition and reversed the RTC.

#### **ISSUE:**

Whether the RTC committed grave abuse of discretion. (NO)

#### **RULING:**

All motions, except those which the court may act on without prejudice to the other party, must be set for hearing, including MRs. The notice of hearing on any motion must be directed to the other party informing him of the date and time of the hearing and must be served in such a manner that will ensure receipt 3 days before the scheduled hearing. Failure to comply with these requirements renders the motion fatally defective.

The RTC, in this case, correctly treated the March 5, 2010 as a mere scrap of paper for failure to comply with the 3-day notice rule as petitioner was only able to receive a copy 3 days after the date of hearing.

Hence, the RTC did not commit grave abuse of discretion in ruling that the appeal was filed out of time as a defective motion does not toll the running period to appeal from a judgment or final order.

## DR. ROGER R. POSADAS and DR. ROLANDO P. DAYCO, petitioners, -versus- SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES, respondents.

G.R. Nos. 168951 & 169000, FIRST DIVISION, July 17, 2013, VILLARAMA, JR., J.

When a party files motion for reconsideration which is not set for hearing, it renders the motion without no legal effect. It is considered a pro forma motion which shall not toll the reglementary period of the appeal. This requirement is mandatory Basic is the rule that every motion must be set for hearing by the movant except for those motions which the court may act upon without prejudice to the rights of the adverse party.

In this case, as Flores committed a procedural lapse in failing to include a notice of hearing, his motion was a worthless piece of paper with no legal effect whatsoever. Thus, his motion was properly dismissed by the Sandiganbayan.

#### **FACTS:**

Petitioner Dr. Posadas is a longtime professor and former Dean of the College of Science at the UP-Diliman Campus. He was appointed by the Board of Regents as UP Diliman Chancellor for a three-year term starting November 1, 1993 and ending on October 31, 1996.

On July 26, 1995, Dr. Posadas submitted to the National Economic and Development Authority (NEDA) an Application for Funding of his proposed project entitled "Institutionalization of Technology Management at the University of the Philippines in Diliman" (TMC Project). The TMC Project, to be funded by a grant from the Canadian International Development Agency (CIDA), aimed to design and develop ten new graduate courses in technology management for the diploma, master's and doctoral programs to be offered by TMC.

On November 7, 1995, Dr. Posadas was appointed as Project Director of UP TMC effective September 18, 1995 up to September 17, 1996.In another undated "Contract for Consultancy Services", Dr. Posadas was hired as Consultant for the TMC Project for the same period. As evidenced by disbursement vouchers and admitted by Dr. Posadas, the latter received his "honoraria" (P30,000.00 per month) and consultancy fees (totaling P100,000.00) as Project Director and Consultant of the TMC Project until May 1996 when the Commission on Audit (COA) raised questions on the legality of the said fees.7

In August 1996, payment of the subject "honoraria" and fees was suspended by COA Resident Auditor Romeo J. Pulido who noted that there were deficiencies. In a Memorandum dated September 16, 1996, UP's Chief Legal Officer Marichu C. Lambino addressed the foregoing concerns of COA Auditor Pulido. Atty. Lambino stated that (a) the compensation received by Dr. Posadas are in the nature of consultancy fees and hence expressly exempted by Department of Budget and Management (DBM) National Compensation Circular (NCC) No. 75 dated March 11, 1995; (b) the TMC Project, being a training program, is likewise exempted from the coverage of NEDA Guidelines on the Procurement of Consulting Services for Government Projects; and (c) under Civil Service Commission (CSC) Memorandum Circular (MC) No. 43, series of 1993 "Streamlining and Deregulating Human Resource Development Functions" UP is authorized, without prior approval from the CSC, to determine the rates of honorarium for government personnel participating as resource persons, coordinator, and facilitator, in training programs. On the issue of double compensation, Atty. Lambino pointed out that Dr. Posadas was appointed Project Director because of managerial expertise, and his skills in supervising personnel who are involved in an academic undertaking, and as Consultant because of his expertise in technology management. Finding these explanations/justifications acceptable, Auditor Pulido lifted the notices of suspension in September 1997.

However, even before the issuance of the suspension notices, then UP President Dr. Emil Q. Javier, ordered an investigation on the basis of an administrative complaint filed. After the conduct of a preliminary investigation and finding a prima facie case against the petitioners, President Javier issued the formal chargesfor Grave Misconduct and Abuse of Authority. The ADT found petitioners guilty of serious or grave misconduct and recommended the penalty of dismissal in accordance with CSC Memorandum Circular No. 30, series of 1989, as well as Article 250 of the University Code. The Report likewise stated that the acts of petitioners for which they were held administratively liable may warrant prosecution under Section 3(h) and (i) of R.A. No. 3019. Under the Order dated August 25, 1998 signed by President Javier, petitioners were dismissed from the service.

On September 3, 1998, Atty. Carmelita Yadao-Guno in her capacity as General Counsel of UP formally endorsed the findings and recommendations of the ADT to the Ombudsman. Meanwhile, the BOR at its 1126th meeting resolved petitioners' appeal in the ADT Case. Satisfied with the BOR's action, petitioners caused the withdrawal of their appeal before the CSC.

On June 9, 1999, the Evaluation and Preliminary Investigation Bureau of the Office of Ombudsman recommended the dismissal of the charges against petitioners for insufficiency of evidence. However, said recommendation was disapproved by then Ombudsman Aniano A. Desierto who ordered that petitioners be indicted for violation of Section 3(e) of R.A. No. 3019 and Section 7(b) in relation to Section 11 of R.A. No. 6713. The corresponding Informations were thus filed against the petitioners before the Sandiganbayan (Criminal Case Nos. 25465-66). The Sandiganbayan found both Dr. Posadas and Dr. Dayco guilty beyond reasonable doubt. Petitioners filed a motion for reconsideration but it was denied due course for the reason that it has not been set for hearing as required by the rules, hence the motion is pro forma.

#### **ISSUE:**

Whether the Sandiganbayan committed grave abuse of discretion amounting to lack of or in excess of jurisdiction in denying petitioners' motion for reconsideration on the ground that it was not set for hearing. (NO)

#### **RULING:**

The petition is dismissed.

Contrary to petitioners' stance, the 2002 Revised Internal Rules of the Sandiganbayan requires a motion for reconsideration to be set for hearing, as it provides under Rule VII:

SECTION 1. Motion Day. - Except for motions which may be acted upon ex parte, all motions shall be scheduled for hearings on a Friday, or if that day is a non-working holiday, on the next working day.

Motions requiring immediate action may be acted upon on shorter notice.

Under the Rules of Sandiganbayan, effective January 10, 1979, a petition for reconsideration of a judgment or final order may be filed upon the grounds, in the form and subject to the requirements, for motions for new trial in criminal cases under Rule 121 of the Rules of Court. In the case of Alvarezv. Sandiganbayan, the Court upheld the Sandiganbayan in not considering "the failure of the movant to fix the place, date and time of the hearing of his motion a substantial defect, for instead of giving the motion a short shrift, it set the incident for hearing, and even granted the prosecution ten days from notice within which to oppose/comment." The Court noted what was then the practice of the Sandigabayan itself, rather than the movant, to determine the date and time of hearings of motions. The peculiar circumstances of said case heavily weighed in favor of relaxation of the rules, with the Court's finding that the evidence presented against the petitioner does not fulfill the test of moral certainty and may not be deemed sufficient to support a conviction. Hence, the Court was not prepared "to declare that petitioner's omission to set his motion for hearing is so grievous an error as to foreclose the award to him of the relief to which he is otherwise entitled."

In any event, the mandatory setting for hearing a motion for reconsideration to reverse or modify a judgment or final order of the Sandiganbayan is already settled. A pro forma motion for new trial or reconsideration shall not toll the reglementary period of appeal. Section 4, Rule 121 states:

SEC. 4. Form of motion and notice to the prosecutor. – The motion for a new trial or reconsideration shall be in writing and shall state the grounds on which it is based. x x x.

Notice of the motion for new trial or reconsideration shall be given to the prosecutor.

As correctly stated by the Office of the Special Prosecutor (OSP), Sec.2 of Rule 37 and Sec. 4 of Rule 121 should be read in conjunction with Sec.5 of Rule 15 of the Rules of Court. Basic is the rule that every motion must be set for hearing by the movant except for those motions which the court may act upon without prejudice to the rights of the adverse party. The notice of hearing must be addressed to all parties and must specify the time and date of the hearing, with proof of service.

This Court has indeed held, time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, the requirement is mandatory. Failure to comply with the requirement renders the motion defective. "As a rule, a motion without a notice of hearing is considered pro forma and does not affect the reglementary period for the appeal or the filing of the requisite pleading."

In this case, as Flores committed a procedural lapse in failing to include a notice of hearing, his motion was a worthless piece of paper with no legal effect whatsoever. Thus, his motion was properly dismissed by the Sandiganbayan.

The Court thus find no grave abuse of discretion committed by the Sandiganbayan when it denied due course to petitioners' motion for reconsideration on the ground that it "has not been set for hearing as required by the rules" and the same is "deemed pro forma."

HEIRS OF DR. MARIANO FAVIS, SR., represented by their co-heirs and Attorneys-in-Fact MERCEDES A. FAVIS and NELLY FAVIS-VILLAFUERTE, petitioners, -versus- JUANA GONZALES, her son MARIANO G. FAVIS, MA. THERESA JOANA D. FAVIS, JAMES MARK D. FAVIS, all minors represented herein by their parents, SPS. MARIANO FAVIS and LARCELITA D. FAVIS, respondents.

G.R. No. 185922, SECOND DIVISION, January 15, 2014, PEREZ, J.

Rule 16 treats of the grounds for a motion to dismiss the complaint. It must be distinguished from the grounds provided under Section 1, Rule 9 which specifically deals with dismissal of the claim by the court motu proprio. Section 1, Rule 9 provides for only four instances when the court may motu proprio dismiss the claim, namely: (a) lack of jurisdiction over the subject matter; (b) litis pendentia; (c) res judicata; and (d) prescription of action. It is so inferable from the opening sentence of Section 1 of Rule 9 stating that defense and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. Failure to allege in the complaint that earnest efforts at a compromise has been made but had failed is not one of the exceptions. Upon such failure, the defense is deemed waived.

In the case at hand, the proceedings before the trial court ran the full course. The complaint of petitioners was answered by respondents without a prior motion to dismiss having been filed. The decision in favor of the petitioners was appealed by respondents on the basis of the alleged error in the ruling on the merits, no mention having been made about any defect in the statement of a cause of action. In other words, no motion to dismiss the complaint based on the failure to comply with a condition precedent was filed in the trial court; neither was such failure assigned as error in the appeal that respondent brought before the Court of Appeals.

#### **FACTS:**

Dr. Favis was married to Capitolina with whom he had seven children. When Capitolina died Dr. Favis took Juana as his common-law wife with whom he sired one child, Mariano. Later, Dr. Favis and Juana got married and Dr. Favis executed an affidavit acknowledging Mariano as one of his legitimate children. Mariano is married to Larcelita, with whom he has four children. Soon, Dr. Favis died intestate leaving residential lands, commercial building, house, and an orchard. However, it is alleged that Dr. Favis executed a Deed of Donation transferring and conveying the residential land and the building erected therein in favor of his grandchildren with Juana. With this, petitioners being Dr. Favis' children with Capitolina, claimed that the donation prejudiced their legitime and filed for annulment if the Deed of Donation before the RTC against respondents. Respondents, however, asserted that the properties donated do not form part of the estate of the late Dr. Favis because the donation was made inter vivos.

The RTC, limited the issues to the validity of the deed of donation and whether respondent Juana and Mariano are compulsory heirs of Dr. Favis. Thus, in its decision, RTC nullified the Deed of Donantion finding Dr. Favis at age 92 and plagued with illnesses, could not have jad full control of his metal capacities to execute a valid Deed of Donation, and further declared Juan and Mariano as legitimate heirs. As such, respondents appealed to the CA challenging the RTC decision on ground of

vitiated consent. The CA dismissed the same not on the grounds invoked by respondents but for failure of petitioners to make an averment that earnest efforts toward a compromise have been made, as mandated by Article 151 of the Family Code. Subsequently, petitioners filed a motion for reconsideration contending that the case is not subject to compromise as it involves future legitime, which the CA rejected, observing that while the action is between members of the same family it does not involve a testator and a compulsory heir. Moreover, the appellate court pointed out that the subject properties cannot be considered as "future legitime" but are in fact, legitime, as the instant complaint was filed after the death of the decedent.

#### **ISSUE:**

Whether or not the appellate court may dismiss the order of dismissal of the complaint for failure to allege therein that earnest efforts towards a compromise have been made. (NO)

#### **RULING:**

The appellate court committed egregious error in dismissing the complaint. The appellate courts' decision hinged on Article 151 of the Family Code, which it correlated with Section 1, par (j), Rule 16 of the 1997 Rules of Court.

The appellate court's reliance on this provision is misplaced. Rule 16 treats of the grounds for a motion to dismiss the complaint. It must be distinguished from the grounds provided under Section 1, Rule 9 which specifically deals with dismissal of the claim by the court motu proprio. Section 1, Rule 9 provides for only four instances when the court may motu proprio dismiss the claim, namely: (a) lack of jurisdiction over the subject matter; (b) litis pendentia; (c) res judicata; and (d) prescription of action. Specifically in Gumabon v. Larin, cited in Katon v. Palanca, Jr., the Court held:

The motu proprio dismissal of a case was traditionally limited to instances when the court clearly had no jurisdiction over the subject matter and when the plaintiff did not appear during trial, failed to prosecute his action for an unreasonable length of time or neglected to comply with the rules or with any order of the court. Outside of these instances, any motu proprio dismissal would amount to a violation of the right of the plaintiff to be heard.

Except for qualifying and expanding Section 2, Rule 9, and Section 3, Rule 17, of the Revised Rules of Court, the amendatory 1997 Rules of Civil Procedure brought about no radical change. Under the new rules, a court may motu proprio dismiss a claim when it appears from the pleadings or evidence on record that it has no jurisdiction over the subject matter; when there is another cause of action pending between the same parties for the same cause, or where the action is barred by a prior judgment or by statute of limitations.

The error of the Court of Appeals is evident even if the consideration of the issue is kept within the confines of the language of Section 1(j) of Rule 16 and Section 1 of Rule 9. That a condition

precedent for filing the claim has not been complied with, a ground for a motion to dismiss emanating from the law that no suit between members from the same family shall prosper unless it should appear from the verified complaint that earnest efforts toward a compromise have been made but had failed, is, as the Rule so words, a ground for a motion to dismiss. Significantly, the Rule requires that such a motion should be filed "within the time for but before filing the answer to the complaint or pleading asserting a claim." The time frame indicates that thereafter, the motion to dismiss based on the absence of the condition precedent is barred. It is so inferable from the opening sentence of Section 1 of Rule 9 stating that defense and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. There are, as just noted, only four exceptions to this Rule, namely, lack of jurisdiction over the subject matter; litis pendentia; res judicata; and prescription of action. Failure to allege in the complaint that earnest efforts at a compromise has been made but had failed is not one of the exceptions. Upon such failure, the defense is deemed waived. Thus was it made clear that a failure to allege earnest but failed efforts at a compromise in a complaint among members of the same family, is not a jurisdictional defect but merely a defect in the statement of a cause of action.

In the case at hand, the proceedings before the trial court ran the full course. The complaint of petitioners was answered by respondents without a prior motion to dismiss having been filed. The decision in favor of the petitioners was appealed by respondents on the basis of the alleged error in the ruling on the merits, no mention having been made about any defect in the statement of a cause of action. In other words, no motion to dismiss the complaint based on the failure to comply with a condition precedent was filed in the trial court; neither was such failure assigned as error in the appeal that respondent brought before the Court of Appeals.

Therefore, the rule on deemed waiver of the non-jurisdictional defense or objection is wholly applicable to respondent. If the respondents as parties-defendants could not, and did not, after filing their answer to petitioner's complaint, invoke the objection of absence of the required allegation on earnest efforts at a compromise, the appellate court unquestionably did not have any authority or basis to motu propio order the dismissal of petitioner's complaint.

Indeed, even if we go by the reason behind Article 151 of the Family Code, which provision as then Article 222 of the New Civil Code was described as "having been given more teeth"21 by Section 1(j), Rule 16 of the Rule of Court, it is safe to say that the purpose of making sure that there is no longer any possibility of a compromise, has been served.

REPUBLIC OF THE PHILIPPINES, represented by the Presidential Commission on Good Government (PCGG), petitioner, -versus- SANDIGANBAYAN (Second Division) and FERDINAND R. MARCOS, JR. (as executor of the estate of FERDINAND E. MARCOS), respondents.

G.R. No. 148154, SECOND DIVISION, December 17, 2007, QUISUMBING, J.

Given the existence of the default order then, what is the legal effect of the granting of the motions to file a responsive pleading and bill of particulars? In our view, the effect is that the default order against the former president is deemed lifted.

The only objection to the action of said court would be on a technicality. But on such flimsy foundation, it would be erroneous to sacrifice the substantial rights of a litigant. Rules of procedure should be liberally construed to promote their objective in assisting the parties obtain a just, speedy and inexpensive determination of their case.

#### **FACTS:**

Roman Cruz is impleaded as an alleged crony of President Ferdinand Marcos. When the Presidential Commission on Good Governance went after the cronies, in hopes of recovering the wealth he and his family and cronies amassed during his reign, an alias summons was served upon him in Hawaii, his place of exile. Since he was not able to file a responsive pleading, he was then declared in default, upon motion by the Republic of the Philippines.

When the order of exile was lifted after the death of the fallen President, his wife, Imelda Marcos moved to set aside the order of default, which motion was granted by the Sandiganbayan. Sandiganbayan found that a myriad of events, such as their exile, President Marcos' ill health and numerous other civil and criminal suits against the latter was reasonable cause to lift the order of default.

The President's son, Ferdinand Marcos, Jr. (Bong- Bong), as the executor of his father's estate, petitioned the court for extension of time to file a responsive pleading, which the court granted. However, instead of filing an answer, Bong-Bong filed a Motion For Bill of Particulars, praying for clearer statements of the allegations which he called "mere conclusions of law, too vague and general to enable defendants to intelligently answer."

Sandiganbayan upheld respondent, explaining that the allegations against former President Marcos were vague, general, and were mere conclusions of law. It pointed out that the accusations did not specify the ultimate facts of former President Marcos' participation in Cruz's alleged accumulation of ill-gotten wealth, effectively preventing respondent from intelligently preparing an answer. It noted that this was not the first time the same issue was raised before it, and stressed that this Court had consistently ruled in favor of the motions for bills of particulars of the defendants in the other ill-gotten wealth cases involving the Marcoses.

The Republic argued that since Bong-Bong filed a motion for extension of time to file an answer, the Sandiganbayan should not have accepted the former's motion for bill of particulars. It argued that the charges were clear, and that other parties, such as Cruz, also linked to the controversy of ill-gotten wealth, have already filed their own answers, thus proving that the complaint was not in fact couched in too general terms.

#### **ISSUE:**

Whether the court committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting respondent's motion for a bill of particulars as executor of former President Marcos' estates considering that the deceased defendant was then a defaulting defendant when the motion was filed. (NO)

#### **RULING:**

Given the existence of the default order then, what is the legal effect of the granting of the motions to file a responsive pleading and bill of particulars? In our view, the effect is that the default order against the former president is deemed lifted.

Considering that a motion for extension of time to plead is not a litigated motion but an *ex parte* one, the granting of which is a matter addressed to the sound discretion of the court; that in some cases we have allowed defendants to file their answers even after the time fixed for their presentation; that we have set aside orders of default where defendants' failure to answer on time was excusable; that the pendency of the motion for a bill of particulars interrupts the period to file a responsive pleading; and considering that no real injury would result to the interests of petitioner with the granting of the motion for a bill of particulars, the three motions for extensions of time to file an answer, and the motion with leave to file a responsive pleading, the anti-graft court has validly clothed respondent with the authority to represent his deceased father. The only objection to the action of said court would be on a technicality. But on such flimsy foundation, it would be erroneous to sacrifice the substantial rights of a litigant. Rules of procedure should be liberally construed to promote their objective in assisting the parties obtain a just, speedy and inexpensive determination of their case.

In his motion for a bill of particulars, respondent wanted clarification on the specific nature, manner and extent of participation of his father in the acquisition of the assets cited above under Cruz; particularly whether former President Marcos was a beneficial owner of these properties; and the specific manner in which he acquired such beneficial control.

While the allegations as to the alleged specific acts of Cruz were clear, they were vague and unclear as to the acts of the Marcos couple who were allegedly "in unlawful concert with" the former.

There was no factual allegation in the original and expanded complaints on the collaboration of or on the kind of support extended by former President Marcos to Cruz in the commission of the alleged unlawful acts constituting the alleged plunder. All the allegations against the Marcoses, aside from being maladroitly laid, were couched in general terms. The alleged acts, conditions and circumstances that could show the conspiracy among the defendants were not particularized and sufficiently set forth by petitioner.

# CATALINA B. CHU, THEANLYN B. CHU, THEAN CHING LEE B. CHU, THEAN LEEWN B. CHU, and MARTIN LAWRENCE B. CHU, petitioners, -versus- SPOUSES FERNANDO C. CUNANAN and TRINIDAD N. CUNANAN, BENELDA ESTATE DEVELOPMENT CORPORATION, and SPOUSES AMADO E. CARLOS and GLORIA A. CARLOS, respondents.

G.R. No. 156185, FIRST DIVISION, September 12, 2011, BERSAMIN, J.

The following are the requisites of res judicata to bar the institution of a subsequent action: (a) final former judgment; (b) judgment is rendered by a court having jurisdiction; (c) judgment on the merits; and (d) identity of parties, subject matter, and cause of action in the first and second action.

#### **FACTS:**

Spouses Chu executed a *deed of sale with assumption of mortgage* involving their five parcels of land in favor of Trinidad Cunanan. They also executed a *side agreement*, clarifying that Cunanan paid only P1 million despite the Chus having acknowledged receiving P5,161,090; that the amount of P1.6 million was to be paid to Benito Co and Security Bank; and that Cunanan would pay the balance within three months. The ownership would only be transferred to Cunanan upon complete payment and compliance with the terms of the deed. However, Cunanan was able to transfer the title to her name without the knowledge of the Chus, and to borrow money with the lots as security without paying the balance. She later transferred two of the lots to Spouses Carlos. Hence, the Chus caused the annotation of an unpaid vendor's lien on three of the lots but Cunanan still assigned the lots to Cool Town Realty.

The Chus filed a complaint to recover the unpaid balance from the Cunanans and later amended the complaint to seek the annulment of the deed and the TCTs issued and recover damages. They impleaded Cool Town Realty and the Office of the Registry of Deeds of Pampanga. Meanwhile, the Carloses sold the two lots to Benelda Estate thus, the Chus impleaded Benelda Estate. Benelda Estate filed its answer with a motion to dismiss, claiming there is no cause of action because it acted in good faith in buying the lots which was denied. Benelda Estate assailed the denial on *certiorari* in the CA but the court upheld the dismissal.

The Chus, Cunanans, and Cool Town Realty entered into a compromise agreement, whereby the Cunanans transferred to the Chus their 50% share in all the parcels of land registered in the name of Cool Town Realty "for and in consideration of the full settlement of their case." Thereafter, the Chus brought another suit against the Carloses and Benelda Estate, seeking the cancellation of the TCTs of the two lots in the name of Benelda Estate and impleaded the Cunanans. The Cunanans moved to dismiss on the ground of bar by prior judgment, and the claim or demand had been paid, waived, and abandoned. Benelda Estate also moved to dismiss citing as grounds: (a) forum

shopping; (b) bar by prior judgment, and (c) failure to state a cause of action. On their part, the Carloses raised affirmative defenses in their answer, namely: (a) the failure to state a cause of action; (b) res judicata or bar by prior judgment; and (c) bar by statute of limitations.

#### **ISSUE:**

Whether or not the case is barred by *res judicata* although the compromise agreement did not expressly include Benelda Estate as a party and it made no reference to the lots. (YES)

#### **RULING:**

Under the doctrine of *res judicata*, a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit. Yet, in order that *res judicata* may bar the institution of a subsequent action, the following requisites must concur: (a) the former judgment must be final; (b) it must have been rendered by a court having jurisdiction of the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be between the first and second actions (i) identity of parties, (ii) identity of the subject matter, and (iii) identity of cause of action.

The first requisite was attendant. Civil Case No. G-1936 was already terminated under the compromise agreement, for the judgment, being upon a compromise, was immediately final and unappealable. As to the second requisite, the RTC had jurisdiction over the cause of action in Civil Case No. G- 1936 for the enforcement or rescission of the deed of sale with assumption of mortgage, which was an action whose subject matter was not capable of pecuniary estimation. That the compromise agreement explicitly settled the entirety of Civil Case No. G-1936 by resolving all the claims of the parties against each other indicated that the third requisite was also satisfied. There is identity of parties when the parties in both actions are the same, or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action litigating for the same thing and under the same title and in the same capacity. The requirement of the identity of parties was fully met, because the Chus, on the one hand, and the Cunanans, on the other hand, were the parties in both cases along with their respective privies. As to identity of the subject matter, both actions dealt with the properties involved in the deed of sale with assumption of mortgage. Identity of the causes of action was also met, because Case No. G-1936 and Civil Case No. 12251 were rooted in one and the same cause of action - the failure of Cunanan to pay in full the purchase price of the five lots subject of the deed of sale with assumption of mortgage.

THE UNITED ABANGAN CLAN, INC., represented by CRISTITUTO F. ABANGAN, petitioner, versus- YOLANDA C. SABELLANO-SUMAGANG, ERNESTO TIRO, BASILISA CABELLON-MORENO, MARTIN C. TABURA, JR., ROMUALDO C. TABURA, ROLANDO CABELLON, represented by

## ROLANDO CABELLON, and THE HONORABLE CITY CIVIL REGISTRAR OF CEBU CITY, respondents.

G.R. No. 186722, SECOND DIVISION, June 18, 2012, SERENO, J.

Litis pendentia, as a ground for the dismissal of an action, refers to a situation in which another action is pending between the same parties for the same cause of action, and the second action becomes unnecessary and vexatious. In order to successfully invoke the rule, the movant must prove the existence of the following requisites: (a) the identity of parties, or at least like those representing the same interest in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two (2) cases, such that the judgment that may be rendered in the pending case would, regardless of which party is successful, amount to res judicata in the other.

There is no identity and similarity between the first and the second petitions with respect to the issues under litigation. The action in the prior Petition (SP. PROC. No. 16171-CEB) involves a judicial declaration of heirship, while the main issue in the present one (SP. PROC. No. 16180-CEB) pertains to a cancellation of entry in the civil register.

#### **FACTS:**

The present case stemmed from the registration of the purported marital union between the late Anastacia and Raymundo. They were allegedly married on 18 February 1873 at the Santo Tomas de Villanueva Parish in El Pardo, Cebu City. A delayed registration of the marriage was entered in the records of the Civil Registrar, and a Certificate of Marriage issued sometime in September 2007 or 134 years after their purported matrimonial bond. The petition for late registration was filed by Rolando Cabellon, Edith T. Casas, and Imelda T. Casugay, who were allegedly the true legal heirs and descendants of Anastacia and Raymundo.

On 19 May 2008, the United Abangan Clan filed a Petition seeking the cancellation of the entry in the Register of Marriages. It averred that Anastacia died single and without issue. On the other hand, respondents argued that petitioner was engaged in forum shopping, since the fact of marriage between Anastacia and Raymundo was an important issue to be resolved in another case. Docketed as SP. PROC. No. 16171-CEB, the case involved a petition for the judicial declaration of the heirs of decedent Anastacia (first petition).

On 6 February 2009, the RTC issued a Resolution dismissing the Petition for cancellation of the entry in the Register of Marriages (second petition) on the ground of *litis pendentia*.

#### **ISSUE:**

Whether the instant petition was properly dismissed on the ground of *litis pendentia*. (NO)

#### **RULING:**

Litis pendentia, as a ground for the dismissal of an action, refers to a situation in which another action is pending between the same parties for the same cause of action, and the second action becomes unnecessary and vexatious. In order to successfully invoke the rule, the movant must prove the existence of the following requisites: (a) the identity of parties, or at least like those representing the same interest in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two (2) cases, such that the judgment that may be rendered in the pending case would, regardless of which party is successful, amount to res judicata in the other.

There is no identity and similarity between the first and the second petitions with respect to the issues under litigation. The action in the prior Petition (SP. PROC. No. 16171-CEB) involves a judicial declaration of heirship, while the main issue in the present one (SP. PROC. No. 16180-CEB) pertains to a cancellation of entry in the civil register. An action for declaration of heirship (declaración de herederos) refers to a special proceeding in which a person claiming the status of heir seeks prior judicial declaration of his or her right to inherit from a decedent. On the other hand, an action for cancellation of entry in the civil register refers to a special proceeding whereby a substantial change affecting the civil status of a party is sought through the amendment of the entry in the civil register. In the former, what is established is a party's right of succession to the decedent; in the latter, among those settled are the issues of nationality, paternity, filiation, legitimacy of the marital status, and registrability of an event affecting the status or nationality of an individual. Because the respective subject matters in the two actions differ, any decision that may be rendered in one of them cannot constitute res judicata in the other. A judicial declaration of heirship is inconclusive on the fact of occurrence of an event registered or to be registered in the civil register, while changes in the entries in the civil register do not in themselves settle the issue of succession.

SPOUSES CONRADO ANTONIO and AVELYN ANTONIO, petitioners, -versus- JULITA SAYMAN VDA. DE MONJE, substituted by her heirs, namely: ANGELINA MONJE-VILLAMOR, LUZVISMINDA MONJE-CORTEL, MARRIETA MONJE-ORTICO, LEOPOLDO MONJE, CONCEPCION SAYMAN-MONJE, and ROLINDA MONJE-CALO, respondents.

G.R. No. 149624, SECOND DIVISION, September 29, 2010, PERALTA, J.

There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action.

In the present case, there is no question that there is identity of parties in Civil Case No. 007-125 and Civil Case No. 506. However, as to identity of issues, a perusal of the records and other pleadings would show that the issue raised in Civil Case No. 007-125 is whether the sale to petitioners of the 7,500 square meter portion of Lot No. 1 being contested by respondents is valid. On the other hand, in Civil Case No. 506, the issues are whether petitioners were deprived of possession of the remaining 8,403 square meter portion of Lot No. 1 which was validly sold to them and whether they are entitled to an

accounting of the proceeds of the copra harvested from their property which was supposedly appropriated by respondents. The Court finds that there is no identity of issues as the issue raised in Civil Case No. 007-125 is different from, and does not overlap with, the issue raised in Civil Case No. 506.

#### **FACTS:**

Spouses Catalino Manguiob and Andrea Pansaon were the original owners of the subject parcel of coconut land, consisting of 15,903 square meters, particularly known as Lot No. 1 covered by Original Certificate of Title No. 1020 of the Register of Deeds of Davao.

On 02 September 1962, Andrea Pansaon who survived her husband Catalino Manguiob, together with some other heirs, sold to Macedonio Monje 7,500 square meters only of the aforesaid property. The said deed of absolute sale was duly notarized by Notary Public Ricardo Reyes and entered in his notarial book.

Macedonio Monje immediately took possession thereof and constructed a house worth P30,000.00.

The heirs of spouses Catalino Manguiob and Andrea Pansaon who also died, sold the subject property which was already sold to Macedonio Monje in 1962, in favor of Nicanor Manguiob and Carolina V. Manguiob.

Immediately thereafter, spouses Nicanor Manguiob and Carolina V. Manguiob had executed an absolute deed of sale in favor of the former's sister-in-law, Avelyn B. Antonio, the entire Lot No. [1] consisting of 15,903 square meters. The sale was entered in the notarial book of Notary Public Juanito T. Hernandez.

Macedonio Monje knew about it only when he received a letter from Avelyn B. Antonio, informing him that she is now the registered owner of the subject property under a new Transfer Certificate of Title.

Aggrieved, Macedonio Monje filed before the CFI of Baganga, Davao Oriental, a complaint for the annulment of the deed of sale between the heirs of Catalino Manguiob and Carolina Balanay/Nicanor Manguiob, as well as the subsequent deed of absolute sale by the latter in favor of Avelyn Antonio and the cancellation of TCT No. T-9643.

The aforesaid court rendered a decision declaring the 2nd and 3rd deeds of sale of the property as null and void, and the transfer certificate title No. 9643 likewise null and void.

Plaintiff-appellants, Spouses Antonio appealed the above-mentioned decision all the way to the Supreme Court. The Supreme Court in G.R. No. 69696, rendered a decision finding res judicata.

Plaintiff-appellants [herein petitioners] filed a case for a sum of money, accounting of the proceeds of the copra, damages and attorney's fees against herein defendant-appellees before the Regional Trial Court of Baganga, Davao Oriental, Branch 7.

The Regional Trial Court (RTC) issued an Order dismissing herein petitioners' complaint on the ground of res judicata.

The Court of Appeals affirmed the judgment of the RTC and dismissed the appeal of herein petitioners.

#### **ISSUE:**

Whether or not the CA erred in applying the principle of res judicata. (YES)

#### **RULING:**

Res judicata is defined as "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." According to the doctrine of res judicata, an existing final judgment or decree rendered on the merits, and without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.

To state simply, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on all points and matters determined in the former suit.

The principle of res judicata is applicable by way of (1) "bar by prior judgment" and (2) "conclusiveness of judgment."

There is "bar by prior judgment" when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action.

Whereas, conclusiveness of judgment finds application when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition.

In the present case, there is no question that there is identity of parties in Civil Case No. 007-125 and Civil Case No. 506.

However, as to identity of issues, a perusal of the records and other pleadings would show that the issue raised in Civil Case No. 007-125 is whether the sale to petitioners of the 7,500 square meter portion of Lot No. 1 being contested by respondents is valid. On the other hand, in Civil Case No. 506, the issues are whether petitioners were deprived of possession of the remaining 8,403 square meter portion of Lot No. 1 which was validly sold to them and whether they are entitled to an

accounting of the proceeds of the copra harvested from their property which was supposedly appropriated by respondents. The Court finds that there is no identity of issues as the issue raised in Civil Case No. 007-125 is different from, and does not overlap with, the issue raised in Civil Case No. 506.

The Court has previously employed various tests in determining whether or not there is identity of causes of action as to warrant the application of the principle of res judicata. One test of identity is the "absence of inconsistency test" where it is determined whether the judgment sought will be inconsistent with the prior judgment. If no inconsistency is shown, the prior judgment shall not constitute a bar to subsequent actions.

In the instant case, the reliefs prayed for in Civil Case No. 506 are the payment of a sum representing the proceeds of the copra supposedly harvested from petitioners' property and purportedly misappropriated by respondents. Petitioners also pray for the award of moral and exemplary damages, as well as attorney's fees and litigation expenses.

The more common approach in ascertaining identity of causes of action is the "same evidence test," whereby the following question serves as a sufficient criterion: "would the same evidence support and establish both the present and former causes of action?" If the answer is in the affirmative, then the prior judgment is a bar to the subsequent action; conversely, it is not. In the instant case, it is unmistakable that the pieces of evidence that would back up the cause of action in Civil Case No. 007-125 are different from the set of evidence that would prove the cause of action in Civil Case No. 506.

Aside from the "absence of inconsistency test" and "same evidence test," we have also ruled that a previous judgment operates as a bar to a subsequent one when it had "touched on [a] matter already decided," or if the parties are in effect "litigating for the same thing." A reading of the decisions of the lower and appellate courts in Civil Case No. 007-125 would show that there were neither discussions nor disposition of the issues raised in Civil Case No. 506.

HEIRS OF ANTONIO SANTOS and LUISA ESGUERRA SANTOS, petitioners, -versus- HEIRS OF CRISPULO BERAMO, and/or PACIFICO BERAMO, SR., namely, PACIFICO BERAMO, JR., and ROMEO BERAMO; HEIRS OF PETRA BERAMO, namely, VIVENCIO BERAMO PENALOSA and JOSE B. BASINANG; HEIRS OF RAMON BERAMO, namely, BERNABE BERAMO; HEIRS OF AGAPITO BERAMO, namely, JESSIE P. BERAMO and SAMUEL BERAMO, respondents.

G.R. No. 151454, SECOND DIVISION, August 9, 2010, PERALTA, J.

The general rule is that the allegations in a complaint are sufficient to constitute a cause of action against the defendant, if, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer therein. To sustain a motion to dismiss for lack of cause of action, the complaint must show that the claim for relief does not exist.

The Court agrees with the Court of Appeals that the Amended Complaint states a cause of action for reivindicacion and/or reconveyance.

#### **FACTS:**

On March 5, 1998, respondents heirs of Crispulo Beramo, Pacifico Beramo, Sr., Petra Beramo, Ramon Beramo and Agapito Beramo filed an Amended Complaint for *reivindicacion* and/or reconveyance of property against the heirs of Cornelio Borreros and Soledad Delfin (Spouses Borreros), Northern Capiz Agro-Industrial Development Corporation (NORCAIC), Central Azucarera de la Carlota and Riverside Commodities Trading, Inc. with the RTC of Roxas City, Branch 18 (trial court), presided over by Judge Charlito F. Fantilanan.

On May 13, 1999, petitioners heirs of Antonio Santos and Luisa Esguerra Santos filed a Motion to Dismiss 3 on the ground that the Amended Complaint stated no cause of action against them. They pointed out that respondents were unable to substantiate their claim of ownership over the subject property, since they failed to present any documentary proof which established *prima facie* that the subject parcels of land were owned by their predecessor-in-interest. Moreover, respondents did not annex documents to the Amended Complaint evincing their right over the subject property. Petitioners also asserted that respondents failed to substantiate their claim of fraud on the part of defendants spouses Antonio and Luisa Santos; hence, respondents were unable to establish a right that was allegedly violated by the defendants Spouses Santos.

On October 27, 1999, the trial court issued an Order denying the Motion to Dismiss as the grounds relied upon did not appear to be indubitable.

In a Decision dated May 15, 2001, the Court of Appeals dismissed the petition for lack of merit.

#### **ISSUE:**

Whether the Amended Complaint states a cause of action for *reivindicacion* and/or reconveyance of the subject property. (YES)

#### **RULING:**

When the ground for dismissal is that the complaint states no cause of action under Section 1 (g), Rule 16 of the Rules of Court, such fact must be determined from the allegations of the complaint. In a motion to dismiss, a defendant hypothetically admits the truth of the material allegations of the plaintiff's complaint for the purpose of resolving the motion. The general rule is that the allegations in a complaint are sufficient to constitute a cause of action against the defendant, if, admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer therein. To sustain a motion to dismiss for lack of cause of action, the complaint must show that the claim for relief does not exist.

The Court agrees with the Court of Appeals that the Amended Complaint states a cause of action for *reivindicacion* and/or reconveyance. The Court of Appeals correctly found, thus:

From the amended complaint, it appears that since 1892, private respondents' predecessor, Don Juan Beramo, was in open, continuous, exclusive and notorious possession and occupation of the subject property, an agricultural land of the public domain; that the subject property was merely entrusted by private respondents' predecessor, Don Juan Beramo, to Cornelio Borreros, from whom petitioners derived their title; and that the titling of the subject property and transfers thereof were simulated and fraudulent. These averments indicate that private respondents are the rightful owners of the subject property but the same was wrongfully registered by petitioners' predecessors, the Borreros spouses. Such averments make out a case for reconveyance (*De la Cruz vs. Court of Appeals, 286 SCRA 230*).

Contrary to the contention of petitioners, respondents did not have to present or append proof of their allegations in the complaint to establish a sufficient cause of action for *reivindicacion* and/or reconveyance in their Amended Complaint. The Court has held that in determining whether the allegations of a complaint are sufficient to support a cause of action, it must be borne in mind that the complaint does not have to establish or allege facts proving the existence of a cause of action at the outset; this will have to be done at the trial on the merits of the case.

LETICIA NAGUIT AQUINO, MELVIN NAGUIT, ROMMEL NAGUIT, ELMA NAGUIT TAYAG, YSSEL L. NAGUIT, ROSALINA NAGUIT AUMENTADO, RIZEL NAGUIT CUNANAN, CARIDAD NAGUIT PARAJAS, MILLIE NAGUIT FLORENDO, MARNEL NAGUIT, EDUARDO NAGUIT, JOSE NAGUIT, ZOILO NAGUIT, AND AMELIA NAGUIT DIZON, represented by YSSEL L. NAGUIT, petitioners, versus- CESAR B. QUIAZON, AMANDA QUIAZON, JOSE B. QUIAZON AND REYNALDO B. QUIAZON, represented by JAIME B. QUIAZON, respondents.

G.R. No. 201248, SECOND DIVISION, March 11, 2015, MENDOZA, J.

The trial court may hold a preliminary hearing on affirmative defenses. However, such hearing is not necessary when the affirmative defense is failure to state a cause of action. The reception and the consideration of evidence on the said ground, has been held to be improper and impermissible. The trial court, thus, erred in receiving and considering evidence in connection with this ground.

#### **FACTS:**

A complaint for Annulment and Quieting of Title was filed by the petitioners alleging that they were the heirs of Epifanio Makam and Severina Bautista, who acquired a house and lot by virtue of a Deed of Sale and since then, they had been in open, continuous, adverse, and notorious possession for more than a hundred years. Later, they received demand letters from the respondents claiming ownership over the subject property and demanding that they vacate the same. Upon inquiry with the RD, it confirmed that the property had been titled in the name of respondents and they claim that the title was invalid, ineffective, voidable or unenforceable and that they were the true owners of the property. The respondents asserted that they were the absolute owners of the subject land

and they had inherited the same from their predecessor-in interest and that petitioners had been occupying the property by mere tolerance. They denied the allegations in the complaint and proffered affirmative defenses with counterclaims. They argued that: First, the petitioners "have no valid, legal and sufficient cause of action" against them, because their deed of sale was spurious. Second, the action was barred by prescription and that petitioners were guilty of laches in asserting their interest over the subject lot. Third, the action was also barred by *res judicata* and violated the prohibition against forum shopping, considering that petitioners had earlier filed a similar case for quieting of title against respondents. The RTC set a preliminary hearing on the affirmative defenses.

#### **ISSUE:**

Whether or not it is within the trial court's discretion to receive other evidence in resolving an affirmative defense on the ground of failure to state cause of action. (NO)

#### **RULING:**

The Court does not discount, however, that there are exceptions to the general rule that allegations are hypothetically admitted as true and inquiry is confined to the face of the complaint. First, there is no hypothetical admission of (a) the veracity of allegations if their falsity is subject to judicial notice; (b) allegations that are legally impossible; (c) facts inadmissible in evidence; and (d) facts which appear, by record or document included in the pleadings, to be unfounded. Second, inquiry is not confined to the complaint if culled (a) from annexes and other pleadings submitted by the parties; (b) from documentary evidence admitted by stipulation which disclose facts sufficient to defeat the claim; or (c) from evidence admitted in the course of hearings related to the case.

Pointing to the exception that inquiry was not confined to the complaint if evidence had been presented in the course of hearings related to the case, the CA ruled that it was within the trial court's discretion to receive and consider other evidence aside from the allegations in the complaint in resolving a party's affirmative defense. It held that this discretion was recognized under Section 6 of Rule 16 of the Rules of Court, which allowed the court to conduct a preliminary hearing, *motu proprio*, on the defendant's affirmative defense if no corresponding motion to dismiss was filed.

The trial court may indeed elect to hold a preliminary hearing on affirmative defenses as raised in the answer under Section 6 of Rules 16 of the Rules of Court. It has been held, however, that such a hearing is not necessary when the affirmative defense is failure to state a cause of action, and that it is, in fact, error for the court to hold a preliminary hearing to determine the existence of external facts outside the complaint. The reception and the consideration of evidence on the ground that the complaint fails to state a cause of action, has been held to be improper and impermissible. Thus, in a preliminary hearing on a motion to dismiss or on the affirmative defenses raised in an answer, the parties are allowed to present evidence except when the motion is based on the ground of insufficiency of the statement of the cause of action which must be determined on the basis only of

the facts alleged in the complaint and no other. Section 6, therefore, does not apply to the ground that the complaint fails to state a cause of action. The trial court, thus, erred in receiving and considering evidence in connection with this ground.

SAMUEL M. ALVARADO, petitioner, -versus- AYALA LAND, INC., AYALA HILLSIDE ESTATES HOMEOWNERS' ASSOCIATION, INC., ALEXANDER P. AGUIRRE, HORACIO PAREDES, RICARDO F. DE LEON, REYNATO Y. SAWIT, AGUSTIN N. PEREZ, GERONIMO M. COLLADO, EMMANUEL C. CHING, MACABANGKIT LANTO, MANUEL DIZON, TARCISIO CALILUNG, IRINEO AGUIRRE, ERNESTO ORTIZ LUIS, BERNARDO JAMBALOS III, FRANCISCO ARCILLANA, LUIS S. TANJANGCO, AND PABLITO VILLEGAS, respondents.

G.R. No. 208426, THIRD DIVISION, September 20, 2017, LEONEN, J.

Two (2) categories of motions to dismiss may be recognized under the 1997 Rules of Civil Procedure: first, those that must be filed ahead of an answer, and second, those that may be entertained even after an answer has been filed. Motions to dismiss under the first category may plead any of the 10 grounds under Rule 16, Section 1. Those under the second category may only plead four (4) of Rule 16, Section 1's 10 grounds: lack of jurisdiction over the subject matter, litis pendentia, res judicata, and prescription.

#### **FACTS**:

Capitol Hills Golf and Country Club, Inc. (Capitol) owned a 15,598-square-meter lot in Quezon City (QC). This lot was levied entirely by the QC Treasurer due to unpaid real estate taxes. Then, it was subjected to a tax deliquency sale. The lot was sold to Petitioner Alvarado, being highest bidder. Individual respondents, who are members of Capitol, and Ayala Land, whose subdivision is inside the subject property, filed a complaint against Alvarado to nullify the sale. Respondents (plaintiffs) alleged irregularities in the delinquency sale of the subject property. Alvarado invoked three grounds to dismiss answer: (1) that a condition precedent was not complied with (mandatory judicial deposit of taxes due under the LGC); (2) that there was failure to state a cause of action (plaintiffs were not the registered owners of the levied property); and (3) that the court has no subject-matter jurisdiction (plaintiffs have no legal interest over the property). After filing an Answer, Alvarado filed a Motion to Dismiss on the same grounds. The RTC denied Alvarado's Motion to Dismiss, it being filed after the Answer.

#### **ISSUE:**

- 1. Whether or not the RTC is correct in denying Alvarado's motion to dismiss. (YES)
- 2. Whether or not the RTC has subject matter jurisdiction. (YES)
- 3. Whether or not Alvarado's belatedly filed Motion to Dismiss is superfluous. (NO)

#### **RULING**:

1.The RTC correctly observed that petitioner filed his Answer ahead of his Motion to Dismiss. The filing of an answer precludes a motion to dismiss. It is basic, then, that motions to dismiss are not to be entertained after an answer has been filed. Out of Rule 16, Section 1's 10 grounds, four (4) survive the anterior filing of an answer: lack of jurisdiction over the subject matter, *litis pendentia*, *res judicata*, and prescription. Common to all these four (4) grounds that survive the filing of an answer is that they persist no matter the resolution of the merits of the case by the court. A judgment issued by a court without jurisdiction is null and void. Judgments on a similar prior case will be redundant. Thus, *res judicata* and *litis pendencia* can be raised even after an answer has been filed. Prescription attaches regardless of the resolution of the case on the merits. Apart from the exceptions recognized in Rule 9, Section 1, jurisprudence has also clarified that, despite the prior filing of an answer, an action may still be dismissed on a ground which became known subsequent to the filing of an answer. In *Obando v. Figueras*, the Court has allowed a defendant to file a motion to dismiss on the following grounds: (1) lack of jurisdiction, (2) *litis pendentia*,(3) lack of cause of action, and (4) discovery during trial of evidence that would constitute a ground for dismissal. [NB: none of the exceptions applies to this case]

- 2. It is elementary that jurisdiction is a matter of substantive law. It is not contingent on the personal circumstances of the parties. Thus, it is inconsequential to subject matter jurisdiction that respondents are allegedly bereft of any real, actual, material or substantial legal rights or interest on the auctioned property.
- 3. It is error to assume that the grounds pleaded by petitioner in his Motion to Dismiss deserved no consideration since it preceded his Answer. While a belatedly filed motion to dismiss is not a valid independent plea for terminating the action, it still serves practical purposes. It emphasizes and aims attention at the need for immediately dismissing the complaint. To this end, it should specifically be treated as a plea for a court to hear the grounds for dismissal, just as it would have had a proper motion to dismiss been filed. Petitioner's pleaded grounds for dismissal in his Answer sufficed for the Regional Trial Court to consider the propriety of dismissing the Complaint of the respondents. Their reiteration in petitioner's Motion to Dismiss did not amount to the negation of their prior expression. While nominally it was an independent motion to dismiss, it was more appropriately a reiterative manifestation and a prayer to hear grounds for dismissal which had previously been properly pleaded.

REPUBLIC OF THE PHILIPPINES, represented by the Regional Executive Director of the Department of Environment and Natural Resources, Regional Office No. 3, petitioner, versus-ROMAN CATHOLIC ARCHBISHOP OF MANILA, respondent.

G.R. Nos. 192975 & 192994, SECOND DIVISION, November 12, 2012, PERLAS-BERNABE, J.

An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. Thus, as a general rule, the denial of a motion to dismiss cannot be questioned in a special civil action for certiorari which is a remedy designed to correct errors of jurisdiction and not errors of judgment. However, when the denial of the motion to dismiss is tainted with grave abuse of discretion, the grant of the extraordinary remedy of certiorari may be justified.

Respondent's motion to dismiss assails the jurisdiction of the RTC over the nature of the action before it. Hence, to determine whether the RTC gravely abused its discretion in denying the motion to dismiss it is pertinent to first ascertain whether the RTC has jurisdiction over the case. In the present case, the

material averments, as well as the character of the relief prayed for by petitioners in the complaint before the RTC, show that their action is one for cancellation of titles and reversion, not for annulment of judgment of the RTC.

#### **FACTS:**

Petitioner Republic filed a complaint for cancellation of titles and reversion against respondent RCAM and several others. The complaint alleged that RCAM appears as a registered owner of 8 parcels of land in Obando, Bulacan. RCAM sold those 8 parcels of land to the other named defendants. The lands were later on certified by the Bureau of Forestry as falling within the unclassified lands of the public domain and declared alienable and disposable. The KKK, occupants of the subject property filed a complaint-in-intervention. During the course of pre-trial, the RCAM filed a motion to dismiss assailing the jurisdiction of the RTC over the complaint. The RTC denied the motion for being premature. The matter was elevated to the CA on certiorari alleging grave abuse of discretion on the part of the RTC. The CA held that while reversion suits are allowed under the law, the same should be instituted before the CA because the RTC cannot nullify a decision rendered by a co-equal land registration court. The CA further applied equitable estoppels against the State and considered it barred from filing a reversion suit. Republic petitioned the SC contending that they do not seek annulment of judgment of the RTC acting as Land Registration Court but the nullification of the subject titles.

#### **ISSUE:**

Whether or not the RTC has jurisdiction over the action filed by the Republic (YES)

#### **HELD:**

An order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits. Thus, as a general rule, the denial of a motion to dismiss cannot be questioned in a special civil action for *certiorari* which is a remedy designed to correct errors of jurisdiction and not errors of judgment. However, when the denial of the motion to dismiss is tainted with grave abuse of discretion, the grant of the extraordinary remedy of *certiorari* may be justified. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.

Respondent's motion to dismiss assails the jurisdiction of the RTC over the nature of the action before it. Hence, to determine whether the RTC gravely abused its discretion in denying the motion to dismiss it is pertinent to first ascertain whether the RTC has jurisdiction over the case.

It is axiomatic that the nature of an action and whether the tribunal has jurisdiction over such action are to be determined from the material allegations of the complaint, the law in force at the time the complaint is filed, and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims averred. Jurisdiction is not affected by the pleas or the theories set up by defendant in an answer to the complaint or a motion to dismiss the same. In the present case, the material averments, as well as the character of the relief prayed for by petitioners in the complaint before the RTC, show that their action is one for cancellation of titles and reversion, not for annulment of judgment of the RTC. The complaint alleged that Lot Nos. 43 to 50, the parcels of land subject matter of the action, were not the subject of the CFI's judgment in the relevant prior land registration case. Hence, petitioners pray that the certificates of title of RCAM be cancelled which will not necessitate the annulment of said judgment. Clearly, Rule 47 of the Rules of Court on annulment of judgment finds no application in the instant case.

The RTC may properly take cognizance of reversion suits which do not call for an annulment of judgment of the RTC acting as a Land Registration Court. Actions for cancellation of title and reversion, like the present case, belong to the class of cases that "involve the title to, or possession of, real property, or any interest therein" and where the assessed value of the property exceeds P20,000.00, fall under the jurisdiction of the RTC. Consequently, no grave abuse of discretion excess of jurisdiction can be attributed to the RTC in denying RCAM's motion to dismiss.

Moreover, it should be stressed that the only incident before the CA for resolution was the propriety of RCAM's motion to dismiss, thus, it was premature for the CA at this stage to apply the doctrine of equitable estoppel as the parties have not presented any evidence that would support such finding.

LETICIA NAGUIT AQUINO, MELVIN NAGUIT, ROMMEL NAGUIT, ELMA NAGUIT TAYAG, YSSEL L. NAGUIT, ROSALINA NAGUIT AUMENTADO, RIZEL NAGUIT CUNANAN, CARIDAD NAGUIT PARAJAS, MILLIE NAGUIT FLORENDO, MARNEL NAGUIT, EDUARDO NAGUIT, JOSE NAGUIT, ZOILO NAGUIT, AND AMELIA NAGUIT DIZON, represented by YSSEL L. NAGUIT, petitioners, versus- CESAR B. QUIAZON, AMANDA QUIAZON, JOSE B. QUIAZON AND REYNALDO B. QUIAZON, represented by JAIME B. QUIAZON, respondents.

G.R. No. 201248, SECOND DIVISION, March 11, 2015, MENDOZA, J.

The trial court may hold a preliminary hearing on affirmative defenses. However, such hearing is not necessary when the affirmative defense is failure to state a cause of action. The reception and the consideration of evidence on the said ground, has been held to be improper and impermissible. The trial court, thus, erred in receiving and considering evidence in connection with this ground.

#### **FACTS:**

A complaint for Annulment and Quieting of Title was filed by the petitioners alleging that they were the heirs of Epifanio Makam and Severina Bautista, who acquired a house and lot by virtue of a Deed of Sale and since then, they had been in open, continuous, adverse, and notorious possession for more than a hundred years. Later, they received demand letters from the respondents claiming ownership over the subject property and demanding that they vacate the same. Upon inquiry with the RD, it confirmed that the property had been titled in the name of respondents and they claim that the title was invalid, ineffective, voidable or unenforceable and that they were the true owners of the property. The respondents asserted that they were the absolute owners of the subject land and they had inherited the same from their predecessor-in interest and that petitioners had been occupying the property by mere tolerance. They denied the allegations in the complaint and proffered affirmative defenses with counterclaims. They argued that: First, the petitioners "have no valid, legal and sufficient cause of action" against them, because their deed of sale was spurious. Second, the action was barred by prescription and that petitioners were guilty of laches in asserting their interest over the subject lot. Third, the action was also barred by *res judicata* and violated the prohibition against forum shopping, considering that petitioners had earlier filed a similar case for quieting of title against respondents. The RTC set a preliminary hearing on the affirmative defenses.

#### **ISSUE:**

Whether or not it is within the trial court's discretion to receive other evidence in resolving an affirmative defense on the ground of failure to state cause of action. (NO)

#### **RULING:**

The Court does not discount, however, that there are exceptions to the general rule that allegations are hypothetically admitted as true and inquiry is confined to the face of the complaint. First, there is no hypothetical admission of (a) the veracity of allegations if their falsity is subject to judicial notice; (b) allegations that are legally impossible; (c) facts inadmissible in evidence; and (d) facts which appear, by record or document included in the pleadings, to be unfounded. Second, inquiry is not confined to the complaint if culled (a) from annexes and other pleadings submitted by the parties; (b) from documentary evidence admitted by stipulation which disclose facts sufficient to defeat the claim; or (c) from evidence admitted in the course of hearings related to the case.

Pointing to the exception that inquiry was not confined to the complaint if evidence had been presented in the course of hearings related to the case, the CA ruled that it was within the trial court's discretion to receive and consider other evidence aside from the allegations in the complaint in resolving a party's affirmative defense. It held that this discretion was recognized under Section 6 of Rule 16 of the Rules of Court, which allowed the court to conduct a preliminary hearing, *motu proprio*, on the defendant's affirmative defense if no corresponding motion to dismiss was filed.

The trial court may indeed elect to hold a preliminary hearing on affirmative defenses as raised in the answer under Section 6 of Rules 16 of the Rules of Court. It has been held, however, that such a hearing is not necessary when the affirmative defense is failure to state a cause of action, and that it is, in fact, error for the court to hold a preliminary hearing to determine the existence of external

facts outside the complaint. The reception and the consideration of evidence on the ground that the complaint fails to state a cause of action, has been held to be improper and impermissible. Thus, in a preliminary hearing on a motion to dismiss or on the affirmative defenses raised in an answer, the parties are allowed to present evidence except when the motion is based on the ground of insufficiency of the statement of the cause of action which must be determined on the basis only of the facts alleged in the complaint and no other. Section 6, therefore, does not apply to the ground that the complaint fails to state a cause of action. The trial court, thus, erred in receiving and considering evidence in connection with this ground.

HEIRS OF DR. MARIANO FAVIS, SR., represented by their co-heirs and Attorneys-in-Fact MERCEDES A. FAVIS and NELLY FAVIS-VILLAFUERTE, petitioners, -versus- JUANA GONZALES, her son MARIANO G. FAVIS, MA. THERESA JOANA D. FAVIS, JAMES MARK D. FAVIS, all minors represented herein by their parents, SPS. MARIANO FAVIS and LARCELITA D. FAVIS, respondents.

G.R. No. 185922, SECOND DIVISION, January 15, 2014, PEREZ, J.

Rule 16 treats of the grounds for a motion to dismiss the complaint. It must be distinguished from the grounds provided under Section 1, Rule 9 which specifically deals with dismissal of the claim by the court motu proprio. Section 1, Rule 9 provides for only four instances when the court may motu proprio dismiss the claim, namely: (a) lack of jurisdiction over the subject matter; (b) litis pendentia; (c) res judicata; and (d) prescription of action. It is so inferable from the opening sentence of Section 1 of Rule 9 stating that defense and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. Failure to allege in the complaint that earnest efforts at a compromise has been made but had failed is not one of the exceptions. Upon such failure, the defense is deemed waived.

In the case at hand, no motion to dismiss the complaint based on the failure to comply with a condition precedent was filed in the trial court; neither was such failure assigned as error in the appeal that respondent brought before the Court of Appeals. Therefore, the rule on deemed waiver of the non-jurisdictional defense or objection is wholly applicable to respondent.

#### **FACTS:**

Dr. Favis was married to Capitolina with whom he had seven children. When Capitolina died Dr. Favis took Juana as his common-law wife with whom he sired one child, Mariano. Later, Dr. Favis and Juana got married and Dr. Favis executed an affidavit acknowledging Mariano as one of his legitimate children. Mariano is married to Larcelita, with whom he has four children. Soon, Dr. Favis died intestate leaving residential lands, commercial building, house, and an orchard. However, it is alleged that Dr. Favis executed a Deed of Donation transferring and conveying the residential land and the building erected therein in favor of his grandchildren with Juana. With this, petitioners being Dr. Favis' children with Capitolina, claimed that the donation prejudiced their legitime and filed for annulment if the Deed of Donation before the RTC against respondents. Respondents, however, asserted that the properties donated do not form part of the estate of the late Dr. Favis because the donation was made inter vivos. The RTC, limited the issues to the validity of the deed of

donation and whether respondent Juana and Mariano are compulsory heirs of Dr. Favis. Thus, in its decision, RTC nullified the Deed of Donantion finding Dr. Favis at age 92 and plagued with illnesses, could not have had full control of his metal capacities to execute a valid Deed of Donation, and further declared Juan and Mariano as legitimate heirs. As such, respondents appealed to the CA challenging the RTC decision on ground of vitiated consent. The CA dismissed the same not on the grounds invoked by respondents but for failure of petitioners to make an averment that earnest efforts toward a compromise have been made, as mandated by Article 151 of the Family Code. Subsequently, petitioners filed a motion for reconsideration contending that the case is not subject to compromise as it involves future legitime, which the CA rejected, observing that while the action is between members of the same family it does not involve a testator and a compulsory heir. Moreover, the appellate court pointed out that the subject properties cannot be considered as "future legitime" but are in fact, legitime, as the instant complaint was filed after the death of the decedent.

#### **ISSUE:**

Whether or not the appellate court may dismiss the order of dismissal of the complaint for failure to allege therein that earnest efforts towards a compromise have been made. (NO)

#### **RULING:**

The appellate court committed egregious error in dismissing the complaint. The appellate courts' decision hinged on Article 151 of the Family Code, which it correlated with Section 1, par (j), Rule 16 of the 1997 Rules of Court.

The appellate court's reliance on this provision is misplaced. Rule 16 treats of the grounds for a motion to dismiss the complaint. It must be distinguished from the grounds provided under Section 1, Rule 9 which specifically deals with dismissal of the claim by the court motu proprio. Section 1, Rule 9 provides for only four instances when the court may motu proprio dismiss the claim, namely: (a) lack of jurisdiction over the subject matter; (b) litis pendentia; (c) res judicata; and (d) prescription of action.

Specifically in Gumabon v. Larin, cited in Katon v. Palanca, Jr., the Court held: The motu proprio dismissal of a case was traditionally limited to instances when the court clearly had no jurisdiction over the subject matter and when the plaintiff did not appear during trial, failed to prosecute his action for an unreasonable length of time or neglected to comply with the rules or with any order of the court. Outside of these instances, any motu proprio dismissal would amount to a violation of the right of the plaintiff to be heard.

Except for qualifying and expanding Section 2, Rule 9, and Section 3, Rule 17, of the Revised Rules of Court, the amendatory 1997 Rules of Civil Procedure brought about no radical change. Under the new rules, a court may motu proprio dismiss a claim when it appears from the pleadings or

evidence on record that it has no jurisdiction over the subject matter; when there is another cause of action pending between the same parties for the same cause, or where the action is barred by a prior judgment or by statute of limitations.

The error of the Court of Appeals is evident even if the consideration of the issue is kept within the confines of the language of Section 1(j) of Rule 16 and Section 1 of Rule 9. That a condition precedent for filing the claim has not been complied with, a ground for a motion to dismiss emanating from the law that no suit between members from the same family shall prosper unless it should appear from the verified complaint that earnest efforts toward a compromise have been made but had failed, is, as the Rule so words, a ground for a motion to dismiss. Significantly, the Rule requires that such a motion should be filed "within the time for but before filing the answer to the complaint or pleading asserting a claim." The time frame indicates that thereafter, the motion to dismiss based on the absence of the condition precedent is barred. It is so inferable from the opening sentence of Section 1 of Rule 9 stating that defense and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. There are, as just noted, only four exceptions to this Rule, namely, lack of jurisdiction over the subject matter; litis pendentia; res judicata; and prescription of action. Failure to allege in the complaint that earnest efforts at a compromise has been made but had failed is not one of the exceptions. Upon such failure, the defense is deemed waived. Thus was it made clear that a failure to allege earnest but failed efforts at a compromise in a complaint among members of the same family, is not a jurisdictional defect but merely a defect in the statement of a cause of action.

In the case at hand, the proceedings before the trial court ran the full course. The complaint of petitioners was answered by respondents without a prior motion to dismiss having been filed. The decision in favor of the petitioners was appealed by respondents on the basis of the alleged error in the ruling on the merits, no mention having been made about any defect in the statement of a cause of action. In other words, no motion to dismiss the complaint based on the failure to comply with a condition precedent was filed in the trial court; neither was such failure assigned as error in the appeal that respondent brought before the Court of Appeals.

Therefore, the rule on deemed waiver of the non-jurisdictional defense or objection is wholly applicable to respondent. If the respondents as parties-defendants could not, and did not, after filing their answer to petitioner's complaint, invoke the objection of absence of the required allegation on earnest efforts at a compromise, the appellate court unquestionably did not have any authority or basis to motu propio order the dismissal of petitioner's complaint.

Indeed, even if we go by the reason behind Article 151 of the Family Code, which provision as then Article 222 of the New Civil Code was described as "having been given more teeth" by Section 1(j), Rule 16 of the Rule of Court, it is safe to say that the purpose of making sure that there is no longer any possibility of a compromise, has been served.

## DANTE Y. GO, petitioner, -versus- HON. FERNANDO CRUZ, Judge, etc., CITY SHERIFF OF CALOOCAN CITY, and CALIFORNIA MANUFACTURING CO., INC., respondents.

G.R. No. 58986, FIRST DIVISION, April 17, 1989, NARVASA, J.

What marks the loss by a plaintiff of the right to cause dismissal of the action by mere notice is not the filing of the defendant's answer with the Court (either personally or by mail) but the service on the plaintiff of said answer or of a motion for summary judgment.

Here, California filed its notice of dismissal of its action in the Manila Court after the filing of Dante Go's answer but before service thereof. Thus having acted well within the letter and contemplation of the afore-quoted Section 1 of Rule 17 of the Rules of Court, its notice ipso facto brought about the dismissal of the action then pending in the Manila Court, without need of any order or other action by the Presiding Judge.

#### **FACTS:**

California Manufacturing Co., Inc. (hereinafter, simply, California) brought an action in the Court of First Instance of Manila against Dante Go, accusing him of unfair competition. The gravamen of California's complaint was that Dante Go, doing business under the name and style of "Sugarland International Products," and engaged like California in the manufacture of spaghetti, macaroni, and other pasta, was selling his products in the open market under the brand name, "Great Italian," in packages which were in colorable and deceitful imitation of California's containers bearing its own brand, "Royal." Its complaint contained an application for preliminary injunction commanding Dante Go to immediately cease and desist from the further manufacture, sale and distribution of said products, and to retrieve those already being offered for sale.

About two weeks later, California filed a notice of dismissal with the Court. Four days afterwards, California received by registered mail a copy of Dante Go's answer with counterclaim, which had been filed with the Court.

A fire broke out at the Manila City Hall destroying among others the sala of Judge Tengco and the records of cases therein kept, including that filed by California against Dante Go.

California filed another complaint asserting the same cause of action against Dante Go, this time with the Court of First Instance at Caloocan City. This second suit was docketed as Civil Case No. C-9702 and was assigned to the branch presided over by Judge Fernando A. Cruz.

Judge Cruz issued an ex parte restraining order directing "the defendant x x to immediately cease and desist from the further manufacture, sale, promotion and distribution of spaghetti, macaroni and other pasta products contained in packaging boxes and labels under the name 'GREAT ITALIAN,' which are similar to or copies of those of the plaintiff, and x x recall x x all his spaghetti, macaroni and other pasta products using the brand, 'GREAT ITALIAN.'"

On the day following the rendition of the restraining order, Dante Go filed the present petition for certiorari, etc. with this Court praying for its nullification and perpetual inhibition. This Court, in turn, issued a writ of preliminary injunction restraining California, Judge Cruz and the City Sheriff from enforcing or implementing the restraining order, and from continuing with the hearing on the application for preliminary injunction in said Civil Case No. C-9702. The scope of the injunction was subsequently enlarged by this Court's Resolution to include the City Fiscal of Manila, who was thereby restrained from proceeding with the case of unfair competition filed in his office by California against Dante Go.

Dante Go's thesis is that the case filed against him by California in the Manila Court remained pending despite California's notice of dismissal. According to him, since he had already filed his answer to the complaint before California sought dismissal of the action three (3) days afterwards, such dismissal was no longer a matter of right and could no longer be effected by mere notice in accordance with Section 1, Rule 17 of the Rules of Court, but only on plaintiff's motion, and by order of the Court; hence, the Caloocan Court acted without jurisdiction over the second action based on the same cause. He also accused California of forum shopping, of selecting a sympathetic court for a relief which it had failed to obtain from another.

#### **ISSUE:**

Whether there is a valid dismissal of action. (YES)

#### **RULING:**

The petitioner is in error. What marks the loss by a plaintiff of the right to cause dismissal of the action by mere notice is not the filing of the defendant's answer with the Court (either personally or by mail) but the service on the plaintiff of said answer or of a motion for summary judgment. This is the plain and explicit message of the Rules. "The filing of pleadings, appearances, motions, notices, orders and other papers with the court," according to Section 1, Rule 13 of the Rules of Court, means the delivery thereof to the clerk of the court either personally or by registered mail. Service, on the other hand, signifies delivery of the pleading or other paper to the parties affected thereby through their counsel of record, unless delivery to the party himself is ordered by the court, by any of the modes set forth in the Rules, i.e., by personal service, service by mail, or substituted service. Here, California filed its notice of dismissal of its action in the Manila Court after the filing of Dante Go's answer but before service thereof. Thus having acted well within the letter and contemplation of the afore-quoted Section 1 of Rule 17 of the Rules of Court, its notice ipso facto brought about the dismissal of the action then pending in the Manila Court, without need of any order or other action by the Presiding Judge. The dismissal was effected without regard to whatever reasons or motives California might have had for bringing it about, and was, as the same Section 1, Rule 17 points out, "without prejudice," the contrary not being otherwise "stated in the notice" and it being the first time the action was being so dismissed.

There was therefore no legal obstacle to the institution of the second action in the Caloocan Court of First Instance based on the same claim. The filing of the complaint invested it with jurisdiction of the subject matter or nature of the action. In truth, and contrary to what petitioner Dante Go obviously believes, even if the first action were still pending in the Manila Court, this circumstance would not affect the jurisdiction of the Caloocan Court over the second suit. The pendency of the first action would merely give the defendant the right to move to dismiss the second action on the ground of auter action pendant, or litis pendentia.

SHIMIZU PHILIPPINES CONTRACTORS, INC., petitioner, -versus- MRS. LETICIA B. MAGSALIN, doing business under the trade name "KAREN'S TRADING," FGU INSURANCE CORPORATION, GODOFREDO GARCIA, CONCORDIA GARCIA, and REYNALDO BAETIONG, respondents.

G.R. No. 170026, SECOND DIVISION, June 20, 2012, BRION, J.

Based on available records and on the averments of the parties, the following events were chronologically proximate to the dismissal of the case: (a) on March 24, 2003, the court admitted FGU Insurance's third-party complaint; (b) the trial court cancelled the June 20, 2003 hearing upon FGU Insurance's motion; and (c) on June 16, 2003, Baetiong filed his Answer to the third-party complaint but did not serve it upon the petitioner. None of these events square with the grounds specified by Section 3, Rule 17 of the Rules of Court for the motu proprio dismissal of a case for failure to prosecute. These grounds are as follows: (a) Failure of the plaintiff, without justifiable reasons, to appear on the date of the presentation of his evidence in chief; (b) Failure of the plaintiff to prosecute his action for an unreasonable length of time; (c) Failure of the plaintiff to comply with the Rules of Court; or (d) Failure of the plaintiff to obey any order of the court.

#### **FACTS:**

Shimizu Philippines Contractors, Inc. claims that one Leticia Magsalin, doing business under the trade name "Karen's Trading," had breached their subcontract agreement for the supply, delivery, installation, and finishing of parquet tiles for certain floors in the petitioner's Makati City condominium project called "The Regency at Salcedo." The breach triggered the agreement's termination. When Magsalin also refused to return the Shimizu's unliquidated advance payment and to account for other monetary liabilities despite demand, the petitioner sent a notice to respondent FGU Insurance Corporation demanding damages pursuant to the surety and performance bonds the former had issued for the subcontract. Shimizu filed a complaint against Magsalin and FGU. However, it was only FGU who was able to served with summons. FGU then filed a motion for leave of court to file a third-party complaint. The RTC granted the motion. In May 2003, the RTC issued a notice setting the case for hearing on June 20, 2003. FGU Insurance filed a motion to cancel the hearing on the ground that the third-party defendants had not yet filed their answer. The motion was granted. With the foregoing procedural events, RTC gave an order dismissing the complaint of Shimzu for failure to prosecute. After the dismissal, Shimizu sought relief with the CA when it filed an appeal under Rule 41. However, FGU filed a motion to dismiss the appeal on the ground that it did not dispute the proceedings before the RTC and only raised a pure question of law. The appellate court then granted the motion of FGU. Aggrieved, Shimizu now filed a review on certiorari. Shimizu claimed that the order of dismissal done by the RTC is improper. Now

FGU assails the present petition of Shimizu, claiming that the petition is fatally defective. It also reiterated that the appeal made in the CA and filed under Rule 41 was improper and should have been filed directly with this Court under Rule 45 of the Rules of Court.

#### **ISSUES:**

- 1. Whether or not the filing of the petition for review was proper and in accord under Rule 41. (YES)
- 2. Whether or not the order of dismissal due to failure to prosecute was proper. (NO)

#### **RULING:**

- 1. It is noteworthy that the CA dismissed the appeal of Shimizu based on the ruling laid in Joaquin vs. Navarro: "Where a case is submitted upon an agreement of facts, or where all the facts are stated in the judgment and the issue is the correctness of the conclusions drawn therefrom, the question is one of law which is properly subject to the review of this Court." However what was being questioned by Shimizu was that the facts supposedly supporting the trial court's conclusion of non prosequitur were not stated in the judgment. Thus, this defeats the application of Joaquin. At any rate, the filing of the appeal in CA under Rule 41 of the Rules of Court was proper as it necessarily involved questions of fact.
- 2. Based on available records and on the averments of the parties, the following events were chronologically proximate to the dismissal of the case: (a) on March 24, 2003, the court admitted FGU Insurance's third-party complaint; (b) the trial court cancelled the June 20, 2003 hearing upon FGU Insurance's motion; and (c) on June 16, 2003, Baetiong filed his Answer to the third-party complaint but did not serve it upon the petitioner. None of these events square with the grounds specified by Section 3, Rule 17 of the Rules of Court for the motu proprio dismissal of a case for failure to prosecute. These grounds are as follows: (a) Failure of the plaintiff, without justifiable reasons, to appear on the date of the presentation of his evidence in chief; (b) Failure of the plaintiff to prosecute his action for an unreasonable length of time; (c) Failure of the plaintiff to comply with the Rules of Court; or (d) Failure of the plaintiff to obey any order of the court.

## MA. MERCEDES L. BARBA, *petitioner*, -versus- LICEO DE CAGAYAN UNIVERSITY, *respondent*. G.R. No. 193857, FIRST DIVISION, November 28, 2012, VILLARAMA, JR., *J.*

Corporate officers are elected or appointed by the directors or stockholders, and are those who are given that character either by the Corporation Code or by the corporation's by-laws. Section 25 of the Corporation Code enumerates corporate officers as the president, the secretary, the treasurer and such other officers as may be provided for in the by-laws.

In respondent's by-laws, there are four officers specifically mentioned, namely, a president, a vice president, a secretary and a treasurer. In addition, it is provided that there shall be other appointive officials, a College Director and heads of departments whose appointments, compensations, powers and duties shall be determined by the board of directors. It is worthy to note that a College Dean is not

among the corporate officers mentioned in respondent's by-laws. Petitioner, being an academic dean, also held an administrative post in the university but not a corporate office as contemplated by law.

#### **FACTS:**

Petitioner Dr. Ma. Mercedes L. Barba was the Dean of the College of Physical Therapy of respondent Liceo de Cagayan University, Inc., a private educational institution. Due to the low number of enrollees, LDCU decided to freeze the operation of the College of Physical Therapy indefinitely. Respondent's President Dr. Rafaelita Pelaez-Golez wrote petitioner informing her that her services as dean of the said college will end at the close of the school year. Thereafter, the College of Physical Therapy ceased operations on March 31, 2005, and petitioner went on leave without pay starting on April 9, 2005. Subsequently, respondent's Executive Vice President, Dr. Mariano M. Lerin, through Dr. Glory S. Magdale, respondent's Vice President for Academic Affairs, sent petitioner a letter instructing petitioner to return to work on June 1, 2005 and report to Ma. Chona Palomares, the Acting Dean of the College of Nursing, to receive her teaching load and assignment as a full-time faculty member in that department for the school year 2005-2006. Petitioner however refused on that teaching in the college of nursing is not part of her contract and that it amounts to demotion. So, petitioner filed a complaint with the Labor Arbiter.

Before the CA, respondent claimed that a College Dean is a corporate officer under its bylaws and petitioner was a corporate officer of respondent since her appointment was approved by the board of directors. Respondent posited that petitioner was a corporate officer since her office was created by the by-laws and her appointment, compensation, duties and functions were approved by the board of directors. Thus, respondent maintained that the jurisdiction over the case is with the regular courts and not with the labor tribunals.

#### ISSUE:

Whether the labor tribunals have jurisdiction. (YES)

#### **RULING:**

Corporate officers are elected or appointed by the directors or stockholders, and are those who are given that character either by the Corporation Code or by the corporation's by-laws. Section 25 of the Corporation Code enumerates corporate officers as the president, the secretary, the treasurer and such other officers as may be provided for in the by-laws. In Matling Industrial and Commercial Corporation v. Coros, the phrase "such other officers as may be provided for in the by-laws" has been clarified, thus: "Conformably with Section 25, a position must be expressly mentioned in the By-Laws in order to be considered as a corporate office."

In respondent's by-laws, there are four officers specifically mentioned, namely, a president, a vice president, a secretary and a treasurer. In addition, it is provided that there shall be other appointive

officials, a College Director and heads of departments whose appointments, compensations, powers and duties shall be determined by the board of directors. It is worthy to note that a College Dean is not among the corporate officers mentioned in respondent's by-laws. Petitioner, being an academic dean, also held an administrative post in the university but not a corporate office as contemplated by law. Petitioner was not directly elected nor appointed by the board of directors to any corporate office but her appointment was merely approved by the board together with the other academic deans of respondent university in accordance with the procedure prescribed in respondent's Administrative Manual. The act of the board of directors in approving the appointment of petitioner as Dean of the College of Therapy did not make her a corporate officer of the corporation.

Moreover, the CA, in its amended decision erroneously equated the position of a College Director to that of a College Dean thereby concluding that petitioner is an officer of respondent. It bears stressing that the appointive officials mentioned in Article V of respondent's by-laws are not corporate officers under the contemplation of the law. Though the board of directors may create appointive positions other than the positions of corporate officers, the persons occupying such positions cannot be deemed as corporate officers as contemplated by Section 25 of the Corporation Code.

ELOISA MERCHANDISING, INC. and TREBEL INTERNATIONAL, INC., petitioners, -versus-BANCO DE ORO UNIVERSAL BANK and ENGRACIO M. ESCASINAS, JR., in his capacity as Ex-Officio Sheriff of the RTC of Makati City, respondents.

G.R. No. 192716, FIRST DIVISION, June 13, 2012, VILLARAMA, JR., J.

The failure of a plaintiff to prosecute the action without any justifiable cause within a reasonable period of time will give rise to the presumption that he is no longer interested to obtain from the court the relief prayed for in his complaint; hence, the court is authorized to order the dismissal of the complaint on its own motion or on motion of the defendants.

However, despite the trial court's leniency and admonition, petitioners continued to exhibit laxity and inattention in attending to their case. Assuming domestic problems had beset petitioners' counsel in the interregnum, with greater reason should he make proper coordination with the trial court to ensure his availability on the date to be chosen by the trial court for the long-delayed conduct of a pretrial conference. Petitioners themselves did nothing to get the case moving for nine months and set the case anew for pre-trial even as BDO was already seeking their judicial ejectment with the implementation of the writ of possession issued by Branch 143.

#### **FACTS:**

Respondent BDO extended a credit accommodation to petitioner Eloisa Merchandising, Inc. (EMI) and it was secured by a real estate mortgage (REM) over its properties. BDO filed an application for extrajudicial foreclosure before the Office of the Ex-Officio Sheriff, RTC. A notice was issued setting the auction sale of the mortgaged properties. Petitioners filed a complaint for the annulment of REM. BDO filed a motion to dismiss on the ground of lack of cause of action but it was denied. BDO then filed its answer. The petitioners failed to appear twice during the pre-trial conference despite notice. Hence, the case was also dismissed twice. After the last reconsideration, the case was once

again dismissed due to failure to prosecute. Petitioners appealed to the CA but it affirmed the trial court's dismissal.

#### **ISSUE:**

Whether the dismissal of the case against the petitioners is proper. (YES)

#### **RULING:**

Under Section 3, Rule 17 of the 1997 Rules of Civil Procedure, as amended, the failure on the part of the plaintiff, without any justifiable cause, to comply with any order of the court or the Rules, or to prosecute his action for an unreasonable length of time, may result in the dismissal of the complaint either *motu proprio* or on motion by the defendant. The failure of a plaintiff to prosecute the action without any justifiable cause within a reasonable period of time will give rise to the presumption that he is no longer interested to obtain from the court the relief prayed for in his complaint; hence, the court is authorized to order the dismissal of the complaint on its own motion or on motion of the defendants. The presumption is not, by any means, conclusive because the plaintiff, on a motion for reconsideration of the order of dismissal, may allege and establish a justifiable cause for such failure. The burden to show that there are compelling reasons that would make a dismissal of the case unjustified is on the petitioners.

However, despite the trial court's leniency and admonition, petitioners continued to exhibit laxity and inattention in attending to their case. Assuming domestic problems had beset petitioners' counsel in the *interregnum*, with greater reason should he make proper coordination with the trial court to ensure his availability on the date to be chosen by the trial court for the long-delayed conduct of a pre-trial conference. Petitioners themselves did nothing to get the case moving for nine months and set the case anew for pre-trial even as BDO was already seeking their judicial ejectment with the implementation of the writ of possession issued by Branch 143. Such circumstance also belies their pretense that the parties were then still negotiating for a settlement. We have held that a party cannot blame his counsel when he himself was guilty of neglect; and that the laws aid the vigilant, not those who slumber on their rights. *Vigilantibus sed non dormientibus jura subveniunt*.

PHILIPPINE EXPORT AND FOREIGN LOAN GUARANTEE CORPORATION (now TRADE AND INVESTMENT DEVELOPMENT CORPORATION OF THE PHILIPPINES), petitioner, -versus-AMALGAMATED MANAGEMENT AND DEVELOPMENT CORPORATION, FELIMON R. CUEVAS, AND JOSE A. SADDUL, JR., respondents.

G.R. No. 177729, FIRST DIVISION, September 28, 2011, BERSAMIN, J.

The issues to be tried between the parties shall be limited to those defined in the pre-trial order. However, it is unavoidable that there are issues that are impliedly included or that may be inferable from those listed by necessary implication which are as much integral as those expressly listed.

At any rate, it remains that the petitioner impleaded Cuevas and Saddul as defendants, and adduced against them evidence to prove their liabilities. With Cuevas and Saddul being parties to be affected by the judgment, it was only appropriate for the RTC to inquire into and determine their liability for the purpose of arriving at a complete determination of the suit. Thereby, the RTC acted in conformity with the avowed reason for which the courts are organized, which was to put an end to controversies, to decide the questions submitted by the litigants, and to settle the rights and obligations of the parties.

#### **FACTS:**

Amalgamated Management and Development Corporation (AMDC) obtained from the National Commercial Bank of Saudi Arabia (NCBSA) a loan amounting to SR3.3 million to finance the working capital requirements and the down payment for the trucks to be used in AMDC's hauling project in the Middle East. Philippine Export and Foreign Loan Guarantee Corporation (PEFLGC), a GOCC which guarantees foreign loans granted to any domestic entity, issued a letter of guaranty in favor of NCBSA as the lending bank upon the request of AMDC. As the security for the guaranty, Amalgamated Motors Philippines Incorporated (AMPI), a sister company of AMDC, acted as an accommodation mortgagor, and executed in favor of PEFLGC a real estate mortgage. AMDC also executed a deed of undertaking with Cuevas and Saddul, its President and Vice- President respectively, as its co-obligors in which they were jointly and severally bound to pay PEFLGC whatever damages or liabilities that PEFLGC would incur by reason of the guaranty. AMDC defaulted and upon demand, PEFLGC paid the obligation to NCBSA. Hence, PEFLGC demanded that AMDC, Cuevas and Saddul should pay the obligation, but did not comply. Hence, it extra-judicially foreclosed the real estate mortgage. The sheriff conducted a public auction and PEFLGC acquired the mortgaged properties as the highest bidder. However, PEFLGC sued AMDC, Cuevas and Saddul to recover for the deficiency since the proceeds of the foreclosure sale were not sufficient to cover the guaranty. AMDC, Cuevas, and Saddul all sought the dismissal of the complaint.

#### **ISSUE:**

Whether or not the liability of Cuevas and Saddul on the deficiency claim was already an admitted fact under the pre-trial order. (NO)

#### **RULING:**

The pre-trial order nowhere stated that Cuevas and Saddul already admitted their liability on the petitioner's deficiency claim. Their admission appearing in the pre-trial order referred only to the fact that they and AMDC had received advances in large amounts from the petitioner, and that the real estate mortgage securing the loan had already been foreclosed. Whether Cuevas and Saddul were liable on the deficiency claim was proper for the ascertainment and determination by the RTC as the trial court and the CA as the appellate tribunal, notwithstanding the silence of the pre-trial order on it, because such issue was deemed necessarily included in or inferred from the stated issue of whether there was a deficiency still to be paid by AMDC, Cuevas and Saddul.

It is true that the issues to be tried between the parties in a case shall be limited to those defined in the pre-trial order. However, a pre-trial order is not intended to be a detailed catalogue of each and every issue that is to be taken during the trial, for it is unavoidable that there are issues that are impliedly included among those listed or that may be inferable from those listed by necessary implication which are as much integral parts of the pre-trial order as those expressly listed.

At any rate, it remains that the petitioner impleaded Cuevas and Saddul as defendants, and adduced against them evidence to prove their liabilities. With Cuevas and Saddul being parties to be affected by the judgment, it was only appropriate for the RTC to inquire into and determine their liability for the purpose of arriving at a complete determination of the suit. Thereby, the RTC acted in conformity with the avowed reason for which the courts are organized, which was to put an end to controversies, to decide the questions submitted by the litigants, and to settle the rights and obligations of the parties.

## REAL BANK, INC., *Petitioner*, -versus- SAMSUNG MABUHAY CORPORATION, *Respondent*. G.R. No. 175862, FIRST DIVISION, October 13, 2010, PEREZ, *J*.

Since mediation is part of Pre-Trial, the trial court shall impose the appropriate sanction including but not limited to censure, reprimand, contempt and such sanctions as are provided under the Rules of Court for failure to appear for pre-trial, in case any or both of the parties absent himself/themselves, or for abusive conduct during mediation proceedings.

It being daylight clear that the withdrawal of respondent Samsung's original counsel was sufficient as the same carried the stamp of approval of the client, the notice of mediation sent to respondent Samsung's original counsel was ineffectual as the same was sent at the time when such counsel had already validly withdrawn its representation. Corollarily, the absence of respondent Samsung during the scheduled mediation conference was excusable and justified. Therefore, the trial court erroneously dismissed Civil Case No. 97-86265.

#### **FACTS:**

Samsung filed a Complaint for damages against petitioner Real Bank, Inc. Petitioner Real Bank, Inc. filed its Answer6 on 23 February 1998, to which a Reply was filed by respondent Samsung on 5 March 1998.

On 12 March 1998, respondent Samsung filed an Ex-Parte Motion To Set Case for Pre-Trial, asking that the case be set for pre-trial. In a notice dated 24 March 1998, Judge Amelia Tria-Infante (Judge Infante) of RTC, Br. 9 of Manila, set the case for pre-trial on 25 June 1998.

Meantime, petitioner Real Bank, Inc. filed on 26 May 1998 a Motion to Admit Third Party Complaint against Reynaldo A. Senson alias Edgardo Bacea, to which was attached the Third Party Complaint.

On 22 June 1998, respondent Samsung filed its Pre-trial Brief. The pre-trial was originally set on 25 June 1998 but was reset to 17 July 1998 upon motion of petitioner Real Bank, Inc. on the ground

that its Motion to Admit Third Party Complaint was still pending resolution. Thus, the pre-trial was re-scheduled and reset to 10 September 1998.

Petitioner Real Bank, Inc. once again moved for the resetting of the pre-trial conference scheduled on 10 September 1998 on the same ground that its Motion to Admit Third Party Complaint has yet to be resolved.

On 22 February 1999, the trial court issued an Order granting petitioner Real Bank, Inc.'s Motion to Admit Third Party Complaint and also ordered that summons be issued to third-party defendant Reynaldo A. Senson alias Edgardo Bacea.

On 25 May 1999, respondent Samsung filed a Motion to Dismiss the Third Party Complaint for failure of petitioner Real Bank, Inc. to prosecute its case and Motion to Set the Case for Pre-Trial. On the other hand, petitioner Real Bank, Inc. filed a Motion to Serve Summons by Publication on the third-party defendant Reynaldo A. Senson alias Edgardo Bacea. The judge denied the Motion to Dismiss the Third-Party Complaint.

On 7 March 2001, the trial court issued an Order dated 17 March 2001 requiring both petitioner Real Bank, Inc. and respondent Samsung to appear in a mediation proceeding set on 3 April 2001. This Order of the trial court was sent to respondent Samsung's former counsel, V.E. Del Rosario and Partners which had at that time already filed a notice of withdrawal of appearance.

The mediation proceedings took place as scheduled on 3 April 2001 and Mediator Tammy Ann C. Reyes, who handled the mediation proceedings submitted her report to the Court stating therein that no action was taken on the case referred for mediation because respondent Samsung failed to appear.

An Order was issued dismissing the complaint of respondent Samsung for failure to appear at the mediation conference previously scheduled by the trial judge of Branch 9 in her Order dated 17 March 2001.

#### **ISSUE:**

Whether failure of Samsung to appear at the mediation is a cause for the dismissal of the suit. (NO)

#### **RULING:**

Since mediation is part of Pre-Trial, the trial court shall impose the appropriate sanction including but not limited to censure, reprimand, contempt and such sanctions as are provided under the Rules of Court for failure to appear for pre-trial, in case any or both of the parties absent himself/themselves, or for abusive conduct during mediation proceedings.

In this case, it is uncontroverted that the withdrawal of respondent Samsung's original counsel, V.E. Del Rosario and Partners on 19 October 2000, was with the client's consent. Thus, no approval thereof by the trial court was required because a court's approval is indispensable only if the withdrawal is without the client's consent.

It being daylight clear that the withdrawal of respondent Samsung's original counsel was sufficient as the same carried the stamp of approval of the client, the notice of mediation sent to respondent

Samsung's original counsel was ineffectual as the same was sent at the time when such counsel had already validly withdrawn its representation. Corollarily, the absence of respondent Samsung during the scheduled mediation conference was excusable and justified. Therefore, the trial court erroneously dismissed Civil Case No. 97-86265.

We cannot sustain petitioner Real Bank, Inc.'s argument that respondent Samsung was negligent in the conduct of its case.

The calendar of hearings document the fact that respondent Samsung has been willing and able to prosecute its case. Except for the lone instance, reasonable as already shown, of absence during the scheduled mediation conference on 3 April 2001, respondent Samsung had, till then, promptly and religiously attended the hearings set by the RTC. In fact, respondent Samsung exhibited diligence and dispatch in prosecuting its case against petitioner Real Bank, Inc. by immediately moving to set the case for pre-trial after it had filed its reply and momently filing a motion for reconsideration of the RTC Order dismissing Civil Case No. 97-86265.

### OFFICE OF THE OMBUDSMAN, Petitioner -versus- LETICIA BARBARA B. GUTIERREZ, Respondent

G.R. No. 189100, THIRD DIVISION, June 21, 2017, VELASCO, J.

In the instant case, the Ombudsman moved to intervene in CAG. R. SP No. 91080 only after the Court of Appeals had rendered its decision therein. It did not offer any worthy explanation for its belated attempt at intervention, and merely offered the feeble excuse that it was not ordered by the Court of Appeals to file a Comment on Magno's Petition. Even then, as the Court has already pointed out, the records disclose that the Ombudsman was served with copies of the petition and pleadings filed by Magno in CA-G.R. SP No. 91080, yet it chose not to immediately act thereon.

#### **FACTS:**

Owing to an irregular procurement of LCD projectors in the Bureau of Food and Drugs (BFAD), respondent Gutierrez, then its Director, was charged administratively for grave misconduct. The Ombudsman found respondent liable and penalized her with dismissal. Respondent went to the CA through Rule 65. The CA reversed the Ombudsman. Aggrieved, the Ombudsman sought intervention in the CA and reconsideration of the CA's reversal. The CA denied the Ombudsman's motions for intervention and reconsideration.

#### **ISSUE:**

Whether the Ombudsman may intervene on appeal in this case. (NO)

#### **RULING:**

The Ombudsman has legal standing to intervene on appeal in administrative cases that it has resolved. Preliminarily, the Court rules that petitioner has legal standing to intervene. The issue of whether or not the Ombudsman possesses the requisite legal interest to intervene in the proceedings where its decision is at risk of being inappropriately impaired has been laid to rest in Ombudsman vs. De Chavez. In the said case, the Court conclusively ruled that even if the Ombudsman was not impleaded as a party in the proceedings, part of its broad powers include defending its decisions before the CA. And pursuant to Section 1 of Rule 19 of the Rules of Court, the

Ombudsman may validly intervene in the said proceedings as its legal interest on the matter is beyond cavil.

[However, in this case, the Court ruled that the Ombudsman's motion for intervention was belatedly filed.]: Thus, in the three cases that seemingly strayed from Samaniego, it can be said that under the circumstances obtaining therein, the appellate court had a valid reason for disallowing the Ombudsman to participate in those cases because the latter only moved for intervention after the CA already rendered judgment. By that time, intervention is no longer warranted. In the same vein, there is no cogent reason for the Court to disturb the ruling of the CA. The appellate court did not abuse its discretion and neither did it commit reversible error when it denied the Office of the Ombudsman's Omnibus Motion, having been filed after the appellate court promulgated the assailed Decision.

In the instant case, the Ombudsman moved to intervene in CAG. R. SP No. 91080 only after the Court of Appeals had rendered its decision therein. It did not offer any worthy explanation for its belated attempt at intervention, and merely offered the feeble excuse that it was not ordered by the Court of Appeals to file a Comment on Magno's Petition. Even then, as the Court has already pointed out, the records disclose that the Ombudsman was served with copies of the petition and pleadings filed by Magno in CA-G.R. SP No. 91080, yet it chose not to immediately act thereon.

## LORENZA C. ONGCO, Petitioner, -versus- VALERIANA UNGCO DALISAY, Respondent. G.R. No. 190810, SECOND DIVISION, July 18, 2012, SERENO, J.

Intervention is not a matter of right, but is left to the trial court's sound discretion. The trial court must not only determine if the requisite legal interest is present, but also take into consideration the delay and the consequent prejudice to the original parties that the intervention will cause. Both requirements must concur.

In this case, petitioner has not shown any legal interest of such nature that she "will either gain or lose by the direct legal operation of the judgment." On the contrary, her interest is indirect and contingent. She has not been granted a free patent over the subject land, as she in fact admits being only in the process of applying for one. Her interest is at best inchoate.

#### **FACTS:**

Dalisay applied for registration of a parcel of land before the Municipal Trial Court (MTC) of Binangonan. At the hearings, no oppositor aside from the Republic of the Philippines (the Republic) came. Neither was there any written opposition filed in court. Thus, an Order of General Default was issued against the whole world except the Republic. Consequently, the court found Dalisay to have clearly shown a registrable right over the subject property and ordered that a decree of registration be issued by the Land Registration Authority once the Decision had become final.

The Republic filed an appeal with the CA. While the case was pending appeal, Ongco filed a "Motion for Leave to Intervene" with an attached Answer-in-Intervention seeking the dismissal of Dalisay's Application for Land Registration on the ground that, contrary to the allegations therein, the subject property was not free from any adverse claim. The CA denied Ongco's Motion for Intervention.

#### **ISSUE:**

Whether the CA committed reversible error in denying the Motion for Intervention of petitioner. (NO)

#### **RULING:**

Intervention is not a matter of right, but is left to the trial court's sound discretion. The trial court must not only determine if the requisite legal interest is present, but also take into consideration the delay and the consequent prejudice to the original parties that the intervention will cause. Both requirements must concur. To help ensure that delay does not result from the granting of a motion to intervene, the Rules also explicitly say that intervention may be allowed only before rendition of judgment by the trial court.

In this case, petitioner has not shown any legal interest of such nature that she "will either gain or lose by the direct legal operation of the judgment." On the contrary, her interest is indirect and contingent. She has not been granted a free patent over the subject land, as she in fact admits being only in the process of applying for one. Her interest is at best inchoate.

In any event, the Motion for Intervention was filed only with the CA after the MTC had rendered judgment. By itself, this inexcusable delay is a sufficient ground for denying the motion. To recall, the motion should be filed "any time before rendition of judgment."

IN RE: PETITION FOR CANCELLATION AND CORRECTION OF ENTRIES IN THE RECORD OF BIRTH, EMMA K. LEE, Petitioner, -versus-COURT OF APPEALS, RITA K. LEE, LEONCIO K. LEE, LUCIA K. LEE-ONG, JULIAN K. LEE, MARTIN K. LEE, ROSA LEE-VANDERLEK, MELODY LEE-CHIN, HENRY K. LEE, NATIVIDAD LEE-MIGUEL, VICTORIANO K. LEE, and THOMAS K. LEE, represented by RITA K. LEE, as Attorney-in-Fact, Respondents.

G.R. No. 177861, SECOND DIVISION, July 13, 2010, ABAD, J.

But, as the CA correctly ruled, the grounds cited—unreasonable and oppressive—are proper for subpoena ad duces tecum or for the production of documents and things in the possession of the witness, a command that has a tendency to infringe on the right against invasion of privacy. Section 4, Rule 21 of the Rules of Civil Procedure, thus provides:

SECTION 4. Quashing a subpoena. — The court may quash a subpoena duces tecum upon motion promptly made and, in any event, at or before the time specified therein if it is unreasonable and oppressive, or the relevancy of the books, documents or things does not appear, or if the person in whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof.

#### **FACTS:**

Lee-Keh children filed two separate petitions, one of them before the Regional Trial Court (RTC) of Caloocan City in Special Proceeding C-1674 for the deletion from the certificate of live birth of the petitioner Emma Lee, one of Lee's other children, the name Keh and replace the same with the name Tiu to indicate her true mother's name.

In April 2005 the Lee-Keh children filed with the RTC an ex parte request for the issuance of a subpoena ad testificandum to compel Tiu, Emma Lee's presumed mother, to testify in the case. The RTC granted the motion but Tiu moved to quash the subpoena, claiming that it was oppressive and

violated Section 25, Rule 130 of the Rules of Court, the rule on parental privilege, she being Emma Lee's stepmother. On August 5, 2005 the RTC quashed the subpoena it issued for being unreasonable and oppressive considering that Tiu was already very old and that the obvious object of the subpoena was to badger her into admitting that she was Emma Lee's mother.

Because the RTC denied the Lee-Keh children's motion for reconsideration, they filed a special civil action of certiorari before the Court of Appeals (CA) in CA-G.R. SP 92555. On December 29, 2006 the CA rendered a decision, setting aside the RTC's August 5, 2005 Order. The CA ruled that only a subpoena duces tecum, not a subpoena ad testificandum, may be quashed for being oppressive or unreasonable under Section 4, Rule 21 of the Rules of Civil Procedure. The CA also held that Tiu's advanced age alone does not render her incapable of testifying. The party seeking to quash the subpoena for that reason must prove that she would be unable to withstand the rigors of trial, something that petitioner Emma Lee failed to do.

#### **ISSUE:**

Whether the subpoena ad testificandum was properly quashed. (NO)

#### **RULING:**

But, as the CA correctly ruled, the grounds cited—unreasonable and oppressive—are proper for subpoena ad duces tecum or for the production of documents and things in the possession of the witness, a command that has a tendency to infringe on the right against invasion of privacy. Section 4, Rule 21 of the Rules of Civil Procedure, thus provides:

SECTION 4. Quashing a subpoena. — The court may quash a subpoena duces tecum upon motion promptly made and, in any event, at or before the time specified therein if it is unreasonable and oppressive, or the relevancy of the books, documents or things does not appear, or if the person in whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof.

Taking in mind the ultimate purpose of the Lee-Keh children's action, obviously, they would want Tiu to testify or admit that she is the mother of Lee's other children, including petitioner Emma Lee. Keh had died and so could not give testimony that Lee's other children were not hers. The Lee-Keh children have, therefore, a legitimate reason for seeking Tiu's testimony and, normally, the RTC cannot deprive them of their right to compel the attendance of such a material witness.

REPUBLIC OF THE PHILIPPINES, *Petitioner*, -versus- SANDIGANBAYAN (FOURTH DIVISION), JOSE L. AFRICA (substituted by his heirs), MANUEL H. NIETO, JR., FERDINAND E. MARCOS (substituted by his heirs), IMELDA R. MARCOS, FERDINAND R. MARCOS, JR., JUAN PONCE ENRILE, and POTENCIANO ILUSORIO (substituted by his heirs), *Respondents*.

G.R. No. 152375, EN BANC, December 16, 2011, BRION, J.

Before a party can make **use** of the deposition taken at the trial of a pending action, Section 4, Rule 23 of the Rules of Court does not only require due observance of its sub-paragraphs (a) to (d); it also

requires, as a condition for admissibility, compliance with "the rules on evidence." Thus, even Section 4, Rule 23 of the Rules of Court makes an implied reference to Section 47, Rule 130 of the Rules of Court before the deposition may be **used** in evidence. By reading Rule 23 in isolation, the petitioner failed to recognize that the principle conceding admissibility to a deposition under Rule 23 should be consistent with the rules on evidence under Section 47, Rule 130. In determining the admissibility of the Bane deposition, therefore, reliance cannot be given on one provision to the exclusion of the other; **both provisions must be considered**. This is particularly true in this case where the evidence in the prior proceeding does not simply refer to a witness' testimony in open court but to a deposition taken under another and farther jurisdiction.

Undisputably, the Sandiganbayan relied on the Bane deposition, taken in Civil Case No. 0130, for purposes of this very same case. Thus, what the petitioner established and what the Sandiganbayan found, for purposes of using the Bane deposition, refer only to the circumstances laid down under Section 4(c), Rule 23 of the Rules of Court, not necessarily to those of Section 47, Rule 130 of the Rules of Court, as a distinct rule on evidence that imposes further requirements in the use of depositions in a different case or proceeding. In other words, the prior use of the deposition under Section 4(c), Rule 23 cannot be taken as compliance with Section 47, Rule 130 which considers the same deposition as hearsay, unless the requisites for its admission under this rule are observed.

#### **FACTS:**

Petitioner Republic of the Philippines, through the Presidential Commission on Good Government (PCGG), filed a complaint (docketed as Civil Case No. 0009) against Jose L. Africa, Manuel H. Nieto, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Juan Ponce Enrile, and Potenciano Ilusorio (collectively, the respondents) for reconveyance, reversion, accounting, restitution, and damages before the Sandiganbayan. The petitioner alleged, inter alia, that the respondents illegally manipulated the purchase of the major shareholdings of Cable and Wireless Limited in Eastern Telecommunications Philippines, Inc. (ETPI), which shareholdings respondents Jose Africa and Manuel Nieto, Jr. held for themselves and, through their holdings and the corporations they organized, beneficially for respondents Ferdinand E. Marcos and Imelda R. Marcos.

During the pendency of PCGG's petition (G.R. No. 107789), the PCGG filed with this Court a "Very Urgent Petition for Authority to Hold Special Stockholders' Meeting for [the] Sole Purpose of Increasing [ETPI's] Authorized Capital Stock" (*Urgent Petition*). In our May 7, 1996 Resolution, we referred this Urgent Petition to the Sandiganbayan for reception of evidence and immediate resolution. The Sandiganbayan included the Urgent Petition in Civil Case No. 0130.<sup>17</sup>

In the proceedings to resolve the Urgent Petition, the testimony of Mr. Maurice V. Bane (former director and treasurer-in-trust of ETPI) was taken– at the petitioner's instance and after serving notice of the deposition-taking on the respondents – on October 23 and 24, 1996 by way of deposition upon oral examination (*Bane deposition*) before Consul General Ernesto Castro of the Philippine Embassy in London, England.

Invoking Section 1, Rule 24 (of the old Rules of Court), purportedly allowing the petitioner to depose Bane without leave of court, i.e., as a matter of right after the defendants have filed their answer, the notice stated that "[t]he purpose of the deposition is for [Bane] to identify and testify on the facts set forth in his affidavit x x x so as to prove the ownership issue in favor of [the petitioner] and/or establish the *prima facie* factual foundation for sequestration of [ETPI's] Class A stock in support of the [Urgent Petition]." The notice also states that the petitioner shall use the

Bane deposition "in evidence... in the main case of Civil Case No. 0009." On the scheduled deposition date, only Africa was present and he cross-examined Bane.

After the trial of Civ Case No. 0009, petitioner filed several motions to adapt the deposition of Bane. But the Sandiganbayan denied these.

#### ISSUE:

Whether Bane's deposition should be admitted. (NO)

#### **RULING:**

A reading of Rule 31 of the Rules of Court easily lends itself to two observations. First, Rule 31 is completely silent on the effect/s of consolidation on the cases consolidated; on the parties and the causes of action involved; and on the evidence presented in the consolidated cases. Second, while Rule 31 gives the court the discretion either to order a joint hearing or trial, or to order the actions consolidated, jurisprudence will show that the term "consolidation" is used generically and even synonymously with joint hearing or trial of several causes.

Section 4, Rule 23 of the Rules of Court on "Deposition Pending Action" (deposition de bene esse) provides for the circumstances when depositions may be used in the trial, or at the hearing of a motion or an interlocutory proceeding.

A plain reading of Rule 23 of the Rules of Court readily rejects the petitioner's position that the Bane deposition can be admitted into evidence without observing the requirements of Section 47, Rule 130 of the Rules of Court.

Before a party can make **use** of the deposition taken at the trial of a pending action, Section 4, Rule 23 of the Rules of Court does not only require due observance of its sub-paragraphs (a) to (d); it also requires, as a condition for admissibility, compliance with "the rules on evidence." Thus, even Section 4, Rule 23 of the Rules of Court makes an implied reference to Section 47, Rule 130 of the Rules of Court before the deposition may be **used** in evidence. By reading Rule 23 in isolation, the petitioner failed to recognize that the principle conceding admissibility to a deposition under Rule 23 should be consistent with the rules on evidence under Section 47, Rule 130. In determining the admissibility of the Bane deposition, therefore, reliance cannot be given on one provision to the exclusion of the other; **both provisions must be considered**. This is particularly true in this case where the evidence in the prior proceeding does not simply refer to a witness' testimony in open court but to a deposition taken under another and farther jurisdiction.

Undisputably, the Sandiganbayan relied on the Bane deposition, taken in Civil Case No. 0130, for purposes of this very same case. Thus, what the petitioner established and what the Sandiganbayan found, for purposes of using the Bane deposition, refer only to the circumstances laid down under Section 4(c), Rule 23 of the Rules of Court, not necessarily to those of Section 47, Rule 130 of the Rules of Court, as a distinct rule on evidence that imposes further requirements in the use of depositions in a *different* case or proceeding. In other words, the prior use of the deposition under Section 4(c), Rule 23 cannot be taken as compliance with Section 47, Rule 130 which considers the same deposition as hearsay, unless the requisites for its admission under this rule are observed.

HARRY L. GO, TONNY NGO, JERRY NGO AND JANE GO, *Petitioners*, -versus-THE PEOPLE OF THE PHILIPPINES and HIGHDONE COMPANY, LTD., ET AL., *Respondents*.

#### G.R. No. 185527, THIRD DIVISION, July 18, 2012, PERLAS-BERNABE, J.

But for purposes of taking the deposition in criminal cases, more particularly of a prosecution witness who would forseeably be unavailable for trial, the testimonial examination should be made before the court, or at least before the judge, where the case is pending as required by the clear mandate of Section 15, Rule 119 of the Revised Rules of Criminal Procedure.

Since the conditional examination of a prosecution witness must take place at no other place than the court where the case is pending, the RTC properly nullified the MeTC's orders granting the motion to take the deposition of Li Luen Ping before the Philippine consular official in Laos, Cambodia.

#### **FACTS:**

Petitioners Harry Go, Tonny Ngo, Jerry Ngo and Jane Go were charged before the Metropolitan Trial Court (MeTC) of Manila for Other Deceits under Article 318 of the Revised Penal Code (RPC) docketed as Criminal Case No. 396447.

The prosecution's complaining witness, Li Luen Ping, a frail old businessman from Laos, Cambodia, traveled from his home country back to the Philippines in order to attend the hearing held on September 9, 2004. However, trial dates were subsequently postponed due to his unavailability. On October 13, 2005, the private prosecutor filed with the MeTC a Motion to Take Oral Deposition<sup>6</sup> of Li Luen Ping, alleging that he was being treated for lung infection at the Cambodia Charity Hospital in Laos, Cambodia and that, upon doctor's advice, he could not make the long travel to the Philippines by reason of ill health.

Notwithstanding petitioners' Opposition, the MeTC granted<sup>8</sup> the motion after the prosecution complied with the directive to submit a Medical Certificate of Li Luen Ping. Petitioners sought its reconsideration which the MeTC denied, prompting petitioners to file a Petition for Certiorari before the RTC.

On September 12, 2006, the RTC granted the petition and declared the MeTC Orders null and void. The RTC held that Section 17, Rule 23 on the taking of depositions of witnesses in civil cases cannot apply suppletorily to the case since there is a specific provision in the Rules of Court with respect to the taking of depositions of prosecution witnesses in criminal cases, which is primarily intended to safeguard the constitutional rights of the accused to meet the witness against him face to face.

Upon denial by the RTC of their motion for reconsideration through an Order dated March 5, 2006, the prosecution elevated the case to the CA.

On February 19, 2008, the CA promulgated the assailed Decision which held that no grave abuse of discretion can be imputed upon the MeTC for allowing the deposition-taking of the complaining witness Li Luen Ping because no rule of procedure expressly disallows the taking of depositions in criminal cases and that, in any case, petitioners would still have every opportunity to cross-examine the complaining witness and make timely objections during the taking of the oral deposition either through counsel or through the consular officer who would be taking the deposition of the witness.

#### **ISSUE:**

Whether the deposition should be taken. (NO)

#### **RULING:**

But for purposes of taking the deposition in criminal cases, more particularly of a prosecution witness who would forseeably be unavailable for trial, the testimonial examination should be made before the court, or at least before the judge, where the case is pending as required by the clear mandate of Section 15, Rule 119 of the Revised Rules of Criminal Procedure.

Since the conditional examination of a prosecution witness must take place at no other place than the court where the case is pending, the RTC properly nullified the MeTC's orders granting the motion to take the deposition of Li Luen Ping before the Philippine consular official in Laos, Cambodia.

Certainly, to take the deposition of the prosecution witness elsewhere and not before the very same court where the case is pending would not only deprive a detained accused of his right to attend the proceedings but also deprive the trial judge of the opportunity to observe the prosecution witness' deportment and properly assess his credibility, which is especially intolerable when the witness' testimony is crucial to the prosecution's case against the accused.

It is true that Section 3, Rule 1 of the Rules of Court provides that the rules of civil procedure apply to all actions, civil or criminal, and special proceedings. In effect, it says that the rules of civil procedure have suppletory application to criminal cases. However, it is likewise true that criminal proceedings are primarily governed by the Revised Rules of Criminal Procedure.

SPOUSES VICENTE AFULUGENCIA and LETICIA AFULUGENCIA, Petitioners, -versus-METROPOLITAN BANK & TRUST CO. and EMMANUEL L. ORTEGA, Clerk of Court, Regional Trial Court and Ex-Officio Sheriff, Province of Bulacan, Respondents.

G.R. No. 185145, SECOND DIVISION, February 5, 2014, DEL CASTILLO, J.

As a rule, in civil case<mark>s, the procedure of calling the adverse party to the witne</mark>ss stand is not allowed, unless written interrogatories are first served upon the latter. This is embodied in Section 6, Rule 25.

One of the purposes of the above rule is to prevent fishing expeditions and needless delays; it is there to maintain order and facilitate the conduct of trial. It will be presumed that a party who does not serve written interrogatories on the adverse party beforehand will most likely be unable to elicit facts useful to its case if it later opts to call the adverse party to the witness stand as its witness. Another reason for the rule is that by requiring prior written interrogatories, the court may limit the inquiry to what is relevant, and thus prevent the calling party from straying or harassing the adverse party when it takes the latter to the stand. Thus, the rule not only protects the adverse party from unwarranted surprises or harassment; it likewise prevents the calling party from conducting a fishing expedition or bungling its own case. In the case, Metrobank's officers were sought to be presented by the petitioner as its initial witness and to present documents in the possession of Metrobank, which move cannot be allowed in the petitioner's presentation of its evidence-in-chief.

#### **FACTS:**

Petitioners, spouses Afulugencia, filed a Complaint for nullification of mortgage, foreclosure, auction sale, certificate of sale and other documents, with damages, against respondents Metrobank and Ortega. Upon the conclusion of pre-trial, petitioners filed a Motion for Issuance of Subpoena Duces Tecum Ad Testificandum to require Metrobank's officers to appear and testify as the petitioners' initial witnesses during the August 31, 2006 hearing for the presentation of their

evidence-in-chief, and to bring the documents relative to their loan with Metrobank, as well as those covering the extrajudicial foreclosure and sale of petitioners' land. With this, Metrobank filed an Opposition arguing that the Motion must be denied for lack of proper notice of hearing as it is a litigated motion. Petitioners replied by stating that the lack of proper notice was cured by Metrobank's filing of Opposition, hence the defect may be ignored.

The RTC denied petitioner Motion. Motion for reconsideration was filed but was denied. Subsequently, petition for certiorari was raised to the CA, which it later on dismissed holding that petitioners' Motion is a litigated motion that requires a proper notice of hearing to the parties specifying the date and time of hearing, as contained under Section 4 and 5 of Rule 15. Petitioners filed their Motion for Reconsideration, which the CA denied. Hence, the present Petition.

#### ISSUE:

Whether the request by a party for the issuance of subpoenas do not require notice to other parties to the action.

#### **RULING:**

As a rule, in civil cases, the procedure of calling the adverse party to the witness stand is not allowed, unless written interrogatories are first served upon the latter. This is embodied in Section 6, Rule 25.

One of the purposes of the above rule is to prevent fishing expeditions and needless delays; it is there to maintain order and facilitate the conduct of trial. It will be presumed that a party who does not serve written interrogatories on the adverse party beforehand will most likely be unable to elicit facts useful to its case if it later opts to call the adverse party to the witness stand as its witness. Instead, the process could be treated as a fishing expedition or an attempt at delaying the proceedings; it produces no significant result that a prior written interrogatories might bring.

Besides, since the calling party is deemed bound by the adverse party's testimony, compelling the adverse party to take the witness stand may result in the calling party damaging its own case. Otherwise stated, if a party cannot elicit facts or information useful to its case through the facility of written interrogatories or other mode of discovery, then the calling of the adverse party to the witness stand could only serve to weaken its own case as a result of the calling party's being bound by the adverse party's testimony, which may only be worthless and instead detrimental to the calling party's cause.

Another reason for the rule is that by requiring prior written interrogatories, the court may limit the inquiry to what is relevant, and thus prevent the calling party from straying or harassing the adverse party when it takes the latter to the stand.

Thus, the rule not only protects the adverse party from unwarranted surprises or harassment; it likewise prevents the calling party from conducting a fishing expedition or bungling its own case. Using its own judgment and discretion, the court can hold its own in resolving a dispute, and need not bear witness to the parties perpetrating unfair court practices such as fishing for evidence, badgering, or altogether ruining their own cases. Ultimately, such unnecessary processes can only constitute a waste of the court's precious time, if not pointless entertainment.

In the present case, petitioners seek to call Metrobank's officers to the witness stand as their initial and main witnesses, and to present documents in Metrobank's possession as part of their principal documentary evidence. This is improper. Petitioners may not be allowed, at the incipient phase of the presentation of their evidence-in-chief at that, to present Metrobank's officers – who are considered adverse parties as well, based on the principle that corporations act only through their officers and duly authorized agents – as their main witnesses; nor may they be allowed to gain access to Metrobank's documentary evidence for the purpose of making it their own. This is tantamount to building their whole case from the evidence of their opponent. The burden of proof and evidence falls on petitioners, not on Metrobank; if petitioners cannot prove their claim using their own evidence, then the adverse party Metrobank may not be pressured to hang itself from its own defense.

It is true that under the Rules, a party may, for good cause shown and to prevent a failure of justice, be compelled to give testimony in court by the adverse party who has not served written interrogatories. But what petitioners seek goes against the very principles of justice and fair play; they would want that Metrobank provide the very evidence with which to prosecute and build their case from the start. This they may not be allowed to do.

## REY LAÑADA, *Petitioner*, -versus- COURT OF APPEALS and SPS. ROGELIO and ELIZA HEMEDEZ, *Respondents*.

G.R. No. 102390, SECOND DIVISION, February 1, 2002, DE LEON, JR., J.

When Rule 26 states that a party shall respond to the request for admission, it should not be restrictively construed to mean that a party may not engage the services of counsel to make the response in his behalf.

In the case at bar, neither is there a showing that petitioners Nestle and Santos did not authorize their respective counsel to file in their behalf the respective answers requested of them by private respondents in the latters written request for admission. As the Court has said, there is no reason to strictly construe the phrase the party to whom the request is directed to refer solely or personally to the petitioners themselves.

#### **FACTS:**

Spouses Hemedez filed a civil case against Nestle, Jesus Alimagno, Francis Santos, Pacifico Galasao, and Capt. Rey Laada, praying for indemnity for the death of their son, actual compensation for the destruction of the car, moral and exemplary damages. The defendants filed their respective Answers denying liability. Thereafter, the spouses Hemedez served the defendants a request for admission of the truth of the facts set forth in their complaint and the genuineness of each of the documents appended thereto. Through their respective counsel, Nestle and Santos, Capt. Laada, and Alimagno and Galasao filed their verified answer to the request for admission. Spouses Hemedez sought the striking out of said answers contending that under Section 2 of Rule 26 of the Rules of Court the parties themselves and not their counsel should personally answer the request for admission and hence the answer filed by their counsel in their behalf was by nature based on hearsay. On the other hand, the defendants asserted that they observed the rules in filing their answers, through their lawyers, to the request for admission.

#### **ISSUE:**

Whether or not an answer to a request for admission signed and sworn to by the counsel of the party so requested is sufficient compliance with the provisions of Rule 26 of the Rules of Court. (YES)

#### **Ruling:**

The issue in this case may be stated in this wise: should a person to whom a request for admission is addressed personally answer the request? It calls for an interpretation of the phrase the party to whom the request is directed. This is not the first time that the Court is faced with the said issue. In *PSCFC Financial Corporation v. CA*, the following has been cited:

"Section 21 of Rule 138 states that "an attorney is presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client x x x" Furthermore, Section 23 of Rule 138 provides that "attorneys 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 x x x." Thus, when Rule 26 states that a party shall respond to the request for admission, it should not be restrictively construed to mean that a party may not engage the services of counsel to make the response in his behalf."

In the case at bar, neither is there a showing that petitioners Nestle and Santos did not authorize their respective counsel to file in their behalf the respective answers requested of them by private respondents in the latters written request for admission. As the Court has said, there is no reason to strictly construe the phrase the party to whom the request is directed to refer solely or personally to the petitioners themselves.

## DEVELOPMENT BANK OF THE PHILIPPINES, Petitioner, -versus- HONORABLE COURT OF APPEALS and ROSALINDA CANADALLA-GO, represented by her Attorney-in-Fact, BENITO A. CANADALLA, Respondents.

G.R. No. 153034, FIRST DIVISION, September 20, 2005, DAVIDE, JR., J.

A party cannot be deemed to have impliedly admitted the matters set forth in the Request for Admission for the mere reason that its Comment was not under oath. That the Comment was not under oath is not a substantive, but merely a formal defect which can be excused in the interest of justice.

DBP cannot be deemed to have impliedly admitted the matters set forth in the Request for Admission for the mere reason that its Comment was not under oath. That the Comment was not under oath is not a substantive, but merely a formal defect which can be excused in the interest of justice conformably to the well-entrenched doctrine that all pleadings should be liberally construed as to do substantial justice. The filing of such Comment substantially complied with Rule 26.

#### **FACTS:**

Rosalinda Canadalla-Go filed a Supplemental Complaint for the Exercise of Right of Redemption and Determination of Redemption Price, Nullification of Consolidation, Annulment of Titles, with Damages, Plus Injunction and Temporary Restraining Order. After the DBP filed its Answer but before the parties could proceed to trial, Go filed a Request for Admission by Adverse Party. Thereafter, the DBP filed its Comment. Go objected to the Comment reasoning that it was not under oath as required by Section 2, Rule 26 of the Rules of Court, and that it failed to state the reasons for the admission or denial of matters for which an admission was requested. For its part, the DBP manifested that, first, the statements, allegations, and documents contained in the Request for Admission are substantially the same as those in the Supplemental Complaint; second, they had already been either specifically denied or admitted by the DBP in its Answer; and third, the reasons for the denial or admission had already been specifically stated therein.

#### **ISSUE:**

Whether or not matters requested to be admitted under Rule 26 of the Rules of Court which are mere reiterations of the allegations in the complaint and are specifically denied in the answer may be deemed impliedly admitted on the ground that the response thereto is not under oath. (NO)

#### **RULING:**

DBP cannot be deemed to have impliedly admitted the matters set forth in the Request for Admission for the mere reason that its Comment was not under oath. As held in *Po v. Court of Appeals* [a] party should not be compelled to admit matters of fact already admitted by his pleading and to make a second denial of those already denied in his answer to the complaint. The *Po* doctrine was brought a step further in *Concrete Aggregates Co. v. Court of Appeals*, where it is ruled that if the factual allegations in the complaint are the very same allegations set forth in the request for admission and have already been specifically denied or otherwise dealt with in the answer, a response to the request is no longer required. It becomes unnecessary to dwell on the issue of the propriety of an unsworn response to the request for admission. A request for admission that merely reiterates the allegations in an earlier pleading is inappropriate under Rule 26 of the Rules of Court, which, as a mode of discovery, contemplates of interrogatories that would clarify and tend to shed light on the truth or falsity of the allegations in the pleading. Rule 26 does not refer to a mere reiteration of what has already been alleged in the pleadings.

That the Comment was not under oath is not a substantive, but merely a formal defect which can be excused in the interest of justice conformably to the well-entrenched doctrine that all pleadings should be liberally construed as to do substantial justice. The filing of such Comment substantially complied with Rule 26.

NENITA GONZALES, SPOUSES GENEROSA GONZALES and RODOLFO FERRER, SPOUSES FELIPE GONZALES and CAROLINA SANTIAGO, SPOUSES LOLITA GONZALES and GERMOGENES GARLITOS, SPOUSES DOLORES GONZALES and FRANCISCO COSTIN, SPOUSES CONCHITA GONZALES and JONATHAN CLAVE, and SPOUSES BEATRIZ GONZALES and ROMY CORTES, REPRESENTED BY THEIR ATTORNEY-IN-FACT and CO-PETITIONER NENITA GONZALES, Petitioners, -versus- MARIANO BUGAAY AND LUCY BUGAAY, SPOUSES ALICIA BUGAAY AND FELIPE BARCELONA, CONEY "CONIE" BUGAAY, JOEY GATAN, LYDIA BUGAAY, SPOUSES LUZVIMINDA BUGAAY AND REY PAGATPATAN AND BELEN BUGAAY, Respondents.

G.R. No. 173008, THIRD DIVISION, February 22, 2012, PERLAS-BERNABE, J.

In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the judgment. Being considered a motion to dismiss, thus, a demurrer to evidence must clearly be filed before the court renders its judgment.

In this case, respondents demurred to petitioners' evidence after the RTC promulgated its Decision. While respondents' motion for reconsideration and/or new trial was granted, it was for the sole purpose of receiving and offering for admission the documents not presented at the trial. As respondents never complied with the directive but instead filed a demurrer to evidence, their motion should be deemed abandoned. Consequently, the RTC's original Decision stands.

#### **FACTS:**

The petitioners filed a complaint for Partition and Annulment of Documents with Damages dated February 5, 1991 against Enrico, Consolacion and the respondents. After due proceedings, the RTC rendered a Decisiondated November 24, 1995, awarding one-fourth (¼) *pro-indiviso* share of the estate each to Enrico, Maximiano, Encarnacion and Consolacion as the heirs of the Spouses Ayad, excluding Mariano who predeceased them. It likewise declared the Deed of Extrajudicial Settlement and Partition executed by Enrico and respondents, as well as all other documents and muniments of title in their names, as null and void. It also directed the parties to submit a project of partition within 30 days from finality of the Decision.

Without resolving the foregoing motion, the RTC, noting the failure of the parties to submit a project of partition, issued a writ of execution on February 17, 2003 giving them a period of 15 days within which to submit their nominees for commissioner, who will partition the subject estate.

Subsequently, the RTC, through then Acting Presiding Judge Emilio V. Angeles, discovered the pendency of the motion for reconsideration and/or new trial and set the same for hearing. In the Order dated August 29, 2003, Judge Angeles granted respondents' motion for reconsideration and/or new trial for the specific "purpose of receiving and offering for admission the documents referred to by the [respondents]."

However, instead of presenting the documents adverted to, consisting of the documents sought to be annulled, respondents demurred petitioners' evidence on December 6, 2004 which the RTC, this time through Presiding Judge Dionisio C. Sison, denied in the Orderdated April 13, 2005 as well as respondents' motion for reconsideration in the August 8, 2005 Order.

Aggrieved, respondents elevated their case to the CA through a petition for certiorari, imputing grave abuse of discretion on the part of the RTC in denying their demurrer notwithstanding petitioners' failure to present the documents sought to be annulled. On March 23, 2006, the CA rendered the assailed Decision reversing and setting aside the Orders of the RTC.

#### **ISSUE:**

Whether the grant of the demurrer was proper. (NO)

#### **RULING:**

"A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence and is presented after the plaintiff rests his case. It is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case."

In passing upon the sufficiency of the evidence raised in a demurrer, the court is merely required to ascertain whether there is competent or sufficient proof to sustain the judgment. Being considered a motion to dismiss, thus, a demurrer to evidence must clearly be filed before the court renders its judgment.

In this case, respondents demurred to petitioners' evidence after the RTC promulgated its Decision. While respondents' motion for reconsideration and/or new trial was granted, it was for the sole purpose of receiving and offering for admission the documents not presented at the trial. As respondents never complied with the directive but instead filed a demurrer to evidence, their motion should be deemed abandoned. Consequently, the RTC's original Decision stands.

Accordingly, the CA committed reversible error in granting the demurrer and dismissing the Amended Complaint a quo for insufficiency of evidence. The demurrer to evidence was clearly no longer an available remedy to respondents and should not have been granted, as the RTC had correctly done.

## FREDERICK F. FELIPE, *Petitioner*, -versus- MGM MOTOR TRADING CORPORATION, doing business under the name and style NISSAN GALLERY-ORTIGAS, and AYALA GENERAL INSURANCE CORPORATION, *Respondents*.

G.R. No. 191849, FIRST DIVISION, September 23, 2015, PEREZ, J.

A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence and is presented after the plaintiff rests his case. It is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue.

There is no dispute that the only pieces of evidence admitted in court are the testimony of Alberto and the receipt showing MGM Motors receiving P200,000.00 from petitioner as partial payment of the subject car. The allegation that the purchase of the vehicle was on an installment basis was not supported by any evidence. The receipt of a partial payment does not suffice to prove that the purchase was made on an installment basis. Petitioner did not present any document to prove said allegation while MGM Motors produced a sales invoice wherein it was stated that the mode of payment is "COD" or cash on delivery.

#### **FACTS:**

Frederick Felipe filed a Complaint for Specific Performance and Damages against respondent MGM Motors and Ayala Insurance. Felipe's Nissan Terano Wagon was reportedly lost. He tried to claim from Ayala Insurance but the latter refused to pay its liability. On the other hand, MGM Motors refused to produce, despite repeated demands, the document of sale by installment covering the vehicle. Petitioner allegedly paid additional P200,000.00 as partial payment for the vehicle. MGM Motors denied receiving the down payment of P200,000.00 and P5,000.00 reservation fee paid through Sarmiento. Trial proceeded and only two pieces of evidence were admitted by the court:

(1) the Official Receipt issued by MGM Motors wherein it acknowledged receipt of P200,000 from petitioner; and (2) the testimony of his father Alberto that he was present when petitioner paid P200,000 to MGM Motors. Defendants filed their respective Motions to Dismiss on demurrer to evidence which was granted by the trial court.

#### **ISSUE:**

Whether or not the trial court correctly granted the demurrer to evidence and dismissed the complaint. (YES)

#### **RULING:**

A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence and is presented after the plaintiff rests his case. It is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue.

Well-established is the rule that the burden of proof lies on the party who makes the allegations. There is no dispute that the only pieces of evidence admitted in court are the testimony of Alberto and the receipt showing MGM Motors receiving P200,000.00 from petitioner as partial payment of the subject car. The allegation that the purchase of the vehicle was on an installment basis was not supported by any evidence. The receipt of a partial payment does not suffice to prove that the purchase was made on an installment basis. Petitioner did not present any document to prove said allegation while MGM Motors produced a sales invoice wherein it was stated that the mode of payment is "COD" or cash on delivery.

In the same vein, petitioner failed to substantiate his allegation against Ayala Insurance. Petitioner has the burden of proof to show that a loss occurred and said loss was covered by his insurance policy. Considering that the trial court only admitted two pieces of evidence in petitioner's favor and none of those tend to prove loss of the subject car and coverage thereof under the insurance policy, petitioner is not entitled to the reliefs he had prayed for.

## Republic of the Philippines, *Petitioner*, -versus- Alfredo R. De Borja, *Respondent*. G.R. No. 187448, FIRST DIVISION, January 9, 2017, CAGUIOA, *J*.

A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue. The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, had been able to establish a prima facie case.

The Sandiganbayan has ruled correctly in granting the Demurrer to evidence filed by De Borja. A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue. The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, had been able to establish a prima facie case. In a demurrer to evidence, however, it is premature to speak of "preponderance of evidence" because it is filed prior to the defendant's presentation of evidence; it is precisely the office of a demurrer to evidence to expeditiously terminate the case without the need of the defendant's evidence. Hence, what is crucial is the determination as to whether the plaintiffs evidence entitles it to the relief sought.

#### **FACTS:**

Republic, through PCGG, filed a complaint for "Accounting, Reconveyance, Forfeiture, Restitution, and Damages" before the Sandiganbayan for the recovery of the ill-gotten assets allegedly amassed by the individual respondents therein, singly or collectively, during the administration of the late President Ferdinand E. Marcos. Geronimo Z. Velasco, one of the defendants in the complaint, was the President and Chairman of the Board of Directors of the Philippine National Oil Company (PNOC). Herein respondent De Borja is Velasco's nephew.

It appeared that PNOC, in the exercise of its functions, would regularly enter into charter agreements with vessels and, pursuant to industry practice, vessel owners would pay "address commissions" to PNOC as charterer, amounting to five percent (5%) of the total freight. Allegedly, during the tenure of Velasco, no address commissions were remitted to PNOC. It was alleged that the commissions were remitted to the account of Decision Research Management Company (DRMC) and Velasco was alleged to have diverted government funds by entering into several transactions involving the purchase of crude oil tankers and by reason of which he received bribes, kickbacks, or commissions in exchange for the granting of permits, licenses, and/or charters to oil tankers to service PNOC. Moreover, Republic claimed that it was De Borja who collected these address commissions in behalf of Velasco, basing its allegation on the testimony of Epifanio F. Verano and he also alleged to have acted as Velasco's dummy, nominee, and/or agent for corporations he owned and/or controlled, such as DRMC.

After the filing of the parties' responsive pleadings, trial on the merits ensued. Subsequently, upon the conclusion of its presentation of evidence, petitioner Republic submitted its Formal Offer of Evidence dated March 6, 1995. On April 15, 2005, respondent De Borja filed his Demurrer to Evidence of even date, stating therein, among others: (i) that Verano, on two (2) occasions, testified that he delivered an envelope to Velasco who, in turn, instructed him to deliver the same to De Borja; (ii) that Verano admitted that the envelope was sealed; (iii) that Verano did not open the envelope and therefore had no knowledge of the contents thereof; (iv) that Verano did not deliver the envelope personally to De Borja; and (v) that Verano did not confirm whether De Borja in fact received the said envelope.

#### **ISSUE:**

Whether or not the opposition against Demurrer to Evidence filed by De Borja should be sustained. (NO)

#### **RULING:**

The Sandiganbayan has ruled correctly in granting the Demurrer to evidence filed by De Borja. A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue. The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, had been able to establish a prima facie case. In a demurrer to evidence, however, it is premature to speak of "preponderance of evidence" because it is filed prior to the defendant's presentation of evidence; it is precisely the office of a demurrer to evidence to expeditiously terminate the case without the

need of the defendant's evidence. Hence, what is crucial is the determination as to whether the plaintiffs evidence entitles it to the relief sought.

Specifically, the inquiry in this case is confined to resolving whether petitioner Republic is entitled to "Accounting, Reconveyance, Forfeiture, Restitution, and Damages" based on the evidence it has presented. The testimony of Verano, the insinuations of petitioner Republic in the instant Petition can best be described as speculative, conjectural, and inconclusive at best. Nothing in the testimony of Verano reasonably points, or even alludes, to the conclusion that De Borja acted as a dummy or conduit of Velasco in receiving address commissions from vessel owners. The Court joins and concurs in the SB's observations pertaining to Verano's want of knowledge with respect to the contents of the envelopes allegedly delivered to respondent De Borja's office, which remained sealed the entire time it was in Verano's possession. As admitted by Verano himself, he did not and could not have known what was inside the envelopes when they were purportedly entrusted to him for delivery. In the same vein, Verano did not even confirm respondent De Borja's receipt of the envelopes, despite numerous opportunities to do so. Relatedly, it was further revealed during the cross-examination of Verano that in the first place, Velasco did not even deal directly with brokers.

All told, the Court finds that the evidence adduced is wholly insufficient to support the allegations of the Complaint before the SB. Thus, for failure of petitioner Republic to show any right to the relief sought, the Court affirms the SB in granting the Demurrer to Evidence.

ESPIRITA N. ACOSTA, Petitioner, -versus- THE COMMISSION ON ELECTIONS, JUDGE GENOVEVA COCHING MARAMBA, IN HER CAPACITY AS PRESIDING JUDGE OF THE MUNICIPAL CIRCUIT TRIAL COURT, SAN FABIAN/SAN JACINTO, PANGASINAN AND RAYMUNDO I. RIVERA, Respondents.

G.R. No. 131488, EN BANC, August 03, 1998, ROMERO, J.

Due process dictates that before any decision can be validly rendered in a case, the following safeguards must be met: (a) the court or tribunal must be clothed with judicial authority to hear and determine the matter before it; (b) it must have jurisdiction over the person of the party or over the property subject of the controversy; (c) the parties thereto must have been given an opportunity to adduce evidence in their behalf, and (d) such evidence must be considered by the tribunal in deciding the case.

In this case, the COMELEC indeed exceeded the bounds of its authority when it affirmed the trial court's decision when said judgment was not the subject of SPR No. 13-97, a special civil action assailing an interlocutory order of the same lower court.

#### **FACTS:**

The parties herein were candidates for the position of Punong Barangay in Bgy. Sobol, San Fabian, Pangasinan, during the May 12, 1997, barangay election. By a winning margin of four votes, petitioner was proclaimed as the duly elected Punong Barangay. On May 15, 1997, Rivera filed an election protest with the Municipal Circuit Trial Court of San Fabian-San Jacinto, alleging that the votes cast for him in Precincts No. 22-A, No. 22-A-1, No. 22-B, and No. 22-B-1 were not duly and properly accounted for due to "misreading, non-reading, mistallying, and misappreciation of ballots/votes," and praying for a recount of the votes. The following day, the court a quo summoned

Acosta who, on May 19, 1997, filed a Motion for Time to File Answer. In an order dated May 21, 1997, the court denied said motion and concluded that the election protest was sufficient in form and substance. Furthermore, considering that from the allegations in the protest a revision of ballots was necessary, the court also ordered the COMELEC Election Registrar and/or the Municipal Treasurer of San Fabian to bring to court the ballot boxes of Bgy. Sobol, together with their keys, list of voters with voting records, book of voters and other election documents.

On May 29, 1997, petitioner filed with the COMELEC a petition for certiorari and prohibition with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction, questioning the May 21, 1997, order of the MCTC. This was docketed as **SPR No. 13-97**.

The following day, **May 30th**, after determining that Rivera should have garnered 408 votes, three votes more than Acosta's 405, the lower court rendered a decision nullifying petitioner's proclamation and declaring Rivera as the duly elected Punong Barangay of Bgy. Sobol. Petitioner filed a notice of appeal on June 11, 1997, which respondent Judge granted in an order of even date. Said appeal was assigned **UNDK No. 5-97** before the COMELEC.

On December 2, 1997, the COMELEC issued an en banc Resolution in SPR No. 13-97 dismissing the petition for lack of merit and affirming the assailed order dated May 21, 1997, as well as the trial court's decision dated May 30, 1997.

#### **ISSUE:**

Whether COMELEC gravely abuse its discretion? (YES)

#### **RULING:**

The COMELEC indeed exceeded the bounds of its authority when it affirmed the trial court's decision when said judgment was not the subject of SPR No. 13-97, a special civil action assailing an interlocutory order of the same lower court. The fact that the decision was eventually elevated to the COMELEC on appeal does not cure the defect since said appeal was not consolidated with SPR No. 13-97. In fact, it was still undocketed at the time and the parties had not yet submitted any evidence relating to the election protest.

Due process dictates that before any decision can be validly rendered in a case, the following safeguards must be met: (a) the court or tribunal must be clothed with judicial authority to hear and determine the matter before it; (b) it must have jurisdiction over the person of the party or over the property subject of the controversy; (c) the parties thereto must have been given an opportunity to adduce evidence in their behalf, and (d) such evidence must be considered by the tribunal in deciding the case. While the COMELEC cannot be faulted for resolving the issue raised by petitioner in SPR No. 13-97, namely, the propriety of the lower court's order dated May 21, 1997, it exceeded its authority and thereby gravely abused its discretion when, in the same resolution, it affirmed said court's decision dated May 30, 1997, which was the subject of petitioner's appeal, UNDK No. 5-97.

# EVELYN DE LUNA, ROSALINA DE LUNA, PRUDENCIO DE LUNA, JR., WILLARD DE LUNA, ANTONIO DE LUNA, and JOSELITO DE LUNA, *Petitioners*, -versus-HON. SOFRONIO F. ABRIGO, Presiding Judge of the Court of First Instance of Quezon, Branch IX, and LUZONIAN UNIVERSITY FOUNDATION, INC., *Respondents*.

G.R. No. L-57455, FIRST DIVISION, January 18, 1990, MEDIALDEA, J.

Considering that the allegations in the complaint on the matter of the donee's non-compliance with the conditions of the donation have been contested by private respondents who claimed that improvements more valuable than the donated property had been introduced, a judgment on the pleadings is not proper. Moreover, in the absence of a motion for judgment on the pleadings, the court cannot motu proprio render such judgment. Section 1 of Rule 19 provides: "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."

#### **FACTS:**

On January 24, 1965, Prudencio de Luna donated a portion of 7,500 square meters of Lot No. 3707 of the Cadastral Survey of Lucena covered by Transfer Certificate of Title No. 1-5775 to the Luzonian Colleges, Inc., (now Luzonian University Foundation, Inc., herein referred to as the foundation). The donation, embodied in a Deed of Donation Intervivos was subject to certain terms and conditions and provided for the automatic reversion to the donor of the donated property in case of violation or non-compliance. The foundation failed to comply with the conditions of the donation. On April 9, 1971, Prudencio de Luna "revived" the said donation in favor of the foundation, in a document entitled "Revival of Donation Intervivos" (Annex "B" of Petition) subject to terms and conditions which among others, required the construction by the donee at its own expense a Chapel, a Nursery and Kindergarten School.

As in the original deed of donation, the "Revival of Donation Intenrivos" also provided for the automatic reversion to the donor of the donated area in case of violation of the conditions thereof. The foundation, through its president, accepted the donation in the same document, subject to all the terms and conditions stated in the donation. The donation was registered and annotated on April 15, 1971 in the memorandum of encumbrances.

On September 23, 1980, herein petitioners, who claim to be the children and only heirs of the late Prudencio de Luna who died on August 18, 1980, filed a complaint with the Regional Trial Court of Quezon alleging that the terms and conditions of the donation were not complied with by the foundation. Among others, it prayed for the cancellation of the donation and the reversion of the donated land to the heirs.

In its answer respondent foundation claimed that it had partially and substantially complied with the conditions of the donation and that the donor has granted the foundation an indefinite extension of time to complete the construction of the chapel. It also invoked the affirmative defense of prescription of action and prayed for the dismissal of the complaint.

The lower court granted respondent's motion to dismiss on the ground of prescription.

#### **ISSUE:**

Whether the lower court erred in not rendering judgment on the merits by way of judgment on the pleadings. (YES)

#### **RULING:**

It is true that under Article 764 of the New Civil Code, actions for the revocation of a donation must be brought within four (4) years from the non-compliance of the conditions of the donation. However, it is Our opinion that said article does not apply to onerous donations in view of the specific provision of Article 733 providing that onerous donations are governed by the rules on contracts.

In the light of the above, the rules on contracts and the general rules on prescription and not the rules on donations are applicable in the case at bar.

Under Article 1306 of the New Civil Code, the parties to a contract have the right "to establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order or public policy." Paragraph 11 of the "Revival of Donation Intervivos, has provided that "violation of any of the conditions (herein) shall cause the *automatic reversion* of the donated area to the donor, his heirs, . . ., without the need of executing any other document for that purpose and without obligation on the part of the DONOR". The validity of the stipulation in the contract providing for the automatic reversion of the donated property to the donor upon non-compliance cannot be doubted. It is in the nature of an agreement granting a party the right to rescind a contract unilaterally in case of breach, without need of going to court. Upon the happening of the resolutory condition of non-compliance with the conditions of the contract, the donation is automatically revoked without need of a judicial declaration to that effect.

It is clear, however, that judicial intervention is necessary not for purposes of obtaining a judicial declaration rescinding a contract already deemed rescinded by virtue of an agreement providing for rescission even without judicial intervention, but in order to determine whether or not the recession was proper.

The trial court was therefore not correct in holding that the complaint in the case at bar is barred by prescription under Article 764 of the New Civil Code because Article 764 does not apply to onerous donations.

Finally, considering that the allegations in the complaint on the matter of the donee's non-compliance with the conditions of the donation have been contested by private respondents who claimed that improvements more valuable than the donated property had been introduced, a judgment on the pleadings is not proper. Moreover, in the absence of a motion for judgment on the pleadings, the court cannot *motu proprio* render such judgment. Section 1 of Rule 19 provides: "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."

SPOUSES RAMON VILLUGA AND MERCEDITA VILLUGA, *Petitioners*, -versus- KELLY HARDWARE AND CONSTRUCTION SUPPLY INC., REPRESENTED BY ERNESTO V. YU, EXECUTIVE VICE-PRESIDENT AND GENERAL MANAGER, *Respondent*.

G.R. No. 176570, THIRD DIVISION, July 18, 2012, PERALTA, J.

*In Nocom v. Camerino, the Court ruled:* 

x x x When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules of Court allow a party to obtain immediate relief by way of summary judgment, that is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts. Conversely, where the pleadings tender a genuine issue, summary judgment is not proper. A "genuine issue" is such issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. Section 3 of [Rule 35 of the Rules of Court] provides two (2) requisites for summary judgment to be proper: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. A summary judgment is permitted only if there is no genuine issue as to any material fact and a moving party is entitled to a judgment as a matter of law. A summary judgment is proper if, while the pleadings on their face appear to raise issues, the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine.

In the present case, it bears to note that in its original Complaint, as well as in its Amended Complaint, respondent did not allege as to how petitioners' partial payments of P110,301.80 and P20,000.00 were applied to the latter's obligations. However, it is settled that the rule authorizing an answer to the effect that the defendant has no knowledge or information sufficient to form a belief as to the truth of an averment and giving such answer the effect of a denial, does not apply where the fact as to which want of knowledge is asserted, is so plainly and necessarily within the defendant's knowledge that his averment of ignorance must be palpably untrue. In the instant case, it is difficult to believe that petitioners do not know how their payment was applied.

Thus, petitioners' defense of partial payment in their Answer to Second Amended Complaint, in effect, no longer raised genuine issues of fact that require presentation of evidence in a full-blown trial. Hence, the summary judgment of the RTC in favor of respondent is proper.

#### **FACTS:**

On March 3, 1995, herein respondent filed with the RTC of Bacoor, Cavite a Complaint for a Sum of Money and Damages against herein petitioners alleging as follows:

(3) During the period of November 19, 1992 to January 5, 1993, defendants [herein petitioners] made purchases of various construction materials from plaintiff corporation [herein respondent] in the sum of P259,809.50, which has not been paid up to the present time, both principal and stipulated interests due thereon. (4) Plaintiff made several demands, oral and written, for the same defendants to pay all their obligations due plaintiff herein, but defendants fail and refuse to comply with, despite demands made upon them, to the damage and prejudice of plaintiff. x x x x

In their Answer to Complaint, petitioners admitted having made purchases from respondent, but alleged that they do not remember the exact amount thereof as no copy of the documents evidencing the purchases were attached to the complaint. Petitioners, nonetheless, claimed that they have made payments to the respondent on March 4, 1994 and August 9, 1994 in the amounts of P110,301.80 and P20,000.00, respectively, and they are willing to pay the balance of their indebtedness after deducting the payments made and after verification of their account.

In a Manifestation dated July 18, 1995, petitioners stated that in order to buy peace, they were willing to pay respondent the principal sum of P259,809.50, but without interests and costs, and on installment basis.

In its Counter Manifestation, respondent signified that it was amenable to petitioners' offer to pay the principal amount of P259,809.50. However, respondent insisted that petitioners should also pay interests, as well as litigation expenses and attorney's fees, and all incidental expenses.

Subsequently, on August 11, 1995, respondent filed a Motion for Partial Judgment on the Pleadings contending that petitioners were deemed to have admitted in their Answer that they owed respondent the amount of P259,809.50 when they claimed that they made partial payments amounting to P130,301.80. Based on this premise, respondent prayed that it be awarded the remaining balance of P129,507.70. Petitioners filed their Opposition to the said Motion.

On September 11, 1995, the RTC issued an Order deferring resolution of respondent's Motion for Partial Judgment on the ground that there is no clear and specific admission on the part of petitioners as to the actual amount that they owe respondent.

On March 8, 1996, respondent filed a Request for Admission asking that petitioners admit the genuineness of various documents, such as statements of accounts, delivery receipts, invoices and demand letter attached thereto as well as the truth of the allegations set forth therein. Respondent basically asked petitioners to admit that the latter's principal obligation is P279,809.50 and that only P20,000.00 was paid.

On June 3, 1996, respondent filed a Manifestation and Motion before the RTC praying that since petitioners failed to timely file their comment to the Request for Admission, they be considered to have admitted the genuineness of the documents described in and exhibited.

On June 6, 1996, petitioners filed their Comments on the Request for Admission stating their objections to the admission of the documents attached to the Request.

On January 24, 1997, respondent filed its Second Amended Complaint, again with leave of court. Petitioners filed their Answer to the Second Amended Complaint denying the allegations therein and insisting that they have made partial payments.

On September 4, 1997, respondent filed a Motion to Expunge with Motion for Summary Judgment claiming that petitioners' Comments on respondent's Request for Admission is a mere scrap of paper as it was signed by petitioners' counsel and not by petitioners themselves and that it was filed beyond the period allowed by the Rules of Court. Respondent goes on to assert that petitioners, in effect, were deemed to have impliedly admitted the matters subject of the said request. Respondent also contended that it is already entitled to the issuance of a summary judgment in its favor as petitioners not only failed to tender a genuine issue as to any material fact but also did not raise any special defenses, which could possibly relate to any factual issue.

In their Opposition to Motion to Expunge with Motion for Summary Judgment, petitioners argued that respondent's request for admission is fatally defective, because it did not indicate or specify a period within which to answer; that verification by petitioners' counsel is sufficient compliance with the Rules of Court; that petitioners' request for admission should be deemed dispensed with and no longer taken into account as it only relates to the Amended Complaint, which was already

abandoned when the Second Amended Complaint was filed; and that summary judgment is improper and without legal basis, as there exists a genuine controversy brought about by petitioners' specific denials and defenses.

The RTC granted respondent's Motion to Expunge with Motion for Summary Judgment, which was affirmed by the CA.

#### **ISSUE:**

Whether summary judgment was proper. (YES)

#### **RULING:**

Summary judgment is a procedural device resorted to in order to avoid long drawn out litigations and useless delays. Such judgment is generally based on the facts proven summarily by affidavits, depositions, pleadings, or admissions of the parties.

In this respect, the Court's ruling in *Nocom v. Camerino*, is instructive, to wit:

x x x When the pleadings on file show that there are no genuine issues of fact to be tried, the Rules of Court allow a party to obtain immediate relief by way of summary judgment, that is, when the facts are not in dispute, the court is allowed to decide the case summarily by applying the law to the material facts. Conversely, where the pleadings tender a genuine issue, summary judgment is not proper. A "genuine issue" is such issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. Section 3 of [Rule 35 of the Rules of Court] provides two (2) requisites for summary judgment to be proper: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. A summary judgment is permitted only if there is no genuine issue as to any material fact and a moving party is entitled to a judgment as a matter of law. A summary judgment is proper if, while the pleadings on their face appear to raise issues, the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine.

In the present case, it bears to note that in its original Complaint, as well as in its Amended Complaint, respondent did not allege as to how petitioners' partial payments of P110,301.80 and P20,000.00 were applied to the latter's obligations. In fact, there is no allegation or admission whatsoever in the said Complaint and Amended Complaint that such partial payments were made. Petitioners, on the other hand, were consistent in raising their affirmative defense of partial payment in their Answer to the Complaint and Answer to Amended Complaint. Having pleaded a valid defense, petitioners, at this point, were deemed to have raised genuine issues of fact.

The situation became different, however, when respondent subsequently filed its Second Amended Complaint admitting therein that petitioners, indeed, made partial payments of P110,301.80 and P20,000.00. Nonetheless, respondent accounted for such payments by alleging that these were applied to petitioners' obligations which are separate and distinct from the sum of P259,809.50 being sought in the complaint. This allegation was not refuted by petitioners in their Answer to Second Amended Complaint. Rather, they simply insisted on their defense of partial payment while claiming lack of knowledge or information to form a belief as to the truth of respondent's allegation that they still owe the amount of P259,809.50 despite their payments of P110,301.80 and

P20,000.00. It is settled that the rule authorizing an answer to the effect that the defendant has no knowledge or information sufficient to form a belief as to the truth of an averment and giving such answer the effect of a denial, does not apply where the fact as to which want of knowledge is asserted, is so plainly and necessarily within the defendant's knowledge that his averment of ignorance must be palpably untrue. In the instant case, it is difficult to believe that petitioners do not know how their payment was applied. Instead of denying knowledge, petitioners could have easily asserted that their payments of P110,301.80 and P20,000.00 were applied to, and should have been deducted from, the sum sought to be recovered by respondent, but they did not, leading the court to no other conclusion than that these payments were indeed applied to their other debts to respondent leaving an outstanding obligation of P259,809.50.

On the basis of the foregoing, petitioners' defense of partial payment in their Answer to Second Amended Complaint, in effect, no longer raised genuine issues of fact that require presentation of evidence in a full-blown trial. Hence, the summary judgment of the RTC in favor of respondent is proper.

THE HEIRS OF NICOLAS S. CABIGAS, NAMELY: LOLITA ZABATE CABIGAS, ANECITA C. CANQUE, DIOSCORO CABIGAS, FIDEL CABIGAS, AND RUFINO CABIGAS, Petitioners, -versus- MELBA L. LIMBACO, LINDA L. LOGARTA, RAMON C. LOGARTA, HENRY D. SEE, FREDDIE S. GO, BENEDICT Y. QUE, AWG DEVELOPMENT CORPORATION, PETROSA DEVELOPMENT CORPORATION, AND UNIVERSITY OF CEBU BANILAD, INC., Respondents.

G.R. No. 175291, SECOND DIVISION, July 27, 2011, BRION, J.

Under the Rules, summary judgment is appropriate when there are no genuine issues of fact which call for the presentation of evidence in a full-blown trial. Even if on their face the pleadings appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the Rules must ensue as a matter of law. The determinative factor, therefore, in a motion for summary judgment, is the presence or absence of a genuine issue as to any material fact.

At the outset, we note from the respondents' pleadings that several respondents denied that the sale between anwhile, missed the information against all the accused, on in Court, claiming that cutors, who are his subordinates. Ouano and Cobarde ever occurred. It would, therefore, appear that a factual issue existed that required resolution through a formal trial, and the RTC erred in rendering summary judgment. However, a closer examination of the parties' submissions, however, makes it apparent that this is not a genuine issue of fact because, as will be discussed below, the petitioners do not have any legally enforceable right to the properties in question, as their predecessors-in-interest are not buyers in good faith.

#### **FACTS:**

On February 4, 2003, the petitioners filed a complaint for the annulment of titles of various parcels of land registered in the names of Melba Limbaco, Linda Logarta, Ramon Logarta, Eugenio Amores, New Ventures Realty Corporation, Henry See, Freddie Go, Benedict Que, AWG Development Corporation (*AWG*), Petrosa Development Corporation (*Petrosa*), and University of Cebu Banilad, Inc. (*UCB*) with the Regional Trial Court (*RTC*) of Cebu City, docketed as Civil Case No. 28585.

The complaint alleged that petitioner Lolita Cabigas and her late husband, Nicolas Cabigas, purchased two lots (Lot No. 742 and Lot No. 953) from Salvador Cobarde on January 15, 1980.

Cobarde in turn had purchased these lots from Ines Ouano on February 5, 1948.

Notwithstanding the sale between Ouano and Cobarde, and because the two lots remained registered in her name, **Ouano was able to sell these same lots to the National Airports Corporation on November 25, 1952** for its airport expansion project. The National Airports Corporation promptly had the titles of these properties registered in its name.

When the airport expansion project fell through, respondents Melba Limbaco, Ramon Logarta, and Linda Logarta, the legal heirs of Ouano, succeeded in reclaiming title to the two lots through an action for reconveyance filed with the lower court; the titles over these lots were thereafter registered in their names. They then subdivided the two lots and sold them to New Ventures Realty Corporation, Eugenio Amores, Henry See, Freddie Go, Benedict Que, Petrosa, and AWG. AWG, in turn, sold one of the parcels of land to UCB. All the buyers registered the titles over their respective lots in their names.

After the respondents had filed their individual Answers, respondents Henry See, Freddie Go and Benedict Que filed a motion to set the case for hearing on special affirmative defenses on July 8, 2004. On the other hand, respondents AWG, Petrosa, and UCB filed a motion for summary judgment on April 13, 2005, admitting as true the facts stated in the petitioners' complaint, but claiming that the petitioners had no legal right to the properties in question.

the RTC issued a resolution, granting the motion for summary judgment filed by AWG, Petrosa and UCB, and dismissing the petitioners' complaint. The RTC concluded that *that the National Airports* Corporation was a buyer in good faith, since Cobarde's rights to the properties had already been cut off with their registration in the name of the National Airports Corporation, he could not sell any legal interest in these properties to the Cabigas spouses.

CA ruled that the petitioners should have filed a petition for review on *certiorari* under Rule 45 of the Rules of Court with the Supreme Court instead of an ordinary appeal since they only raised a question of law, *i.e.*, the propriety of the summary judgment. Accordingly, insofar as the respondents who filed the motion for summary judgment.

#### **ISSUE:**

Whether summary judgment is proper. (YES)

#### **RULING:**

Under the Rules of Court, a summary judgment may be rendered where, on motion of a party and after hearing, 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." The Court explained the concept of summary judgment in *Asian Construction and Development Corporation v. Philippine Commercial International Bank*:

Summary or accelerated judgment is a procedural technique aimed at weeding out sham claims or defenses at an early stage of litigation thereby avoiding the expense and loss of time involved in a trial.

Under the Rules, summary judgment is appropriate when there are no genuine issues of fact which call for the presentation of evidence in a full-blown trial. Even if on their face the pleadings appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the Rules must ensue as a matter of law. The determinative factor, therefore, in a motion for summary judgment, is the presence or absence of a genuine issue as to any material fact.

The petitioners assert that the RTC erred in rendering a summary judgment since there were factual issues that required the presentation of evidence at a trial.

The Court disagrees with the petitioners.

At the outset, we note from the respondents' pleadings that several respondents denied that the sale between anwhile, missed the information against all the accused. on in Court, claiming that cutors, who are his subordinates. Ouano and Cobarde ever occurred. It would, therefore, appear that a factual issue existed that required resolution through a formal trial, and the RTC erred in rendering summary judgment.

A closer examination of the parties' submissions, however, makes it apparent that this is not a genuine issue of fact because, as will be discussed below, the petitioners do not have any legally enforceable right to the properties in question, as their predecessors-in-interest are not buyers in good faith.

First, the Cabigas spouses are not buyers in good faith. A fact known to the Cabigas spouses since they received the duplicate owner's certificate of title from Cobarde when they purchased the land. At the time of the sale to the Cabigas spouses, however, the land was registered not in Cobarde's name, but in Ouano's name.

While one who buys from the registered owner does not need to look behind the certificate of title, one who buys from one who is not the registered owner is expected to examine not only the certificate of title but all factual circumstances necessary for one to determine if there are any flaws in the title of the transferor, or in the capacity to transfer the land. (emphasis supplied)

Instead, the Cabigas spouses relied completely on Cobarde's representation that he owned the properties in question, and did not even bother to perform the most perfunctory of investigations by checking the properties' titles with the Registry of Deeds. Had the Cabigas spouses only done so, they would easily have learned that Cobarde had no legal right to the properties they were acquiring since the lots had already been registered in the name of the National Airports Corporation in 1952. Their failure to exercise the plain common sense expected of real estate buyers bound them to the consequences of their own inaction.

In addition, there's no allegation that the National Airports Corporation registered the lots in bad faith .

ESTATE OF FERDINAND E. MARCOS, *Petitioner*, -versus- REPUBLIC OF THE PHILIPPINES, *Respondent.*;

IMELDA ROMUALDEZ MARCOS AND IRENE MARCOS ARANETA, Petitioners, -versus-REPUBLIC OF THE PHILIPPINES, Respondent.

#### G.R. No. 213027, FIRST DIVISION, January 18, 2017, SERENO, C.J.

The Court has held that a request for admission can be the basis for the grant of summary judgment. The request can be the basis therefor when its subject is deemed to have been admitted by the party and is requested as a result of that party's failure to respond to the court's directive to state what specifically happened in the case. The resort to such a request as a mode of discovery rendered all the matters contained therein as matters that have been deemed admitted pursuant to Rule 26, Section 2 of the 1997 Rules of Civil Procedure.

On the basis of respondent Imelda Marcos's letter dated 25 May 2009; respondents' Answer to the 1991 Petition, which was considered to be a "negative pregnant" in Republic v. Sandiganbayan; and respondents' failure to timely respond to petitioner's Request for Admission, the Sandiganbayan thus correctly granted the Motion for Summary Judgment of the Republic.

A careful scrutiny of the three bases used by the Sandiganbayan in justifying the absence of a genuine issue and eventually granting the Motion for Pmtial Summary Judgment leads us to no other course of action but to affirm the ruling of the Sandiganbayan. The prima facie presumption on unlawfully acquired property indeed finds application on the first basis. Section 2 of R.A. 1379 provides that "whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of propmtion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed prima facie to have been unlawfully acquired." And in this regard, the Sandiganbayan had taken judicial notice of the legitimate income of the Marcoses during their incumbency as public officers for the period 1966-1986 which was pegged at USD 304,372.43.

#### **FACTS:**

The present consolidated petitions emanated from the same Civil Case No. 0141, when the Republic filed a Motion for Partial Summary Judgmentdated 24 June 2009 with respect to another property listed in the 1991 Petition. By way of that motion, the Republic asked the Sandiganbayan to render judgment declaring the pieces of jewelry, known as the Malacañang Collection and specifically mentioned under paragraph 9 (6) of the 1991 Petition, as ill-gotten; and to subsequently cause this collection of jewelry to be declared forfeited in favor of the Republic.

Based on the 1991 valuation of auction house Christie, Manson and Woods International, Inc., the Roumeliotes, Malacañang and Hawaii collections were worth between US\$5,313.575 (low estimate) to US\$7,112,879 (high estimate), at the time of the filing of the petition. (ANNEX "D") The value of the Malacañang collection by itself was US\$110,055 (low estimate) to US\$153,089 (high estimate). In support of the motion, the Republic cited the letter dated 25 May 2009 sent to the PCGG by Imelda Marcos, through counsel, demanding "the immediate return of all her pieces of jewelry (i) taken by PCGG from Malacañang Palace and (ii) those turned over to PCGG by the U.S. Government." The Republic argued that the letter proved the claim of the Marcoses that they owned the Malacañang Collection, including the Hawaii Collection. It further argued that in the 1991 Petition, they were deemed to have admitted the allegations regarding the pieces of jewelry. The Republic said that the words or stock phrases they used in their Answer dated 18 October 1993 had been declared by this Court in the Swiss deposits case as a "negative pregnant" and, as such, amounted to an admission if not squarely denied.

On 3 July 2009, the Republic also filed a Request for Admission addressed to the Estate of Ferdinand Marcos.

The Republic also submitted a Supplement to Motion for Partial Summary Judgmentdated 14 July 2009. It restated that the object of the motion covered only the Malacañang Collection, as the ownership of the two other collections had been settled by the Sandiganbayan in a Resolution dated 25 October 1996.

al Summary Judgment and the Supplement thereto and further reserved their right to present additional arguments or comments on the Motion and the Supplement.

Imelda Marcos and Irene Marcos Araneta subsequently filed a Manifestation and Motion to Expunge dated 25 July 2009. They specifically stated therein that they were adopting the same arguments raised in their Comment.

In their Manifestation and Motion to Expunge, Imelda Marcos and Irene Marcos Araneta claimed that the filing of the Request for Admission was tantamounto an abdication of the earlier position of the Republic that the case was ripe for summary judgment. They argued that the Request for Admission entertained a possibly genuine issue as to a material fact, which was needed for the grant of the motion for summary judgment. They further argued that the filing of the Request for Admission was rather late, considering that it was done after the Republic had filed its Motion for Summary Judgment in 2000 and after the case was concluded in 2004.

The Republic filed its Opposition dated 24 August 2009, in which it said that the Manifestation and Motion to Expunge of Imelda Marcos and Irene Marcos Araneta argued on trivial matters, raised puerile arguments, and failed to refute the contention that the collection was ill-gotten and subject to forfeiture. It further stated that the Request for Admission did not depart from the legal basis of the Motion for Partial Summary Judgment. Instead, the request merely sought to elicit details regarding the acquisition of the jewelry in order to expedite the resolution of the motion. The Republic therefore claimed that by operation of law, the failure of the Marcoses to respond resulted in their admission of the matters contained in the request.

Also, the Republic stated that the Request for Admission was not inconsistent with its Motion for Partial Summary Judgment, and that the filing of the request after the motion was not prohibited by the Rules of Court. It stressed that the Request for Admission was filed and served on 3 July 2009. It said that instead of making an admission or a denial as a timely response to the request within 15 days or until 18 July 2009, the Marcoses filed - and belatedly at that - a Manifestation and Motion to Expunge on 25 July 2009. Thus, the Republic insisted that all the matters that were the subject of the request be deemed admitted by the Marcoses.

The Sandiganbayan denied the Marcoses' Manifestation and Preliminary Comments and Manifestation and Motion to Expunge. It ruled that the Republic's Request for Admission was not inconsistent with the Motion for Summary.

After the submission of the parties of their respective memoranda,the Sandiganbayan issued a Partial Summary Judgment

#### **ISSUE:**

Whether the Sandiganbayan correctly ruled that the Motion for Partial Summary Judgment was not inconsistent with the Request for Admission. (YES)

#### **RULING:**

The Court has held that a request for admission can be the basis for the grant of summary judgment. The request can be the basis therefor when its subject is deemed to have been admitted by the party and is requested as a result of that party's failure to respond to the court's directive to state what specifically happened in the case. The resort to such a request as a mode of discovery rendered all the matters contained therein as matters that have been deemed admitted pursuant to Rule 26, Section 2 of the 1997 Rules of Civil Procedure.

On the basis of respondent Imelda Marcos's letter dated 25 May 2009; respondents' Answer to the 1991 Petition, which was considered to be a "negative pregnant" in *Republic v. Sandiganbayan*; and respondents' failure to timely respond to petitioner's Request for Admission, the Sandiganbayan thus correctly granted the Motion for Summary Judgment of the Republic.

A careful scrutiny of the three bases used by the Sandiganbayan in justifying the absence of a genuine issue and eventually granting the Motion for Pmtial Summary Judgment leads us to no other course of action but to affirm the ruling of the Sandiganbayan. The *prima facie* presumption on unlawfully acquired property indeed finds application on the first basis. Section 2 of R.A. 1379 provides that "whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of propmtion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired." And in this regard, the Sandiganbayan had taken judicial notice of the legitimate income of the Marcoses during their incumbency as public officers for the period 1966-1986 which was pegged at USD 304,372.43.

As in the Arelma case, the Marcoses are deemed to have admitted that the Malacañang Collection itemized in the annexes were found in the palace and subsequently proven to have been owned by Mrs. Marcos as she admitted in her letter dated 25 May 2009.

The Sandiganbayan ruled that "a request for admission may even complement a summary judgment in that the request for admission may be used as basis for filing a summary judgment" citing three cases as follows: Concrete Aggregates Corp. v. CA, Diman v. Alumbres, and Allied Agri-Business v. CA. The first case instructs that a request for admission "should set forth relevant evidentiary matters of fact, or documents described in and exhibited with the request, whose purpose is to establish said party's cause of action or defense."

The second case, on the other hand, teaches the nature of modes of discovery in this wise: Particularly as regards request for admission under Rule 26 of the Rules of Court, the law ordains that when a party is served with a written request that he admit: (1) the genuineness of any material and relevant document described in and exhibited with the request, or (2) the truth of any material and relevant matter of fact set forth in the request, said party is bound within the period designated in the request, to file and serve on the party requesting the admission a *sworn statement* either (10) denying specifically the matters of which an admission is requested or (2) setting forth in details the reasons why he cannot truthfully either admit or deny those matters. If the party served does not respond with such sworn statement, *each of the matters of which an admission is requested shall be deemed admitted*.

On the other hand, in the case of a summary judgment, issues apparently exist - i.e., facts are asserted in the complaint regarding which there is as yet no admission, disavowal or qualification; or specific denials or atllnnative defenses are in truth set out in the answer - but the issues thus arising from the pleadings are sham, fictitious, not genuine, as shown by admissions, depositions or admissions.

The third case demonstrates how failure to answer the request for admission within the period resulted in the admission of the matters stated therein. The Court, in that case, specifically ruled: The burden of affirmative action is on the party upon whom notice is served to avoid the admission rather than upon the party seeking the admission. Hence, when petitioner failed to reply to a request to admit, it may not argue that the adverse party has the burden of proving the facts sought to be admitted. Petitioners silence is an admission of the facts stated in the request.

Iloilo Jar Corporation, *Petitioner*, -versus- Comglasco Corporation/Aguila Glass, *Respondent* G.R. No. 219509, SECOND DIVISION, January 18, 2017, Mendoza, J.

Simply stated, what distinguishes a judgment on the pleadings from a summary judgment is the presence of issues in the Answer to the Complaint. 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. On the other hand, when the Answer specifically denies the material averments of the complaint or asserts affirmative defenses, or in other words raises an issue, a summary judgment is proper provided that the issue raised is not genuine.

In this case, the Court notes that while petitioners' Answer to respondents' Complaint practically admitted all the material allegations therein, it nevertheless asserts the affirmative defences that the action for revival of judgment is not the proper action and that petitioners are not the proper parties. As issues obviously arise from these affirmative defenses, a judgment on the pleadings is clearly improper in this case.

#### **FACTS:**

Petitioner Iloilo Jar Corporation (*Iloilo Jar*), as lessor, and respondent Comglasco Corporation/Aguila Glass (*Comglasco*), as lessee, entered into a lease contract over a portion of a warehouse building. On December 1, 2001, Comglasco requested for the pre-termination of the lease effective on the same date. Iloilo Jar, however, rejected the request on the ground that the pre-termination of the lease contract was not stipulated therein. Despite the denial of the request for pre-termination, Comglasco still removed all its stock, merchandise and equipment from the leased premises on January 15, 2002. From the time of the withdrawal of the equipment, and notwithstanding several demand letters, Comglasco no longer paid all rentals accruing from the said date.

On September 14, 2003, Iloilo Jar sent a final demand letter to Comglasco, but it was again ignored. Consequently, Iloilo Jar filed a civil action for breach of contract and damages before the RTC on

October 10, 2003. On June 28, 2004, Comglasco filed its Answer and raised an affirmative defense, arguing that by virtue of Article 1267 of the Civil Code (*Article 1267*),it was released from its obligation from the lease contract. It explained that the consideration thereof had become so difficult due to the global and regional economic crisis that had plagued the economy. Likewise, Comglasco admitted that it had removed its stocks and merchandise but it did not refuse to pay the rentals because the lease contract was already deemed terminated. Further, it averred that though it received the demand letters, it did not amount to a refusal to pay the rent because the lease contract had been pre-terminated in the first place.

On July 15, 2004, Iloilo Jar filed its Motion for Judgment on the Pleadings arguing that Comglasco admitted all the material allegations in the complaint. It insisted that Comglasco's answer failed to tender an issue because its affirmative defense was unavailing.

#### **ISSUE:**

Whether or not a judgment on the pleadings is appropriate and valid when the defense interposed by the defendant in the answer is not applicable as a defense to the cause of action as stated in the complaint. (NO)

#### **RULING:**

In *Basbas v. Sayson*, the Court differentiated judgment on the pleadings from summary judgment in that the former is appropriate if the answer failed to tender an issue and the latter may be resorted to if there are no genuine issues raised, to wit:

Simply stated, what distinguishes a judgment on the pleadings from a summary judgment is the presence of issues in the Answer to the Complaint. 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. On the other hand, when the Answer specifically denies the material averments of the complaint or asserts affirmative defenses, or in other words raises an issue, a summary judgment is proper provided that the issue raised is not genuine. "A 'genuine issue' means an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is fictitious or contrived or which does not constitute a genuine issue for trial."

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In this case, we note that while petitioners' Answer to respondents' Complaint practically admitted all the material allegations therein, it nevertheless asserts the affirmative defences that the action for revival of judgment is not the proper action and that petitioners are not the proper parties. As issues obviously arise from these affirmative defenses, a judgment on the pleadings is clearly improper in this case.

In the case at bench, Comglasco interposed an affirmative defense in its answer. While it admitted that it had removed its stocks from the leased premises and had received the demand letter for

rental payments, it argued that the lease contract had been pre-terminated because the consideration thereof had become so difficult to comply in light of the economic crisis then existing. Thus, judgment on the pleadings was improper considering that Comglasco's Answer raised an affirmative defense.

Although resort to judgment on the pleadings might have been improper, there was still no need to remand the case to the RTC for further proceedings. In *Wood Technology Corporation v. Equitable Banking Corporation (Wood Technology)*, the Court ruled that summary judgment may be availed if no genuine issue for trial is raised, viz:

Summary judgment is a procedure aimed at weeding out sham claims or defenses at an early stage of the litigation. The proper inquiry in this regard would be whether the affirmative defenses offered by petitioners constitute genuine issues of fact requiring a full-blown trial. In a summary judgment, the crucial question is: are the issues raised by petitioners not genuine so as to justify a summary judgment? A "genuine issue" means an issue of fact which calls for the presentation of evidence, as distinguished from an issue which is fictitious or contrived, an issue that does not constitute a genuine issue for trial.

It bears noting that in *Wood Technology*, the RTC originally rendered a judgment on the pleadings but was corrected by the Court to be a summary judgment because of the issue presented by the affirmative defense raised therein. In the said case, the Court, nonetheless, ruled in favor of the complainant therein because there was no genuine issue raised.

Similar to *Wood Technology*, the judgment rendered by the RTC in this case was a summary judgment, not a judgment on the pleadings, because Comglasco's answer raised an affirmative defense. Nevertheless, no genuine issue was raised because there is no issue of fact which needs presentation of evidence, and the affirmative defense Comglasco invoked is inapplicable in the case at bench.

A full blown trial would needlessly prolong the proceedings where a summary judgment would suffice. It is undisputed that Comglasco removed its merchandise from the leased premises and stopped paying rentals thereafter. Thus, there remains no question of fact which must be resolved in trial. What is to be resolved is whether Comglasco was justified in treating the lease contract terminated due to the economic circumstances then prevalent.

DARE ADVENTURE FARM CORPORATION, Petitioner, -versus- HON. COURT OF APPEALS, MANILA, HON. AUGUSTINE VESTIL, AS PRESIDING JUDGE OF RTC-CEBU, BR. 56, MANDAUE CITY, SPS. FELIX NG AND NENITA NG, AND SPS. MARTIN T. NG AND AZUCENA S. NG AND AGRIPINA R. GOC-ONG, Respondents.

G.R. No. 161122, FIRST DIVISION, September 24, 2012, BERSAMIN, J.

A decision rendered on a complaint in a civil action or proceeding does not bind or prejudice a person not impleaded therein, for no person shall be adversely affected by the outcome of a civil action or proceeding in which he is not a party. Hence, such person cannot bring an action for the annulment of the judgment under Rule 47 of the 1997 Rules of Civil Procedure, except if he has been a successor in interest by title subsequent to the commencement of the action, or the action or proceeding is in rem the judgment in which is binding against him.

In this case, the petitioner probably brought the action for annulment upon its honest belief that the action was its remaining recourse from a perceived commission of extrinsic fraud against it. It is worthwhile for the petitioner to ponder, however, that permitting it despite its being a non-party in Civil Case No. MAN-2838 to avail itself of the remedy of annulment of judgment would not help it in any substantial way. Although Rule 47 would initially grant relief to it from the effects of the annulled judgment, the decision of the CA would not really and finally determine the rights of the petitioner in the property as against the competing rights of the original parties. To be borne in mind is that the annulment of judgment is an equitable relief not because a party-litigant thereby gains another opportunity to reopen the already-final judgment but because a party-litigant is enabled to be discharged from the burden of being bound by a judgment that was an absolute nullity to begin with.

#### **FACTS:**

The petitioner acquired a parcel of land through a deed of absolute sale executed on July 28, 1994 between the petitioner, as vendee, and Agripina R. Goc-ong (a respondent herein), Porferio Goc-ong, Diosdado Goc-ong, Crisostomo Goc-ong, Tranquilino Goc-ong, Naciancena Goc-ong and Avelino Goc-ong (collectively, the Goc-ongs), as vendors.

The petitioner later on discovered the joint affidavit executed on June 19, 1990 by the Goc-ongs, whereby the Goc-ongs declared that they were the owners of the property, and that they were mortgaging the property to the Ngs to secure their obligation amounting to P648,000.00, subject to the condition that should they not pay the stipulated 36-monthly installments, the Ngs would automatically become the owners of the property.

With the Goc-ongs apparently failing to pay their obligation to the Ngs as stipulated, the latter brought on January 16, 1997 a complaint for the recovery of a sum of money, or, in the alternative, for the foreclosure of mortgage in the Regional Trial Court, Branch 56, in Mandaue City (RTC) only against respondent Agripina R. Goc-ong. The action was docketed as Civil Case No. MAN-2838.

With Agripina R. Goc-ong being declared in default for failing to file her answer in Civil Case No. MAN-2838, the RTC declared the respondents as the owners.

In 2001, the petitioner commenced in the CA an action for the annulment of the decision of the RTC, however the CA dismissed the petition for annulment of judgment.

#### **ISSUE:**

Whether the action for annulment of judgment under Rule 47 was a proper recourse for the petitioner to set aside the decision rendered in Civil Case No. MAN-2838. (NO)

#### **RULING:**

A decision rendered on a complaint in a civil action or proceeding does not bind or prejudice a person not impleaded therein, for no person shall be adversely affected by the outcome of a civil action or proceeding in which he is not a party. Hence, such person cannot bring an action for the annulment of the judgment under Rule 47 of the 1997 *Rules of Civil Procedure*, except if he has been a successor in interest by title subsequent to the commencement of the action, or the action or proceeding is *in rem* the judgment in which is binding against him.

A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions The Court has thus instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the *Rules of Court* that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. A petition for annulment that ignores or disregards any of the safeguards cannot prosper.

It is elementary that a judgment of a court is conclusive and binding only upon the parties and those who are their successors in interest by title after the commencement of the action in court. Moreover, Section 1 of Rule 47 extends the remedy of annulment only to a party in whose favor the remedies of new trial, reconsideration, appeal, and petition for relief from judgment are no longer available through no fault of said party. As such, the petitioner, being a non-party in Civil Case No. MAN-2838, could not bring the action for annulment of judgment due to unavailability to it of the remedies of new trial, reconsideration, appeal, or setting the judgment aside through a petition for relief.

In this case, the petitioner probably brought the action for annulment upon its honest belief that the action was its remaining recourse from a perceived commission of extrinsic fraud against it. It is worthwhile for the petitioner to ponder, however, that permitting it despite its being a non-party in Civil Case No. MAN-2838 to avail itself of the remedy of annulment of judgment would not help it in any substantial way. Although Rule 47 would initially grant relief to it from the effects of the annulled judgment, the decision of the CA would not really and finally determine the rights of the petitioner in the property as against the competing rights of the original parties. To be borne in mind is that the annulment of judgment is an equitable relief not because a party-litigant thereby gains another opportunity to reopen the already-final judgment but because a party-litigant is enabled to be discharged from the burden of being bound by a judgment that was an absolute nullity to begin with.

The Court agrees with the CA's suggestion that the petitioner's proper recourse was either an action for quieting of title or an action for reconveyance of the property. It is timely for the Court to remind that the petitioner will be better off if it should go to the courts to obtain relief through the proper recourse; otherwise, it would waste its own time and effort, aside from thereby unduly burdening the dockets of the courts.

Mercury Drug Corporation and Rolando J. Del Rosario, *Petitioners*, -versus-Spouses Richard Y. Huang & Carmen G. Huang, and Stephen G. Huang, *Respondents*. G.R. No. 197654, THIRD DIVISION, August 30, 2017, Leonen, J.

A judgment that lapses into finality becomes immutable and unalterable. This doctrine admits the following exceptions:

- The correction of a clerical error is an exception to the general rule that no amendment or correction may be made by the court in its judgment once the latter had become final.
- The doctrine of immutability of judgment is premised upon the existence of a final and

- executory judgment. It is, therefore, inapplicable where the judgment never attains finality, as in the case of void judgments.
- The happening of a supervening event is likewise a ground to set aside or amend a final and executory judgment.

In this case, the petitioner asserts that the case falls in the first exception. This Court notes that the amendments sought by petitioners affect the very substance of the controversy. While it appears on the surface of the Petition that they merely seek the clarification of the judgment, a careful review of petitioners' assertions and arguments reveal their true intention of appealing the merits of the case. This cannot be done without violating the doctrine on immutability of judgments. A correction pertaining to the substance of the controversy is not a clerical error.

#### **FACTS:**

Stephen Huang (Stephen) and his parents, Spouses Richard Y. Huang and Carmen G. Huang, filed a complaint for damages based on quasi-delict against Mercury Drug Corporation. Mercury Drug was the registered owner of a six (6)-wheeler truck driven by Del Rosario, which figured in an accident with Stephen's car on the night of December 20, 1996. As a result of the tragic incident, Stephen suffered serious spinal cord injuries. He is now a paraplegic.RTC held Mercury Drug as liable, and the CA affirmed the same.

As a result of garnishment proceedings, Citibank N.A. issued in favor of Richard Y. Huang a Manager's Check in the amount of P40,434,062.00.28 Afterwards, Stephen and his parents filed a Satisfaction of Judgment before the Regional Trial Court.

Petitioners assert that the dispositive portion of the September 29, 2004 Decision and the corresponding Writ of Execution varied the tenor of the judgment. They point out, in particular, that the amounts of life care cost and loss of earning capacity reflected in the dispositive portion and the writ of execution do not correspond to those stated in the body of the decision.

According to petitioners, respondent Stephen is only entitled to a life care cost of P7,102,640.00 instead of P23,461,062.00 based on his average monthly expenses and his life expectancy. Petitioners also point out that the award of P10,000,000.00 as loss of earning capacity is patently excessive. Based on respondent Stephen's life expectancy, projected monthly salary, and the time within which he could have obtained gainful employment, the award of loss of earning capacity should only be P5,040,000.00. Petitioners claim that there were clerical errors in the computation of life care cost and loss of earning capacity. However, at the same time, they contend that the two (2) monetary awards were not "supported in the body of the decision or in the records of the case."

Assuming that there were no clerical errors, petitioners assert that respondents cannot immediately collect the two (2) monetary awards in full. The amounts of life care cost and loss of earning capacity should be paid in installments or "amortized over the probable lifetime of Stephen." Petitioners, citing *Advincula v. Advincula* and *Canonizado v. Benitez*, argue that life care cost is similar to judicial support. Hence, it should be paid monthly. Loss of earning capacity should likewise be amortized since it is akin to a monthly income.

On the other hand, respondents assert that petitioners are prohibited from questioning the

propriety of the monetary awards under the doctrine of immutability of final judgments. There are no clerical errors in the computation of the two (2) monetary awards. Respondents contend that the reduction of these amounts would amount to a substantial amendment of a final and executory judgment.

#### **ISSUE:**

Whether or not the case falls under any of the exceptions to the doctrine of immutability of judgments. (NO)

#### **RULING:**

A judgment that lapses into finality becomes immutable and unalterable. It can neither be modified nor disturbed by courts in any manner even if the purpose of the modification is to correct perceived errors of fact or law. Parties cannot circumvent this principle by assailing the execution of the judgment. What cannot be done directly cannot be done indirectly. This doctrine admits the following exceptions:

- The correction of a clerical error is an exception to the general rule that no amendment or correction may be made by the court in its judgment once the latter had become final.
- The doctrine of immutability of judgment is premised upon the existence of a final and executory judgment. It is, therefore, inapplicable where the judgment never attains finality, as in the case of void judgments.
- The happening of a supervening event is likewise a ground to set aside or amend a final and executory judgment.

In this case, the petitioner asserts that the case falls in the first exception. This Court notes that the amendments sought by petitioners affect the very substance of the controversy. While it appears on the surface of the Petition that they merely seek the clarification of the judgment, a careful review of petitioners' assertions and arguments reveal their true intention of appealing the merits of the case. This cannot be done without violating the doctrine on immutability of judgments. A correction pertaining to the substance of the controversy is not a clerical error.

There are no clerical errors or ambiguities regarding the computation of life care cost and loss of earning capacity awarded to respondent Stephen. The amounts indicated in the dispositive portion of the judgment faithfully correspond to the findings of fact and conclusions of the trial court.

The trial court deemed it adequate and proper to award P23,461,062.00 as life care cost and P10,000,000.00 as loss of earning capacity based on the evidence presented during trial. In awarding life care cost, the trial court did not limit itself to respondent Stephen's actual expenses in 1997 and 1998 and his projected life expectancy. The trial court also considered the testimonies of respondent Stephen's doctors regarding his future medical expenses. On the award of loss of earning capacity, the trial court did not likewise limit itself to respondent Stephen's projected initial monthly salary and life expectancy. It considered other equally important factors such as

respondent Stephen's capacity prior to the injury, fhysical conditions, disposition to labor, and his professional habits.

## ROBERTO A. TORRES, IMMACULADA TORRES-ALANON, AGUSTIN TORRES, AND JUSTO TORRES, JR., Petitioners, -versus- ANTONIA F. ARUEGO, Respondent.

G.R. No. 201271; FIRST DIVISION, September 20, 2017, Del Castillo, J.

The doctrine on the immutability of judgments is subject to exceptions such as: [i] the correction of clerical errors; [ii] the making of nunc pro tunc entries when there is no prejudice to any party; [iii] when the judgment is void.

In this case, petitioners now assert that the terms in the 1992 decision were not clear or conclusive as to the properties comprising the estate, and therefore the decision still had room for interpretation, hence the judgment may still be appealed despite its finality. However, the question as to what properties are deemed included in the estate of Jose Aruego had been finally settled by the RTC in 1992. As seen from the records, the petitioners never opposed the offer of evidence of the respondent, which contained certificates of title to the properties of the estate of Aruego. If the petitioners believed such was questionable, they should have filed a MR or appeal before the decision became executory contesting such.

#### **FACTS:**

In 1983, the respondent filed a complaint for compulsory recognition and enforcement of successional rights against the estate of the late Jose Aruego and the petitioners, the nieces and nephews of the deceased. Respondent alleged they were the illegitimate children of Jose Aruego and were in continuous possession of the status of children, hence the action for compulsory acknowledgement and participation in the inheritance. The respondent enumerated parcels of land that were part of her father's estate. The petitioners denied the allegations and disputed respondent's claim. In June 1992, the RTC found the respondent to be an illegitimate child and granted her shares in the inheritance.

The petitioners filed a Motion for Partial Reconsideration, which was denied in 1983. In 1993, the petitioners filed a notice of appeal, which was denied by the RTC for being filed out of time. The petitioners then filed a Petition for Prohibition and *Certiorari* with prayer for writ of preliminary injunction before the CA. In 1993, the CA dismissed this petition for lack of merit, and further denied the MR of the petitioners.

The petitioners then appealed the CA decision to the SC through Petition for Review on *Certiorari*. In 1996, the SC denied the petition and affirmed the CA decision. The RTC then issued a writ of execution for its 1992 decision. The respondents then filed a Motion for Partition and motion to implement the decision, which were both granted by the RTC.

The second case arose in 1998, when the petitioners filed a verified complaint seeking to nullify the Deed of Absolute Sale over the 2 parcels of land in the estate. The respondents again filed a Motion for Partition, and the RTC held that the complaint for nullification of the Deed of Absolute Sale filed by the petitioners constituted a prejudicial question to the issue involved in the motion for partition.

After the respondents' MR was denied, they filed a petition for *certiorari* before the CA, which granted the petition as there was no prejudicial question between the two cases. The Motion for Partition was thereafter granted. The MR of the petitioners was denied, and they thereafter filed a petition for *certiorari* before the CA. The CA dismissed the petition and also denied their MR. Hence, this petition for review on *certiorari* under Rule 45.

#### ISSUE:

Whetherthe decision of decision of the court which attained finality over 20 years ago may still be the subject of review.(NO)

#### **RULING:**

The first resolution assailed by the petitioners is the dismissal of their petition for *certiorari*, with the CA holding that it cannot issued a writ of certiorari to allow parties to present evidence in a case that has long attained finality. While the doctrine on the immutability of judgments is subject to exceptions such as: [i] the correction of clerical errors; [ii] the making of *nunc pro tunc* entries when there is no prejudice to any party; [iii] when the judgment is void; such are not present in this case. In the CA's denial of the petitioner's MR in 2012, it held that there was no ground to modify the 1992 RTC decision.

Petitioners now assert that the terms in the 1992 decision were not clear or conclusive as to the properties comprising the estate, and therefore the decision still had room for interpretation, hence the judgment may still be appealed despite its finality.

The question as to what properties are deemed included in the estate of Jose Aruego had been finally settled by the RTC in 1992. As seen from the records, the petitioners never opposed the offer of evidence of the respondent, which contained certificates of title to the properties of the estate of Aruego. The petitioners also did not raise this issue in their Motion for Partial Reconsideration of the 1992 RTC decision. They also failed to appeal this decision. Also, from the records it can be seen that the petitioners actively participated in the trial and formally offered their own evidence, which did not contain anything contesting the respondent's evidence.

Moreover, petitioners allege that the dispositive portion of the RTC decision enumerating the properties part of the estate has no discussion thereof in the decision. As held in jurisprudence, the dispositive portion of the decision is controlling for purposes of execution. If the petitioners believed such was questionable, they should have filed a MR or appeal before the decision became executory contesting such. However, as seen in the records, the petitioners filed a Motion for Partial Reconsideration and did not raise this contention therein.

Beverly Anne C. Yap, *Petitioner*, -versus- Republic of the Philippines, represented by the Regional Executive Director, Department of Environment and Natural Resources (DENR), *Respondent*.

G.R. No. 199810 March 15, 2017 REYES, J.

The doctrine of conclusiveness of judgment, as a concept of res judicata, states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of

competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority.

In this case, RTC Branch 16 falsely appreciated the decision of RTC Branch 13. The foregoing shows that the question of whether or not Yap and Villamar are innocent purchasers was not an actual issue of fact in the case before the RTC Branch 13, and which called for said court's adjudication. "An issue of fact is a point supported by one party's evidence and controverted by another's." Yap and Villamor being buyers in good faith was merely an allegation which was not proven in court and RTC Branch 13 did not actually make any clear pronouncement on the matter.

#### **FACTS:**

Consuelo *Vda. de* dela Cruz applied for free patent over a parcel of land located in Daliao, Toril, Davao City. As she could not wait for the approval of her application, she executed a Deed of Waiver/Quitclaim on November 25, 1981 in favor of Rollie Pagarigan (Pagarigan). Pagarigan filed his own Free Patent Application (FPA) and subsequently, Free Patent No. (XI-1)5133 was issued to him over said lot. Original Certificate of Title (OCT) No. P-11182 was thereby issued in his name on November 25, 1982. On September 5, 1989, Pagarigan mortgaged the lot to Banco Davao-Davao City Development Bank (the Bank). For failure to pay his loan, the property was foreclosed, and was eventually sold to the Bank at public auction on October 26, 1990. These proceedings were duly annotated in the title. However, the land covered by OCT No. P-11182 was allegedly occupied by Teodoro Valparaiso and Pedro Malalis (Protestants). On October 24, 1990, the Protestants filed a formal protest with the Bureau of Lands (Bureau), praying for the recall of the free patent issued to Pagarigan, and for the institution of a corresponding action for reversion considering that they have been in adverse, exclusive, and continuous occupation of the subject property since 1945, cultivating it, and planting various crops, *nipa* palms and coconut trees on said land.

On January 27, 1992, the Protestants caused the annotation of a notice of *lis pendens* in the title. Said notice of *lis pendens* pertained to the Civil Case instituted by the Protestants against Pagarigan, Menardo Metran and Rene Galope to enjoin them from demolishing the former's houses pending the determination of the Department of Environment and Natural Resources (DENR) on the propriety of cancelling the title obtained by Pagarigan. The administrative protest reached the Office of the Secretary of the DENR, which rendered a Decision against Pagarigan, since the protestants have been in actual occupation of the land in dispute since 1945 and have introduced improvements thereon. Pagarigan never occupied the same nor his predecessor-in-interest, Consuelo dela Cruz. He, likewise, misrepresented in his application that he was the actual occupant and that there were no others who occupied the lot in dispute. The title was issued sans an actual ground survey and Pagarigan did not post a copy of his Notice for FPA on both the Bulletin Boards of Daliao and Lizardo as required by law.

Meanwhile, on November 5, 1992, the Bank sold the subject property to Beverly Anne C. Yap (Yap) and Rosanna F. Villamor (Villamor). Upon the execution of the deed of sale, the OCT was delivered to them and TCT was eventually issued in the name of Yap and Villamor. DOTC filed a complaint for expropriation of a portion of the subject lot before the RTC of Davao City. On February 19, 2003, the RTC Branch 13 rendered its Decision, ruling that the DENR is entitled to expropriate the land subject of this case for the purpose of road right of way to the Davao Fish Port, which is for public use. The just compensation for the land is ₱278,000.00, and Villamor and Yap are the ones entitled

to the payment of just compensation for the property, and DOTC is directed to pay the said amount to Villamor and Yap. The DENR, through the Office of the Solicitor General (OSG), filed the Complaint for Cancellation of Patent, Nullification of Title and Reversion with the RTC of Davao City. The RTC dismissed the DENR's complaint since the subject land has already been sold to third persons, it must be shown that the latter were part of the fraud and/or misrepresentation committed by the original grantee, or at least were aware of it. However, since the RTC Branch 13 already declared in its decision that Yap and Villamor were purchasers in good faith and for value of the land in question, RTC Branch 16 maintained that, as a court of co-equal jurisdiction, it is bound by the said finding under the principle of conclusiveness of judgment. Moreover, the fact that it took the respondent 26 years, from the issuance of the free patent before it instituted an action for reversion, militates against its cause. The Regional Director of DENR elevated its case to the CA which reversed the trial court. In so ruling, the CA held that neither the Bank nor Yap and Villamor were innocent purchasers for value. Further, the CA maintained that the decision of the RTC Branch 13 did not constitute res judicata insofar as the same has not yet attained finality. The Bank, Yap, and Villamor sought reconsideration of the CA decision, but their motion was evenly denied in the Resolution dated November 14, 2011.

#### **ISSUE:**

Whether the decision of the CA run counter to the rule on conclusiveness of judgment. (NO)

#### **RULING:**

The doctrine of conclusiveness of judgment, as a concept of *res judicata*, states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issue.

RTC Branch 16 falsely appreciated the decision of RTC Branch 13. The foregoing shows that the question of whether or not Yap and Villamar are innocent purchasers was not an actual issue of fact in the case before the RTC Branch 13, and which called for said court's adjudication. "An issue of fact is a point supported by one party's evidence and controverted by another's." Yap and Villamor being buyers in good faith was merely an allegation which was not proven in court and RTC Branch 13 did not actually make any clear pronouncement on the matter. The expropriation proceeding was filed on February 28, 1997. The protestants caused the annotation of a notice of *lis pendens* on the original title on January 27, 1992. Accordingly, if indeed the question on whether Yap and Villamar are buyers in good faith was an actual issue of fact before the expropriation proceeding, the protestants could have easily controverted such claim by the mere expedience of presenting a certified original copy of the title. Indeed, the notice at the back of a Torrens title serves as notice to the whole world of the pending controversy over the land so registered.

The RTC Branch 13 basically anchored its judgment on the indefeasibility of a Torrens title. Pursuant to the well-settled rule that a certificate of title cannot be subject to collateral attack and can only be altered, modified, or cancelled in a direct proceeding in accordance with law, it was clear that the trial court was without jurisdiction in an expropriation proceeding, to rule whether the title issued to Pagarigan is void - notwithstanding the decision of the DENR Secretary.

## DEVELOPMENT BANK OF THE PHILIPPINES, Petitioner, -versus- GUARIÑA AGRICULTURAL AND REALTY DEVELOPMENT CORPORATION, Respondent.

G.R. NO. 160758, JANUARY 15, 2014 J. BERSAMIN

The doctrine of law of the case simply means, therefore, that when an appellate court has once declared the law in a case, its declaration continues to be the law of that case even on a subsequent appeal, notwithstanding that the rule thus laid down may have been reversed in other cases. But the law of the case, as the name implies, concerns only legal questions or issues thereby adjudicated in the former appeal.

In this case, the ex parte proceeding on DBP's application for the issuance of the writ of possession was entirely independent from the judicial demand for specific performance herein. In fact, C.A.-G.R. No. 12670-SP, being the interlocutory appeal concerning the issuance of the writ of possession while the main case was pending, was not at all intertwined with any legal issue properly raised and litigated in C.A.-G.R. CV No. 59491, which was the appeal to determine whether or not DBP's foreclosure was valid and effectual. And, secondly, the ruling in C.A.-G.R. No. 12670-SP did not settle any question of law involved herein because this case for specific performance was not a continuation of C.A.-G.R. No. 12670-SP (which was limited to the propriety of the issuance of the writ of possession in favor of DBP), and vice versa.

#### **FACTS:**

Respondent applied for a loan from DBP to finance the development of its resort complex, to which respondent executed a promissory note, real estate mortgage, and chattel mortgage as security for the repayment of the loan. Also, prior to the release of the loan, DBP required respondents to put up a cash equity for the construction of the buildings and other improvements on the resort complex. Thereafter, the loan was released in several instalments from which DBP withheld the interest. Respondent demanded the release of the balance of the loan, but DBP refused and directly paid some suppliers of respondent over its objection. Upon inspection, DBP found that the construction of the resort project had not been completed, prompting DBP to demand from respondent the completion thereof and warned respondent of foreclosing the property if the project could not be completed. Nonetheless, respondent objected, causing DBP to initiate an extra-judicial foreclosure over the property. Notice of foreclosure sale was sent to respondent, which was soon published, leading to the clients of respondent to think that its business operation had slowed down, and that its resort had closed.

Respondent sued DBP in the RTC to demand specific performance and to stop the foreclosure of the mortgages, to which DBP moved for dismissal stating that the mortgaged properties had been sold at a public auction to satisfy respondent's obligation. As such, respondent amended the complaint to seek nullification of the foreclosure proceedings and cancellation of the certificate of sale, and thereafter trial ensued. Meantime, DBP applied for the issuance of a writ of possession by the RTC,

which the RTC initially denied but later granted upon reconsideration. Feeling aggrieved, respondent assailed the decision via certiorari before the CA, which CA dismissed causing DBP to seek the issuance of writ of possession.

The RTC nullified the extra-judicial sales of the mortgaged properties, which the CA sustained. Motion for reconsideration was denied, hence this petition.

#### **ISSUE:**

Whether the law of the case doctrine is applicable. (NO)

#### **Ruling:**

Law of the case has been defined as the opinion delivered on a former appeal, and means, more specifically, that whatever is once irrevocably established as the controlling legal rule of decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court.

The concept of law of the case is well explained in Mangold v. Bacon, an American case, thusly:

The general rule, nakedly and boldly put, is that legal conclusions announced on a first appeal, whether on the general law or the law as applied to the concrete facts, not only prescribe the duty and limit the power of the trial court to strict obedience and conformity thereto, but they become and remain the law of the case in all other steps below or above on subsequent appeal. The rule is grounded on convenience, experience, and reason. Without the rule there would be no end to criticism, re- agitation, re-examination, and reformulation. In short, there would be endless litigation. It would be intolerable if parties litigants were allowed to speculate on changes in the personnel of a court, or on the chance of our rewriting propositions once gravely ruled on solemn argument and handed down as the law of a given case. An itch to reopen questions foreclosed on a first appeal would result in the foolishness of the inquisitive youth who pulled up his corn to see how it grew. Courts are allowed, if they so choose, to act like ordinary sensible persons. The administration of justice is a practical affair. The rule is a practical and a good one of frequent and beneficial use.

The doctrine of law of the case simply means, therefore, that when an appellate court has once declared the law in a case, its declaration continues to be the law of that case even on a subsequent appeal, notwithstanding that the rule thus laid down may have been reversed in other cases. For practical considerations, indeed, once the appellate court has issued a pronouncement on a point that was presented to it with full opportunity to be heard having been accorded to the parties, the pronouncement should be regarded as the law of the case and should not be reopened on remand of the case to determine other issues of the case, like damages. But the law of the case, as the name implies, concerns only legal questions or issues thereby adjudicated in the former appeal.

The foregoing understanding of the concept of the law of the case exposes DBP's insistence to be unwarranted.

To start with, the ex parte proceeding on DBP's application for the issuance of the writ of possession was entirely independent from the judicial demand for specific performance herein. In

fact, C.A.-G.R. No. 12670-SP, being the interlocutory appeal concerning the issuance of the writ of possession while the main case was pending, was not at all intertwined with any legal issue properly raised and litigated in C.A.-G.R. CV No. 59491, which was the appeal to determine whether or not DBP's foreclosure was valid and effectual. And, secondly, the ruling in C.A.-G.R. No. 12670-SP did not settle any question of law involved herein because this case for specific performance was not a continuation of C.A.-G.R. No. 12670-SP (which was limited to the propriety of the issuance of the writ of possession in favor of DBP), and vice versa.

## ROBERTO A. TORRES, IMMACULADA TORRES-ALANON, AGUSTIN TORRES, AND JUSTO TORRES, JR. vs. ANTONIA F. ARUEGO

G.R. No. 201271, FIRST DIVISION, September 20, 2017, Del Castillo, J.

Jurisprudence holds that it is the dispositive portion of the decision that controls for purposes of execution. The proper remedy to contest a decision would have been to file a motion for reconsideration or appeal before the decision became final and executory.

#### **FACTS:**

Respondent and her sister Evelyn, represented by their mother, filed a Complaint for Compulsory Recognition and Enforcement of Successional Rights against Jose Aruego Jr. and the five minor children of Gloria Torres, represented by their father Justo M. Torres (petitioners in this case). The sisters alleged they are illegitimate children of Aruego with their mother Luz Fabian, anchored in continuous possession of the status of being Aruego's children and being unaware of any intestate proceeding having been filed in court for the settlement of Aruego's estate.

On June 15, 1992, the RTC ruled in favor of the sisters, prompting petitioners to file a Petition for Prohibition and Certiorari with Prayer for a Writ of Preliminary Injunction. The Petition and a subsequent Petition filed with the SC were denied. The CA executed a Writ of Execution to execute its June 15, 1992 decision. Respondent filed a Motion for Partition with the RTC alleging it's become final and executory in view of the CA's denial of their petition.

On December 12, 1998, petitioners filed a Complaint seeking to nullify the Deed of Sale dated May 14, 1998 and the corresponding titles issued in relation thereto executed by respondent in favor of Sharon Cuneta, covering ½ portion of the lot covered by TCT No. 30730. Respondent again filed anew a Motion for Partition praying for the implementation of the June 15, 1992. The Regional Trial Court deferred the resolution of the Motion for Partition on the ground the controversy involved in the case for nullification would constitute a prejudicial question to the issue involved in the Motion for Partition.

Respondent filed a petition for Certiorari in the CA, which decided there was no prejudicial question between the two cases involved. The decision became final and executory and respondent again filed her Motion for Partition. Petitioners opposed the motion, arguing the partition of the estate of Aruego could not take place by virtue of respondent's mere motion considering there was no conclusive adjudication of the ownership of the properties declared as constituting the estate of Aruego and that identities of his heirs had yet to be determined.

The RTC decided in favor of respondent. The CA dismissed the petitioners' Petition for Certiorari.

#### ISSUE:

Whether the June 15, 1992 decision, which attained finality 20 years ago, may still be subject to review and modification by the Court? **(NO)** 

#### **RULING:**

The insistence of petitioners on *Heirs of Francisco v. Munoz-Palma* is misplaced: in such case, on appeal was an order of execution, which although generally not appealable, was allowed because the Court found the Project of Partition submitted to implement the decision was not in accordance with the final decision in the case. An appeal from an order of execution would be allowed as an exception to the general rule so that the appellate tribunal might pass upon the legality and the correctness of the said order.

Such doctrine is inapplicable to this case, as petitioners seek an order to allow them to present evidence with regard to properties comprising the estate of Aruego and the heirs to share in the inheritance. This constitutes an appeal from the June 15, 1992 decision which has long become final and executory, and not from an order of execution which is yet to be carried out through a Project of Partition still to be submitted and approved by the Court.

Further, the June 15, 1992 Decision is already conclusive with respect to the properties comprising the estate of Aruego. It is the dispositive portion of the decision that controls for purposes of execution. If petitioners believed that the dispositive portion of the June 15, 1992 decision is questionable, they should have filed a motion for reconsideration or appeal before the decision became final and executory.

### ANGELITO L. CRISTOBAL vs. PHILIPPINE AIRLINES, INC. AND LUCIO TAN

G.R. No. 201622, THIRD DIVISION, October 4, 2017, Leonen, J.

Where a tribunal renders a decision substantially reversing itself on a matter, a motion for reconsideration seeking reconsideration of this reversal, for the first time, is not a prohibited second motion for reconsideration.

#### **FACTS:**

Cristobal became a pilot for respondent PAL on October 16, 1971.In May 1998, in line with a downsizing program of PAL, Cristobal applied for leave without pay from PAL. PAL approved the application and advised him that he would continue to accrue seniority during his leave and that he could opt to retire from PAL during this period. Cristobal advised PAL of his intent to retire.In response, PAL advised him that he was deemed to have lost his employment status on June 9, 1998. Thus, on May 12, 1999, Cristobal filed a complaint with the NLRC.

LA found Cristobal's dismissal illegal. On the matter of retirement benefits, the Labor Arbiter noted PAL's claim that Cristobal could only be entitled to a retirement pay of ₱5,000,00 per year, pursuant to the PAL-ALPAP Retirement Plan of 1967. However, he found that Cristobal's retirement benefits

should not be less than the amount provided under the law. Thus, the Labor Arbiter found him entitled to an amount computed pursuant to Article 287 of the Labor Code.

In a Decision dated September 30, 2010, NLRC affim1ed the LA Decision but reduced the award of moral and exemplary damages to ₱100,000 each. On Cristobal's retirement pay, it noted PAL's argument that any retirement benefits should be pursuant to the terms of the CBA and affirmed the LA's computation.

**Cristobal filed a Motion for Partial Reconsideration** arguing among others that since Respondents acted in bad faith the award of Php *500,000* each for Moral and Exemplary Damages should be reinstated, instead of the reduced amount of Php 100,000. PAL also filed an MR, claiming that it was error to find that Cristobal was illegally dismissed and to base his retirement benefits on Article 287 of the Labor Code.

NLRC resolved both motions in its Decision dated May 31, 2011, deleting the award of moral and exemplary damages and reducing the amount of Cristobal's retirement benefits. It agreed that Cristobal's retirement benefits should not be computed in accordance with Article 287 of the Labor Code as Cristobal. Cristobal was entitled to receive only ₱5,000 per year of service, under the 1967 PAL-ALPAP Retirement Plan.

On June 24, 2011, Cristobal filed his MR seeking reconsideration of the reduction of retirement benefits. He pointed out that the PAL Pilots Retirement Benefit Plan is different from the PAL ALPAP Retirement Plan, and that it is an investment plan.

NLRC Resolution dated August 24, 2011 denied Cristobal's MR, deeming it a second MR of its May 31, 2011 Decision.

Cristobal filed his Petition for *Certiorari* before the CA, which was dismissed. CA accepted the NLRC premise that petitioner's June 24, 2011 MR was a second MR. Thus, it did not toll petitioners period to file a petition for *certiorari* assailing the May 31, 2011 Decision. Consequently, the petition for *certiorari* was filed out of time.

Petitioner points out that his November 12, 2010 Partial MR only assailed the NLRC May 31, 2011 Decision, which reduced the award of moral and exemplary damages. On the other hand, his June 24, 2011 MR assailed the reduction of his retirement benefits.

#### **ISSUE:**

Whether or not the June 24, 2011 MR filed by petitioner assailing the NLRC May 31, 2011 Decision was a prohibited second MR? **(NO)** 

#### **RULING:**

**Petition is granted**. Rule VII, Section 15 of the NLRC Rules of Procedure prohibits a party from questioning a decision, resolution, or order, twice. In other words, this rule prohibits the same party from assailing the same judgment. However, a decision substantially reversing a determination in a prior decision is a discrete decision from the earlier one.

In Solidbank Corp. v. Court of Appeals, this Court held: **The Amended Decision is an entirely new** decision which supersedes the original decision, for which a new motion for reconsideration may be filed again.

In *Barba v. Licea De Cagayan University*, where CA denied MR from an amended decision on the ground that it was a prohibited second MR, this Court held that the prohibition against a second MR contemplates the same party assailing the same judgment.

Here, the NLRC May 31, 2011 Decision substantially modified its September 30, 2010 Decision. Thus, petitioner was not precluded from seeking reconsideration of the new decision, and it was clearly an error for CA to find that petitioner's petition for *certiorari* was filed out of time on that ground.

As for the purported failure to attach the records necessary to resolve the petition, in *Wack Wack Golf & Country Club v. NLRC*, this Court held: "the subsequent submission of the requisite documents constituted substantial compliance with procedural rules. There is ample jurisprudence holding that the subsequent and substantial compliance of an appellant may call for the relaxation of the rules of procedure in the interest of justice." Thus, this Court finds that CA committed reversible error in dismissing the petition outright, considering the circumstances of this case.

Petitioner raises in issue whether or not the PAL Pilots Retirement Benefit Plan is part of the retirement benefits that should be computed in comparing the retirement benefits accorded to him under the Labor Code as against what he is entitled to under PAL policy. However, the matter of retirement benefits is not addressed in respondent's memorandum. It would better serve th1e interest of substantial justice to <u>remand this case</u> to the Court of Appeals to allow the parties to folly discuss this issue.

## DOMINGO NEYPES, et. al.vs. THE COURT OF APPEALS G.R. No. 141524, EN BANC, September 14, 2005, Corona, J.

Under Rule 41, Section 3, petitioners had 15 days from notice of judgment or final order to appeal the decision of the trial court. On the 15th day of the original appeal period (March 18, 1998), petitioners did not file a notice of appeal but instead opted to file a motion for reconsideration. According to the trial court, the MR only interrupted the running of the 15-day appeal period. It ruled that petitioners, having filed their MR on the last day of the 15-day reglementary period to appeal, had only one (1) day left to file the notice of appeal upon receipt of the notice of denial of their MR. Petitioners, however, argue that they were entitled under the Rules to a fresh period of 15 days from receipt of the final order or the order dismissing their motion for reconsideration.

Petitioners here filed their notice of appeal on July 27, 1998 or five days from receipt of the order denying their motion for reconsideration on July 22, 1998. Hence, the notice of appeal was well within the fresh appeal period of 15 days, as already discussed.

#### **FACTS:**

Petitioners Neypes et. al. filed an action for annulment of judgment and titles of land and/or reconveyance and/or reversion with preliminary injunction before the Regional Trial Court against the Bureau of Forest Development Bureau of Lands, Land Bank of the Philippines and the heirs of Bernardo del Mundo.

In the course of the proceedings, both the petitioner and respondents filed several motions with the trial court. Petitioners filed a motion to declare respondents' in default, and the latter filed a motion to dismiss.

The trial court dismissed petitioners' complaint (and also the motion for reconsideration) on the ground that the action had already prescribed. Thus, five days later, petitioners filed a notice of appeal and paid the appeal fees. However, the court a quo denied the notice of appeal, holding that it was filed eight days late. Petitioners' motion for reconsideration was also denied.

Via a petition for *certiorari* and *mandamus* under Rule 65 of the 1997 Rules of Civil Procedure, petitioners assailed the dismissal of the notice of appeal before the Court of Appeals.

In the appellate court, petitioners claimed that they had seasonably filed their notice of appeal. They argued that the 15-day reglementary period to appeal started to run only on July 22, 1998 since this was the day they received the final order of the trial court denying their motion for reconsideration. When they filed their notice of appeal on July 27, 1998, only five days had elapsed and they were well within the reglementary period for appeal.

However, the CA dismissed the petition. It ruled that the 15-day period to appeal should have been reckoned the day they received the order dismissing their complaint which is February 12,1998.

#### **ISSUES:**

- **(1)** What should be deemed as the final order, receipt of which triggers the start of the 15-day reglementary period to appeal the February 12, 1998 order dismissing the complaint or the July 1, 1998 order dismissing the MR? **(July 1, 1988 order)**
- (2) Whether or not the petitioners filed their notice of appeal in time? (YES)

#### **RULING:**

- (1) The Supreme Court ruled that it was the denial of the motion for reconsideration of an order of dismissal of a complaint which constituted the final order as it was what ended the issues raised there (Quelan v. VHF Philippines, Inc.; Apuyan v. Haldeman et. al.)
- Based on the aforementioned cases, we sustain petitioners view that the order dated July 1, 1998 denying their motion for reconsideration was the final order contemplated in the Rules.
- (2) Under Rule 41, Section 3, petitioners had 15 days from notice of judgment or final order to appeal the decision of the trial court. On the 15th day of the original appeal period (March 18, 1998), petitioners did not file a notice of appeal but instead opted to file a motion for reconsideration. According to the trial court, the MR only interrupted the running of the 15-day appeal period. It ruled that petitioners, having filed their MR on the last day of the 15-day reglementary period to appeal, had only one (1) day left to file the notice of appeal upon receipt of the notice of denial of their MR. Petitioners, however, argue that they were entitled under the Rules to a fresh period of 15 days from receipt of the final order or the order dismissing their motion for reconsideration.

To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.

Henceforth, this fresh period rule shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of

Appeals and Rule 45 governing appeals by certiorari to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.

Petitioners here filed their notice of appeal on July 27, 1998 or five days from receipt of the order denying their motion for reconsideration on July 22, 1998. Hence, the notice of appeal was well within the fresh appeal period of 15 days, as already discussed. Thus, petitioners seasonably filed their notice of appeal within the fresh period of 15 days, counted from July 22, 1998 (the date of receipt of notice denying their motion for reconsideration).

To recapitulate, a party litigant may either file his notice of appeal within 15 days from receipt of the Regional Trial Courts decision or file it within 15 days from receipt of the order (the final order) denying his motion for new trial or motion for reconsideration. Obviously, the new 15-day period may be availed of only if either motion is filed; otherwise, the decision becomes final and executory after the lapse of the original appeal period provided in Rule 41, Section 3.

## REPUBLIC OF THE PHILIPPINES v. ORTIGAS AND COMPANY LIMITED PARTNERSHIP G.R. NO. 171496, THIRD DIVISION, March 3, 2014, Leonen, J.

Orders denying motions for reconsideration are not always interlocutory orders. A motion for reconsideration may be considered a final decision, subject to an appeal, if it puts an end to a particular matter, leaving the court with nothing else to do but to execute the decision. An appeal from an order denying a motion for reconsideration of an order of dismissal of a complaint is effectively an appeal of the order of dismissal itself. It is an appeal from a final decision or order.

#### **FACTS:**

Ortigas is the owner of a parcel of land in Pasig City. Upon the request of the Department of Public Works and Highways, respondent Ortigas caused the segregation of its property into five lots and reserved one portion for road widening for the C-5 flyover project. The title was then inscribed with an encumbrance that it was for road widening and subject to Section 50 of Presidential Decree No. 1529 or the Property Registration Decree.

The C-5-Ortigas Avenue flyover was completed in 1999, utilizing only 396 square meters of the 1,445-square-meter allotment for the project. Consequently, respondent Ortigas further subdivided the portion actually used for road widening and the unutilized portion.

On February 14, 2001, respondent Ortigas filed with the Regional Trial Court of Pasig a petition for authority to sell to the government the unutilized portion. Respondent Ortigas alleged that the Department of Public Works and Highways requested the conveyance of the property for road widening purposes. Despite due notice, no one appeared to oppose respondent Ortigas' petition. The RTC issued an order, authorizing the sale of to petitioner Republic of the Philippines.

On June 27, 2001, petitioner Republic of the Philippines filed an opposition, alleging that respondent Ortigas' property can only be conveyed by way of donation to the government, citing Section 50 of Presidential Decree No. 1529. On June 29, 2001, petitioner Republic of the Philippines filed a motion for reconsideration of the RTC order. The same was denied; this prompted the Republic to file a notice of appeal with the CA. The CA dismissed the appeal. Hence, this petition.

#### **ISSUE:**

Whether the Court of Appeals gravely erred in denying petitioner Republic of the Philippines' appeal based on technicalities? **(NO)** 

#### **RULING:**

Appeals from the Regional Trial Court to the Court of Appeals under Rule 41 must raise both questions of fact and law Section 2 of Rule 50 of the Rules of Court provides that appeals taken from the Regional Trial Court to the Court of Appeals raising only pure questions of law are not reviewable by the Court of Appeals. In which case, the appeal shall not be transferred to the appropriate court. Instead, it shall be dismissed outright.

Appeals from the decisions of the Regional Trial Court, raising purely questions of law must, in all cases, be taken to the Supreme Court on a petition for review on certiorari in accordance with Rule 45. An appeal by notice of appeal from the decision of the Regional Trial Court in the exercise of its original jurisdiction to the Court of Appeals is proper if the appellant raises questions of fact or both questions of fact and questions of law.

There is a question of law when the appellant raises an issue as to what law shall be applied on a given set of facts. Questions of law do "not involve an examination of the probative value of the evidence presented." Its resolution rests solely on the application of a law given the circumstances. There is a question of fact when the court is required to examine the truth or falsity of the facts presented. A question of fact "invites a review of the evidence."

The sole issue raised by petitioner Republic of the Philippines to the Court of Appeals is whether respondent Ortigas' property should be conveyed to it only by donation, in accordance with Section 50 of Presidential Decree No. 1529. This question involves the interpretation and application of the provision. It does not require the Court of Appeals to examine the truth or falsity of the facts presented. Neither does it invite a review of the evidence. The issue raised before the Court of Appeals was, therefore, a question purely of law. The proper mode of appeal is through a petition for review under Rule 45. Hence, the Court of Appeals did not err in dismissing the appeal on this ground.

Nevertheless, it should be emphasized that Rule 41, Section 1, paragraph (a) of the Rules of Court, which provides that "[n]o appeal may be taken from [a]n order denying a x x x motion for reconsideration," is based on the implied premise in the same section that the judgment or order does not completely dispose of the case. In other words, what Section 1 of Rule 41 prohibits is an appeal taken from an interlocutory order.

Orders denying motions for reconsideration are not always interlocutory orders. A motion for reconsideration may be considered a final decision, subject to an appeal, if "it puts an end to a particular matter," leaving the court with nothing else to do but to execute the decision. The trial court's order denying petitioner Republic of the Philippines' motion for reconsideration of the decision granting respondent Ortigas the authority to sell its property to the government was not an interlocutory order because it completely disposed of a particular matter. An appeal from it

would not cause delay in the administration of justice. Petitioner Republic of the Philippines' appeal to the Court of Appeals, however, was properly dismissed because the former used the wrong mode of appeal.

## TONGONAN HOLDING AND DEVELOPMENT CORPORATION v. ATTY. FRANCISCO ESCANO, JR. G.R. No. 190994, THIRD DIVISION, September 7, 2011, Mendoza, J.

An order or judgment of the RTC is deemed final when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court. On the other hand, an order which does not dispose of the case completely and indicates that other things remain to be done by the court as regards the merits, is interlocutory.

As correctly noted by the CA, the RTC ended with finality the issue of Atty. Escaño's attorney's fees when it rendered the aforementioned orders, having ruled that he was not entitled to it. The RTC need not resolve anything else thereby making the said orders final.

#### **FACTS:**

Respondent Atty. Francisco Escano was the counsel of petitioner THDC in a case for eminent domain. Atty. Escano sought the entry of his attorney's liens on the basis of the Memorandum of Agreement contracted between him and THDC. Eventually, THDC terminated the services of Atty. Escano on the ground of loss of confidence, which was approved by the RTC. Afterwards, Atty. Escano filed a Motion to Enter into the Records Attorney's Lien for additional Attorney's fees. The RTC denied the motion and approved only the 15% Attorney's Lien on the money judgment in favor of Atty. Escaño and his former partners. After his motion for reconsideration was denied on January 26, 2006, Atty. Escaño filed a Notice of Appeal. THDC then filed its Motion for Reconsideration and Motion to Dismiss Appeal arguing that the Notice of Appeal was not the proper remedy as the order being questioned was interlocutory which could not be the subject of an appeal. THDC contends that it was merely interlocutory because the issue was only collateral to the main issue of eminent domain. Atty. Escaño, on the other hand, counters that the Orders are not interlocutory, but final orders and, therefore, appealable. He reasons that both orders finally disposed the issue of his attorney's fees before the RTC and there was nothing more to be done pertaining to the same matter.

#### **ISSUE:**

Whether or not the RTC's order of denial of the motion for entry for additional attorney's fees was interlocutory? **(NO)** 

#### **RULING:**

An order or judgment of the RTC is deemed final when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court. On the other hand, an order which does not dispose of the case completely and indicates that other things remain to be done by the court as regards the merits, is interlocutory.

In *Planters Products, Inc. v. Court of Appeals*, the Court ruled that the order of the respondent trial court awarding attorney's fees in favor of a claimant-lawyer is a final order and not interlocutory. The Court is of the view that the RTC orders denying the claim for additional attorney's fees were final considering that the main action for eminent domain, was already final. In fact, it was the subject of several motions for execution. Thus, the RTC had nothing more to do with respect to the relative rights of the parties therein. There is nothing left for the judge to perform except to enforce the judgment.

Moreover, as correctly noted by the CA, the RTC ended with finality the issue of Atty. Escaño's attorney's fees when it rendered the aforementioned orders, having ruled that he was not entitled to it. The RTC need not resolve anything else thereby making the said orders final.

## FLOR GUPILAN-AGUILAR and HONORE R. HERNANDEZ v. OFFICE OF THE OMBUDSMAN, et al. G.R. NO. 197307, THIRD DIVISION, February 26, 2014, Velasco, J.

The Ombudsman-imposed penalties in administrative disciplinary cases are immediately executory notwithstanding an appeal timely filed. An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. Thus, no error can be attributed to the CA when it ruled that the penalties imposed by the Ombudsman against petitioners are immediately executory. Immediate execution argues against the outlandish notion that the Ombudsman can only recommend disciplinary sanctions.

#### **FACTS:**

In June 2003, PNP-CIDG conducted an investigation on the lavish lifestyle and alleged nefarious activities of certain personnel of the Bureau of Customs, among them Aguilar, then Chief of the Miscellaneous Division, and Hernandez.

Aguilar's SALNs do not reflect any income source other than her employment. The spaces for her spouse's name and business interest were left in blank. Following weeks of surveillance and lifestyle probe, the PNP-CIDG investigating team executed a Joint-Affidavit depicting as owning properties not declared or properly identified in her SALNs. It was also discovered that Aguilar took 13 unofficial trips abroad, accompanied most of the time by daughter Josephine. During the same period, her two other daughters also collectively made nine travels abroad.

In view of what it deemed to be a wide variance between Aguilar's acquired assets and what she spent for her four-year overseas travels, on one hand, and her income, on the other, the PNP-CIDG, on a finding that she has violated R.A. 1379 in relation to R.A. 3019 and 6713 charged her with grave misconduct and dishonesty. Hernandez was charged too with the same offenses. Upon evaluation of the complaint and of the evidence presented, the Ombudsman created an investigating panel which then conducted administrative proceedings on the complaint.

The Ombudsman rendered a decision finding petitioners guilty of grave misconduct and dishonesty and dismissed them from the service. The CA affirmed the ruling of the Ombudsman. Hence, this petition.

#### **ISSUE:**

Whether a Rule 43 petition to assail the findings or decisions of the Ombudsman in an administrative case is proper? **(YES)** 

#### **RULING:**

Petitioners properly appealed to the CA. The Ombudsman has defined prosecutorial powers and possesses adjudicative competence over administrative disciplinary cases filed against public officers. What presently concerns the Court relates to the grievance mechanism available to challenge the OMB's decisions in the exercise of that disciplinary jurisdiction.

In the case at bar, the Ombudsman, in the exercise of his administrative disciplinary jurisdiction had, after due investigation, adjudged petitioners guilty of grave misconduct and dishonesty and meted the corresponding penalty. Recourse to the CA via a Rule 43 petition is the proper mode of appeal. Rule 43 governs appeals to the CA from decisions or final orders of quasi-judicial agencies.

This brings us to the issue on the nature of the Ombudsman's decisions in administrative disciplinary suits. Administrative disciplinary authority of the OMB does not end with a recommendation to punish. This court held in Ombudsman v. De Leon that, as early as 2000, rules were already enforced by the OMB that provide for the immediate execution of judgments pending appeal. As pointed out in De Leon, Sec. 27 of the Ombudsman Act of 1989 prescribes the rules on the effectivity and finality of the OMB's decisions:

SEC. 27. Effectivity and Finality of Decisions. – (1) All provisionary orders at the Office of the Ombudsman are immediately effective and executory. x x x x

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman x x x.

The then Sec. 7, Rule III of Administrative Order No. 07 (AO 07) or the Rules of Procedure of the OMB, in turn, stated:

Sec. 7. Finality of decision. – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari, shall have been filed by him as prescribed in Section 27 of RA 6770.

The Court, in Lapid v. Court of Appeals, has interpreted the above-quoted provision to mean that the sanctions imposed by the Ombudsman other than public censure, reprimand, suspension of not more than one month or a fine equivalent to one month salary are not immediately executory and can be stayed by an appeal timely filed. The pertinent ruling in Lapid has, however, been superseded. On August 17, 2000, AO 14-A was issued amending Sec. 7, Rule III of the Rules of Procedure of the OMB. The rule, as thus amended, pertinently reads:

Section 7. Finality and execution of decision. – Where  $x \times x$  the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision may be appealed  $x \times x$ .

Then came AO 17 dated September 15, 2003 further amending Sec. 7 of Rule III. Thus, the section now provides:

Section 7. Finality and execution of decision. – Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory, and unappealable. In all other cases, the decision may be appealed to the Court of Appeals  $x \times x$ .

Clearly then, as early as August 17, 2000, when AO 14-A was issued, the OMB-imposed penalties in administrative disciplinary cases were already immediately executory notwithstanding an appeal timely filed. In this case, it must be noted that the complaint dated July 28, 2003 was filed on August 20, 2003 or after the AO 14-A has come into effect. Thus, no error can be attributed to the CA when it ruled that the penalties imposed by the Ombudsman against petitioners are immediately executory. Immediate execution argues against the outlandish notion that the Ombudsman can only recommend disciplinary sanctions.

# DEPARTMENT OF FOREIGN AFFAIRS (DFA) vs. BCA INTERNATIONAL CORPORATION & AD HOC ARBITRAL TRIBUNAL, COMPOSED OF CHAIRMAN DANILO L. CONCEPCION AND MEMBERS, CUSTODIO O. PARLADE AND ANTONIO P. JAMON, JR.

G.R. No. 225051, SECOND DIVISION, July 19, 2017, Peralta, J.

An appeal by certiorari to the SC is from a judgment or final order or resolution of the CA and only questions of law may be raised. An interlocutory order of an Arbitral Tribunal is not appealable by certiorari.

#### **FACTS:**

DFA awarded the Machine Readable Passport and Visa Project to respondent in a BOT Agreement. Conflict arose and petitioner sought to terminate the Agreement. Respondent opposed the termination and filed a Request for Arbitration. Later, the Arbitral Tribunal was constituted. Much later, respondent manifested that it shall file an Amended Statement of Claims so that its claim may conform to the evidence they have presented.

Petitioner objected to respondent's Amended Statement of Claims, averring that its belated filing violates its right to due process and will prejudice its interest and that the Tribunal has no jurisdiction over the alternative reliefs sought by respondent. The Arbitral Tribunal issued Procedural Orders No. 11 and 12.

Petitioner filed this petition for certiorari under Rule 65 of the Rules of Court seeking to annul Procedural Order No. 11 and Procedural Order No. 12. Petitioner stated that it opted to file the petition directly with this court in view of the immensity of the claim concerned, significance of the public interest involved in this case.

#### **ISSUE:**

Whether petition for certiorari under Rule 65 of the Rules of Court was proper to set aside the orders of the arbitral tribunal? **(NO)** 

#### **RULING:**

An appeal by certiorari to the SC is from a judgment or final order or resolution of the CA and only questions of law may be raised. In this case, the appeal by certiorari is not from a final Order of the CA or the RTC, but from an interlocutory order of the Arbitral Tribunal; hence, the petition must be dismissed for failure to observe the rules on court intervention allowed by RA No. 9285 and the Special ADR Rules.

## **EASTERN SHIPPING LINES INC.,** Petitioner, vs.BPI/MS INSURANCE CORP. and MITSUI SUM TOMO INSURANCE CO. LTD., Respondents.

G.R. No. 193986, FIRST DIVISION, January 15, 2014, Villarama, Jr., J.:

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts, or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.

In this petition, the resolution of the question as to who between petitioner and ATI should be liable for the damage to the goods is indubitably factual, and would clearly impose upon this Court the task of reviewing, examining and evaluating or weighing all over again the probative value of the evidence presented – something which is not, as a rule, within the functions of this Court and within the office of a petition for review on certiorari.

#### **FACTS**

In three instances, Sumitomo shipped through MV Eastern Challenger V-9-S, a vessel owned by Eastern Shipping Lines, Inc., various steel sheets in coil from Yokohama, Japan for delivery in favor of the consignee Calamba Steel. The cargo was insured against all risk by Sumitomo with Mitsui Sumitomo Insurance Co., Ltd. Upon unloading from the vessel at the port of Manila, several coils were observed to be in bad condition as evidenced by the Turn Over Survey of Bad Order Cargo (in the shipment of 31 various steel sheets in coil, nine coils were observed to be in bad condition; in the second shipment of 28 steel sheets in coil, 11 coils were found damaged; in the third shipment of 117 various steel sheets in coil, six coils were in bad condition.)

In all these instances, the cargo was then turned over to Asian Terminals, Inc. (ATI) for stevedoring, storage and safekeeping pending Calamba Steel's withdrawal of the goods. When ATI delivered the cargo to Calamba Steel, the latter rejected its damaged portion for being unfit for its intended purpose.

Consequently, Calamba Steel filed an insurance claim with Mitsui through the latter's settling agent, BPI/MS Insurance Corporation (BPI/MS), and the former was paid for the damage suffered by all

three shipments or for the total amount of US\$30,210.32. Correlatively, as insurer and subrogee of Calamba Steel, Mitsui and BPI/MS filed a Complaint for Damages against petitioner and ATI. RTC rendered its Decision, holding Eastern Shipping Lines, Inc. and Asian Terminals, Inc., jointly and severally liable and ordering the latter to pay plaintiffs actual damages amounting to US\$30,210.32 plus 6% legal interest thereon commencing from the filing of this complaint, until the same is fully paid; attorney's fees; costs of suit.

Aggrieved, petitioner and ATI appealed to the CA which affirmed with modifications RTC's findings and ruling, holding, among others, that both petitioner and ATI were very negligent in the handling of the subject cargoes. Pointing to the affidavit of Mario Manuel, Cargo Surveyor, the CA found that "during the unloading operations, the steel coils were lifted from the vessel but were not carefully laid on the ground. Some were even 'dropped' while still several inches from the ground while other coils bumped or hit one another at the pier while being arranged by the stevedores and forklift operators of ATI and [petitioner]."

Petitioner and ATI filed their respective separate petitions for review on certiorari before this Court. However, ATI's petition, was denied by this Court in our Resolution for failure of ATI to show any reversible error in the assailed CA decision and for failure of ATI to submit proper verification. Said resolution had become final and executory. Nevertheless, this Court in its Resolution gave due course to this petition and directed the parties to file their respective memoranda.

#### **ISSUE**

Whether the CA committed any reversible error in finding that petitioner is solidarily liable with ATI on account of the damage incurred by the goods? **(NO)** 

#### **RULING**

Well entrenched in this jurisdiction is the rule that factual questions may not be raised before this Court in a petition for review on certiorari as this Court is not a trier of facts. This is clearly stated in Section 1, Rule 45 of the 1997 Rules of Civil Procedure, as amended, which provides:

SECTION 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

Thus, it is settled that in petitions for review on certiorari, only questions of law may be put in issue. Questions of fact cannot be entertained.

A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts, or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.

In this petition, the resolution of the question as to who between petitioner and ATI should be liable for the damage to the goods is indubitably factual, and would clearly impose upon this Court the task of reviewing, examining and evaluating or weighing all over again the probative value of the evidence presented – something which is not, as a rule, within the functions of this Court and within the office of a petition for review on certiorari.

While it is true that the aforementioned rule admits of certain exceptions, this Court finds that none are applicable in this case. This Court finds no cogent reason to disturb the factual findings of the RTC which were duly affirmed by the CA. Unanimous with the CA, this Court gives credence and accords respect to the factual findings of the RTC – a special commercial court which has expertise and specialized knowledge on the subject matter of maritime and admiralty – highlighting the solidary liability of both petitioner and ATI.

In sum, petitioner failed to show any reversible error on the part of the CA in affirming the ruling of the RTC as to warrant the modification, much less the reversal of its assailed decision.

MARIO MAGAT, SR., MARIO S. MAGAT, JR. MARIO S. MAGAT, III, MA. MARGARITA M. ESTAVILLA, MA. MARJORIE S. MAGAT, ALL SUBSTITUTE PARTIES AND HEIRS OF THE DECEASED PARTY, JULIANA S. MAGATV. TANTRADE CORPORATION AND PABLO S. BORJA, JR. G.R. No. 205483, THIRD DIVISION, August 23, 2017, Leonen, J.

Motions for extension to file Rule 42 petitions are permissible. Rule 42 permits a second extension of another 15 days. This second extension shall, however, only be "for the most compelling reason." This Court finds petitioners here to have effectively pleaded grounds that warrant the extensions prayed for. They should not be faulted for maximizing the period that Rule 42 allows. Petitioners can neither be faulted for the receipt by the ponente's office of the Rollo on May 24, 2011. Their Second Motion for Extension was filed two (2) days before the end of the first 15-day extension. It was filed, not only within, but in advance of the lapse of the period for seeking the second extension of Rule 42, Section 1.

#### **FACTS:**

This resolves a Petition for Review on Certiorariunder Rule 45 of the 1997 Rules of Civil Procedure, arising from the original action which is a Complaint for Collection of Sum of Money filed by Tantrade Corporation against now deceased Juliana S. Magat.

Ultimately, the MTC found Juliana liable to pay Tantrade but ordered Borja, an impleaded third-party defendant to reimburse Juliana the amount she was ordered to pay Tantrade. The RTC affirmed in toto the MTC's decision.

Petitioners filed their Urgent Motion for Extension of Time to File Petition for Review under Rule 42 in the CA, one day before the lapse of the 15-day period. They justified their First Motion for Extension by citing financial constraints; that the same constraints prevented the counsel from timely preparing the Petition for Review.

The CA denied the First Motion for Extension, hence a second motion was filed and an extension was sought for the filing of their Petition for Review since they were yet to receive a copy of the May 31, 2011 Resolution. It was only in June 29, 2011 when they received the aforementioned. The second motion was denied and the appeal was dismissed.

#### **ISSUE:**

Whether or not the Court of Appeals committed a reversible error in denying the extensions sought by petitioners and in dismissing their appeal? (YES)

#### **RULING:**

CA committed a reversible error. The last two (2) sentences of Section 1 of the Rule 42 of the Rules on Civil Procedure set that motions for extension to file Rule 42 petitions are permissible. Rule 42 permits a second extension of another 15 days. This second extension shall, however, only be "for the most compelling reason."

This Court finds petitioners here to have effectively pleaded grounds that warrant the extensions prayed for. They should not be faulted for maximizing the period that Rule 42 allows. Petitioners can neither be faulted for the receipt by the ponente's office of the *Rollo* on May 24, 2011. Their Second Motion for Extension was filed *two (2) days* before the end of the first 15-day extension. It was filed, not only within, but in advance of the lapse of the period for seeking the second extension of Rule 42, Section 1. Petitioners were simultaneously afflicted with the tragedy of death and constrained by their mean; these were compelling reasons warranting a solicitous stance towards them. In sum, the technical requirements of Rule 42 were satisfied.

## NUEVA ECIJA II ELECTRIC COOPERATIVE, INC., AREA I, MR. REYNALDO VILLANUEVA, PRESIDENT, BOARD OF DIRECTORS, AND MRS. EULALIA CASTRO, GENERAL MANAGER $\nu$ . ELMER B. MAPAGU

G.R. No. 196084, THIRD DIVISION, February 15, 2017, Jardeleza, J.

Petitioners received the September 2, 2010 Resolution of the CA on September 14, 2010. They filed a Motion for Reconsideration and received the Resolution denying the same on March 17, 2011. Thereafter, they filed a Motion for Extension of Time to File Petition for Review on Certiorari with Payment of Docket Fees. They sought an extension of 20 days from April 1, 2011 or until April 21, 2011 within which to file the appeal. On May 6, 2011, they filed this petition. They allege that they have 60 days to file the appeal and in fact, they claim that they are filing it 11 days ahead of the reglementary deadline. Petitioners insist that following Republic v. Court of Appeals and Bello v. National Labor Relations Commission, petitions for review on certiorari can be filed within 60 days from receipt of the order denying the motion for reconsideration. Petitioners are gravely mistaken. The right to appeal is a mere statutory privilege and must be exercised only in the manner and in accordance with the provisions of the law.

#### **FACTS:**

Elmer Magapu filed a complaint for illegal dismissal against petitioner. The Labor Arbiter ruled in favor of petitioner, but the NLRC ruled in Elmer's favor. Petitioner filed a petition for certiorari with the CA, which was dismissed outright since petitioners failed to sign the Verification and Certification against Forum Shopping. Petitioners filed a petition for review on certiorari which was denied for being filed out of time.

#### **ISSUE:**

Whether or not the Supreme Court correctly denied the petition? (YES)

#### **RULING:**

The facts and material dates are undisputed. Petitioners received the September 2, 2010 Resolution of the CA on September 14, 2010. They filed a Motion for Reconsideration and received the Resolution denying the same on March 17, 2011. Thereafter, they filed a Motion for Extension of Time to File Petition for Review on Certiorari with Payment of Docket Fees. They sought an extension of 20 days from April 1, 2011 or until April 21, 2011 within which to file the appeal. On May 6, 2011, they filed this petition. They allege that they have 60 days to file the appeal and in fact, they claim that they are filing it 11 days ahead of the reglementary deadline. Petitioners insist that following *Republic v. Court of Appeals* and *Bello v. National Labor Relations Commission*, petitions for review on certiorari can be filed within 60 days from receipt of the order denying the motion for reconsideration. Petitioners are gravely mistaken. The right to appeal is a mere statutory privilege and must be exercised only in the manner and in accordance with the provisions of the law. One who seeks to avail of the right to appeal must strictly comply with the requirement of the rules. Failure to do so leads to the loss of the right to appeal.

### RUBEN MANALANG, CARLOS MANALANG, CONCEPCION GONZALES and LUIS MANALANG v. BIENVENIDO and MERCEDES BACANI

G.R. No. 156995, FIRST DIVISION, January 12, 2015, Bersamin, J.

In the exercise of its appellate jurisdiction, the RTC shall decide the appeal of the judgment of the MTC in unlawful detainer or forcible entry cases on the basis of the entire record of the proceedings in the court of origin and such memoranda and/or briefs as may be required by the RTC. There is no trial de novo of the case.

#### **FACTS:**

Petitioners caused the relocation and verification survey of their lot and the adjoining lots, the result of which showed that the respondents had encroached on their lot. When the respondents refused to vacate the encroached portion and to surrender peaceful possession thereof despite demands, the petitioners commenced an action for unlawful detainer. The MTC dismissed the case for lack of jurisdiction based on its finding that the action involved an essentially boundary dispute that should be properly resolved in an accion reinvindicatoria. On appeal, however, the RTC reversed the MTC's decision and remanded the case for further proceedings. Upon remand, the MTC ultimately dismissed the complaint for lack of merit. Once more, the petitioners appealed to the RTC. The RTC, after ordering another relocation and verification survey, reversed and set aside the MTC's decision. The respondents thereafter appealed to the CA, which promulgated a ruling reversing and setting aside the RTC's decision and reinstating the MTC's decision. The CA concluded that the RTC, by ordering the relocation and verification survey "in aid of its appellate jurisdiction" upon motion of the petitioners and over the objection of the respondents, and making a determination of whether there was an encroachment based on such survey and testimony of the surveyor, had acted as a trial court in complete disregard of the second paragraph of Section 18, Rule 70 of the Rules of Court. It declared such action by the RTC as unwarranted because it amounted to the reopening of the trial, which was not allowed.

#### **ISSUE:**

Whether or not the RTC essentially conducted a trial *de novo* when it ordered another relocation and verification survey? **(YES)** 

#### **RULING:**

RTC, in an appeal of the judgment in an ejectment case, shall not conduct a rehearing or trial *de novo*. In this connection, Section 18, Rule 70 of the Rules of Court clearly provides: x x x The judgment or final order shall be appealable to the appropriate Regional Trial Court which shall decide the same on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Court.

The RTC violated the foregoing rule by ordering the conduct of the relocation and verification survey "in aid of its appellate jurisdiction" and by hearing the testimony of the surveyor, for its doing so was tantamount to its holding of a trial *de novo*. The RTC's violation of the said rule was accented by the fact that the RTC ultimately decided the appeal based on the survey and the surveyor's testimony instead of the record of the proceedings in the court of origin.

#### DARMA MASLAG vs.

## ELIZABETH MONZON, WILLIAM GESTON, and REGISTRY OF DEEDS OF BENGUET G.R. No. 174908, SECOND DIVISION, June 17, 2013, Del Castillo, J.

Under the present state of the law, in cases involving title to real property, original and exclusive jurisdiction belongs to either the RTC or the MTC, depending on the assessed value of the subject property. In the case at bench, annexed to the Complaint is a Declaration of Real Property, showing that the disputed property has an assessed value of  $\rat{P}12,400$  only. Such assessed value of the property is well within the jurisdiction of the MTC. In fine, the RTC, thru Judge Cabato, erred in applying Section 19(1) of BP 129 in determining which court has jurisdiction over the case and in pronouncing that the MTC is divested of original and exclusive jurisdiction.

There are two modes of appealing an RTC decision or resolution on issues of fact and law. The first mode is an ordinary appeal under Rule 41 in cases where the RTC exercised its original jurisdiction. It is done by filing a Notice of Appeal with the RTC. The second mode is a petition for review under Rule 42 in cases where the RTC exercised its appellate jurisdiction over MTC decisions. It is done by filing a Petition for Review with the CA. Simply put, the distinction between these two modes of appeal lies in the type of jurisdiction exercised by the RTC in the Order or Decision being appealed. As discussed above, the MTC has original and exclusive jurisdiction over the subject matter of the case; hence, there is no other way the RTC could have taken cognizance of the case and review the court a quo's Judgment except in the exercise of its appellate jurisdiction.

#### **FACTS:**

Petitioner filed a complaint for reconveyance of real property with declaration of nullity of original certificate of title against respondents before the MTC, which found that respondent Monzon is guilty of fraud in obtaining and OCT over petitioner's property and ordered the reconveyance of said property to petitioner.

Respondents appealed to the RTC which declared, through Judge Cabato, that the MTC without jurisdiction over the petitioner's cause of action and took cognizance of the case pursuant to Sec.8, Rule 40 of the Rules of Court. Both parties acknowledged receipt of the RTC order but neither presented additional evidence before the new Judge De Rivera.

A Resolution was issued by the RTC which reversed the MTC decision, ordering petitioner to turn over possession of the subject land to respondent Monzon. Aggrieved, petitioner filed a Notice of Appeal with the CA, assailing the resolution of the RTC which reversed MTC's findings. The respondents, on the other hand, moved to dismiss petitioner's ordinary appeal for being the improper remedy, and asserted that the proper mode should have been under Rule 42 for the RTC rendered such resolution in its appellate jurisdiction.

CA dismissed petitioner's appeal. It observed that the RTC's May 4, 2004 Resolution (the subject matter of the appeal before the CA) set aside an MTC Judgment; hence, the proper remedy is a Petition for Review under Rule 42, and not an ordinary appeal. The motion for reconsideration having been denied, petitioner brought this petition.

#### **ISSUES:**

- (1) Whether or not the MTC has jurisdiction over the subject matter of the case? (YES)
- **(2)** Which remedy should be availed of by the petitioner petition for review under Rule 42 or an ordinary appeal under Rule 41? **(RULE 42)**

#### **RULING**

- (1) Under the present state of the law, in cases involving title to real property, original and exclusive jurisdiction belongs to either the RTC or the MTC, depending on the assessed value of the subject property. Pertinent provisions of BP 129, as amended by RA No. 7691, provides:
  - Sec. 19. Jurisdiction in civil cases. Regional Trial Courts shall exercise exclusive original jurisdiction:
    - (1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;
    - (2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos ( $\rat{P}20,000.00$ ) or for civil actions in Metro Manila, where x x x the assessed value of the property exceeds Fifty thousand pesos ( $\rat{P}$ ]50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts; x x x x
  - SEC. 33. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases. Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts shall exercise: x x x x
    - (3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos ( $\rat{20,000.00}$ ) or, in

civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos ( $\rat{P}50,000.00$ )  $x \times x$ .

In the case at bench, annexed to the Complaint is a Declaration of Real Property, showing that the disputed property has an assessed value of ₱12,400 only. Such assessed value of the property is well within the jurisdiction of the MTC. In fine, the RTC, thru Judge Cabato, erred in applying Section 19(1) of BP 129 in determining which court has jurisdiction over the case and in pronouncing that the MTC is divested of original and exclusive jurisdiction.

**(2)** There are two modes of appealing an RTC decision or resolution on issues of fact and law. The first mode is an ordinary appeal under Rule 41 in cases where the RTC exercised its original jurisdiction. It is done by filing a Notice of Appeal with the RTC. The second mode is a petition for review under Rule 42 in cases where the RTC exercised its appellate jurisdiction over MTC decisions. It is done by filing a Petition for Review with the CA. Simply put, the distinction between these two modes of appeal lies in the type of jurisdiction exercised by the RTC in the Order or Decision being appealed.

As discussed above, the MTC has original and exclusive jurisdiction over the subject matter of the case; hence, there is no other way the RTC could have taken cognizance of the case and review the court a quo's Judgment except in the exercise of its appellate jurisdiction. Besides, the new RTC Judge who penned the May 4, 2004 Resolution, Judge Diaz de Rivera, actually treated the case as an appeal despite the October 22, 2003 Order. He started his Resolution by stating, "This is an appeal from the Judgment rendered by the Municipal Trial Court (MTC) of La Trinidad Benguet" and then proceeded to discuss the merits of the "appeal." In the dispositive portion of said Resolution, he reversed the MTC's findings and conclusions and remanded residual issues for trial with the MTC. Thus, in fact and in law, the RTC Resolution was a continuation of the proceedings that originated from the MTC. It was a judgment issued by the RTC in the exercise of its appellate jurisdiction.

With regard to the RTC's earlier October 22, 2003 Order, the same should be disregarded for it produces no effect (other than to confuse the parties whether the RTC was invested with original or appellate jurisdiction). It cannot be overemphasized that jurisdiction over the subject matter is conferred only by law and it is "not within the courts, let alone the parties, to themselves determine or conveniently set aside." Neither would the active participation of the parties nor estoppel operate to confer original and exclusive jurisdiction where the court or tribunal only wields appellate jurisdiction over the case. Thus, the CA is correct in holding that the proper mode of appeal should have been a Petition for Review under Rule 42 of the Rules of Court, and not an ordinary appeal under Rule 41.

Petitioner maintains that the RTC should have issued its May 4, 2004 Resolution in its original jurisdiction because it had earlier ruled that the MTC had no jurisdiction over the cause of action. Petitioner's argument lacks merit. To reiterate, only statutes can confer jurisdiction. Court issuances cannot seize or appropriate jurisdiction. It has been repeatedly held that "any judgment, order or resolution issued without jurisdiction is void and cannot be given any effect." By parity of reasoning, an order issued by a court declaring that it has original and exclusive jurisdiction over the subject matter of the case when under the law it has none cannot likewise be given effect. It amounts to usurpation of jurisdiction which cannot be countenanced. Since BP 129 already apportioned the jurisdiction of the MTC and the RTC in cases involving title to property, neither the courts nor the petitioner could alter or disregard the same. Besides, in determining the proper mode of appeal from an RTC Decision or Resolution, the determinative factor is the type of jurisdiction actually exercised by the RTC in rendering its Decision or Resolution.

### BOARDWALK BUSINESS VENTURES, INC. vs. ELVIRA A. VILLAREAL (deceased) substituted by REYNALDO P. VILLAREAL, JR., et al.

G.R. No. 181182, SECOND DIVISION, April 10, 2013, Del Castillo, J.

The payment of docket fees and a Notice of Appeal from an RTC decision was filed with the RTC instead of the CA along with a Motion for Extension of 30 days. The verification/certification did not contain an authorization for Boardwalk's representative.

The Rules require that the Petition must be accompanied by a Verification and Certification against forum shopping. If the petitioner is a juridical entity, as in this case, it must be shown that the person signing in behalf of the corporation is duly authorized to represent said corporation. In this case, no special power of attorney or board resolution was attached to the Petition showing that Lo was authorized to sign the Petition or represent Boardwalk in the proceedings. In addition, Boardwalk failed to attach to the Petition copies of the relevant pleadings and other material portions of the record.

It must be stressed that the payment of the docket fees and other lawful fees must be done within 15 days from receipt of notice of decision sought to be reviewed or denial of the motion for reconsideration. In this case, Boardwalk remitted the payment to the CA clerk long after the lapse of the reglementary period.

Boardwalk sought an extension of 30 days within which to file its Petition for Review with the CA. This is not allowed. Section 1 of Rule 42 allows an extension of only 15 days. "No further extension shall be granted except for the most compelling reason." Boardwalk never cited any compelling reason. Boardwalk's appeal was not perfected because of its failure to timely file the Petition and to pay the docket and other lawful fees before the proper court which is the CA. The perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory.

#### **FACTS:**

Petitioner Boardwalk Business Ventures, Inc. filed an Amended Complaint for replevin against respondent Elvira A. Villareal, one of Boardwalk's distributors of RTW merchandise for his alleged failure to pay a car loan obtained from Boardwalk with the MeTC of Manila. The MeTC ruled in favor of Boardwalk but was reversed by the RTC. Boardwalk through counsel filed with the Manila RTC a Motion for Extension of Time to File Petition for Review, praying that it be granted 30 day to file its Petition for Review and paid the docket and other legal fees. Boardwalk also filed a Notice of Appeal with the RTC which the RTC denied for being the wrong mode of appeal. The CA dismissed Boardwalk's petition. The CA held that Boardwalk erred in filing its Motion for Extension and paying the docket fees with the RTC and that the subsequent filing of its Petition with the CA was late and beyond the reglementary 15-day period provided for under Rule 42.

The CA also found that Boardwalk's prayer for a 30-day extension in its Motion for Extension irregular, because the maximum period that may be granted is only 15 days pursuant to Section 1 of Rule 42. It held that Boardwalk's Petition for Review failed to include a board resolution or secretary's certificate showing that its representative, Ma. Victoria M. Lo, was authorized to sign the Petition or represent Boardwalk in the proceedings, rendering the Verification and Certification against forum-shopping defective. Finally, the CA faulted Boardwalk for its failure to attach to its Petition copies of the Complaint, Answer, position papers, memoranda and other relevant

pleadings, as required in Sections 2 and 3 of Rule 42, thus meriting the outright dismissal of its Petition for Review.

#### **ISSUES:**

- 1. Whether or not Boardwalk attached the authorization of the person representing it? (NO)
- 2. Whether or not Boardwalk properly paid the docket fees? **(NO)**
- 3. Whether or not the CA may grant an extension of 30 days? (NO)
- 4. Whether or not Boardwalk's appeal is perfected? (NO)

#### **RULING:**

1. The Petition must be accompanied by a Verification and Certification against forum shopping. Copies of the relevant pleadings and other material portions of the record must likewise be attached to the Petition.

The Rules require that the Petition must be accompanied by a Verification and Certification against forum shopping. If the petitioner is a juridical entity, as in this case, it must be shown that the person signing in behalf of the corporation is duly authorized to represent said corporation. In this case, no special power of attorney or board resolution was attached to the Petition showing that Lo was authorized to sign the Petition or represent Boardwalk in the proceedings. In addition, Boardwalk failed to attach to the Petition copies of the relevant pleadings and other material portions of the record.

Boardwalk tried to cure these lapses by subsequently submitting a board resolution showing Lo's authority to sign and act on behalf of Boardwalk, as well as copies of the relevant pleadings. Concededly, this Court in several cases exercised leniency and relaxed the Rules. However, in this case, Boardwalk committed multiple violations of the Rules which should sufficiently militate against its plea for leniency. As will be shown below, Boardwalk failed to perfect its appeal by not filing the Petition within the reglementary period and paying the docket and other lawful fees before the proper court. These requirements are mandatory and jurisdictional.

2. Boardwalk erroneously paid the docket fees and other lawful fees with the RTC.

Section 1, Rule 42 of the Rules of Court specifically states that payment of the docket fees and other lawful fees should be made to the clerk of the CA. A plain reading of the Rules leaves no room for interpretation; it is categorical and explicit. It was thus grave error on the part of Boardwalk to have misinterpreted the same and consequently mistakenly remitted its payment to the RTC clerk. Boardwalk's subsequent payment to the clerk of the CA of the docket fees and other lawful fees did not cure the defect. The payment to the CA was late; it was done long after the reglementary period to file an appeal had lapsed. It must be stressed that the payment of the docket fees and other lawful fees must be done within 15 days from receipt of notice of decision sought to be reviewed or denial of the motion for reconsideration. In this case, Boardwalk remitted the payment to the CA clerk long after the lapse of the reglementary period.

3. The CA may grant an extension of 15 days only. The grant of another 15-days extension, or a total of 30-days extension is allowed only for the most compelling reason.

Boardwalk sought an extension of 30 days within which to file its Petition for Review with the CA. This is not allowed. Section 1 of Rule 42 allows an extension of only 15 days. "No further extension shall be granted except for the most compelling reason." Boardwalk never cited any compelling reason.

Thus, even on the assumption that the CA granted Boardwalk a 15-day reprieve from February 3, 2007, or the expiration of its original reglementary period, it still failed to file its Petition for Review on or before the February 19, 2007 due date. Records show that the Petition was actually filed only on March 7, 2007, or way beyond the allowable February 19, 2007 deadline. The appellate court thus correctly ruled that this may not simply be brushed aside.

### 4. Boardwalk's appeal is not deemed perfected.

More significantly, Section 8 of Rule 42 provides that the appeal is deemed perfected as to the petitioner "upon the timely filing of a petition for review and the payment of the corresponding docket and other lawful fees." Undisputably, Boardwalks's appeal was not perfected because of its failure to timely file the Petition and to pay the docket and other lawful fees before the proper court which is the CA. Consequently, the CA properly dismissed outright the Petition because it never acquired jurisdiction over the same. As a result, the RTC's Decision had long become final and executory.

To stress, the right to appeal is statutory and one who seeks to avail of it must comply with the statute or rules. The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory. And, just as a losing party has the privilege to file an appeal within the prescribed period, so also does the prevailing party have the correlative right to enjoy the finality of a decision in his favor.

AMADO G. PEREZ (DECEASED) REPRESENTED BY HIS WIDOW GUILLERMA T. PEREZ, MARIO S. FRANCISCO, RAFAEL P. ARGAME, MIRASOL V. MENDOZA, GLORIA S. GONZALVO AND MARIA FE V. BOMBASE, petitioners, vs.OFFICE OF THE OMBUDSMAN, MAYOR IGNACIO R. BUNYE, CARLOS G. DOMINGUEZ, ROGELIO P. MADRIAGA, RECTO CORONADO, TEODORA A. DIANG, TOMAS M. OSIAS, REYNALDO CAMILON AND BENJAMIN BULOS, respondents.

G.R. No. 131445, THIRD DIVISION, May 27, 2004, Corona, J.

It is the nature of the case that determines the proper remedy to be filed and the appellate court where such remedy should be filed by a party aggrieved by the decisions or orders of the Office of the Ombudsman. If it is an administrative case, appeal should be taken to the Court of Appeals under Rule 43 of the Rules of Court. If it is a criminal case, the proper remedy is to file with the Supreme Court an original petition for certiorari under Rule 65.

Although the CA was correct in dismissing the petition for certiorari, it erroneously invoked as ratio decidendi Section 27 of RA 6770 which applies in administrative cases only, not criminal cases, such as the graft and corruption charge at bar. In our en banc decision in Fabian vs. Desierto, which is still controlling, we held that Section 27 applies only whenever an appeal by certiorari under Rule 45 is taken from a decision in an administrative disciplinary action. Nevertheless, we declared Section 27 unconstitutional for expanding the Supreme Court's appellate jurisdiction without its advice and

consent. We thus held that all appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Court. As the present controversy pertained to a criminal case, the petitioners were correct in availing of the remedy of petition for certiorari under Rule 65 but they erred in filing it in the Court of Appeals.

#### **FACTS:**

Members of the *Kilusang Bayan ng mga Magtitinda ng Bagong Pamilihang Bayan ng Muntinlupa, Inc.* (KBMBPM), instituted two complaints at the Office of the Ombudsman against several respondents, one of whom was then Mayor Ignacio R. Bunye, for violation of RA 3019 (also known as the "Anti-Graft and Corrupt Practices Act"). Respondents allegedly destroyed the doors of the KBMBPM office while serving on petitioners the Take-Over Order of the KBMBPM management issued by then Agriculture Secretary Carlos G. Dominguez.

In disposing of said complaints, the Office of the Ombudsman issued a resolution (hereinafter, "Ombudsman resolution") excluding Bunye from the criminal indictment. The petitioners assailed the exclusion in the CA through an original petition for *certiorari* and *mandamus*. The CA, however, dismissed it for lack of jurisdiction supposedly in accordance with Section 27 of RA 6770 (also known as the "Ombudsman Act of 1989"). Citing *Yabut vs. Ombudsman, Alba vs. Nitorreda*, and *Angchangco vs.Ombudsman*, the CA likewise denied petitioners' motion for reconsideration. Hence, this petition for review.

#### **ISSUE**

Whether or not the CA was correct in dismissing the petition for *certiorari* and *mandamus?* (NO)

#### **RULING**

It is the nature of the case that determines the proper remedy to be filed and the appellate court where such remedy should be filed by a party aggrieved by the decisions or orders of the Office of the Ombudsman. If it is an *administrative* case, appeal should be taken to the *Court of Appeals under Rule 43* of the Rules of Court. If it is a *criminal* case, the proper remedy is to file with the *Supreme Court an original petition for certiorari under Rule 65.* 

Although the CA was correct in dismissing the petition for *certiorari*, it erroneously invoked as *ratio decidendi* Section 27 of RA 6770 which applies in administrative cases only, not criminal cases, such as the graft and corruption charge at bar. In our *en banc* decision in *Fabian vs. Desierto*, which is still controlling, we held that Section 27 applies only whenever an appeal by *certiorari* under Rule 45 is taken from a decision in an administrative disciplinary action. Nevertheless, we declared Section 27 unconstitutional for expanding the Supreme Court's appellate jurisdiction without its advice and consent. We thus held that all appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under Rule 43 of the 1997 Rules of Court.

As the present controversy pertained to a criminal case, the petitioners were correct in availing of the remedy of petition for *certiorari* under Rule 65 but they erred in filing it in the Court of Appeals. The procedure set out in *Kuizon vs. Ombudsman* and *Mendoza-Arce vs. Ombudsman*, requiring that petitions for *certiorari* questioning the Ombudsman's orders or decisions in criminal cases should be filed in the Supreme Court and not the Court of Appeals, is still the prevailing rule.

But even if the petition for *certiorari* had been filed in the Supreme Court, it would have dismissed it just the same. First, petitioners should have filed a motion for reconsideration of the Ombudsman resolution as it was the plain, speedy and adequate remedy in the ordinary course of law, not filing a petition for *certiorari* directly in the Supreme Court. Second, the Office of the Ombudsman did not act without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Ombudsman resolution.

In this case, there was no grave abuse of discretion on the part of the Office of the Ombudsman in dismissing the complaint against respondent Bunye upon the factual finding that there is no evidence to show that he specifically participated in the violent implementation of the Order.

### AMANDO P. CONTES vs. OFFICE OF THE OMBUDSMAN (VISAYAS), VICTORY M. FERNANDEZ, JULIO E. SUCGANG and NILO IGTANLOC

G.R. Nos. 187896-97, SECOND DIVISION, June 10, 2013, Perez, J.

Appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43, in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure. Jurisprudence accords a different treatment with respect to an appeal in a criminal case filed with the Office of the Ombudsman and that remedy is to file with this Court a petition for certiorari under Rule 65.

#### **FACTS:**

Petitioner charged respondents with violation of Section 3(c) of RA 3019, or the Anti-Graft and Corrupt Practices Act, claiming that respondents utilized a heavy equipment in levelling a portion of his land and destroyed. The Ombudsman (Visayas), in its Consolidated Evaluation Report, recommended the dismissal of the cases due to the fact that two other cases involving the same parties and issues had already been filed by petitioner. Petitioner moved for reconsideration of the Report but the same was denied by the Ombudsman (Visayas).

Petitioner then filed an appeal directly to the SC, via a petition for review on certiorari, pursuant to Section 27 of the Ombudsman Act, assailing the denial of his motion for reconsideration. He refutes the finding of the Office of the Ombudsman (Visayas) that he had filed a similar administrative and criminal complaint against respondents. In their Comment, the Office of the Solicitor General seeks the dismissal of the petition because the petitioner availed of the wrong remedy.

#### **ISSUE:**

Whether or not the Ombudsman erred in dismissing the petitioner's complaints?

#### **RULING:**

Petitioner, in filing this petition for review, committed a procedural misstep which warrants an outright dismissal.

Petitioner misconstrued Section 27 of Republic Act No. 6770 or the Ombudsman Act of 1989 and disregarded prevailing jurisprudence. Section 27 provides, in part, that:

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

This provision, insofar as it provided for appeal by certiorari under Rule 45 from the decisions or orders of the Ombudsman in administrative cases, had been declared unconstitutional by this Court as early as in the case of Fabian v. Desierto. We ruled in Fabian that appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43, in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure.

Jurisprudence accords a different treatment with respect to an appeal in a criminal case filed with the Office of the Ombudsman. We made the pronouncement in Acuña v. Deputy Ombudsman for Luzon that the remedy of an aggrieved party in criminal complaints before the Ombudsman is to file with this Court a petition for certiorari under Rule 65.

Considering that the case at bar was a consolidation of an administrative and a criminal complaint, petitioner had the option to either file a petition for review under Rule 43 with the Court of Appeals or directly file a certiorari petition under Rule 65 before this Court. Neither of these two remedies was resorted to by petitioner. By availing of a wrong remedy, this petition merits an outright dismissal.

JULIET VITUG MADARANG and ROMEO BARTOLOME, represented by his attorneys-in-fact and acting in their personal capacities, RODOLFO and RUBY BARTOLOME, Petitioners, -versus-

SPOUSES JESUS D. MORALES and CAROLINA N. MORALES, Respondents.

G.R. No. 199283, THIRD DIVISION, June 9, 2014, LEONEN, J.

A party filing a petition for relief from judgment must strictly comply with two (2) reglementary periods: (a) the petition must be filed within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and (b) within a fixed period of six (6) months from entry of such judgment, order or other proceeding. Strict compliance with these periods is required because provision for a petition for relief from judgment is a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order or proceeding must, at some definite time, attain finality in order at last to put an end to litigation.

This court agrees that the petition for relief from judgment was filed out of time. However, the trial court erred in counting the 60-day period to file a petition for relief from the date of finality of the trial court's decision. Rule 38, Section 3 of the 1997 Rules of Civil Procedure is clear that the 60-day period must be counted after petitioner learns of the judgment or final order.

#### **FACTS:**

Spouses Jesus and Carolina Morales filed with the RTC of Quezon City a complaint for judicial foreclosure of a house and lot located in Bago Bantay, Quezon City. They alleged that Spouses

Nicanor and Luciana Bartolome loaned ₱500,000.00 from them, and consequently mortgaged the Bago Bantay property to them. The period to pay lapsed without the Spouses Bartolome having paid their loan; even after demand, the loan obligation remained unpaid.

In the meantime, the Spouses Bartolome died. The Spouses Morales sued Madarang as the latter allegedly represented herself as Lita Bartolome and convinced the Spouses Morales to lend money to the Spouses Bartolome. Romeo and Rodolfo Bartolome were sued in their capacities as legitimate heirs of the Spouses Bartolome. Ruby Anne Bartolome is Rodolfo Bartolome's wife.

The trial court ruled in favor of the respondent-spouses. Petitioners received a copy of the trial court's decision on January 29, 2010. The petitioners filed their motion for reconsideration of the trial court's decision, and subsequently an amended motion for reconsideration. However, in its order dated May 25, 2010, the trial court denied both motions. Defendants received a copy of the May 25, 2010 order on June 24, 2010.

On August 11, 2010, defendants filed a notice of appeal. In its order dated August 13, 2010, the trial court denied due course the notice of appeal for having been filed out of time. According to the trial court, defendants, through their counsel, Atty. Arturo F. Tugonon, received a copy of the order denying the motion for reconsideration on June 24, 2010. However, they filed their notice of appeal only on August 11, 2010, which was beyond the 15-day period to appeal.

On September 24, 2010, defendants filed a petition for relief from judgment, blaming their 80-year-old lawyer who failed to file the notice of appeal within the reglementary period. They argued that Atty. Tugonon's failure to appeal within the reglementary period was a mistake and an excusable negligence due to their former lawyer's old age.

The trial court denied the petition for relief from judgment, holding that the petition for relief was filed beyond 60 days from the finality of the trial court's decision, contrary to Section 3, Rule 38 of the 1997 Rules of Civil Procedure.

On July 13, 2011, Madarang, Romeo, and Rodolfo and Ruby Anne Bartolome filed a petition for certiorari with the Court of Appeals. The appellate court denied outright the petition for certiorari, finding that petitioners did not file a motion for reconsideration of the order denying the petition for relief from judgment, a prerequisite for filing a petition for certiorari.

In the instant, petition, petitioners argue, among others, that the trial court erred in denying their notice of appeal. They personally received a copy of the decision only on August 11, 2011. They argue that the period to file on appeal must be counted from August 11, 2011, not on the day their "ailing counsel" received a copy of the decision.

#### **ISSUE:**

Whether the failure of petitioners' former counsel to file the notice of appeal within the reglementary period is excusable negligence (NO)

#### **RULING:**

This court agrees that the petition for relief from judgment was filed out of time. However, the trial court erred in counting the 60-day period to file a petition for relief from the date of finality of the trial court's decision. Rule 38, Section 3 of the 1997 Rules of Civil Procedure is clear that the 60-day

period must be counted after petitioner learns of the judgment or final order. The period counted from the finality of judgment or final order is the six-month period. Section 3, Rule 38 of the 1997 Rules of Civil Procedure states:

Sec. 3. Time for filing petition; contents and verification.— A petition provided for in either of the preceding sections of this Rule must be verified, filed within sixty (60) days after petitioner learns of the judgment, final order, or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered, or such proceeding was taken; and must be accompanied with affidavits, showing the fraud, accident, mistake or excusable negligence relied upon and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be. (Emphasis supplied)

The double period required under Section 3, Rule 38 is jurisdictional and should be strictly complied with. A petition for relief from judgment filed beyond the reglementary period is dismissed outright. This is because a petition for relief from judgment is an exception to the public policy of immutability of final judgments.

A party filing a petition for relief from judgment must strictly comply with two (2) reglementary periods: (a) the petition must be filed within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and (b) within a fixed period of six (6) months from entry of such judgment, order or other proceeding. Strict compliance with these periods is required because provision for a petition for relief from judgment is a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order or proceeding must, at some definite time, attain finality in order at last to put an end to litigation.

In Turqueza v. Hernando, this Court stressed once more that:

... the doctrine of finality of judgments is grounded on fundamental considerations of public policy and sound practice that at the risk of occasional error, the judgments of courts must become final at some definite date fixed by law. The law gives an exception or 'last chance' of a timely petition for relief from judgment within the reglementary period (within 60 days from knowledge and 6 months from entry of judgment) under Rule 38, supra, but such grave period must be taken as 'absolutely fixed, inextendible, never interrupted and cannot be subjected to any condition or contingency. Because the period fixed is itself devised to meet a condition or contingency (fraud, accident, mistake or excusable neglect), the equitable remedy is an act of grace, as it were, designed to give the aggrieved party another and last chance' and failure to avail of such last chance within the grace period fixed by the statute or Rules of Court is fatal . . . . (Emphasis in the original)

In this case, petitioners, through counsel, received a copy of the trial court's decision on January 29, 2010. They filed a motion for reconsideration and an amended motion for reconsideration, both containing similar allegations. Although petitioners filed a motion for reconsideration and amended motion for reconsideration, these motions were pro forma for not specifying the findings or conclusions in the decision that were not supported by the evidence or contrary to law. Their motion for reconsideration did not toll the 15-day period to appeal.

Petitioners cannot argue that the period to appeal should be counted from August 11, 2011, the day petitioners personally received a copy of the trial court's decision. Notice of judgment on the counsel of record is notice to the client. Since petitioners' counsel received a copy of the decision on January 29, 2010, the period to appeal shall be counted from that date.

Thus, the decision became final 15 days after January 29, 2010, or on February 13, 2010. Petitioners had six (6) months from February 13, 2010, or until August 12, 2010, to file a petition for relief from judgment. Since petitioners filed their petition for relief from judgment on September 24, 2010, the petition for relief from judgment was filed beyond six (6) months from finality of judgment. The trial court should have denied the petition for relief from judgment on this ground.

Even if we assume that petitioners filed their petition for relief from judgment within the reglementary period, petitioners failed to prove that their former counsel's failure to file a timely notice of appeal was due to a mistake or excusable negligence.

To set aside a judgment through a petition for relief, the negligence must be so gross "that ordinary diligence and prudence could not have guarded against." This is to prevent parties from "reviv[ing] the right to appeal [already] lost through inexcusable negligence."

Petitioners argue that their former counsel's failure to file a notice of appeal within the reglementary period was "a mistake and an excusable negligence due to [their former counsel's] age." This argument stereotypes and demeans senior citizens. It asks this court to assume that a person with advanced age is prone to incompetence. This cannot be done.

### PINAUSUKAN SEAFOOD HOUSE, ROXAS BOULEY ARD, INC., Petitioner, -versus-

### FAR EAST BANK & TRUST COMPANY, NOW BANK OF THE PHILIPPINE ISLANDS AND HECTOR I. GALURA, Respondents.

G.R. No. 159926, FIRST DIVISION, January 20, 2014, BERSAMIN, J.

Pinausukan's failure to include the affidavits of witnesses was fatal to its petition for annulment. Worthy to reiterate is that the objective of the requirements of verification and submission of the affidavits of witnesses is to bring all the relevant facts that will enable the CA to immediately determine whether or not the petition has substantial merit. In that regard, however, the requirements are separate from each other, for only by the affidavits of the witnesses who had competence about the circumstances constituting the extrinsic fraud can the petitioner detail the extrinsic fraud being relied upon as the ground for its petition for annulment. This is because extrinsic fraud cannot be presumed from the recitals alone of the pleading but needs to be particularized as to the facts constitutive of it.

#### **FACTS:**

On various dates in 1993, Bonier de Guzman, then the President of petitioner corporation (Pinausukan, for short), executed several mortgages involving the petitioner's parcel of land in Pasay City in favor of Far East Bank and Trust Company. When the unpaid obligation secured by the mortgages had ballooned, the Bank commenced proceedings for the extrajudicial foreclosure of the mortgages. Learning of the impending sale of its property, Pinausukan, represented by Zsae Carrie de Guzman, brought against the Bank and the sheriff an action for the annulment of real estate

mortgages in the RTC (Civil Case No. 01-0300), averring that Bonier had constituted the mortgages on the corporate asset without Pinausukan's consent through a board resolution.

In August 2002, the parties informed the RTC about their attempts to settle the case. However, the counsels of the parties did not appear in court on the scheduled hearing despite having agreed thereto. Accordingly, on October 31, 2002, the RTC dismissed Civil Case No. 01-0300 for failure to prosecute. The order of dismissal attained finality. On June 24, 2003, the sheriff issued a notice of extrajudicial sale concerning the property of Pinausukan. The notice was received by Pinausukan a week later.

Claiming surprise over the turn of events, Pinausukan inquired from the RTC and learned that Atty. Michael Dale Villaflor (Atty. Villaflor), its counsel of record, had not informed it about the order of dismissal issued on October 31, 2002.

On July 24, 2003, Pinausukan brought the petition for annulment in the CA seeking the nullification of the order of October 31, 2002 dismissing Civil Case No. 01-0300. Its petition, under the verification of Roxanne de Guzman-San Pedro (Roxanne), who was one of its Directors, and concurrently its Executive Vice President for Finance and Treasurer, stated that its counsel had been guilty of gross and palpable negligence in failing to keep track of the case he was handling, and in failing to apprise Pinausukan of the developments on the case. It further pertinently stated that the palpable negligence of counsel to keep track of the case he was handling constituted professional misconduct amounting to extrinsic fraud properly warranting the annulment of the Order dated October 31, 2003 as petitioner was unduly deprived of its right to present evidence in Civil Case No. 01-0300 through no fault of its own.

The CA dismissed the petition for annulment, citing the failure to attach the affidavits of witnesses attesting to and describing the alleged extrinsic fraud supporting the cause of action as required by Section 4, Rule 47 of the Rules of Court; and observing that the verified petition related only to the correctness of its allegations, a requirement entirely different and separate from the affidavits of witnesses required under Rule 47 of the Rules of Court.

#### **ISSUE:**

Whether or not the requirement for attaching the affidavits of witnesses to the petition for annulment should be relaxed (NO)

#### **RULING:**

Pinausukan posits that the requirement for attaching the affidavits of witnesses to the petition for annulment should be relaxed; that even if Roxanne had executed the required affidavit as a witness on the extrinsic fraud, she would only repeat therein the allegations already in the petition, thereby duplicating her allegations under her oath; that the negligence of Atty. Villaflor, in whom it entirely relied upon, should not preclude it from obtaining relief; and that it needed a chance to prove in the RTC that Bonier had no right to mortgage its property.

The Court has expounded on the nature of the remedy of annulment of judgment or final order in Dare Adventure Farm Corporation v. Court of Appeals, viz:

A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final

resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. The Court has thus instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the Rules of Court that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. A petition for annulment that ignores or disregards any of the safeguards cannot prosper.

Given the extraordinary nature and the objective of the remedy of annulment of judgment or final order, Pinausukan must be mindful of and should closely comply with the following statutory requirements for the remedy as set forth in Rule 47 of the Rules of Court.

One requirement limits the ground for the action of annulment of judgment to either extrinsic fraud or lack of jurisdiction.

Aptly, in this case, not every kind of fraud justifies the action of annulment of judgment. Only extrinsic fraud does. Fraud is extrinsic, according to Cosmic Lumber Corporation v. Court of Appeals, "where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority connives at his defeat; these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment and open the case for a new and fair hearing."

The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented the petitioner from having his day in court. Nonetheless, extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.

Another requirement, pertinent to this case, demands that the petition should be verified, and should allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be. The need for particularity cannot be dispensed with because averring the circumstances constituting either fraud or mistake with particularity is a universal requirement in the rules of pleading.

The purpose of these requirements of the sworn verification and the particularization of the allegations of the extrinsic fraud in the petition, of the submission of the certified true copy of the judgment or final order or resolution, and of the attachment of the affidavits of witnesses and documents supporting the cause of action or defense is to forthwith bring all the relevant facts to the CA's cognizance in order to enable the CA to determine whether or not the petition has substantial merit. Should it find prima facie merit in the petition, the CA shall give the petition due course and direct the service of summons on the respondent; otherwise, the CA has the discretion to outrightly dismiss the petition for annulment.

A review of the dismissal by the CA readily reveals that Pinausukan's petition for annulment suffered from procedural and substantive defects.

The procedural defect consisted in Pinausukan's disregard of the requirement mentioned earlier consisting in its failure to submit together with the petition the affidavits of witnesses or documents supporting the cause of action. It is true that the petition, which narrated the facts relied upon, was verified under oath by Roxanne. However, the submission of the affidavits of witnesses together with the petition was not dispensable for that reason.

Pinausukan's failure to include the affidavits of witnesses was fatal to its petition for annulment. Worthy to reiterate is that the objective of the requirements of verification and submission of the affidavits of witnesses is to bring all the relevant facts that will enable the CA to immediately determine whether or not the petition has substantial merit. In that regard, however, the requirements are separate from each other, for only by the affidavits of the witnesses who had competence about the circumstances constituting the extrinsic fraud can the petitioner detail the extrinsic fraud being relied upon as the ground for its petition for annulment. This is because extrinsic fraud cannot be presumed from the recitals alone of the pleading but needs to be particularized as to the facts constitutive of it. The distinction between the verification and the affidavits is made more pronounced when an issue is based on facts not appearing of record. In that instance, the issue may be heard on affidavits or depositions presented by the respective parties, subject to the court directing that the matter be heard wholly or partly on oral testimony or depositions.

The substantive defect related to the supposed neglect of Atty. Villaflor to keep track of the case, and to his failure to apprise Pinausukan of the developments in the case, which the CA did not accept as constituting extrinsic fraud, because – Based solely on these allegations, we do not see any basis to give due course to the petition as these allegations do not speak of the extrinsic fraud contemplated by Rule 47. Notably, the petition's own language states that what is involved in this case is mistake and gross negligence of petitioner's own counsel. The petition even suggests that the negligence of counsel may constitute professional misconduct (but this is a matter for lawyer and client to resolve). What is certain, for purposes of the application of Rule 47, is that mistake and gross negligence cannot be equated to the extrinsic fraud that Rule 47 requires to be the ground for an annulment of judgment.

#### JOY VANESSA M. SEBASTIAN, Petitioner, -versus-

# SPOUSES NELSON C. CRUZ AND CRISTINA P. CRUZ and THE REGISTER OF DEEDS FOR THE PROVINCE OF PANGASINAN, Respondents.

G.R. No. 220940, FIRST DIVISION, March 20, 2017, PERLAS-BERNABE, J.

Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim. In case of absence, or lack, of jurisdiction, a court should not take cognizance of the case. Thus, the prevailing rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out are void.

In this case, Sebastian's petition for annulment of judgment before the CA clearly alleged that, contrary to the claim of Spouses Cruz in LRC Case No. 421, the owner's duplicate copy of OCT No. P-41566 was not really lost, as the same was surrendered to her by Lamberto, Nelson's father and

attorney-in-fact, and was in her possession all along. Should such allegation be proven following the conduct of further proceedings, then there would be no other conclusion than that the RTC had no jurisdiction over the subject matter of LRC Case No. 421. As a consequence, the Decision dated March 27, 2014 of the RTC in the said case would then be annulled on the ground of lack of jurisdiction.

#### **FACTS:**

Petitioner alleged that respondent Nelson Cruz, married to Cristina Cruz, is the registered owner of a parcel of land located in Brgy. Bogtong-Bolo, Mangatarem, Pangasinan and covered by OCT No. P-415666. Later, Nelson, through his father and attorney-in-fact, Lamberto P. Cruz, sold the subject lot in favor of Sebastian, as evidenced by a Deed of Absolute Sale executed by the parties. Upon Sebastian's payment of the purchase price, Lamberto then surrendered to her the possession of the subject land, and OCT No. P-41566.

However, upon her presentment of the requisite documents to the Register of Deeds of the Province of Pangasinan, the latter directed her to secure a Special Power of Attorney executed by Spouses Cruz authorizing Lamberto to sell the subject land to her. Accordingly, Sebastian requested the execution of such document to Lamberto, who promised to do so, but failed to comply.

It was only upon her inquiry with RD-Pangasinan about the status of the aforesaid title when she discovered that: (a) Nelson executed an Affidavit of Loss dated September 23, 2013 attesting to the loss of owner's duplicate copy of OCT No. P- 41566, which he registered with the RD-Pangasinan; (b) the Spouses Cruz filed before the RTC a petition for the issuance of a second owner's copy of OCT No. P-41566, docketed as LRC Case No. 421; and (c) on March 27, 2014, the RTC promulgated a Decision granting Spouses Cruz's petition and, consequently, ordered the issuance of a new owner's duplicate copy of OCT No. P-41566 in their names.

In view of the foregoing incidents, Sebastian filed the aforesaid petition for annulment of judgment before the CA on the ground of lack of jurisdiction. Essentially, she contended that the RTC had no jurisdiction to take cognizance of LRC Case No. 421 as the duplicate copy of OCT No. P-41566 - which was declared to have no further force in effect - was never lost, and in fact, is in her possession all along.

The CA did not give due course to Sebastian's petition and, consequently, dismissed the same outright. It held that the compliance by Spouses Cruz with the jurisdictional requirements of publication and notice of hearing clothed the RTC with jurisdiction to take cognizance over the action *in rem,* and constituted a constructive notice to the whole world of its pendency. As such, personal notice to Sebastian of the action was no longer necessary.

#### **ISSUE:**

Whether or not the CA correctly denied due course to Sebastian's petition for annulment of judgment, resulting in its outright dismissal (NO)

#### **RULING:**

Under Section 2, Rule 4 7 of the Rules of Court, the only grounds for annulment of judgment are extrinsic fraud and lack of jurisdiction. Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter

of the claim. In case of absence, or lack, of jurisdiction, a court should not take cognizance of the case. Thus, the prevailing rule is that where there is want of jurisdiction over a subject matter, the judgment is rendered null and void. A void judgment is in legal effect no judgment, by which no rights are divested, from which no right can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out are void. It is not a decision in contemplation of law and, hence, it can never become executory. It also follows that such a void judgment cannot constitute a bar to another case by reason of *res judicata*.

As will be explained hereunder, the CA erred in denying due course to Sebastian's petition for annulment of judgment and, resultantly, in dismissing the same outright.

The fact of loss or destruction of the owner's duplicate certificate of title is crucial in clothing the RTC with jurisdiction over the judicial reconstitution proceedings. In *Spouses Paulino v. CA*, the Court reiterated the rule that when the owner's duplicate certificate of title was not actually lost or destroyed, but is in fact in the possession of another person, the reconstituted title is void because the court that rendered the order of reconstitution had no jurisdiction over the subject matter of the case, *viz.*:

In reconstitution proceedings, the Court has repeatedly ruled that before jurisdiction over the case can be validly acquired, it is a condition *sine qua non* that the certificate of title has not been issued to another person. If a certificate of title has not been lost but is in fact in the possession of another person, the reconstituted title is void and the court rendering the decision has not acquired jurisdiction over the petition for issuance of new title. The courts simply have no jurisdiction over petitions by (such) third parties for reconstitution of allegedly lost or destroyed titles over lands that are already covered by duly issued subsisting titles in the names of their duly registered owners. The existence of a prior title *ipso facto* nullifies the reconstitution proceedings. The proper recourse is to assail directly in a proceeding before the regional trial court the validity of the Torrens title already issued to the other person. (Emphases and underscoring supplied)

In this case, Sebastian's petition for annulment of judgment before the CA clearly alleged that, contrary to the claim of Spouses Cruz in LRC Case No. 421, the owner's duplicate copy of OCT No. P-41566 was not really lost, as the same was surrendered to her by Lamberto, Nelson's father and attorney-in-fact, and was in her possession all along. Should such allegation be proven following the conduct of further proceedings, then there would be no other conclusion than that the RTC had no jurisdiction over the subject matter of LRC Case No. 421. As a consequence, the Decision dated March 27, 2014 of the RTC in the said case would then be annulled on the ground of lack of jurisdiction.

# RENE H. IMPERIAL and NIDSLAND RESOURCES AND DEVELOPMENT CORPORATION, *Petitioners,*

-versus-

HON. EDGAR L. ARMES, Presiding Judge of Branch 4, Regional Trial Court, 5th Judicial Region, Legazpi City and ALFONSO B. CRUZ, JR., *Respondents*.

G.R. No. 178842, THIRD DIVISION, January 30, 2017, JARDELEZA, J.

x -----x
ALFONSO B. CRUZ, Petitioner,
-versus-

### RENE IMPERIAL and NIDSLAND RESOURCES AND DEVELOPMENT CORPORATION, Respondents.

G.R. No. 195509, THIRD DIVISION, January 30, 2017, JARDELEZA, J.

While it is correct that both the regional trial courts and the CA cannot take cognizance of a petition for annulment of judgment of a quasi-judicial body under Rule 47 of the Rules of Court, they may nevertheless do so, if a law categorically provides for such a remedy and clearly provides them with jurisdiction.

Applying this to the present case, we rule that there is no law at the time pertinent to this case, which allows the filing of a petition for annulment of judgment before the regional trial courts and the CA to set aside a void judgment of the SEC on the basis of lack of jurisdiction. We hasten to emphasize, however, that this pertains only to cases filed prior to Republic Act No. 8799 which transferred the jurisdiction over intra-corporate disputes to regional trial courts designated as commercial courts. As to the latter, Rule 47 clearly applies.

This leads to the conclusion that the RTC Petition is not the proper remedy to assail the SEC Decision. Since it is an action for the annulment of judgment, the RTC Petition cannot prosper as we have already ruled that this remedy is not available in this particular case.

#### **FACTS:**

Julian Napal (Napal) and Imperial entered into a Memorandum of Agreement (MOA) to organize a domestic corporation, to be named NIDSLAND and to engage in the real estate business. While Imperial faithfully complied with his obligations under the MOA, Napal failed to convey to NIDSLAND, for his capital contribution, a certain portion of the Subject Property. Napal sold the Subject Property to Cruz as evidenced by a Deed of Absolute Sale. While the Deed of Absolute Sale between Napal and Cruz bore the date July 24, 1996, the sale was registered in the Registry of Deeds of Legazpi City only on August 27, 1996.

Imperial filed, for himself and in representation of NIDSLAND, a derivative suit (SEC Petition) before the Securities and Exchange Commission. This was filed after the sale to Cruz but before its registration. On the same day, Imperial also filed a notice of *lis pendens* for the SEC Case with the Registry of Deeds. Since the annotation of the *lis pendens* occurred after the sale of the Subject Property to Cruz but before its registration with the Registry of Deeds, the notice of *lis pendens* was carried over to the new TCT issued in Cruz's name. Meanwhile, the SEC Case proceeded without the participation of Cruz who had possession of the new TCT covering the Subject Property during the continuation of the hearings.

The SEC Hearing Officer rendered a Decision in favor of Imperial and NIDSLAND (SEC Decision), declaring the Deed of Absolute Sale between Napal and Cruz void *ab initio* as the SEC found that the sale was simulated and was intentionally made to appear to have been perfected prior to the filing

of the notice of *lis pendens*. Thus, the SEC ordered the cancellation of the TCT in the name of Cruz. The SEC directed Napal to execute the proper deed of conveyance of the Subject Property in favor of NIDSLAND.

Since Napal did not appeal the SEC Decision, it became final and executory and was enforced on January 13, 1999. As ordered in the SEC Decision, a Deed of Conveyance was issued, transferring the Subject Property to NIDSLAND. The TCT in the name of Cruz was cancelled and a new one was issued in the name of NIDSLAND.

On January 22, 2001, Cruz filed a pleading denominated as a "Petition" before RTC Legazpi City (RTC Petition), which sought to nullify the SEC Decision.

The presiding judge dismissed the Petition *motu proprio*. He justified his dismissal on the ground that regional trial courts have no jurisdiction over the SEC and as such, an action assailing the decision of the SEC should be brought before the CA. As his motion for reconsideration of the decision was denied, Cruz elevated the case to the CA by way of a special civil action for *certiorari*. The CA held that RTC Legazpi City acted with grave abuse of discretion in dismissing the Petition, and therefore ordered that the case be remanded to RTC Legazpi City to be given due course.

In accordance with the Decision of the CA, the RTC Petition was re-docketed. After trial, the parties to the RTC Petition submitted their respective memoranda. In Imperial and NIDSLAND's memorandum and supplemental memorandum, they sought the dismissal of the RTC Petition on the ground of lack of jurisdiction. Judge Armes refused the dismissal. Later, they filed an Omnibus Motion, and a Supplemental Motion, again praying for the dismissal of the RTC Petition.

Respondent Judge Armes denied the Omnibus Motion and Supplemental Motion, as well as their subsequent motion for reconsideration. Imperial and NIDSLAND then filed a Petition for *Certiorari* and Prohibition under Rule 65 before the CA. This petition assailed the validity of Respondent Judge Armes' Orders. The CA dismissed Imperial and NIDSLAND's Petition for *Certiorari* and Prohibition for lack of merit.

Hence, Imperial and NIDSLAND filed this Petition for Review on *Certiorari* (G.R. NO. 178842) under Rule 45. In their petition, Imperial and NIDSLAND argue that the CA should have reversed the error of the RTC Legazpi City in allowing the filing of the RTC Petition way beyond the 60-day period for the filing of a special civil action for *certiorari*. They stress that the RTC Petition was filed three and a half years after the finality of the SEC Decision and two years and three months from the time Cruz received notice of its promulgation.

While the First Petition was pending, RTC Legazpi City rendered a Decision. The RTC Legazpi City ruled that SEC Hearing Officer Gonzales acted with grave abuse of discretion when he annulled the Deed of Sale of the Subject Property between Napal and Cruz, ordered the cancellation of Cruz's TCT, and directed Napal to execute a deed of conveyance in favor of NIDSLAND. Aggrieved by the

RTC Main Decision, Imperial and NIDSLAND filed before the CA an appeal under Rule 41. The CA reversed the RTC Decision.

Cruz filed a Petition for Review on *Certiorari*(G.R. No. 195509) challenging the Second Assailed Decision. Cruz raised the following arguments: Cruz claimed that he is the registered owner of the Subject Property. He was thus an indispensable party to the SEC Case and as such, should have been impleaded. Since the SEC Case was a personal action and he was never impleaded, Cruz argues that the SEC never acquired jurisdiction over him. Thus, any decision cannot prejudice his property rights over the Subject Property. Further, as an indispensable party, any judgment obtained by Imperial and NIDSLAND in the SEC Case has no binding effect on Cruz.

#### **ISSUE:**

Whether or not the RTC Petition was the proper remedy to assail the SEC Decision (NO)

#### **RULING:**

The RTC Petition filed by Cruz has been treated by the CA and the parties as a special civil action for *certiorari*. The RTC Petition, however, prays for the nullification of the SEC Decision and thus purports to be an action for the annulment of a void judgment. Ascertaining the true nature of the RTC Petition is crucial as it determines whether Cruz properly invoked the correct remedy in assailing the SEC Decision.

The nature of an action is determined by the material allegations in the complaint and the type of relief prayed for. We have examined the RTC Petition, and we rule that contrary to the findings of the lower courts, it is an action for the annulment of judgment on the ground of lack of jurisdiction. The meat of the RTC Petition's allegation is that the SEC declared as void *ab initio* the sale between Napal and Cruz without impleading Cruz in the proceedings. The SEC also had no power to order the transfer of title over the Subject Property from Cruz to NIDSLAND because Cruz was never heard in these proceedings. Cruz asserts that the SEC never acquired jurisdiction over his person. Cruz thus prayed in the RTC Petition that the SEC Decision be declared null and void.

The RTC Petition clearly captures the material allegations in a petition for annulment of judgment on the ground of lack of jurisdiction over the person of one of the parties under Rule 47 of the Rules of Court. In sharp contrast, the RTC Petition makes no allegations that the SEC Decision was rendered with grave abuse of discretion. It cannot be treated as a special civil action for *certiorari* under Rule 65.

The necessary question before us now is whether Cruz invoked the proper remedy. There have been several attempts to use an action for annulment of judgment under Rule 47 of the Rules of Court to set aside a void judgment of a quasi-judicial body. Thus, the following issues: whether this

remedy is available to set aside a void judgment of a quasi-judicial body, and which tribunal has jurisdiction over it.

In *Springfield Development Corporation, Inc. v. Presiding Judge, RTC, Misamis Oriental, Br. 40, Cagayan de Oro City,* we explained that regional trial courts have no jurisdiction to annul judgments of quasi-judicial bodies of equal rank. It then proceeded to state that the CA also has no jurisdiction over such an action. *Springfield* emphasized that Section 9 of BP 129 and Rule 47 of the Rules of Court both state that the CA has jurisdiction over annulment of judgments of regional trial courts only. We ruled in this case that the "silence of B.P. Blg. 129 on the jurisdiction of the CA to annul judgments or final orders and resolutions of quasi-judicial bodies like the DARAB indicates its lack of such authority." While this case explained that neither the regional trial courts nor the CA possess jurisdiction over an action to annul the judgment of quasi-judicial bodies, it did not categorically state that the remedy itself does not exist in the first place.

The seeming confusion in the string of cases pertaining to the jurisdiction over petitions for annulment of judgment of quasi-judicial bodies is clarified when these cases are read in conjunction with *Macalalag* v. *Ombudsman*. While we repeated our consistent ruling that Rule 47 of the Rules of Court only applies to judgments of regional trial courts, *Macalalag* also explains that an action for the annulment of judgment is similar in nature to an appeal-both are merely statutory. No right exists unless expressly granted by law. In *Macalalag*, we implied that the key to determining whether this remedy may be had and where such action may be filed is to ascertain whether there is a law expressly allowing a resort to this action before a particular tribunal. This then requires an examination of the laws and rules relevant to a specified quasi-judicial body. While it is correct that both the regional trial courts and the CA cannot take cognizance of a petition for annulment of judgment of a quasi-judicial body under Rule 47 of the Rules of Court, they may nevertheless do so, if a law categorically provides for such a remedy and clearly provides them with jurisdiction.

Applying this to the present case, we rule that there is no law at the time pertinent to this case, which allows the filing of a petition for annulment of judgment before the regional trial courts and the CA to set aside a void judgment of the SEC on the basis of lack of jurisdiction. We hasten to emphasize, however, that this pertains only to cases filed prior to Republic Act No. 8799 which transferred the jurisdiction over intra-corporate disputes to regional trial courts designated as commercial courts. As to the latter, Rule 47 clearly applies.

This leads to the conclusion that the RTC Petition is not the proper remedy to assail the SEC Decision. Since it is an action for the annulment of judgment, the RTC Petition cannot prosper as we have already ruled that this remedy is not available in this particular case.

However, the error in Cruz's RTC Petition does not automatically warrant a dismissal of these proceedings. We rule that the SEC, in nullifying the sale between Napal and Cruz and in ordering the cancellation of Cruz's TCTs in favor of NIDSLAND, overstepped its jurisdiction. The SEC Decision was rendered with grave abuse of discretion.

To assail the validity of the sale, Imperial and NIDSLAND sought to prove that the sale to Cruz was simulated. This involves the application of the law on sales. As we have already held in *Intestate Estate of Alexander T. Ty,* the issue of whether a sale is simulated falls within the jurisdiction of ordinary civil courts. It does not concern an adjudication of the rights of Imperial, NIDSLAND and Napal under the Corporation Code and the internal rules of the corporation. The resolution of these questions requires the application of an entire gamut of laws that goes well beyond the expertise of the SEC.

In this case, the SEC, in rendering the decision, disregarded established law and jurisprudence on the jurisdiction of the SEC. Further, it adjudicated on the rights of Cruz, cancelled the deed of sale, and took away his property without giving him the opportunity to be heard. It is a breach of the basic requirements of due process. Hence, because the SEC Decision was issued with grave abuse of discretion and is therefore void, all acts emanating from it have no force and effect. Thus, the Deed of Conveyance issued pursuant to it has no legal effect.

Nevertheless, while the certificates of title issued in the name of NIDSLAND arose from a void judgment, this Court cannot nullify them in these proceedings. The indefeasibility of a Torrens title prevents us from doing so. Further, we are bound by rules on jurisdiction and the nature of the proceedings before us.

### BACLARAN MARKETING CORPORATION, Petitioner, -versus-

**FERNANDO C. NIEVA and MAMERTO SIBULO, JR., Respondents** G.R. No. 189881, THIRD DIVISI<mark>ON</mark>, April 19, 2017, JARDELEZA, J.

In Guiang v. Co, we declared that an auction sale and a writ of execution are not final orders. Thus, they cannot be nullified through an action for annulment of judgment. Corollarily, an order implementing a writ of execution issued over certain real properties is also not a final order as it merely enforces a judicial process over an identified object. Similar to a writ of execution, a writ of possession is not a final order which may be annulled under Rule 47. It is merely a judicial process to enforce a final order against the losing party. For this reason the Decision of the Antipolo Court ordering the issuance of writ of possession is also not amenable to an action for annulment of judgment.

In fine, only the Decision of the Paranaque Court ordering the cancellation of BMC's title over the property qualifies as a final judgment. BMC invokes extrinsic fraud and lack of due process as grounds for its petition for annulment of judgment. It claims that Atty. Rizon's gross negligence in handling the case constitutes extrinsic fraud and deprived it of due process of law. In this case, the CA correctly found that BMC neither alleged nor proved that the gross negligence of its former counsel was done in connivance with Nieva or Sibulo. Therefore, it is not the extrinsic fraud contemplated under Rule 47, Section 2.

#### **FACTS:**

Petitioner BMC is one of the defendants in the civil case, entitled "Mamerto Sibulo, Jr. v. Ricardo Mendoza and Baclaran Marketing, Inc." pending with the Regional Trial Court of Antipolo (Antipolo Court). The case is one for damages arising from a vehicular collision between a truck owned by BMC and driven by its employee Ricardo Mendoza (Mendoza), and a car owned and driven by Mamerto Sibulo, Jr. (Sibulo). The Antipolo Court ruled in favor of BMC and Mendoza, finding that the damages suffered by Sibulo were the result of his own reckless and imprudent driving. On appeal, the CA reversed the Antipolo Court and held that Mendoza's negligence caused the collision. It awarded Sibulo damages in the total amount of \$\mathbb{P}765,159.55.

The Decision became final and executory. The Antipolo Court subsequently issued a Writ of Execution. Then, it directed the Deputy Sheriff, upon motion of Sibulo, to implement the Writ of Execution against the real properties owned by BMC, as it appears that BMC has no personal properties. The sheriff of the Antipolo Court levied upon BMC's real property in Paranaque City (TCT 34587). He sold the property and its improvements through public auction. Respondent Fernando C. Nieva (Nieva) emerged as the highest bidder paying the total price of \$\mathbb{P}800,000.000.000.

For BMC's failure to redeem the property within one year from the sale, Nieva consolidated ownership over it. He filed a Petition for Cancellation of Transfer Certificate Title No. 34587 and Issuance of New [Title] in the Regional Trial Court of Parañaque City. The Parañaque Court granted the petition, and ordered BMC to surrender to Nieva, within 15 days from receipt of the Decision, its owner's duplicate certificate of title over the property. Failing such, the Parañaque Court ordered the Register of Deeds to annul TCT No. 34587 and issue a new title in Nieva's name. The Decision of the Parañaque Court became final. Consequently, upon petition by Nieva, the Parañaque Court issued a Writ of Possession and Notice to Vacate against BMC.

BMC filed a Petition for Annulment of Judgment before the CA. BMC prayed for the annulment of the following orders and decisions: (a) Writ of Execution; (b) Order, ordering the implementation of the writ of execution over the real properties of BMC; (c) Auction Sale; (d) Decision of the Parañaque Court canceling TCT No. 34587; and (e) Decision, ordering the issuance of a Writ of Possession.

BMC alleged that its counsel, Atty. Isagani B. Rizon (Atty. Rizon), committed acts of gross and inexcusable negligence constituting "extrinsic fraud," which deprived it of due process and an opportunity to present its side. It discovered the fraud only in December 2008 when its representatives tried to pay the real estate tax on the property, only to learn that the title to it had already been transferred to Nieva. BMC averred that it did not know that Sibulo appealed the 1990 Decision of the Antipolo Court to the CA. It claimed that Atty. Rizon assured BMC that the 1990 Decision ended the controversy. Had BMC known of the appeal, it could have opposed the proceedings or engaged the services of new counsel.

BMC emphasized that the Antipolo Court ruled in its favor in the civil action for damages and that it was only when BMC failed to participate in the appeal that an adverse decision was rendered

against it. It maintains that if the orders of the Antipolo and Parañaque Courts were allowed to stand, BMC will be deprived of its substantial property rights over the property: when the property was sold to Nieva at the public auction for a bid price of P800,000.00, its market value was already P19,890,000.00.

The CA denied BMC's petition. It ruled that the remedy of annulment of judgment is not available to BMC because: (a) Extrinsic fraud refers to a fraud perpetrated by the prevailing party, not by the unsuccessful party's own counsel; (b) BMC is bound by the negligence of Atty. Rizon because it was negligent for not checking on the status of the case; and (c) a writ of execution or auction sale is not in the nature of a final judgment, order, or resolution.

#### **ISSUE:**

Whether the CA erred in dismissing BMC's petition for annulment of judgment (NO) **RULING:** 

In *Pinausukan Seafood House v. Far East Bank & Trust Company*, we held that "[g]iven the extraordinary nature and the objective of the remedy of annulment of judgment or final order," a petitioner must comply with the statutory requirements as set forth under Rule 47. These are:

(1) The remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner; (2) The grounds for the action of annulment of judgment are limited to either extrinsic fraud or lack of jurisdiction; (3) The action must be filed within four years from the discovery of the extrinsic fraud; and if based on lack of jurisdiction, must be brought before it is barred by laches or estoppel; and (4) The petition must be verified, and should allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.

BMC's petition for annulment of judgment fails to meet the first and second requisites.

Rule 47, Section 1 limits the applicability of the remedy of annulment of judgment to *final* judgments, orders or resolutions. A final judgment or order is one that finally disposes of a case, leaving nothing more for the court to do in respect thereto. In contrast, an interlocutory order does not dispose of a case completely but leaves something to be done upon its merits.

In *Guiang v. Co,* we declared that an auction sale and a writ of execution are not final orders. Thus, they cannot be nullified through an action for annulment of judgment, to wit:

It bears stressing that Rule 47 of the Rules of Civil Procedure applies only to a petition to annul a judgment or final order and resolution in civil actions, on the ground of extrinsic fraud or lack of jurisdiction or due process. A final order or resolution is one which is issued by a court which

disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court. The rule does not apply to an action to annul the levy and sale at public auction of petitioner's properties or the certificate of sale executed by the deputy sheriff over said properties. Neither does it apply to an action to nullify a writ of execution because a writ of execution is not a final order or resolution, but is issued to carry out the mandate of the court in the enforcement of a final order or of a judgment. It is a judicial process to enforce a final order or judgment against the losing party. (Citations omitted, emphasis supplied.)

Corollarily, an order *implementing* a writ of execution issued over certain real properties is also not a final order as it merely enforces a judicial process over an identified object. It does not involve an adjudication on the merits or determination of the rights of the parties. Similar to a writ of execution, a writ of possession is not a final order which may be annulled under Rule 47. It is merely a judicial process to enforce a final order against the losing party. For this reason the Decision of the Antipolo Court ordering the issuance of writ of possession is also not amenable to an action for annulment of judgment.

In fine, only the Decision of the Paranaque Court ordering the cancellation of BMC's title over the property qualifies as a final judgment. It is a judgment on the merits declaring who between Nieva and BMC has the right over the title to the property. Therefore, it may be the subject of an action for annulment of judgment. Be that as it may, BMC failed to prove that any of the grounds for annulment are present in this case.

Rule 47, Section 2 provides extrinsic fraud and lack of jurisdiction as the exclusive grounds for the remedy of annulment of judgment. Case law, however, recognizes a third ground--denial of due process of law. *Arcelona v. Court of Appeals* teaches that a decision which is patently void may be set aside on grounds of want of jurisdiction or "non-compliance with due process of law."

Here, BMC invokes extrinsic fraud and lack of due process as grounds for its petition for annulment of judgment. It claims that Atty. Rizon's gross negligence in handling the case constitutes extrinsic fraud and deprived it of due process of law.

We are not persuaded. Extrinsic fraud refers to a fraud committed to the unsuccessful party by his opponent preventing him from fully exhibiting his case by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or when an attorney fraudulently or without authority connives at his defeat.

In this case, the CA correctly found that BMC neither alleged nor proved that the gross negligence of its former counsel was done in connivance with Nieva or Sibulo. Therefore, it is not the extrinsic fraud contemplated under Rule 47, Section 2.

It is well-settled that the negligence of the counsel binds the client, except in cases where the gross negligence of the lawyer deprived his client of due process of law. However, mere allegation of gross negligence does not suffice. In the recent case of *Ong Lay Hin v. Court of Appeals*, we held that for the exception to apply, the client must prove by clear and convincing evidence that he was maliciously deprived of information that he could not have acted to protect his interests. The error of his counsel must have been both palpable and maliciously exercised that it could viably be the basis for a disciplinary action. Pertinently, malice is never presumed but must be proved as a fact. The record is bereft of showing that BMC alleged and proved that Atty. Rizon was motivated by malice in failing to infonn it of Sibulo's appeal.

# ESTRELLA MEJIA-ESPINOZA and NORMA MEJIA DELLOSA, Petitioners, -versus-

#### NENA A. CARIÑO, Respondent.

G.R. No. 193397, THIRD DIVISION, January 25, 2017, JARDELEZA, J.

Rule 47 does not apply to an action to annul the levy and sale at public auction. Neither does it apply to an action to annul a writ of execution because a writ of execution is not a final order or resolution, but is issued to carry out the mandate of the court in the enforcement of a final order or of a judgment. It is a judicial process to enforce a final order or judgment against the losing party.

The proper remedy for Nena was to file a motion to nullify the writ of execution and notices of levy and sale before the MTC, instead of instituting a new complaint before the RTC. This is because the execution of a decision is merely incidental to the jurisdiction already acquired by a trial court. As we explained in Deltaventures Resources, Inc. v. Cabato: Jurisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated. Whatever irregularities attended the issuance and execution of the alias writ of execution should be referred to the same administrative tribunal which rendered the decision. This is because any court which issued a writ of execution has the inherent power, for the advancement of justice, to correct errors of its ministerial officers and to control its own processes.

#### **FACTS:**

Petitioner Estrella Mejia-Espinoza was the plaintiff in an action for ejectment against respondent Nena A. Cariño before the MTC of Mangaldan, Pangasinan. The MTC rendered a joint decision in favor of Espinoza. It ordered Nena and Alberto to vacate the respective properties and to pay rents from time of default, litigation expenses, and attorney's' fees. Upon Nena's appeal to the RTC of Dagupan City, it reversed the MTC decision and dismissed the case against Nena for lack of cause of action. On Espinoza's petition for review, the CA 17th Division reversed the decision of the RTC and affirmed the MTC decision.

Espinoza filed a motion for issuance of a writ of execution before the MTC, which Nena opposed. The MTC granted the motion and subsequently issued a writ of execution. The sheriff served the writ upon Nena. When Sheriff Hortaleza proceeded to the property subject of the ejectment suit, he found out that Nena had voluntarily vacated the place and turned over the padlock to one Gertrudes Taberna, Nena's caretaker. Thus, the sheriff was able to peacefully turn over the property to copetitioner Norma Mejia Dellosa (Dellosa), Espinoza's attorney-in-fact. Sheriff Hortaleza then levied a separate commercial lot owned by Nena to cover the monetary awards for rent, litigation expenses, and attorney's fees, and correspondingly issued a Notice of Sale on Execution of Real Property.

Nena filed a complaint captioned as "Annulment of Court's Processes with prayer for the issuance of a Temporary Restraining Order, Preliminary Injunction and/or Prohibition, and Damages" before the RTC of Dagupan City. Nena argued that she was deprived of the opportunity to ask for reconsideration of the order granting Espinoza's motion for issuance of writ of execution because she was not furnished a copy of the order.

The RTC dismissed the complaint for lack of cause of action. It opined that the issue on the alleged irregularity of the issuance of the writ of execution was rendered moot by its implementation. It noted that Nena had already voluntarily relinquished her possession of the property-including the building-before the demolition.

On appeal, the CA 4<sup>th</sup> Division reversed the RTC. It held that Nena correctly filed the petition for annulment with the RTC of Dagupan City in accordance with Section 10 of Rule 47. The CA 4<sup>th</sup> Division opined that because Nena did not receive a copy of the order granting Espinoza's motion for issuance of writ of execution, it "did not become final and executory insofar as [Nena] is concerned." The CA 4<sup>th</sup> Division concluded that the writ of execution was "premature and without legal basis" and, therefore, void.

#### **ISSUE:**

Whether or not the petition for annulment of judgment was proper (NO)

#### **RULING:**

A petition for annulment of judgment or final order under Rule 47 is an extraordinary remedy that may be availed of only under certain exceptional circumstances. Under the Rules, there are three requirements that must be satisfied before a Rule 47 petition can prosper. *First,* the remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner. This means that a Rule 47 petition is a remedy of last resort-it is not an alternative to the ordinary remedies under Rules 37, 38, 40, 41, 42, 43, and 45. *Second,* an action for annulment of judgment

may be based only on two grounds: extrinsic fraud and lack of jurisdiction. *Third,* the action must be filed within the temporal window allowed by the Rules. If based on extrinsic fraud, it must be filed within four years from the discovery of the extrinsic fraud; if based on lack of jurisdiction, must be brought before it is barred by laches or estoppel. There is also a formal requisite that the petition be verified, and must allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.

The averments of Nena's complaint a quo, however, do not make out an action for annulment of judgment or final order. It was therefore inaccurate for both the CA  $4^{th}$  Division and the RTC to characterize it as a Rule 47 petition. While the non-compliance with the requisites laid down in Rule 47 is glaring-there is neither any averment in the complaint showing prima facie compliance with the aforementioned requisites nor even a reference to Rule 47-the first thing the lower courts should have considered is the subject of the complaint.

Nena is challenging the MTC's order granting the issuance of the writ of execution, the writ of execution itself, as well as the sheriff's notice of levy and notice of sale on her real property. Clearly, these are not the judgments or final orders contemplated by Rule 47. A final order or resolution is one which is issued by a court which disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing else to be done but to enforce by execution what has been determined by the court. Rule 47 does not apply to an action to annul the levy and sale at public auction. Neither does it apply to an action to annul a writ of execution because a writ of execution is not a final order or resolution, but is issued to carry out the mandate of the court in the enforcement of a final order or of a judgment. It is a judicial process to enforce a final order or judgment against the losing party.

The proper remedy for Nena was to file a motion to nullify the writ of execution and notices of levy and sale before the MTC, instead of instituting a new complaint before the RTC. This is because the execution of a decision is merely incidental to the jurisdiction already acquired by a trial court. As we explained in *Deltaventures Resources, Inc. v. Cabato:* 

Jurisdiction once acquired is not lost upon the instance of the parties but continues until the case is terminated. Whatever irregularities attended the issuance and execution of the alias writ of execution should be referred to the same administrative tribunal which rendered the decision. This is because any court which issued a writ of execution has the inherent power, for the advancement of justice, to correct errors of its ministerial officers and to control its own processes. (Emphasis supplied; citations omitted.)

Even assuming that Nena availed of the appropriate remedy, her complaint is still without merit. Nena sought to annul the writ of execution because she did not receive a copy of the MTC order granting the issuance of the writ of execution. Yet, she received a copy of the writ without any protest and voluntarily vacated the premises and turned over possession to Espinoza's

representative. These actions evince Nena's recognition of, and acquiescence to, the writ of execution; she is therefore estopped from questioning its validity. After all, she is fully aware of the finality of the decision in the ejectment case and that execution of the decision is its logical consequence. "[W]hen a judgment has been satisfied, it passes beyond review, satisfaction being the last act and the encl of the proceedings, and payment or satisfaction of the obligation thereby established produces permanent and irrevocable discharge; hence, a judgment debtor who acquiesces to and voluntarily complies with the judgment is estopped from taking an appeal therefrom." Furthermore, as a result of Nena's voluntary compliance with the writ, any issue arising from the issuance or enforcement of such writ is rendered moot. Injunction is no longer available to question the transfer of possession to Espinoza, as the act sought to be enjoined is already *fait accompli*.

Nena's contention that her failure to receive a copy of the order deprived her of the opportunity to file a motion for reconsideration is without legal basis, because she is not entitled to file a motion for reconsideration in the first place. We have repeatedly held that once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution and its issuance is the trial court's ministerial duty. When a prevailing party files a motion for execution of a final and executory judgment, it is not mandatory for such party to serve a copy of the motion to the adverse party and to set it for hearing. The absence of such advance notice to the judgment debtor does not constitute an infringement of due process. Ergo, it follows that the opportunity to move for reconsideration of an order granting execution is likewise not indispensable to due process.

### SPOUSES EULOGIA MANILA and RAMON MANILA, Petitioners, -versus-

#### SPOUSES EDERLINDA GALLARDO-MANZO and DANIEL MANZO, Respondents.

G.R. No. 163602, FIRST DIVISION, September 7, 2011, VILLARAMA, JR., J.

Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim. Thus, petitioner must show not merely an abuse of jurisdictional discretion but an absolute lackof jurisdiction. Lack of jurisdiction means absence of or no jurisdiction; that is, the court should not have taken cognizance of the petition because the law does not vest it with jurisdiction over the subject matter.

#### **FACTS:**

The controversy stemmed from an action for ejectment filed by the Sps. Manzo, against the Sps. Manila, before the Metropolitan Trial Court (MeTC) of Las Pinas City which ruled in favor of the Sps. Manzo.

On appeal, the Regional Trial Court (RTC) reversed and set aside the MeTC decision. Sps. Manzo filed a motion for reconsideration which the RTC denied for having been filed beyond the fifteen (15)-day period. Consequently, the actual decision became final and executory.

Thereafter, Sps. Manzo filed a petition for annulment of the RTC decision in the Court of Appeals (CA). By Decision, the CA granted the petition, annulled the RTC decision and reinstated the MeTC decision. With the denial of their motion for reconsideration, Sps, Manila filed the present petition.

#### **ISSUE:**

Whether or not the CA erred in annulling the judgment of the RTC on the ground of lack of jurisdiction when it has not even been shown that the RTC had no jurisdiction over the person of Sps. Manzo or the subject matter of the claim (YES)

#### **RULING:**

Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim. Thus, petitioner must show not merely an abuse of jurisdictional discretion but an absolute lack of jurisdiction. Lack of jurisdiction means absence of or no jurisdiction; that is, the court should not have taken cognizance of the petition because the law does not vest it with jurisdiction over the subject matter.

There is no dispute that the RTC is vested with appellate jurisdiction over ejectment cases decided by the MeTC, MTC or MCTC. We note that Sps. Manila's attack on the validity of the RTC decision pertains to a relief erroneously granted on appeal. While the court in an ejectment case may delve on the issue of ownership or possession *de jure* solely for the purpose of resolving the issue of possession *de facto*, it has no jurisdiction to settle with finality the issue of ownership and any pronouncement made by it on the question of ownership is provisional in nature.

In this case, the RTC acted in excess of its jurisdiction in deciding the appeal of Sps. Manzo when it ordered the Sps. Manzo to execute a deed of absolute sale in favor of the Sps. Manila. Such erroneous grant of relief, however, is but an exercise of jurisdiction by the RTC. Jurisdiction is not the same as the exercise of jurisdiction. As distinguished from the exercise of jurisdiction, jurisdiction is the authority to decide a cause, and not the decision rendered therein. Thus, while Sps. Manzo assailed the content of the RTC decision, they failed to show that the RTC did not have the authority to decide the case on appeal. The CA therefore erred in annulling the RTC decision on the ground of lack of jurisdiction as said court had jurisdiction to take cognizance of the appeal.

LETICIA DIONA, represented by her Attorney-in-Fact, MARCELINA DIONA, *Petitioner*, -versus-

ROMEO A. BALANGUE, SONNY A. BALANGUE, REYNALDO A. BALANGUE, and ESTEBAN A. BALANGUE, JR., Respondents.

G.R. No. 173559, SECOND DIVISION, January 7, 2013, DEL CASTILLO, J.

While under Section 2, Rule 47 of the Rules of Court a Petition for Annulment of Judgment may be based only on the grounds of extrinsic fraud and lack of jurisdiction, jurisprudence recognizes lack of due process as additional ground to annul a judgment. In Arcelona v. Court of Appeals,this Court declared that a final and executory judgment may still be set aside if, upon mere inspection thereof, its patent nullity can be shown for having been issued without jurisdiction or for lack of due process of law.

Grant of 5% monthly interest is way beyond the 12% per annum interest sought in the Complaint and smacks of violation of due process. 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.

#### **FACTS:**

Real Estate Mortgageover their 202-square meter property located in Marulas, Valenzuela. When the debt became due, respondents failed to pay notwithstanding demand. Thus, petitioner filed with the RTC a Complaint praying, among others, that respondents be ordered: "(a) To pay petitioner the principal obligation of ₱45,000.00, with interest thereon at the rate of 12% per annum, from 02 March 1991 until the full obligation is paid..."

The RTC granted petitioner's Complaint. Subsequently, petitioner filed a Motion for Execution alleging that respondents did not interpose a timely appeal despite receipt by their former counsel of the RTC's Decision. The RTC ordered the issuance of a Writ of Execution. However, since the writ could not be satisfied, petitioner moved for the public auction of the mortgaged property, which the RTC granted.In the auction sale, petitioner was the only. Thus, a Certificate of Sale was issued in her favor.

Respondents then filed a Motion to Correct/Amend Judgment and To Set Aside Execution Sale, claiming that the parties did not agree in writing on any rate of interest and that petitioner merely sought for a 12% per annum interest in her Complaint. Surprisingly, the RTC awarded 5% monthly interest (or 60% per annum) from March 2, 1991 until full payment. Resultantly, their indebtedness inclusive of the exorbitant interest from March 2, 1991 to May 22, 2001 ballooned from \$\mathbb{P}124,400.00 to \$\mathbb{P}652,000.00.

The RTC granted respondents' motion and accordingly modified the interest rate awarded from 5% monthly to 12% per annum. Respondents filed a Motion for Leave to Deposit/Consign Judgment Obligation in the total amount of ₱126,650.00.

Displeased, petitioner elevated the matter to the CA via a Petition for Certiorari. The CA rendered a Decision declaring that the RTC exceeded its jurisdiction in awarding the 5% monthly interest but at the same time pronouncing that the RTC gravely abused its discretion in subsequently reducing

the rate of interest to 12% per annum. According to the CA, the proper remedy is not to amend the judgment but to declare that portion as a nullity. Void judgment for want of jurisdiction is no judgment at all.

Taking their cue from the above Decision of the CA, respondents filed with the same court a Petition for Annulment of Judgment and Execution Sale with Damages. They contended that the portion of the RTC Decision granting petitioner 5% monthly interest rate is in gross violation of Section 3(d) of Rule 9 of the Rules of Court and of their right to due process. According to respondents, the loan did not carry any interest as it was the verbal agreement of the parties that in lieu thereof petitioner's family can continue occupying respondents' residential building located in Marulas, Valenzuela for free until said loan is fully paid.

The CA ruled that aside from being unconscionably excessive, the monthly interest rate of 5% was not agreed upon by the parties and that petitioner's Complaint clearly sought only the legal rate of 12% per annum. Following the mandate of Section 3(d) of Rule 9 of the Rules of Court, the CA concluded that the awarded rate of interest is void for being in excess of the relief sought in the Complaint.

#### **ISSUE:**

Whether or not the petition for annulment of judgment was proper (YES)

#### **RULING:**

While under Section 2, Rule 47 of the Rules of Court a Petition for Annulment of Judgment may be based only on the grounds of extrinsic fraud and lack of jurisdiction, jurisprudence recognizes lack of due process as additional ground to annul a judgment. In Arcelona v. Court of Appeals, this Court declared that a final and executory judgment may still be set aside if, upon mere inspection thereof, its patent nullity can be shown for having been issued without jurisdiction or for lack of due process of law.

Grant of 5% monthly interest is way beyond the 12% per annum interest sought in the Complaint and smacks of violation of due process.

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.

Notably, the Rules is even more strict in safeguarding the right to due process of a defendant who was declared in default than of a defendant who participated in trial. For instance, amendment to conform to the evidence presented during trial is allowed the parties under the Rules. But the same is not feasible when the defendant is declared in default because Section 3(d), Rule 9 of the Rules of Court comes into play and limits the relief that may be granted by the courts to what has been prayed for in the Complaint. It provides:

(d) Extent of relief to be awarded. – A judgment rendered against a party in default shall not exceed the amount or be different in kind from that prayed for nor award unliquidated damages.

The raison d'être in limiting the extent of relief that may be granted is that it cannot be presumed that the defendant would not file an Answer and allow himself to be declared in default had he known that the plaintiff will be accorded a relief greater than or different in kind from that sought in the Complaint. No doubt, the reason behind Section 3(d), Rule 9 of the Rules of Court is to safeguard defendant's right to due process against unforeseen and arbitrarily issued judgment. This, to the mind of this Court, is akin to the very essence of due process. It embodies "the sporting idea of fair play" and forbids the grant of relief on matters where the defendant was not given the opportunity to be heard thereon.

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.

## CAGAYAN DE ORO COLISEUM, INC., petitioner, -versus-

#### COURT OF APPEALS, MAXIMIANO MABANAG, JR. and RICHARD GO KING, respondents.

G.R. No. 129713, FIRST DIVISION, December 15, 1999, YNARES-SANTIAGO, J.

It was on the basis of the November 26, 1986 order that the execution sale actually took place on February 13, 1987. Since this order was not filed with the Register of Deeds prior to the execution sale, it follows that the levy was not effected and the execution sale of February 13, 1987 proceeded without

a levy. A lawful levy on execution is indispensable to a valid sale on execution. In other words, a sale, unless preceded by a valid levy, is void, and the purchaser acquires no title to the property sold. Without a proper levy, the property is not placed under the authority of the court. The court does not acquire jurisdiction over the property subject of execution, hence, it could not transmit title thereto at the time of the sale. Where in the instant case no jurisdiction was acquired over the subject property, the execution sale was void and of no legal effect. And the trial court did not err in so ruling.

#### **FACTS:**

Petitioner Cagayan de Oro Coliseum, Inc., a domestic corporation domiciled in Cagayan de Oro City, obtained from one Santiago Maceren a loan in the amount of P149,253.73. As security for the loan, petitioner executed a promissory note and a mortgage over all its assets and properties, including a parcel of land registered in its name. The loan, together with the promissory note and the mortgage, were later assigned by Maceren to the Commercial Credit Corporation of Cagayan de Oro (Commercial Credit). Petitioner failed to pay the loan when it became due, hence, the Commercial Credit commenced foreclosure proceedings on the said parcel of land.

On October 23, 1979, five stockholders of petitioner corporation instituted before the then CFI of Misamis Oriental a petition for injunction to enjoin the public sale of the corporate property alleging that the loan was contracted by Diego Imperio, the president of the corporation, without authority from the stockholders; and that the creditor, Santiago Maceren, was corporate treasurer and a member of the Board of Directors of petitioner corporation at the time the loan was obtained. Eventually, the parties, assisted by their respective counsel, entered into a compromise agreement which became the basis of a judgment rendered by the trial court on March 11, 1980, whereby the five stockholders ratified the loan of the corporation to Commercial Credit in the amount of P249,263.23, computed as of February 15, 1980; the corporation bound itself to pay the loan in equal monthly installments of P11,000.00 and agreed that failure to pay any of the installments shall render the judgment immediately executory.

On March 4, 1983, Commercial Credit filed with the court *a quo*, now the Regional Trial Court, Branch 19, Cagayan de Oro City, an "*Ex-Parte* Motion for the Issuance of a Writ of Execution." Commercial Credit alleged that petitioner corporation failed to pay several installments on its loan and left an outstanding balance of P70,152.68, excluding sheriffs expenses. The trial court granted the motion on March 9, 1983. The following day, the Branch Clerk of Court issued the writ of execution on the personal and real properties of petitioner corporation. On March 11, the deputy sheriff filed a notice of levy on petitioner's title with the Register of Deeds of Cagayan de Oro City.

Petitioner forthwith filed a "Motion for Reconsideration of the Order of Execution" alleging that the issuance of the order of execution *ex-parte* violated petitioner's right to due process; that a hearing

should have been conducted on the motion for execution because petitioner had already made payments in the total amount of P419,429.95, resulting in an overpayment of P94,028.12. In an order dated November 26, 1986, the trial court denied petitioner's motion for reconsideration. Accordingly, the court ordered the issuance of a writ of execution for the collection of said amount. Thus, on December 4, 1986, the Branch Clerk of Court of the trial court issued the writ of execution. Meanwhile, petitioner filed with the Court of Appeals an action for annulment of judgment of the trial court, docketed as CA-G.R. SP No. 10888, wherein it sought to set aside the compromise judgment. The Court of Appeals rendered a decision holding that since petitioner had made payments totalling P303,755.15, it equitably reduced the penalty of three per cent (3%) per month to only one-half per cent (1/2%) per month on the overdue and unpaid installments, and the five per cent (5%) additional attorney's fees to only two per cent (2%) of the outstanding balance.

Meanwhile, on January 19, 1987, herein respondent Sheriff Mabanag issued an Amended Sheriffs notice of sale setting the sale of the property at public auction on February 13, 1987, or on the same day the Court of Appeals promulgated its decision. At the Auction Sale the property was sold to the highest bidder, herein respondent Richard Go King, for the sum of P170,000.00.

Both parties moved for reconsideration of the decision of the Court of Appeals. Petitioner argued that:  $x \times x \times (3)$  that the auction sale was conducted on February 13, 1987, the day of promulgation of the Court of Appeals' decision substantially amending the amount of judgment debt. The Court of Appeals denied the petitioner's motion. It, however, granted the motion for reconsideration with respect to the public auction sale conducted during the pendency of the case. The Court of Appeals declared the writ of execution, the sheriff's notice of sale, the public auction sale and the certificate of sale null and void insofar as they were in excess of the judgment as modified by its decision.

Commercial Credit moved for reconsideration, but its motion was denied. Both parties filed separate petitions for review before the Supreme Court. The petition of Commercial Credit in G.R. No. 78315 was granted. In a decision dated January 2, 1989, the First Division of this Court set aside the decision and resolution of the Court of Appeals and affirmed the compromise judgment of the trial court.

WHEREFORE, the petition is GRANTED. The decision of the respondent Court of Appeals dated February 13, 1987 and its resolutions dated March 23, 1987 and May 19, 1987 are hereby SET ASIDE and another judgment is hereby rendered affirming *in toto* the compromise judgment of the trial court dated March 11, 1980, with costs against private respondent. This decision is immediately executory. Judgment in G.R. No. 78315 was entered on April 3, 1989.

Meanwhile, during the pendency of G.R. No. 78315, on August 17, 1988, respondent Sheriff issued to respondent Go King a Final Deed of Conveyance over the subject property. TCT No. T-3383 of petitioner was cancelled and TCT No. T-51704 was issued in the name of respondent Go King.

On April 11, 1989, after finality of the decision of the Supreme Court in G.R. No. 78315, petitioner instituted Civil Case No. 89-098 against herein respondents Sheriff Mabanag and Richard Go King for "Remedies from Falsification and Damages." In its amended complaint, petitioner alleged that the execution proceedings were null and void for failure to comply with the requirements of the Rules of Court. Respondent Go King filed a "Motion for the Issuance of a Writ of Possession."

On August 5, 1993, the trial court rendered a decision declaring the deed of sale, the final deed of conveyance, and TCT No. T-51704 in the name of respondent Go King as null and void, and denying respondent Go King's motion for writ of possession and petition for receiver, after finding that the property subject of execution was not levied upon, that notices of sale were not posted and that there was no return of the writ of execution of March 10, 1983. On appeal by respondents, the Court of Appeals reversed the trial court.

#### **ISSUE:**

Whether or not the levy on execution was lawful such that it clothed the execution sale with validity (NO)

#### **RULING:**

Levy means the essential act or acts by which an officer sets apart or appropriates a part or the whole of the property of the judgment debtor for purposes of the prospective execution sale. The object of a levy is to take property into the custody of the law, and thereby renders it liable to the lien of the execution, and put it out of the power of the judgment debtor to divert it to any other use or purpose. A valid levy on execution places the property subject of execution under the jurisdiction and authority of the court. It also creates a lien in favor of the judgment creditor over the right, title and interest of the judgment debtor in such property at the time of the levy, subject to liens and encumbrances then existing.

The second paragraph of Section 15, Rule 39 as aforequoted provides that a levy is effected in the same manner as the levy under a writ of attachment. Rule 57 on Attachment provides:

Sec. 7. *Attachment of real and personal property; recording thereof.* — Properties shall be attached by the officer executing the order in the following manner:

(a) Real property, or growing crops thereon, standing upon the records of the registrar of deeds of the province in the name of the party against whom attachment is issued, or not appearing at all upon such records, by filing with the registrar of deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, and by leaving a copy of such order, description, and notice with the occupant of the property, of any there be. Where the property has been brought under the operation of the Land Registration Act, the notice shall contain a reference to the number of the certificate of title and the volume and page in the

registration book where the certificate is registered. The registrar must index attachments filed under this paragraph in the names of both of the applicant and the adverse party. xxx xxx xxx.

To effect a levy upon a realty, the sheriff is required to do two specific things: (1) file with the register of deeds a copy of the order of attachment or execution, together with the description of the attached property and notice of attachment or execution; and (2) leave with the occupant of the property copy of the same order, description and notice. These are prerequisites to a valid levy, non-compliance with any of which is fatal.

In the instant case, the execution sale of the subject property was made pursuant to the order of execution of November 26, 1986 and the writ of execution of December 4, 1986. The November 26, 1986 execution order and the corresponding writ of execution were not filed with the Register of Deeds before the auction sale of February 13, 1987. The order of November 26, 1986 was filed and inscribed on petitioner's title only on December 7, 1988 — exactly *one* (1) *year and ten* (10) *months after the execution sale of February 13, 1987.* This is clear from the annotation in TCT No. T-3383 of petitioner corporation.

Clearly, the execution order of November 26, 1986 was filed with the Register of Deeds only after the execution sale of February 13, 1987. The belated filing came after the execution of the Sheriff's Certificate of Sale, after the issuance of the Sheriff's Certificate of Final Deed of conveyance; and after cancellation of TCT No. T-3383 of petitioner and the issuance of TCT No. T-51704 in the name of respondent Goking on October 20, 1988. Respondent Sheriff himself admitted on the witness stand that he did not file a copy of the November 26, 1986 order of execution with the Register of Deeds before the February 13, 1987 sale on the belief that the property had already been levied upon by Sheriff Acero. An examination of TCT No. T-3383 shows that the court order and writ of execution filed by Sheriff Acero with the Register of Deeds before the auction sale was *not* the November 26, 1986 order but the March 9, 1983 order.

The order of November 26, 1986 did not supplement the March 9, 1983 order. It amended the original. The substantial increase in the amount of debt necessarily affected the kind and number of property that was to be levied upon and sold, and the price the property was to command at the public auction sale. The amendment was of such proportion that it superseded that which it amended and gave rise to an entirely new order. The March 9, 1983 order was therefore extinguished and the one of November 26, 1986 became the new order of execution.

It was on the basis of the November 26, 1986 order that the execution sale actually took place on February 13, 1987. Since this order was not filed with the Register of Deeds prior to the execution sale, it follows that the levy was not effected and the execution sale of February 13, 1987 proceeded without a levy. A lawful levy on execution is indispensable to a valid sale on execution. In other words, a sale, unless preceded by a valid levy, is void, and the purchaser acquires no title to the property sold. Without a proper levy, the property is not placed under the authority of the court. The court does not acquire jurisdiction over the property subject of execution, hence, it could not

transmit title thereto at the time of the sale. Where in the instant case no jurisdiction was acquired over the subject property, the execution sale was void and of no legal effect. And the trial court did not err in so ruling.

### VENTURA B. AYO, complainant,

#### -versus-

JUDGE LUCIA VIOLAGO-ISNANI, BRANCH CLERK OF COURT JAIME M. LUY, SHERIFF JADI HATAB Regional Trial Court, Branch 59, Makati CLERK OF COURT ERLINDA M. PEREZ, Regional Trial Court, Balanga Bataan, and LEGAL RESEARCHER JOEY A. ASTORGA, Regional Trial Court, Branch 5, Dinalupihan, Bataan, respondents.

A.M. No. RTJ-99-1445, SECOND DIVISION, June 21, 1999, MENDOZA, J.

As the Court has more than once stated, execution is the fruit and end of the suit and is the life of law. A judgment that is left unexecuted is nothing but an empty victory for the prevailing party. In the case at bar, Clerk of Court Jaime M. Luy must take responsibility for the delay in the implementation of the writ of execution in Civil Case No. 91-354. He gave no reason why, considering that the writ of execution was issued as early as July 15, 1997, he gave the same to complainant for delivery to the RTC of Bataan only on December 17, 1997.

#### **FACTS:**

This is a complaint filed by Ventura B. Ayo against Judge Lucia Violago-Isnani of the Regional Trial Court, Branch 59, of Makati City, and *Atty. Jaime M. Luy* and Jadi I. Hatab, *Clerk of Court V* and Sheriff, respectively, of the same court, and Atty. Erlinda M. Perez, Clerk of Court VI, Regional Trial Court of Balanga, Bataan, and Joey A. Astorga, Legal Researcher II of the Regional Trial Court, Branch 5, of Dinalupihan, Bataan.

Complainant was the representative of Vilma C. Aquino and her minor children who are plaintiffs in Civil Case No. 91-354. In an amended decision rendered by respondent judge on September 4, 1996, Vilma Aquino and her children were awarded P50,000.00 as indemnity for the death of her husband Ireneo Aquino; P1,101,600.00 for the loss of Ireneo's earning capacity; P14,000.00 actual damages; and P100,000.00 moral damages.

Complainant alleged that it took respondents [Clerk of Court Jaime M. Luy and Sheriff Jadi I. Hatab] an unreasonably long time, from July 15, 1997, when the writ was issued, to December 17, 1997, to enforce the writ of execution in favor of Vilma C. Aquino and her minor children. Complainant claimed that the two "did not even send the writ of execution through registered mail to the

appropriate Clerk of Court and/or the Sheriff and his deputy who have administrative jurisdiction to enforce [said writ]."

In his comment, Clerk of Court Luy denied delaying the implementation of the writ of execution. He alleged that while he issued the writ of execution on July 15, 1997, it was only on December 17, 1997 that complainant got the writ from him for delivery and payment of the required fees to the Clerk of Court and *Ex-Officio* Sheriff, RTC of Balanga, Bataan. Luy pointed out that when an order was issued on January 9, 1998 authorizing Aquino and her children to litigate as indigent parties, he immediately issued an *alias* writ of execution and endorsed the same to the Clerk of Court and *Ex-Officio* Sheriff, RTC of Dinalupihan, Bataan.

Consequently, the Office of the Court Administrator submitted the following evaluation and recommendation:

#### I. Atty. JAYME M. LUY

The excuse of respondent Luy that it was only after five (5) months that complainant made a follow-up regarding the writ is not tenable because it is incumbent upon him to act with considerable dispatch so as not to unduly delay the administration of justice. His defense that the required fees should be paid first is not available to him because payment of the same should be made in Bataan and not in Makati. Moreover, as asserted by the complainant, respondent should have sent a copy of the writ at least through registered mail to the proper court personnel at Dinalupihan, Bataan. The mistake of respondent in sending the writ to Balanga, Bataan instead of sending it to Dinalupihan shows that he is not too diligent and careful which unduly delayed the enforcement of the writ causing prejudice to the rights of the complainant.

In view of the foregoing, respondent should be admonished and warned that a repetition of the same or similar act would be dealt with severely. x x x

#### **ISSUE:**

Whether or not respondent Jaime Luy was responsible for the delay in the implementation of the writ of execution (YES)

#### **RULING:**

Except as to respondent Jaime M. Luy, the Court finds the foregoing recommendation to be well taken.

As the Court has more than once stated, execution is the fruit and end of the suit and is the life of law. A judgment that is left unexecuted is nothing but an empty victory for the prevailing party.

In the case at bar, Clerk of Court Jaime M. Luy must take responsibility for the delay in the implementation of the writ of execution in Civil Case No. 91-354. He gave no reason why, considering that the writ of execution was issued as early as July 15, 1997, he gave the same to complainant for delivery to the RTC of Bataan only on December 17, 1997. It would appear that had not complainant followed up the matter with respondent, the writ would not have been sent to the RTC of Bataan. Worse, when he finally issued the writ, respondent Luy endorsed it to the Balanga branch of the RTC of Bataan which does not have the territorial jurisdiction to enforce the writ. He was finally able to endorse an *alias* writ of execution to the Clerk of Court and *Ex-Officio* Sheriff of the appropriate court, the RTC of Dinalupihan, Bataan, only on June 9, 1998.

The OCA recommended that respondent Clerk of Court Jaime M. Luy be merely admonished and warned that a repetition of the same or similar act would be dealt with more severely. The Court believes that the imposition of a penalty is called for under the circumstances. We find respondent Luy guilty of simple neglect of duty which, pursuant to the Civil Service Law, is a less grave offense punishable by suspension for one month and one day to six months for the first infraction.

The fundamental distinction between a final judgment or order, on one hand, and an interlocutory order, on the other hand, has been outlined in Investments, Inc. v. Court of Appeals, viz:

The concept of 'final' judgment, as distinguished from one which has 'become final' (or 'executory' as of right [final and executory]), is definite and settled. A 'final' judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of res judicata or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes 'final' or, to use the established and more distinctive term, 'final and executory.'

XXX

Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is 'interlocutory,' e.g., an order denying a motion to dismiss under Rule 16 of the Rules, or granting a motion for extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, etc. Unlike a 'final' judgment or order, which is appealable, as above pointed out, an 'interlocutory' order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.

### PAQUITO BUAYA, petitioner, -versus-

#### STRONGHOLD INSURANCE CO., Inc., respondent.

G.R. No. 139020, THIRD DIVISION, October 11, 2000, PANGANIBAN, J.

The Court holds that the September 17, 1987 Decision of the trial court become final and executory on June 28, 1993. A Writ of Execution of the March 16, 1995 Order of the trial court reinstating the September 17, 1987 Decision was issued by the trial court on May 11, 1995. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and the issuance of a Writ of Execution becomes a ministerial duty of the court. It is axiomatic that once a decision attains finality, it becomes the law of the case regardless of any claim that it is erroneous. Having been rendered by a court of competent jurisdiction acting within its authority, the judgment may no longer be altered even at the risk of occasional legal infirmities or errors it may contain.

#### **FACTS:**

Stronghold Insurance Company, Inc., filed a complaint against Paquito B. Buaya, its erstwhile branch manager for Cebu, for the collection of the principal amount of \$\mathbb{P}678,076.83\$, representing his unremitted premium collections owing to the respondent. For failure of the petitioner and his counsel to appear at the scheduled pre-trial, the petitioner was declared in default, and the respondent was allowed, by the court, to adduce its evidence, ex parte. On the basis of the evidence of the respondent, the court *a quo* promulgated a Decision (September 17, 1987), in favor of the respondent.

The petitioner appealed from said Decision to the CA. The CA promulgated a Decision in favor of the [petitioner] annulling the Decision of the [c]ourt *a quo* and remanding the case to the lower [c]ourt for further proceedings. The Decision of the CA became final and executory.

Accordingly, the [c]ourt *a quo* issued an Order setting the case for hearing on December 13, 1990. The [petitioner] himself filed a 'Motion for Postponement' of the hearing. [Petitioner's] motion was granted by the [c]ourt *a quo* and the hearing was reset. However, the hearing was reset again on motion of the [respondent]. The [petitioner] himself again filed a 'Motion for Postponement' of the rescheduled hearing on the ground that his [c]ounsel, Atty. Bartolome A. Avancena, had died and [petitioner] needed time to engage the services of new counsel. Upon petitioner's motions, the schedule of hearing was reset a couple times more, until finally the court ordered a requested reset subject to the condition that if, for any reason, the [petitioner] still failed to appear on said setting, such failure shall be deemed a waiver of his right to present evidence.

On November 27, 1991, Atty. Manuel Maranga, the new counsel of the [petitioner], filed a 'Motion to Postpone'. The [c]ourt *a quo* issued an Order denying [petitioner's] motion and declaring the [petitioner] to have waived his right to adduce evidence in his behalf. The [respondent] forthwith

filed a motion praying the [c]ourt to reinstate its Decision. The [c]ourt a quo issued an Order granting [respondent's] motion for the reinstatement of its Decision.

The [petitioner] filed a 'Petition for Certiorari' with [the CA]. [The CA] promulgated a Decision dismissing [petitioner's] Petition for lack of merit. The Decision of this [c]ourt became final and executory on June 28, 1993. On [m]otion of the [respondent], the [c]ourt *a quo* issued an Order, directing the issuance of a [W]rit of [E]xecution. The [petitioner] filed a 'Motion for Reconsideration' of said Order, which motion the [c]ourt *a quo* denied. On appeal, the CA denied petitioner's appeal.

In the *instant petition*, petitioner condemns the unfairness of the trial court when it ruled that he had waived his right to submit evidence, when it should have merely ordered plaintiff to present its evidence *first*. He interprets the CA remand to mean that both parties, subject to cross-examination, would again present their respective sets of evidence.

#### **ISSUE:**

Whether or not the orders in the September 17, 1987 Decision may still be questioned (NO)

#### **HELD:**

The CA remanded the case to the court of origin for further hearing, not for retrial. A motion for new trial under Rule 37 of the Rules of Court is a remedy separate and distinct from an appeal. Plaintiff (herein respondent) had rested its case long before the September 17, 1987 Decision was rendered. In fact, the evidence adduced by herein respondent became the sole basis of the Default Judgment of September 17, 1987.

The Court holds that the September 17, 1987 Decision of the trial court become final and executory on June 28, 1993. A Writ of Execution of the March 16, 1995 Order of the trial court reinstating the September 17, 1987 Decision was issued by the trial court on May 11, 1995. Once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right, and the issuance of a Writ of Execution becomes a ministerial duty of the court. It is axiomatic that once a decision attains finality, it becomes the law of the case regardless of any claim that it is erroneous. Having been rendered by a court of competent jurisdiction acting within its authority, the judgment may no longer be altered even at the risk of occasional legal infirmities or errors it may contain.

An existing final judgment or decree -- rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction acting upon a matter within its authority -- is conclusive of the rights of the parties and their privies. This ruling holds in all other actions or suits, in the same or any other judicial tribunal of concurrent jurisdiction, touching on the points or matters in issue in the first suit.

Indeed, nothing decided on in the first appeal, between the same parties and the same facts, can be reexamined in a second or subsequent appeal. Right or wrong, the decision in the first appeal is binding on both the trial and the appellate courts for the purpose of that case and for that case only.

#### VLASON ENTERPRISES CORPORATION, petitioner, -versus-

# COURT OF APPEALS and DURAPROOF SERVICES, represented by its General Manager, Cesar Urbino Sr., respondents.

G.R. Nos. 121662-64, THIRD DIVISION, July 6, 1999, PANGANIBAN, J.

Section 1 of Rule 39 provides that execution shall issue only upon a judgment that finally disposes of the action or proceeding. Such execution shall issue as a matter of right upon the expiration of the period to appeal it, if no appeal has been duly perfected. In the present case, however, we have already shown that the trial court's Decision has not become final and executory against petitioner. In fact, the judgment does not even bind it. Obviously, Respondent Court committed serious reversible errors when it allowed the execution of the said judgment against petitioner.

#### **FACTS:**

Poro Point Shipping Services, then acting as the local agent of Omega Sea Transport Company of Honduras & Panama, a Panamanian company, requested permission for its vessel M/V Star Ace, which had engine trouble, to unload its cargo and to store it at the Philippine Ports Authority (PPA) compound in San Fernando, La Union while awaiting transshipment to Hongkong. The request was approved by the Bureau of Customs. Despite the approval, the customs personnel boarded the vessel when it docked, on suspicion that it was the hijacked M/V Silver Med owned by Med Line Philippines Co., and that its cargo would be smuggled into the country. The district customs collector seized said vessel and its cargo pursuant to Section 2301, Tariff and Customs Code.

While seizure proceedings were ongoing, La Union was hit by typhoons, and the vessel ran aground and was abandoned. Its authorized representative, Frank Cadacio, entered into a salvage agreement with private respondent to secure and repair the vessel at the agreed consideration of \$1 million and "fifty percent (50%) [of] the cargo after all expenses, cost and taxes."

Upon orders of then Customs Commissioner Salvador M. Mison, acting District Collector of Customs John S. Sy issued a Decision decreeing the forfeiture and the sale of the cargo in favor of the government. To enforce its preferred salvor's lien, herein Private Respondent Duraproof Services filed with the Regional Trial Court of Manila a Petition for *Certiorari*, Prohibition and *Mandamus* 

assailing the actions of Commissioner Mison and District Collector Sy. Also impleaded as respondents were PPA Representative Silverio Mangaoang and Med Line Philippines, Inc.

Private respondent amended its Petition to include former District Collector Quiray; PPA Port Manager Adolfo Ll. Amor Jr; Petitioner Vlason Enterprises as represented by its president, Vicente Angliongto; Singkong Trading Company as represented by Atty. Eddie Tamondong; Banco Du Brasil; Dusit International Co., Inc.; Thai-Nan Enterprises Ltd. and Thai-United Trading Co., Ltd. *In both Petitions, private respondent plainly failed to include any allegation pertaining to petitioner, or any prayer for relief against it.* 

Declared in default in an Order issued by the trial court, were the following: Singkong Trading Co., Commissioner Mison, M/V Star Ace and Omega. Private respondent filed, and the trial court granted, an *ex parte* Motion to present evidence against the defaulting respondents. Only private respondent, Atty. Tamondong, Commissioner Mison, Omega and M/V Star Ace appeared in the next pretrial hearing; thus, the trial court declared the other respondents in default and allowed private respondent to present evidence against them.

Cesar Urbino, general manager of private respondent, testified and adduced evidence against the other respondents, including herein petitioner. As regards petitioner, he declared: "Vlason Enterprises represented by Atty. Sy and Vicente Angliongto thru constant intimidation and harassment of utilizing the PPA Management of San Fernando, La Union . . . further delayed, and [private respondent] incurred heavy overhead expenses due to direct and incidental expenses . . . causing irreparable damages of about P3,000,000 worth of ship tackles, rigs, and appurtenances including radar antennas and apparatuses, which were taken surreptitiously by persons working for Vlason Enterprises or its agents.

The trial court disposed as follows: x x x 3. [Vlason] Enterprises to pay [private respondent] in the amount of P3,000,000.00 for damages; x x x

Subsequently, private respondent moved for the execution of judgment, claiming that the trial court Decision had already become final and executory. The Motion was granted and a Writ of Execution was issued. Petitioner filed, by special appearance, a *Motion for Reconsideration* on the grounds that it was allegedly not impleaded as a defendant, served summons or declared in default. The trial court ordered the deputy sheriffs to cease and desist from implementing the Writ of Execution and from levying on the personal property of the defendants. Private respondent filed with the CA a Petition for *Certiorari* and Prohibition to nullify the cease and desist orders of the trial court.

Meanwhile, petitioner received from Sheriff Camañgon a notice to pay private respondent P3 million to satisfy the trial court Decision. Not having any knowledge of the CA case to which it was not impleaded, petitioner filed with the trial court a Motion to Dismiss *ex abutandi ad cautelam* on the grounds that (1) the Petition of private respondent stated no cause of action against it, (2) the trial court had no jurisdiction over the case, and (3) *litis pendentia* barred the suit.

Sheriff Camañgon levied on petitioner's properties. Petitioner filed a special appearance before the CA. It prayed for the lifting of the levy on its properties or, alternatively, for a temporary restraining order against their auction until its Motion for Reconsideration was resolved by the trial court. Acting on petitioner's Motion for Reconsideration, the trial court reversed its Decision of February 18, 1991. However, the CA found the trial judge to have committed grave abuse of discretion in recalling the Writ of Execution and quashing the levy and the execution of the sale.

#### **ISSUE:**

Whether or not the CA erred when it allowed the execution of the said judgment against petitioner (YES)

#### **RULING:**

Private respondent claims that petitioner has always been included in the caption of all the Petitions it filed, which included Antonio Sy, field manager of petitioner. We checked and noted that in the caption and the body of the Amended Petition and Second Amended Petition with Supplemental Petition, Antonio Sy alleged to be representing Med Line Philippines, not petitioner. Because it was private respondent who was responsible for the errors, the Court cannot excuse it from compliance, for such action will prejudice petitioner, who had no hand in the preparation of these pleadings. In any event, we reiterate that, as a general rule, mere failure to include the name of a party in the title of a complaint is not fatal by itself.

Section 1 of Rule 39 provides that execution shall issue only upon a judgment that finally disposes of the action or proceeding. Such execution shall issue as a matter of right upon the expiration of the period to appeal it, if no appeal has been duly perfected.

In the present case, however, we have already shown that the trial court's Decision has not become final and executory against petitioner. In fact, the judgment does not even bind it. Obviously, Respondent Court committed serious reversible errors when it allowed the execution of the said judgment against petitioner.

FEDERICO PALLADA, PACIFICO PALLADA, LOURDES PALLADA and CONSOLACION PALLADA DELGADO, assisted by her husband, RIZAL DELGADO, PURIFICACION PALLADA, LOVELLA DELA CRUZ, DIOCESS PALLADA, NORBERTO PALLADA, and DELFA PALLADA, petitioners, -versus-

REGIONAL TRIAL COURT OF KALIBO, AKLAN, BRANCH 1, SHERIFF OF THE PROVINCE OF AKLAN OR ANY OF HIS DEPUTIES, SPOUSES MELDA MERCEDITO NATAL and CRESENCIO NATAL, SPOUSES EDITHA MERCEDITA SONGCANG, SPOUSES ELMA MERECEDIO SAPINIT and ERNESTO SAPINIT, SPOUSES WENINA MERECEDIO LIM and CONSEI LIM, SPOUSES CELMENCIA

# MATIONG SAN MIGUEL and APOLINARIO SAN MIGUEL, SPOUSES MERCEDES MATIONG TOLENTINO and ENRIQUITO TOLENTINO, SPOUSES GLORIA PASTOR and HELDERICO PASTOR, RENEE MERECEDIO, FIDELINO MERECEDIO, RUSTICO MATIONG, SALVADOR MATIONG, JR., and ARTURO MATIONG, respondents.

G.R. No. 129442, THIRD DIVISION, March 10, 1999, PURISMA, J.

A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon. The Court is not prepared, however, to invalidate the Writ of Execution issued below. The petition is obviously a dilatory move on the part of petitioners, designed to prevent the final disposition of the case. In People v. Leviste, it was held that:

While it is true that any motion that does not comply with the requirements of Rule 15 should not be accepted for filing and, if filed, is not entitled to judicial cognizance, this Court has likewise held that where a rigid application of the rule will result in a manifest failure or miscarriage of justice, technicalities may be disregarded in order to resolve the case. Litigations should, as much as possible be decided on the merits and not on technicalities.

#### **FACTS:**

Private respondents commenced a civil case for recovery of possession and ownership of land with damages before Branch 1 of the RTC-Aklan. RTC-Aklan declared the defendants, petitioners herein, as the absolute and lawful owners and possessors of subject land. Private respondents appealed the said decision to the Court of Appeals which reversed and set aside the same. Petitioners' Motion for Reconsideration was to no avail.

Petitioners found their way to this court *via* the Petition for Review on *Certiorari* under consideration, docketed as G.R. No. 126112. But the same was denied in a Resolution, which disposition became final and executory.

The private respondents filed an *Ex Parte* Motion for Execution with RTC-Aklan, which granted the said motion. The respondent court then issued the Writ of Execution directing the Sheriff of the Province of Aklan or any of his deputies to implement subject Decision. Execution was partially satisfied, as shown in the Officer's Return of Services.

#### **ISSUE:**

Whether or not the writ of execution was invalid for private respondents' ex-parte motion for execution was granted without notice to petitioners (NO)

#### **RULING:**

There is tenability in petitioners' contention that the Writ of Execution was irregularly issued insofar as the *Ex-Parte* Motion for Execution of private respondents did not contain a notice of hearing to petitioners. Sections 4 and 5 of Rule 15 of the Revised Rules of Court, read:

Sec. 4. *Notice.* — Notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it. The court, however, for good cause may hear a motion on shorter notice, specially on matters which the court may dispose of on its own motion.

Sec. 5. *Contents of notice.* — The notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion.

The foregoing requirements — that the notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion — are mandatory, and if not religiously complied with, the motion becomes *pro forma*. A motion that does not comply with the requirements of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the clerk of court has no right to receive and which the court has no authority to act upon.

The Court is not prepared, however, to invalidate the Writ of Execution issued below. The petition is obviously a dilatory move on the part of petitioners, designed to prevent the final disposition of the case. In *People v. Leviste*, it was held that:

While it is true that any motion that does not comply with the requirements of Rule 15 should not be accepted for filing and, if filed, is not entitled to judicial cognizance, this Court has likewise held that where a rigid application of the rule will result in a manifest failure or miscarriage of justice, technicalities may be disregarded in order to resolve the case. Litigations should, as much as possible be decided on the merits and not on technicalities.

## URBANO JACA and BONIFACIO JACA, petitioners, -versus-

# DAVAO LUMBER COMPANY and HONORABLE MANASES REYES, as Judge of the Court of First Instance of Davao, respondents.

G.R. No. L-25771, FIRST DIVISION, March 29, 1982, FERNANDEZ, J.

As provided in Sec. 2, Rule 39 of the New Rules of Court, the existence of good reasons is what confers discretionary power on a court of first instance to issue a writ of execution pending appeal. The reasons allowing execution must constitute superior circumstances demanding urgency which will outweigh the injury or damage should the losing party secure a reversal of the judgment on appeal. The reasons stated in the order of execution pending appeal are not well founded.

#### **FACTS:**

Urbano Jaca and Bonifacio Jaca are engaged in the logging business of producing timber and logs for export and/or domestic purposes. Davao Lumber Company (hereinafter, company) is a business corporation with which plaintiffs had business dealings covering the sale and/or exportation of their logs. In 1954, the parties entered into an agreement that the company would provide for the

materials, foodstuff and/or equipment, and payment for such is the logs or lumber produced by the plaintiffs. The company made Urbano Jaca execute a chattel mortgage in its favor, but it never furnished the Jacas a copy of such instrument.

In 1963, the Jacas requested a formal accounting of their business relationship, but the company persistently refused to do so. The Jacas, to their surprise, received demand letters requesting them to pay their accounts to the respondent which, according to the latter, had long been overdue.

Petitioners have thereby been constrained to file a case in court in order to compel respondent to have a formal accounting between them, and that it is the desire of petitioners that pending the formal hearing of this case, three commissioners, constituting accountants be judicially appointed for the purpose of examining all the books, pertinent papers and documents and all other data in relation with their business transaction; that in order to protect their interest and to litigate this case, the plaintiffs were compelled to secure and retain the services of attorneys, and that they have thereby suffered damages in the sum of Twenty Thousand Pesos (P20,000.00) by way of attorney's fees.

The court ruled in favor of the respondent, dismissing the complaint for accounting, and ordering petitioner Urbano Jaca to pay respondent the amount of P756,236.52 with legal interest from the date of the filing of the counterclaim.

In September, 1965, the Davao Lumber Company filed a motion for execution pending appeal. The respondent judge granted the motion for execution pending appeal. Urbano Jaca and Bonifacio Jaca filed a motion for reconsideration of the order granting execution pending appeal in December, 1965, 8 but the same was denied in an order dated January 10, 1966.

Petitioners Urbano Jaca and Bonifacio Jaca contend that the respondent Judge acted in excess of jurisdiction and/or with grave abuse of discretion in issuing the order granting execution pending appeal and the order denying the motion for reconsideration of the order granting execution pending appeal because said orders were issued in complete disregard of the applicable provisions of the Rules of Court, the laws, and the settled decisions of the Honorable Supreme Court.

#### **ISSUE:**

Whether or not there are good reasons justifying the issuance of an order granting premature execution (NO)

#### **RULING:**

Section 2, Rule 39 of the Rules of Court provides that on motion of the prevailing party with notice to the adverse party the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein. The

discretionary power of the Court of First Instance to grant or deny a motion for execution before the expiration of the time to appeal will not be interfered with by the appellate court, unless it be shown that there has been an abuse thereof or a subsequent change of conditions.

As provided in Sec. 2, Rule 39 of the New Rules of Court, the existence of good reasons is what confers discretionary power on a court of first instance to issue a writ of execution pending appeal. The reasons allowing execution must constitute superior circumstances demanding urgency which will outweigh the injury or damage should the losing party secure a reversal of the judgment on appeal.

The reasons stated in the order of execution pending appeal are not well founded.

The first reason stated in the order was the consistent refusal of petitioner to deliver the mortgaged chattels to the receiver. The records disclose that respondent Davao Lumber Company is not even entitled to the appointment of a receiver. It is an established rule that the applicant for receivership must have an actual and existing interest in the property for which a receiver is sought to be appointed. The Davao Lumber Company's proof of interest in the property is the deed of chattel mortgage executed by Urbano Jaca in favor of the Davao Lumber Company on January 24, 1961. This deed of chattel mortgage is void because it provides that the security stated therein is for the payment of any and all obligations herein before contracted and which may hereafter be contracted by the Mortgagor in favor of the Mortgagee

The second reason stated was the fact that petitioner Urbano Jaca violated Article 319 of the Revised Penal Code by selling to a certain Teodoro Alagon some of the mortgaged properties. As already discussed, the deed of chattel mortgage executed by Urbano Jaca in favor of the Davao Lumber Company is void. Hence, petitioner Urbano Jaca could not have violated Article 319 of the Revised Penal Code. Moreover, the respondent Davao Lumber Company has not successfully refuted the allegation of the petitioners that the sale of the wrecker to Teodoro Alagon was exclusively negotiated by the lumber company's managing partner, Tian Se, and that the latter caused Urbano Jaca to sign the deed of sale because he was the owner of the wrecker.

The third reason stated is the fact that petitioners have no properties and assets to satisfy the judgment. The basis of respondent judge's conclusion that petitioners do not have sufficient assets is an unsubstantiated allegation in the motion for execution pending appeal of respondent lumber company. <sup>28</sup> To rectify this omission, respondent lumber company, in its opposition to the motion for reconsideration of the order of execution pending appeal, tried to point out that the sale of two chevrolet trucks by Urbano Jaca and their failure to file a counterbond indicate that they are without sufficient assets. This later attempt to substantiate a baseless allegation in the motion for execution pending appeal is futile. The trucks alleged to be sold are not properties of petitioner Urbano Jaca They are paraphernalia properties of his wife, Florentina Perez, and the same trucks were in fact sold by her. And even if said trucks were owned by Urbano Jaca their sale to Atty. Raul Nengasca does not totally indicate insolvency. As has been repeatedly observed, petitioner Urbano

Jaca is engaged in business. Sale of property used in business does not establish insolvency. The sale may have been prompted by the need for more modern equipment on account of obsolescence, or the need of to be directed to more profitable endeavor. The same reason applies to their failure to file a counterbound. The cash needed for the counterbound may be utilized for the continuance of the business or to increase business profits. In short, the acts of petitioner cannot be always be interpreted as signs of insolvency but may also indicate sound business judgment prompted by the need to have liquid reserve of cash.

# ARTURO G. EUDELA, RENATO TUAZON, FRANCISCO S. PANGILINAN and LEO GUEVARRA, petitioners,

-versus-

HON. COURT OF APPEALS, HON. FILEMON H. MENDOZA, as Presiding Judge of the Regional Trial Court of Quezon City, Branch XCIV (94), NIZA SORIANO VERGEL DE DIOS, RICHARD NG, NATIVIDAD MALLARI-NG, and SHERIFF OF QUEZON CITY, respondents.

G.R. No. 89265, FIRST DIVISION, July 17, 1992, CRUZ, J.

*In Roxas vs. Court of Appeals, thus:* 

It is not intended obviously that execution pending appeal shall issue as a matter of course. "Good reasons," special, important, pressing reasons must exist to justify it; otherwise, instead of an instrument of solicitude and justice, it may well become a tool of oppression and inequity. But to consider the mere posting of a bond a "good reason" would precisely make immediate execution of a judgment pending appeal routinary, the rule rather than the exception. Judgments would be executed immediately, as a matter of course, once rendered, if all that the prevailing party needed to do was to post a bond to answer for damages that might result therefrom. This is a situation, to repeat, neither contemplated nor intended by law.

The Court finds that the justification given by the trial court in its challenged order constitutes the "good reasons" required by Section 2 of Rule 39 for authorizing execution pending appeal.

#### **FACTS:**

This case arose from two complaints filed by the private respondents against the petitioners for injunction, specific performance and damages, in the Regional Trial Court of Quezon City. These complaints were consolidated and, after trial, decided against the petitioners on December 16, 1987. The petitioners were found to have defrauded the private respondents and held solidarily liable to them in the amount of P450,000.00 plus 15% interest and P30,000.00 as attorney's fees.

On motions for reconsideration filed by both parties, the decision was amended on February 1, 1988, to specify the respective amounts due each of the two complainants. On that same date, the petitioners filed a notice of appeal of the original decision. The private respondents received a copy of the amended decision and six days later filed a motion for execution pending appeal. After

considering the same and the opposition filed by the petitioners, then Judge Filemon H. Mendoza granted private respondents' motion.

This order was challenged by the petitioners on *certiorari* with the Court of Appeals. The order was sustained.

#### **ISSUE:**

Whether or not the order of the trial court granting execution pending appeal was proper (YES)

#### **RULING:**

In *Cuento vs. Pareres*, this Court held that where a judgment is amended, the date of the amendment should be considered the date of the decision in the computation of the period for perfecting the appeal.

In the present case, the notice of the amended decision was received by the private respondents on February 13, 1988, and the motion for execution pending appeal was filed on February 19, 1988, or six days thereafter. Under the present procedure for appeal, it suffices that the notice of appeal is made before the expiration of the 15-day reglementary period. An appeal bond is no longer necessary, and neither is the filing of a record on appeal, except in case of multiple appeals. The mere filing of a notice of appeal does not divest the trial court of its jurisdiction over the case. The court may still take cognizance of the other party's motion for execution pending appeal, as in the instant case, provided such motion is filed within 15 days from notice of the decision of the said party.

The general rule under Sec. 1 of Rule 39 of the Rules of Court is that a judgment can be executed only after it has become final and executory, that is, when it "finally disposes of the action or proceeding." Such execution shall issue as a matter of right upon the expiration of the period for appeal if no appeal has been perfected.

By way of exception, however, execution pending appeal is allowed under Sec. 2 of the same Rule as follows:

Sec 2. *Execution pending-appeal.* — On motion of the prevailing party with notice to the adverse party, the court may, in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the motion and the special order shall be included therein.

Execution pending appeal requires observance of the following requisites: (a) there must be a motion therefor by the prevailing party with notice to the adverse party; (b) there must be a good reason for issuing the writ of execution; and (c) the good reason must be stated in a special order. The exercise of the power to grant or deny immediate or advance execution is addressed to the sound discretion of the court. However, the existence of good reason is indispensable to the grant of execution pending appeal. Absent any such good reason, the special order of execution must be struck down for having been issued with grave abuse of discretion.

The Court disagrees with the respondent court that the mere filing of a bond is sufficient to warrant execution pending appeal. It is now settled that the filing of a bond cannot by itself alone entitle the private respondents to such a process. Whatever doubts may have been generated by early decisions have been clarified in *Roxas vs. Court of Appeals*, thus:

It is not intended obviously that execution pending appeal shall issue as a matter of course. "Good reasons," special, important, pressing reasons must exist to justify it; otherwise, instead of an instrument of solicitude and justice, it may well become a tool of oppression and inequity. But to consider the mere posting of a bond a "good reason" would precisely make immediate execution of a judgment pending appeal routinary, the rule rather than the exception. Judgments would be executed immediately, as a matter of course, once rendered, if all that the prevailing party needed to do was to post a bond to answer for damages that might result therefrom. This is a situation, to repeat, neither contemplated nor intended by law.

Even so, the Court finds that the justification given by the trial court in its challenged order constitutes the "good reasons" required by Section 2 of Rule 39 for authorizing execution pending appeal. It is noted that the decision under appeal held the petitioners solidarily liable to the private respondents for what it described as "the fraudulent combination of the defendants against the plaintiffs." Of these defendants, Pioneer Savings and Loan Bank is under receivership and in a state of insolvency; Renato Tuazon and his family have immigrated and his real properties are being sold; Leo Guevarra and Arturo Eudela appear to have no registered real properties in their name, and Eudela himself is reportedly at large and facing malversation charges filed by the Bureau of Internal Revenue. Francisco Pangilinan, the president of the insolvent bank, appears to be the only one who may be able to satisfy the private respondents' claims although he has not denied their allegations that his real properties are heavily mortgaged and that he has sold two of his cars.

Added to these danger signals is the fact that the complaints were filed in the Regional Trial Court of Quezon City as early as 1986, and the private respondents have yet to execute the judgment in their favor because of the petition at bar and the appeal pending in the Court of Appeals. In these circumstances, the Court feels that the trial court did not commit grave abuse of discretion but in fact acted quite judiciously in granting the motion for execution pending appeal.

# ADELAIDA INFANTE, Petitioner, -versus-

#### ARAN BUILDERS, INC., Respondent.\*

G.R. NO. 156596, THIRD DIVISION, August 24, 2007, AUSTRIA-MARTINEZ, J.

Thus, the proper venue depends on the determination of whether the present action for revival of judgment is a real action or a personal action. Applying the afore-quoted rules on venue, if the action for revival of judgment affects title to or possession of real property, or interest therein, then it is a real action that must be filed with the court of the place where the real property is located. If such action does not fall under the category of real actions, it is then a personal action that may be filed with the court of the place where the plaintiff or defendant resides.

The allegations in the complaint for revival of judgment determine whether it is a real action or a personal action.

#### **FACTS:**

Before the Regional Trial Court of Muntinlupa City was an action for revival of judgment filed on June 6, 2001 by Aran Builders, Inc. against Adelaida Infante. The judgment sought to be revived was rendered by the Regional Trial Court of Makati City in an action for specific performance and damages.

The Makati RTC judgment, which became final and executory on November 16, 1994, decreed as follows:

 $\mathbf{X} \mathbf{X} \mathbf{X}$ 

26.1.1. To deliver to the plaintiff ARAN BUILDERS, INC. the following: (a) the complete plans (lot plan, location map and vicinity map); (b) Irrevocable Power of Attorney; (c) Real Estate Tax clearance; (d) tax receipts; (e) proof of up to date payment of Subdivision Association dues referred to in the "CONTRACT TO SELL" dated November 10, 1986 (Exh. A or Exh. 1);

26.1.2. To execute the deed of sale of Lot No. 11, Block 9, Phase 3-A1, Ayala Alabang Subdivision covered by TCT No. 114015 for ₱500,000.00 in favor of the plaintiff;

 $\mathbf{X} \ \mathbf{X} \ \mathbf{X}$ 

26.2 Upon the compliance of the defendant with the preceding directives, the plaintiff must immediately pay to the defendant the sum of  $\rat{P}321,918.25$ ; x x x

Petitioner filed a motion to dismiss the action (for revival of judgment) on the grounds that the Muntinlupa RTC has no jurisdiction over the persons of the parties and that venue was improperly laid. Petitioner asserts that the complaint for specific performance and damages before the Makati

RTC is a personal action and, therefore, the suit to revive the judgment therein is also personal in nature; and that, consequently, the venue of the action for revival of judgment is either Makati City or Parañaque City where private respondent and petitioner respectively reside, at the election of private respondent.

The Muntinlupa RTC denied the motion to dismiss.

Her motion for reconsideration having been denied per order, petitioner came to the CA via the instant special civil action for certiorari. The CA promulgated its Decision ruling in favor of herein private respondent. The CA held that since the judgment sought to be revived was rendered in an action involving title to or possession of real property, or interest therein, the action for revival of judgment is then an action *in rem* which should be filed with the Regional Trial Court of the place where the real property is located. Petitioner moved for reconsideration of the CA Decision but the motion was denied.

#### **ISSUE:**

Whether or not the RTC Muntinlupa was the proper venue for petitioner's action for revival of judgment (YES)

#### **RULING:**

Section 6, Rule 39 of the 1997 Rules of Civil Procedure provides that after the lapse of five (5) years from entry of judgment and before it is barred by the statute of limitations, a final and executory judgment or order may be enforced by action. The Rule does not specify in which court the action for revival of judgment should be filed.

In Aldeguer v. Gemelo, the Court held that:

x x x an action upon a judgment must be brought either in the same court where said judgment was rendered or in the place where the plaintiff or defendant resides, or **in any other place designated** by the statutes which treat of the venue of actions in general. (Emphasis supplied)

but emphasized that other provisions in the rules of procedure which fix the venue of actions in general must be considered.

Under the present Rules of Court, Sections 1 and 2 of Rule 4 provide:

Section 1. *Venue of real actions.* - Actions affecting title to or possession of real property, or interest therein, shall be commenced and tried in the proper court which has jurisdiction over the area wherein the real property involved, or a portion thereof, is situated.

X X X X

Section 2. Venue of personal actions. - All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant where he may be found, at the election of the plaintiff.

Thus, the proper venue depends on the determination of whether the present action for revival of judgment is a real action or a personal action. Applying the afore-quoted rules on venue, if the action for revival of judgment affects title to or possession of real property, or interest therein, then it is a real action that must be filed with the court of the place where the real property is located. If such action does not fall under the category of real actions, it is then a personal action that may be filed with the court of the place where the plaintiff or defendant resides.

The allegations in the complaint for revival of judgment determine whether it is a real action or a personal action.

The complaint for revival of judgment alleges that a final and executory judgment has ordered herein petitioner to execute a deed of sale over a parcel of land in Ayala Alabang Subdivision in favor of herein private respondent; pay all pertinent taxes in connection with said sale; register the deed of sale with the Registry of Deeds and deliver to Ayala Corporation the certificate of title issued in the name of private respondent. The same judgment ordered private respondent to pay petitioner the sum of ₱321,918.25 upon petitioner's compliance with the aforementioned order. It is further alleged that petitioner refused to comply with her judgment obligations despite private respondent's repeated requests and demands, and that the latter was compelled to file the action for revival of judgment. Private respondent then prayed that the judgment be revived and a writ of execution be issued to enforce said judgment.

The present case for revival of judgment being a real action, the complaint should indeed be filed with the Regional Trial Court of the place where the realty is located.

#### ROLANDO TING, Petitioner, -versus-

#### HEIRS OF DIEGO LIRIO, namely: FLORA A. LIRIO, AMELIA L. ROSKA, AURORA L. ABEJO, ALICIA L. DUNQUE, ADELAIDA L. DAVID, EFREN A. LIRIO and JOCELYN ANABELLE L. ALCOVER, Respondents.

G.R. No. 168913, SECOND DIVISION, March 14, 2007, CARPIO MORALES, J.

Sta. Ana v. Menla, et al. enunciates the raison d'etre why Section 6, Rule 39 does not apply in land registration proceedings, viz: x x x This provision of the Rules refers to civil actions and is not applicable to special proceedings, such as a land registration case. This is so because a party in a civil action must immediately enforce a judgment that is secured as against the adverse party, and his failure to act to enforce the same within a reasonable time as provided in the Rules makes the decision unenforceable against the losing party. In special proceedings the purpose is to establish a status,

condition or fact; in land registration proceedings, the ownership by a person of a parcel of land is sought to be established. After the ownership has been proved and confirmed by judicial declaration, no further proceeding to enforce said ownership is necessary, except when the adverse or losing party had been in possession of the land and the winning party desires to oust him therefrom.

#### **FACTS:**

The decision in LRC No. N-983 became final and executory on January 29, 1977. Judge Marigomen thereafter issued an order of November 10, 1982 directing the Land Registration Commission to issue the corresponding decree of registration and the certificate of title in favor of the spouses Lirio.

On February 12, 1997, Rolando Ting (petitioner) filed with the Regional Trial Court (RTC) of Cebu an application for registration of title to the same lot. The application was docketed as LRC No. 1437-N.

The herein respondents, heirs of Diego Lirio, who were afforded the opportunity to file an opposition to petitioner's application by Branch 21 of the Cebu RTC, filed their Answercalling attention to the December 10, 1976 decision in LRC No. N-983 which had become final and executory on January 29, 1977 and which, they argued, barred the filing of petitioner's application on the ground of res judicata.

After hearing the respective sides of the parties, Branch 21 of the Cebu RTC, on motion of respondents, dismissed petitioner's application on the ground of res judicata.

In the present petition for review on certiorari, petitioner argues that although the decision in LRC No. N-983 had become final and executory on January 29, 1977, no decree of registration has been issued by the Land Registration Authority (LRA); it was only on July 26, 2003 that the "extinct" decision belatedly surfaced as basis of respondents' motion to dismiss LRC No. 1437-N; and as no action for revival of the said decision was filed by respondents after the lapse of the ten-year prescriptive period, "the cause of action in the dormant judgment passé[d] into extinction." Petitioner thus concludes that an "extinct" judgment cannot be the basis of *res judicata*.

#### **ISSUE:**

Whether or not Section 6, Rule 39 of the Rules of Court is applicable to decisions in land registration cases (NO)

#### **RULING:**

Section 30 of Presidential Decree No. 1529 or the Property Registration Decree provides:

As for petitioner's claim that under Section 6, Rule 39 of the Rules of Court reading:

SEC. 6. Execution by motion or by independent action. – A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations[,]

the December 10, 1976 decision became "extinct" in light of the failure of respondents and/or of their predecessors-in-interest to execute the same within the prescriptive period, the same does not lie.

Sta. Ana v. Menla, et al. enunciates the raison d'etre why Section 6, Rule 39 does not apply in land registration proceedings, viz:

THAT THE LOWER COURT ERRED IN ORDERING THAT THE DECISION RENDERED IN THIS LAND REGISTRATION CASE ON NOVEMBER 28, 1931 OR TWENTY SIX YEARS AGO, HAS NOT YET BECOME FINAL AND UNENFORCEABLE.

We fail to understand the arguments of the appellant in support of the above assignment, except in so far as it supports his theory that after a decision in a land registration case has become final, it may not be enforced after the lapse of a period of 10 years, except by another proceeding to enforce the judgment or decision. Authority for this theory is the provision in the Rules of Court to the effect that judgment may be enforced within 5 years by motion, and after five years but within 10 years, by an action (Sec. 6, Rule 39.) This provision of the Rules refers to civil actions and is not applicable to special proceedings, such as a land registration case. This is so because a party in a civil action must immediately enforce a judgment that is secured as against the adverse party, and his failure to act to enforce the same within a reasonable time as provided in the Rules makes the decision unenforceable against the losing party. In special proceedings the purpose is to establish a status, condition or fact; in land registration proceedings, the ownership by a person of a parcel of land is sought to be established. After the ownership has been proved and confirmed by judicial declaration, no further proceeding to enforce said ownership is necessary, except when the adverse or losing party had been in possession of the land and the winning party desires to oust him therefrom.

Furthermore, there is no provision in the Land Registration Act similar to Sec. 6, Rule 39, regarding the execution of a judgment in a civil action, except the proceedings to place the winner in possession by virtue of a writ of possession. The decision in a land registration case, unless the adverse or losing party is in possession, becomes final without any further action, upon the expiration of the period for perfecting an appeal.

RIZAL COMMERCIAL BANKING CORPORATION, Petitioner, -versus-

#### FEDERICO A. SERRA, Respondent.

G.R. No. 203241, SECOND DIVISION, July 10, 2013, CARPIO, J.

When there is a delay in the execution of the decision caused by the respondent for his own advantage, the five-year period to enforce the same shall be suspended. The Rules of Court provide that a final and executory judgment may be executed by motion within five years from the date of its entry or by an action after the lapse of five years and before prescription sets in. This Court, however, allows exceptions when execution may be made by motion even after the lapse of five years. These exceptions have one common denominator: the delay is caused or occasioned by actions of the judgment obligor and/or is incurred for his benefit or advantage.

#### **FACTS:**

On 20 May 1975, Serra and petitioner Rizal Commercial Banking Corporation (RCBC) entered into a Contract of Lease with Option to Buy, wherein Serra agreed to lease his land to RCBC for 25 years. Serra further granted RCBC the option to buy the land and improvement within 10 years from the signing of the Contract of Lease with Option to Buy. However, when RCBC informed Serra of its decision to exercise its option to buy the property but Serra replied that he was no longer interested in selling the property, which then prompted RCBC to file a Complaint for Specific Performance and Damages against Serra in the Regional Trial Court (RTC) of Makati (Specific Performance case). The RTC Makati initially dismissed the complaint. However, it subsequently reversed itself and ordered Serra to execute and deliver the proper deed of sale in favor of RCBC. Serra then elevated the case to the Court of Appeals (CA).

On 18 May 1989, Serra donated the property to his mother, who then sold the property to Hermanito Liok (Liok). A new land title was issued in favor of Liok. Thus, RCBC filed a Complaint for Nullification of Deed of Donation and Deed of Sale with Reconveyance and Damages against Liok, Ablao and Serra (Annulment case) before the RTC of Masbate City.

Meanwhile, the CA, and later the Supreme Court, affirmed the order of the RTC Makati in the Specific Performance case. The Supreme Court declared that the Contract of Lease with Option to Buy was valid, effective, and enforceable. Such decision became final and executory upon entry of judgment.

On 22 October 2001, the RTC Masbate ruled in favor of RCBC. The CA affirmed the RTC Masbate decision. Thus, Liok filed a Petition for Review on Certiorari, while Serra and Ablao filed a Petition for Certiorari, before the Supreme Court. In separate Resolutions, the Court found neither reversible error nor grave abuse of discretion on the CA's part.

On 25 August 2011, RCBC moved for the execution of the decision in the Specific Performance case. RCBC alleged that it was legally impossible to ask for the execution of the decision prior to the annulment of the fraudulent transfers made by Serra. Thus, the period to execute by motion was

suspended during the pendency of the Annulment case. The RTC Makati denied RCBC's motion for execution. Hence, this petition.

#### **ISSUE:**

Whether or not the court a quo erred in holding that petitioner RCBC is barred from having its 05 January 1989 Decision executed through Motion, considering that under the circumstances obtaining in this case, RCBC was unlawfully prevented by the respondent from enforcing the said decision (YES)

#### **RULING**

The Rules of Court provide that a final and executory judgment may be executed by motion within five years from the date of its entry or by an action after the lapse of five years and before prescription sets in. This Court, however, allows exceptions when execution may be made by motion even after the lapse of five years. These exceptions have one common denominator: the delay is caused or occasioned by actions of the judgment obligor and/or is incurred for his benefit or advantage.

In the present case, it is clear that the delay in the execution of the decision was caused by Serra for his own advantage. Thus, the pendency of the Annulment case effectively suspended the five-year period to enforce through a motion the decision in the Specific Performance case. Since the decision in the Annulment case attained finality on 3 March 2009 and RCBC's motion for execution was filed on 25 August 2011, RCBC's motion is deemed filed within the five-year period for enforcement of a decision through a motion.

This Court has reiterated that the purpose of prescribing time limitations for enforcing judgments is to prevent parties from sleeping on their rights. Far from sleeping on its rights, RCBC has pursued persistently its action against Serra in accordance with law. On the other hand, Serra has continued to evade his obligation by raising issues of technicality. While strict compliance with the rules of procedure is desired, liberal interpretation is warranted in cases where a strict enforcement of the rules will not serve the ends of justice.

# PABLITO T. VILLARIN AND P.R. BUILDERS DEVELOPERS & MANAGERS, INC., Petitioners, - versus - CORONADO P. MUNASQUE, Respondent

G.R. No. 169444, THIRD DIVISION, September 17, 2008, TINGA, J.

[In] Torres v. Cabling, the Court held that "a sheriff is not required to give the judgment debtor some time to raise cash [since] if time be given, the property may be placed in danger of being lost or absconded."

In the case at bar, it is not disputed that Deputy Sheriff Mendoza failed to first demand of petitioners the immediate payment in cash of the full amount stated in the writ of execution. However, it is also extant in the records that petitioners never disputed the admissions of their counsel, Atty. Salamero, that they had no funds to pay even a month's interest and that they agreed to the levy so long as the auction sale would not be set earlier than 20 November 2002. The admissions provide reasonable basis for the deputy sheriff to forego prior demand on petitioners for payment in cash and proceed to levy on the properties right away.

#### **FACTS:**

Respondent Coronado P. Munasque filed a complaint for sum of money against petitioners Pablito T. Villarin and P.R. Builders Developers and Managers, Inc., and their co-defendant Intra Strata Assurance Corp. (Intra Strata). The parties entered into a compromise agreement wherein it was agreed petitioners will pay respondent the amount of P15 million with monthly interest of P450,000. The RTC approved the compromise. Petitioners managed to pay only P250,000.00 of their total obligation. Thus, respondent filed a motion for execution.

The motion was granted and the writ of execution issued. The following day, the deputy sheriff issued a notice of levy covering various properties of petitioners. Petitioners filed a motion to recall the notice of levy and cancel the scheduled deputy sheriff's sale, alleging that the deputy sheriff did not comply with Section 9, Rule 39 of the 1997 Rules of Civil Procedure which, according to it, requires first a personal demand for payment of the full amount of the obligation before levy on the properties could be made; that when levy was made, petitioners were not given the option to choose what property should be levied; and that levy should have been made first on petitioners' personal properties. In a letter, dated November 13, 2002, petitioners then identified eight (8) parcels of land registered with the Register of Deeds of Tanauan City which they claimed should be the subject of levy since the combined value of the said properties was sufficient to cover the P15 million claim. On that basis, they requested that the appropriate correction be made in the notice of levy.

Respondent opposed the motion, contending that the day before the levy, petitioners' counsel, Atty. Salamero, informed respondent's counsel that petitioners did not have the money to pay even one month's interest at the time. Petitioners were not able to dispute such contention.

#### **ISSUE:**

Whether the issuance of the notice of levy is proper. (YES)

#### **RULING:**

Based on Section 9, Rule 39 of the RoC, the sheriff is required to first demand of the judgment obligor the immediate payment of the full amount stated in the writ of execution before a levy can

be made. The sheriff shall demand such payment either in cash, certified bank check or any other mode of payment acceptable to the judgment obligee. If the judgment obligor cannot pay by these methods immediately or at once, he can exercise his option to choose which of his properties can be levied upon. If he does not exercise this option immediately or when he is absent or cannot be located, he waives such right, and the sheriff can now first levy his personal properties, if any, and then the real properties if the personal properties are insufficient to answer for the judgment.

The present rule now requires the sheriff to first make a demand for payment, and it prescribes the procedure for and the manner of payment as well as the immediate turnover of the payment by the sheriff to the clerk of court. Levy as a mode of satisfying the judgment may be done only if the judgment obligor cannot pay all or part of the obligation in cash, certified bank check, or other mode of payment acceptable to the judgment obligee.

The issue of improper levy was raised in *Seven Brothers Shipping Corp. v. Oriental Assurance Corp.* In that case, Seven Brothers was ordered to pay Oriental Assurance P8 million plus interest at the legal rate from the date of filing of the complaint until full payment. When the sheriff enforced the writ of execution by levying on the vessels of the shipping company, it moved to quash the writ and to lift the levy. The Court found untenable Seven Brothers' claim of improper levy, citing *Torres v. Cabling*, where the Court held that "a sheriff is not required to give the judgment debtor some time to raise cash [since] if time be given, the property may be placed in danger of being lost or absconded." Based on the evidence presented, Seven Brothers' existing assets were found to be insufficient to satisfy the final judgment against it, and the sheriff was thus deemed justified in recognizing that Seven Brothers was in no position to pay its obligation in cash and in immediately levying on the vessels that would sail beyond the reach of Philippine courts and law enforcers if the levy was not made. In so ruling, the Court recognized that while it is desirable that the Rules be conscientiously observed, in meritorious cases they should be interpreted liberally to help secure and not frustrate justice.

In the case at bar, it is not disputed that Deputy Sheriff Mendoza failed to first demand of petitioners the immediate payment in cash of the full amount stated in the writ of execution. However, it is also extant in the records that petitioners never disputed the admissions of their counsel, Atty. Salamero, that they had no funds to pay even a month's interest and that they agreed to the levy so long as the auction sale would not be set earlier than 20 November 2002. The admissions provide reasonable basis for the deputy sheriff to forego prior demand on petitioners for payment in cash and proceed to levy on the properties right away.

Furthermore, while petitioners, in their 13 November 2002 letter, complained of procedural defects in the enforcement of the writ, they at the same time also actually "exercise[d] their right to choose which properties may be levied upon in satisfaction of their aforesaid obligation." It should be noted that nowhere in the letter did they offer payment of their obligation in cash. They did not even allege any willingness and ability to do so. They also did not offer personal properties that may be subject of levy.

By such acts, petitioners may be said to have overlooked the procedural lapses, acceded to the execution by levy, and effectively exercised their right to choose which of their properties may be levied on.

# YOLANDA LEACHON CORPUZ, *Petitioner*, – versus - SERGIO V. PASCUA, Sheriff III. Municipal Trial Court in Cities, Trece Martires City, Cavite, *Respondent*.

A.M. No. P-11-2972, FIRST DIVISION, September 28, 2011, Leonardo-De Castro, J.

The power of the court in executing judgments extends only to properties unquestionably belonging to the judgment debtor alone.

Sheriff Pascua cannot rely on the presumption that the vehicle is the conjugal property of Juanito and Yolanda. Article 160 of the New Civil Code provides that all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." However, for this presumption to apply, the party who invokes it must first prove that the property was acquired during the marriage.

#### **FACTS:**

In a criminal case filed with MTCC against Juanito Corpuz (Juanito) filed by Alicia Panganiban (Panganiban) for violation of Batas Pambansa Blg. 22, the parties entered into a compromise agreement. In the compromise agreement, which the court approved, Juanito undertook to pay Panganiban the sum of Batas Pambansa Blg. 22. Consequently, the criminal case was provisionally dismissed. However, Juanito failed to pay as scheduled. Hence, a writ of execution was issued by the MTCC to ordering the levy of the properties of Juanito though Sheriff Sergio Pascua (Pascua). Later, Sheriff Pascua went to the office of Yolanda Corpuz (Yolanda), the wife of Juanito, demanding the surrender of her Toyota Town Ace Noah. According to Yolanda, Sheriff Pascua tried to forcibly open the vehicle. Embarrassed by the incident, Yolanda filed an administrative case against Pascua.

For his part, Pascua alleged that the property is presumed to be conjugal, hence covered by the Writ of Execution issued by the MTCC. In its report, the Office of the Court Administrator (OCA) recommended that a regular administrative case be filed against Pascua holding that Pascua is guilty of neglect of duty.

#### **ISSUE:**

Whether or not Pascua's act of levying the car belonging to Yolanda is proper. (NO)

#### **RULING:**

The power of the court in executing judgments extends only to properties unquestionably belonging to the judgment debtor alone. An execution can be issued only against a party and not against one who did not have his day in court. The duty of the sheriff is to levy the property of the judgment debtor not that of a third person. A sheriff is not authorized to attach or levy on property not belonging to the judgment debtor. The sheriff may be liable for enforcing execution on property belonging to a third party. If he does so, the writ of execution affords him no justification, for the action is not in obedience to the mandate of the writ. Sheriff Pascua cannot rely on the presumption that the vehicle is the conjugal property of Juanito and Yolanda. Article 160 of the New Civil Code provides that all property of the marriage is presumed to belong to the conjugal partnership, unless it be proved that it pertains exclusively to the husband or to the wife." However, for this presumption to apply, the party who invokes it must first prove that the property was acquired during the marriage. Proof of acquisition during the coverture is a condition sine qua non to the operation of the presumption in favor of the conjugal partnership. Thus, the time when the property was acquired is material. There is no such proof in the records of the present case.

Moreover, when Sheriff Pascua proceeded in levying upon Yolanda's vehicle, he digressed far from the procedure laid down in Section 9, Rule 39 of the Rules of Court for the enforcement of judgments which clearly states that the levy upon the properties of the judgment obligor may be had by the executing sheriff only if the judgment obligor cannot pay all or part of the full amount stated in the writ of execution. If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check, or other mode acceptable to the judgment obligee, the judgment obligor is given the option to immediately choose which of his property or part thereof, not otherwise exempt from execution, may be levied upon sufficient to satisfy the judgment. If the judgment obligor does not exercise the option immediately, or when he is absent or cannot be located, he waives such right, and the sheriff can now first levy his personal properties, if any, and then the real properties if the personal properties are insufficient to answer for the judgment. Therefore, the sheriff cannot and should not be the one to determine which property to levy if the judgment obligor cannot immediately pay because it is the judgment obligor who is given the option to choose which property or part thereof may be levied upon to satisfy the judgment.

In this case, Sheriff Pascua totally ignored the established procedural rules. Without giving Juanito the opportunity to either pay his obligation under the MTCC judgment in cash, certified bank check, or any other mode of payment acceptable to Panganiban; or to choose which of his property may be levied upon to satisfy the same judgment, Sheriff Pascua immediately levied upon the vehicle that belonged to Juanito's wife, Yolanda.

SPOUSES EDUARDO and ELSA VERSOLA, *Petitioners*, - versus -HON. COURT OF APPEALS, SHERIFF REYNALDO B. MADOLARIA, JUDGE LYDIA QUERUBIN LAYOSA BOTH OF THE REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 217, REGISTER OF DEEDS OF QUEZON CITY AND DR. VICTORIA T. ONG, OH, *Respondents*.

G.R. No. 164740, FIRST DIVISION, July 31, 2006, CHICO-NAZARIO, J

It is not sufficient that the person claiming exemption merely alleges that such property is a family home. This claim for exemption must be set up and proved to the Sheriff. Failure to do so would estop the party from later claiming the exception.

Petitioners simply alleged there that the property subject of the intended auction sale was their family home. Instead of substantiating their claim, petitioners languidly presupposed that the sheriff had prior knowledge that the said property was constituted by them as their family home. Lamentably, in the said objection, petitioners did not set forth therein any evidence to substantiate their claim that the property to be sold at the execution sale was indeed exempt for having been constituted as a family home.

#### **FACTS:**

This case has its genesis from a loan transaction entered into by private respondent Dr. Victoria T. Ong Oh and a certain Dolores Ledesma, wherein the former granted a P1,000,000.00 loan to the latter. As a security for said loan, Ledesma promised to execute a deed of real estate mortgage over her house and lot. The execution of the deed of real estate mortgage did not materialize, but Ledesma delivered the owner's duplicate copy of the TCT No. RT-51142 to private respondent. Thereafter, Ledesma sold the said house and lot to petitioners for P2,500,000.00. Even before the monthly installments became due, Ledesma already asked petitioners to pay the remaining balance of P1,500,000.00. Petitioners, however, were only able to pay the amount of P50,000.00 to Ledesma. To raise the full amount that Ledesma demanded, petitioners applied for a loan with Asiatrust Bank, Inc. (Asiatrust) in the amount of P2,000,000.00.

In the course of the application for said loan, petitioners, private respondent, and Ledesma convened with Asiatrust to arrive at a scheme to settle the obligation of Ledesma to private respondent and the obligation of petitioners to Ledesma. After the meeting, the following agreement was arrived at: (1)Ledesma would execute a Deed of Sale transferring ownership over her house and lot to petitioners; (2) private respondent would then deliver the duplicate copy of TCT No. RT-51142 to Asiatrust; (3) once petitioners had secured a title to the said house and lot in their names, they would execute a real estate mortgage over it in favor of Asiatrust to secure their loan of P2,000,000.00; and (4) Asiatrust would then grant a loan of P2,000,000.00 to petitioners with a written guarantee that the P1,500,000.00 would be given directly by Asiatrust to private respondent after the mortgage lien of Asiatrust would have been annotated on the title of the said property.

However, when Asiatrust tried to register the Real Estate Mortgage covering the subject property executed in its favor by petitioners, it discovered a notice of levy on execution was annotated on the title in connection with Ledesma's obligation to a certain Miladay's Jewels, Inc.. Because of this annotated encumbrance, Asiatrust did not register said Real Estate Mortgage and refused to release the P2,000,000.00 loan of petitioners. Subsequently, when private respondent presented for payment the check issued by petitioners, the said check was likewise dishonored because there was

a stop payment order. With the dishonor of the checks and with Asiatrust's refusal to release the P2,000,000.00 loan of petitioners, private respondent came away empty-handed as she did not receive payment. **As a result,** private respondent filed a Complaint for Sum of Money against Ledesma, petitioners, and Asiatrust.

The RTC ruled in favor of private respondent. The CA affirmed and the decision became final and executory. Private respondent filed a Motion for Execution with the trial court which the latter granted the same. On 23 June 2000, the property covered by TCT No. 83104, in the names of petitioners, was levied upon. The sheriff set the sale of the property at public auction on 19 September 2000.

On 18 September 2000, petitioners filed with the sheriff an "Objection/Exception to the Sheriff's Sale of Defendant Sps. Eduardo and Elsa Versola's Family Home Pending Court Order or Clearance." Despite petitioners' objections, however, the property was still sold at public auction on 19 September 2000 and was awarded to private respondent at the bid price of P2,835,000.00. A Sheriff's Final Deed of Sale was issued on March 19, 2002.

On 5 August 2002, private respondent filed with the trial court an Ex-parte Motion for Issuance of Confirmation of Judicial Sale of Real Property of Sps. Eduardo and Elsa Versola. Petitioners opposed the said motion on the ground that the property is exempt for being a family home.

#### **ISSUE:**

Whether the property is exempt from execution. (NO)

#### **RULING:**

Article 153 of the Family Code provides: The family home is deemed constituted on a house and lot from the time it is occupied as the family residence. From the time of its constitution and so long as its beneficiaries resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.

The settled rule is that the right to exemption or forced sale under Article 153 of the Family Code is a personal privilege granted to the judgment debtor and as such, it must be claimed not by the sheriff, but by the debtor himself before the sale of the property at public auction. It is not sufficient that the person claiming exemption merely alleges that such property is a family home. This claim for exemption must be set up and proved to the Sheriff. Failure to do so would estop the party from later claiming the exception.

On the day immediately prior to the scheduled sale of the subject property, petitioners filed with the sheriff an Objection/Exception to Sheriff's Sale of Defendant Sps. Eduardo and Elsa Versola's Family Home. Petitioners simply alleged there that the property subject of the intended auction sale was their family home. Instead of substantiating their claim, petitioners languidly presupposed that the sheriff had prior knowledge that the said property was constituted by them as their family home. Lamentably, in the said objection, petitioners did not set forth therein any evidence to substantiate their claim that the property to be sold at the execution sale was indeed exempt for having been constituted as a family home.

After almost two years from the time of the execution sale and after the "Sheriff's Final Deed of Sale" was issued did petitioners rigorously claim in their Opposition to private respondent's Exparte Motion for Issuance of Confirmation of Judicial Sale of Real Property of Sps. Eduardo and Elsa Versola that the property in question is exempt from execution. Even then, there was no showing that petitioners adduced evidence to prove that it is indeed a family home.

# POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM), Petitioner – versus - MAUNLAD HOMES, INC., Respondent

G.R. No. 215933, SECOND DIVISION, February 8, 2017, PERALTA, J.

Pursuant to Section 17, Rule 39, a third-party claimant has two remedies: an action for damages against the sheriff to be brought within 120 days from the filing of the bond, and a separate and independent action to vindicate his claim to the property. From the denial of a third-party claim to defeat the attachment caused to be levied by a creditor, neither an appeal nor a petition for certiorari is the proper remedy.

Petitioner may file a separate reinvidicatory action against the execution creditor or a complaint for damages against the bond filed by the judgment creditor in favor of the sheriff. The rights of a third-party claimant should be decided in a separate action to be instituted by the third person. The court may then issue a writ of preliminary injunction against the sheriff enjoining him from proceeding with the execution sale to immediately relieve petitioner from the adverse effects of the lower court's judgment.

#### **FACTS:**

Respondent Maunlad Homes, Inc. filed with the MTCC an unlawful detainer case with damages against National Power Corporation (NPC).

The MTCCordered NPC to vacate the subject premises and surrender physical possession thereof to respondent and to pay reasonable compensation.

The RTC affirmed *in toto* the MTCC decision on appeal.

Respondent filed a Motion for Execution. RTC granted respondent's motion for execution. A Writ of Execution pending appeal was issued. The sheriff served a Notice of Demand of payment to the NPC. Respondent then filed an urgent motion for issuance of a Break Open Order since the sheriff who tried to implement the writ was prevented by the security guards therein.

The NPC argued that the property is being used both by it and the Power Sector Assets and Liabilities Management Corporation (herein petitioner PSALM), an entity created by virtue of the Electric Power Industry Reform Act of 2001 (EPIRA Law); that the said law provides that the ownership of all assets and contracts are transferred to PSALM.

The RTC issued a Break Open Order. The sheriff issued a Notice of Levyon execution pending appeal of personal properties/sale.

Petitioner filed an Affidavitof third-party claim with the sheriff pursuant to Section 16, Rule 39, and alleging that it is the owner of the levied properties pursuant to the EPIRA Law.

Petitioner filed a Manifestation with Urgent *Ex Parte* Motion for Issuance of *Status Quo* Order with the RTC arguing that it is not a party to the instant case and therefore cannot be bound by the judgment therein.

The RTC denied the motion for issuance of Status Quo Order and the third-party claim.

The CA dismissed the petition for *certiorari* for being an incorrect remedy. Denied motion for reconsideration.

Hence, this Petition.

#### **ISSUE:**

Whether the petition for *certiorari* assailing the denial of the latter's third party claim is the correct remedy. (NO)

#### **RULING:**

The power of the court in executing judgments extends only to properties belonging to the judgment debtor alone. An execution can be issued only against a party and not against one who did not have his day in court. The duty of the sheriff is to levy the property of the judgment debtor not that of a third person.

A third person whose property was seized by a sheriff to answer for the obligation of the judgment debtor may invoke the supervisory power of the court which authorized such execution. Upon due application by the third person and after summary hearing, the court may command that the property be released from the mistaken levy and restored to the rightful owner or possessor.

What the court can do is limited to a determination of whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of judgment, if he has indeed taken hold of property not belonging to the judgment debtor.

The court does not and cannot pass upon the question of title to the property, with any character of finality. It can treat of the matter only insofar as may be necessary to decide if the sheriff has acted correctly or not. It can require the sheriff to restore the property to the claimant's possession if warranted by the evidence. However, if the claimant's proofs do not persuade the court of the validity of his title or right of possession thereto, the claim will be denied.

A third-party claimant may also avail of the remedy known as "terceria," provided in Section 17, Rule 39, by serving on the officer making the levy an affidavit of his title and a copy thereof upon the judgment creditor. The officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnifies the officer against such claim by a bond in a sum not greater than the value of the property levied on. An action for damages may be brought against the sheriff within one hundred twenty (120) days from the filing of the bond.

The aforesaid remedies are without prejudice to "any proper action" that a third-party claimant may deem suitable to vindicate "his claim to the property." Such a "proper action" is entirely distinct from that explicitly prescribed in Section 17 of Rule 39, which is an action for damages brought by a third-party claimant against the officer within one hundred twenty (120) days from the date of the filing of the bond for the taking or keeping of the property subject of the "terceria."

In this case, PSALM has not been able to satisfactorily establish their claim of ownership over the subject properties. It merely claimed that the subject properties were transferred by operation of law in view of the EPIRA law. It did not submit any document evidencing ownership.

Notably, petitioner cannot appeal from the denial of its third-party claim since it is not one of the parties in the action where the writ of execution was issued the unlawful detainer case was between respondent and the NPC. Also, the denial of the third-party claim is not appealable as provided under the above-quoted Section 16, Rule 39 since the remedy of a third party claimant is to file a separate and independent action to vindicate his claim of ownership or right of possession of the levied properties.

Pursuant to Section 17, Rule 39, a third-party claimant has two remedies: an action for damages against the sheriff to be brought within 120 days from the filing of the bond, and a separate and independent action to vindicate his claim to the property. From the denial of a third-party claim to defeat the attachment caused to be levied by a creditor, neither an appeal nor a petition for *certiorari* is the proper remedy.

Petitioner may file a separate reinvidicatory action against the execution creditor or a complaint for damages against the bond filed by the judgment creditor in favor of the sheriff. The rights of a third-party claimant should be decided in a separate action to be instituted by the third person. The court may then issue a writ of preliminary injunction against the sheriff enjoining him from proceeding with the execution sale to immediately relieve petitioner from the adverse effects of the lower court's judgment.

## ALFREDO CHING and ENCARNACION CHING, *Petitioners*, – versus -THE HON. COURT OF APPEALS and ALLIED BANKING CORPORATION, *Respondents*.

G.R. No. 124642, SECOND DIVISION, February 23, 2004, CALLEJO, SR., J.

In Ong v. Tating, we held that the sheriff may attach only those properties of the defendant against whom a writ of attachment has been issued by the court.

In this case, the petitioner-wife filed her motion to set aside the levy on attachment of the 100,000 shares of stocks in the name of petitioner-husband claiming that the said shares of stocks were conjugal in nature; hence, not liable for the account of her husband under his continuing guaranty and

suretyship agreement with the PBMCI. The petitioner-wife had the right to file the motion for said relief.

#### **FACTS:**

Philippine Blooming Mills Company, Inc. (PBMCI) obtained a loan from the Allied Banking Corporation (ABC). As added security for the said loan, Alfredo Ching executed a continuing guaranty with the ABC binding themselves to jointly and severally guarantee the payment of all the PBMCI obligations owing the ABC.

The PBMCI defaulted in the payment of all its loans. Hence, ABC filed a complaint for sum of money with prayer for a writ of preliminary attachment. The writ of preliminary attachment was granted as against the defendant Alfredo Ching requiring the sheriff of this Court to attach all the properties of said Alfredo Ching. The deputy sheriff of the trial court levied on attachment the 100,000 common shares of Citycorp stocks in the name of Alfredo Ching.

Encarnacion T. Ching, assisted by her husband Alfredo Ching, filed a Motion to Set Aside the levy on attachment. She alleged inter alia that the 100,000 shares of stocks levied on by the sheriff were acquired by her and her husband during their marriage out of conjugal funds after the Citycorp Investment Philippines was established in 1974. Furthermore, the indebtedness covered by the continuing guaranty/comprehensive suretyship contract executed by petitioner Alfredo Ching for the account of PBMCI did not redound to the benefit of the conjugal partnership. She, likewise, alleged that being the wife of Alfredo Ching, she was a third-party claimant entitled to file a motion for the release of the properties. She attached therewith a copy of her marriage contract with Alfredo Ching

ABC assails the personality of Encarnacion to file the motion.

#### **ISSUE:**

Whether Encarnacion has the legal personality to file the motion. (YES)

#### **RULING:**

In *Ong v. Tating*, we held that the sheriff may attach only those properties of the defendant against whom a writ of attachment has been issued by the court. When the sheriff erroneously levies on attachment and seizes the property of a third person in which the said defendant holds no right or interest, the superior authority of the court which has authorized the execution may be invoked by the aggrieved third person in the same case. Upon application of the third person, the court shall order a summary hearing for the purpose of determining whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of the writ of attachment, more

specifically if he has indeed levied on attachment and taken hold of property not belonging to the plaintiff. If so, the court may then order the sheriff to release the property from the erroneous levy and to return the same to the third person. In resolving the motion of the third party, the court does not and cannot pass upon the question of the title to the property with any character of finality. It can treat the matter only insofar as may be necessary to decide if the sheriff has acted correctly or not. If the claimant's proof does not persuade the court of the validity of the title, or right of possession thereto, the claim will be denied by the court. The aggrieved third party may also avail himself of the remedy of "terceria" by executing an affidavit of his title or right of possession over the property levied on attachment and serving the same to the office making the levy and the adverse party. Such party may also file an action to nullify the levy with damages resulting from the unlawful levy and seizure, which should be a totally separate and distinct action from the former case. The above-mentioned remedies are cumulative and any one of them may be resorted to by one third-party claimant without availing of the other remedies.

In this case, the petitioner-wife filed her motion to set aside the levy on attachment of the 100,000 shares of stocks in the name of petitioner-husband claiming that the said shares of stocks were conjugal in nature; hence, not liable for the account of her husband under his continuing guaranty and suretyship agreement with the PBMCI. The petitioner-wife had the right to file the motion for said relief.

MAGDALENA T. VILLASI, *Petitioner*, - versus - FILOMENO GARCIA, substituted by his heirs, namely, ERMELINDA H. GARCIA, LIZA GARCIA-GONZALEZ, THERESA GARCIA-TIANGSON, MARIVIC H. GARCIA, MARLENE GARCIA-MOMIN, GERARDO H. GARCIA, GIDEON H. GARCIA and GENEROSO H. GARCIA, and ERMELINDA H. GARCIA, *Respondents*.

G.R. No. 190106, SECOND DIVISION, January 15, 2014, PEREZ, J.

The right of a third-party claimant to file a terceria is founded on his title or right of possession. Corollary thereto, before the court can exercise its supervisory power to direct the release of the property mistakenly levied and the restoration thereof to its rightful owner, the claimant must first unmistakably establish his ownership or right of possession thereon.

As the party asserting their title, the Spouses Garcia failed to prove that they have a bona fide title to the building in question. Aside from their postulation that as title holders of the land, the law presumes them to be owners of the improvements built thereon, the Spouses Garcia were unable to adduce credible evidence to prove their ownership of the property. In contrast, Villasi was able to satisfactorily establish the ownership of FGCI thru the pieces of evidence she appended to her opposition. The building in litigation was declared for taxation purposes in the name of FGCI and not in the Spouses Garcias'. While it is true that tax receipts and tax declarations are not incontrovertible evidence of ownership, they constitute credible proof of claim of title over the property.

#### **FACTS:**

Fil-Garcia Construction, Inc. (FGCI) instituted a collection suit against petitioner Villasi for failure to pay the accomplishment billings, relative to the construction services the former had rendered. This suit later culminated in a CA decision finding for petitioner Villasi. The CA ruled that an overpayment was made by Villasi and thereby directed FGCI to return the amount that was paid in excess. The decision became final and executory.

The RTC, upon petitioner's motion, issued a writ of execution. To satisfy the judgment, the sheriff levied on a **building** at Kalayaan Avenue, Quezon City. While the building was declared for taxation purposes in the name of FGCI, the lots in which it was erected were registered in the names of the respondent-spouses Filomeno Garcia and Ermelinda Halili-Garcia.

To forestall the scheduled sale on execution, the Spouses Garcia filed an Affidavit of Third Party Claim and a Motion to Set Aside Notice of Sale on Execution, claiming that they are the lawful owners of the property which was erroneously levied upon by the sheriff. Petitioner opposed the motion, insisting that its ownership belongs to FGCI. The RTC held against petitioner; directing the sheriff to hold in abeyance the conduct of the sale on execution

#### **ISSUE:**

Whether the suspension of the execution sale on the basis of respondents' affidavit of third party claim was proper. (NO)

#### **RULING:**

Money judgments are enforceable only against the property incontrovertibly belonging to the judgment debtor, and if the property belonging to any third person is mistakenly levied upon to answer for another man's indebtedness, such person has all the right to challenge the levy through any of the remedies provided for under the Rules of Court.

Section 16, Rule 39 specifically provides that a third person may avail himself of the remedies of either terceria, to determine whether the sheriff has rightly or wrongly taken hold of the property not belonging to the judgment debtor or obligor, or an independent "separate action" to vindicate his claim of ownership and/or possession over the foreclosed property. However, the person other than the judgment debtor who claims ownership or right over levied properties is not precluded from taking other legal remedies to prosecute his claim.

The right of a third-party claimant to file a terceria is founded on his title or right of possession. Corollary thereto, before the court can exercise its supervisory power to direct the release of the property mistakenly levied and the restoration thereof to its rightful owner, the claimant must first unmistakably establish his ownership or right of possession thereon.

A third person whose property was seized by a sheriff to answer for the obligation of the judgment debtor may invoke the supervisory power of the court which authorized such execution. Upon due application by the third person and after summary hearing, the court may command that the property be released from the mistaken levy and restored to the rightful owner or possessor. What said court can do in these instances, however, is limited to a determination of whether the sheriff has acted rightly or wrongly in the performance of his duties in the execution of judgment, more specifically, if he has indeed taken hold of property not belonging to the judgment debtor. The court does not and cannot pass upon the question of title to the property, with any character of finality. It can treat of the matter only insofar as may be necessary to decide if the sheriff has acted correctly or not. It can require the sheriff to restore the property to the claimant's possession if warranted by the evidence. However, if the claimant's proofs do not persuade the court of the validity of his title or right of possession thereto, the claim will be denied.

As the party asserting their title, the Spouses Garcia failed to prove that they have a bona fide title to the building in question. Aside from their postulation that as title holders of the land, the law presumes them to be owners of the improvements built thereon, the Spouses Garcia were unable to adduce credible evidence to prove their ownership of the property. In contrast, Villasi was able to satisfactorily establish the ownership of FGCI thru the pieces of evidence she appended to her opposition. The building in litigation was declared for taxation purposes in the name of FGCI and not in the Spouses Garcias'. While it is true that tax receipts and tax declarations are not incontrovertible evidence of ownership, they constitute credible proof of claim of title over the property.

FGCI is in actual possession of the building and as the payment of taxes coupled with actual possession of the land covered by tax declaration strongly supports a claim of ownership. Quite significantly, all the court processes in an earlier collection suit between FGCI and Villasi were served, thru the former's representative Filomeno Garcia, at No. 140 Kalayaan Avenue, Quezon City, where the subject property is located. This circumstance is consistent with the tax declaration in the name of FGCI.

In cases where there is a clear and convincing evidence to prove that the principal and the accessory are not owned by one and the same person or entity, the presumption shall not be applied, and the actual ownership shall be upheld. In a number of cases, we recognized the separate ownership of the land from the building and brushed aside the rule that accessory follows the principal.

# SOCIAL SECURITY COMMISSION, *Petitioners* – versus - RIZAL POULTRY and LIVESTOCK ASSOCIATION, INC., et al., *Respondent*

G.R. No. 167050, 1 June 2011, FIRST DIVISION, Perez, J.

Res judicata embraces two concepts: (1) bar by prior judgment and (2) conclusiveness of judgment. There is bar by prior judgment when, as between the first case where the judgment was rendered and

the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. Thus, if a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issue.

Res judicata applies which preclude the SSC from resolving anew the existence of employer-employee relationship, which issue was previously determined in the NLRC case.

#### **FACTS:**

Alberto Angeles filed before the Social Security Commission (SSC) to compel Rizal Poultry and Livestock Association, Inc. or BSD Agro Industrial Development Corporation to remit to the Social Security System all contributions due for and in his behalf. Rizal Poultry et al. countered with a Motion to Dismiss citing rulings of the National Labor Relations Commission and Court of Appeals regarding the absence of employer-employee relationship between Angeles and Rizal Poultry et al.

The SSC did not take into consideration the decision of the NLRC. It denied the motion to dismiss. According to SSC, while it is true that the parties before the NLRC and in this case are the same, the issues and subject matter are entirely different. The labor case is for illegal dismissal with demand for backwages and other monetary claims, while the present action is for remittance of unpaid SSS contributions. In other words, although in both suits Rizal Poultry et al. invoke lack of employer-employee relationship, the same does not proceed from identical causes of action as one is for violation of the Labor Code while the instant case is for violation of the SSS Law.

#### **ISSUE:**

Whether res judicata applies so as to preclude the SSC from resolving anew the existence of employer-employee relationship, which issue was previously determined in the NLRC case. (YES)

#### **RULING:**

Res judicata embraces two concepts: (1) bar by prior judgment and (2) conclusiveness of judgment. There is bar by prior judgment when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. Thus, if a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issue.

Verily, the principle of res judicata in the mode of conclusiveness of judgment applies in this case. The first element is present in this case. The NLRC ruling was affirmed by the Court of Appeals. The NLRC case was clearly decided on its merits; likewise on the merits was the affirmance of the NLRC by the Court of Appeals. With respect to the element of identity of parties, we hold that there is substantial compliance. Further, an identity in the cause of action need not obtain in order to apply res judicata by conclusiveness of judgment. An identity of issues would suffice. The mandatory coverage under the Social Security Act is premised on the existence of an employer-employee relationship. In the instant case, therefore, res judicata in the concept of conclusiveness of judgment applies. The judgment in the NLRC case pertaining to a finding of an absence of employer-employee relationship between Angeles and Rizal Poultry et al. is conclusive on the SSC case.

# LZK HOLDINGS and DEVELOPMENT CORPORATION, Petitioner, - versus PLANTERS DEVELOPMENT BANK, Respondent. G.R. No. 187973, FIRST DIVISION, January 20, 2014, REYES, J.

The doctrine of res judicata by conclusiveness of judgment postulates that "when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or when an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them."

All the elements of the doctrine are present in this case. The final judgment in G.R. No. 167998 was rendered by the Court pursuant to its jurisdiction over the review of decisions and rulings of the CA. It was a judgment on the merits of Planters Banks' right to apply for and be issued a writ of possession. Lastly, the parties in G.R. No. 167998 are the same parties involved in the present case.

#### **FACTS:**

LZK Holdings obtained a ₹40,000,000.00 loan from Planters Bank and secured the same with a Real Estate Mortgage (REM) over its lot in La Union.

The lot was sold at a public auction after Planters Bank extrajudicially foreclosed the REM thereon due to LZK Holdings' failure to pay its loan. Planters Bank emerged as the highest bidder and its certificate of sale was registered.

LZK Holdings filed before **RTC Makati** a complaint for annulment of extra judicial foreclosure, mortgage contract, PN and damages. LZK Holdings prayed for the issuance of a TRO or writ of preliminary injunction to enjoin the consolidation of title by Planters Bank.

Planters Bank filed an ex-parte motion for the issuance of a writ of possession with **RTC San Fernando.** 

On April 3, 2000, the RTC of Makati issued a TRO effective for 20 days enjoining Planters Bank from consolidating its title over the property. It ordered the issuance of a writ of preliminary injunction but the writ was issued only on June 20, 2000.

In the meantime or on April 24, 2000, Planters Bank succeeded in consolidating its ownership over the property.

The RTC San Fernando suspended the proceedings for its ex-parte motion for the issuance of a writ of possession in view of the TRO and writ of preliminary injunction issued by the RTC Makati.

The RTC Makati declared NULL AND VOID **the consolidated title** of Planters Bank in an Order. The CA and the SC affirmed.

Planters Bank appealed the RTC San Fernando Order which held in abeyance the resolution of its ex parte motion for the issuance of a writ of possession.

**The CA** GRANTED the appeal and ANNULLED the assailed order of the RTC San Fernando.

**SC** on **GR** No. 167998 (April 27, 2007): AFFIRMED CA's ruling and decreed that Planters Bank may apply for and is entitled to a writ of possession as the purchaser of the property in the foreclosure sale. (The suspension of the proceeding is invalid.

We have consistently held that the duty of the trial court to grant a writ of possession is ministerial. Such writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the trial court. Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Act No. 3135. Such question cannot be raised to oppose the issuance of the writ, since the proceeding is ex parte. The recourse is available even before the expiration of the redemption period.

Planters Bank, as the purchaser in the foreclosure sale, may apply for a writ of possession during the redemption period. In fact, it did apply for a writ within the redemption period.

The RTC San Fernando, given its ministerial duty to issue the writ, therefore, should have acted on the ex parte petition. The injunction order is of no moment because it should be understood to have merely stayed the consolidation of title. As previously stated, an injunction is not allowed to prohibit the issuance of a writ of possession. Neither does the pending case for annulment of foreclosure sale, mortgage contract, promissory notes and damages stay the issuance of said writ.

Planters Bank filed before the RTC San Fernando a motion to set ex-parte hearing for the issuance of a writ of possession. RTC set the hearing. RTC San Fernando eclared the scheduled hearing moot

and academic and GRANTED Planter Bank's ex-parte motion for the issuance of a writ of possession.

#### **ISSUE:**

Whether doctrine of conclusiveness of judgment applies in this case. (YES)

#### **RULING:**

After a re-examination of the substantive merits, Court stands by its initial determination that the CA committed no reversible error in affirming the issuance of a writ of possession by the RTC in favor of Planters Bank.

Under the principle of conclusiveness of judgment, the right of Planter's Bank to a writ of possession as adjudged in G.R. No. 167998 is binding and conclusive on the parties.

The doctrine of res judicata by conclusiveness of judgment postulates that "when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or when an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them."

All the elements of the doctrine are present in this case. The final judgment in G.R. No. 167998 was rendered by the Court pursuant to its jurisdiction over the review of decisions and rulings of the CA. It was a judgment on the merits of Planters Banks' right to apply for and be issued a writ of possession. Lastly, the parties in G.R. No. 167998 are the same parties involved in the present case. Hence, LZK Holdings can no longer question Planter Bank's right to a writ of possession over the subject property because the doctrine of conclusiveness of judgment bars the re-litigation of such particular issue.

We cannot also uphold the contentions of LZK Holdings that the RTC, in issuing the writ of possession, transgressed Act No. 3135.

No hearing is required prior to the issuance of a writ of possession. The proceeding in a petition for a writ of possession is ex parte and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without notice by the court to any person adverse of interest. It is a proceeding wherein relief is granted without giving the person against whom the relief is sought an opportunity to be heard.

Given the ex-parte nature of the proceedings for a writ of possession, the RTC did not err in cancelling the previously scheduled hearing and in granting Planters Bank's motion without affording notice to LZK Holdings or allowing it to participate.

## Beverly Anne C. Yap, *Petitioners – versus -*Republic of the Philippines, represented by the Regional Executive Director, Department of Environment and Natural Resources (DENR), *Respondent*

G.R. No. 199810, THIRD DIVISION, March 15, 2017 REYES, J.:

If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issue.

RTC Branch 16 falsely appreciated the decision of RTC Branch 13. The foregoing shows that the question of whether or not Yap and Villamar are innocent purchasers was not an actual issue of fact in the case before the RTC Branch 13, and which called for said court's adjudication. "An issue of fact is a point supported by one party's evidence and controverted by another's."

#### **FACTS:**

Consuelo *Vda. de* dela Cruz applied for free patent over a parcel of land located in Daliao, Toril, Davao City. As she could not wait for the approval of her application, she executed a Deed of Waiver/Quitclaim on November 25, 1981 in favor of Rollie Pagarigan (Pagarigan). Pagarigan filed his own Free Patent Application (FPA) and subsequently, Free Patent No. (XI-1)5133 was issued to him over said lot. Original Certificate of Title (OCT) No. P-11182 was thereby issued in his name on November 25, 1982. On September 5, 1989, Pagarigan mortgaged the lot to Banco Davao-Davao City Development Bank (the Bank). For failure to pay his loan, the property was foreclosed, and was eventually sold to the Bank at public auction on October 26, 1990. These proceedings were duly annotated in the title. However, the land covered by OCT No. P-11182 was allegedly occupied by Teodoro Valparaiso and Pedro Malalis (Protestants). On October 24, 1990, the Protestants filed a formal protest with the Bureau of Lands (Bureau), praying for the recall of the free patent issued to Pagarigan, and for the institution of a corresponding action for reversion considering that they have been in adverse, exclusive, and continuous occupation of the subject property since 1945, cultivating it, and planting various crops, *nipa* palms and coconut trees on said land.

On January 27, 1992, the Protestants caused the annotation of a notice of *lis pendens* in the title. Said notice of *lis pendens* pertained to the Civil Case instituted by the Protestants against Pagarigan, Menardo Metran and Rene Galope to enjoin them from demolishing the former's houses pending the determination of the Department of Environment and Natural Resources (DENR) on the propriety of cancelling the title obtained by Pagarigan. The administrative protest reached the Office of the Secretary of the DENR, which rendered a Decision against Pagarigan, since the protestants have been in actual occupation of the land in dispute since 1945 and have introduced improvements thereon. Pagarigan never occupied the same nor his predecessor-in-interest,

Consuelo dela Cruz. He, likewise, misrepresented in his application that he was the actual occupant and that there were no others who occupied the lot in dispute. The title was issued sans an actual ground survey and Pagarigan did not post a copy of his Notice for FPA on both the Bulletin Boards of Daliao and Lizardo as required by law.

Meanwhile, on November 5, 1992, the Bank sold the subject property to Beverly Anne C. Yap (Yap) and Rosanna F. Villamor (Villamor). Upon the execution of the deed of sale, the OCT was delivered to them and TCT was eventually issued in the name of Yap and Villamor. DOTC filed a complaint for expropriation of a portion of the subject lot before the RTC of Davao City. On February 19, 2003, the RTC Branch 13 rendered its Decision, ruling that the DENR is entitled to expropriate the land subject of this case for the purpose of road right of way to the Davao Fish Port, which is for public use. The just compensation for the land is ₱278,000.00, and Villamor and Yap are the ones entitled to the payment of just compensation for the property, and DOTC is directed to pay the said amount to Villamor and Yap. The DENR, through the Office of the Solicitor General (OSG), filed the Complaint for Cancellation of Patent, Nullification of Title and Reversion with the RTC of Davao City. The RTC dismissed the DENR's complaint since the subject land has already been sold to third persons, it must be shown that the latter were part of the fraud and/or misrepresentation committed by the original grantee, or at least were aware of it. However, since the RTC Branch 13 already declared in its decision that Yap and Villamor were purchasers in good faith and for value of the land in question, RTC Branch 16 maintained that, as a court of co-equal jurisdiction, it is bound by the said finding under the principle of conclusiveness of judgment. Moreover, the fact that it took the respondent 26 years, from the issuance of the free patent before it instituted an action for reversion, militates against its cause. The Regional Director of DENR elevated its case to the CA which reversed the trial court. In so ruling, the CA held that neither the Bank nor Yap and Villamor were innocent purchasers for value. Further, the CA maintained that the decision of the RTC Branch 13 did not constitute res judicata insofar as the same has not yet attained finality. The Bank, Yap, and Villamor sought reconsideration of the CA decision, but their motion was evenly denied in the Resolution dated November 14, 2011.

#### **ISSUE:**

Whether the decision of the CA run counter to the rule on conclusiveness of judgment. (NO)

#### **RULING:**

The doctrine of conclusiveness of judgment, as a concept of *res judicata*, states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It is essential that the issue be identical. If a particular point or

question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issue.

RTC Branch 16 falsely appreciated the decision of RTC Branch 13. The foregoing shows that the question of whether or not Yap and Villamar are innocent purchasers was not an actual issue of fact in the case before the RTC Branch 13, and which called for said court's adjudication. "An issue of fact is a point supported by one party's evidence and controverted by another's." Yap and Villamor being buyers in good faith was merely an allegation which was not proven in court and RTC Branch 13 did not actually make any clear pronouncement on the matter. The expropriation proceeding was filed on February 28, 1997. The protestants caused the annotation of a notice of *lis pendens* on the original title on January 27, 1992. Accordingly, if indeed the question on whether Yap and Villamar are buyers in good faith was an actual issue of fact before the expropriation proceeding, the protestants could have easily controverted such claim by the mere expedience of presenting a certified original copy of the title. Indeed, the notice at the back of a Torrens title serves as notice to the whole world of the pending controversy over the land so registered.

The RTC Branch 13 basically anchored its judgment on the indefeasibility of a Torrens title. Pursuant to the well-settled rule that a certificate of title cannot be subject to collateral attack and can only be altered, modified, or cancelled in a direct proceeding in accordance with law, it was clear that the trial court was without jurisdiction in an expropriation proceeding, to rule whether the title issued to Pagarigan is void - notwithstanding the decision of the DENR Secretary.

## ST. AVIATION SERVICES CO., PTE., LTD., Petitioner, - versus - GRAND INTERNATIONAL AIRWAYS, INC., Respondent.

G.R. No. 140288, SECOND DIVISION, October 23, 2006, SANDOVAL-GUTIERREZ, J.

Under the above Rule, a foreign judgment or order against a person is merely presumptive evidence of a right as between the parties. It may be repelled, among others, by want of jurisdiction of the issuing authority or by want of notice to the party against whom it is enforced. The party attacking a foreign judgment has the burden of overcoming the presumption of its validity.

Considering that the Writ of Summons was served upon respondent in accordance with our Rules, jurisdiction was acquired by the Singapore High Court over its person. Clearly, the judgment of default rendered by that court against respondent is valid.

#### **FACTS:**

Petitioner St. Aviation (foreign corporation) and respondent Grand International (domestic corporation) executed an Agreement for the Maintenance and Modification of Airbus A 300 B4-103 Aircraft (First Agreement). Petitioner agreed that the validity and performance thereof shall be

governed by the laws of Singapore. They agreed to submit any suit arising from their agreement to the non-exclusive jurisdiction of the Singapore courts.

Petitioner promptly delivered the aircrafts to respondent. Petitioner billed respondent in the total amount of US\$303,731.67 or S\$452,560.18. But respondent failed to pay.

Petitioner filed with the High Court of the Republic of Singapore an action for the sum of S\$452,560.18 against respondent (Suit No. 2101). Upon petitioner's motion, the court issued a Writ of Summons to be served extraterritorially or outside Singapore upon respondent. The court sought the assistance of the sheriff of Pasay City to effect service of the summons upon respondent. However, despite receipt of summons, respondent failed to answer the claim.

On motion of petitioner, the Singapore High Court rendered a judgment by default against respondent. Petitioner filed with RTC Pasay, a Petition for Enforcement of Judgment.

Respondent filed a MTD the Petition on two grounds: (1) Singapore High Court did not acquire jurisdiction over its person; and (2) foreign judgment sought to be enforced is void.

The RTC DENIED the MTD, holding that neither one of the two grounds are among the grounds for a MTD.

Respondent filed with CA a Petition for Certiorari alleging that the extraterritorial service of summons on its office in the Philippines is defective and that the Singapore court did not acquire jurisdiction over its person. Thus, its judgment sought to be enforced is void.

The CAGRANTED the petition and set aside the Orders of the RTC. In the case at bar, the complaint does not involve the personal status of plaintiff, nor any property in which the defendant has a claim or interest, or which the private respondent has attached but purely an action for collection of debt. It is a personal action as well as an action *in personam*, not an action *in rem* or *quasi in rem*. As a personal action, the service of summons should be personal or substituted, not extraterritorial, in order to confer jurisdiction on the court.

#### **ISSUE:**

Whether the judgment by default in suit no. 2101 by the Singapore high court is enforceable in the Philippines. (YES)

#### **RULING:**

Generally, in the absence of a special contract, no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country; however, under the rules of comity and convenience, nations have established a usage among civilized states by which final judgments of foreign courts of competent jurisdiction are reciprocally respected and rendered

efficacious under certain conditions that may vary in different countries. Certainly, the Philippine legal system has long ago accepted into its jurisprudence and procedural rules the viability of an action for enforcement of foreign judgment.

The conditions for the recognition and enforcement of a foreign judgment in our legal system are contained in Section 48, Rule 39 of the 1997 Rules of Civil Procedure.

Under the above Rule, a foreign judgment or order against a person is merely presumptive evidence of a right as between the parties. It may be repelled, among others, by want of jurisdiction of the issuing authority or by want of notice to the party against whom it is enforced. The party attacking a foreign judgment has the burden of overcoming the presumption of its validity.

Generally, matters of remedy and procedure such as those relating to the service of process upon a defendant are governed by the *lexfori* or the internal law of the forum, which in this case is the law of Singapore. In an Order, the Singapore High Court granted "leave to serve a copy of the Writ of Summons on the Defendant by a method of service authorized by the law of the Philippines for service of any originating process issued by the Philippines at ground floor, APMC Building, 136 Amorsolo corner Gamboa Street, 1229 Makati City, or elsewhere in the Philippines." This service of summons outside Singapore is in accordance with Order 11, r. 4(2) of the Rules of Court 1996 of Singapore, which provides:

x xxc) by a method of service authorized by the law of that country for service of any originating process issued by that country.

In the Philippines, jurisdiction over a party is acquired by service of summons by the sheriff, his deputy or other proper court officer either personally by handing a copy thereof to the defendant or by substituted service. In this case, the Writ of Summons issued by the Singapore High Court was served upon respondent at its office located at Mercure Hotel (formerly Village Hotel), MIA Road, Pasay City. The Sheriff's Return shows that it was received by Joyce Austria, Secretary of the General Manager of respondent company. But respondent completely ignored the summons, hence, it was declared in default.

Considering that the Writ of Summons was served upon respondent in accordance with our Rules, jurisdiction was acquired by the Singapore High Court over its person. Clearly, the judgment of default rendered by that court against respondent is valid.

# SPOUSES ELISEO F. ESTARES and ROSENDA P. ESTARES, *Petitioners*, - versus -COURT OF APPEALS, HON. DAMASO HERRERA as Presiding Judge of the RTC, Branch 24, Biñan, Laguna PROMINENT LENDING & CREDIT CORPORATION, PROVINCIAL SHERIFF OF LAGUNA and Sheriff IV ARNEL G. MAGAT, *Respondents*.

G.R. No. 144755, SECOND DIVISION, June 8, 2005, AUSTRIA-MARTINEZ, J.

To be entitled to an injunctive writ, the petitioner must show, inter alia, the existence of a clear and unmistakable right and an urgent and paramount necessity for the writ to prevent serious damage. Thus, an injunctive remedy may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation. In the present case, the Estares spouses failed to establish their right to injunctive relief. They do not deny that they are indebted to PLCC but only question the amount thereof.

#### **FACTS:**

Petitioner Spouses Eliseo F. Estares and Rosenda P. Estares (Estares spouses for brevity) obtained a loan from Prominent Lending & Credit Corporation (PLCC) for ₱800,000.00 secured by a real estate mortgage. For failure to pay the obligation despite repeated demands, PLCC filed a petition for extrajudicial foreclosure.

Estares spouses filed a complaint for "Damages and Preliminary Prohibitory Injunction" against private respondent PLCC seeking to declare as null and void the promissory note and the real estate mortgage for not reflecting their true agreement. In the interim, they prayed for a temporary restraining order (TRO) and/or writ of preliminary injunction to enjoin PLCC from taking possession of the mortgaged property and proceeding with the extrajudicial sale

The trial court issued a TRO in favor of the Estares spouses.

At the hearing on the Estares spouses' application for a writ of preliminary injunction, Rosenda P. Estares (Rosenda for brevity) testified that: they did not question PLCC in writing why they only received \$\mathbb{P}637,000.00\$; when they received the Statement of Account, they did not question the figures appearing therein; when they received PLCC's demand letter, they went to the former's office not to question the loan's terms and conditions but merely to request for extension of three months to pay their obligation. n opposition to the application for a writ of preliminary injunction, PLCC presented its manager, Rey Arambulo, who testified that the Estares spouses were duly apprised of the terms and conditions of the loan, including the rate of interest, penalties and other charges, in accordance with the Truth in Lending Act or Republic Act No. 3765.

The trial court denied the application for writ of preliminary injunction.

#### **ISSUE:**

Whether the denial of the application of writ of preliminary injunction is correct. (YES)

#### **RULING:**

Generally, injunction is a preservative remedy for the protection of substantive rights or interests. It is not a cause of action in itself but merely a provisional remedy, an adjunct to a main suit. The controlling reason for the existence of the judicial power to issue the writ is that the court may thereby prevent a threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly investigated and advisedly adjudicated. It is to be resorted to only when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard of compensation. The application of the writ rests upon an alleged existence of an emergency or of a special reason for such an order before the case can be regularly heard, and the essential conditions for granting such temporary injunctive relief are that the complaint alleges facts which appear to be sufficient to constitute a cause of action for injunction and that on the entire showing from both sides, it appears, in view of all the circumstances, that the injunction is reasonably necessary to protect the legal rights of plaintiff pending the litigation.

To be entitled to an injunctive writ, the petitioner must show, inter alia, the existence of a clear and unmistakable right and an urgent and paramount necessity for the writ to prevent serious damage. Thus, an injunctive remedy may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation. In the present case, the Estares spouses failed to establish their right to injunctive relief. They do not deny that they are indebted to PLCC but only question the amount thereof. Their property is by their own choice encumbered by a real estate mortgage. Upon the nonpayment of the loan, which was secured by the mortgage, the mortgaged property is properly subject to a foreclosure sale. Rosenda's testimony sealed the fate of the necessity of the writ of preliminary injunction. She acknowledged that they only raised the alleged discrepancy of the amount loaned and the amount received, as well as the blank documents which they allegedly signed, after PLCC initiated the foreclosure proceedings.

DAVAO LIGHT & POWER CO., INC., Petitioner, - versus - THE COURT OF APPEALS,
QUEENSLAND HOTEL or QUEENSLAND TOURIST INN, and TEODORICO ADARNA,
Respondents.

G.R. No. 93262, EN BANC, December 29, 1991, NARVASA, J.

For the guidance of all concerned, the Court reiterates and reaffirms the proposition that writs of attachment may properly issue ex parte provided that the Court is satisfied that the relevant requisites therefor have been fulfilled by the applicant, although it may, in its discretion, require prior hearing on the application with notice to the defendant; but that levy on property pursuant to the writ thus issued may not be validly effected unless preceded, or contemporaneously accompanied, by

service on the defendant of summons, a copy of the complaint (and of the appointment of guardian ad litem, if any), the application for attachment (if not incorporated in but submitted separately from the complaint), the order of attachment, and the plaintiff's attachment bond.

#### **FACTS:**

Davao Light & Power Co., Inc. (hereafter, simply Davao Light) filed a verified complaint for recovery of a sum of money and damages against Queensland Hotel, etc. and Teodorico Adarna (docketed as Civil Case No. 19513-89). The complaint contained an ex parte application for a writ of preliminary attachment.

Judge Nartatez, issued an Order granting the ex parte application and fixing the attachment bond at P4,600,513.37.

The attachment bond having been submitted by Davao Light, the writ of attachment issued. The summons and a copy of the complaint, as well as the writ of attachment and a copy of the attachment bond, were served on defendants Queensland and Adarna; and pursuant to the writ, the sheriff seized properties belonging to the latter.

Defendants Queensland and Adarna filed a motion to discharge the attachment for lack of jurisdiction to issue the same because at the time the order of attachment was promulgated (May 3, 1989) and the attachment writ issued (May 11, 1989), the Trial Court had not yet acquired jurisdiction over the cause and over the persons of the defendants.

#### **ISSUE:**

Whether a writ of preliminary attachment may issue ex parte against a defendant before acquisition of jurisdiction of the latter's person by service of summons or his voluntary submission to the Court's authority. (YES)

#### **RULING:**

The events that follow the filing of the complaint as a matter of routine are well known. After the complaint is filed, summons issues to the defendant, the summons is then transmitted to the sheriff, and finally, service of the summons is effected on the defendant in any of the ways authorized by the Rules of Court. There is thus ordinarily some appreciable interval of time between the day of the filing of the complaint and the day of service of summons of the defendant. During this period, different acts may be done by the plaintiff or by the Court, which are unquestionable validity and propriety. Among these, for example, are the appointment of a guardian ad litem, the grant of authority to the plaintiff to prosecute the suit as a pauper litigant, the amendment of the complaint by the plaintiff as a matter of right without leave of court, authorization by the Court of service of summons by publication, the dismissal of the action by the plaintiff on mere notice.

This, too, is true with regard to the provisional remedies of preliminary attachment, preliminary injunction, receivership or replevin. They may be validly and properly applied for and granted even before the defendant is summoned or is heard from.

Rule 57 in fact speaks of the grant of the remedy "at the commencement of the action or at any time thereafter." The phase, "at the commencement of the action," obviously refers to the date of the filing of the complaint — which, as above pointed out, is the date that marks "the commencement of the action;" and the reference plainly is to a time before summons is served on the defendant, or even before summons issues.

What the rule is saying quite clearly is that after an action is properly commenced — by the filing of the complaint and the payment of all requisite docket and other fees — the plaintiff may apply for and obtain a writ of preliminary attachment upon fulfillment of the pertinent requisites laid down by law, and that he may do so at any time, either before or after service of summons on the defendant. And this indeed, has been the immemorial practice sanctioned by the courts: for the plaintiff or other proper party to incorporate the application for attachment in the complaint or other appropriate pleading (counter-claim, cross-claim, third-party claim) and for the Trial Court to issue the writ ex-parte at the commencement of the action if it finds the application otherwise sufficient in form and substance.

Court declared that "(n)othing in the Rules of Court makes notice and hearing indispensable and mandatory requisites for the issuance of a writ of attachment." Court had occasion to emphasize the postulate that no hearing is required on an application for preliminary attachment, with notice to the defendant, for the reason that this "would defeat the objective of the remedy... (since the) time which such a hearing would take, could be enough to enable the defendant to abscond or dispose of his property before a writ of attachment issues."

For the guidance of all concerned, the Court reiterates and reaffirms the proposition that writs of attachment may properly issue ex parte provided that the Court is satisfied that the relevant requisites therefor have been fulfilled by the applicant, although it may, in its discretion, require prior hearing on the application with notice to the defendant; but that levy on property pursuant to the writ thus issued may not be validly effected unless preceded, or contemporaneously accompanied, by service on the defendant of summons, a copy of the complaint (and of the appointment of guardian ad litem, if any), the application for attachment (if not incorporated in but submitted separately from the complaint), the order of attachment, and the plaintiff's attachment bond.

## SECURITY BANK CORPORATION, *Petitioner* – versus - GREAT WALL COMMERCIAL PRESS COMPANY, INC., ALFREDO BURIEL ATIENZA, FREDINO CHENG ATIENZA and SPS. FREDERICK CHENG ATIENZA and MONICA CU ATIENZA, *Respondents*.

G.R. No. 219345, SECOND DIVISION, January 30, 2017, MENDOZA, J.

For a writ of preliminary attachment to issue under the above-quoted rule, the applicant must sufficiently show the factual circumstances of the alleged fraud. It is settled that fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation.

A fortiori, in a civil case involving a trust receipt, the entrustee's failure to comply with its obligations under the trust receipt constitute as civil fraud provided that it is alleged, and substantiated with specificity, in the complaint, its attachments and supporting evidence.

#### **FACTS:**

Security Bank and Great Wall (other respondent are sureties) entered into a credit facility. The credit facility was covered by several **trust receipts** and surety agreements. There is further a warranty of solvency in the agreement: Borrower shall at all times have sufficient liquid assets to meet operating requirements and pay all its/his debts as they fall due. Failure of the Borrower to pay any maturing interest, principal or other charges under the Credit Facility shall be conclusive evidence of violation of this warranty.

Great Wall defaulted. After being unable to pay, Great Wall requested for a meeting with the bank to discuss a repayment proposal. However, for unknown reasons, they did not meet the representatives of the Security Bank. Great Wall likewise was not able to return the goods secured by the trust receipt agreement.

Security Bank filed a complaint with the prayer of a writ of preliminary attachment.

The RTC granted the writ of preliminary attachment. However, the CA reversed the RTC and lifted the writ. The CA ruled citing *PBCom vs CA*, where it was held that fraudulent intent could not be inferred from a debtor's inability to pay or comply with its obligations. The CA further advanced that only dolo causane not dolo incidente is a ground for a writ of preliminary attachment **ISSUES:** 

- 1. Whether Greatwall acted fraudulently warranting the issuance of the writ (YES)
- 2. Whether dolo incidente could be a ground of the writ (YES)

#### RULING

1. 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.

In this case, Security Bank relied on Section 1 (d), Rule 57 of the Rules of Court as basis of its application for a writ of preliminary attachment. It reads:

(d) In 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;xxx

For a writ of preliminary attachment to issue under the above-quoted rule, the applicant must sufficiently show the factual circumstances of the alleged fraud. It is settled that fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation.

While fraud cannot be presumed, it need not be proved by direct evidence and can well be inferred from attendant circumstances. Fraud by its nature is not a thing susceptible of ocular observation or readily demonstrable physically; it must of necessity be proved in many cases by inferences from circumstances shown to have been involved in the transaction in question

After a judicious study of the records, the Court finds that Security Bank was able to substantiate its factual allegation of fraud, particularly, the violation of the trust receipt agreements, to warrant the issuance of the writ of preliminary attachment.

While the Court agrees that mere violations of the warranties and representations contained in the credit agreement and the continuing suretyship agreement do not constitute fraud under Section 1(d) of Rule 57 of the Rules of Court, the same cannot be said with respect to the violation of the trust receipts agreements.

A trust receipt transaction is one where the entrustee has the obligation to deliver to the entruster the price of the sale, or if the merchandise is not sold, to return the merchandise to the entruster. There are, therefore, two obligations in a trust receipt transaction: the first refers to money received under the obligation involving the duty to turn it over (entregarla) to the owner of the merchandise sold, while the second refers to the merchandise received under the obligation to "return" it (devolvera) to the owner. The obligations under the trust receipts are governed by a special law, Presidential Decree (P.D.) No. 115, and non-compliance have particular legal consequences.

Failure of the entrustee to tum over the proceeds of the sale of the goods, covered by the trust receipt to the entruster or to return said goods if they were not disposed of in

accordance with the terms of the trust receipt shall be punishable as es ta fa under Article 315 (1) of the Revised Penal Code, without need of proving intent to defraud. The offense punished under P.D. No. 115 is in the nature of malum prohibitum. Mere failure to deliver the proceeds of the sale or the goods, if not sold, constitutes a criminal offense that causes prejudice not only to another, but more to the public interest. The present case, however, only deals with the civil fraud in the noncompliance with the trust receipts to warrant the issuance of a writ of preliminary attached. A fortiori, in a civil case involving a trust receipt, the entrustee's failure to comply with its obligations under the trust receipt constitute as civil fraud provided that it is alleged, and substantiated with specificity, in the complaint, its attachments and supporting evidence.

By signing the trust receipt agreements, respondents fully acknowledged the consequences under the law once they failed to abide by their obligations therein. The said trust receipt agreements were attached to the complaint.

*PBCom vs CA* is inapplicable. In PBCom, the applicant for the writ of preliminary attachment simply stated in its motion that the defendant therein failed to remit the proceeds or return the goods subject of the trust receipt and attached an ambiguous affidavit stating that the case was covered by Sections 1 (b) and (d) of Rule 57. Obviously, these allegations and attachments are too general and vague to prove that the defendant committed fraud. Likewise, there was no hearing conducted in the RTC before it granted the issuance of the writ of preliminary attachment. Thus, the Court had no option but to lift the said writ.

In contrast, the complaint in the present case explained in detail the factual circumstances surrounding the execution of the trust receipts, its contents and the subsequent violation thereof. Security Bank attached supporting annexes and presented its witness during the hearing in the R TC to substantiate the specific violation of trust receipts by respondents. Security Bank took great lengths to explain the contents of the trust receipt and show that respondents expressed their conformity to it.

2. Previously, Section 1 (d), Rule 57 of the 1964 Rules of Court provided that a writ of preliminary attachment may be issued "[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 xxx" Thus, the fraud that justified the issuance of a writ of preliminary attachment then was only fraud committed in contracting an obligation (dolo casuante). When the 1997 Rules of Civil Procedure was issued by the Court, Section I(d) of Rule 57 conspicuously included the phrase "in the performance thereof." Hence, the fraud committed in the performance of the obligation (dolo incidente) was included as a ground for the issuance of a writ of preliminary attachment.

This significant change in Section 1 (d) of Rule 57 was recognized recently in *Republic v. Mega Pacific eSolutions, Inc.* The Court stated therein that "[a]n amendment to the Rules of Court added the phrase "in the performance thereof" to include within the scope of the

grounds for issuance of a writ of preliminary attachment those instances relating to fraud in the performance of the obligation."

### EQUITABLE BANKING CORPORATION, INC. Petitioner, - versus -SPECIAL STEEL PRODUCTS, and AUGUSTO L. PARDO, Respondents.

G.R. No. 175350, FIRST DIVISION, June 13, 2012, DEL CASTILLO, J.

[A] writ of preliminary attachment is too harsh a provisional remedy to be issued based on mere abstractions of fraud. Rather, the rules require that for the writ to issue, there must be a recitation of clear and concrete factual circumstances manifesting that the debtor practiced fraud upon the creditor at the time of the execution of their agreement in that said debtor had a preconceived plan or intention not to pay the creditor."

No proof was adduced tending to show that Equitable had a preconceived plan not to pay SSPI or had knowingly participated in Uy's scheme. In fact, SSPI admits its uncertainty whether Equitable's participation in the transactions involved fraud or was a result of its negligence.

#### **FACTS:**

Special Steel Products, Inc. (SSPI) is a private domestic corporation selling steel products. Its corespondent Augusto L. Pardo (Pardo) is SSPI's President and majority stockholder. International Copra Export Corporation (Interco) is its regular customer. Jose Isidoro Uy, alias Jolly Uy (Uy), is an Interco employee, in charge of the purchasing department, and the son-in-law of its majority stockholder. Equitable Banking Corporation (Equitable) is a private domestic corporation engaged in banking and is the depository bank of Interco and of Uy.

SSPI sold welding electrodes to Interco as evinced by sales invoices. The invoices provided that Interco would pay interest at the rate of 36% per annum in case of delay.

As payment for the welding electrodes, Interco issued three checks payable to the order of SSPI. Each check was crossed with the notation "account payee only" and was drawn against Equitable. However, Jose Uy got hold of these checks. The records does not disclose how Uy got the checks, such records only show that Uy presented each crossed check to Equitable on the day of its issuance and claimed that he had good title thereto. He demanded the deposit of the checks in his personal accounts in Equitable.

Equitable acceded to Uy's demands and deposited the checks unto his account on the assumption that Uy, as the son-in-law of Interco's majority stockholder, was acting pursuant to Interco's orders.

SSPI reminded Interco of the unpaid weldingb electrodes. SSPI explained its immediate need for payment as it was experiencing some financial crisis of its own. Interco replied that it had already issued three checks payable to SSPI and drawn against Equitable. SSPI denied receipt of these checks

The records do not disclose the circumstances surrounding Interco's and SSPI's eventual discovery of Uy's scheme. Nevertheless, it was determined that Uy, not SSPI, received the proceeds of the three checks that were payable to SSPI. 23 months after the issuance of the original check. Interco finally paid the value of the three checks to SSPI, plus a portion of the accrued interests. Interco

refused to pay the entire accrued interest of ₱767,345.64 on the ground that it was not responsible for the delay. Thus, SSPI was unable to collect ₱437,040.35

SSPi and its Presdent, Pardofiled a complaint for damages with application for a writ of preliminary attachment against Uy and Equitable Bank.

In support for their application for a writ of preliminary attachment, SSPi and Pardo allged alleged that the defendants are guilty of fraud in incurring the obligation upon which the action was brought and that there is no sufficient security for the claim sought to be enforced in this action.

The trial court granted the application, it issued the writ of preliminary attachment. Upon the motion and filing of a counter-bond of Equitable, the trial court eventually discharged the attachment.

#### ISSUE:

Whether the attachment of Equitables properties was proper. (NO)

#### **RULING:**

[A] writ of preliminary attachment is too harsh a provisional remedy to be issued based on mere abstractions of fraud. Rather, the rules require that for the writ to issue, there must be a recitation of clear and concrete factual circumstances manifesting that the debtor practiced fraud upon the creditor at the time of the execution of their agreement in that said debtor had a preconceived plan or intention not to pay the creditor."

No proof was adduced tending to show that Equitable had a preconceived plan not to pay SSPI or had knowingly participated in Uy's scheme. In fact, SSPI admits its uncertainty whether Equitable's participation in the transactions involved fraud or was a result of its negligence. Despite such uncertainty with respect to Equitable's participation, SSPI applied for and obtained a preliminary attachment of Equitable's properties on the ground of fraud. For such wrongful preliminary attachment, plaintiffs may be held liable for damages. However, Equitable is entitled only to such damages as its evidence would allow, for the wrongfulness of an attachment does not automatically warrant the award of damages. The debtor still has the burden of proving the nature and extent of the injury that it suffered by reason of the wrongful attachment.

The Court has gone over the records and found that Equitable has duly proved its claim for, and is entitled to recover, actual damages. In order to lift the wrongful attachment of Equitable's properties, the bank was compelled to pay the total amount of ₱30,204.26 in premiums for a counter-bond.

## PEROXIDE PHILIPPINES CORPORATION, EASTMAN CHEMICAL INDUSTRIES, INC., EDMUNDO O. MAPUA and ROSE U. MAPUA, petitioners, vs.

HON. COURT OF APPEALS and BANK OF THE PHILIPPINE, ISLANDS, respondents.

G.R. No. 92813, SECOND DIVISION, July 31, 1991, REGALADO, J.

The attachment of the properties of Eastman and the Mapuas remained valid from its issuance since the judgment had not been satisfied, nor has the writ been validly discharged either by the filing of a counterbond or for improper or irregular issuance.

We likewise affirm the findings and conclusion of respondent court that the order of Judge Acosta, suspending the writ of attachment was in essence a lifting of said writ which order, having likewise been issued ex parte and without notice and hearing in disregard of Section 13 of Rule 57, could not have resulted in the discharge of the attachment. Said attachment continued unaffected by the so-called order or suspension and could not have been deemed inefficacious until and only by reason of its supposed restoration in the order of of Judge Gerona. Under the facts of this case, the lifting of the said writ without notice and hearing in disregard of Section 13 of Rule 57, could not have resulted in the discharge of the attachment.

#### **FACTS:**

BPI filed an action for sum of money against Peroxide, Eastman, and Mapuas (Eastman and Mapuas bound themselves to solidarily liable for Peroxide's indebtedness)

Judge Pineda ordered the issuance of writ of preliminary attachment after BPI filed an attachment bond. The properties of the petitioners were attached by the sheriff.

Eastman and the Mapuas moved to lift the attachment, which motion was set for hearing and BPI was ordered to file its written opposition. BPI filed the a motion to set for hearing for the motion to lift attachment and its opposition.

Judge Pineda denied motion for hearing and granted the lifting of the writ of attachment. BPI filed MFR but, consequent to the then judiciary reorganization, the case was re-raffled and assigned to the sala of Judge Reyes.

Judge Reyes ruled that writ of attachment was proper on the ground Eastman and Mapuas disposed of their properties in fraud of BPI. It also directed the sheriff to implement the writ of attachment upon the finality of said order.

After more than one year, BPI moved for partial reconsideration, the court writ of attachment was revived and re-affirmed and may be executed and implemented immediately. The petitioners filed a petition for certiorari and prohibition with CA. CA dismissed the petition.

Peroxide et al filed a petition for certiorari with SC. Meantime, RTC issued an order suspending the writ of preliminary attachment pursuant to the an ex-parte motion filed by Peroxide et al.

SC denied the petition for review declaring the writ of preliminary attachment valid. Peroxide et al filed MFR but denied.

BPI filed a motion for the implementation of the writ with RTC to deliver the cash dividends declared by Bataan Pulp and Paper Mills, Inc (Bataan) [with respect to garnished shares] and to

declare the officers of Bataan in contempt for the disregard of the notice of the garnishment. RTC granted. Peroxide et al filed MFR but denied. Peroxide et al filed 2<sup>nd</sup> MFR.

RTC granted and ruled that the officers cannot be declared in contempt because there was no order or writ violated by Bataan's officers since the writ of attachment was suspended.

BPI filed a petition for certiorari with CA. CA ruled that the writ of attachment is valid and enforceable from the beginning.

#### **ISSUE:**

Whether or not the writ of attachment was validly lifted and suspended. (YES)

#### **RULING:**

Applicable law

Rule 57, Sec.13

**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 he 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.

When the attachment is challenged for having been illegally or improperly issued, there must be a hearing with the burden of proof to sustain the writ being on the attaching creditor. That hearing includes not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing parties and meet them.

The attachment of the properties of Eastman and the Mapuas remained valid from its issuance since the judgment had not been satisfied, nor has the writ been validly discharged either by the filing of a counterbond or for improper or irregular issuance.

We likewise affirm the findings and conclusion of respondent court that the order of Judge Acosta, suspending the writ of attachment was in essence a lifting of said writ which order, having likewise been issued ex parte and without notice and hearing in disregard of Section 13 of Rule 57, could not have resulted in the discharge of the attachment. Said attachment continued unaffected by the so-called order or suspension and could not have been deemed inefficacious until and only by reason of its supposed restoration in the order of of Judge Gerona. Under the facts of this case, the lifting of the said writ without notice and hearing in disregard of Section 13 of Rule 57, could not have resulted in the discharge of the attachment.

The *ex parte* discharge or suspension of the attachment is a disservice to the orderly administration of justice and nullifies the underlying role and purpose of preliminary attachment in preserving the rights of the parties *pendente lite* as an ancillary remedy.

The writ of attachment is continuing and uninterruptedly valid and enforceable since the order of discharge and, later, the order of suspension of the trial court were void The cancellation of the annotations regarding the levy on attachment of petitioners' properties, procured by the sheriff pursuant to the aforesaid invalid orders, is likewise a nullity and another levy thereon is not required.

The proceeding in the issuance of a writ of preliminary attachment, as a mere provisional remedy, is ancillary to an action commenced at or before the time when the attachment is sued out. Accordingly the attachment does not affect the decision of the case on the merits, the right to recover judgment on the alleged indebtedness and the right to attach the property of the debtor being entirely separate and distinct. As a rule, the judgment in the main action neither changes the nature nor determines the validity of the attachment.

SECURITY PACIFIC ASSURANCE CORPORATION, Petitioners, v. THE HON. AMELIA TRIA-INFANTE, In her official capacity as Presiding Judge, Regional Trial Court, Branch 9, Manila; THE PEOPLE OF THE PHILIPPINES, represented by Spouses REYNALDO and ZENAIDA ANZURES; and REYNALDO R. BUAZON, In his official capacity as Sheriff IV, Regional Trial Court, Branch 9, Manila, Respondents.

G.R. NO. 144740, SECOND DIVISION, August 31, 2005, CHICO-NAZARIO, J.

There are two (2) ways to secure the discharge of an attachment. 1. The party whose property has been attached or a person appearing on his behalf may post a security (Sec 12 Rule 57). 2. The party whose property is attached may show that the order of attachment was improperly or irregularly issued. Under the 1<sup>st</sup> manner (which is what is applicable in this case), the mere filing of a counterbond (security) discharges the attachment.

#### **FACTS:**

Reynaldo Anzures filed a complaint in RTC against Teresita Villaluz for BP 22. Anzures filed an Ex-Parte Motion for Preliminary Attachment, praying that pending the hearing on the merits of the case, a WPA is to be issued ordering the sheriff to attach the properties of Villaluz in accordance with the Rules.

RTC issued a WPA upon complainant's (Anzures) posting of a bond (P2.1M). Sheriff attached certain properties of Villaluz and were duly annotated on the corresponding certificates of title. The RTC acquitted Villaluz of the crime charged (BP22) but held her civilly liable. Villaluz appealed but decision was affirmed.

The case was elevated to the SC and during it's pendency, Villaluz posted a counter-bond of P2.5M issued by Security Pacific Assurance Corporation, as well as filed an Urgent Motion to Discharge Attachment. SC affirmed CA. Anzures moved for execution of judgment.

Pursuant to a writ of execution issued, Sheriff Reynaldo R. Buazon tried to serve the writ of execution upon Villaluz, but the latter no longer resided in her given address. Sheriff sent a Notice of Garnishment to Security Pacific Assurance Corporation's office in Makati City, by virtue of the

counter-bond posted by Villaluz with said insurance corporation in the amount of P2.5M but refused to assume it's obligation on the counter-bond it posted for the discharge of the attachment made by Villaluz on the ground that the bond was not approved by SC and that the condition by which the bond was issued, did not happen.

#### **ISSUES:**

- 1. WON CA committed an error in affirming the decision of RTC to allow execution on the counterbond issued by Security Pacific (NO)
- 2. WON CA is correct in ruling that the that the mere act of posting the counter-bond was sufficient to discharge the attachment on the property (attachment on the property of Villaliz was discharged without need of court approval of the counter-bond) (YES)

#### **RULING:**

1. When a judgment which has become executory, is returned unsatisfied, **liability of the bond automatically attaches** in failure of the surety to satisfy the judgment against the defendant despite demand therefore, writ of execution may issue against the surety to enforce the obligation of the bond. - *Tijam v. Sibonghanoy*. "

Petitioner does not deny that the contract between it and Villaluz is one of surety. However, it points out that the kind of surety agreement between them is one that merely waives its right of excussion. This cannot be so. The counter-bond itself states that the parties jointly and severally bind themselves to secure the payment of any judgment that the plaintiff may recover against the defendant in the action. A surety is considered in law as being the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter, and their liabilities are interwoven as to be inseparable.

Suretyship is a contractual relation resulting from an agreement whereby one person, the surety, engages to be answerable for the debt, default or miscarriage of another, known as the principal. The surety's obligation is not an original and direct one for the performance of his own act, but merely accessory or collateral to the obligation contracted by the principal. Nevertheless, although the contract of a surety is in essence secondary only to a valid principal obligation, his liability to the creditor or promise of the principal is said to be direct, primary and absolute; in other words, he is directly and equally bound with the principal. The surety therefore becomes liable for the debt or duty of another although he possesses no direct or personal interest over the obligations nor does he receive any benefit therefrom.

In view of the nature and purpose of a surety agreement, petitioner, thus, is barred from disclaiming liability.

2. Petitioner's argument that the mere filing of a counter-bond in this case cannot automatically discharge the attachment without first an order of discharge and approval of the bond, is lame. Under the Rules, there are two (2) ways to secure the discharge of an attachment. First, the party whose property has been attached or a person appearing on his behalf may post a security. Second, said party may show that the order of attachment was improperly or irregularly issued. The first applies in the instant case. XXX

The filing of the counter-attachment bond by petitioner Villaluz has discharged the attachment on the properties and made the petitioner corporation liable on the counter-attachment bond. This can be gleaned from the "DEFENDANT'S BOND FOR THE DISSOLUTION OF ATTACHMENT", which states that Security Pacific Assurance Corporation, as surety, in consideration of the dissolution of the said attachment jointly and severally, binds itself with petitioner Villaluz for any judgment that may be recovered by private respondent Anzures against petitioner Villaluz.

CONCHITA CARPIO MORALES, IN HER CAPACITY AS THE OMBUDSMAN, Petitioner, v. COURT OF APPEALS (SIXTH DIVISION) AND JEJOMAR ERWIN S. BINAY, JR., Respondents. CONCHITA CARPIO MORALES, IN HER CAPACITY AS THE OMBUDSMAN, Petitioner, v. COURT OF APPEALS (SIXTH DIVISION) AND JEJOMAR ERWIN S. BINAY, JR., Respondents.

G.R. Nos. 217126-27, EN BANC, November 10, 2015, PERLAS-BERNABE, J.

This Court simply finds no legal authority to sustain the condonation doctrine in this jurisdiction. It was a doctrine adopted from one class of US rulings way back in 1959 and thus, out of touch from – and now rendered obsolete by – the current legal regime. In consequence, it is high time for this Court to abandon the condonation doctrine that originated from Pascual, and affirmed in the cases following the same, such as Aguinaldo, Salalima, Mayor Garcia, and Governor Garcia, Jr. which were all relied upon by the CA.

#### **FACTS:**

A complaint/affidavit was filed before the Office of the Ombudsman against Binay, Jr. and other public officers and employees of the City Government of Makati (Binay, Jr., et al), accusing them of Plunder and violation of RA 3019, otherwise known as "The Anti-Graft and Corrupt Practices Act," in connection with the five phases of the procurement and construction of the Makati City Hall Parking Building.

Before Binay, Jr., et al.'s filing of their counter-affidavits, the Ombudsman issued the order placing Binay, Jr., et al. under preventive suspension for not more than six months without pay, during the pendency of the OMB Cases.

The Ombudsman ruled that the requisites for the preventive suspension of a public officer are present, and that their continued stay in office may prejudice the investigation relative to the OMB Cases filed against them.

Binay, Jr. filed a petition for certiorari before the CA seeking the nullification of the preventive suspension order, and praying for the issuance of a TRO and/or WPI to enjoin its implementation. Primarily, Binay, Jr. argued that he could not be held administratively liable for any anomalous activity attending any of the five phases of the Makati Parking Building project since: (a) Phases I and II were undertaken before he was elected Mayor of Makati in 2010; and (b) Phases III to V transpired during his first term and that his re-election as City Mayor of Makati for a second term effectively condoned his administrative liability therefor, if any, thus rendering the administrative cases against him moot and academic.

Prior to the hearing of the oral arguments before the CA, the Ombudsman filed the present petition before this Court, assailing the CA's Resolution, which granted Binay, Jr.'s prayer for TRO. The Ombudsman claims that the CA had no jurisdiction to grant Binay, Jr.'s prayer for a TRO.

#### **ISSUE:**

Whether or not the doctrine of condonation should apply in Binay's case. (NO)

#### **RULING:**

The petition is partly meritorious.

This Court simply finds no legal authority to sustain the condonation doctrine in this jurisdiction. It was a doctrine adopted from one class of US rulings way back in 1959 and thus, out of touch from – and now rendered obsolete by – the current legal regime. In consequence, it is high time for this Court to abandon the condonation doctrine that originated from Pascual, and affirmed in the cases following the same, such as Aguinaldo, Salalima, Mayor Garcia, and Governor Garcia, Jr. which were all relied upon by the CA.

It should, however, be clarified that this Court's abandonment of the condonation doctrine should be prospective in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines.

The condonation doctrine was first enunciated in Pascual v. Hon. Provincial Board of Nueva Ecija, There is no truth in Pascual's postulation that the courts would be depriving the electorate of their right to elect their officers if condonation were not to be sanctioned. In political law, election pertains to the process by which a particular constituency chooses an individual to hold a public office.

In this jurisdiction, there is, again, no legal basis to conclude that election automatically implies condonation. Neither is there any legal basis to say that every democratic and republican state has an inherent regime of condonation. If condonation of an elective official's administrative liability would perhaps, be allowed in this jurisdiction, then the same should have been provided by law under our governing legal mechanisms. May it be at the time of Pascual or at present, by no means has it been shown that such a law, whether in a constitutional or statutory provision, exists.

Therefore, inferring from this manifest absence, it cannot be said that the electorate's will has been abdicated.

### PALM TREE ESTATES, INC. and BELLE AIR GOLF AND COUNTRY CLUB, INC., Petitioners, v. PHILIPPINE NATIONAL BANK, Respondent.

G.R. No. 159370, FIRST DIVISION, October 3, 2012, LEONARDO-DE CASTRO, J.

A petition for a preliminary injunction is an equitable remedy, and one who comes to claim for equity must do so with clean hands. Since injunction is the strong arm of equity, he who must apply for it must come with equity or with clean hands. This is so because among the maxims of equity are (1) he who seeks equity must do equity, and (2) he who comes into equity must come with clean hands In this case, the hands of PTEI were not unsullied when it sought preliminary injunction. It was already in breach of its contractual obligations when it defaulted in the payment of its indebtedness to PNB.

#### **FACTS**

PTEI entered into a seven year loan agreement with PNB for 320M, and as security therefor, it also executed a real estate mortgage over 48 parcels of land. This loan was amended several times. As a

result of PTEI's transfer to BAGCCI of the ownership, title and interest over some parcels of land mortgaged to PNB, PTEI executed an amendment to the REM in favor of PNB with BAGCCI as accommodation mortgagor.

As PTEI defaulted in its payment, PNB filed a petition for extrajudicial foreclosure over the real estate mortgage. PTEI's president requested for another 30 days to settle its obligations.

Thereafter, to enjoin PNB from foreclosing on the mortgage, PTEI and BAGCCI filed a complaint for breach of contracts, nullity of promissory notes, annulment of mortgages, annulment of petition for extrajudicial foreclosure, injunction, damages, with prayer for TRO and writ of preliminary injunction.

According to them, the extrajudicial foreclosure was patently null and voice since it included properties which have already been transferred to BAGCCI and were now being made to answer under the agreement of which BAGCCI was not a party.

The RTC ordered the issuance of the writ of preliminary injunction. It reasoned out that the granting was proper because (1) there was an actual controversy in this case, as the positions of the parties were completely opposed to each other, and (2) that the parties at least have the right to be fully heard before they are finally deprived of their rights over the mortgaged properties in question.

Reconsideration of the order was denied, then PNB filed a petition for certiorari with the CA, which found merit in the PNB's petition that PTEI and BAGCCI failed to show a clear and unmistakable right which would have necessitateed the issuance of the writ, while PNB had the right to extrajudicial foreclosure under the loan agreement.

#### **ISSUE:**

Whether or not the grant of the writ of preliminary injunction was proper. (NO)

#### **RULING:**

A petition for a preliminary injunction is an equitable remedy, and one who comes to claim for equity must do so with clean hands. Since injunction is the strong arm of equity, he who must apply for it must come with equity or with clean hands. This is so because among the maxims of equity are (1) he who seeks equity must do equity, and (2) he who comes into equity must come with clean hands

In this case, the hands of PTEI were not unsullied when it sought preliminary injunction. It was already in breach of its contractual obligations when it defaulted in the payment of its indebtedness to PNB.

PTEI's President, Akimoto, admitted that PTEI has unsettled accrued obligations in the letter dated March 28, 2001. Moreover, PTEI had sought the rescheduling or deferral of its payment as well as the restructuring of its loan. This Court has held that a debtor's various and constant requests for deferment of payment and restructuring of loan, without actually paying the amount due, are clear indications that said debtor was unable to settle his obligation.

As PTEI is not entitled to the issuance of a writ of preliminary injunction, so is BAGCCI. The accessory follows the principal. The accessory obligation of BAGCCI as accommodation mortgagor is tied to PTEI's principal obligation to PNB and arises only in the event of PTEI's default. Thus, BAGCCI's interest in the issuance of the writ of preliminary injunction is necessarily prejudiced by PTEI's wrongful conduct and breach of contract.

A preliminary injunction, at times called the "Strong Arm of Equity" is an order granted at any stage of an action prior to judgment of final order, requiring a party, court, agency, or person to refrain from a particular act or acts. It is a preservative remedy to ensure the protection of a party's substantive rights or interests pending the final judgment in the principal action. A plea for an injunctive writ lies upon the existence of a claimed emergency or extraordinary situation which should be avoided for otherwise, the outcome of a litigation would be useless as far as the party applying for the writ is concerned.

For the writ to issue, two requisites must be present, namely, the existence of the right to be protected, and that the facts against which the injunction is to be directed are violative of said right.  $x \times x$ . A writ of preliminary injunction is an extraordinary event which must be granted only in the face of actual and existing substantial rights.

The duty of the court taking cognizance of a prayer for a writ of preliminary injunction is to determine whether the requisites necessary for the grant of an injunction are present in the case before it. In the absence of the same, and where facts are shown to be wanting in bringing the matter within the conditions for its issuance, the ancillary writ must be struck down for having been rendered in grave abuse of discretion.

The right of PNB to extrajudicially foreclose on the real estate mortgage in the event of PTEI's default is provided under various contracts of the parties. Foreclosure is but a necessary consequence of nonpayment of mortgage indebtedness.

In view of PTEI's failure to settle its outstanding obligations upon demand, it was proper for PNB to exercise its right to foreclose on the mortgaged properties. It then became incumbent on PTEI and BAGCCI, when they filed the complaint and sought the issuance of a writ of preliminary injunction, to establish that they have a clear and unmistakable right which requires immediate protection during the pendency of the action. The Order dated May 17, 2001 of the trial court granting the application for issuance of writ of preliminary injunction failed to show that PTEI and BAGCCI discharged that burden.

In this connection, this Court has denied the application for a writ of preliminary injunction that would enjoin an extrajudicial foreclosure of a mortgage, and declared that foreclosure is proper when the debtors are in default of the payment of their obligation

The Court of Appeals did not err when it ruled that PTEI and BAGCCI failed to show a clear and unmistakable right which would have necessitated the issuance of a writ of preliminary injunction. The Order dated May 17, 2001 of the trial court failed to state a finding of facts that would justify the issuance of the writ of preliminary injunction. It merely stated the conclusion that "real controversies exist" based on the observation that "the positions of the parties are completely opposed to each other."

This clearly shows that the trial court relied only on the bare allegations of PTEI and BAGCCI that the mortgaged properties were being made to answer for obligations that are not covered by the mortgage and that properties which are not mortgaged are included in PNB's petition for extrajudicial foreclosure. Beyond bare allegations, however, no specific evidence was cited. Thus, the trial court's order granting the issuance of a writ of preliminary injunction had no factual basis.

In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion. Injunction is not designed to protect contingent or future rights. It is not proper when the complainant's right is doubtful or disputed.

BICOL MEDICAL CENTER, REPRESENTED BY DR. EFREN SJ. NERVA, AND THE DEPARTMENT OF HEALTH, REPRESENTED BY HEALTH SECRETARY ENRIQUE T. ONA,, Petitioners, v. NOE B. BOTOR, CELJUN F. YAP, ISMAEL A. ALBAO, AUGUSTO S. QUILON, EDGAR F. ESPLANA II, AND JOSEFINA F. ESPLANA, Respondents.

G.R. No. 214073, THIRD DIVISION, October 04, 2017, LEONEN, J

A writ of preliminary injunction is issued to: [P]reserve the status quo ante, upon the applicant's showing of two important requisite conditions, namely: (1) the right to be protected exists prima facie, and (2) the acts sought to be enjoined are violative of that right. It must be proven that the violation sought to be prevented would cause an irreparable injustice.

In satisfying these requisites, the applicant for the writ need not substantiate his or her claim with complete and conclusive evidence since only prima facie evidence or a sampling is required "to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits."

This Court finds that the Court of Appeals erred in limiting prima facie evidence merely to the evidence presented by Naga City and respondents and in disregarding altogether petitioners' evidence, which had the effect of squarely rebutting Naga City and respondents' assertions. The Court of Appeals failed to appreciate the nature of the ancillary remedy of a writ of preliminary injunction as against the exparte nature of a temporary restraining order. xxx

#### **FACTS:**

Camarines Sur Provincial Hospital (Provincial Hospital) was established in 1933 as a 25-bed provincial hospital located along Mabini Street, now Peñafrancia Avenue, Naga City. The Camarines Sur Provincial Government eventually subsidized the operations of a private hospital located at Concepcion Pequeña, Naga City and transferred the Provincial Hospital there.

Road Lot No. 3, which stretched from Panganiban Road to J. Miranda Avenue, is a service road which leads to the Provincial Hospital. The Provincial Hospital was eventually converted to the Bicol Regional Training and Teaching Hospital (Training and Teaching Hospital).

Sometime in 1982, the Camarines Sur Provincial Government donated about five (5) hectares of land to the Ministry of Health, now the Department of Health, as evidenced by Transfer Certificate of Title (TCT) No. 13693. The Training and Teaching Hospital and Road Lot No. 3 were included in this donation.

The Training and Teaching Hospital became the Bicol Medical Center (BMC) in 1995.

Sometime in 2009, BMC constructed a steel gate along J. Miranda Avenue to control the flow of vehicle and pedestrian traffic entering the hospital premises.

In 2012, Dr. Nerva issued Hospital Memorandum No. 0310 which ordered the rerouting of traffic inside the BMC Compound. Salient portions of this Memorandum read:

This rerouting scheme closed the steel gate for vehicles and pedestrians along J. Miranda Avenue, relocating it from the eastern side of the hospital to the western side effective April 1, 2012. The relocation of this gate was implemented for security reasons and to make way for "[m]assive development within the Complex."

The gate closure drew a lot of criticism from the community, and on May 19, 2012, Atty. Noe Botor (Atty. Botor) wrote to Naga City Mayor John Bongat (Mayor Bongat), asking for the reopening or dismantling of the gate for being a public nuisance.

The Sangguniang Panlungsod of Naga City passed a resolution authorizing Mayor Bongat to dismantle the gate. However, instead of dismantling it, Mayor Bongat filed a Verified Petition with Prayer for a Writ of Preliminary Injunction against BMC.

Atty. Botor, Celjun F. Yap, Ismael A. Albao, Augusto S. Quilon, Edgar F. Esplana II, and Josefina F. Esplana (Intervenors) were allowed to intervene and submit their complaint-in-intervention.

**RTC:** denied Naga City's application for injunctive relief, ruling that Naga City failed to prove a clear and unmistakable right to the writ prayed for. It also denied the motion for reconsideration filed by the Intervenors.

Only the Intervenors filed a petition for certiorari before the Court of Appeals.

**CA:** granted the petition and emphasized that only a *prima facie* showing of an applicant's right to the writ is required in an application for writ of injunctive relief. The Court of Appeals opined that the Intervenors were able to prove the public character of Road Lot No. 3, considering that "the general public had been using [it] since time immemorial," with even Dr. Nerva admitting that he passed through it when he was young. The Court of Appeals also gave due weight to the 1970s Revised Assessor's Tax Mapping Control Roll and its Identification Map, which support the Intervenors' assertion of the public nature of Road Lot No. 3. The Court of Appeals concluded that Naga City and the Intervenors were able to present *prima facie* evidence of their right to the writ. However, the Court of Appeals pointed out that whether or not the Revised Assessor's Tax Mapping Control Roll should prevail over BMC's title over the property is a factual matter that should be threshed out in the trial court.

**ISSUE:** Whether or not the Court of Appeals erred in directing the Regional Trial Court to issue a writ of preliminary injunction on the closure of Road Lot No. 3. (YES)

#### **RULING:**

A writ of preliminary injunction is issued to: [P]reserve the *status quo ante*, upon the applicant's showing of two important requisite conditions, namely: (1) the right to be protected exists *prima* 

*facie,* and (2) the acts sought to be enjoined are violative of that right. It must be proven that the violation sought to be prevented would cause an irreparable injustice.

Rule 58, Section 3 of the Rules of Court provides the instances when a writ of preliminary injunction may be issued:

Section 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;
- (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.

In satisfying these requisites, the applicant for the writ need not substantiate his or her claim with complete and conclusive evidence since only *prima facie* evidence or a sampling is required "to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits."

This Court finds that the Court of Appeals erred in limiting *prima facie* evidence merely to the evidence presented by Naga City and respondents and in disregarding altogether petitioners' evidence, which had the effect of squarely rebutting Naga City and respondents' assertions. The Court of Appeals failed to appreciate the nature of the ancillary remedy of a writ of preliminary injunction as against the *ex parte* nature of a temporary restraining order. Xxx

Writs of preliminary injunction are granted only upon prior notice to the party sought to be enjoined and upon their due hearing. xxx Thus, Rule 58 requires "a full and comprehensive hearing for the determination of the propriety of the issuance of a writ of preliminary injunction," giving the applicant an opportunity to prove that great or irreparable injury will result if no writ is issued and allowing the opposing party to comment on the application. On the other hand, a temporary restraining order that is heard only with the evidence presented by its applicant is *ex parte*, but it is issued to preserve the status quo until the hearing for preliminary injunction can be conducted.

*Miriam College Foundation, Inc v. Court of Appeals* explained the difference between preliminary injunction and a restraining order as follows:

Preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to perform to refrain from performing a particular act or acts. As an extraordinary remedy, injunction is calculated to preserve or maintain the status quo of things and is generally availed of to prevent actual or threatened acts, until the merits of the case can be heard. A preliminary injunction persists until it is dissolved or until the termination of the action without the court issuing a final injunction.

The basic purpose of restraining order, on the other hand, is to preserve the status quo until the hearing of the application for preliminary injunction. Under the former Rule 58 of the Rules of Court, as amended by Batas Pambansa Blg. 224, a judge (or justice) may issue a temporary restraining order with a limited life of twenty days from date of issue. If before the expiration of the 20-day period the application for preliminary injunction is denied, the temporary order would thereby be deemed automatically vacated. If no action is taken by the judge on the application for preliminary injunction within the said 20 days, the temporary restraining order would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary. In the instant case, no such preliminary injunction was issued; hence, the TRO earlier issued automatically expired under the aforesaid provision of the Rules of Court.

It is true that some issues are better threshed out before the trial court, such as if the donation to the Department of Health by the Camarines Sur Provincial Government contained an encumbrance for the public to continue using Road Lot No. 3, or the validity of this donation. The Court of Appeals, however, erred when it completely disregarded the evidence presented by petitioners, reasoning out that the question of whether or not Naga City's evidence should prevail over BMC's title over the property was supposedly a factual matter that should be threshed out in the trial court.

By focusing solely on Naga City and respondents' evidence to determine if there was *prima facie* evidence to issue the writ of preliminary injunction while the case was being heard in the lower court, the Court of Appeals misappreciated the nature of a writ of preliminary injunction. To reiterate, a preliminary injunction is an ancillary remedy issued after due hearing where both parties are given the opportunity to present their respective evidence. Thus, both their evidence should be considered.

As it is, absent a finding of grave abuse of discretion, there was no reason for the Court of Appeals to reverse the trial court's denial of respondents' application for the issuance of a writ of preliminary injunction. Respondents were unable to present *prima facie* evidence of their clear and unmistakable right to use Road Lot No. 3.

## ROSARIO E. CAHAMBING, Petitioner vs. VICTOR ESPINOSA and JUANA ANG, Respondent G.R. No. 215807, SECOND DIVISION, January 25, 2017, PERALTA, J.

A Writ of Preliminary Injunction to issue, the following requisites must be present, to wit: (1) the existence of a clear and unmistakable right that must be protected, and (2) an urgent and paramount necessity for the writ to prevent serious damage.

The right of possession and control is a clear right already established by the circumstances obtaining at that time. Hence, petitioner's act of entering the premises of Jhanel's Pharmacy, through her sons, is a material and substantial violation of private respondent Victor Espinosa's right, which act must be enjoined.

#### **FACTS:**

Petitioner and respondent Victor Espinosa are siblings and the children of deceased spouses Librado and Brigida Espinosa, the latter bequeathing their properties, among which is Lot B or Lot 354 with an area of 1,341 square meters, more or less, situated in Maasin City, Southern Leyte, to the said siblings in the same deceased spouses' respective Last Wills and Testaments which were duly probated.

Deceased Librado and Brigida bequeathed their respective shares over Lot 354 to respondent Victor Espinosa, however, Brigida subsequently revoked and cancelled her will, giving her one-half (1/2) share over Lot 354 to petitioner.

Brigida Espinosa and respondent Victor Espinosa, after the death of Librado Espinosa, entered into an Extrajudicial Partition of Real Estate subdividing Lot 354 into Lot 354-A, with an area of 503.5 square meters adjudicated to Brigida Espinosa, and Lot 354-B, with an area of 837.5 square meters, adjudicated to respondent Victor Espinosa, who eventually obtained a certificate of title in his name.

petitioner filed a complaint against respondent Victor Espinosa and his representative, respondent Juana Ang, for, among others, the annulment of the Extrajudicial Partition of Real Property which was docketed as Civil Case No. R-2912.

At the time of the filing of the complaint, the same building had twelve (12) lessees, four (4) of whom pay rentals to petitioner, namely: Pacifica Agrivet Supplies, Family Circle, Ariane's Gift Items, and Julie's Bakeshop. Petitioner alleged that respondent Juana Ang prevailed upon Pacifica Agrivet Supplies not to renew its lease contract with petitioner but to enter into a contract of lease with respondent Victor Espinosa instead. According to petitioner, respondent Juana Ang also threatened to do the same thing with Julie's Bakeshop.

Clerk of Court, acting as Commissioner, issued an Order dated April 16, 1998 directing the parties to maintain the status quo.

respondent Victor Espinosa filed an Application for the Issuance of a Writ of Preliminary Injunction with Prayer for the Issuance of a Temporary Restraining Order dated March 3, 2009 against petitioner alleging that the latter violated the status quo ante order by allowing her sons to occupy the space rented by Jhanel's Pharmacy which is one of respondent Victor Espinosa's tenants. Respondent Victor Espinosa, through his attorney-in-fact, private respondent Juana Ang, alleged that petitioner's sons constructed a connecting door through the partition separating their cellular phone shop from Jhanel's Pharmacy and that the contract of lease between the latter and respondent Victor Espinosa is still subsisting, hence, the entry by petitioner's sons into the pharmacy's commercial space disturbed the status quo ante.

Thereafter, the RTC, on September 22, 2009, issued an Order for the issuance of a writ of preliminary injunction, the dispositive portion of which reads as follows:

IN VIEW OF THE FOREGOING, the defendant's prayer for the issuance of a writ of preliminary injunction is GRANTED. Accordingly, upon defendant's filing, within ten (10) days from receipt hereof, of the injunction bond in the sum of fifty thousand pesos (PhP50,000.00) conditioned on defendant's paying all damages, the plaintiff may sustain by reason of this injunction in case the Court should finally decide that the defendant is not entitled thereto, let a writ of preliminary injunction issue enjoining or restraining the plaintiff and all those claiming rights under her from

disturbing the possession of the defendant to the leased premises or the "status quo ante" until after this case shall have been decided on the merits and/or until further orders from this Court. SO ORDERED... petitioner filed a petition on certiorari under Rule 65 of the Rules of Court, with the CA imputing grave abuse of discretion on the part of the RTC when it granted the application for the issuance of a writ of preliminary injunction filed by respondent Victor Espinosa. According to petitioner, respondents themselves violated the status quo ante order when they wrested the space rented by Pacifica Agrivet Supplies from petitioner's control and that there was no compliance with the requisites for the issuance of the writ of preliminary injunction.

In particular, petitioner avers the following contentions: (1) the damage claimed by respondents is quantifiable at P12,000.00 per month, hence, not irreparable; (2) respondent, Victor Espinosa is at best a co-owner of the subject property, while respondent Juana Ang is a stranger, and a co-owner cannot exclude another co-owner, hence, respondent Victor Espinosa's right is not clear and unmistakable; (3) there is no urgency involved because the application for injunction was filed more than one year after the incident in question; (4) contrary to the conclusion of the CA, the space occupied by Jhanel's Pharmacy was voluntarily surrendered to petitioner by the lessee; and (5) the CA committed grave legal errors when it failed to correct the RTC's issuance of the writ of preliminary injunction.

Respondents argue that they did not have sullied hands when they applied for the writ of preliminary injunction. They also point out that the issuance of the writ of preliminary injunction was strictly in accordance with the Revised Rules on Civil Procedure.

#### **Issues:**

Whether or not the grant of Preliminary Injuction was proper. (YES)

#### **Ruling:**

A Writ of Preliminary Injunction to issue, the following requisites must be present, to wit: (1) the existence of a clear and unmistakable right that must be protected, and (2) an urgent and paramount necessity for the writ to prevent serious damage. Indubitably, this Court has likewise stressed that the very foundation of the jurisdiction to issue a writ of injunction rests in the existence of a cause of action and in the probability of irreparable injury, inadequacy of pecuniary compensation, and the prevention of multiplicity of suits. Sine dubio, the grant or denial of a writ of preliminary injunction in a pending case, rests in the sound discretion of the court taking cognizance of the case since the assessment and evaluation of evidence towards that end involve findings of facts left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with except when there is grave abuse of discretion. Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law.

In this case, respondent court correctly found that private respondent Victor Espinosa had established a clear and unmistakable right to a commercial space heretofore occupied by Jhanel's Pharmacy. He had an existing Contract of Lease with the pharmacy up to December 2009. Without prejudging the main case, it was established that, at the time of the issuance of the status quo order

dated April 16, 1998, Jhanel's Pharmacy was recognized as one of private respondent Victor Espinosa's tenants. In fact, petitioner identified only Pacifica Agrivet Supplies, Family Circle, Ariane's Gift Items and Julie's Bakeshop. As such, pursuant to the status quo order, it is private respondent Victor Espinosa who must continue to deal with Jhanel's Pharmacy. Correspondingly, the commercial space occupied by Jhanel's Pharmacy must be deemed to be under the possession and control of private respondent Victor Espinosa as of the time of the issuance of the status quo order. The right of possession and control is a clear right already established by the circumstances obtaining at that time. Hence, petitioner's act of entering the premises of Jhanel's Pharmacy, through her sons, is a material and substantial violation of private respondent Victor Espinosa's right, which act must be enjoined.

MIRIAM COLLEGE FOUNDATION, INC., petitioner, vs. HON. COURT OF APPEALS, JASPER BRIONES, JEROME GOMEZ, RELLY CARPIO, ELIZABETH VALDEZCO, JOSE MARI RAMOS, CAMILLE PORTUGAL, JOEL TAN and GERALD GARY RENACIDO, respondents.

G.R. No. 127930, FIRST DIVISION, December 15, 2000, KAPUNAN, J.

The power of the school to investigate is an adjunct of its power to suspend or expel. It is a necessary corollary to the enforcement of rules and regulations and the maintenance of a safe and orderly educational environment conducive to learning. That power, like the power to suspend or expel, is an inherent part of the academic freedom of institutions of higher learning guaranteed by the Constitution.

The Supreme Court ruled that Miriam College has the authority to hear and decide the cases filed against students.

#### **FACTS:**

Miriam college has found its school paper (Chi-Rho), and magazine (Ang Magasing Pampanitikan ng Chi-Rho) contents of the September-October 1994 issue "Obscene," "vulgar," "indecent," "gross," "sexually explicit," "injurious to young readers," and devoid of all moral values." Following the publication of the paper and the magazine, the members of the editorial board, author, all students of Miriam College, received a letter signed by Dr. Aleli Sevilla, Chair of the Miriam College Discipline Committee to inform them that their are letters of complaint filed against them by members of the Miriam Community and a concerned Ateneo grade five student that had been forwarded to the Discipline Committee for inquiry and investigation and required them submit a written statement in answer to the charge/s on or before the initial date of hearing, but none of the students submitted their respective answers. They instead requested Dr. Sevilla to transfer the case to the Regional Office of the Department of Education, Culture and Sports (DECS), which they contested, that had jurisdiction over the case. Dr. Sevilla again required the students to file their written answers. In response, the lawyer for the students submitted a letter to the Discipline Committee reiterating his clients' position that said Committee had no jurisdiction over them. The Discipline Committee proceeded with its investigation ex parte. Thereafter, the Discipline Board, after a review of the Discipline Committee's report, imposed disciplinary sanctions upon the students. The students were suspended, expelled, dismissed, and one was not allowed to attend her graduation. The students thus filed a petition for prohibition and certiorari with preliminary injunction/restraining order before the Regional Trial Court of Quezon City questioning the jurisdiction of the Discipline Board of Miriam College over them. The RTC issued an order denying the plaintiffs' prayer for a Temporary Restraining Order. The students thereafter filed a "Supplemental Petition and Motion for Reconsideration." The RTC issued an Order granting the writ of preliminary injunction. Both parties moved for a reconsideration of the order. On the matter

raised by both parties that it is the DECS which has jurisdiction, the RTC DISMISSED the case and all orders it issued are recalled and set aside. The CA issued a Temporary Restraining Order enjoining Miriam College from enforcing letters of dismissal/suspension, but it eventually declared the RTC Order, as well as the students' suspension and dismissal, void.

#### **ISSUE:**

- 1) Whether or not the trail court has the jurisdiction to entertain the petition for certiorari filed by the students. (YES)
- 2) Whether or not Miriam College has the jurisdiction over the complaints against the students. (YES)

#### **HELD:**

1) the grounds invoked by the students in their refusal to answer the charges against them were limited to the question of jurisdiction – a question purely legal in nature and well within the competence and the jurisdiction of the trial court, not the DECS Regional Office. This is an exception to the doctrine of primary jurisdiction.

As the Court held in *Phil. Global Communications, Inc. vs. Relova*: Absent such clarity as to the scope and coverage of its franchise, a legal question arises which is more appropriate for the judiciary than for an administrative agency to resolve. The doctrine of primary jurisdiction calls for application when there is such competence to act on the part of an administrative body.

A court having jurisdiction of a case has not only the right and the power or authority, but also the duty, to exercise that jurisdiction and to render a decision in a case properly submitted to it.

2) Section 7 of the Campus Journalism Act should be read in a manner as not to infringe upon the school's right to discipline its students. At the same time, however, we should not construe said provision as to unduly restrict the right of the students to free speech. Consistent with jurisprudence, we read Section 7 of the Campus Journalism Act to mean that the school cannot suspend or expel a student solely on the basis of the articles he or she has written, except when such articles materially disrupt class work or involve substantial disorder or invasion of the rights of others.

The power of the school to investigate is an adjunct of its power to suspend or expel. It is a necessary corollary to the enforcement of rules and regulations and the maintenance of a safe and orderly educational environment conducive to learning. That power, like the power to suspend or expel, is an inherent part of the academic freedom of institutions of higher learning guaranteed by the Constitution.

The Supreme Court ruled that Miriam College has the authority to hear and decide the cases filed against students.

EXECUTIVE SECRETARY, SECRETARY OF FINANCE, COMMISSIONER OF CUSTOMS, DISTRICT COLLECTOR OF CUSTOMS, Port of Aparri, Cagayan, DISTRICT COLLECTOR OF CUSTOMS, Port

## of San Fernando, La Union, and HEAD OF THE LAND TRANSFORTATION OFFICE, Petitioners, v. FORERUNNER MULTI RESOURCES, INC., Respondent.

G.R. No. 199324, SECOND DIVISION, January 7, 2013, CARPIO, J.

Respondent has no clear legal right to import used motor vehicles. 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 injunctive relief.

Respondent failed to overcome the presumption of validity of EO 156. Whatever legal right respondent may possess vis à vis the operation of EO 156, it is doubtful by force of the Southwing precedent. The Southwing ruling makes conclusive the presumption of EO 156's validity.

#### **FACTS:**

Respondent Forerunner Multi Resources, Inc., a corporation engaged in the importation of used motor vehicles seeks to declare EO 156 invalid, and seeks a preliminary injunctive writ to enjoin, litis pendentia, the enforcement of EO 156.

EO 156, issued by President Gloria Macapagal-Arroyo on December 12, 2002, imposes a partial ban on the importation of used motor vehicles to "accelerate the sound development of the motor vehicle industry in the Philippines."

Previously, in Executive Secretary v. Southwing Heavy Industries Inc. and two related petitions (collectively, Southwing), Supreme Court found EO 156 a valid executive issuance.

#### **ISSUES:**

Whether respondent is correct in contending that EO 156 is invalid for the following reasons:

- 1) having been issued by President Arroyo ultra vires;
- 2) trenching the Due Process and Equal Protection Clauses of the Constitution; and
- 3) having been superseded by Executive Order No. 418 (EO 418),9 issued by President Arroyo on 4 April 2005, modifying the tariff rates of imported used motor vehicles.

#### **RULING**:

#### **CLEAR LEGAL RIGHT**

Respondent has no clear legal right to import used motor vehicles. 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 injunctive relief.

Respondent failed to overcome the presumption of validity of EO 156. Whatever legal right respondent may possess vis à vis the operation of EO 156, it is doubtful by force of the Southwing precedent. The Southwing ruling makes conclusive the presumption of EO 156's validity.

#### **VALID POLICE MEASURE**

The issuance of the ban to protect the domestic industry is a reasonable exercise of police power. It is a valid police measure addressing an "urgent national concern". The deterioration of the local motor manufacturing firms due to the influx of imported used motor vehicles is an urgent national concern that needs to be swiftly addressed by the President. In the exercise of delegated police power, the executive can therefore validly proscribe the importation of these vehicles.

#### **DUE PROCESS AND EQUAL PROTECTION CLAUSE**

The "grave and irremediable" financial losses suffered by the respondent were self imposed. He cannot look to the courts for injunctive relief for self-inflicted losses which are in the nature of damnum absque injuria. Injunction will not issue on the mere possibility that a litigant will sustain damage, without proof of a clear legal right entitling the litigant to protection.

#### **ON THE ALLEGED REPEAL BY EO 418**

EO 418 did not repeal EO 156. The subsequent issuance of E.O. No. 418 increasing the import duties on used motor vehicles did not alter the policy of the executive department to prohibit the importation of said vehicle. There is nothing in the text of E.O. No. 418 which expressly repeals E.O. No. 156. The failure to add a specific repealing clause indicates that the intent was not to repeal previous administrative issuances.

E.O. No. 156 is very explicit in its prohibition on the importation of used motor vehicles. On the other hand, E.O. No. 418 merely modifies the tariff and nomenclature rates of import duty on used motor vehicles. Nothing therein expressly revokes the importation ban.

## TML GASKET INDUSTRIES, INC., Petitioner, v. BPI FAMILY SAVINGS BANK, INC., Respondents G.R. No. 188768, SECOND DIVISION, January 7, 2013, PEREZ, J.

Verily, [TML's] failure to comply with the terms and conditions of its credit agreement with [BPI], as embodied in the [real estate mortgage] and the promissory notes it issued in favor of the latter, entitles [BPI] to extrajudicially foreclose the mortgaged properties.rî½11

#### **FACTS:**

TML obtained a loan from the Bank of Southeast Asia, Inc. (BSA), which TML can avail *via* a credit facility of P85M. As security for the loan, TML executed a real estate mortgage over commercial and industrial lots -Parañaque City. BSA required TML to execute a promissory note for each availment from the credit facility.

From September 1996 to 31 July 1997, TML executed several promissory notes (PN). During the period of the loan, BSA changed its corporate name - merged with BPI. TML defaulted in the payment of its loan so BPI extra-judicially foreclosed the mortgaged properties. TML's indebtedness to BPI ballooned. The Sheriff of RTC issued a Notice of Extra-judicial Foreclosure Sale. TML filed a "Complaint for Declaratory Relief, Plus Damages, with Prayer for the Issuance of (TRO) and/or Writ of Preliminary Injunction" against BPI. ½11

TML asseverated that BSA made it understand that the stipulation meant that TML's loan would be subject to only a 16% interest rate *per annum*. However, contrary to their actual understanding, BSA imposed a 33% interest rate *per annum*, and a penalty of 36% interest.

TML likewise pointed out that it had demanded an independent accounting and liquidation of its loan account, which went unheeded. It cannot be considered in default of an obligation with an undetermined and unascertained amount. In that regard, TML argued that the intended foreclosure of TML's mortgaged properties is unwarranted for being illegal; thus, the foreclosure ought to be enjoined to prevent TML from suffering grave and irreparable damage, especially since TML's office and factory are located at the mortgaged properties.

BPI maintained that the interest rates on TML's loan obligation were mutually and voluntarily agreed upon. On TML's application for the issuance of a writ of preliminary injunction, BPI countered that it has the absolute right to foreclose the mortgage constituted over TML's properties given that TML defaulted on its loan obligation, which had already become due and demandable.

The trial court denied TML's application for the issuance of a preliminary injunction as the testimony of [TML] casts [doubt] on its right over the property. Furthermore, [TML] has in its favor the right of redemption. Find M/R, the trial court ordered the issuance of the writ in favor of TML, subject to the posting of a bond in the amount of P300,000.00.

BPI filed a petition for *certiorari* under Rule 65 before CA seeking to annul and set aside the twin Orders of the trial court. The appellate court found grave abuse of discretion in the trial court's issuance of the orders. TML filed a M/R which was denied by CA. Hence, this petition for review on *certiorari* 

**ISSUE:** Whether or not the issuance of the writ of preliminary injunction is proper. (NO)

#### **HELD:**

We subscribe to the appellate court's ruling.

Section 3, Rule 58 of the Rules of Court lists the grounds for the issuance of a writ of preliminary injunction.  $x \times x \times As$  such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The requisites of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be

entitled to an injunctive writ, the right to be protected and the violation against that right must be shown.  $\frac{1}{2}$ 1

Verily, [TML's] failure to comply with the terms and conditions of its credit agreement with [BPI], as embodied in the [real estate mortgage] and the promissory notes it issued in favor of the latter, entitles [BPI] to extrajudicially foreclose the mortgaged properties. rî½11

The issuance of a preliminary injunction rests entirely within the discretion of the court taking cognizance of the case and is generally not interfered with except in cases of manifest abuse. 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.,In the absence of a clear legal right, the issuance of a writ of injunction constitutes grave abuse of discretion.

In *Selegna Management and Development Corporation v. United Coconut Planters Bank*, we ruled that the debt is considered liquidated despite the alleged lack of accounting: A debt is liquidated when the amount is known or is determinable by inspection of the terms and conditions of the relevant promissory notes and related documentation. Failure to furnish a debtor a detailed statement of account does not ipso facto result in an unliquidated obligation.

Petitioners executed a Promissory Note, in which they stated that their principal obligation was in the amount of P103,909,710.82, subject to an interest rate of 21.75 percent per annum. Pursuant to the parties' Credit Agreement, petitioners likewise know that any delay in the payment of the principal obligation will subject them to a penalty charge of one percent per month, computed from the due date until the obligation is paid in full. It is in fact clear from the agreement of the parties that when the payment is accelerated due to an event of default, the penalty charge shall be based on the total principal amount outstanding, to be computed from the date of acceleration until the obligation is paid in full. Their Credit Agreement even provides for the application of payments. It appears from the agreements that the amount of total obligation is known or, at the very least, determinable. Moreover, when they made their partial payment, petitioners did not question the principal, interest or penalties demanded from them. They only sought additional time to update their interest payments or to negotiate a possible restructuring of their account. Hence, there is no basis for their allegation that a statement of account was necessary for them *to know* their obligation. We cannot impair respondent's right to foreclose the properties on the basis of their unsubstantiated allegation of a violation of due process.  $\frac{1}{2}1$ 

Clearly, the possibility of irreparable damage without proof of actual existing right is no ground for an injunction. Once again, our holding in Selegna is relevant and sound:  $x \times x$  Injunction is not designed to protect contingent or future rights. It is not proper when the complainant's right is doubtful or disputed.  $x \times x \times x$ 

Petitioners do not have any clear right to be protected. As shown in our earlier findings, they failed to substantiate their allegations that their right to due process had been violated and the maturity of their obligation forestalled. Since they indisputably failed to meet their obligations in spite of repeated demands, we hold that there is no legal justification to enjoin respondent from enforcing its undeniable right to foreclose the mortgaged properties. In any case, petitioners will not be deprived outrightly of their property. Pursuant to Section 47 of the General Banking Law of 2000, mortgagors who have judicially or extrajudicially sold their real property for the full or partial

payment of their obligation have the right to redeem the property within one year after the sale. They can redeem their real estate by paying the amount due, with interest rate specified, under the mortgage deed; as well as all the costs and expenses incurred by the bank.

The Petition is DENIED.

# MANILA INTERNATIONAL AIRPORT AUTHORITY, Petitioners, v. RIVERA VILLAGE LESSEE HOMEOWNERS ASSOCIATION, INCORPORATED, Respondent. G.R. NO. 143870, SECOND DIVISION, September 30, 2005, TINGA, J.

Appellant is not entitled to the issuance of a writ of mandamus. For a writ of mandamus to issue, it is essential that the appellant has a legal right to the thing demanded and that it is the imperative duty of respondent to perform the act required. The legal right... of appellant to the thing demanded must be well-defined, clear and certain. The corresponding duty of respondent to perform the required act must also be clear and specific (cf. Lemi v. Valencia, 26 SCRA 203, 210 [1968]).

In view of the expiration of the lease contracts of its individual members, appellant has failed to show that it has the legal right to possess the subject property. There is therefore no corresponding duty on the part of the MIAA to segregate the property from the scope of its... conceptual development plan.

### **FACTS:**

The antecedents, culled from the petition and the assailed Decision, are as follows:

The then Civil Aeronautics Administration (CAA) was entrusted with the administration, operation, management, control, maintenance and development of the Manila International Airport (MIA), now the Ninoy Aquino International Airport. Among its powers was the power to enter... into, make and execute concessions and concession rights for purposes essential to the operation of the airport.

On May 25, 1965, the CAA, through its Director, Capt. Vicente C. Rivera, entered into individual lease contracts with its employees (lessees) for the lease of portions of a four (4)-hectare lot situated in what is now known as Rivera Village located in Barangay 199 and 200 in Pasay City. The leases were for a twenty-five (25)-year period to commence on May 25, 1965 up to May 24, 1990 at P20.00[3] per annum as rental.

Sometime in January 1995, MIAA stopped issuing accrued rental bills and refused to accept rental payments from the lessees.

As a result, respondent Rivera Village Lessee Homeowners Association, Inc. (homeowners association), purportedly representing the lessees, requested MIAA to sell the subject property to its members, invoking the provisions of Presidential Decree No. (PD) 1517 or the Urban Land Reform Act and PD 2016.

Respondent then filed a petition for mandamus and prohibition with prayer for the issuance of a preliminary injunction against MIAA and the National Housing Authority (NHA).

It also sought to compel MIAA to segregate Rivera Village from the scope of the Conceptual Development Plan and the NHA to take the... necessary steps for the disposition of the property in favor of the members of the homeowners association.

MIAA filed an answer alleging that the petition fails to state a cause of action in view of the expiration of the lease contracts and the lack of personality to sue of the homeowners association. MIAA also claimed that the homeowners association is not... entitled to a writ of mandamus because it does not have a clear legal right to possess the subject property and MIAA does not have a corresponding duty to segregate Rivera Village from its Conceptual Development Plan.

A preliminary hearing on MIAA's affirmative defenses was conducted, after which the trial court issued an Order[6] dated October 12, 1998, denying the prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction and... dismissing the petition for lack of merit.

The dispositive portion of the Order reads:

In view of all the foregoing, the prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction is hereby denied for lack of merit and the above-entitled petition is hereby ordered dismissed for lack of merit.

Respondent filed an appeal with the Court of Appeals, interposing essentially the same arguments raised before the trial court. The appellate court annulled and set aside the order of the trial court and remanded the case for further proceedings. The dispositive... portion of the assailed Decision states:

WHEREFORE, the assailed October 12, 1998 Order is annulled, set aside and reversed. The case is remanded to the court a quo for further proceedings.

A writ of preliminary injunction is issued restraining and preventing respondent MIAA from evicting the members of petitioner Rivera Village Association from their respective lots in the Rivera Village. Petitioner is ordered to post a bond in the amount of P500,000.00 with the... condition that petitioner will pay to respondent MIAA all damages it may sustain by reason of the injunction if the court should finally decided that petitioner is not entitled thereto. Upon approval of the bond, the writ of preliminary injunction shall forthwith... issue.

Respondent further argues that PD 1818 is inapplicable to this case because it has established a clear and unmistakable right to an injunction. Besides, PD 2016 which protects from eviction tenants of lands identified for priority development, is a later enactment which should... be deemed to prevail over PD 1818.

### **ISSUES:**

Whether or not the homeowners association is entitled to the issuance of a writ of mandamus. (NO)

### **RULING**

Appellant is not entitled to the issuance of a writ of mandamus. For a writ of mandamus to issue, it is essential that the appellant has a legal right to the thing demanded and that it is the imperative duty of respondent to perform the act required. The legal right... of appellant to the thing demanded

must be well-defined, clear and certain. The corresponding duty of respondent to perform the required act must also be clear and specific (cf. Lemi v. Valencia, 26 SCRA 203, 210 [1968]). In view of the expiration of the lease contracts of its individual members, appellant has failed to show that it has the legal right to possess the subject property. There is therefore no corresponding duty on the part of the MIAA to segregate the property from the scope of its... conceptual development plan.

For the foregoing reasons, the prayer for the issuance of the writ of preliminary injunction must perforce be denied. Preliminary injunction is a mere ancillary remedy which cannot stand separately or proceed independently of the main case. Having declared that the... petition filed before the trial court was correctly dismissed, the determination of the homeowners association's entitlement to a writ of preliminary injunction is already moot and academic.

Besides, as earlier noted, the right of the members of the homeowners association to possess and purchase the subject property is still uncertain considering that they have not completed the process for the acquisition of their lots as outlined in PD 1517.

Injunction is a preservative remedy aimed at protecting substantive rights and interests. The writ of preliminary injunction is issued by the court to prevent threatened or continuous irreparable injury to parties before their claims can be thoroughly studied and... adjudicated. Its sole objective is to preserve the status quo until the merits of the case can be heard fully. The writ is issued upon the satisfaction of two requisites, namely: (1) the existence of a right to be protected; and (2) acts which are violative of said right. In the... absence of a clear legal right, the issuance of the injunctive relief constitutes grave abuse of discretion. Injunction is not designed to protect contingent or future rights. Where the complainant's right is doubtful or disputed, injunction is not proper. The possibility of... irreparable damage without proof of actual existing right is not a ground for an injunction.

**SPOUSES NICASIO C. MARQUEZ AND ANITA J. MARQUEZ,** Petitioners, vs. **SPOUSES CARLITO ALINDOG AND CARMEN ALINDOG,** Respondents. G.R. No. 184045, SECOND DIVISION, January 22, 2014, PERLAS-BERNABE, J.

In this case, it is clear that the issuance of a writ of possession in favor of Spouses Marquez, who had already consolidated their title over the extrajudicially foreclosed property, is merely ministerial in nature. The general rule as herein stated – and not the exception found under Section 33, Rule 39 of the Rules – should apply since Spouses Alindog hinged their claim over the subject property on their purported purchase of the same from its previous owner, i.e., Spouses Gutierrez (with Gutierrez being the original mortgagor). Accordingly, it cannot be seriously doubted that Spouses Alindog are only the latter's (Sps. Gutierrez) successors-in-interest who do not have a right superior to them.

### **FACTS:**

In June 1998, Anita Marquez extended a loan in the amount of P500,000 to a certain Gutierrez. As security therefor, Gutierrez executed a Deed of Real Estate Mortgage dated June 16, 1998 over the subject parcel of land. The mortgage was duly annotated.

Since Gutierrez defaulted in the payment of his loan obligation, Anita sought the extra-judicial foreclosure of the subject property. At the public auction sale held on January 19, 2000, Anita emerged as the highest bidder. Upon Gutierrez's failure to redeem the same property

within the prescribed period therefor, title was consolidated in the name of Spouses Marquez with an annotation of adverse claim in the names of Spouses Alindog. Said adverse annotation was copied from an earlier annotation made only after the subject property's mortgage to Spouses Marquez.

Spouses Alindog filed a civil case for annulment of real estate mortgage and certificate of sale on the ground that they purchased the subject property from Gutierrez way back in September 1989 but was unable to secure a certificate of title in their names due to deception of a certain Gonzales. Eventually, they found out that the property had already been mortgaged to Sps. Marquez

Meanwhile, Anita filed an ex-parte petition for the issuance of a writ of possession claiming that the same is ministerial on the court's part following the consolidation of her and her husband's title over the subject property. RTC granted the same. Spouses Alindog sought the issuance of a TRO and/or a writ of preliminary injunction. RTC issued a 72-hour TRO but did not extent it to a full 20-day TRO.

After further proceedings on the injunction case, the RTC issued a writ of preliminary injunction against Spouses Marquez based on initial evidence that Spouses Alindog appeared to have a right to be protected. CA found no grave abuse of discretion on the RTC's part when it issued the injunctive writ.

#### ISSUE:

Whether or not RTC acted with grave abuse of discretion when it issued the injunctive writ which enjoined Sps. Marquez from taking possession of the subject property. (YES)

### **RULING:**

The Court ruled in the affirmative.

## General rule on possession of purchaser in an extrajudicial foreclosure sale

It is an established rule that the purchaser in an extra-judicial foreclosure sale is entitled to the possession of the property and can demand that he be placed in possession of the same either during (with bond) or after the expiration (without bond) of the redemption period therefor.

The Court has ruled in long line of cases that a writ of possession duly applied for by said purchaser in a public auction of an extrajudicially foreclosed real property should issue as a matter of course, and thus, merely constitutes a ministerial duty on the part of the court.

It is thus settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title.

### Exception: When third party claims a right superior to that of the original mortgagor

Section 33, Rule 39 of the Rules of Court provides that the possession of the mortgaged property may be awarded to a purchaser in an extra-judicial foreclosure unless a third party is actually holding the property by adverse title or right.

The phrase "a third party who is actually holding the property adversely to the judgment obligor" contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property. Notably, the property should not only be possessed by a third party, but also held by the third party adversely to the judgment obligor. The third person must therefore claim a right superior to that of the original mortgagor.

In this case, it is clear that the issuance of a writ of possession in favor of Spouses Marquez, who had already consolidated their title over the extrajudicially foreclosed property, is merely ministerial in nature. The general rule as herein stated – and not the exception found under Section 33, Rule 39 of the Rules – should apply since Spouses Alindog hinged their claim over the subject property on their purported purchase of the same from its previous owner, i.e., Spouses Gutierrez (with Gutierrez being the original mortgagor). Accordingly, it cannot be seriously doubted that Spouses Alindog are only the latter's (Sps. Gutierrez) successors-in-interest who do not have a right superior to them.

### Issuance of writ of preliminary injunction in favor of Spouses Alindog is improper

The court ruled that the RTC's finding anent the initial evidence adduced by Spouses Alindog constitutes improper basis to justify the issuance of the writ of preliminary injunction in their favor since it had no authority to exercise any discretion in this respect.

Besides, the act sought to be enjoined, i.e., the implementation of the writ of possession, had already been accomplished in the interim and thus, rendered the matter moot. Case law instructs that injunction would not lie where the acts sought to be enjoined had already become fait accompli (meaning, an accomplished or consummated act).

Hence, since the consummation of the act sought to be restrained had rendered Spouses Alindog's injunction petition moot, the issuance of the said injunctive writ was altogether improper.

BANK OF THE PHILIPPINE ISLANDS, Petitioner, vs. HON. JUDGE AGAPITO L. HONTANOSAS, JR., REGIONAL TRIAL COURT, BRANCH 16, CEBU CITY, SILVERIO BORBON, SPOUSES XERXES AND ERLINDA FACULTAD, AND XM FACULTAD & DEVELOPMENT CORPORATION, Respondents.

G.R. No. 157163, FIRST DIVISION, June 25, 2014, BERSAMIN, J.

Injunction only seeks to prevent threatened wrong, further injury, and irreparable harm or injustice until the rights of the parties can be settled. The respondents failed to prove that they would suffer an irreparable injury. Fear of potential loss of possession and ownership, or facing a criminal prosecution did not constitute the requisite irreparable injury that could have warranted the issuance of the writ of injunction.

As a general rule, the courts will not issue writs of prohibition or injunction – whether preliminary or final – in order to enjoin or restrain any criminal prosecution.

### **FACTS:**

Respondents Spouses Silverio et.al. filed a case against BPI to seek the declaration of the nullity of the promissory notes, real estate and chattel mortgages and continuing surety agreement they had executed in favor of the petitioner.

They further sought damages and attorney's fees, and applied for a temporary restraining order (TRO) or writ of preliminary injunction to prevent the petitioner from foreclosing on the mortgages against their properties.

The complaint alleged that the respondents had obtained a loan from the petitioner, and had executed promissory notes binding themselves solidarily. and constituted real estate mortgages on several parcels of land in favor of the petitioner; and that they had been made to sign a continuing surety agreement and a chattel mortgage on their Mitsubishi Pajero as security.

The petitioner required them to issue postdated checks to cover the loan under threat of foreclosing on the mortgages.

Petitioner filed its answer with affirmative defenses and counterclaim, as well as its opposition to the issuance of the writ of preliminary injunction, contending that the foreclosure of the mortgages was within its legal right to do.

A motion to dismiss was filed by Petitione, but was denied. RTC granted the application for Preliminary Injunction.

Petitioner appealed to the CA. CA affirmed the RTC decision.

### **ISSUE:**

Whether or not the RTC erred in the issuance of the writ of preliminary injunction. (NO)

### **RULING:**

The RTC's issuance of the writ of preliminary injunction to enjoin the petitioner from proceeding with the foreclosure of the mortgages was plainly erroneous and unwarranted.

The issuance of the writ of preliminary injunction upon the application of the respondents was improper.

They had admittedly constituted the real estate and chattel mortgages to secure the performance of their loan obligation to the petitioner, and, as such, they were fully aware of the consequences on their rights in the properties given as collaterals should the loan secured be unpaid.

The foreclosure of the mortgages would be the remedy provided by law for the mortgagee to exact payment. In fact, they did not dispute the petitioner's allegations that they had not fully paid their obligation.

Civil Case No. CEB-26468 was precisely brought by them in order to stave off the impending foreclosure of the mortgages based on their claim that they had been compelled to sign pre-printed standard bank loan forms and mortgage agreements.

Injunction only seeks to prevent threatened wrong, further injury, and irreparable harm or injustice until the rights of the parties can be settled. The respondents failed to prove that they would suffer an irreparable injury. Fear of potential loss of possession and ownership, or facing a criminal prosecution did not constitute the requisite irreparable injury that could have warranted the issuance of the writ of injunction.

As a general rule, the courts will not issue writs of prohibition or injunction – whether preliminary or final – in order to enjoin or restrain any criminal prosecution. But there are extreme cases in which **exceptions** to the general rule have been recognized, including:

- a. When the injunction is necessary to afford adequate protection to the constitutional rights of the accused;
- b. When it is necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- c. When there is a prejudicial question that is sub judice;
- d. When the acts of the officer are without or in excess of authority;
- e. When the prosecution is under an invalid law, ordinance or regulation;
- f. When double jeopardy is clearly apparent;
- g. When the court has no jurisdiction over the offense;
- h. When it is a case of persecution rather than prosecution;
- i. When the charges are manifestly false and motivated by the lust for vengeance; and
- j. When there is clearly no prima faciecase against the accused and a motion to quash on that ground has been denied.

However, the respondents did not sufficiently show that Civil Case No. CEB-26468 came under any of the foregoing exceptions. Hence, the issuance by the RTC of the writ of preliminary injunction to enjoin the petitioner from instituting criminal complaints for violation of BP No. 22 against the respondents was unwarranted.

# BACOLOD CITY WATER DISTRICT, Petitioner, v. THE HON. EMMA C. LABAYEN, Presiding Judge, RTC of Bacolod City, Br. 46 and the City of Bacolod, Respondents.

G.R. NO. 157494, SECOND DIVISION, December 10, 2004, PUNO, I

If no action is taken by the judge on the application for preliminary injunction within the said twenty (20) days, the temporary restraining order would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary.

Hence, in the case at bar, since no preliminary injunction was issued, the temporary restraining order granted automatically expired after twenty (20) days under the Rules. The fact that respondent court merely ordered the respondent[,] its agents, representatives or any person acting in his behalf to stop, desist and refrain from implementing in their billings the new water rate increase which will start on March 1, 2000 without stating the period for the restraint does not convert the temporary restraining order to a preliminary injunction.

### **FACTS:**

Respondent City opposed the Schedule of Automatic Water Rates Adjustments for the years 1999, 2000 and 2001published by the petitioner. It alleged that the proposed water rates would violate due process as they were to be imposed without the public hearing. Hence, it prayed that before the hearing of the main case, a temporary restraining order or a preliminary injunction be issued. On the same date requested, respondent court heard respondents application for temporary restraining order and issued an Order commanding petitioner to stop, desist and refrain from implementing the proposed water rates.

Respondent court issued the assailed Decision granting the final injunction which allegedly confirmed the previous preliminary injunction.

Petitioner filed its Motion for Reconsideration of the assailed Decision asserting, among others, that the case was not yet ripe for decision when the court granted the final injunction, the petitioner having had no opportunity to file its answer, avail of the mandatory pre-trial conference and have the case tried on the merits.

### **ISSUE:**

Whether or not preliminary injunction had been issued. (NO)

### **RULING:**

The sequence of events and the proceedings that transpired in the trial court make a clear conclusion that the Order issued was a temporary restraining order and not a preliminary injunction.

Given the previous undeviating references to it as a temporary restraining order, respondents cannot now consider it as a preliminary injunction to justify the validity of the assailed Decision. The attendant facts and circumstances clearly show that the respondent trial court issued a temporary restraining order.

Injunction is a judicial writ, process or proceeding whereby a party is ordered to do or refrain from doing a certain act. It may be the main action or merely a provisional remedy for and as an incident in the main action.<sup>1</sup>

The main action for injunction is distinct from the provisional or ancillary remedy of preliminary injunction which cannot exist except only as part or an incident of an independent action or proceeding. As a matter of course, in an action for injunction, the auxiliary remedy of preliminary injunction, whether prohibitory or mandatory, may issue. Under the law, the main action for injunction seeks a judgment embodying a final injunction which is distinct from, and should not be confused with, the provisional remedy of preliminary injunction, the sole object of which is to preserve the *status quo* until the merits can be heard. A preliminary injunction is granted at any stage of an action or proceeding prior to the judgment or final order. It persists until it is dissolved or until the termination of the action without the court issuing a final injunction.

A restraining order, on the other hand, is issued to preserve the *status quo* until the hearing of the application for preliminary injunction which cannot be issued *ex parte*. Under Rule 58 of the Rules

of Court, a judge may issue a temporary restraining order with a limited life of twenty (20) days from date of issue. If before the expiration of the twenty (20)-day period the application for preliminary injunction is denied, the temporary restraining order would be deemed automatically vacated. If no action is taken by the judge on the application for preliminary injunction within the said twenty (20) days, the temporary restraining order would automatically expire on the 20th day by the sheer force of law, no judicial declaration to that effect being necessary.

Hence, in the case at bar, since no preliminary injunction was issued, the temporary restraining order granted automatically expired after twenty (20) days under the Rules. The fact that respondent court merely ordered the respondent[,] its agents, representatives or any person acting in his behalf to stop, desist and refrain from implementing in their billings the new water rate increase which will start on March 1, 2000 without stating the period for the restraint does not convert the temporary restraining order to a preliminary injunction.

The rule against the non-extendibility of the twenty (20)-day limited period of effectivity of a temporary restraining order is absolute if issued by a regional trial court. The failure of respondent court to fix a period for the ordered restraint did not lend the temporary restraining order a breath of semi-permanence which can only be characteristic of a preliminary injunction. The twenty (20)-day period provided by the Rules of Court should be deemed incorporated in the Order where there is an omission to do so. It is because of this rule on non-extendibility that respondent City was prompted to move that hearings be set for its application of a preliminary injunction. Respondent City cannot take advantage of this omission by respondent trial court.

# STRATEGIC ALLIANCE DEVELOPMENT CORPORATION, Petitioner, vs. STAR INFRASTRUCTURE DEVELOPMENT CORPORATION ET AL., Respondents.

G.R. No. 187872, FIRST DIVISION, April 11, 2011, PEREZ, J.

An intra-corporate dispute is understood as a suit arising from intra-corporate relations or between or among stockholders or between any or all of them and the corporation. Applying what has come to be known as the relationship test, it has been held that the types of actions embraced by the foregoing definition include the following suits: (a) between the corporation, partnership or association and the public; (b) between the corporation, partnership or association and its stockholders, partners, members, or officers; (c) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; and, (d) among the stockholders, partners or associates themselves.

In the case at bench, STRADEC's first and second causes of action seek the nullification of the loan and pledge over its SIDC shareholding contracted by respondents Yujuico, Sumbilla and Wong as well the avoidance of the notarial sale of said shares conducted by respondent Caraos. Applying the relationship test, we find that STRADEC's first and second causes of action qualify as intra-corporate disputes since said corporation and respondent Wong are incorporators and/or stockholders of SIDC.

### **FACTS:**

Petitioner Strategic Alliance Development Corporation (STRADEC) is a domestic corporation primarily engaged in the business of a development with principal place of business at Bayambang, Pangasinan t. Along with five individuals and three other corporations, STRADEC incorporated respondent Star Infrastructure Development Corporation (SIDC) for the purpose of engaging in the general construction business with the original principal place of business at Pasig City, then moved

to Poblacion Sur, Bayambang, Pangasinan and, later, to Lipa, Batangas. STRADEC fully paid and owned 49% of the 5,000,000 shares of stock into which SIDC's authorized capital stock.

In 2004, respondents Yujuico and Sumbilla, in their respective capacities as then President and Treasurer of STRADEC, executed a Promissory Note for and in consideration of a loan in the sum of P10,000,000.00 ostensibly extended in favor of said corporation by respondent Robert L. Wong, one of the incorporators of SIDC. As security for the payment of the principal as well as the stipulated interests thereon, a pledge constituted over STRADEC's entire shareholdings in SIDC was executed by respondent Yujuico on 1 April 2005.

In view of STRADEC's repeated default on its obligations, however, the shares thus pledged were sold by way of the 26 April 2005 notarial sale conducted in Makati City by respondent Raymond M. Caraos. Having tendered the sole bid of P11,800,000.00, respondent Wong was issued the corresponding certificates of stocks by respondent Bede S. Tabalingcos, SIDC's Corporate Secretary for the years 2004 and 2005, after the transfer was recorded in the corporation's stock and transfer book.

In 2006, Quiambao, in his capacity as President and Chairman of the Board of Directors of STRADEC, commenced the instant suit with the filing of the petition before a commercial court in Batangas City alleging four causes of action, to wit: that respondents Yujuico and Sumbilla were not authorized to enter into any loan agreement with respondent Wong, that the auction sale was held in a wrong venue, that the transfer of STRADED shares in SIDC was made fraudulently and that the 30 July 2005 annual stockholders meeting and 20 July 2006 special stockholder's meeting of SIDC where the change of principal place of business was approved is invalid pending determination of the legitimate Board of Directors for STRADEC.

### **ISSUE:**

Whether or not the cause of action of petitioners is an intra-corporate dispute. (YES)

### **RULING:**

An intra-corporate dispute is understood as a suit arising from intra-corporate relations or between or among stockholders or between any or all of them and the corporation. Applying what has come to be known as the relationship test, it has been held that the types of actions embraced by the foregoing definition include the following suits: (a) between the corporation, partnership or association and the public; (b) between the corporation, partnership or association and its stockholders, partners, members, or officers; (c) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; and, (d) among the stockholders, partners or associates themselves. As the definition is broad enough to cover all kinds of controversies between stockholders and corporations, the traditional interpretation was to the effect that the relationship test brooked no distinction, qualification or any exemption whatsoever.

However, the unqualified application of the relationship test has been modified on the ground that the same effectively divests regular courts of jurisdiction over cases for the sole reason that the suit is between the corporation and/or its corporators. It was held that the better policy in determining which body has jurisdiction over a case would be to consider not only the status or relationship of the parties but also the nature of the question that is the subject of their

**controversy.** Under the nature of the controversy test, the dispute must not only be rooted in the existence of an intra-corporate relationship, but must also refer to the enforcement of the parties' correlative rights and obligations under the Corporation Code as well as the internal and intra-corporate regulatory rules of the corporation. The combined application of the relationship test and the nature of the controversy test has, consequently, become the norm in determining whether a case is an intra-corporate controversy or is purely civil in character.

In the case at bench, STRADEC's first and second causes of action seek the nullification of the loan and pledge over its SIDC shareholding contracted by respondents Yujuico, Sumbilla and Wong as well the avoidance of the notarial sale of said shares conducted by respondent Caraos.

Applying the relationship test, we find that STRADEC's first and second causes of action qualify as intra-corporate disputes since said corporation and respondent Wong are incorporators and/or stockholders of SIDC. Having acquired STRADEC's shares thru the impugned notarial sale conducted by respondent Caraos, respondent Wong appears to have further transferred said shares in favor of CTCII, a corporation he allegedly formed with members of his own family. By reason of said transfer, CTCII became a stockholder of SIDC and was, in fact, alleged to have been recognized as such by the latter and its corporate officers.

Considering that they fundamentally relate to STRADEC's status as a stockholder and the alleged fraudulent divestment of its stockholding in SIDC, the same causes of action also qualify as intracorporate disputes under the nature of the controversy test. As part of the fraud which attended the transfer of its shares, STRADEC distinctly averred, among other matters, that respondents Yujuico and Sumbilla had no authority to contract a loan with respondent Wong; that the pledge executed by respondent Yujuico was simulated since it did not receive the proceeds of the loan for which its shares in SIDC were set up as security; that irregularities attended the notarial sale conducted by respondent Caraos who sold said shares to respondent Wong; that the latter unlawfully transferred the same shares in favor of CTCII; and, that SIDC and its officers recognized and validated said transfers despite being alerted about their defects. Ultimately, the foregoing circumstances were alleged to have combined to rid STRADEC of its shares in SIDC and its right as a stockholder to participate in the latter's corporate affairs.

Moreover, pursuant to Section 5.2 of Republic Act No. 8799,<sup>41</sup> otherwise known as the Securities Regulation Code, the jurisdiction of the SEC over all cases enumerated under Section 5 of Presidential Decree No. 902-A has been transferred to RTCs designated by this Court as SCCs<sup>4</sup> pursuant to A.M. No. 00-11-03-SC promulgated on 21 November 2000.

On the issue of venue and jurisdiction, unlike the SEC which is a tribunal of limited jurisdiction, special commercial courts (SCC) like the RTC are still competent to tackle civil law issues incidental to intra-corporate disputes filed before them.

Section 5.2 of R.A. No. 8799 directs merely the Supreme Court's designation of RTC branches that shall exercise jurisdiction over intra-corporate disputes. Nothing in the language of the law suggests the diminution of jurisdiction of those RTCs to be designated as SCCs. The assignment of intra-corporate disputes to SCCs is only for the purpose of streamlining the workload of the RTCs so that certain branches thereof like the SCCs can focus only on a particular subject matter.

The RTC exercising jurisdiction over an intra-corporate dispute can be likened to an RTC exercising its probate jurisdiction or sitting as a special agrarian court. The designation of the SCCs as such has

not in any way limited their jurisdiction to hear and decide cases of all nature, whether civil, criminal or special proceedings.

At any rate, it cannot be gainsaid that STRADEC correctly commenced its petition before the RTC exercising jurisdiction over SIDC's principal place of business which was alleged to have been transferred from Bayambang, Pangasinan to Lipa, Batangas. It matters little that STRADEC, as pointed out by respondents, also questions the validity of the 30 July 2005 SIDC stockholders' annual meeting where the aforesaid change in the address of its principal place of business was allegedly approved. Said matter should be properly threshed out in the proceedings before the RTC alongside such issues as the validity of the transfers of STRADEC's shares to respondents Wong and CTCII, the propriety of the recording of said transfers in SIDC's books, STRADEC's status as a stockholder of SIDC, the legality of the 20 July 2006 SIDC stockholders' special meeting or, for that matter, Cezar T. Quiambao's authority to represent STRADEC in the case at bench.

On the principle that a corporation is a legal entity with a personality separate and distinct from its individual stockholders or members and from that of its officers who manage and run its affairs, we find that the other pending actions have little or no bearing to the issues set forth in STRADEC'spetition which, at bottom, involve the transfer of its own shareholding in SIDC and its status and rights as such stockholder.

# AUSTRALIAN PROFESSIONAL REALTY, INC., JESUS GARCIA, and LYDIA MARCIANO, Petitioners, vs. MUNICIPALITY OF PADRE GARCIA BATANGAS PROVINCE, Respondent.

Thus, to be entitled to the injunctive writ, petitioners must show that (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.

In this case, no grave abuse of discretion can be imputed to the CA. This is so because APRI has no clear legal right.

### **FACTS**:

Fire razed to the ground the old public market of respondent Municipality of Padre Garcia, Batangas. The municipal government, invited petitioner Australian Professional Realty, Inc. (APRI) to rebuild the public market and construct a shopping center. A Memorandum of Agreement (MOA) was executed between petitioner APRI and respondent, represented by Mayor Gutierrez.

Victor Reyes was elected as municipal mayor of respondent. Respondent, through Mayor Reyes, initiated a Complaint for Declaration of Nullity of Memorandum of Agreement with Damages before the Regional Trial Court (RTC) of Rosario, Batangas.

The RTC issued an Order declaring petitioners in default and allowing respondent to present evidence ex parte. The RTC ruled that the Memorandum of Agreement is hereby declared null and void for being contrary to law and public policy and the structures found within the unfinished PADRE GARCIA SHOPPING CENTER are hereby declared forfeited in favor of the Municipality of Padre Garcia.

After learning of the adverse judgment, petitioners filed a Petition for Relief from Judgment. This Petition was denied by the RTC. Petitioners later filed before the CA a Petition for Certiorari and Prohibition. Also, petitioners filed before the CA a Motion for the Issuance of Status Quo Order and Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction. The CA issued a Resolution denying the said motion.

#### ISSUE:

Whether the CA committed grave abuse of discretion in denying petitioners' Motion for the Issuance of Status Quo Order and Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction (Motion for Injunction). (NO)

### **RULING:**

The CA did not commit grave abuse of discretion. Essential to granting the injunctive relief is the existence of an urgent necessity for the writ in order to prevent serious damage. A TRO issues only if the matter is of such extreme urgency that grave injustice and irreparable injury would arise unless it is issued immediately. Thus, to be entitled to the injunctive writ, petitioners must show that (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.

In this case, no grave abuse of discretion can be imputed to the CA. This is so because APRI has no clear legal right. A perusal of the Motion for Injunction and its accompanying Affidavit filed before the CA shows that petitioners rely on their alleged right to the full and faithful execution of the MOA. However, their rights under the MOA have already been declared inferior or inexistent in relation to respondent in the RTC case, under a judgment that has become final and executory. At the very least, their rights under the MOA are precisely disputed by respondent. Hence, there can be no "clear and unmistakable" right in favor of petitioners to warrant the issuance of a writ of injunction. Where the complainant's right or title is doubtful or disputed, injunction is not proper.

# MILA CABOVERDE TANTANO and ROSELLER CABOVERDE, Petitioners, vs. DOMINALDA ESPINA-CABOVERDE, EVE CABOVERDE-YU, FE CABOVERDE-LABRADOR, and JOSEPHINE E. CABOVERDE, Respondents.

G.R. No. 203585, THIRD DIVISION, July 29, 2013, VELASCO, JR., J.

Sec. 2 of Rule 59 is very clear in that before issuing the order appointing a receiver the court shall require the applicant to file a bond executed to the party against whom the application is presented. The use of the word "shall" denotes its mandatory nature; thus, the consent of the other party, or as in this case, the consent of petitioners, is of no moment. Hence, the filing of an applicant's bond is required at all times. On the other hand, the requirement of a receiver's bond rests upon the discretion of the court. Sec. 2 of Rule 59 clearly states that the court may, in its discretion, at any time after the appointment, require an additional bond as further security for such damages.

## **FACTS:**

Petitioners files a complaint of annulment of the Deed of Sale purportedly transferring lots from their parents Maximo and Dominalda. During the pendency of the case the parties executed a

Partial Settlement Agreement (PSA) where they fixed the sharing of the uncontroverted properties among themselves, in particular, the adverted additional eight (8) parcels of land including their respective products and improvements. Under the PSA, Dominalda's daughter, Josephine, shall be appointed as Administrator. The PSA provided that Dominalda shall be entitled to receive a share of one-half (1/2) of the net income derived from the uncontroverted properties. The PSA also provided that Josephine shall have special authority, among others, to provide for the medicine of her mother.

Both Annabelle Saldia and Jesus Tan then took their respective oaths of office and filed a motion to fix and approve bond which was approved by the trial court over petitioners' opposition.

Petitioners harp on the fact that the court a quo failed to require Dominalda to post a bond prior to the issuance of the order appointing a receiver, in violation of Section 2, Rule 59 of the Rules of court

Respondents insist that where there is sufficient cause to appoint a receiver, there is no need for an applicant's bond because under Sec. 2 of Rule 59, the very purpose of the bond is to answer for all damages that may be sustained by a party by reason of the appointment of a receiver in case the applicant shall have procured such appointment without sufficient cause.

### **ISSUE**:

Whether or not posting bond is required in receivership. (YES)

### HELD:

Sec. 2 of Rule 59 is very clear in that before issuing the order appointing a receiver the court shall require the applicant to file a bond executed to the party against whom the application is presented. The use of the word "shall" denotes its mandatory nature; thus, the consent of the other party, or as in this case, the consent of petitioners, is of no moment. Hence, the filing of an applicant's bond is required at all times. On the other hand, the requirement of a receiver's bond rests upon the discretion of the court. Sec. 2 of Rule 59 clearly states that the court may, in its discretion, at any time after the appointment, require an additional bond as further security for such damages.

# MA. CARMINIA C. CALDERON represented by her Attorney-In-Fact, Marycris V. Baldevia, Petitioner, vs.JOSE ANTONIO F. ROXAS and COURT OF APPEALS, Respondents.

G.R. No. 185595, FIRST DIVISION, January 9, 2013, Villarama, J.

Provisional remedies are writs and processes available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case. They are provisional because they constitute temporary measures availed of during the pendency of the action, and they are ancillary because they are mere incidents in and are dependent upon the result of the main action

### **FACTS:**

Petitioner Ma. Carminia C. Calderon and private respondent Jose Antonio F. Roxas, were married on December 4, 1985 and their union produced four children. On January 16, 1998, petitioner filed an

Amended Complaint3 for the declaration of nullity of their marriage on the ground of psychological incapacity under Art. 36 of the Family Code of the Philippines.

On May 19, 1998, the trial court issued an Order4 granting petitioner's application for support pendente lite.

On motion of petitioner's counsel, the trial court issued an Order dated October 11, 2002 directing private respondent to give support in the amount of P42,292.50 per month starting April 1, 1999 pursuant to the May 19, 1998 Order.7

On February 11, 2003, private respondent filed a Motion to Reduce Support citing, among other grounds, that the P42,292.50 monthly support for the children as fixed by the court was even higher than his then P20,800.00 monthly salary as city councilor.

### **ISSUE:**

Whether the March 7, 2005 and May 4, 2005 Orders on the matter of support pendente lite are interlocutory or final.

### RULING:

The Rules of Court provide for the provisional remedy of support pendente lite which may be availed of at the commencement of the proper action or proceeding, or at any time prior to the judgment or final order.16 On March 4, 2003, this Court promulgated the Rule on Provisional Orders17 which shall govern the issuance of provisional orders during the pendency of cases for the declaration of nullity of marriage, annulment of voidable marriage and legal separation. These include orders for spousal support, child support, child custody, visitation rights, hold departure, protection and administration of common property.

Petitioner contends that the CA failed to recognize that the interlocutory aspect of the assailed orders pertains only to private respondent's motion to reduce support which was granted, and to her own motion to increase support, which was denied. Petitioner points out that the ruling on support in arrears which have remained unpaid, as well as her prayer for reimbursement/payment under the May 19, 1998 Order and related orders were in the nature of final orders assailable by ordinary appeal considering that the orders referred to under Sections 1 and 4 of Rule 61 of the Rules of Court can apply only prospectively. Thus, from the moment the accrued amounts became due and demandable, the orders under which the amounts were made payable by private respondent have ceased to be provisional and have become final. We disagree.

The word interlocutory refers to something intervening between the commencement and the end of the suit which decides some point or matter but is not a final decision of the whole controversy.18 An interlocutory order merely resolves incidental matters and leaves something more to be done to resolve the merits of the case. In contrast, a judgment or order is considered final if the order disposes of the action or proceeding completely, or terminates a particular stage of the same action.19 Clearly, whether an order or resolution is final or interlocutory is not dependent on compliance or non-compliance by a party to its directive, as what petitioner suggests. It is also important to emphasize the temporary or provisional nature of the assailed orders.

Provisional remedies are writs and processes available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case. They are provisional because they constitute temporary measures availed of during the pendency of the action, and they are ancillary because they are mere incidents in and are dependent upon the result of the main action.20 The subject orders on the matter of support pendente lite are but an incident to the main action for declaration of nullity of marriage.

# ADVENT CAPITAL AND FINANCE CORPORATION, Petitioner, vs.ROLAND YOUNG, Respondent. G.R. No. 183018, August 3, 2011, SECOND DIVISION, Carpio, J.

Upon the dismissal of the replevin case for failure to prosecute, the writ of seizure, which is merely ancillary in nature, became functus officio and should have been lifted

### **FACTS:**

he present controversy stemmed from a replevin suit instituted by petitioner Advent Capital and Finance Corporation (Advent) against respondent Roland Young (Young) to recover the possession of a 1996 Mercedes Benz E230 with plate number UMN-168, which is registered in Advent's name.5 Prior to the replevin case, or on 16 July 2001, Advent filed for corporate rehabilitation with the Regional Trial Court of Makati City, Branch 142 (rehabilitation court).6

On 27 August 2001, the rehabilitation court issued an Order (stay order) which states that "the enforcement of all claims whether for money or otherwise, and whether such enforcement is by court action or otherwise, against the petitioner (Advent), its guarantors and sureties not solidarily liable with it, is stayed."7

On 5 November 2001, Young filed his Comment to the Petition for Rehabilitation, claiming, among others, several employee benefits allegedly due him as Advent's former president and chief executive officer.

On 6 November 2002, the rehabilitation court approved the rehabilitation plan submitted by Advent. Included in the inventory of Advent's assets was the subject car which remained in Young's possession at the time.

Young's obstinate refusal to return the subject car, after repeated demands, prompted Advent to file the replevin case on 8 July 2003. The complaint, docketed as Civil Case No. 03-776, was raffled to the Regional Trial Court of Makati City, Branch 147 (trial court).

After Advent's posting of ₱3,000,000 replevin bond, which was double the value of the subject car at the time, through Stronghold Insurance Company, Incorporated (Stronghold), the trial court issued a Writ of Seizure8 directing the Sheriff to seize the subject car from Young. Upon receipt of the Writ of Seizure, Young turned over the car to Advent,9 which delivered the same to the rehabilitation receiver.10

Thereafter, Young filed an Answer alleging that as a former employee of Advent, he had the option to purchase the subject car at book value pursuant to the company car plan and to offset the value of the car with the proceeds of his retirement pay and stock option plan. Young sought the (1)

execution of a deed of sale over the subject car; and (2) determination and payment of the net amount due him as retirement benefits under the stock option plan.

### **ISSUE:**

Whether the Court of Appeals committed reversible error in (1) directing the return of the seized car to Young; and (2) ordering the trial court to set a hearing for the determination of damages against the replevin bond.

### **RULING:**

The petition is partially meritorious. On returning the seized vehicle to Young

We agree with the Court of Appeals in directing the trial court to return the seized car to Young since this is the necessary consequence of the dismissal of the replevin case for failure to prosecute without prejudice. Upon the dismissal of the replevin case for failure to prosecute, the writ of seizure, which is merely ancillary in nature, became functus officio and should have been lifted. There was no adjudication on the merits, which means that there was no determination of the issue who has the better right to possess the subject car. Advent cannot therefore retain possession of the subject car considering that it was not adjudged as the prevailing party entitled to the remedy of replevin.

Contrary to Advent's view, Olympia International Inc. v. Court of Appeals16 applies to this case. The dismissal of the replevin case for failure to prosecute results in the restoration of the parties' status prior to litigation, as if no complaint was filed at all. To let the writ of seizure stand after the dismissal of the complaint would be adjudging Advent as the prevailing party, when precisely no decision on the merits had been rendered. Accordingly, the parties must be reverted to their status quo ante. Since Young possessed the subject car before the filing of the replevin case, the same must be returned to him, as if no complaint was filed at all.

# FAUSTINO REYES, ESPERIDION REYES, JULIETA C. RIVERA, and EUTIQUIO DICO, JR., petitioners, vs.

PETER B. ENRIQUEZ, for himself and Attorney-in-Fact of his daughter DEBORAH ANN C. ENRIQUEZ, and SPS. DIONISIO FERNANDEZ and CATALINA FERNANDEZ, respondents... G.R. No. 162956, FIRST DIVISION, April 10, 2008, Puno, C.J.

The determination of who are the legal heirs of the deceased couple must be made in the proper special proceedings in court, and not in an ordinary suit for reconveyance of property. This must take precedence over the action for reconveyance

### **FACTS:**

Petitioners claim to be the lawful heirs of Dionisia Reyes who co-owned the subject parcel of land located in Talisay, Cebu, with Anacleto Cabrera. On the other hand respondents, claim to be the heirs of Anacleto Cabrera, as husband and daughter of Anacleto's daughter.

On June 19, 1999, petitioners Peter and Deborah Ann Enriquez, sold 200 sq. m. out of the 1051 sq. m. for P200,000.00 to Spouses Dionisio and Catalina Fernandez (Spouses Fernandez), also their corespondents in this case. When Spouses Fernandez, tried to register their share in the subject land, they discovered that certain documents prevent them from doing so: (1) Affidavit by Anacleto Cabrera dated March 16, 1957 stating that his share in Lot No. 1851, the subject property, is approximately 369 sq. m.; (2) Affidavit by Dionisia Reyes dated July 13, 1929 stating that Anacleto only owned ¼ of Lot No. 1851, while 302.55 sq. m. belongs to Dionisia and the rest of the property is co-owned by Nicolasa Bacalso, Juan Reyes, Florentino Reyes and Maximiano Dico.

Alleging that the documents are fraudulent and fictitious, the respondents filed a complaint for annulment or nullification of the aforementioned documents and for damages. They likewise prayed for the "repartition and resubdivision" of the subject property.

The RTC dismissed the case, but upon appeal it was reversed, hence the petition.

#### ISSUE:

Whether or not the respondents have to institute a special proceeding to determine their status as heirs of Anacleto Cabrera before they can file an ordinary civil action to nullify the affidavits of Anacleto Cabrera and Dionisia Reyes.

### **RULING:**

Yes, the determination of who are the legal heirs of the deceased couple must be made in the proper special proceedings in court, and not in an ordinary suit for reconveyance of property. This must take precedence over the action for reconveyance. The respondents have yet to substantiate their claim as the legal heirs of Anacleto Cabrera who are, thus, entitled to the subject property.

The Rules of Court provide that only a real party in interest is allowed to prosecute and defend an action in court. A real party in interest is the one who stands to be benefited or injured by the judgment in the suit or the one entitled to the avails thereof. Such interest, to be considered a real interest, must be one which is present and substantial, as distinguished from a mere expectancy, or a future, contingent, subordinate or consequential interest.

# LEONARDO R. OCAMPO, Petitioners, v. LEONORA TIRONA, Respondents.

G.R. No.147812, FIRST DIVISION, April 6, 2005, Carpio, J.

Interpleader is proper when a lesse<mark>e does not know who to pay to</mark> the rentals due to conflicting claims in the subject property

### **FACTS:**

Respondent Tirona was a lessee of a land purchased by the petitioner. However, when the area was declared a priority development, respondent informed petitioner that she will suspend paying the rentals. The petitioner purchased the said land from the original owner. This prompted the petitioner to file an action for unlawful detainer and damages against the respondent.

The MTC held that Tirona had no reason to suspend the payment of rents as this made her occupation of the property illegal. Thus, the petitioner has the right to recover possession. The RTC concurred with this decision.

### ISSUE:

Whether or not an action for interpleader is proper in this case

### **RULING**:

Yes. Tirona should have filed an interpleader and need not wait for the actual filing of a suit by petitioner against her. The action is proper when a lessee does not know who to pay to the rentals due to conflicting claims in the subject property.

This remedy is afforded not to protect anyone against double liabilities but to protect him against double vexation with respect to one's liability.

When a court orders that claimants litigate among themselves there arises a new action. The pleading which initiates the action is referred to as the complaint of interpleader and not a cross-complaint.

# RIZAL COMMERCIAL BANKING CORPORATION, petitioner, vs. METRO CONTAINER CORPORATION, respondent.

G.R. No. 127913, FIRST DIVISION, September 13, 2001, KAPUNAN, J.:

An action of interpleader is afforded to protect a person not against double liability but against double vexation in respect of one liability. It requires, as an indispensable requisite, that conflicting claims upon the same subject matter are or may be made against the plaintiff-in-interpleader who claims no interest whatever in the subject matter or an interest which in whole or in part is not disputed by the claimants

### **FACTS:**

For failure of Ley Construction Corporation (LEYCON) to settle its loan obligations, Rizal Commercial Banking Corporation (RCBC) instituted an extrajudicial foreclosure proceeding against it. In a bidding, RCBC was adjudged the highest bidder, LEYCON promptly filed an action for Nullification of Extrajudicial Foreclosure Sale and Damages against RCBC. Meanwhile, RCBC consolidated its ownership over the property due to LEYCON's failure to redeem the mortgaged property within the 12-month redemption period. By virtue thereof, RCBC demanded rental payments from Metro Container Corporation (METROCAN) which was leasing the mortgaged property from LEYCON.

On the other hand, LEYCON filed an action for Unlawful Detainer against METROCAN before the MeTC. Consequently, METROCAN filed a complaint for Interpleader against LEYCON and RCBC before the RTC to compel them to interplead and litigate their several claims among themselves and to determine which among them shall rightfully receive the payment of monthly rentals on the subject property.

On 31 October 1995, judgment was rendered in the Unlawful Detainer case, which, among other things, ordered METROCAN to pay LEYCON whatever rentals due on the subject premises. The said decision became final and executory. By reason thereof, METROCAN and LEYCON separately filed a motion to dismiss the interpleader case. However, the said motions were dismissed for lack of merit. METROCAN appealed to the Court of Appeals which granted the petition and ordered the dismissal of the interpleader case. Hence, RCBC filed the instant petition.

### **ISSUE:**

May METROCAN unilaterally cause the dismissal of the interpleader case?

### **RULING:**

Yes. An action of interpleader is afforded to protect a person not against double liability but against double vexation in respect of one liability. It requires, as an indispensable requisite, that conflicting claims upon the same subject matter are or may be made against the plaintiff-in-interpleader who claims no interest whatever in the subject matter or an interest which in whole or in part is not disputed by the claimants.

When the decision in the Unlawful Detainer case became final and executory, METROCAN has no other alternative left but to pay the rentals to LEYCON. Precisely because there was already a judicial fiat to METROCAN, there was no more reason to continue with the interpleader case. Thus, METROCAN moved for the dismissal of the interpleader action not because it is no longer interested but because there is no more need for it to pursue such cause of action. The decision in the Unlawful Detainer case resolved the conflicting claims insofar as payment of rentals was concerned.

RCBC was correct in saying that it is not bound by the decision in the Unlawful Detainer case. It is not a party thereto. However, it could not compel METROCAN to pursue the interpleader case. RCBC has other avenues to prove its claim. It is not bereft of other legal remedies. In fact, the issue of ownership can very well be threshed out in the case for Nullification of Extrajudicial Foreclosure Sale and Damages filed by LEYCON against RCBC.

# WACK WACK GOLF & COUNTRY CLUB, INC., plaintiff-appellant, vs. LEE E. WON alias RAMON LEE and BIENVENIDO A. TAN, defendants-appellees.

G.R. No. L-23851, EN BANC, March 26, 1976, Castro, C.J.

It is the general rule that before a person will be deemed to be in a position to ask for an order of intrepleader, he must be prepared to show, among other prerequisites, that he has not become independently liable to any of the claimants. Indeed, if a stakeholder defends a suit filed by one of the adverse claimants and allows said suit to proceed to final judgment against him, he cannot later on have that part of the litigation repeated in an interpleader suit.

### **FACTS:**

Wack Wack Golf and Country Club filed a complaint for interpleader against Won and Tan who both claim ownership over membership fee certificate 201. Won claims its ownership stemming from a decision rendered in Civil Case 26044 entitled "Lee E. Won alias Ramon Lee vs. Wack Wack Golf & Country Club, Inc." Meanwhile, Tan claims ownership from the assignment made by the alleged true

owner of the same certificate. The trial court dismissed the complaint on the ground of res judicata by reason of the previous civil case that issued Won the right to the certificate. Hence, the appeal.

### **ISSUE:**

Was the remedy of interpleader proper and timely?

#### **RULING:**

There is no question that the subject matter of the present controversy, i.e., the membership fee certificate 201, is proper for an interpleader suit. However, the Corporation may not properly invoke the remedy of interpleader.

It is the general rule that before a person will be deemed to be in a position to ask for an order of intrepleader, he must be prepared to show, among other prerequisites, that he has not become independently liable to any of the claimants. Indeed, if a stakeholder defends a suit filed by one of the adverse claimants and allows said suit to proceed to final judgment against him, he cannot later on have that part of the litigation repeated in an interpleader suit.

In the case at hand, the Corporation allowed civil case 26044 to proceed to final judgment. It was aware of the conflicting claims of the appellees with respect to the membership fee certificate 201 long before it filed the present interpleader suit. Yet it did not interplead Tan. It preferred to proceed with the litigation and to defend itself therein. As a matter of fact, final judgment was rendered against it and said judgment has already been executed. It is therefore too late for it to invoke the remedy of interpleader

To now permit the Corporation to bring Won to court after the latter's successful establishment of his rights in civil case 26044 to the membership fee certificate 201, is to increase instead of to diminish the number of suits, which is one of the purposes of an action of interpleader, with the possibility that the latter would lose the benefits of the favorable judgment. This cannot be done because having elected to take its chances of success in said civil case 26044, with full knowledge of all the fact, the Corporation must submit to the consequences of defeat.

Besides, a successful litigant cannot later be impleaded by his defeated adversary in an interpleader suit and compelled to prove his claim anew against other adverse claimants, as that would in effect be a collateral attack upon the judgment.

In fine, the instant interpleader suit cannot prosper because the Corporation had already been made independently liable in civil case 26044 and, therefore, its present application for interpleader would in effect be a collateral attack upon the final judgment in the said civil case; the appellee Lee had already established his rights to membership fee certificate 201 in the aforesaid civil case and, therefore, this interpleader suit would compel him to establish his rights anew, and thereby increase instead of diminish litigations, which is one of the purposes of an interpleader suit, with the possibility that the benefits of the final judgment in the said civil case might eventually be taken away from him; and because the Corporation allowed itself to be sued to final judgment in the said case, its action of interpleader was filed inexcusably late, for which reason it is barred by laches or unreasonable delay.

SOLEDAD CHANLIONGCO RAMOS, FRANCISCO D. CHANLIONGCO, ADELBERTO D. CHANLIONGCO, ARMANDO D. CHANLIONGCO and FLORENCIO D. CHANLIONGCO, petitioners, vs.

TERESITA D. RAMOS, Spouses TERESITA and EDMUNDO S. MUYOT, Spouses VEDASTA and FLORENCIO M. DATO, LORETO MUYOT, Spouses TERESITA and ELMER SOLIS, LICERIA TORRES, Spouses CORAZON and VICENTE MACATUNGAL, Spouses PRECILLA and CRISOSTOMO MUYOT, and Spouses CARIDAD and SALVADOR PINGOL, respondents.

G.R. No. 144294, THIRD DIVISION, March 11, 2003, Panganiban, J.

It is well settled that a decision that has acquired finality becomes immutable and unalterable. A final judgment may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law;11 and whether it will be made by the court that rendered it or by the highest court in the land.12 The only exceptions to this rule are the correction of (1) clerical errors, (2) the so-called nunc pro tunc entries which cause no prejudice to any party, and (3) void judgments.

### **FACTS:**

Petitioners are children of the late Paulino V. Chanliongco Jr., who was the co-owner of a parcel of land known as Lot No. 2-G of Subdivision Plan SWO No. 7308. Situated in Tondo, Manila, it was co-owned by him, his sister Narcisa, and his brothers Mario and Antonio. By virtue of a Special Power of Attorney executed by the co-owners in favor of Narcisa, her daughter Adoracion C. Mendoza had sold the lot to herein respondents on different days in September 1986. Because of conflict among the heirs of the co-owners as to the validity of the sale, respondents filed with the Regional Trial Court (RTC)5 a Complaint6 for interpleader to resolve the various ownership claims.

The RTC upheld the sale insofar as the share of Narcisa was concerned. It ruled that Adoracion had no authority to sell the shares of the other co-owners, because the Special Power of Attorney had been executed in favor only of her mother, Narcisa.

On appeal, the CA modified the ruling of the RTC. It held that while there was no Special Power of Attorney in favor of Adoracion, the sale was nonetheless valid, because she had been authorized by her mother to be the latter's sub-agent. There was thus no need to execute another special power of attorney in her favor as sub-agent. This CA Decision was not appealed, became final and was entered in favor of respondents on August 8, 1996.7

On April 10, 1999, petitioners filed with the CA a Motion to Set Aside the Decision. They contended that they had not been served a copy of either the Complaint or the summons. Neither had they been impleaded as parties to the case in the RTC. As it was, they argued, the CA Decision should be set aside because it adversely affected their respective shares in the property without due process. In denying the Motion of petitioners, the CA cited the grounds raised in respondents' Opposition: (a) the Motion was not allowed as a remedy under the 1997 Rules of Civil Procedure; (b) the Decision sought to be set aside had long become final and executory; (c) the movants did not have any legal standing; and (d) the Motion was purely dilatory and without merit.

## **ISSUE:**

W]hether the Court of Appeals erred in denying petitioners' Motion and allowing its Decision dated September 25, 1995 to take its course, inspite of its knowledge that the lower court did not acquire

jurisdiction over the person of petitioners and passing petitioners property in favor of respondents, hence without due process of law.

### **RULING:**

It is well settled that a decision that has acquired finality becomes immutable and unalterable. A final judgment may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law;11 and whether it will be made by the court that rendered it or by the highest court in the land.12 The only exceptions to this rule are the correction of (1) clerical errors, (2) the so-called nunc pro tunc entries which cause no prejudice to any party, and (3) void judgments.13 To determine whether the CA Decision of September 28, 1995 is void, the failure to implead and to serve summons upon petitioners will now be addressed.

The Complaint filed by respondents with the RTC called for an interpleader to determine the ownership of the real property in question.17 Specifically, it forced persons claiming an interest in the land to settle the dispute among themselves as to which of them owned the property. Essentially, it sought to resolve the ownership of the land and was not directed against the personal liability of any particular person. It was therefore a real action, because it affected title to or possession of real property.18 As such, the Complaint was brought against the deceased registered co-owners: Narcisa, Mario, Paulino and Antonio Chanliongco, as represented by their respective estates.

Clearly, petitioners were not the registered owners of the land, but represented merely an inchoate interest thereto as heirs of Paulino. They had no standing in court with respect to actions over a property of the estate, because the latter was represented by an executor or administrator.19 Thus, there was no need to implead them as defendants in the case, inasmuch as the estates of the deceased co-owners had already been made parties.

# PROVINCE OF CAMARINES SUR, represented by Governor LUIS RAYMUND F. VILLAFUERTE, Ir., Petitioner,

vs.

# HONORABLE COURT OF APPEALS; and CITY OF NAGA, represented by Mayor JESSE M. ROBREDO, Respondents.

G.R. No. 175064, THIRD DIVISION, September 18, 2009, Chico-Nazario, J.

Declaratory relief is defined as an action by any person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute; and for a declaration of his rights and duties thereunder

### **FACTS:**

On 13 January 1997, the City of Naga filed a Complaint9 for Declaratory Relief and/or Quieting of Title against Camarines Sur before the Regional Trial Court (RTC) of the City of Naga, Branch 61, which was docketed as Civil Case No. 97-3691.

The City of Naga alleged that, for a considerable length of time, Camarines Sur possessed and claimed ownership of Plaza Rizal because of a tax declaration over the said property in the name of the province. As a result, Camarines Sur had long exercised administrative control and management

of Plaza Rizal, to the exclusion of the City of Naga. The City of Naga could not introduce improvements on Plaza Rizal, and its constituents could not use the property without securing a permit from the proper officials of Camarines Sur. The situation had created a conflict of interest between the parties herein and had generated animosities among their respective officials.

The City of Naga stressed that it did not intend to acquire ownership of Plaza Rizal. Being a property of the public domain, Plaza Rizal could not be claimed by any subdivision of the state, as it belonged to the public in general. Instead, the City of Naga sought a declaration that the administrative control and management of Plaza Rizal should be vested in it, given that the said property is situated within its territorial jurisdiction. The City of Naga invoked Section 2, Article I of Republic Act No. 305, the Charter of the City of Naga, which states:

SEC. 2. Territory of the City of Naga. — The city of Naga which is hereby created, shall comprise the present territorial jurisdiction of the municipality of Naga, in the Province of Camarines Sur. On 21 February 1997, Camarines Sur filed an Answer with Motion to Dismiss.10 It argued that it was the legal and absolute owner of Plaza Rizal and, therefore, had the sole right to maintain, manage, control, and supervise the said property. Camarines Sur asserted that the City of Naga was without any cause of action because the Complaint lacked any legal or factual basis. Allegedly, Section 2 of Republic Act No. 305 merely defined the territorial jurisdiction of the City of Naga and did not vest any color of right to the latter to manage and control any property owned by Camarines Sur. Furthermore, the remedy of Declaratory Relief was inappropriate because there was no justiciable controversy, given that the City of Naga did not intend to acquire ownership of Plaza Rizal; and Camarines Sur, being the owner of Plaza Rizal, had the right to the management, maintenance, control, and supervision thereof. There was likewise no actual or impending controversy, since Plaza Rizal had been under the control and supervision of Camarines Sur since time immemorial. The remedy of Quieting of Title was inappropriate, as the City of Naga had no legal or equitable title to or interest in Plaza Rizal that needed protection. Lastly, Camarines Sur stated that Plaza Rizal was not a property of public domain, but a property owned by Camarines Sur which was devoted to public use.

### **ISSUE:**

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT TREATED THE [PETITION FOR REVIEW UNDER RULE 45 FILED BY CAMARINES SUR] AS ONE FOR CERTIORARI UNDER RULE 65 THEREBY DENYING DUE COURSE AND DISMISSING THE PETITION AND EVEN THE MOTION FOR RECONSIDERATION ON THE GROUND THAT THE PETITION WAS AVAILED OF AS A SUBSTITUTE FOR THE LOST APPEAL AND FOR ABSENCE OF GRAVE ABUSE OF DISCRETION.

### **RULING:**

Declaratory relief is defined as an action by any person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute; and for a declaration of his rights and duties thereunder.31 The only issue that may be raised in such a petition is the question of construction or validity of provisions in an instrument or statute.32

The requisites of an action for declaratory relief are: (1) there must be a justiciable controversy between persons whose interests are adverse; (2) the party seeking the relief has a legal interest in the controversy; and (3) the issue is ripe for judicial determination.33

The Court rules that the City of Naga properly resorted to the filing of an action for declaratory relief.

In the instant case, the controversy concerns the construction of the provisions of Republic Act No. 305 or the Charter of the City of Naga. Specifically, the City of Naga seeks an interpretation of Section 2, Article I of its Charter, as well as a declaration of the rights of the parties to this case thereunder.

To recall, Section 2, Article I of Republic Act No. 305 defines the territory of the City of Naga, providing that the City shall comprise the present territorial jurisdiction of the Municipality of Naga. By virtue of this provision, the City of Naga prays that it be granted the right to administratively control and supervise Plaza Rizal, which is undisputedly within the territorial jurisdiction of the City.

Clearly, the interests of the City of Naga and Camarines Sur in this case are adverse. The assertion by the City of Naga of a superior right to the administrative control and management of Plaza Rizal, because said property of the public domain is within its territorial jurisdiction, is clearly antagonistic to and inconsistent with the insistence of Camarines Sur. The latter asserted in its Complaint for Declaratory Relief and/or Quieting of Title that it should maintain administrative control and management of Plaza Rizal having continuously possessed the same under a claim of ownership, even after the conversion of the Municipality of Naga into an independent component city. The City of Naga further asserted that as a result of the possession by Camarines Sur, the City of Naga could not introduce improvements on Plaza Rizal; its constituents were denied adequate use of said property, since Camarines Sur required that the latter's permission must first be sought for the use of the same; and it was still Camarines Sur that was able to continuously use Plaza Rizal for its own programs and projects. The City of Naga undoubtedly has a legal interest in the controversy, given that Plaza Rizal is undisputedly within its territorial jurisdiction. Lastly, the issue is ripe for judicial determination in that, in view of the conflicting interests of the parties to this case, litigation is inevitable, and there is no adequate relief available in any other form or proceeding

### **EUFEMIA ALMEDA and ROMEL ALMEDA, petitioners,**

VS.

## BATHALA MARKETING INDUSTRIES, INC., respondent.

G.R. No. 150806, THIRD DIVISION, January 28, 2008, Nachura, J.

Declaratory relief is defined as an action by any person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute, and for a declaration of his rights and duties thereunder.

### **FACTS:**

Respondent Bathala Marketing Industries, Inc., as lessee, represented by its president Ramon H. Garcia, renewed its Contract of Lease4 with Ponciano L. Almeda (Ponciano), as lessor, husband of

petitioner Eufemia and father of petitioner Romel Almeda. Under the said contract, Ponciano agreed to lease a portion of the Almeda Compound, located at 2208 Pasong Tamo Street, Makati City, consisting of 7,348.25 square meters, for a monthly rental of P1,107,348.69, for a term of four (4) years from May 1, 1997 unless sooner terminated as provided in the contract.

During the effectivity of the contract, Ponciano died. Thereafter, respondent dealt with petitioners. In a letter7 dated December 29, 1997, petitioners advised respondent that the former shall assess and collect Value Added Tax (VAT) on its monthly rentals. In response, respondent contended that VAT may not be imposed as the rentals fixed in the contract of lease were supposed to include the VAT therein, considering that their contract was executed on May 1, 1997 when the VAT law had long been in effect.8

On January 26, 1998, respondent received another letter from petitioners informing the former that its monthly rental should be increased by 73% pursuant to condition No. 7 of the contract and Article 1250 of the Civil Code. Respondent opposed petitioners' demand and insisted that there was no extraordinary inflation to warrant the application of Article 1250 in light of the pronouncement of this Court in various cases.9

Respondent refused to pay the VAT and adjusted rentals as demanded by petitioners but continued to pay the stipulated amount set forth in their contract.

On February 18, 1998, respondent instituted an action for declaratory relief for purposes of determining the correct interpretation of condition Nos. 6 and 7 of the lease contract to prevent damage and prejudice.10 The case was docketed as Civil Case No. 98-411 before the RTC of Makati.

On March 10, 1998, petitioners in turn filed an action for ejectment, rescission and damages against respondent for failure of the latter to vacate the premises after the demand made by the former.11 Before respondent could file an answer, petitioners filed a Notice of Dismissal.12 They subsequently refiled the complaint before the Metropolitan Trial Court of Makati; the case was raffled to Branch 139 and was docketed as Civil Case No. 53596.

Petitioners later moved for the dismissal of the declaratory relief case for being an improper remedy considering that respondent was already in breach of the obligation and that the case would not end the litigation and settle the rights of the parties. The trial court, however, was not persuaded, and consequently, denied the motion.

### **ISSUE:**

Whether or not declaratory relief is proper since plaintiff was in breach when petition for declaratory relief was filed before the trial court

### **RULING:**

Declaratory relief is defined as an action by any person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute, and for a declaration of his rights and duties thereunder. The only issue that may be raised in such a petition is the question of construction or validity of provisions in an instrument or statute. Corollary is the

general rule that such an action must be justified, as no other adequate relief or remedy is available under the circumstances. 15

Decisional law enumerates the requisites of an action for declaratory relief, as follows: 1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; 2) the terms of said documents and the validity thereof are doubtful and require judicial construction; 3) there must have been no breach of the documents in question; 4) there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; 5) the issue must be ripe for judicial determination; and 6) adequate relief is not available through other means or other forms of action or proceeding.16

It is beyond cavil that the foregoing requisites are present in the instant case, except that petitioners insist that respondent was already in breach of the contract when the petition was filed. We do not agree.

After petitioners demanded payment of adjusted rentals and in the months that followed, respondent complied with the terms and conditions set forth in their contract of lease by paying the rentals stipulated therein. Respondent religiously fulfilled its obligations to petitioners even during the pendency of the present suit. There is no showing that respondent committed an act constituting a breach of the subject contract of lease. Thus, respondent is not barred from instituting before the trial court the petition for declaratory relief.

Petitioners claim that the instant petition is not proper because a separate action for rescission, ejectment and damages had been commenced before another court; thus, the construction of the subject contractual provisions should be ventilated in the same forum.

We are not convinced.

It is true that in Panganiban v. Pilipinas Shell Petroleum Corporation17 we held that the petition for declaratory relief should be dismissed in view of the pendency of a separate action for unlawful detainer. However, we cannot apply the same ruling to the instant case. In Panganiban, the unlawful detainer case had already been resolved by the trial court before the dismissal of the declaratory relief case; and it was petitioner in that case who insisted that the action for declaratory relief be preferred over the action for unlawful detainer. Conversely, in the case at bench, the trial court had not yet resolved the rescission/ejectment case during the pendency of the declaratory relief petition. In fact, the trial court, where the rescission case was on appeal, itself initiated the suspension of the proceedings pending the resolution of the action for declaratory relief.

We are not unmindful of the doctrine enunciated in Teodoro, Jr. v. Mirasol18 where the declaratory relief action was dismissed because the issue therein could be threshed out in the unlawful detainer suit. Yet, again, in that case, there was already a breach of contract at the time of the filing of the declaratory relief petition. This dissimilar factual milieu proscribes the Court from applying Teodoro to the instant case.

Given all these attendant circumstances, the Court is disposed to entertain the instant declaratory relief action instead of dismissing it, notwithstanding the pendency of the ejectment/rescission case before the trial court. The resolution of the present petition would write finis to the parties' dispute, as it would settle once and for all the question of the proper interpretation of the two contractual stipulations subject of this controversy.

Bernadette S. Bilag, Erlinda Bilag Santillan, Dixon Bilag, Reynaldo B. Suello Heirs of Lourdes S. Bilag, Heirs of Leticia Bilag-Hanaoka, and heirs of Nellie Bilag vs. Estela Ay-Ay, Andres Acop Jr., Felicitas Ap-Ap, Sergio Ap-Ap, John Napoleon A. Ramirez Jr., and Ma. Teresa A. Ramirez

G.R. No. 189950, EN BANC, April 24, 2017, J. TIJAM

When a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action, as any act it performs without jurisdiction is null and void, and without any binding legal effects

### Facts:

The instant case stemmed from a complaint for quieting of title with prayer for preliminary injunction filed by respondents against the petitioners before the RTC Br. 61. Essentially, respondents alleged that petitioner's predecessors-in-interest sold to them separately various portions of a 159, 496 square meter parcel of land designated by the Bureau of Lands situated at Sitio Benin, Baguio City, and they registered the corresponding Deeds of sale with the Register of Deeds of Baguio City.

Respondents further alleged that they have been in continuous possession of the said lands since 1976 when they were delivered to them and that they have already introduced various improvements thereon. Petitioners refused to honor the forgoing sales and continued to harass and threatened to demolish their improvements. Petitioners filed a motion to dismiss on the grounds of lack of jurisdiction, prescription/laches/estoppel, and res judicata. The RTC ruled in favour of petitioner, ordered the dismissal of civil case No. 5881-R and dismissing the earlier filed civil case No. 3934-R where respondents similarly sought to be declared the owners of the subject property. Respondents appealed to the CA, the CA then set aside the dismissal of the civil case and remanded the case to the court a quo for trial. The CA concluded that while these cases may involve the same properties, the nature of the action differs; hence, res judicata is not a bar to the present suit. The CA pointed out that in view of respondent's allegation that they have been in possession of the subject property since 1976, their action to quiet title is imprescriptible.

### Issue:

Whether or not the CA gravely erred in setting aside the dismissal of the Civil Case No. 5881-R on the ground of lack of jurisdiction on the part of the RTC?

### **RULING:**

Yes. On the issue of jurisdiction, a review of the records shows that the subject property form part of a 159,496 square meter parcel of land designated by Bureau of Lands situated at Sitio Benin, Baguio City. Such parcel of land forms part of the Baguio Town site Reservation, a portion of which was awarded to Iloc Bilag. RTC Br. 61 has no jurisdiction over Civil Case No. 5881-R as the plaintiffs therein seek to quiet title over lands which belong to the public domain. It should be stressed that the court a qou's lack of subject matter jurisdiction over the case renders it without authority and necessarily obviates the resolution of the merits of the case. To reiterate, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action, as any act it performs without jurisdiction is null and void, and without any binding legal effects.

## ALLIED BROADCASTING CENTER, INC., petitioner, -versus-REPUBLIC OF THE PHILIPPINES, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS and NATIONAL TELECOMMUNICATIONS COMMISSION, respondents.

G.R. No. 91500, EN BANC, October 18, 1990, GANCAYCO, J.

Action for declaratory relief should be brought before the Regional Trial Court and not before the Supreme Court. A petition for declaratory relief is not among the petitions within the original jurisdiction of the Supreme Court even if only questions of law are involved.

### **FACTS:**

Republic Act No. 3001 was passed granting petitioner the permit or franchise to construct, maintain and operate radio broadcasting stations in the Philippines. Petitioner was able to construct, maintain and operate ten (10) radio broadcasting stations all over the country. Through said broadcasting stations, petitioner was able to provide adequate public service which enabled the government to reach the population on important public issues, and assist the government in programs relating to public information and education. Its radio stations have never been used for the broadcasting of obscene or indecent language or speech, or for the dissemination of misleading information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversion or treasonable acts.

Under Section 10 of Republic Act No. 3001, petitioner's franchise or permit "shall be subject to amendment, alteration or repeal by the Congress of the Philippines when the public interest so requires . ..."

On November 11, 1974, Presidential Decree No. 576-A entitled "Decree Regulating The Ownership And Operation Of Radio And Television Stations And For Other Purposes" was issued and duly published in the December 2, 1974 supplemental issue of the Official Gazette.

Pursuant to Section 6 of the said Decree, all franchises, grants, licenses, permits, certificates, or other forms of authority to operate radio or television broadcasting systems/stations, including the franchise or permit of petitioner under Republic Act No. 3001, have been deemed terminated or revoked effective December 31, 1981.

Thus, petitioner is left with only 3 radio stations located in Iloilo City, Bacolod City and Roxas City.

Petitioner alleged that said Decree has caused it great and irreparable damage, because — (a) it divested petitioner of its franchise without due process of law and forced it to divest itself of some of its radio stations; (b) it deprived petitioner of its right to further construct, maintain and operate radio broadcasting stations in other cities or municipalities of the country;2 (c) it deprived petitioner of its right to avail of loan facilities or renew its existing loan availments from any bank or financial institution in order to expand and continue the operation of its radio broadcasting business; and (d) petitioner suffered loss of income.

### **ISSUE:**

Whether declaratory relief is within the jurisdiction of the Courts.

### **RULING:**

The petition seeks a declaration of the unconstitutionality and/or nullity of Presidential Decree No. 576-A. As such, it must be treated as one seeking declaratory relief under Rule 64 of the Rules of Court. Such an action should be brought before the Regional Trial Court and not before the Supreme Court. A petition for declaratory relief is not among the petitions within the original jurisdiction of the Supreme Court even if only questions of law are involved. 4

Thus, the present petition should be dismissed on this score.

Moreover, there is no actual case or controversy involving the law sought to be annulled. Petitioner does not allege that it has filed an application for a license to operate a radio or television station in excess of the authorized number and that the same is being denied or refused on the basis of the restrictions under Presidential Decree No. 576-A. Petitioner does not also allege that it had been penalized or is being penalized for a violation under said Decree. There is, likewise, no allegation that any of the petitioner's stations had been confiscated or shut down pursuant to Presidential Decree No. 576-A. Obviously, the constitutional challenge is not being raised in the context of a specific case or controversy wherein the petitioner has asserted his rights. All that petitioner seeks is the nullification of Presidential Decree No. 576-A and the reinstatement of its rights under Republic Act No. 3001.

VIVENCIO V. JUMAMIL, Petitioners, -versus- JOSE J. CAFE, GLICERIO L. ALERIA, RUDY G. ADLAON, DAMASCENO AGUIRRE, RAMON PARING, MARIO ARGUELLES, ROLANDO STA. ANA, NELLIE UGDANG, PEDRO ATUEL, RUBY BONSOBRE, RUTH FORNILLOS, DANIEL GATCHALIAN, RUBEN GUTIERREZ, JULIET GATCHALIAN, ZENAIDA POBLETE, ARTHUR LOUDY, LILIAN LU, ISABEL MEJIA, EDUARDO ARGUELLES, LAO SUI KIEN, SAMUEL CONSOLACION, DR. ARTURO MONTERO, DRA. LILIOSA MONTERO, PEDRO LACIA, CIRILA LACIA, EVELYN SANGALANG, DAVID CASTILLO, ARSENIO SARMIENTO, ELIZABETH SY, METODIO NAVASCA, HELEN VIRTUDAZO, IRENE LIMBAGA, SYLVIA BUSTAMANTE, JUANA DACALUS, NELLIE RICAMORA, JUDITH ESPINOSA, PAZ KUDERA, EVELYN PANES, AGATON BULICATIN, PRESCILLA GARCIA, ROSALIA OLITAO, LUZVIMINDA AVILA, GLORIA OLAIR, LORITA MENCIAS, RENATO ARIETA, EDITHA ACUZAR, LEONARDA VILLACAMPA, ELIAS JARDINICO, BOBINO NAMUAG, FELIMON NAMUAG, EDGAR CABUNOC, HELEN ARGUELLES, HELEN ANG, FELECIDAD PRIETO, LUISITO GRECIA, LILIBETH PARING, RUBEN CAMACHO, ROSALINDA LALUNA, LUZ YAP, ROGELIO LAPUT, ROSEMARIE WEE, TACOTCHE RANAIN, AVELINO DELOS G.R. No. 144570, THIRD DIVISION, September 21, 2005, CORONA, J.

Legal standing or locus standi is a party's personal and substantial interest in a case such that he has sustained or will sustain direct injury as a result of the governmental act being challenged. It calls for more than just a generalized grievance. The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.

### Facts:

In 1989, Vivencio V. Jumamil filed before the Regional Trial Court (RTC) of Panabo, Davao del Norte a petition for declaratory relief with prayer for preliminary injunction and writ of restraining order against Mayor Jose J. Cafe and the members of the Sangguniang Bayan of Panabo, Davao del Norte. He questioned the constitutionality of Municipal Resolution 7, Series of 1989 (Resolution 7). Resolution 7, enacting Appropriation Ordinance 111, provided for an initial appropriation of

P765,000 for the construction of stalls around a proposed terminal fronting the Panabo Public Market which was destroyed by fire. Subsequently, the petition was amended due to the passage of Resolution 49, series of 1989 (Resolution 49), denominated as Ordinance 10, appropriating a further amount of P1,515,000 for the construction of additional stalls in the same public market. Prior to the passage of these resolutions, Mayor Cafe had already entered into contracts with those who advanced and deposited (with the municipal treasurer) from their personal funds the sum of P40,000 each. Some of the parties were close friends and/or relatives of Cafe, et al. The construction of the stalls which Jumamil sought to stop through the preliminary injunction in the RTC was nevertheless finished, rendering the prayer therefor moot and academic. The leases of the stalls were then awarded by public raffle which, however, was limited to those who had deposited P40,000 each. Thus, the petition was amended anew to include the 57 awardees of the stalls as private respondents. Jumamil alleges that Resolution Nos. 7 and 49 were unconstitutional because they were passed for the business, occupation, enjoyment and benefit of private respondents, some of which were close friends and/or relative of the mayor and the sanggunian, who deposited the amount of P40,000.00 for each stall, and with whom also the mayor had a prior contract to award the would be constructed stalls to all private respondents; that resolutions and ordinances did not provide for any notice of publication that the special privilege and unwarranted benefits conferred on the private respondents may be availed of by anybody who can deposit the amount of P40,000; and that nor there were any prior notice or publication pertaining to contracts entered into by public and private respondents for the construction of stalls to be awarded to private respondents that the same can be availed of by anybody willing to deposit P40,000.00. The Regional Trial Court dismissed Jumamil's petition for declaratory relief with prayer for preliminary injunction and writ of restraining order, and ordered Jumamil to pay attorney's fees in the amount of P1,000 to each of the 57 private respondents. On appeal, and on 24 July 2000 (CA GR CV 35082), the Court of Appeals affirmed the decision of the trial court. Jumamil filed the petition for review on certiorari.

### **ISSUE:**

Whether Jumamil had the legal standing to bring the petition for declaratory relief.

### **RULING:**

Legal standing or locus standi is a party's personal and substantial interest in a case such that he has sustained or will sustain direct injury as a result of the governmental act being challenged. It calls for more than just a generalized grievance. The term "interest" means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. Unless a person's constitutional rights are adversely affected by the statute or ordinance, he has no legal standing. Jumamil brought the petition in his capacity as taxpayer of the Municipality of Panabo, Davao del Norte and not in his personal capacity. He was questioning the official acts of the the mayor and the members of the Sanggunian in passing the ordinances and entering into the lease contracts with private respondents. A taxpayer need not be a party to the contract to challenge its validity. Parties suing as taxpayers must specifically prove sufficient interest in preventing the illegal expenditure of money raised by taxation. The expenditure of public funds by an officer of the State for the purpose of executing an unconstitutional act constitutes a misapplication of such funds. The resolutions being assailed were appropriations ordinances. Jumamil alleged that these ordinances were "passed for the business, occupation, enjoyment and benefit of private respondents" (that is, allegedly for the private benefit of respondents) because even before they were passed, Mayor Cafe and private respondents had

already entered into lease contracts for the construction and award of the market stalls. Private respondents admitted they deposited P40,000 each with the municipal treasurer, which amounts were made available to the municipality during the construction of the stalls. The deposits, however, were needed to ensure the speedy completion of the stalls after the public market was gutted by a series of fires. Thus, the award of the stalls was necessarily limited only to those who advanced their personal funds for their construction. Jumamil did not seasonably allege his interest in preventing the illegal expenditure of public funds or the specific injury to him as a result of the enforcement of the questioned resolutions and contracts. It was only in the "Remark to Comment" he filed in the Supreme Court did he first assert that "he (was) willing to engage in business and (was) interested to occupy a market stall." Such claim was obviously an afterthought.

BAYAN TELECOMMUNICATIONS INC. (Formerly International Communications Corporation), Petitioner, -versus- REPUBLIC OF THE PHILIPPINES and NATIONAL TELECOMMUNICATIONS COMMISSION, Respondents.

G.R. No. 161140, SECOND DIVISION, January 31, 2007, Quisumbing, J.

For such an action for declaratory relief before a trial court to prosper, it must be shown that (a) there is a justiciable controversy, (b) the controversy is between persons whose interests are adverse, (c) the party seeking the relief has a legal interest in the controversy, and (d) the issue invoked is ripe for judicial determination

### **FACTS:**

The case stemmed from the petition for declaratory relief filed before the RTC of Pasig City, by petitioner Bayan Telecommunications Inc., against respondents Republic of the Philippines and National Telecommunications Commission (NTC). Petitioner specifically sought the suspension of the requirement, under Section 21 of Republic Act No. 7925,4 of a public offering of 30% of the aggregate common stocks of telecommunication entities with regulated types of services within five years from the effectivity of the Act or the entity's first start of commercial operations, whichever comes later. Petitioner claimed that it was impossible for it to make a bona fide public offering at that time because its financial condition, the Philippine economy, and the stock market were not conducive for a successful public offering. It also claimed that impossibility of performance was an implied exception to the abovecited provision of Rep. Act No. 7925.

The Solicitor General moved for the dismissal of the petition for failure to state a cause of action. The Solicitor General maintained that the provisions of Section 215 of Rep. Act No. 7925 are clear and free of any ambiguity, and that petitioner failed to exhaust administrative remedies as it did not first ask for an exemption from the application of said provision.

### **ISSUE:**

Whether there is an ambiguity in the cited provision of Section 21, Rep. Act No. 7925 which justifies an action for declaratory relief.

### **RULING:**

For such an action for declaratory relief before a trial court to prosper, it must be shown that (a) there is a justiciable controversy, (b) the controversy is between persons whose interests are adverse, (c) the party seeking the relief has a legal interest in the controversy, and (d) the issue

invoked is ripe for judicial determination.10 Respondents contest the presence of the first and last requisites insofar as petitioner's case is concerned.

A justiciable controversy is a definite and concrete dispute touching on the legal relations of parties having adverse legal interests, which may be resolved by a court of law through the application of a law.11 In the case at bar, petitioner fears the risk of possible sanctions. However, a mere apprehension of an administrative sanction does not give rise to a justiciable controversy.12 Rep. Act No. 7925 does not provide for a penalty for noncompliance with Section 21, and as correctly pointed out by the Solicitor General, there are yet no implementing rules or guidelines to carry into effect the requirement imposed by the said provision. Whatever sanctions petitioner fears are merely hypothetical.

Considering that the requirements of an action for declaratory relief have not been met, the trial court properly dismissed the case for lack of cause of action.

# RENATO V. DIAZ and AURORA MA. F. TIMBOL, Petitioners, -versus-THE SECRETARY OF FINANCE and THE COMMISSIONER OF INTERNAL REVENUE, Respondents.

G.R. No. 193007, EN BANC, July 19, 2011, Abad, J.

There are precedents for treating a petition for declaratory relief as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good.8 The Court has also held that a petition for prohibition is a proper remedy to prohibit or nullify acts of executive officials that amount to usurpation of legislative authority

### **FACTS:**

Petitioners Renato V. Diaz and Aurora Ma. F. Timbol (petitioners) filed this petition for declaratory relief1 assailing the validity of the impending imposition of value-added tax (VAT) by the Bureau of Internal Revenue (BIR) on the collections of tollway operators.

Petitioners claim that, since the VAT would result in increased toll fees, they have an interest as regular users of tollways in stopping the BIR action. Additionally, Diaz claims that he sponsored the approval of Republic Act 7716 (the 1994 Expanded VAT Law or EVAT Law) and Republic Act 8424 (the 1997 National Internal Revenue Code or the NIRC) at the House of Representatives. Timbol, on the other hand, claims that she served as Assistant Secretary of the Department of Trade and Industry and consultant of the Toll Regulatory Board (TRB) in the past administration.

Petitioners allege that the BIR attempted during the administration of President Gloria Macapagal-Arroyo to impose VAT on toll fees. The imposition was deferred, however, in view of the consistent opposition of Diaz and other sectors to such move. But, upon President Benigno C. Aquino III's assumption of office in 2010, the BIR revived the idea and would impose the challenged tax on toll fees beginning August 16, 2010 unless judicially enjoined.

Petitioners hold the view that Congress did not, when it enacted the NIRC, intend to include toll fees within the meaning of "sale of services" that are subject to VAT; that a toll fee is a "user's tax," not a sale of services; that to impose VAT on toll fees would amount to a tax on public service; and that, since VAT was never factored into the formula for computing toll fees, its imposition would violate the non-impairment clause of the constitution.

On August 13, 2010 the Court issued a temporary restraining order (TRO), enjoining the implementation of the VAT. The Court required the government, represented by respondents Cesar V. Purisima, Secretary of the Department of Finance, and Kim S. Jacinto-Henares, Commissioner of Internal Revenue, to comment on the petition within 10 days from notice.2 Later, the Court issued another resolution treating the petition as one for prohibition

### **ISSUE:**

Whether or not the Court may treat the petition for declaratory relief as one for prohibition

### **RULING:**

The Court issued a resolution, treating the petition as one for prohibition rather than one for declaratory relief, the characterization that petitioners Diaz and Timbol gave their action. The government has sought reconsideration of the Court's resolution,7 however, arguing that petitioners' allegations clearly made out a case for declaratory relief, an action over which the Court has no original jurisdiction. The government adds, moreover, that the petition does not meet the requirements of Rule 65 for actions for prohibition since the BIR did not exercise judicial, quasijudicial, or ministerial functions when it sought to impose VAT on toll fees. Besides, petitioners Diaz and Timbol has a plain, speedy, and adequate remedy in the ordinary course of law against the BIR action in the form of an appeal to the Secretary of Finance.

But there are precedents for treating a petition for declaratory relief as one for prohibition if the case has far-reaching implications and raises questions that need to be resolved for the public good.8 The Court has also held that a petition for prohibition is a proper remedy to prohibit or nullify acts of executive officials that amount to usurpation of legislative authority.9

Here, the imposition of VAT on toll fees has far-reaching implications. Its imposition would impact, not only on the more than half a million motorists who use the tollways everyday, but more so on the government's effort to raise revenue for funding various projects and for reducing budgetary deficits.

To dismiss the petition and resolve the issues later, after the challenged VAT has been imposed, could cause more mischief both to the tax-paying public and the government. A belated declaration of nullity of the BIR action would make any attempt to refund to the motorists what they paid an administrative nightmare with no solution. Consequently, it is not only the right, but the duty of the Court to take cognizance of and resolve the issues that the petition raises.

Although the petition does not strictly comply with the requirements of Rule 65, the Court has ample power to waive such technical requirements when the legal questions to be resolved are of great importance to the public. The same may be said of the requirement of locus standi which is a mere procedural requisite.

KAREN E. SALVACION, minor, thru Federico N. Salvacion, Jr., father and Natural Guardian, and Spouses FEDERICO N. SALVACION, JR., and EVELINA E. SALVACION, Petitioners, -versus-CENTRAL BANK OF THE PHILIPPINES, CHINA BANKING CORPORATION and GREG BARTELLI y NORTHCOTT, respondents.

G.R. No. 94723, EN BANC, August 21, 1997, Torres, J.

This Court has no original and exclusive jurisdiction over a petition for declaratory relief.2 However, exceptions to this rule have been recognized. Thus, where the petition has far-reaching implications and raises questions that should be resolved, it may be treated as one for mandamus

### **FACTS:**

Greg Bartelli, an American tourist, was arrested for committing four counts of rape and serious illegal detention against Karen Salvacion. Police recovered from him several dollar checks and a dollar account in the China Banking Corp. He was, however, able to escape from prison. In a civil case filed against him, the trial court awarded Salvacion moral, exemplary and attorney's fees amounting to almost P1,000,000.00.

Salvacion tried to execute the judgment on the dollar deposit of Bartelli with the China Banking Corp. but the latter refused arguing that Section 11 of Central Bank Circular No. 960 exempts foreign currency deposits from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever. Salvacion therefore filed this action for declaratory relief in the Supreme Court

### **ISSUE:**

May this Court entertain the instant petition despite the fact that original jurisdiction in petitions for declaratory relief rests with the lower court

### **RULING:**

Petitioner deserves to receive the damages awarded to her by the court. But this petition for declaratory relief can only be entertained and treated as a petition for mandamus to require respondents to honor and comply with the writ of execution in Civil Case No. 89-3214.

This Court has no original and exclusive jurisdiction over a petition for declaratory relief. However, exceptions to this rule have been recognized. Thus, where the petition has far-reaching implications and raises questions that should be resolved, it may be treated as one for mandamus.

# DIONISIO MANANQUIL, LAUDENCIA MANANQUIL-VILLAMOR, ESTANISLAO MANANQUIL, and DIANITA MANANQUIL-RABINO, represented by OTILLO RABINO, *Petitioners*, -versus-ROBERTO MOICO, *Respondent*.\*\*

G.R. No. 180076, SECOND DIVISION, November 21, 2012, DEL CASTILLO, J.

In order that an action for quieting of title may proper, it is essential that the plaintiff must have legal or equitable title to, or interest in, the property which is the subject-matter of the action. Legal title denotes registered ownership, while equitable title means beneficial ownership. In the absence of such legal or equitable title, or interest, there is no cloud to be prevented or removed.

It appears that the petitioners have failed to show their qualifications or right to succeed Iluminardo in his rights under the NHA program/project. They failed to present any title, award, grant, document

or certification from the NHA or proper government agency which would show that Iluminardo and Prescilla have become the registered owners/beneficiaries/ awardees of Lots 18 and 19, or that petitioners are qualified successors or beneficiaries under the Dagat-Dagatan program/project, taking over Iluminardo's rights after his death. They did not call to the witness stand competent witnesses from the NHA who can attest to their rights as successors to or beneficiaries of Lots 18 and 19. They failed to present proof, at the very least, of the specific law, provisions, or terms that govern the Tondo Dagat-Dagatan Foreshore Development Project which would indicate a modicum of interest on their part. For this reason, their rights or interest in the property could not be established.

### **FACTS:**

Lots 18 and 19 in Dagat-Dagatan, Navotas form part of the land previously expropriated by the National Housing Authority (NHA) and placed under its Tondo Dagat-Dagatan Foreshore Development Project – where occupants, applicants or beneficiaries may purchase lots on installment basis. In October 1984, Lot 18 was awarded to spouses Iluminardo and Prescilla Mananquil under a Conditional Contract to Sell. Lot 19, on the other hand, was sold to Prescilla in February 1980 by its occupant.

In 1991, Iluminardo and Prescilla died without issue, but it turned out that Prescilla had a child by a previous marriage – namely Eulogio Francisco Maypa (Eulogio). After the spouses' death, Iluminardo's supposed heirs (Mananquil heirs) – his brothers and sisters and herein petitioners Dionisio and Estanislao Mananquil (Estanislao), Laudencia Mananquil-Villamor (Laudencia), and Dianita Mananquil-Rabino (Dianita) – executed an Extrajudicial Settlement Among Heirs and adjudicated ownership over Lots 18 and 19 in favor of Dianita. They took possession of Lots 18 and 19 and leased them out to third parties.

Sometime later, the Mananquil heirs discovered that in 1997, Eulogio and two others, Eulogio Baltazar Maypa and Brenda Luminugue, on the claim that they are surviving heirs of Iluminardo and Prescilla, had executed an Extrajudicial Settlement of Estate with Waiver of Rights and Sale, and a Deed of Absolute Sale in favor of Roberto Moico (Moico).

In May 1997, Moico began evicting the Mananquils' tenants and demolishing the structures they built on Lots 18 and 19. In June, the Mananquils instituted Civil Case No. 2741-MN for quieting of title and injunctive relief.

The trial court issued a temporary restraining order, thus suspending eviction and demolition. After trial on the merits, a Decision was rendered in favor of the Mananquils.

Moico appealed to the CA, which reversed the trial court.

### **ISSUE:**

Whether or not the Court of Appeals committed a grievous error in construing the provisions of articles 476 and 477 of the Civil Code against petitioners notwithstanding the positive circumstances obtaining in this case pointing to the propriety of the cause of action for quieting of title. (NO)

### **RULING:**

An action for quieting of title is essentially a common law remedy grounded on equity. The competent court is tasked to determine the respective rights of the complainant and other claimants, not only to place things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best. But "for an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its prima facie appearance of validity or legal efficacy."

Contrary to petitioners' stand, the issue relating to the grant of rights, title or award by the NHA determines whether the case for quieting of title may be maintained. If the petitioners are legitimate successors to or beneficiaries of Iluminardo upon his death – under the certificate of title, award, or grant, or under the special law or specific terms of the NHA program/project – then they possess the requisite interest to maintain suit; if not, then Civil Case No. 2741-MN must necessarily be dismissed.

From the evidence adduced below, it appears that the petitioners have failed to show their qualifications or right to succeed Iluminardo in his rights under the NHA program/project. They failed to present any title, award, grant, document or certification from the NHA or proper government agency which would show that Iluminardo and Prescilla have become the registered owners/beneficiaries/ awardees of Lots 18 and 19, or that petitioners are qualified successors or beneficiaries under the Dagat-Dagatan program/project, taking over Iluminardo's rights after his death. They did not call to the witness stand competent witnesses from the NHA who can attest to their rights as successors to or beneficiaries of Lots 18 and 19. They failed to present proof, at the very least, of the specific law, provisions, or terms that govern the Tondo Dagat-Dagatan Foreshore Development Project which would indicate a modicum of interest on their part. For this reason, their rights or interest in the property could not be established.

# SPOUSES EROSTO SANTIAGO and NELSIE SANTIAGO, *Petitioners*, -versus- MANCER VILLAMOR, CARLOS VILLAMOR, JOHN VILLAMOR and DOMINGO VILLAMOR, JR., *Respondents*. G.R. No. 168499, SECOND DIVISION, November 26, 2012, BRION, *J.*

Quieting of title is a common law remedy for the removal of any cloud, doubt or uncertainty affecting title to real property. The plaintiffs must show not only that there is a cloud or contrary interest over the subject real property, but that they have a valid title to it. Worth stressing, in civil cases, the plaintiff must establish his cause of action by preponderance of evidence; otherwise, his suit will not prosper.

The petitioners anchor their claim over the disputed land on the July 21, 1994 notarized deed of sale executed in their favor by the spouses Villamor, Sr. who in turn obtained a July 19, 1994 notarized deed of sale from the San Jacinto Bank.

After considering the parties evidence and arguments, we agree with the CA that the petitioners failed to prove that they have any legal or equitable title over the disputed land.

the execution of a public instrument gives rise only to a prima facie presumption of delivery, which is negated by the failure of the vendee to take actual possession of the land sold. "A person who does not have actual possession of the thing sold cannot transfer constructive possession by the execution and delivery of a public instrument."

In this case, no constructive delivery of the land transpired upon the execution of the deed of sale since it was not the spouses Villamor, Sr. but the respondents who had actual possession of the land. The presumption of constructive delivery is inapplicable and must yield to the reality that the petitioners were not placed in possession and control of the land.

#### **FACTS:**

In January 1982, the spouses Domingo Villamor, Sr. and Trinidad Gutierrez Villamor (spouses Villamor, Sr.), the parents of Mancer Villamor, Carlos Villamor and Domingo Villamor, Jr. (respondents) and the grandparents of respondent John Villamor, mortgaged their 4.5-hectare coconut land in Sta. Rosa, San Jacinto, Masbate, known as Lot No. 1814, to the Rural Bank of San Jacinto (Masbate), Inc. (San Jacinto Bank) as security for a P10,000.00 loan.

For non-payment of the loan, the San Jacinto Bank extrajudicially foreclosed the mortgage, and, as the highest bidder at the public auction, bought the land. When the spouses Villamor, Sr. failed to redeem the property within the prescribed period, the San Jacinto Bank obtained a final deed of sale in its favor sometime in 1991. The San Jacinto Bank then offered the land for sale to any interested buyer.

Since the respondents had been in possession and cultivation of the land, they decided, together with their sister Catalina Villamor Ranchez, to acquire the land from the San Jacinto Bank. The San Jacinto Bank agreed with the respondents and Catalina to a P65,000.00 sale, payable in installments. The respondents and Catalina made four (4) installment payments of P28,000.00, P5,500.00, P7,000.00 and P24,500.00 on November 4, 1991, November 23, 1992, April 26, 1993 and June 8, 1994, respectively.

When the San Jacinto Bank refused to issue a deed of conveyance in their favor despite full payment, the respondents and Catalina filed a complaint against the San Jacinto Bank (docketed as Civil Case No. 200) with the RTC on October 11, 1994. The complaint was for specific performance with damages.

In a February 10, 2004 decision, the RTC dismissed the specific performance case. It found that the San Jacinto Bank acted in good faith when it executed a deed of "repurchase" in the spouses Villamor, Sr.s names since Domingo, Sr., along with the respondents and Catalina, was the one who transacted with the San Jacinto Bank to redeem the land.

The CA, on appeal, set aside the RTCs decision. The CA found that the respondents and Catalina made the installment payments on their own behalf and not as representatives of the spouses Villamor, Sr. The San Jacinto Bank mistakenly referred to the transaction as a "repurchase" when the redemption period had already lapsed and the title had been transferred to its name; the transaction of the respondents and Catalina was altogether alien to the spouses Villamor, Sr.s loan with mortgage. Thus, it ordered the San Jacinto Bank to execute the necessary deed of sale in favor of the respondents and Catalina, and to pay P30,000.00 as attorneys fees. No appeal appears to have been taken from this decision.

On July 19, 1994 (or prior to the filing of the respondents and Catalinas complaint for specific performance, as narrated above), the San Jacinto Bank issued a deed of sale in favor of Domingo, Sr. On July 21, 1994, the spouses Villamor, Sr. sold the land to the petitioners for P150,000.00.

After the respondents and Catalina refused the petitioners demand to vacate the land, the petitioners filed on October 20, 1994 a complaint for quieting of title and recovery of possession against the respondents. This is the case that is now before us.

In its May 28, 1997 decision, <sup>16</sup>Ï, rνll the RTC declared the petitioners as the legal and absolute owners of the land, finding that the petitioners were purchasers in good faith; the spouses Villamor, Sr.s execution of the July 21, 1994 notarized deed of sale in favor of the petitioners resulted in the constructive delivery of the land. Thus, it ordered the respondents to vacate and to transfer possession of the land to the petitioners, and to pay P10,000.00 as moral damages.

On appeal, the CA, in its August 10, 2004 decision, found that the petitioners action to quiet title could not prosper because the petitioners failed to prove their legal or equitable title to the land. It noted that there was no real transfer of ownership since neither the spouses Villamor, Sr. nor the petitioners were placed in actual possession and control of the land after the execution of the deeds of sale. It also found that the petitioners failed to show that the respondents and Catalinas title or claim to the land was invalid or inoperative, noting the pendency of the specific performance case, at that time on appeal with the CA. Thus, it set aside the RTC decision and ordered the dismissal of the complaint, without prejudice to the outcome of the specific performance case.

#### **ISSUE:**

Whether the CA committed a reversible error when it set aside the RTC decision and dismissed the petitioners complaint for quieting of title and recovery of possession. (NO)

#### **RULING:**

Quieting of title is a common law remedy for the removal of any cloud, doubt or uncertainty affecting title to real property. The plaintiffs must show not only that there is a cloud or contrary interest over the subject real property, but that they have a valid title to it. Worth stressing, in civil cases, the plaintiff must establish his cause of action by preponderance of evidence; otherwise, his suit will not prosper.

The petitioners anchor their claim over the disputed land on the July 21, 1994 notarized deed of sale executed in their favor by the spouses Villamor, Sr. who in turn obtained a July 19, 1994 notarized deed of sale from the San Jacinto Bank. On the other hand, the respondents and respondent John claim title by virtue of their installment payments to the San Jacinto Bank from November 4, 1991 to June 8, 1994 and their actual possession of the disputed land.

After considering the parties evidence and arguments, we agree with the CA that the petitioners failed to prove that they have any legal or equitable title over the disputed land.

Execution of the deed of sale only a prima facie presumption of delivery.

Article 1477 of the Civil Code recognizes that the "ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof." Related to this article is Article 1497 which provides that "the thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee."

With respect to incorporeal property, Article 1498 of the Civil Code lays down the general rule: the execution of a public instrument "shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred." However, the execution of a public instrument gives rise only to a prima facie presumption of delivery, which is negated by the failure of the vendee to take actual possession of the land sold. "A person who does not have actual possession of the thing sold cannot transfer constructive possession by the execution and delivery of a public instrument."

In this case, no constructive delivery of the land transpired upon the execution of the deed of sale since it was not the spouses Villamor, Sr. but the respondents who had actual possession of the land. The presumption of constructive delivery is inapplicable and must yield to the reality that the petitioners were not placed in possession and control of the land.

PHIL-VILLE DEVELOPMENT AND HOUSING CORPORATION, *Petitioner*, -versus- MAXIMO BONIFACIO, CEFERINO R. BONIFACIO, APOLONIO B. TAN, BENITA B. CAINA, CRISPINA B. PASCUAL, ROSALIA B. DE GRACIA, TERESITA S. DORONIA, CHRISTINA GOCO AND ARSENIO C. BONIFACIO, in their capacity as the surviving heirs of the late ELEUTERIA RIVERA VDA. DE BONIFACIO, *Respondents*.

G.R. No. 167391, THIRD DIVISION, June 8, 2011, VILLARAMA, JR., J.

The second requisite in an action for quieting of title requires that the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its prima facie appearance of validity or legal efficacy. Article 476 of the <u>Civil Code</u> provides:

Art. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

Thus, the cloud on title consists of: (1) any instrument, record, claim, encumbrance or proceeding; (2) which is apparently valid or effective; (3) but is in truth and in fact invalid, ineffective, voidable, or unenforceable; and (4) may be prejudicial to the title sought to be quieted. The fourth element is not present in the case at bar.

While it is true that TCT No. C-314537 in the name of Eleuteria Rivera is an instrument that appeared to be valid but was subsequently shown to be invalid, it does not cover the same parcels of land that are described in petitioner's titles.

#### **FACTS:**

Phil-Ville Development and Housing Corporation is the registered owner of three parcels of land designated as Lots 1-G-1, 1-G-2 and 1-G-3 of the subdivision plan Psd-1-13-006209, located in Caloocan City, having a total area of 8,694 square meters and covered by Transfer Certificates of Title (TCT) Nos. 270921, 270922 and 270923. Prior to their subdivision, the lots were collectively designated as Lot 1-G of the subdivision plan Psd-2731 registered in the name of Phil-Ville under TCT No. T-148220. Said parcels of land form part of Lot 23-A of the Maysilo Estate originally covered by Original Certificate of Title (OCT) No. 994 registered on May 3, 1917 in the name of Isabel Gil de Sola as the judicial administratrix of the estate of Gonzalo Tuason and thirty-one (31) others. Phil-Ville acquired the lots by purchase from N. Dela Merced and Sons, Inc. on July 24, 1984.

Earlier, on September 27, 1961, a group composed of Eleuteria Rivera, et. al., claiming to be the heirs of Maria de la Concepcion Vidal, a co-owner to the extent of 1-189/1000% of the properties covered by OCT Nos. 982, 983, 984, 985 and 994 of the Hacienda Maysilo, filed a petition with the Court of First Instance (CFI) of Rizal in Land Registration Case No. 4557. They prayed for the substitution of their names on OCT No. 994 in place of Maria de la Concepcion Vidal. Said petition was granted by the CFI in an Order dated May 25, 1962.

Afterwards, the alleged heirs of Maria de la Concepcion Vidal filed a petition for the partition of the properties covered by OCT Nos. 982, 983, 984, 985 and 994. The case was docketed as Civil Case No. C-424 in the CFI of Rizal, Branch 12, Caloocan City. On December 29, 1965, the CFI granted the petition and appointed three commissioners to determine the most equitable division of the properties. Said commissioners, however, failed to submit a recommendation.

Thirty-one (31) years later, on May 22, 1996, Eleuteria Rivera filed a Supplemental Motion in Civil Case No. C-424, for the partition and segregation of portions of the properties covered by OCT No. 994. The Regional Trial Court (RTC), Branch 120, of Caloocan City, through Judge Jaime D. Discaya, to whom the case was transferred, granted said motion. In an Order dated September 9, 1996, Judge Discaya directed the segregation of portions of Lots 23, 28-A-1 and 28-A-2 and ordered the Register of Deeds of Caloocan City to issue to Eleuteria Rivera new certificates of title over them. Three days later, the Register of Deeds of Caloocan, Yolanda O. Alfonso, issued to Eleuteria Rivera TCT No. C-314537 covering a portion of Lot 23 with an area of 14,391.54 square meters. On December 12, 1996, the trial court issued another Order directing the acting Branch Clerk to issue a Certificate of Finality of the Order dated September 9, 1996.

Thereafter, one Rosauro R. Aquino filed a petition for certiorari contesting said Order of December 12, 1996 and impugning the partial partition and adjudication to Eleuteria Rivera of Lots 23, 28-A-1 and 28-A-2 of the Maysilo Estate. The case was docketed as CA-G.R. SP No. 43034 at the Court of Appeals.

Meanwhile, a writ of possession was issued in Eleuteria Rivera's favor on December 26, 1996 upon the Order of Judge Discaya issued on the same date. Accordingly, Sheriff Cesar L. Cruz served a Notice to Vacate dated January 2, 1997 upon Phil-Ville, requiring it to vacate Lots 23-A and 28. Bonifacio Shopping Center, Inc., which occupied Lot 28-A-2, was also served a copy of the notice. Aggrieved, Bonifacio Shopping Center, Inc. filed a petition for certiorari and prohibition, docketed as CA-G.R. SP No. 43009, before the Court of Appeals. In a Decision dated February 19, 1997, the appellate court set aside and declared as void the Order and Writ of Possession dated December 26, 1996 and the Notice to Vacate dated January 2, 1997. The appellate court explained that a party who has not been impleaded in a case cannot be bound by a writ of possession issued in connection therewith.

Subsequently, on February 22, 1997, Eleuteria Rivera Vda. de Bonifacio died at the age of 96.

On April 29, 1997, the Court of Appeals rendered a Decision in CA-G.R. SP No. 43034 granting Rosauro R. Aquino's petition and setting aside the RTC's Order of September 9, 1996, which granted Eleuteria Rivera's prayer for partition and adjudicated in her favor portions of Lots 23, 28-A-1 and 28-A-2 of the Maysilo Estate. The appellate court likewise set aside the Order and the Writ of Possession dated December 26, 1996.

Nonetheless, on June 5, 1997, petitioner filed a complaint for quieting of title and damages against the surviving heirs of Eleuteria Rivera Vda. de Bonifacio (namely Maximo R. Bonifacio, Ceferino R. Bonifacio, Apolonia B. Tan, Benita B. Caina, Crispina B. Pascual, Rosalia B. de Gracia, Teresita S. Doronia, Christina B. Goco, Arsenio C. Bonifacio, Carmen B. Bernardino and Danilo C. Bonifacio) and the Register of Deeds of Caloocan City. The case was docketed as Civil Case No. C-507 in the RTC of Caloocan City, Branch 122.

In a Decision dated March 24, 2000, the Caloocan RTC ordered the quieting of Phil-Ville's titles over Lots 1-G-1, 1-G-2 and 1-G-3, declaring as valid TCT Nos. 270921, 270922 and 270923 in Phil-Ville's name.

On January 31, 2005, the Court of Appeals promulgated its assailed Decision in CA-G.R. SP No. 62211, setting aside the RTC judgment and dismissing Phil-Ville's complaint. The appellate court held that the RTC had no jurisdiction to hear Phil-Ville's complaint as it effectively seeks to annul the Order dated May 25, 1962 of the CFI in LRC No. 4557, which directed the substitution of the late Eleuteria Rivera and her co-heirs in place of Maria de la Concepcion Vidal as registered owners on OCT No. 994. The appellate court likewise affirmed the validity of OCT No. 994 registered on April 19, 1917 citing the Supreme Court Decisions in *Metropolitan Waterworks and Sewerage Systems v. Court of Appeals* and *Heirs of Luis J. Gonzaga v. Court of Appeals* as precedents.

Phil-Ville sought reconsideration of the decision, but the Court of Appeals denied its motion in the assailed Resolution dated March 15, 2005. Hence, this petition.

#### **ISSUE:**

Whether TCT No. C-314537 in the name of Eleuteria Rivera constitutes a cloud over petitioner's titles over portions of Lot 23-A of the Maysilo Estate. (NO)

#### **RULING:**

Ultimately, petitioner submits that a cloud exists over its titles because TCT No. C-314537 in the name of Eleuteria Rivera purports to cover the same parcels of land covered by petitioner's TCT Nos. 270921, 270922 and 270923. It points out that what appears to be a valid and effective TCT No. C-314537 is, in truth, invalid because it covers Lot 23 which is not among those described in the OCT No. 994 on file with the Register of Deeds of Rizal and registered on May 3, 1917. Petitioner notes that the OCT No. 994 allegedly registered on April 19, 1917 and from which TCT No. C-314537 was derived, is not found in the records of the Register of Deeds. In other words, the action seeks the removal of a cloud from Phil-Ville's title and/or the confirmation of its ownership over the disputed properties as the successor-in-interest of N. Dela Merced and Sons, Inc.

Quieting of title is a common law remedy for the removal of any cloud upon, doubt, or uncertainty affecting title to real property. Whenever there is a cloud on title to real property or any interest in real property by reason of any instrument, record, claim, encumbrance, or proceeding that is apparently valid or effective, but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title. In such action, the competent court is tasked to determine the respective rights of the complainant and the other claimants, not only to place things in their proper places, and make the claimant, who has no rights to said immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce any desired improvements, as well as use, and even abuse the property.

In order that an action for quieting of title may prosper, two requisites must concur: (1) the plaintiff or complainant has a legal or equitable title or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.

As regards the first requisite, we find that petitioner was able to establish its title over the real properties subject of this action. Petitioner submitted in evidence the Deed of Absolute Sale by which it acquired the subject property from N. Dela Merced and Sons, Inc., as well as copies of OCT No. 994 dated May 3, 1917 and all the derivative titles leading to the issuance of TCT Nos. 270921, 270922 and 270923 in petitioner's name.

Petitioner likewise presented the *Proyecto de particion de la Hacienda de Maysilo* to prove that Lot 23-A, of which petitioner's Lots 1-G-1, 1-G-2 and 1-G-3 form part, is among the 34 lots covered by OCT No. 994 registered on May 3, 1917. It produced tax receipts accompanied by a Certification dated September 15, 1997 issued by the City Treasurer of Caloocan stating that Phil-Ville has been religiously paying realty taxes on the lots. Its documentary evidence also includes a Plan prepared by the Chief of the Geodetic Surveys Division showing that Lot 23-A of the Maysilo Estate is remotely situated from Lot 23 portion of the Maysilo Estate. Petitioner ties these pieces of evidence to the finding in the DOJ Committee Report dated August 28, 1997 and Senate Committee Report No. 1031 dated May 25, 1998 that, indeed, there is only one OCT No. 994, that is, the one registered on May 3, 1917.

Be that as it may, the second requisite in an action for quieting of title requires that the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. Article 476 of the Civil Code provides:

Art. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

Thus, the cloud on title consists of: (1) any instrument, record, claim, encumbrance or proceeding; (2) which is apparently valid or effective; (3) but is in truth and in fact invalid, ineffective, voidable, or unenforceable; and (4) may be prejudicial to the title sought to be quieted. The fourth element is not present in the case at bar.

While it is true that TCT No. C-314537 in the name of Eleuteria Rivera is an instrument that appeared to be valid but was subsequently shown to be invalid, it does not cover the same parcels of land that are described in petitioner's titles. Foremost, Rivera's title embraces a land measuring 14,391.54 square meters while petitioner's lands has an aggregate area of only 8,694 square meters. On the one hand, it may be argued that petitioner's land could be subsumed within Rivera's 14,391.54-square meter property. Yet, a comparison of the technical descriptions of the parties' titles negates an overlapping of their boundaries.

Such disparity in location is more vividly illustrated in the Plan prepared by Engr. Privadi J.G. Dalire, Chief of the Geodetic Surveys Division, showing the relative positions of Lots 23 and 23-A. As it appears on the Plan, the land covered by respondents' TCT No. C-314537 lies far west of petitioner's lands under TCT Nos. 270921, 270922 and 270923. Strictly speaking, therefore, the existence of TCT No. C-314537 is not prejudicial to petitioner's titles insofar as it pertains to a different land.

Significantly, an action to quiet title is characterized as a proceeding *quasi in rem*. In an action *quasi in rem*, an individual is named a defendant and the purpose of the proceeding is to subject his interests 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 judgment therein is binding only upon the parties who joined in the action.

Yet, petitioner was well aware that the lots encompassed by its titles are not the same as that covered by respondents' title.

This brings petitioner's action within the purview of Rule 63 of the <u>Rules of Court</u> on Declaratory Relief.

In the present case, petitioner filed a complaint for quieting of title after it was served a notice to vacate but before it could be dispossessed of the subject properties. Notably, the Court of Appeals, in CA-G.R. SP No. 43034, had earlier set aside the Order which granted partial partition in favor of Eleuteria Rivera and the Writ of Possession issued pursuant thereto. And although petitioner's complaint is captioned as Quieting of Title and Damages, all that petitioner prayed for, is for the court to uphold the validity of its titles as against that of respondents'. This is consistent with the nature of the relief in an action for declaratory relief where the judgment in the case can be carried into effect without requiring the parties to pay damages or to perform any act.

Thus, while petitioner was not able to demonstrate that respondents' TCT No. C-314537 in the name of Eleuteria Rivera constitutes a cloud over its title, it has nevertheless successfully established its ownership over the subject properties and the validity of its titles which entitles it to declaratory relief.

TOMATIC ARATUC, SERGIO TOCAO, CISCOLARIO DIAZ, FRED TAMULA, MANGONTAWAR GURO and BONIFACIO LEGASPI, *Petitioners*, -versus- The COMMISSION ON ELECTIONS, REGIONAL BOARD OF CANVASSERS for Region XII (Central Mindanao), ABDULLAH DIMAPORO, JESUS AMPARO, ANACLETO BADOY, et al., *Respondents*.

G.R. No. L-49705-09, EN BANC, February 8, 1979, BARREDO, J.

## LINANG MANDANGAN, *Petitioner*, -versus- THE COMMISSION ON ELECTIONS, THE REGIONAL BOARD OF CANVASSERS for Region XII, and ERNESTO ROLDAN, *Respondents*.

Nos. L-49717-21, EN BANC, February 8,1979, BARREDO, J.

While under the Constitution of 1935, "the decisions, orders and rulings of the Commission shall be subject to review by the Supreme Court" (Sec. 2, first paragraph, Article X) and pursuant to the Rules of Court, the petition for "certiorari or review" shall be on the ground that the Commission "has decided a question of substance not theretofore determined by the Supreme Court, or has decided it in a way not in accord with law or the applicable decisions of the Supreme Court" (Sec. 3. Rule 43), and such provisions refer not only to election contests but even to pre-proclamation proceedings, the 1973 Constitution provides somewhat differently thus: "Any decision, order or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from his receipt of a copy thereof" (Section 11, Article XII c), even as it ordains that the Commission shall "be the sole judge of all contests relating to the elections, returns and qualifications of all members of the National Assembly and elective provincial and city official" (Section 2(2).)

We hold, therefore that under the existing constitution and statutory provisions, the certiorari jurisdiction of the Court over orders, and decisions of the Comelec is not as broad as it used to be and should be confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process.

#### **FACTS:**

Petition in G. R. Nos. L-49705-09 for certiorari with restraining order and preliminary injunction filed by six (6) independent candidates for representatives to tile Interim Batasang Pambansa who had joined together under the banner of the Kunsensiya ng Bayan which, however, was not registered as a political party or group under the 1976 Election Code, P.D. No. 1296, namely Tomatic Aratuc, Sorgio Tocao, Ciscolario Diaz, Fred Tamula, Mangontawar Guro and Bonifacio Legaspi her referred to as petitioners, to review the decision of the respondent Commission on Election (Comelec) resolving their appeal from the Of the respondent Regional Board of Canvasses for Region XII regarding the canvass of the results of the election in said region for representatives to the I.B.P. held on April 7, 1978. Similar petition in G.R. Nos. L49717-21, for certiorari with restraining order and preliminary injunction filed by Linang Mandangan, abo a candidate for representative in the same election in that region, to review the decision of the Comelec declaring respondent Ernesto Roldan as entitled to be proclaimed as one of the eight winners in said election.

The instant proceedings are sequels of Our decision in G.R. No. L- 48097, wherein Tomatic Aratuc et al. sought the suspension of the canvass then being undertaken by respondent dent Board in Cotabato city and in which canvass, the returns in 1966 out of a total of 4,107 voting centers in the whole region had already been canvassed showing partial results.

A supervening panel headed by Commissioner of Elections, Hon- Venancio S. Duque, had conducted of the complaints of the petitioners therein of alleged irregularities in the election records in all the

voting centers. Before the start of the hearings, the canvass was suspended but after the supervisory panel presented its report, on May 15, 1978, the Comelec lifted its order of suspension and directed the resumption of the canvass to be done in Manila. This order was the one assailed in this Court. We issued a restraining order.

After hearing the parties, the Court allowed the resumption of the canvass but issued guidelines to be observed thereat.

On June 1, 1978, upon proper motion, said guidelines were modified.

Thus respondent Board proceeded with the canvass, with the herein petitioners presenting objections, most of them supported by the report of handwriting and finger print experts who had examined the voting records and lists of voters in 878 voting centers, out of 2,700 which they specified in their complaints or petitions in Election Cases 78-8, 78-9, 78-10, 78-11 and 7812 in the Comelec. In regard to 501 voting centers, the records of which, consisting of the voters lists and voting records were not available- and could not be brought to Manila, petitions asked that the results therein be completely excluded from the canvass. On July 11, 1978, respondent Board terminated its canvass and declared the result of the voting.

Without loss of time, the petitioners brought the resolution of respondent Board to the Comelec. Hearing was held on April 25, 1978, after which, the case was declared submitted for decision. However, on August 30,1978, the Comelec issued a resolution stating *inter alia* that:

In order to enable the Commission to decide the appeal properly:

a. It will have to go deeper into the examination of the voting records and registration records and in the case of voting centers whose voting and registration records which have not yet been submitted for the Commission to decide to open the ballot boxes; and

b. To interview and get statements under oath of impartial and disinterested persons from the area to determine whether actual voting took place on April 7, 1978, as well as those of the military authorities in the areas affects (Page 12). Record, L-49705-09.)

On December 11, 1978, the Comelec required the parties "to file their respective written comments on the reports they shall periodically receive from the NBI-Comelec team of finger-print and signature experts within the inextendible period of seven (7) days from their receipt thereof". According to counsel for Aratuc, et al., "Petitioners submitted their various comments on the report 4, the principal gist of which was that it would appear uniformly in all the reports submitted by the Comelec-NBI experts that the registered voters were not the ones who voted as shown by the fact that the thumbprints appearing in Form 1 were different from the thumbprints of the voters in Form 5. " But the Comelec denied a motion of petitioners asking that the ballot boxes corresponding to the voting centers the record of which are not available be opened and that a date be set when the statements of witnesses referred to in the August 30, 1978 resolution would be taken, on the ground that in its opinion, it was no longer necessary to proceed with such opening of ballot boxes and taking of statements.

On January 13, 1979, the Comelec rendered its resolution being assailed in these cases, declaring the final result of the canvass.

#### **ISSUE:**

Whether or not the Supreme Court can review decisions of the Comelec involving grave abuse of discretion amounting to patent and substantial denial of due process. (YES)

#### **RULING:**

It is necessary to clarify first the nature and extent of the Supreme Court's power of review in the premises. The Aratuc petition is expressly predicated on the ground that respondent Comelec "committed grave abuse of discretion, amounting to lack of jurisdiction" in eight specifications. On the other hand, the Mandangan petition raises pure questions of law and jurisdiction. In other words, both petitions invoked the Court's certiorari jurisdiction, not its appellate authority of review.

This is as it should be. While under the Constitution of 1935, "the decisions, orders and rulings of the Commission shall be subject to review by the Supreme Court" (Sec. 2, first paragraph, Article X) and pursuant to the Rules of Court, the petition for "certiorari or review" shall be on the ground that the Commission "has decided a question of substance not theretofore determined by the Supreme Court, or has decided it in a way not in accord with law or the applicable decisions of the Supreme Court" (Sec. 3. Rule 43), and such provisions refer not only to election contests but even to pre-proclamation proceedings, the 1973 Constitution provides somewhat differently thus: "Any decision, order or ruling of the Commission *may be brought* to the Supreme Court on certiorari by the aggrieved party within thirty days from his receipt of a copy thereof" (Section 11, Article XII c), even as it ordains that the Commission shall "be the sole judge of all contests relating to the elections, returns and qualifications of all members of the National Assembly and elective provincial and city official" (Section 2(2).)

Correspondingly, the ElectionCode of 1978, which is the first legislative construction of the pertinent constitutional provisions, makes the Commission also the "sole judge of all preproclamation controversies" and further provides that "any of its decisions, orders or rulings (in such contoversies) shall be final and executory", just as in election contests, "the decision of the Commission shall be final, and executory and inappealable." (Section 193)

It is at once evident from these constitutional and statutory modifications that there is a definite tendency to enhance and invigorate the role of the Commission on Elections as the independent constitutinal body charged with the safeguarding of free, peaceful and honest elections. The framers of the new Constitution must be presumed of have definite knowledge of what it means to make the decisions, orders and rulings of the Commission "subject to review by the Supreme Court". And since instead of maintaining that provision intact, it ordained that the Commission's actuations be instead "brought to the Supreme Court on certiorari", We cannot insist that there was no intent to change the nature of the remedy, considering that the limited scope of certiorari, compared to a review, is well known in remedial law.

Withal, as already stated, the legislative construction of the modified peritinent constitutional provision is to the effect that the actuations of the Commission are final, executory and even inappealable. While such construction does not exclude the general certiorari jurisdiction of the Supreme Court which inheres in it as the final guardian of the Constitution, particularly, of its imperious due process mandate, it correspondingly narrows down the scope and extent of the inquiry the Court is supposed to undertake to what is strictly the office of certiorari as

distinguished from review. We are of the considered opinion that the statutory modifications are consistent with the apparent new constitional intent. Indeed, it is obvious that to say that actuations of the Commission may be brought to the Supreme Court on certiorari technically connotes something less than saying that the same "shall be subject to review by the Supreme Court", when it comes to the measure of the Court's reviewing authority or prerogative in the premises.

A review includes digging into the merits and unearthing errors of judgment, while certiorari deals exclusively with grave abuse of discretion, which may not exist even when the decision is otherwise erroneous. certiorari implies an indifferent disregard of the law, arbitrariness and caprice, an omission to weight pertinent considerations, a decision arrived at without rational deliberation. While the effects of an error of judgment may not differ from that of an indiscretion, as a matter of policy, there are matters taht by their nature ought to be left for final determination to the sound discretion of certain officers or entities, reserving it to the Supreme Court to insure the faithful observance of due process only in cases of patent arbitrariness.

Such, to Our mind, is the constitutional scheme relative to the Commission on Elections. Conceived by the charter as the effective instrument to preserve the sanctity of popular suffrage, endowed with independence and all the needed concommittant powers, it is but proper that the Court should accord the greatest measure of presumption of regularity to its course of action and choice of means in performing its duties, to the end that it may achieve its designed place in the democratic fabric of our government. Ideally, its members should be free from all suspicions of partisan inclinations, but the fact that actually some of them have had stints in the arena of politics should not, unless the contrary is shown, serve as basis for denying to its actuations the respect and consideration that the Constitution contemplates should be accorded to it, in the same manner that the Supreme Court itself which from time to time may have members drawn from the political ranks or even from military is at all times deemed insulated from every degree or form of external pressure and influence as well as improper internal motivations that could arise from such background or orientation.

We hold, therefore that under the existing constitution and statutory provisions, the certiorari jurisdiction of the Court over orders, and decisions of the Comelec is not as broad as it used to be and should be confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process.

# LUIS K. LOKIN, JR., as the second nominee of CITIZENS BATTLE AGAINST CORRUPTION (CIBAC), Petitioner, -versus- COMMISSION ON ELECTIONS and the HOUSE OF REPRESENTATIVES, Respondents.

G.R. Nos. 179431-32, EN BANC, June 22, 2010, BERSAMIN, J.

# LUIS K. LOKIN, JR., *Petitioner*, -versus- COMMISSION ON ELECTIONS (COMELEC), EMMANUEL JOEL J. VILLANUEVA, CINCHONA C. GONZALES and ARMI JANE R. BORJE, *Respondents*.

G.R. No. 180443, EN BANC, June 22, 2010, BERSAMIN, J.

Lokin has correctly brought this special civil action for certiorari against the COMELEC to seek the review of the September 14, 2007 resolution of the COMELEC in accordance with Section 7 of Article IX-A of the 1987 Constitution, notwithstanding the oath and assumption of office by Cruz-Gonzales. The constitutional mandate is now implemented by Rule 64 of the 1997 Rules of Civil Procedure, which provides for the review of the judgments, final orders or resolutions of the COMELEC and the

Commission on Audit. As Rule 64 states, the mode of review is by a petition for certiorari in accordance with Rule 65 to be filed in the Supreme Court within a limited period of 30 days. Undoubtedly, the Court has original and exclusive jurisdiction over Lokin's petitions for certiorari and for mandamus against the COMELEC.

#### **FACTS:**

The Citizens' Battle Against Corruption (CIBAC) was one of the organized groups duly registered under the party-list system of representation that manifested their intent to participate in the May 14, 2007 synchronized national and local elections. Together with its manifestation of intent to participate, CIBAC, through its president, Emmanuel Joel J. Villanueva, submitted a list of five nominees from which its representatives would be chosen should CIBAC obtain the required number of qualifying votes. The nominees, in the order that their names appeared in the certificate of nomination dated March 29, 2007, were: (1) Emmanuel Joel J. Villanueva; (2) herein petitioner Luis K. Lokin, Jr.; (3) Cinchona C. Cruz-Gonzales; (4) Sherwin Tugna; and (5) Emil L. Galang. The nominees' certificates of acceptance were attached to the certificate of nomination filed by CIBAC. The list of nominees was later published in two newspapers of general circulation, The Philippine Star News (sic) and The Philippine Daily Inquirer.

Prior to the elections, however, CIBAC, still through Villanueva, filed a certificate of nomination, substitution and amendment of the list of nominees dated May 7, 2007, whereby it withdrew the nominations of Lokin, Tugna and Galang and substituted Armi Jane R. Borje as one of the nominees. The amended list of nominees of CIBAC thus included: (1) Villanueva, (2) Cruz-Gonzales, and (3) Borje.

Following the close of the polls, or on June 20, 2007, Villanueva sent a letter to COMELEC Chairperson Benjamin Abalos, transmitting therewith the signed petitions of more than 81% of the CIBAC members, in order to confirm the withdrawal of the nomination of Lokin, Tugna and Galang and the substitution of Borje. In their petitions, the members of CIBAC averred that Lokin and Tugna were not among the nominees presented and proclaimed by CIBAC in its proclamation rally held in May 2007; and that Galang had signified his desire to focus on his family life.

On June 26, 2007, CIBAC, supposedly through its counsel, filed with the COMELEC *en banc* sitting as the National Board of Canvassers a motion seeking the proclamation of Lokin as its second nominee. The right of CIBAC to a second seat as well as the right of Lokin to be thus proclaimed were purportedly based on Party-List Canvass Report No. 26, which showed CIBAC to have garnered a grand total of 744,674 votes. Using all relevant formulas, the motion asserted that CIBAC was clearly entitled to a second seat and Lokin to a proclamation.

The motion was opposed by Villanueva and Cruz-Gonzales.

Notwithstanding Villanueva's filing of the certificate of nomination, substitution and amendment of the list of nominees and the petitions of more than 81% of CIBAC members, the COMELEC failed to act on the matter, prompting Villanueva to file a petition to confirm the certificate of nomination, substitution and amendment of the list of nominees of CIBAC on June 28, 2007.

On July 6, 2007, the COMELEC issued Resolution No. 8219, whereby it resolved to set the matter pertaining to the validity of the withdrawal of the nominations of Lokin, Tugna and Galang and the substitution of Borje for proper disposition and hearing. The case was docketed as E.M. No. 07-054.

In the meantime, the COMELEC *en banc*, sitting as the National Board of Canvassers, issued National Board of Canvassers (NBC) Resolution No. 07-60 dated July 9, 2007 to partially proclaim the parties, organizations and coalitions participating under the Party-List System as having won in the May 14, 2007 elections which includes CIBAC.

The COMELEC *en banc* issued another resolution, NBC Resolution No. 07-72 dated July 18, 2007, proclaiming Buhay Hayaan Yumabong as entitled to 2 additional seats and Bayan Muna, CIBAC, Gabriela Women's Party, and Association of Philippine Electric Cooperatives to an additional seat each; and holding in abeyance the proclamation of the nominees of said parties, organizations and coalitions with pending disputes until the final resolution of their respective cases.

With the formal declaration that CIBAC was entitled to an additional seat, Ricardo de los Santos, purportedly as secretary general of CIBAC, informed Roberto P. Nazareno, Secretary General of the House of Representatives, of the promulgation of NBC Resolution No. 07-72 and requested that Lokin be formally sworn in by Speaker Jose de Venecia, Jr. to enable him to assume office. Nazareno replied, however, that the request of Delos Santos could not be granted because COMELEC Law Director Alioden D. Dalaig had notified him of the pendency of E.M. 07-054.

On September 14, 2007, the COMELEC en banc resolved E.M. No. 07-054 thuswise:

WHEREFORE, considering the above discussion, the Commission hereby approves the withdrawal of the nomination of Atty. Luis K. Lokin, Sherwin N. Tugna and Emil Galang as second, third and fourth nominees respectively and the substitution thereby with Atty. Cinchona C. Cruz-Gonzales as second nominee and Atty. Armi Jane R. Borje as third nominee for the party list CIBAC. The new order of CIBAC's nominees therefore shall be:

- 1. Emmanuel Joel J. Villanueva
- 2. Cinchona C. Cruz-Gonzales
- 3. Armi Jane R. Borje
- SO ORDERED.

As a result, the COMELEC *en banc* proclaimed Cruz-Gonzales as the official second nominee of CIBAC. Cruz-Gonzales took her oath of office as a Party-List Representative of CIBAC on September 17, 2007.

#### **ISSUE:**

Whether or not the Court has jurisdiction over the controversy. (YES)

#### **RULING:**

The COMELEC posits that once the proclamation of the winning party-list organization has been done and its nominee has assumed office, any question relating to the election, returns and qualifications of the candidates to the House of Representatives falls under the jurisdiction of the HRET pursuant to Section 17, Article VI of the 1987 Constitution. Thus, Lokin should raise the

question he poses herein either in an election protest or in a special civil action for *quo warranto* in the HRET, not in a special civil action for certiorari in this Court.

We do not agree.

An *election protest* proposes to oust the winning candidate from office. It is strictly a contest between the defeated and the winning candidates, based on the grounds of electoral frauds and irregularities, to determine who between them has actually obtained the majority of the legal votes cast and is entitled to hold the office. It can only be filed by a candidate who has duly filed a certificate of candidacy and has been voted for in the preceding elections.

A special civil action for *quo warranto* refers to questions of disloyalty to the State, or of ineligibility of the winning candidate. The objective of the action is to unseat the ineligible person from the office, but not to install the petitioner in his place. Any voter may initiate the action, which is, strictly speaking, not a contest where the parties strive for supremacy because the petitioner will not be seated even if the respondent may be unseated.

The controversy involving Lokin is neither an election protest nor an action for *quo warranto*, for it concerns a very peculiar situation in which Lokin is seeking to be seated as the second nominee of CIBAC. Although an election protest may properly be available to one party-list organization seeking to unseat another party-list organization to determine which between the defeated and the winning party-list organizations actually obtained the majority of the legal votes, Lokin's case is not one in which a nominee of a particular party-list organization thereby wants to unseat another nominee of the same party-list organization. Neither does an action for *quo warranto* lie, considering that the case does not involve the ineligibility and disloyalty of Cruz-Gonzales to the Republic of the Philippines, or some other cause of disqualification for her.

Lokin has correctly brought this special civil action for certiorari against the COMELEC to seek the review of the September 14, 2007 resolution of the COMELEC in accordance with Section 7 of Article IX-A of the 1987 Constitution, notwithstanding the oath and assumption of office by Cruz-Gonzales. The constitutional mandate is now implemented by Rule 64 of the 1997 Rules of Civil Procedure, which provides for the review of the judgments, final orders or resolutions of the COMELEC and the Commission on Audit. As Rule 64 states, the mode of review is by a petition for certiorari in accordance with Rule 65 to be filed in the Supreme Court within a limited period of 30 days. Undoubtedly, the Court has original and exclusive jurisdiction over Lokin's petitions for certiorari and for mandamus against the COMELEC.

# RUBEN REYNA and LLOYD SORIA, *Petitioners*, -versus- COMMISSION ON AUDIT, *Respondent*. G.R. No. 167219, EN BANC, February 8, 2011, PERALTA, *J.*

Petitioners' allegation of grave abuse of discretion by the COA implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or 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. It is imperative for petitioners to show caprice and arbitrariness on the part of the COA whose exercise of discretion is being assailed. Proof of such grave abuse of discretion, however, is wanting in this case.

#### **FACTS:**

The Land Bank of the Philippines (Land Bank) was engaged in a cattle-financing program wherein loans were granted to various cooperatives. Pursuant thereto, Land Bank's Ipil, Zamboanga del Sur Branch (Ipil Branch) went into a massive information campaign offering the program to cooperatives.

Cooperatives who wish to avail of a loan under the program must fill up a Credit Facility Proposal (CFP) which will be reviewed by the Ipil Branch. As alleged by Emmanuel B. Bartocillo, Department Manager of the Ipil Branch, the CFP is a standard and prepared form provided by the Land Bank main office to be used in the loan application as mandated by the Field Operations Manual. One of the conditions stipulated in the CFP is that prior to the release of the loan, a Memorandum of Agreement (MOA) between the supplier of the cattle, Remad Livestock Corporation (REMAD), and the cooperative, shall have been signed providing the level of inventory of stocks to be delivered, specifications as to breed, condition of health, age, color, and weight. The MOA shall further provide for a buy-back agreement, technology, transfer, provisions for biologics requirement and technical visits and replacement of sterile, unproductive stocks. Allegedly contained in the contracts was a stipulation that the release of the loan shall be made sixty (60) days prior to the delivery of the stocks.

The Ipil Branch approved the applications of four cooperatives. R.T. Lim Rubber Marketing Cooperative (RT Lim RMC) and Buluan Agrarian Reform Beneficiaries MPC (BARBEMCO) were each granted two loans. Tungawan Paglaum Multi-Purpose Cooperative (Tungawan PFMPC) and Siay Farmers' Multi-Purpose Cooperative (SIFAMCO) were each granted one loan. Pursuant to the terms of the CFP, the cooperatives individually entered into a contract with REMAD, denominated as a "Cattle-Breeding and Buy-Back Marketing Agreement."

In December 1993, the Ipil Branch granted six loans to the four cooperative borrowers.

As alleged by petitioners, the terms of the CFP allowed for pre-payments or advancement of the payments prior to the delivery of the cattle by the supplier REMAD. This Court notes, however, that copies of the CFPs were not attached to the records of the case at bar. More importantly, the very contract entered into by the cooperatives and REMAD, or the "Cattle-Breeding and Buy-Back Marketing Agreement" did not contain a provision authorizing prepayment.

Three checks were issued by the Ipil Branch to REMAD to serve as advanced payment for the cattle. REMAD, however, failed to supply the cattle on the dates agreed upon.

In post audit, the Land Bank Auditor disallowed the amount of \$\mathbb{P}\$3,115,000.00 under CSB No. 95-005 dated December 27, 1996 and Notices of Disallowance Nos. 96-014 to 96-019 in view of the non-delivery of the cattle. Also made as the basis of the disallowance was the fact that advanced payment was made in violation of bank policies and COA rules and regulations. Specifically, the auditor found deficiencies in the CFPs.

The prepayment arrangement also violates Section 88 of Presidential Decree (PD) No. 1445.

The same employees, including petitioners, were also made respondents in a Complaint filed by the COA Regional Office No. IX, Zamboanga City, before the Office of the Ombudsman for Gross Negligence, Violation of Reasonable Office Rules and Regulations, Conduct Prejudicial to the Interest of the Bank and Giving Unwarranted Benefits to persons, causing undue injury in violation

of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

On January 28, 1997, petitioners filed a Joint Motion for Reconsideration claiming that the issuance of the Notice of Disallowance was premature in view of the pending case in the Office of the Ombudsman. The Motion was denied by the Auditor. Unfazed, petitioners filed an appeal with the Director of COA Regional Office No. IX, Zamboanga City. On August 29, 1997, the COA Regional Office issued Decision No. 97-001 affirming the findings of the Auditor. On February 4, 1998, petitioners filed a Motion for Reconsideration, which was denied by the Regional Office in Decision No. 98-005 issued on February 18, 1998.

Petitioners did not file a Petition for Review or a Notice of Appeal from the COA Regional Office Decision as required under Section 3, Rule VI of the 1997 Revised Rules of Procedure of the COA. Thus, the Decision of the Director of COA Regional Office No. IX became final and executory pursuant to Section 51 of the Government Auditing Code of the Philippines. Consequently, on April 12, 1999, the Director of the COA Regional Office No. IX issued a Memorandum to the Auditor directing him to require the accountant of the Ipil Branch to record in their books of account the said disallowance.

On July 12, 1999, the Auditor sent a letter to the Land Bank Branch Manager requiring him to record the disallowance in their books of account. On August 10, 1999, petitioners sent a letter to COA Regional Office No. IX, seeking to have the booking of the disallowance set aside, on the grounds that they were absolved by the Ombudsman in a February 23, 1999 Resolution, and that the Bangko Sentral ng Pilipinas had approved the writing off of the subject loans.

The February 23, 1999 Resolution of the Ombudsman was approved by Margarito P. Gervacio, Jr. the Deputy Ombudsman for Mindanao, dismissing the complaint for lack of sufficient evidence.

On July 17, 2003, the COA rendered Decision No. 2003-107 affirming the rulings of the Auditor and the Regional Office.

On August 22, 2003, petitioners filed a Motion for Reconsideration, which was, however, denied by the COA in a Resolution dated December 7, 2004.

#### **ISSUE:**

Whether or not respondent COA committed grave abuse of discretion amounting to lack of jurisdiction in the following: declaring the prepayment stipulation in the contract between the bank and remad proscribed by section 103 of P.D. No. 1445, otherwise known as the State Audit Code of the Philippines, for holding the petitioners administratively liable for having processed the loans of the borrowing cooperatives in accordance with the bank's manual (fog) lending operations, and in holding the petitioners liable and, therefore, in effect likewise obligated to refund the disallowed amount even as among other things they acted in evident good faith. more so, as the collectibles have been already effectively written-off. (NO)

#### **RULING:**

In the absence of grave abuse of discretion, questions of fact cannot be raised in a petition for *certiorari*, under Rule 64 of the Rules of Court. The office of the petition for *certiorari* is not to

correct simple errors of judgment; any resort to the said petition under Rule 64, in relation to Rule 65, of the 1997 Rules of Civil Procedure is limited to the resolution of jurisdictional issues. Accordingly, since the validity of the prepayment scheme is inherently a question of fact, the same should no longer be looked into by this Court.

In any case, even assuming that factual questions may be entertained, the facts do not help petitioners' cause for the following reasons: *first*, the supposed Annex "I" does not contain a stipulation authorizing a pre-payment scheme; and *second*, petitioners clearly violated the procedure of releasing loans contained in the Bank's Manual on Field Office Guidelines on Lending Operations (Manual on Lending Operations).

A perusal of the aforementioned Annex "I," the Cattle-Breeding and Buy-Back Marketing Agreement, would show that stipulation "6.1" which allegedly authorizes prepayment does not exist. To make matters problematic is that nowhere in the records of the petition can one find a document which embodies such a stipulation. It bears stressing that the Auditor noted in his report that, "nowhere in the documents reviewed disclosed about prepayment scheme with REMAD, the supplier/dealer."

Anent the second ground raised by petitioners, the same is again without merit. Petitioners impute on the COA grave abuse of discretion when it held petitioners administratively liable for having processed the loans of the borrowing cooperatives. This Court stresses, however, that petitioners cannot rely on their supposed observance of the procedure outlined in the Manual on Lending Operations when clearly the same provides that "payment to the dealer shall be made after presentation of reimbursement documents (delivery/official receipts/purchase orders) acknowledged by the authorized LBP representative that the same has been delivered." Petitioners have not made a case to dispute the COA's finding that they violated the foregoing provision. Any presumption, therefore, that public officials are in the regular performance of their public functions must necessarily fail in the presence of an explicit rule that was violated.

There is no grave abuse of discretion on the part of the COA as petitioners were given all the opportunity to argue their case and present any supporting evidence with the COA Regional Director. Moreover, it bears to point out that even if petitioners' period to appeal had already lapsed, the COA Commission Proper even resolved their August 10, 1999 letter where they raised in issue the favorable ruling of the Ombudsman.

Anent, the last issue raised by petitioners, the same is without merit. Petitioners contend that respondent's Order, requiring them to refund the disallowed transaction, is functus officio, the amount having been legally written-off.

A write-off is a financial accounting concept that allows for the reduction in value of an asset or earnings by the amount of an expense or loss. It is a means of removing bad debts from the financial records of the business.

While the power to write-off is not expressly granted in the charter of the Land Bank, it can be logically implied, however, from the Land Bank's authority to exercise the general powers vested in banking institutions as provided in the General Banking Act (Republic Act 337). The clear intendment of its charter is for the Land Bank to be clothed not only with the express powers granted to it, but also with those implied, incidental and necessary for the exercise of those express powers.

In the case at bar, it is thus clear that the writing-off of the loans involved was a valid act of the Land Bank. In writing-off the loans, the only requirement for the Land Bank was that the same be in accordance with the applicable Bangko Sentral circulars, it being under the supervision and regulation thereof. The Land Bank recommended for write-off all six loans granted to the cooperatives, and it is worthy to note that the Bangko Sentral granted the same. The write-offs being clearly in accordance with law, the COA should, therefore, adhere to the same, unless under its general audit jurisdiction under PD 1445, it finds that under Section 25(1) the fiscal responsibility that rests directly with the head of the government agency has not been properly and effectively discharged.

Petitioners' allegation of grave abuse of discretion by the COA implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or 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. It is imperative for petitioners to show caprice and arbitrariness on the part of the COA whose exercise of discretion is being assailed. Proof of such grave abuse of discretion, however, is wanting in this case.

ERNESTO B. FRANCISCO, JR. and JOSE MA. O. HIZON, *Petitioners*, -versus- TOLL REGULATORY BOARD, PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, MANILA NORTH TOLLWAYS CORPORATION, BENPRES HOLDINGS CORPORATION, FIRST PHILIPPINE INFRASTRUCTURE DEVELOPMENT CORPORATION, TOLLWAY MANAGEMENT CORPORATION, PNCC SKYWAY CORPORATION, CITRA METRO MANILA TOLLWAYS CORPORATION and HOPEWELL CROWN INFRASTRUCTURE, INC., *Respondents*.

G.R. No. 166910, EN BANC, October 19, 2010, VELASCO, JR., J.

Petitions for certiorari and prohibition are, as here, appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify, when proper, acts of legislative and executive officials. The present petitions allege that then President Ramos had exercised vis-à-vis an assignment of franchise, a function legislative in character. As alleged, too, the TRB, in the guise of entering into contracts or agreements with PNCC and other juridical entities, virtually enlarged, modified to the core and/or extended the statutory franchise of PNCC, thereby usurping a legislative prerogative. The usurpation came in the form of executing the assailed STOAs and the issuance of TOCs. Grave abuse of discretion is also laid on the doorstep of the TRB for its act of entering into these same contracts or agreements without the required public bidding mandated by law, specifically the BOT Law (R.A. 6957, as amended) and the Government Procurement Reform Act (R.A. 9184).

In fine, the certiorari petitions impute on then President Ramos and the TRB, the commission of acts that translate inter alia into usurpation of the congressional authority to grant franchises and violation of extant statutes. The petitions make a prima facie case for certiorari and prohibition; an actual case or controversy ripe for judicial review exists. Verily, when an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. In doing so, the judiciary merely defends the sanctity of its duties and powers under the Constitution.

#### **FACTS:**

On March 31, 1977, then President Ferdinand E. Marcos issued Presidential Decree No. ("P.D.") 1112, authorizing the establishment of toll facilities on public improvements. This issuance, in its preamble, explicitly acknowledged "the huge financial requirements" and the necessity of tapping "the resources of the private sector" to implement the government's infrastructure programs. In order to attract private sector involvement, P.D. 1112 allowed "the collection of toll fees for the use of certain public improvements that would allow a reasonable rate of return on investments." The same decree created the Toll Regulatory Board ("TRB") and invested it under Section 3 (a) (d) and (e) with the power to enter, for the Republic, into contracts for the construction, maintenance and operation of tollways, grant authority to operate a toll facility, issue therefor the necessary Toll Operation Certificate ("TOC") and fix initial toll rates, and, from time to time, adjust the same after due notice and hearing.

On the same date, P.D. 1113 was issued, granting to the Philippine National Construction Corporation ("PNCC"), then known as the Construction and Development Corporation of the Philippines ("CDCP"), for a period of thirty years from May 1977 – or up to May 2007 – a franchise to construct, maintain and operate toll facilities in the North Luzon and South Luzon Expressways, with the right to collect toll fees at such rates as the TRB may fix and/or authorize. Particularly, Section 1 of P.D. 1113 delineates the coverage of the expressways from Balintawak, Caloocan City to Carmen, Rosales, Pangasinan and from Nichols, Pasay City to Lucena, Quezon. And because the franchise is not self-executing, as it was in fact made subject, under Section 3 of P.D. 1113, to "such conditions as may be imposed by the Board in an appropriate contract to be executed for such purpose," TRB and PNCC signed in October 1977, a Toll Operation Agreement ("TOA") on the North Luzon and South Luzon Tollways, providing for the detailed terms and conditions for the construction, maintenance and operation of the expressway.

On December 22, 1983, P.D. 1894 was issued therein further granting PNCC a franchise over the Metro Manila Expressway ("MMEX"), and the expanded and delineated NLEX and SLEX. Particularly, PNCC was granted the "right, privilege and authority to construct, maintain and operate any and all such extensions, linkages or stretches, together with the toll facilities appurtenant thereto, from any part of the North Luzon Expressway, South Luzon Expressway and/or Metro Manila Expressway and/or to divert the original route and change the original end-points of the North Luzon Expressway and/or South Luzon Expressway as may be approved by the [TRB]." Under Section 2 of P.D. 1894, "the franchise granted the [MMEX] and all extensions, linkages, stretches and diversions after the approval of the decree that may be constructed after the approval of this decree [on December 22, 1983] shall likewise have a term of thirty (30) years, commencing from the date of completion of the project."

As expressly set out in P.D. 1113 and reiterated in P.D. 1894, PNCC may sell or assign its franchise thereunder granted or cede the usufruct thereof upon the President's approval. This same provision on franchise transfer and cession of usufruct is likewise found in P.D. 1112.

Then came the 1987 Constitution with its franchise provision.

In 1993, the Government Corporate Counsel ("GCC"), acting on PNCC's request, issued Opinion No. 224, s. 1993, later affirmed by the Secretary of Justice, holding that PNCC may, subject to certain clearance and approval requirements, enter into a joint venture ("JV") agreement ("JVA") with private entities without going into public bidding in the selection of its JV partners. PNCC's query was evidently prompted by the need to seek out alternative sources of financing for expanding and

improving existing expressways, and to link them to economic zones in the north and to the CALABARZON area in the south.

On February 8, 1994, the Department of Public Works and Highways ("DPWH"), TRB, PNCC, Benpres Holdings Corporation ("Benpres") and First Philippine Holdings Corporation ("FPHC"), among other private and government entities/agencies, executed a Memorandum of Understanding ("MOU") envisaged to open the door for the entry of private capital in the rehabilitation, expansion (to Subic and Clark) and extension, as flagship projects, of the expressways north of Manila, over which PNCC has a franchise. To carry out their undertakings under the MOU, Benpres and FPHC formed, as their infrastructure holding arm, the First Philippine Infrastructure and Development Corporation ("FPIDC").

Consequent to the MOU execution, PNCC entered into financial and/or technical JVAs with private entities/investors for the toll operation of its franchised areas following what may be considered as a standard pattern.

The STOA defines the scope of the road project coverage, the terminal date of the concession, and includes provisions on initial toll rate and a built-in formula for adjustment of toll rates, investment recovery clauses and contract termination in the event of the concessionaire's, PNCC's or TRB's default, as the case may be.

The following events or transactions, involving the personalities as indicated, transpired with respect to the following projects:

The South Metro Manila Skyway (SMMS) (Buendia – Bicutan elevated stretch) Project

The NLEX Expansion Project (Rehabilitated and Widened NLEX, Subic Expressway, Circumferential Road C-5)

The South Luzon Expressway Project (Nichols to Lucena City)

On September 14, 2007, the Young Professionals and Entrepreneurs of San Pedro, Laguna ("YPES"), one of the petitioners in G.R. No. 173630, filed before the RTC, Branch 155, in Pasig City, a special civil action for certiorari, etc., against the TRB, docketed as SCA No. 3138-PSG, containing practically identical issues raised in **G.R. No. 173630.** Like its petition in **G.R. No. 173630,** YPES, before the RTC, assailed and sought to nullify the April 27, 2007 TOC, which TRB issued to PNCC inasmuch as the TOC worked to extend PNCC's tollway operation franchise for the SLEX. As YPES argued, only the Congress can extend the term of PNCC's franchise which expired on May 1, 2007.

By Decision dated June 23, 2008, the RTC, for the main stated reason that the authority to grant or renew franchises belongs only to Congress, granted YPES' petition.

Thus, the instant petition for review on certiorari under Rule 45, filed by the TRB on pure questions of law, docketed as **G.R. No. 183599**.

#### **ISSUE:**

Whether or not an actual case or controversy exists and, relevantly, whether petitioners in the first three petitions have *locus standi*. (YES)

#### **RULING:**

The power of judicial review can only be exercised in connection with a bona fide controversy involving a statute, its implementation or a government 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. The limitation on the power of judicial review to actual cases and controversies defines the role assigned to the judiciary in a tripartite allocation of power, to assure that the courts will not intrude into areas committed to the other branches of government.

In *The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, the Court has expounded anew on the concept of actual case or controversy and the requirement of ripeness for judicial review, thus:

An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. There must be a contrariety of legal rights  $x \times x$ . The Court can decide the constitutionality of an act  $x \times x$  only when a proper case between opposing parties is submitted for judicial determination.

Related to the requirement of an actual case or controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it.  $x \times x$  [I]t is a prerequisite that something had then been accomplished or performed by either branch before a court may come into the picture, and the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of.

But even with the presence of an actual case or controversy, the Court may refuse judicial review unless the constitutional question or the assailed illegal government act is brought before it by a party who possesses what in Latin is technically called *locus standi* or the standing to challenge it. To have standing, one must establish that he has a "personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement." Particularly, he must show that (1) he has suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.

Petitions for certiorari and prohibition are, as here, appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify, when proper, acts of legislative and executive officials. The present petitions allege that then President Ramos had exercised vis-à-vis an assignment of franchise, a function legislative in character. As alleged, too, the TRB, in the guise of entering into contracts or agreements with PNCC and other juridical entities, virtually enlarged, modified to the core and/or extended the statutory franchise of PNCC, thereby usurping a legislative prerogative. The usurpation came in the form of executing the assailed STOAs and the issuance of TOCs. Grave abuse of discretion is also laid on the doorstep of the TRB for its act of entering into these same contracts or agreements without the required public bidding mandated by law, specifically the BOT Law (R.A. 6957, as amended) and the Government Procurement Reform Act (R.A. 9184).

In fine, the certiorari petitions impute on then President Ramos and the TRB, the commission of acts that translate *inter alia* into usurpation of the congressional authority to grant franchises and violation of extant statutes. The petitions make a prima facie case for certiorari and prohibition; an actual case or controversy ripe for judicial review exists. Verily, when an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. In doing so, the judiciary merely defends the sanctity of its duties and powers under the Constitution.

In any case, the rule on standing is a matter of procedural technicality, which may be relaxed when the subject in issue or the legal question to be resolved is of transcendental importance to the public. Hence, even absent any direct injury to the suitor, the Court can relax the application of legal standing or altogether set it aside for non-traditional plaintiffs, like ordinary citizens, when the public interest so requires. There is no doubt that individual petitioners, Marcos, et al., in G.R. No. 169917, as then members of the House of Representatives, possess the requisite legal standing since they assail acts of the executive they perceive to injure the institution of Congress. On the other hand, petitioners Francisco, Hizon, and the other petitioning associations, as taxpayers and/or mere users of the tollways or representatives of such users, would ordinarily not be clothed with the requisite standing. While this is so, the Court is wont to presently relax the rule on locus standi owing primarily to the transcendental importance and the paramount public interest involved in the implementation of the laws on the Luzon tollways, a roadway complex used daily by hundreds of thousands of motorists. What we said a century ago in *Severino v. Governor General* is just as apropos today:

When the relief is sought merely for the protection of private rights, x x x [the relator's] right must clearly appear. On the other hand, when the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the people are regarded as the real party in interest, and the relator at whose instigation the proceedings are instituted need not show that he has any legal or special interest in the result, it being sufficient to show that he is a citizen and as such interested in the execution of the laws.

Accordingly, We take cognizance of the present case on account of its transcendental importance to the public.

### EDGARDO J. ANGARA, *Petitioner*, -versus- FEDMAN DEVELOPMENT CORPORATION, *Respondent*.

G.R. NO. 156822, SPECIAL SECOND DIVISION, October 18, 2004, AUSTRIA-MARTINEZ, J.

Excess of jurisdiction as distinguished from absence of jurisdiction means that an act, though within the general power of a tribunal, board or officer is not authorized, and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. Without jurisdiction means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or 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. Not every error in proceeding, or every erroneous conclusion of law or fact, is abuse of discretion.

In this case, the assailed orders of the RTC are but resolutions on incidental matters which do not touch on the merits of the case or put an end to the proceedings. They are interlocutory orders since there leaves something else to be done by the RTC with respect to the merits of the case.

Furthermore, where the court has jurisdiction over the subject matter, the orders or decisions upon all questions pertaining to the cause are orders or decisions within its jurisdiction and however erroneous they may be, they cannot be corrected by certiorari. Elsewise stated, when the court has jurisdiction over the case, its questioned acts, even if its findings are not correct, would at most constitute errors of law and not abuse of discretion correctible by the extraordinary remedy of certiorari.

#### **FACTS:**

On February 8, 1996, respondent filed a complaint for Accion Reinvindicatoria and/or Quieting of Title against petitioner before the Regional Trial Court, Branch 14, Nasugbu, Batangas (RTC), docketed as Civil Case No. 360.

In its complaint, respondent alleges as follows:

It is the registered owner of several adjoining lots located at Barangay Balaytigue, Nasugbu, Batangas among which are three adjoining lots covered by Transfer Certificates of Title Nos. T-51824, T-51825, and T-51826 of the Registry of Deeds of Batangas with a total area of 67,500 square meters. Sometime in August 1995, respondent learned that petitioner fenced said parcels of land without its knowledge and consent. On August 28, 1995, respondent informed petitioner that the said lots the latter fenced are titled in its name. In deference to petitioner's position as Senator of the Philippines, respondent undertook a relocation survey of the said properties. The relocation survey disclosed that the subject lots fenced and occupied by petitioner are covered by the certificates of title of respondent. Despite demand made by respondent, petitioner refused to vacate the property in question. Respondent prays that petitioner and all persons claiming title under him be ordered to vacate the premises in question and surrender possession thereof to the former.

On December 9, 1999, the RTC ordered the constitution of committee of three surveyors composed of Geodetic Engineer Esmael Bausas as representative of the petitioner, Geodetic Engineer Filemon Munar, as representative of respondent, and Geodetic Engineer Rodolfo Macalino of the Department of Environment and Natural Resources, Region IV, as chairman of the panel, mandated to conduct a relocation survey on the subject property.

Sometime on February 2000, the members of the committee submitted their individual reports on the relocation survey conducted.

On September 27, 2000, the RTC ordered the dismissal of the case due to the failure of the respondent to prosecute its case for an unreasonable length of time. However, upon respondent's motion for reconsideration, the RTC reconsidered the order of dismissal.

On September 18, 2001, petitioner filed an Omnibus Motion praying that judgment be rendered on the basis of the commissioners' report and, alternatively, all other persons who will be adversely affected by the relocation survey be impleaded as parties.

On November 13, 2001, RTC denied the said Omnibus Motion. The RTC held that according to respondent there was no joint survey conducted by the commissioners as ordered by it and as

agreed upon by the parties, hence the report of the commissioners cannot be the basis of the judgment. As regards the alternative prayer to implead the adjoining owners, the RTC ruled that it cannot be assumed that the adjoining owners have common defenses; the adjoining owners acquired their land from different sources hence they may have different defense; joining them as party defendants will only complicate the issues and prolong adjudication of the case.

Petitioner filed a motion for reconsideration but the same was denied by the RTC in its Order dated January 14, 2002. The RTC held that the record is replete with explicit motions and orders of the court calling for joint survey and there is a big mistake for the petitioner to say that its orders were for the surveyor to merely coordinate in the survey to be done by them. Anent the alternative prayer to implead adjoining owners, the RTC ruled that the recommendation or observation by one witness or surveyor that the parties affected are all indispensable parties cannot be taken into consideration since the report of the surveyor is not in compliance with its order to make a joint survey, and therefore cannot be a basis for concluding that there will be indispensable parties who will be affected. Besides, the RTC noted that petitioner did not name any of the supposed indispensable parties to be included in the case.

Ascribing grave abuse of discretion amounting to lack or in excess of jurisdiction upon the RTC in refusing to render judgment based on the commissioners' report as well as its refusal to direct respondent to implead adjoining property owners, petitioner filed a petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 69776.

On September 26, 2002, the CA dismissed the petition for *certiorari* and affirmed the assailed orders of the RTC.

Petitioner moved for reconsideration of the said decision but the CA denied the same in a Resolution dated January 14, 2003.

#### **ISSUE:**

Whether or not the CA erred in failing to declare that the orders of the RTC were rendered without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. (NO)

#### **RULING:**

A battle of semantics is principally being waged before this Court. Petitioner argues that undue emphasis was placed on the words "joint relocation survey, which literally means one that is conducted physically together or in the presence of one another." The order constituting the panel of commissioners, however, does not define what a joint relocation survey entails nor does it lay out the steps or procedures in conducting the same. Petitioner submits that the term "joint survey" does not rule out a survey that is coordinated and linked together resulting in a joint finding and recommendation. On the other hand, respondent subscribes to the pronouncement of the RTC that the record is replete with explicit motion and orders of the court calling for joint survey.

Anent the refusal to direct respondent to implead the adjoining property owners, petitioner claims that the RTC and the CA refused to acknowledge the observation of Engr. Macalino that the approach adopted by respondent in conducting the survey will cause significant movement in the position of petitioner's property as well as other lot owners. On the other hand, respondent posits that the RTC correctly denied the prayer to implead adjoining property owners since petitioner did not identify who these persons are or whether they will be affected by the outcome of the litigation.

It must be emphasized that the petition before the CA is a special civil action for *certiorari* under Rule 65 of the Rules of Court. *Certiorari* under Rule 65 is a remedy narrow in scope and inflexible in character. It is not a general utility tool in the legal workshop. It offers only a limited form of review. Its principal function is to keep an inferior tribunal within its jurisdiction. It can be invoked only for an error of jurisdiction, that is, one where the act complained of was issued by the court, officer or a quasi-judicial body without or in excess of jurisdiction, or with grave abuse of discretion which is tantamount to lack or in excess of jurisdiction.

Excess of jurisdiction as distinguished from absence of jurisdiction means that an act, though within the general power of a tribunal, board or officer is not authorized, and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. Without jurisdiction means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or 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. Not every error in proceeding, or every erroneous conclusion of law or fact, is abuse of discretion.

In this case, the assailed orders of the RTC are but resolutions on incidental matters which do not touch on the merits of the case or put an end to the proceedings. They are interlocutory orders since there leaves something else to be done by the RTC with respect to the merits of the case.

Ordinarily, the remedy against an interlocutory order is not to resort forthwith to *certiorari*, but to continue with the case in due course and, when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law. However, where there are special circumstances clearly demonstrating the inadequacy of an appeal, the special civil action of *certiorari* may exceptionally be allowed. Special circumstances are absolutely wanting in the present case.

The wisdom or soundness of the RTC's orders involves a matter of judgment which is not properly reviewable by petition for *certiorari*, which is intended to correct defects of jurisdiction solely and not to correct errors of procedure or matters in the RTC's findings or conclusions. Any error therein amounts only to an error of judgment. An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as "grave abuse of discretion." Errors of judgment are correctible by appeal, while those of jurisdiction are reviewable by *certiorari*.

Furthermore, where the court has jurisdiction over the subject matter, the orders or decisions upon all questions pertaining to the cause are orders or decisions within its jurisdiction and however erroneous they may be, they cannot be corrected by *certiorari*. Elsewise stated, when the court has jurisdiction over the case, its questioned acts, even if its findings are not correct, would at most

constitute errors of law and not abuse of discretion correctible by the extraordinary remedy of *certiorari* .

Consequently, the Court is perplexed that, in resolving the petition before it, the Court of Appeals chose to delve into the wisdom and soundness of the orders of the RTC, overlooking the nature of the petition before it. The supervisory jurisdiction of the court to issue a *certiorari* writ cannot be exercised in order to review the judgment of the lower court as to its intrinsic correctness, either upon the law or the facts of the case. In the absence of a showing that there is reason for the Court to annul the decision of the concerned tribunal or to substitute its own judgment, it is not the office of the Court in a petition for *certiorari* to inquire into the correctness of the assailed decision or resolution. A writ of *certiorari* is not intended to correct every controversial interlocutory ruling. A contrary rule would lead to confusion, and seriously hamper the administration of justice.

Petitioner failed to demonstrate his claim that the RTC acted with grave abuse of discretion amounting to lack or in excess of its jurisdiction in denying petitioner's prayer for rendition of judgment based on the commissioners' report. The Rules of Court clearly provides that the trial court is not bound by the findings of the commissioners or precluded from disregarding the same. It may adopt, modify, reject the report or recommit it with instructions, or require the parties to present further evidence.

Neither has petitioner demonstrated that the RTC acted with grave abuse of discretion amounting to lack or in excess of its jurisdiction in denying his prayer to implead adjoining property owners.

The RTC correctly observed that petitioner did not identify the property owners allegedly affected or will be affected by the suit. The RTC cannot simply order a blanket inclusion of property owners in the entire Barangay Balaytigue, Nasugbu, Batangas as parties-defendants in the case. It is the petitioner's responsibility to state the names of all the persons whom he claims will be affected by the suit or any judgment therein.

Besides, petitioner has not shown positively that the adjoining property owners either have such an interest in the controversy or subject matter that a final adjudication cannot be made, in their absence, without injuring or affecting their interest, or that they ought to be joined as parties if complete relief is to be accorded to those already parties, for a complete determination of settlement of the claim subject of the action.

More importantly, the joinder of adjoining property owners is not warranted since the RTC did not adopt the surveys and reports of the individual commissioners. The RTC chose not to give credence to the observation of one surveyor that the parties affected are all indispensable parties because the report of the surveyors is not in compliance with its order to make a joint survey.

ALLIANCE FOR THE FAMILY FOUNDATION, PHILIPPINES, INC. (ALFI) and ATTY. MARIA CONCEPCION S. NOCHE, in her own behalf and as President of ALFI, JOSE S. SANDEJAS, ROSIE B. LUISTRO, ELENITA S.A. SANDEJAS, EMILY R. LAWS, EILEEN Z. ARANETA, SALV ACION C. MONTEIRO, MARIETTA C. GORREZ, ROLANDO M. BAUTISTA, RUBEN T. UMALI, and MILDRED C. CASTOR, Petitioners, -versus- HON. JANETTE L. GARIN, Secretary-Designate of the Department of Health; NICOLAS B.LUTERO III, Assistant Secretary of Health, Officer-in-Charge, Food and Drug Administration; and MARIA LOURDES C. SANTIAGO, Officer in-Charge, Center for Drug Regulation and Research, Respondents.

G.R. No. 217872, SPECIAL SECOND DIVISION, April 26, 2017, MENDOZA, J.

MARIA CONCEPCION S. NOCHE, in her own behalf and as counsel of Petitioners, JOSE S. SANDEJAS, ROSIE B. LUISTRO, ELENITA S.A. SANDEJAS, EMILY R. LAWS EILEEN Z. ARANETA, SALVACION C. MONTEIRO MARIETTA C. GORREZ, ROLANDO M. BAUTISTA, RUBEN T. UMALI, and MILDRED C. CASTOR, Petitioners, -versus- HON. JANETTE L. GARIN, Secretary-Designate of the Department of Health; NICOLAS B. LUTERO III, Assistant Secretary of Health; NICOLAS B. LUTERO III, Assistant Secretary of Health, Officer-in-Charge, Food and Drug Administration; and MARIA LOURDES C. SANTIAGO, Officer-in-Charge, Center for Drug Regulation and Research, Respondents.

G.R. No. 221866, SPECIAL SECOND DIVISION, April 26, 2017, MENDOZA, J.

The powers of an administrative body are classified into two fundamental powers: quasi-legislative and quasi-judicial. **Quasi-legislative power**, otherwise known as the power of subordinate legislation, has been defined as the authority delegated by the lawmaking body to the administrative body to adopt rules and regulations intended to carry out the provisions of law and implement legislative policy. "[A] legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof." The exercise by the administrative body of its quasi-legislative power through the promulgation of regulations of general application does not, as a rule, require notice and hearing. The only exception being where the Legislature itself requires it and mandates that the regulation shall be based on certain facts as determined at an appropriate investigation.

**Quasi-judicial power,** on the other hand, is known as the power of the administrative agency to determine questions of fact to which the legislative policy is to apply, in accordance with the standards laid down by the law itself. As it involves the exercise of discretion in determining the rights and liabilities of the parties, the proper exercise of quasi-judicial power requires the concurrence of two elements: one, jurisdiction which must be acquired by the administrative body and two, the **observance of the requirements of due process,** that is, the **right to notice and hearing.** 

On the argument that the certification proceedings were conducted by the FDA in the exercise of its "regulatory powers" and, therefore, beyond judicial review, the Court holds that it has the power to review all acts and decisions where there is a commission of grave abuse of discretion. No less than the Constitution decrees that the Court must exercise its duty to ensure that no grave abuse of discretion amounting to lack or excess of jurisdiction is committed by any branch or instrumentality of the Government. Such is committed when there is a violation of the constitutional mandate that "no person is deprived of life, liberty, and property without due process of law." The Court's power cannot be curtailed by the FDA's invocation of its regulatory power.

#### **FACTS:**

Subject of this resolution is the Omnibus Motion filed by the respondents, thru the Office of the Solicitor General (OSG), seeking partial reconsideration of the August 24, 2016 Decision (Decision), where the Court resolved the: [1] Petition for *Certiorari*, Prohibition, Mandamus with Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Prohibitory and Mandatory Injunction (G.R. No. 217872); and the [2] Petition for Contempt of Court (G.R. No. 221866), in the following manner:

WHEREFORE, the case docketed as G.R No. 217872 is hereby REMANDED to the Food and Drugs Administration which is hereby ordered to observe the basic requirements of due process by

conducting a hearing, and allowing the petitioners to be heard, on the re-certified, procured and administered contraceptive drugs and devices, including Implanon and Implanon NXT, and to determine whether they are abortifacients or non-abortifacients.

Pursuant to the expanded jurisdiction of this Court and its power to issue rules for the protection and enforcement of constitutional rights, the Court hereby:

- 1. DIRECTS the Food and Drug Administration to formulate the rules of procedure in the screening, evaluation and approval of all contraceptive drugs and devices that will be used under Republic Act No. 10354. The rules of procedure shall contain the following minimum requirements of due process: (a) publication, notice and hearing, (b) interested parties shall be allowed to intervene, (c) the standard laid down in the Constitution, as adopted under Republic Act No. 10354, as to what constitutes allowable contraceptives shall be strictly followed, that is, those which do not harm or destroy the life of the unborn from conception/fertilization, (d) in weighing the evidence, all reasonable doubts shall be resolved in favor of the protection and preservation of the right to life of the unborn from conception/fertilization, and (e) the other requirements of administrative due process, as summarized in *Ang Tibay v. CIR*, shall be complied with.
- 2. DIRECTS the Department of Health in coordination with other concerned agencies to formulate the rules and regulations or guidelines which will govern the purchase and distribution/dispensation of the products or supplies under Section 9 of Republic Act No. 10354 covered by the certification from the Food and Drug Administration that said product and supply is made available on the condition that it will not be used as an abortifacient subject to the following minimum due process requirements: (a) publication, notice and hearing, and (b) interested parties shall be allowed to intervene. The rules and regulations or guidelines shall provide sufficient detail as to the manner by which said product and supply shall be strictly regulated in order that they will not be used as an abortifacient and in order to sufficiently safeguard the right to life of the unborn.
- 3. DIRECTS the Department of Health to generate the complete and correct list of the government's reproductive health programs and services under Republic Act No. 10354 which will serve as the template for the complete and correct information standard and, hence, the duty to inform under Section 23(a)(l) of Republic Act No. 10354. The Department of Health is DIRECTED to distribute copies of this template to all health care service providers covered by Republic Act No. 10354.

The respondents are hereby also ordered to amend the Implementing Rules and Regulations to conform to the rulings and guidelines in G.R. No. 204819 and related cases.

The above foregoing directives notwithstanding, within 30 days from receipt of this disposition, the Food and Drugs Administration should commence to conduct the necessary hearing guided by the cardinal rights of the parties laid down in *CIR v. Ang Tibay*.

Pending the resolution of the controversy, the motion to lift the Temporary Restraining Order is DENIED.

With respect to the contempt petition, docketed as G.R No. 221866, it is hereby DENIED for lack of concrete basis.

SO ORDERED.

In the subject Omnibus Motion, the respondents argued that their actions should be sustained, even if the petitioners were not afforded notice and hearing, because the contested acts of registering, recertifying, procuring, and administering contraceptive drugs and devices were all done in the exercise of its regulatory power.<sup>4</sup> They contended that considering that the issuance of the certificate of product registration (CPR) by the FDA under Section 7.04, Rule of the Implementing Rules and Regulations of Republic Act (R.A.) No. 10354 (RH-IRR) did not involve the adjudication of the parties' opposing rights and liabilities through an adversarial proceeding, the due process requirements of notice and hearing need not be complied with.

Stated differently, the respondents assert that as long as the act of the FDA is exercised pursuant to its regulatory power, it need not comply with the due process requirements of notice and hearing.

Corollary to this, the respondents wanted the Court to consider that the FDA had delineated its functions among different persons and bodies in its organization. Thus, they asked the Court to make a distinction between the "quasi-judicial powers" exercised by the Director-General of the FDA under Section 2(b) of Article 3, Book I of the Implementing Rules and Regulations (IRR) of R.A. No. 9711, and the "regulatory/administrative powers" exercised by the FDA under Section 2(c)(1) of the same. For the respondents, the distinction given in the above-cited provisions was all but proof that the issuance of CPR did not require notice and hearing.

After detailing the process by which the FDA's Center for Drug Regulation and Research (*CDRR*) examined and tested the contraceptives for non-abortifacience, the respondents stressed that the Decision wreaked havoc on the organizational structure of the FDA, whose myriad of functions had been carefully delineated in the IRR of R.A. No. 9711. The respondents, thus, prayed for the lifting of the Temporary Restraining Order (*TRO*).

#### **ISSUE:**

Whether or not the Omnibus Motion should be denied. (YES)

#### **RULING:**

#### **Judicial Review**

The powers of an administrative body are classified into two fundamental powers: *quasi-legislative* and *quasi-judicial*. **Quasi-legislative power**, otherwise known as the power of subordinate legislation, has been defined as the authority delegated by the lawmaking body to the administrative body to adopt rules and regulations intended to carry out the provisions of law and implement legislative policy. "[A] legislative rule is in the nature of subordinate legislation, designed to implement a primary legislation by providing the details thereof." The exercise by the administrative body of its quasi-legislative power through the promulgation of regulations of general application does not, as a rule, require notice and hearing. The only exception being where the Legislature itself requires it and mandates that the regulation shall be based on certain facts as determined at an appropriate investigation.

**Quasi-judicial power,** on the other hand, is known as the power of the administrative agency to determine questions of fact to which the legislative policy is to apply, in accordance with the standards laid down by the law itself. As it involves the exercise of discretion in determining the

rights and liabilities of the parties, the proper exercise of quasi-judicial power requires the concurrence of two elements: *one*, jurisdiction which must be acquired by the administrative body and *two*, **the observance of the requirements of due process**, that is, the **right to notice and hearing**.

On the argument that the certification proceedings were conducted by the FDA in the exercise of its "regulatory powers" and, therefore, beyond judicial review, the Court holds that it has the power to review all acts and decisions where there is a commission of grave abuse of discretion. No less than the Constitution decrees that the Court must exercise its duty to ensure that no grave abuse of discretion amounting to lack or excess of jurisdiction is committed by any branch or instrumentality of the Government. Such is committed when there is a violation of the constitutional mandate that "no person is deprived of life, liberty, and property without due process of law." The Court's power cannot be curtailed by the FDA's invocation of its regulatory power.

In so arguing, the respondents cited Atty. Carlo L. Cruz in his book, *Philippine Administrative Law*.

Lest there be any inaccuracy, the relevant portions of the book cited by the respondents are hereby quoted as follows:

XXX.

B. The Quasi-Judicial Power

Xxx

#### 2. Determinative Powers

To better enable the administrative body to exercise **its quasi judicial authority**, it is also vested with what is known as *determinative* powers and functions.

Professor Freund classifies them generally into the *enabling* powers and the *directing* powers. The latter includes the *dispensing*, the *examining*, and the *summary* powers.

The enabling vowers are those that permit the doing of an act which the law undertakes to regulate and which would be unlawful with government approval. The most common example is the issuance of licenses to engage in a particular business or occupation, like the operation of a liquor store or restaurant. x x x. [Emphases and underscoring supplied]

From the above, two things are apparent: one, the "enabling powers" cover "regulatory powers" as defined by the respondents; and two, they refer to a subcategory of a quasi-judicial power which, as explained in the Decision, requires the compliance with the twin requirements of notice and hearing. Nowhere from the above-quoted texts can it be inferred that the exercise of "regulatory power" places an administrative agency beyond the reach of judicial review. When there is grave abuse of discretion, such as denying a party of his constitutional right to due process, the Court can come in and exercise its power of judicial review. It can review the challenged acts, whether exercised by the FDA in its ministerial, quasi-judicial or regulatory power. In the past, the Court exercised its power of judicial review over acts and decisions of agencies exercising their regulatory powers, such as DPWH, TRB, NEA, and the SEC, among others. In *Diocese of Bacolod v. Commission* 

*on Elections,* the Court properly exercised its power of judicial review over a Comelec resolution issued in the exercise of its regulatory power.

Clearly, the argument of the FDA is flawed.

On the Competence of the Court to review the Findings of the FDA

The fact that any appeal to the courts will involve scientific matters will neither place the actions of the respondents beyond the need to comply with the requirements of *Ang Tibay* nor place the actions of the FDA in certification proceedings beyond judicial review.

It should be pointed out that nowhere in Batas Pambansa Blg. 129, as amended, are the courts ousted of their jurisdiction whenever the issues involve questions of scientific nature. A court is not considered incompetent either in reviewing the findings of the FDA simply because it will be weighing the scientific evidence presented by both the FDA and its oppositors in determining whether the contraceptive drug or device has complied with the requirements of the law.

Although the FDA is not strictly bound by the technical rules on evidence, as stated in the Rules of Court, or it cannot be bound by the principle of *stare decisis* or *res judicata*, it is not excused from complying with the requirements of due process. To reiterate for emphasis, due process does not require that the FDA conduct trial-type hearing to satisfy its requirements. All that the Constitution requires is that the FDA afford the people their right to due process of law and decide on the applications submitted by the MAHs after affording the oppositors, like the petitioners, a genuine opportunity to present their sciencebased evidence.

# PEOPLE OF THE PHILIPPINES, Petitioner, -versus- SANDIGANBAYAN AND JUAN $^1$ ROBERTO L. ABLING, Respondents.

G.R. No. 198119, FIRST DIVISION, September 27, 2017, LEONARDO-DE CASTRO, J.

The general rule is that a judgment of acquittal rendered after trial on the merits shall be immediately final and unappealable because further prosecution will place the accused in double jeopardy. However, the defense of double jeopardy will not lie in a Rule 65 petition. Unlike in an appeal, this remedy does not involve a review of facts and law on the merits, an examination of evidence and a determination of its probative value, or an inquiry on the correctness of the evaluation of the evidence. Judicial review in certiorari proceedings shall be confined to the question of whether the judgment for acquittal is per sevoid on jurisdictional grounds. The court will look into the decision's validity-if it was rendered by a court without jurisdiction or if the court acted with grave abuse of discretion amounting to lack or excess of jurisdiction-not on its legal correctness. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty imposed by law, or to act in contemplation of law or where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. More specifically, to prove that an acquittal is tainted with grave abuse of discretion, the petitioner must show that the prosecution's right to due process was violated or that the trial conducted was a sham.

Measured against the foregoing standard, the Court finds that petitioner People has nonetheless failed to meet the exacting criteria required in availing of this exceptional legal remedy.

First, petitioner directly question public respondent Sandiganbayan's appreciation of evidence. We have already ruled that, in certiorari proceedings, the court shall not examine and assess the evidence

of the parties, weigh its probative value of the evidence, or inquire on the correctness of the evaluation of the evidence.

Second, petitioner People failed to assail public respondent Sandiganbayan's jurisdiction by not substantiating the grave abuse of discretion that the latter supposedly committed when it acquitted private respondent Abling of the crime charged.

Third, even if we assume that public respondent Sandiganbayan's error in judgment resulted in a denial of due process or a sham trial and the same was properly alleged, the Court is still prevented from making a complete evaluation of this aspect because petitioner People did not even attach to the present Petition the very documents at the center of its argument, pursuant to Section 1, Paragraph 2, Rule 65 of the Rules of Court, as amended.

#### **FACTS:**

In an Information dated August 4, 1995, private respondent Abling was charged as follows:

That for the period from January 22, 1986 to February 4, 1986 or sometime prior or subsequent thereto, in Pasig, Metro-Manila, Philippines, and within the jurisdiction of this Honorable Court, J. Roberto L. Abling, a public officer, being then the Executive Director of the Economic Support Fund Secretariat, Office of the President of the Philippines and as such accountable for public funds received and/or entrusted to him by reason of his office, acting in relation to his office and taking advantage of the same, did then and there, willfully, unlawfully and feloniously take, misappropriate and convert to his personal use and benefit the amount of P22,000,000.00 from such public funds received by him by reason of his office to the damage of the government in the amount aforestated.

In Joint Circular No. 1-85, the Commission on Audit (COA) and ESFS established the guidelines and procedures on the release and utilization of amounts from the Fund, *e.g.*, all disbursements must be covered by duly approved vouchers in accordance with existing auditing and accounting regulations and supported by the required documents. In turn, COA Circular No. 76-17 required all disbursements of national security, intelligence, and confidential funds to be supported by duly accomplished disbursement vouchers and receipts, bills, or commercial invoices of creditors.

In January 1986, ESFS issued five disbursement vouchers claimed to be "for the payment of miscellaneous expenses as per instruction of President Marcos." As a result, five checks amounting to P35 million were issued to private respondent Abling as payee and drawn against ESFS's current account with the Land Bank of the Philippines (Land Bank), Makati Branch.

In February 1986, the EDSA People Power Revolution took place, which resulted in the ouster of former President Ferdinand E. Marcos and the assumption to power of former President Corazon C. Aquino.

Subsequently, pursuant to Audit Assignment Order No. 86-207, then COA Chairman Teofisto Guingona authorized the audit of the confidential funds held by 12 government agencies, including the ESFS. Thus, in March 1986, the COA, through Resident Auditor Fe Ramirez-Muñoz (Resident Auditor Muñoz), conducted a special audit of ESFS's confidential funds. Based on the special audit, it appeared that the ESFS made several cash advances amounting to P35 million to private respondent Abling from January to February 1986, the Executive Director of ESFS at the time. Of the

P35 million, however, only P13 million was refunded to the ESFS. Thus, the COA required private respondent Abling to liquidate the balance of P22 million, and to submit all supporting documents pertinent to said liquidation as required by COA Circular No. 76-17.

In compliance to the aforementioned, private respondent Abling referred to his letter dated February 11, 1986 addressed to COA Chairman Francisco S. Tantuico (Chairman Tantuico), through which he submitted the following documents: (a) **disbursement vouchers**; (b) **copy of Certificate of Interest Earnings of ESF Accounts**; (c) **Summary of Disbursements/Expenses**; and (d) **Certificates of Disbursement and Delivery** duly certified by himself.

However, the COA considered the said documents as insufficient compliance with COA Circular No. 76-17. In her affidavit, Resident Auditor Muñoz insisted on the submission of the following documents: (a) a certified list of projects undertaken by the ESF and its corresponding receipts; and (b) copies of receipts, indicating the identity and names of the recipients of the funds disbursed.

Chairman Guingona also demanded that private respondent Abling liquidate the P22 million, and to submit the required documents.

Private respondent Abling, however, failed to comply with the foregoing demand; thus, the COA filed a complaint for malversation against him before the Office of the Ombudsman (Ombudsman).

The Ombudsman found probable cause to indict private respondent Abling for the crime of malversation before the Sandiganbayan.

In a Decision dated June 16, 2011, public respondent Sandiganbayan acquitted private respondent Abling.

#### **ISSUE:**

Whether or not public respondents committed grave abuse of discretion when they accepted the defense of Abling that he forwarded the funds to President Marcos as being sufficient to overturn the legal presumption of malversation. (NO)

#### **RULING:**

Petitioner People mainly questions public respondent Sandiganbayan's manner of appreciation and evaluation of evidence. This is an error of judgment that cannot be corrected by *certiorari*.

At the outset, this Court recognizes that a judgment of acquittal rendered by the Sandiganbayan may be assailed via a petition for *certiorari* under Rule 65 of the Rules of Court on narrow grounds established in jurisprudence.

The general rule is that a judgment of acquittal rendered after trial on the merits shall be immediately final and unappealable because further prosecution will place the accused in double jeopardy. However, the defense of double jeopardy will not lie in a Rule 65 petition. Unlike in an appeal, this remedy does not involve a review of facts and law on the merits, an examination of evidence and a determination of its probative value, or an inquiry on the correctness of the evaluation of the evidence. Judicial review in *certiorari* proceedings shall be confined to the

question of whether the judgment for acquittal is *per se*void on jurisdictional grounds. The court will look into the decision's validity-if it was rendered by a court without jurisdiction or if the court acted with grave abuse of discretion amounting to lack or excess of jurisdiction-not on its legal correctness. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty imposed by law, or to act in contemplation of law or where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. More specifically, to prove that an acquittal is tainted with grave abuse of discretion, the petitioner must show that the prosecution's **right to due process** was violated or that the trial **conducted was a <u>sham</u>**.

Measured against the foregoing standard, the Court finds that petitioner People has nonetheless failed to meet the exacting criteria required in availing of this exceptional legal remedy.

First, petitioner People accuses public respondent Sandiganbayan of committing grave abuse of discretion when it held that private respondent Abling's defense - that he forwarded the funds to President Marcos - sufficiently overturned the *prima facie* case of malversation against him. More specifically, it faults the court *a quo* for giving probative value to Exhibits "15" "16" and "17" the three ESFS memoranda that were undated and unsigned; thus, of questionable authenticity. According to petitioner People, the documents failed to satisfactorily explain the deficit of P22 million. Hence, the totality of the defense's evidence was not at all sufficient to overcome the presumption of malversation.

These averments directly question public respondent Sandiganbayan's appreciation of evidence. We have already ruled that, in *certiorari* proceedings, the court shall not examine and assess the evidence of the parties, weigh its probative value of the evidence, or inquire on the correctness of the evaluation of the evidence.

Even if the court *a quo* committed an error in its review of the evidence or application of the law, these are merely **errors of judgment**. We reiterate that the extraordinary writ of *certiorari* may only correct **errors of jurisdiction** including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. For as long as the court acted within its jurisdiction, an error of judgment that it may commit in the exercise thereof is not correctable through the special civil action of *certiorari*. The review of the records and evaluation of the evidence anew will result in a circumvention of the constitutional proscription against double jeopardy.

*Second*, petitioner People failed to assail public respondent Sandiganbayan's jurisdiction by not substantiating the grave abuse of discretion that the latter supposedly committed when it acquitted private respondent Abling of the crime charged. In the petition, there is no allegation that public respondent Sandiganbayan acted with bias, partiality or bad faith when it rendered the assailed judgment. Moreover, the petition does not even aver that petitioner People's right to due process was violated or that the trial before the court *a quo* was a sham.

A petition for *certiorari* questioning a judgment of acquittal must at least allege these **essential grounds.** Without these, the Petition must fail.

Third, even if we assume that public respondent Sandiganbayan's error in judgment resulted in a denial of due process or a sham trial and the same was properly alleged, the Court is still prevented from making a complete evaluation of this aspect because petitioner People did not even attach to

the present Petition the very documents at the center of its argument, pursuant to Section 1, Paragraph 2, Rule 65 of the Rules of Court, as amended, which reads:

SECTION 1. Petition for certiorari. - x x x.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (Emphases supplied.)

Considering that petitioner People impugned the veracity of the three memoranda supposedly signed by President Marcos, without copies of Exhibits "15," "16" and "17," the Court has no opportunity to examine its contents and verify the same as against petitioner People's averments. In fact, the Court has no factual basis upon which it could actually and completely dispose of the issue raised by petitioner People. Therefore, all that is left before the Court are bare and unsubstantiated allegations that do not warrant the Court's consideration.

Failure to comply with the dictates of the above-quoted Section 1, *visa-vis* Section 3, Paragraph 3 of Rule 46, is a ground for the dismissal of the petition under the last paragraph of the same section, *viz.*:

SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. - x x x.

X X X X

[A]nd shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto.  $x \times x$ .

X X X X

The failure of the petitioner to comply with any of the foregoing requirements shall be **sufficient ground for the dismissal** of the petition. (Emphases supplied.)

That petitioner People failed to comply with this mandatory procedural requirement likewise justifies the dismissal of the present petition.

In fine, the judgment of acquittal was rendered by public respondent Sandiganbayan within its jurisdiction; therefore, the issuance of a writ of *certiorari* is unwarranted in this case.

# MARVIN CRUZ AND FRANCISCO CRUZ, IN HIS CAPACITY AS BONDSMAN, *Petitioners*,-versus-PEOPLE OF THE PHILIPPINES, *Respondent*.

G.R. No. 224974, SECOND DIVISION, July 03, 2017, LEONEN, J.

The trial court's failure to comply with procedural rules constitutes grave abuse of discretion and may be the subject of a petition for certiorari before the Court of Appeals.

Bail shall be deemed automatically cancelled in three (3) instances: (1) the acquittal of the accused, (2) the dismissal of the case, or (3) the execution of the judgment of conviction. The Rules of Court do not limit the cancellation of bail only upon the acquittal of the accused.

Non-compliance with the Rules of Court is not, as the Office of the Solicitor General asserts, a mere error of judgment. It constitutes grave abuse of discretion.

#### **FACTS:**

In an Information dated September 19, 2013, Cruz, along with seven (7) others, was charged with Robbery in an Uninhabited Place and by a Band for unlawfully taking four (4) sacks filled with scraps of bronze metal and a copper pipe worth P72,000.00 collectively. Cruz posted bail through a cash bond in the amount of P12,000.00.

The private complainant in the criminal case subsequently filed an Affidavit of Desistance stating that he was no longer interested in pursuing his complaint against Cruz. On October 23, 2014, Assistant City Prosecutor Deborah Marie Tan filed a Motion to Dismiss, which was granted by Branch 170, Regional Trial Court, City of Malabon in an Order dated October 24, 2014.

Cruz, through his bondsman Francisco, filed a Motion to Release Cash Bond. In an Order dated January 7, 2015, the Regional Trial Court denied the Motion on the ground that the case was dismissed through desistance and not through acquittal. The Motion for Reconsideration filed by Francisco was likewise denied in an Order dated April 6, 2015.

Cruz and Francisco filed a Petition for Certiorari with the Court of Appeals, arguing that the Regional Trial Court committed grave abuse of discretion in dismissing the Motion to Release Cash Bond.

On January 18, 2016, the Court of Appeals rendered a Decision dismissing the Petition.

The Court of Appeals anchored its dismissal on the ground that Cruz and Francisco should have filed an appeal, instead of a petition for certiorari, to question the denial of their Motion to Release Cash Bond. The Court of Appeals further stated that it could not treat the Petition for Certiorari as an appeal since the period for appeal had lapsed before its filing.

Cruz and Francisco filed a Motion for Reconsideration but this was denied in the Resolution dated June 1, 2016. Hence, this Petition was filed.

#### **ISSUE:**

Whether or not thr filing of a petition for certiorari in this case is proper. (YES)

#### **RULING:**

Petitioners Cruz and Francisco insist that the filing of a petition for certiorari was proper since the Regional Trial Court's denial of their Motion to Release Cash Bond amounted to grave abuse of discretion. They point out that under Rule 114, Section 22 of the Rules of Court, bail is deemed automatically cancelled upon the dismissal of the case regardless of whether the case was dismissed through acquittal or desistance.

The writ of certiorari is not issued to correct every error that may have been committed by lower courts and tribunals. It is a remedy specifically to keep lower courts and tribunals within the bounds of their jurisdiction. In our judicial system, the writ is issued to prevent lower courts and tribunals from committing grave abuse of discretion in excess of their jurisdiction. Further, the writ requires that there is no appeal or other plain, speedy, and adequate remedy available to correct the error.

Thus, certiorari may not be issued if the error can be the subject of an ordinary appeal. As explained in *Delos Santos v. Metrobank:* 

We remind that the writ of certiorari — being a remedy narrow in scope and inflexible in character, whose purpose is to keep an inferior court within the bounds of its jurisdiction, or to prevent an inferior court from committing such grave abuse of discretion amounting to excess of jurisdiction, or to relieve parties from arbitrary acts of courts (i.e., acts that courts have no power or authority in law to perform) — is not a general utility tool in the legal workshop, and cannot be issued to correct every error committed by a lower court.

In the common law, from which the remedy of certiorari evolved, the writ of certiorari was issued out of Chancery, or the King's Bench, commanding agents or officers of the inferior courts to return the record of a cause pending before them, so as to give the party more sure and speedy justice, for the writ would enable the superior court to determine from an inspection of the record whether the inferior court's judgment was rendered without authority. The errors were of such a nature that, if allowed to stand, they would result in a substantial injury to the petitioner to whom no other remedy was available. If the inferior court acted without authority, the record was then revised and corrected in matters of law. The writ of certiorari was limited to cases in which the inferior court was said to be exceeding its jurisdiction or was not proceeding according to essential requirements of law and would lie only to review judicial or quasi-judicial acts.

The concept of the remedy of certiorari in our judicial system remains much the same as it has been in the common law. In this jurisdiction, however, the exercise of the power to issue the writ of certiorari is largely regulated by laying down the instances or situations in the Rules of Court in which a superior court may issue the writ of certiorari to an inferior court or officer. Section 1, Rule 65 of the Rules of Court compellingly provides the requirements for that purpose[.]

....

Pursuant to Section 1, supra, the petitioner must show that, one, the tribunal, board or officer exercising judicial or quasi-judicial functions acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, and, two, there is neither an appeal nor any plain, speedy and adequate remedy in the ordinary course of law for the purpose of amending or nullifying the proceeding.(Citations omitted)

An essential requisite for filing a petition for certiorari is the allegation that the judicial tribunal acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion has been defined as a "capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law." In order to determine whether the Court of Appeals erred in dismissing the Petition for

Certiorari for being the wrong remedy, it is necessary to find out whether the Regional Trial Court acted with grave abuse of discretion as to warrant the filing of a petition for certiorari against it.

Rule 114, Section 22 of the Rules of Court states:

Section 22. Cancellation of bail. — Upon application of the bondsmen, with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death.

The bail shall be deemed automatically cancelled upon acquittal of the accused, dismissal of the case, or execution of the judgment of conviction.

In all instances, the cancellation shall be without prejudice to any liability on the bail.

The provisions of the Rules of Court are clear. Bail shall be deemed automatically cancelled in three (3) instances: (1) the acquittal of the accused, (2) the dismissal of the case, or (3) the execution of the judgment of conviction. The Rules of Court do not limit the cancellation of bail only upon the acquittal of the accused.

Non-compliance with the Rules of Court is not, as the Office of the Solicitor General asserts, a mere error of judgment. It constitutes grave abuse of discretion. In *Crisologo v. JEWM Agro-Industrial Corporation:* 

This manifest disregard of the basic rules and procedures constitutes a grave abuse of discretion.

In State Prosecutors II Comilang and Lagman v. Judge Medel Belen, the Court held as inexcusable abuse of authority the trial judge's "obstinate disregard of basic and established rule of law or procedure." Such level of ignorance is not a mere error of judgment. It amounts to "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law," or in essence, grave abuse of discretion amounting to lack of jurisdiction.

Needless to say, judges are expected to exhibit more than just a cursory acquaintance with statutes and procedural laws. They must know the laws and apply them properly in good faith as judicial competence requires no less. (Citations omitted)

When a court or tribunal renders a decision tainted with grave abuse of discretion, the proper remedy is to file a petition for certiorari under Rule 65 of the Rules of Court. Rule 65, Section 1 states:

Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

Considering that the trial court blatantly disregarded Rule 114, Section 22 of the Rules of Court, petitioners' remedy was the filing of a petition for certiorari with the proper court.

The Court of Appeals, however, focused on the Office of the Solicitor General's argument that petitioners availed the wrong remedy. It cited *Belfast Surety and Insurance Company, Inc. v. People* and *Babasa v. Linebarger* as bases to rule that appeal was the proper remedy for a denial of a motion to release cash bond.

In *Belfast Surety*, the trial court declared a forfeiture of cash bond under Rule 114, Section 15 of the 1964 Rules of Criminal Procedure for failure of the accused to appear on trial. This Court stated that while appeal would be the proper remedy from a judgment of forfeiture of bond, certiorari is still available if the judgment complained of was issued in lack or excess of jurisdiction:

While appeal is the proper remedy from a judgment of forfeiture, nevertheless, certiorari is available despite the existence of the remedy of appeal where the judgment or order complained of was either issued in excess of or without jurisdiction. Besides, appeal under the circumstances of the present case is not an adequate remedy since the trial court had already issued a writ of execution. Hence, the rule that certiorari does not lie when there is an appeal is relaxed where, as in the present case, the trial court had already ordered the issuance of a writ of execution. (Citations omitted)

Instead of addressing the merits of the case, the Court of Appeals instead chose to focus on procedural technicalities, dismissing the petition for certiorari based on cases that did not actually prohibit the filing of a petition for certiorari. While procedural rules are necessary for the speedy disposition of justice, its indiscriminate application should never be used to defeat the substantial rights of litigants.

### CEFERINA LOPEZ TAN, *Petitioner*, -versus- SPOUSES APOLINAR P. ANTAZO AND GENOVEVA O. ANTAZO, *Respondents*.

G.R. No. 187208, FIRST DIVISION, February 23, 2011, PEREZ, J.

A petition for certiorari under Rule 65 of the Rules of Court is a pleading limited to correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. It may issue only when the following requirements are alleged in and established by the petition: (1) that the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) that such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

Only the first requisite is here present. Petitioner correctly impleaded the trial court judge in her certiorari petition.

Regarding to the second requisite, petitioner argues that the trial court's judgment is void for lack of factual and legal bases. After perusing the trial court's decision, we find that the assailed decision substantially complied with the constitutional mandate. While the decision is admittedly brief, it however contains all factual bases to support its conclusion.

Anent the third requisite, the remedy of appeal under Rule 42 of the Rules of Court was clearly available to petitioner. She however chose to file a petition for certiorari under Rule 65. As the Court of Appeals correctly surmised and pointed out, petitioner availed of the remedy of certiorari to salvage her lost appeal.

#### **FACTS:**

Respondent Spouses Apolinar and Genoveva Antazo are the registered owners of two parcels of land, namely: (1) a 1,024-square meter lot identified as Lot No. 2190, Cad 609-D, Case-17, AP-04-004442, situated at *Barangay* Pilapila, Binangonan, Rizal and covered by Original Certificate of Title (OCT) No. M-11592; and (2) a 100-square meter portion of a 498-square meter lot identified as Lot 2175, Cad 609-D. An *accion reinvindicatoria* suit with damages, docketed as Civil Case No. 06-019, was filed by respondents against petitioner for encroaching on their properties. On 25 July 2008, the Regional Trial Court (RTC), Branch 68, Binangonan, Rizal, rendered judgment favoring the respondents.

Petitioner filed a motion for reconsideration but was later denied by the RTC on 21 August 2008.

Aggrieved, petitioner filed a petition for *certiorari* before the Court of Appeals on 2 October 2008.

On 6 November 2008, the Court of Appeals dismissed the petition for adopting a wrong remedy or mode of appeal. Petitioner filed a motion for reconsideration but it was subsequently denied in a Resolution dated 10 March 2009.

#### **ISSUE:**

Whether or not a special civil action for *certiorari* before the Court of Appeals as is the correct remedy against the Decision and Resolution of the Regional Trial Court. (NO)

#### **RULING:**

A petition for *certiorari* under Rule 65 of the Rules of Court is a pleading limited to correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. It may issue only when the following requirements are alleged in and established by the petition: (1) that the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) that such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

Only the first requisite is here present. Petitioner correctly impleaded the trial court judge in her *certiorari* petition.

Regarding to the second requisite, it is well-settled that a petition for *certiorari* against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is manifested. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing

the impugned order. Mere abuse of discretion is not enough; it must be grave. The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.

The petitioner lists the particulars of the alleged grave abuse of discretion, thus -

THE RESPONDENT JUDGE OR TRIAL COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR WITHOUT JURISDICTION IN ISSUING THE QUESTIONED ORDERS ANNEXES "A" AND "B."

Under this heading, Item VII argues that the trial court's judgment is void for lack of factual and legal bases. This allegation is worthy only if it is read to mean that the questioned judgment did not state the facts and the law on which it is based, *i.e.*, that it violates Section 14, Article VIII of the Constitution which provides that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

After perusing the trial court's decision, we find that the assailed decision substantially complied with the constitutional mandate. While the decision is admittedly brief, it however contains all factual bases to support its conclusion. The first two (2) paragraphs of the decision established the ownership of respondents through certificates of title. The fact of encroachment was proven by the relocation survey conducted by the geodetic engineer, which the trial court found to be credible. The trial court held that these evidence are more than sufficient to prove two matters--ownership by respondents and encroachment by petitioner.

Petitioner herself disproved the absence of the required statements. She questioned the trial court's appreciation of her arguments and defenses; the sufficiency of evidence to prove encroachment; and the existence of a clear title to the alleged encroached properties in Errors (I), (II), and (III). Errors (IV), (V), and (VI) pertain to legal questions such as whether there was violation of forum-shopping; whether the award of attorney's fees is proper; and the validity of the counterclaims. A petition for the writ of *certiorari* does not deal with errors of judgment. Nor does it include a mistake in the appreciation of the contending parties' respective evidence or the evaluation of their relative weight. Verily, the errors ascribed by petitioner are not proper subjects of a petition for *certiorari*.

Anent the third requisite, a writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party. The party aggrieved by a decision of the Court of Appeals is proscribed from assailing the decision or final order of said court *via* Rule 65 of the Rules of Court because such recourse is proper only if the party has no plain, speedy and adequate remedy in the course of law. Furthermore, *certiorari* cannot be availed of as a substitute for the lost remedy of an ordinary appeal.

In this case, the remedy of appeal under Rule 42 of the Rules of Court was clearly available to petitioner. She however chose to file a petition for *certiorari* under Rule 65. As the Court of Appeals correctly surmised and pointed out, petitioner availed of the remedy of *certiorari* to salvage her lost appeal.

# ALEXIS C. ALMENDRAS, *Petitioner*, -versus- SOUTH DAVAO DEVELOPMENT CORPORATION, INC., (SODACO), ROLANDO SANCHEZ, LEONARDO DALWAMPO AND CARIDAD C. ALMENDRAS, *Respondents*.

G.R. No. 198209, FIRST DIVISION, March 22, 2017, DEL CASTILLO, J.

The instant Petition denominated as a petition for review, wrongfully alleged grave abuse of discretion on the part of the RTC. A petition for review on certiorari under Rule 45 of the Rules of Court is glaringly different from a petition for certiorari under Rule 65 of the Rules of Court. "A petition for review under Rule 45 of the x x x Rules of Court is generally limited only to questions of law or errors of judgment. On the other hand; a petition for certiorari under Rule 65 may be availed of to correct errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction."

Here, petitioner ascribed grave abuse of discretion to the RTC claiming that contrary to the lower court's ruling, he could not have received the motion on March 24, 2010 (as stated in the postmaster's certification) given that the motion was filed only on June 26, 2010.

#### **FACTS:**

On September 13, 2004, petitioner filed an Amended Complaint seeking to annul the Deed of Sale (DOS) executed by and among respondents Caridad C. Almendras (Caridad), Rolando C. Sanchez (Rolando) and Leonardo Dalwampo over a parcel of unregistered land located at Inawayan, Sta. Cruz, Davao del Sur containing approximately 6.3087 hectares. Petitioner alleged that he owned and had occupied said parcel of land since September 21, 1978 until he was forcibly dispossessed by respondent South Davao Development Company, Inc. (SODACO) on April 23, 1994. Petitioner claimed that Caridad sold the property to Rolando, a purported dummy of SODACO.

During the proceedings on March 16, 2010, Rolando filed a Request for Admission addressed to petitioner. The said Request for Admission reads in parts:

(f) That the Almendras coconut plantation situated at Upper Quinocol, Inawayan, Sta, Cruz, Davao del Sur, comprising seven (7) adjoining cadastral lots, was among the properties belonging to Alejandro D. Almendras, Sr. and placed under the jurisdiction of the Guardianship Court in Special Proceeding No. 830, to wit:

Lot No. 50, Pcs-5021 with an area of 5.1403 has. Lot No. 59, Pcs-5021 with an area of 3.4710 has. Lot Nos. 48, 49, 60, Pcs-5021, with an area of 5.1664 has. Lot No.53, Pcs-5021, with an area of 6.3080 has. Lot No.47, Pcs-5021, with an area of 3.4461 has.

- (g) That plaintiff ALEXIS C. ALMENDRAS did not oppose the inclusion of the subject property denominated as Lot. No. 53, Pcs-5021, under the Guardianship Court in Special Proceeding No.830;
- (h) That plaintiff ALEXIS C. ALMJENDRAS did not oppose the grant of authority to the judicial guardians Paul C. Almendras and Elizabeth Almendras-Alba to sell the individual lots comprising the Almendras coconut plantation to different vendees, particularly, the subject property denominated as Lot No. 53, Pcs-5021 in favor of defendant ROLANDO C.SANCHEZ;

# (i) That plaintiff ALEXIS C. ALMENDRAS did not seek a reconsideration nor appeal the Order of the Guardianship Court dated October 29, 1993, approving the sale of the individual lots comprising the Almendras coconut plantation to different vendees; (Emphasis supplied)

Petitioner, however, failed to file a sworn statement specifically denying the matters therein or setting forth in detail the reasons why he cannot either deny or admit said matters. Thus, Rolando filed a Motion for Summary Judgment. He alleged that there being no genuine issue as to any material fact, and the issue of ownership raised by petitioner being sham or fictitious, except as to the issue of damages, he is entitled to a summary judgment. Rolando prayed that the complaint be dismissed, that the validity of the DOS as well as his ownership and possession of the subject property be upheld, and that a hearing be conducted solely for the purpose of determining the propriety of his counterclaim for damages.

Petitioner opposed the Motion for Summary Judgment claiming that he was not personally served a copy of the Request for Admission. Moreover, he averred that the same was fatally defective for failure to comply with Section 5, Rule 15 of the Rules of Court on notice of hearing.

In the assailed March 28, 2011 Order, the RTC held that contrary to petitioner's claim, he was in fact served a copy of the Motion for Summary Judgment via registered mail and that he received a copy thereof on March 24, 2010 while his counsel was furnished a copy thereof on March 17, 2010. The RTC also held that there was a faithful compliance on the notice of hearing requirement. It noted that the motion was filed on June 29, 2010 while the hearing was scheduled on July 9, 2010. Thus, it cannot be said that there was violation of Section 5, Rule 15 of the Rules of Court.

The RTC then concluded that by petitioner's failure to respond to the Request for Admission, he was deemed to have admitted or impliedly admitted the matters specified therein. In particular, petitioner is deemed to have admitted the fact that the property in question had been validly sold to Rolando thereby rendering the complaint without any cause of action.

Petitioner filed a Motion for Reconsideration. In an Order dated August 9, 2011, the RTC denied petitioner's Motion for Reconsideration but granted that of SODACO.

Aggrieved by the RTC's Orders, petitioner sought recourse directly to this Court via the instant Petition for Review.

#### **ISSUE:**

Whether or not the Petition for Review should be granted. (NO)

#### **RULING:**

The instant Petition denominated as a petition for review, wrongfully alleged grave abuse of discretion on the part of the RTC. A petition for review on *certiorari* under Rule 45 of the Rules of Court is glaringly different from a petition for *certiorari* under Rule 65 of the Rules of Court. "A petition for review under Rule 45 of the x x x Rules of Court is generally limited only to questions of law or errors of judgment. On the other hand; a petition for *certiorari* under Rule 65 may be availed of to correct errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction."

Here, petitioner ascribed grave abuse of discretion to the RTC claiming that contrary to the lower court's ruling, he could not have received the motion on March 24, 2010 (as stated in the postmaster's certification) given that the motion was filed only on June 26, 2010.

It must be stressed that only questions of law may be properly raised in a petition for review. Whether or not petitioner received a copy of the motion on March 24, 2010 is a factual issue and such is not within the ambit of a petition for review.

Despite this being beyond the ambit of a petition for review, we find that such error does not constitute grave abuse of discretion. Petitioner should read the March 28, 2011 Order in its entirety to see that the said "absurdity" would not have caused him great damage and prejudice. If he were really keen on protecting his rights after noting the flaw in the March 28, 2011 Order, it would have been prudent for him to file a Motion for Correction of Judgment or to seek a different mode of appeal (*i.e.* Petition for *Certiorari*) but he did not.

The determination of whether an issue involves a question of law or a question of fact has been discussed in *Republic v. Malabanan* where this Court explained:

x x x A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

In Five Star Marketing Company, Inc. v. Booc, this Court distinguished the different modes of appealing RTC decisions, to wit:

The Court, in *Murillo v. Consul, Suarez v. Villarama, Jr.* and *VelayoFong v. Velayo*, had the occasion to clarify the three modes of appeal from decisions of the RTC, namely: a) ordinary appeal or appeal by writ of error, where judgment was rendered in a civil or criminal action by the RTC in the exercise of its original jurisdiction; b) petition for review, where judgment was rendered by the RTC in the exercise of its appellate jurisdiction; and c) petition for review to this Court. The first mode of appeal is governed by Rule 41, and is taken to the CA on questions of fact or mixed questions of fact and law. The second mode, covered by Rule 42, is brought to the CA on questions of fact, of law, or mixed questions of fact and law. The third mode, provided for by Rule 45, is elevated to this Court only on questions of law.

#### XXXX

Section 4 of Circular 2-90 in effect provides that an appeal taken either to this Court or to the CA by the wrong mode or inappropriate mode shall be dismissed. This rule is now incorporated in Section 5, Rule 56 of the Rules of Court. Moreover, the filing of the case directly with this Court departs from the hierarchy of courts. Normally, direct resort from the lower courts to this Court will not be entertained unless the appropriate remedy cannot be obtained in the lower tribunals.

As the instant Petition was filed without resorting to a more appropriate remedy before the CA, the same should be dismissed following our ruling above.

# LAND BANK OF THE PHILIPPINES, *Petitioner*, -versus- COURT OF APPEALS, PEDRO L. YAP, HEIRS OF EMILIANO F. SANTIAGO, AGRICULTURAL MANAGEMENT & DEVELOPMENT CORP., *Respondents*.

G.R. No. 118712, SECOND DIVISION, October 6, 1995, FRANCISCO, R., J.

DEPARTMENT OF AGRARIAN REFORM, represented by the Secretary of Agrarian Reform, Petitioner, -versus- COURT OF APPEALS, PEDRO L. YAP, HEIRS OF EMILIANO F. SANTIAGO, AGRICULTURAL MANAGEMENT & DEVELOPMENT CORP., ET AL., Respondents. G.R. No. 118745, SECOND DIVISION, October 6, 1995, FRANCISCO, R., J.

The conclusive effect of administrative construction is not absolute. Action of an administrative agency may be disturbed or set aside by the judicial department if there is an error of law, a grave abuse of power or lack of jurisdiction or grave abuse of discretion clearly conflicting with either the letter or the spirit of a legislative enactment. In this regard, it must be stressed that the function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying the provisions of the law into effect. The power of administrative agencies is thus confined to implementing the law or putting it into effect. Corollary to this is that administrative regulations cannot extend the law and amend a legislative enactment, for settled is the rule that administrative regulations must be in harmony with the provisions of the law. And in case there is a discrepancy between the basic law and an implementing rule or regulation, it is the former that prevails.

In the present suit, the DAR clearly overstepped the limits of its power to enact rules and regulations when it issued Administrative Circular No. 9. There is no basis in allowing the opening of a trust account in behalf of the landowner as compensation for his property because, as heretofore discussed, Section 16(e) of RA 6657 is very specific that the deposit must be made only in "cash" or in "LBP bonds". In the same vein, petitioners cannot invoke LRA Circular Nos. 29, 29-A and 54 because these implementing regulations cannot outweigh the clear provision of the law. Respondent court therefore did not commit any error in striking down Administrative Circular No. 9 for being null and void.

#### **FACTS:**

Private respondents are landowners whose landholdings were acquired by the DAR and subjected to transfer schemes to qualified beneficiaries under the Comprehensive Agrarian Reform Law (CARL, Republic Act No. 6657).

Aggrieved by the alleged lapses of the DAR and the Landbank with respect to the valuation and payment of compensation for their land pursuant to the provisions of RA 6657, private respondents filed with this Court a Petition for *Certiorari* and *Mandamus* with prayer for preliminary mandatory injunction. Private respondents questioned the validity of DAR Administrative Order No. 6, Series of 1992 and DAR Administrative Order No. 9, Series of 1990, and sought to compel the DAR to expedite the pending summary administrative proceedings to finally determine the just compensation of their properties, and the Landbank to deposit in cash and bonds the amounts respectively "earmarked", "reserved" and "deposited in trust accounts" for private respondents, and to allow them to withdraw the same.

Through a Resolution of the Second Division dated February 9, 1994, this Court referred the petition to respondent Court of Appeals for proper determination and disposition.

As found by respondent court, the following are undisputed:

Petitioner *Pedro Yap* alleges that "(o)n 4 September 1992 the transfer certificates of title (TCTs) of petitioner Yap were totally cancelled by the Registrar of Deeds of Leyte and were transferred in the names of farmer beneficiaries collectively, based on the request of the DAR together with a certification of the Landbank that the sum of P735,337.77 and P719,869.54 have been earmarked for Landowner Pedro L. Yap for the parcels of lands covered by TCT Nos. 6282 and 6283, respectively, and issued in lieu thereof TC-563 and TC-562, respectively, in the names of listed beneficiaries (ANNEXES "C" & "D") without notice to petitioner Yap and without complying with the requirement of Section 16 (e) of RA 6657 to deposit the compensation in cash and Landbank bonds in an accessible bank. (*Rollo*, p. 6).

The above allegations are not disputed by any of the respondents.

Petitioner *Heirs of Emiliano Santiago* allege that the heirs of Emiliano F. Santiago are the owners of a parcel of land located at Laur, NUEVA ECIJA with an area of 18.5615 hectares covered by TCT No. NT-60359 of the registry of Deeds of Nueva Ecija, registered in the name of the late Emiliano F. Santiago; that in November and December 1990, without notice to the petitioners, the Landbank required and the beneficiaries executed Actual tillers Deed of Undertaking (ANNEX "B") to pay rentals to the Landbank for the use of their farmlots equivalent to at least 25% of the net harvest; that on 24 October 1991 the DAR Regional Director issued an order directing the Landbank to pay the landowner directly or through the establishment of a trust fund in the amount of P135,482.12, that on 24 February 1992, the Landbank reserved in trust P135,482.12 in the name of Emiliano F. Santiago. (ANNEX "E"; *Rollo*, p. 7); that the beneficiaries stopped paying rentals to the landowners after they signed the Actual Tiller's Deed of Undertaking committing themselves to pay rentals to the LandBank (*Rollo*, p. 133).

The above allegations are not disputed by the respondents except that respondent Landbank claims 1) that it was respondent DAR, not Landbank which required the execution of Actual Tillers Deed of Undertaking (ATDU, for brevity); and 2) that respondent Landbank, although armed with the ATDU, did not collect any amount as rental from the substituting beneficiaries (*Rollo*, p. 99).

Petitioner Agricultural Management and Development Corporation (*AMADCOR*, for brevity) alleges — with respect to its properties located in San Francisco, Quezon — that the properties of AMADCOR in San Francisco, Quezon consist of a parcel of land covered by TCT No. 34314 with an area of 209.9215 hectares and another parcel covered by TCT No. 10832 with an area of 163.6189 hectares; that a summary administrative proceeding to determine compensation of the property covered by TCT No. 34314 was conducted by the DARAB in Quezon City without notice to the landowner; that a decision was rendered on 24 November 1992 (ANNEX "F") fixing the compensation for the parcel of land covered by TCT No. 34314 with an area of 209.9215 hectares at P2,768,326.34 and ordering the Landbank to pay or establish a trust account for said amount in the name of AMADCOR; and that the trust account in the amount of P2,768,326.34 fixed in the decision was established by adding P1,986,489.73 to the first trust account established on 19 December 1991 (ANNEX "G"). With respect to petitioner AMADCOR's property in Tabaco, Albay, it is alleged that the property of AMADCOR in Tabaco, Albay is covered by TCT No. T-2466 of the Register of Deeds of Albay with an area of 1,629.4578 hectares'; that emancipation patents were issued

covering an area of 701.8999 hectares which were registered on 15 February 1988 but no action was taken thereafter by the DAR to fix the compensation for said land; that on 21 April 1993, a trust account in the name of AMADCOR was established in the amount of P12,247,217.83', three notices of acquisition having been previously rejected by AMADCOR. (*Rollo*, pp. 8-9)

The above allegations are not disputed by the respondents except that respondent Landbank claims that petitioner failed to participate in the DARAB proceedings (land valuation case) despite due notice to it (*Rollo*, p. 100).

Private respondents argued that Administrative Order No. 9, Series of 1990 was issued without jurisdiction and with grave abuse of discretion because it permits the opening of trust accounts by the Landbank, in lieu of depositing in cash or bonds in an accessible bank designated by the DAR, the compensation for the land before it is taken and the titles are cancelled as provided under Section 16(e) of RA 6657. Private respondents also assail the fact that the DAR and the Landbank merely "earmarked", "deposited in trust" or "reserved" the compensation in their names as landowners despite the clear mandate that before taking possession of the property, the compensation must be deposited in cash or in bonds.

Petitioner DAR, however, maintained that Administrative Order No. 9 is a valid exercise of its rule-making power pursuant to Section 49 of RA 6657. Moreover, the DAR maintained that the issuance of the "Certificate of Deposit" by the Landbank was a substantial compliance with Section 16(e) of RA 6657 and the ruling in the case of Association of Small Landowners in the Philippines, Inc., et al. vs. Hon. Secretary of Agrarian Reform, G.R. No. 78742, July 14, 1989 (175 SCRA 343).

For its part, petitioner Landbank declared that the issuance of the Certificates of Deposits was in consonance with Circular Nos. 29, 29-A and 54 of the Land Registration Authority where the words "reserved/deposited" were also used.

On October 20, 1994, the respondent court rendered the assailed decision in favor of private respondents. Petitioners filed a motion for reconsideration but respondent court denied the same.

#### ISSUE:

Whether or not administrative construction may be disturbed or set aside by the judicial department. (YES)

#### **RULING:**

On March 20, 1995, private respondents filed a motion to dismiss the petition in G.R. No. 118745 alleging that the appeal has no merit and is merely intended to delay the finality of the appealed decision. The Court, however, denied the motion and instead required the respondents to file their comments.

Petitioners submit that respondent court erred in (1) declaring as null and void DAR Administrative Order No. 9, Series of 1990, insofar as it provides for the opening of trust accounts in lieu of deposit in cash or in bonds, and (2) in holding that private respondents are entitled as a matter of right to the immediate and provisional release of the amounts deposited in trust pending the final resolution of the cases it has filed for just compensation.

Anent the first assignment of error, petitioners maintain that the word "deposit" as used in Section 16(e) of RA 6657 referred merely to the act of depositing and in no way excluded the opening of a trust account as a form of deposit. Thus, in opting for the opening of a trust account as the acceptable form of deposit through Administrative Circular No. 9, petitioner DAR did not commit any grave abuse of discretion since it merely exercised its power to promulgate rules and regulations in implementing the declared policies of RA 6657.

The contention is untenable. Section 16(e) of RA 6657 explicitly provides that the deposit must be made only in "cash" or in "LBP bonds". Nowhere does it appear nor can it be inferred that the deposit can be made in any other form. If it were the intention to include a "trust account" among the valid modes of deposit, that should have been made express, or at least, qualifying words ought to have appeared from which it can be fairly deduced that a "trust account" is allowed. In sum, there is no ambiguity in Section 16(e) of RA 6657 to warrant an expanded construction of the term "deposit".

The conclusive effect of administrative construction is not absolute. Action of an administrative agency may be disturbed or set aside by the judicial department if there is an error of law, a grave abuse of power or lack of jurisdiction or grave abuse of discretion clearly conflicting with either the letter or the spirit of a legislative enactment. In this regard, it must be stressed that the function of promulgating rules and regulations may be legitimately exercised only for the purpose of carrying the provisions of the law into effect. The power of administrative agencies is thus confined to implementing the law or putting it into effect. Corollary to this is that administrative regulations cannot extend the law and amend a legislative enactment, for settled is the rule that administrative regulations must be in harmony with the provisions of the law. And in case there is a discrepancy between the basic law and an implementing rule or regulation, it is the former that prevails.

In the present suit, the DAR clearly overstepped the limits of its power to enact rules and regulations when it issued Administrative Circular No. 9. There is no basis in allowing the opening of a trust account in behalf of the landowner as compensation for his property because, as heretofore discussed, Section 16(e) of RA 6657 is very specific that the deposit must be made only in "cash" or in "LBP bonds". In the same vein, petitioners cannot invoke LRA Circular Nos. 29, 29-A and 54 because these implementing regulations cannot outweigh the clear provision of the law. Respondent court therefore did not commit any error in striking down Administrative Circular No. 9 for being null and void.

## RUBEN C. MAGTOTO and ARTEMIA MAGTOTO, Petitioners, v. COURT OF APPEALS, and LEONILA DELA CRUZ, Respondents.

G.R. No. 175792, SECOND DIVISION, November 21, 2012, DEL CASTILLO, J.

It must be pointed out that petitioners resort to a Petition for Certiorari under Rule 65 of the Rules of Court is inappropriate. Petitioners remedy from the adverse Decision of the CA lies in Rule 45 which is a Petition for Review on Certiorari. As such, this petition should have been dismissed outright for being a wrong mode of appeal. Even if the petition is to be treated as filed under Rule 45, the same must still be denied for late filing and there being no reversible error on the part of the CA. Records show that petitioners received a copy of the CA Resolution denying their Motion for Reconsideration on October 30, 2006. They therefore had 15 days or until November 14, 2006 within which to file their Petition for Review on Certiorari before this Court. However, they filed their Petition for Certiorari on December 29, 2006, after the period to file a Petition for Review on Certiorari under Rule 45 had expired. Hence,

this Petition for Certiorari under Rule 65 was resorted to as a substitute for a lost appeal which is not allowed.

#### **FACTS:**

On May 15, 2003, Leonila filed before the RTC a Complaint for Specific Performance with Damages and prayer for a writ of preliminary injunction against the spouses Magtoto.

In said Complaint, Leonila alleged that on January 11, 1999, she sold her three parcels of land situated in Mabalacat, Pampanga to petitioner Ruben C. Magtoto (Ruben) for P11,952,750.00. As payment therefor, Ruben issued several postdated checks. After the parties executed the corresponding Deed of Absolute Sale, Leonila delivered the Transfer Certificates of Title (TCTs) of the properties to spouses Magtoto. From then on, the spouses Magtoto exercised acts of dominion over the said properties, enjoyed the use thereof, and transferred their titles in the name of Ruben.

Meanwhile, most of the checks that Ruben issued were dishonored. Out of the total purchase price of P11,952,750.00, the spouses Magtoto were only able to pay the amount of P2,455,000.00. Despite Leonilas repeated demands, the balance of P9,497,750.00 remained unpaid. Hence, the Complaint.

On June 6, 2003, spouses Magtoto were served with summons requiring them to file an Answer within 15 days from notice. The said spouses, however, thrice moved for extensions of time within which to file the same. In an Order dated July 25, 2003, the RTC granted the spouses Magtoto a final extension until August 2, 2003 within which to file their Answer. On August 4, 2003 or two days after the last day for filing the Answer, the spouses Magtoto instead filed a Motion to Dismiss. In an Order dated September 11, 2003, the RTC denied the Motion to Dismiss for lack of merit.

On September 25, 2003, Atty. Noel T. Canlas (Atty. Canlas) filed an Ex-Parte Motion to Withdraw Appearance as counsel for petitioners. The motion was set for hearing on October 9,  $2003\frac{15}{1}$ ,  $\hat{l}_{1}$  but Atty. Canlas failed to appear.

On January 23, 2004, Leonila filed a Motion to Declare Defendants in Default and to Render Judgment Based on the Complaint. Citing Section 4, Rule 16 of the Rules of Court, Leonila argued that after the denial of their Motion to Dismiss, spouses Magtoto should have filed their Answer within the reglementary period. However, despite the lapse of more than three months from receipt of notice of denial of their Motion to Dismiss, the spouses Magtoto still failed to file their Answer. Leonila also cautioned the spouses Magtoto that their counsels withdrawal of appearance does not justify their failure to file an Answer.

The motion to declare petitioners in default was heard by the RTC on March 18, 2004. During said hearing, Ruben was present. The court a quo noted that despite the spouses Magtotos counsels withdrawal of appearance as early as September 25, 2003, they have not yet engaged the services of another counsel. The RTC thus deemed the motion submitted for resolution. Eventually, the RTC declared the spouses Magtoto in default on March 23, 2004. Leonilas presentation of evidence ex parte and formal offer of evidence followed.

On June 25, 2004 or almost three months after they were declared in default, the spouses Magtoto, through their new counsel, filed an Omnibus Motion to Lift Order of Default and to Admit Attached Answer, and their Answer. The RTC, however, denied the said motion.

The spouses Magtoto moved for reconsideration but the same was likewise denied by the said court.

On November 22, 2004, the RTC issued its Decision finding that the spouses Magtoto failed to comply with their obligation to pay the full amount of P11,952,750.00 for the purchase of the three parcels of land and ordering them to pay the balance thereof.

The spouses Magtoto timely filed a Notice of Appeal which was given due course by the RTC.

The CA dismissed the appeal for being bereft of merit in its Decision of May 31, 2006.

#### **ISSUE:**

Whether or not petitioners correctly resorted to a Petition for Certiorari under Rule 65 to assail the CA Decision. (NO)

#### **RULING:**

It must be pointed out that petitioners resort to a Petition for Certiorari under Rule 65 of the Rules of Court is inappropriate. Petitioners remedy from the adverse Decision of the CA lies in Rule 45 which is a Petition for Review on Certiorari. As such, this petition should have been dismissed outright for being a wrong mode of appeal. Even if the petition is to be treated as filed under Rule 45, the same must still be denied for late filing and there being no reversible error on the part of the CA. Records show that petitioners received a copy of the CA Resolution denying their Motion for Reconsideration on October 30, 2006. They therefore had 15 days or until November 14, 2006 within which to file their Petition for Review on Certiorari before this Court. However, they filed their Petition for Certiorari on December 29, 2006, after the period to file a Petition for Review on Certiorari under Rule 45 had expired. Hence, this Petition for Certiorari under Rule 65 was resorted to as a substitute for a lost appeal which is not allowed.

MAHARLIKA A. CUEVAS, Petitioner, -versus- ATTY. MYRNA V. MACATANGAY, IN HER CAPACITY AS DIRECTOR IV OF THE CIVIL SERVICE COMMISSION AND MEMBERS OF THE BOARD OF THE NATIONAL MUSEUM, NAMELY; VIRGILIO ALMARIO, CORAZON ALVINA, SEN. EDGARDO ANGARA, JEREMY BARNS, FELIPE DE LEON, CONG. SALVADOR ESCUDERO III, MARINELLA K. FABELLA, FR. RENE PIO B. JAVELLANA, MARIA ISABEL G. ONGPIN, FELICE P. STA. MARIA AND BENITO S. VERGARA, Respondents.

G.R. No. 208506, SECOND DIVISION, February 22, 2017, PERALTA, J.

This is a classic case of resorting to the filing of a petition for certiorari when the remedy of an ordinary appeal can no longer be availed of. Jurisprudence is replete with the pronouncement that where appeal is available to the aggrieved party, the special civil action of certiorari will not be entertained - remedies of appeal and certiorari are mutually exclusive, not alternative or successive. The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to certiorari because one of the requirements for the latter remedy is the unavailability of appeal.

Clearly, petitioner should have moved for the reconsideration of CSC Resolution No. 10-1438 containing the Commission's resolution as to the invalidity of his appointment and, thereafter, should have filed an appeal. Sadly, failing to do so, petitioner utilized the special civil action of certiorari. And to make matters worse, petitioner questioned, not the proper resolution of the CSC, but the mere letter-responses of the same Commission.

#### **FACTS:**

Petitioner Maharlika Cuevas was one of the employees of the National Museum vying for the vacant position of Director III, and on October 23, 2008, Board Resolution No. 03-2008 was issued by the National Museum Board of Trustees, recommending for appointment Mr. Cecilio Salcedo and petitioner for the said position.

The then National Museum Board of Trustees Chairman, Antonio 0. Cojuangco, appointed petitioner as Director III under a temporary status on November 24, 2008.

Unsatisfied, Elenita D.V. Alba, another applicant for the same position, filed a protest with the esc, the latter referring the matter to the National Museum for resolution. In a letter to the CSC, dated August 14, 2009 by Director IV Corazon S. Alvina, the National Museum dismissed the protest and informed the CSC that the decision on petitioner's appointment is final.

Thereafter, on November 24, 2009, the then National Museum Board of Trustees Chairman, Antonio 0. Cojuangco, appointed petitioner as Director III on a permanent status.

Still aggrieved, Elenita D.V. Alba appealed the dismissal of her protest to the CSC insisting that she is the most qualified for the contested position, and on July 27, 2010, the CSC issued Resolution No. 10-1438 finding no merit on Alba's claim. The CSC, however, found that the issuance of petitioner's appointment was not in accordance with Section 11 of Republic Act (R.A.) No. 8492, or the *National Museum Act of 1998*, which states that it is the Board of Trustees that shall appoint the Assistant Director or Director III and not the Chairman of the National Museum.

Due to the above Resolution, Director Jocelyn Patrice L. Deco, Director II of the CSC Field Office-National Museum, sent a letter dated October 14, 2010 to Director Jeremy Barns, Director IV of the National Museum, forwarding the invalidated permanent appointment of petitioner as Director III contained in CSC Resolution No. 10-1438 dated July 27, 2010.

On October 21, 2010, Director Jeremy Barns wrote the CSC asking for a clarification and reconsideration of the October 14, 2010 letter. The CSC replied in a letter dated June 27, 2011 declaring that its resolution is final and executory because the proper party the appointing authority or the appointee, the petitioner, in this case, failed to appeal the resolution as provided by the CSC Rules. According to the CSC, the records showed that the National Museum duly received the October 14, 2010 letter, copy of which was furnished the petitioner and the appeal from CSC Resolution No. 10-1438 should have been made on or before October 29,2010.

On August 2, 2011, petitioner moved for the reconsideration of the June 27, 2010 letter. He claimed that he received the letter dated June 27, 2010 on July 18, 2011, and it was the first time that he learned of the matter regarding his appointment. He also argued that his appointment was procedurally sound.

The National Museum then posted a bulletin of vacant positions, including that of petitioner's, on August 12, 2011. Petitioner, thereafter, wrote a letter to the National Museum clarifying that a motion for reconsideration had been filed before the esc and it was pending resolution and as such, his position cannot be considered as vacant.

On October 12, 2011, petitioner received a copy of the CSC's letter dated September 26, 2011 denying his motion.

Petitioner then elevated the case to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court alleging that the CSC gravely abused its discretion when it sent its letter-responses dated June 27, 201 l and September 26, 2011 to the National Museum. On August 7, 2013, the CA denied the petition and ruled that CSC Resolution No. 10-1438 invalidating petitioner's appointment stands.

The CA ruled that the assailed orders of the CSC are only letter responses and not the orders contemplated by the Rules which can be assailed in a petition for *certiorari*. According to the CA, petitioner should have sought reconsideration of CSC Resolution No. 10-1438 which invalidated his appointment and which was communicated to the National Museum, copy furnished the petitioner, on October 14, 2010; and an appeal should have been filed instead of a letter of clarification and reconsideration.

#### **ISSUE:**

Whether or not the Court of Appeals committed serious and grave error in declaring that the remedy of certiorari under Rule 65 was not the proper remedy under the circumstances. (NO)

#### **RULING:**

As a general rule, only questions of law raised *via* a petition for review under Rule 45 of the Rules of Court are reviewable by this Court.

Factual findings of administrative or quasi-judicial bodies, including labor tribunals, are accorded much respect by this Court as they are specialized to rule on matters falling within their jurisdiction especially when these are supported by substantial evidence. However, a relaxation of this rule is made permissible by this Court whenever any of the following circumstances is present:

- 1. [W]hen the findings are grounded entirely on speculations, surmises or conjectures;
- 2. when the inference made is manifestly mistaken, absurd or impossible;
- 3. when there is grave abuse of discretion;
- 4. when the judgment is based on a misapprehension of facts;
- 5. when the findings of fact are conflicting;
- 6. when in making its findings[,] the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;
- 7. when the findings are contrary to that of the trial court;
- 8. when the findings are conclusions without citation of specific evidence on which they are based;

- 9. when the facts set forth in the petition[,] as well as in the petitioner is main and reply briefs[,] are not disputed by the respondent;
- 10. when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; [and]
- 11. when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

The question as to whether the assailed orders of the CSC are mere letter-responses or the orders contemplated by the Rules that can be assailed in a petition for *certiorari* under Rule 65 is factual and is not within the ambit of a petition under Rule 45. Nevertheless, even if this Court relaxes such procedural infirmity, the present petition must still fail.

#### Section 1, Rule 65 of the Rules of Court reads:

Section 1. *Petition for Certiorari*. When any tribunal, board or officer exercising judicial or quasijudicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the **judgment, order or resolution** subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

According to petitioner, a letter-response can be the subject of a petition for certiorari as already ruled by this Court in *National Development Company v. Collector of Customs* wherein a letter-response for the Collector of Customs was struck down for having been committed with grave abuse of discretion. However, as correctly observed by the OSG, the case cited by petitioner is misapplied. In *National Development Company v. Collector of Customs*, the subject letter was, in fact, a resolution or decision that found therein petitioners guilty of a violation of the Tariff and Customs Code, while in the present petition, the letter-responses of the CSC did not decide the issue on the validity or invalidity of petitioner's appointment.

It is, therefore, CSC Resolution No. 10-1438 that should have been the subject of an appeal as it contained the decision of the said Commission as to the invalidity of petitioner's appointment as Director III of the National Museum.

Thus, this is a classic case of resorting to the filing of a petition for *certiorari* when the remedy of an ordinary appeal can no longer be availed of. Jurisprudence is replete with the pronouncement that where appeal is available to the aggrieved party, the special civil action of *certiorari* will not be entertained - remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision, order or resolution. The existence

and availability of the right of appeal prohibits the resort to *certiorari* because one of the requirements for the latter remedy is the unavailability of appeal.

Clearly, petitioner should have moved for the reconsideration of CSC Resolution No. 10-1438 containing the Commission's resolution as to the invalidity of his appointment and, thereafter, should have filed an appeal. Sadly, failing to do so, petitioner utilized the special civil action of *certiorari*. And to make matters worse, petitioner questioned, not the proper resolution of the CSC, but the mere letter-responses of the same Commission.

Notwithstanding the above disquisitions, petitioner's claim that his appointment is valid because he was in fact appointed by the Board and not the Chairman as shown in the Minutes of the meeting still does not gain him any merit. In order for the Court to refer to the minutes of a meeting or a proceeding, the subject Board resolution must at least be ambiguous or obscure; otherwise, if it is clear on its face, there is no need to resort to such action because a Board resolution takes precedence over the minutes of a meeting.

## FESTO R. GALANG, JR., *Petitioner*, -versus- HON. RAMIRO R. GERONIMO, as Presiding Judge of the Regional Trial Court of Romblon, Branch 81; and NICASIO M. RAMOS, *Respondents*.

G.R. No. 192793, EN BANC, February 22, 2011, PERALTA, J.

Section 4, Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC, which provides when and where a petition for certiorari should be filed, states thus:

SEC. 4. When and where to file petition. – The petition shall be filed not later than sixty (60) days from notice of the judgment or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

In election cases involving an act or an omission of a municipal or a regional trial court, the <u>petition shall be filed exclusively with the Commission on Elections</u>, in aid of its appellate jurisdiction.

Since it is the COMELEC which has jurisdiction to take cognizance of an appeal from the decision of the regional trial court in election contests involving elective municipal officials, then it is also the COMELEC which has jurisdiction to issue a writ of certiorari in aid of its appellate jurisdiction. Clearly, petitioner erred in invoking this Court's power to issue said extraordinary writ.

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On May 12, 2010, at 12:37 p.m., petitioner was proclaimed winner for the mayoralty race during the May 10, 2010 Automated Elections for the Municipality of Cajidiocan, Province of Romblon. The proclamation was based on the Certificate of Canvass (COC), but without the official signed Certificate of Canvass for Proclamation (COCP). This was done with the approval of the Provincial Board of Canvassers (PBOC) Chairman.

Subsequently, private respondent Nicasio Ramos, who was also a mayoralty candidate in the same election, requested the Commission on Elections (COMELEC) to conduct a manual reconciliation of the votes cast. The COMELEC then issued Resolution No. 8923, granting said request. The manual reconciliation was done on May 20, 2010 at the *Sangguniang Bayan* Session Hall, after which proceedings the eight winning *Sangguniang Bayan* Members were also proclaimed. The MBOC made erasures and corrections using correction fluid on the COCP for the *Sangguniang Bayan* Members to reflect the results of the manual reconciliation. As for the COCP for the previously proclaimed mayoralty and vice-mayoralty candidates, the total number of votes for each of the candidates remained the same even after the manual reconciliation; hence, only the date was erased and changed to read "May 20, 2010" to correspond with the date of the manual reconciliation.

On May 27, 2010, private respondent filed an election protest case against petitioner before the RTC. The following day, the court sheriff went to petitioner's residence to serve summons with a copy of the petition. The Sheriff's Return of Summons stated that the sheriff was able to serve Summons on petitioner by leaving the same and the attached copy of the protest with a certain Gerry Rojas, who was then at petitioner's residence.

On June 8, 2010, petitioner, together with his then counsel of record, Atty. Abner Perez, appeared in court and requested a copy of the summons with a copy of the election protest. During the hearing on said date, respondent judge directed petitioner to file the proper pleading and, on June 11, 2010, petitioner filed a Motion to Admit Answer, to which was attached his Answer with Affirmative Defense and Counterclaim. One of his affirmative defenses was that the electoral protest was filed out of time, since it was filed more than ten (10) days after the date of proclamation of the winning candidate.

The trial court then issued the assailed Order dated June 24, 2010, finding the service of Summons on petitioner on May 28, 2010 as valid, and declaring the Answer filed on June 11, 2010, as filed out of time.

On July 12, 2010, petitioner filed an Omnibus Motion to: (1) Restore Protestee's Standing in Court; (2) Motion for Reconsideration of the Order dated June 24, 2010; and (3) Suspend Proceedings Pending Resolution of Falsification Case Before the Law Department of the COMELEC. However, on July 22, 2010, the trial court issued the second assailed Order denying petitioner's Omnibus Motion.

#### **ISSUE:**

Whether or not the COMELEC has jurisdiction to take cognizance of an appeal from the decision of the regional trial court in election contests involving elective municipal officials. (YES)

#### **RULING:**

Section 4, Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC, which provides when and where a petition for *certiorari* should be filed, states thus:

SEC. 4. When and where to file petition. – The petition shall be filed not later than sixty (60) days from notice of the judgment or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

If the petition relates to an act or an omission of a municipal trial court or of a corporation, a board, an officer or a person, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction. If the petition involves an act or an omission of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed with and be cognizable only by the Court of Appeals.

In election cases involving an act or an omission of a municipal or a regional trial court, the <u>petition shall be filed exclusively with the Commission on Elections</u>, in aid of its appellate jurisdiction.

The question then is, would taking cognizance of a petition for *certiorari* questioning an interlocutory order of the regional trial court in an electoral protest case be considered in aid of the appellate jurisdiction of the COMELEC? The Court finds in the affirmative.

Interpreting the phrase "in aid of its appellate jurisdiction," the Court held in J.M. Tuason & Co., Inc. v. Jaramillo, et al. that if a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of certiorari, in aid of its appellate jurisdiction. This was reiterated in De Jesus v. Court of Appeals, where the Court stated that a court may issue a writ of certiorari in aid of its appellate jurisdiction if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court.

Note that Section 8, Rule 14 of the 2010 Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials states that:

Sec. 8. *Appeal.* - **An aggrieved party may appeal the decision to the COMELEC** within five (5) days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or on the adverse party who is not represented by counsel.

Since it is the COMELEC which has jurisdiction to take cognizance of an appeal from the decision of the regional trial court in election contests involving elective municipal officials, then it is also the COMELEC which has jurisdiction to issue a writ of *certiorari* in aid of its appellate jurisdiction. Clearly, petitioner erred in invoking this Court's power to issue said extraordinary writ.

WILLIAM R. WENCESLAO, VIVENCIO B. RODRIGO, JR., NOEL N. DAMIASAN, VIRGILIO B. CRISTOBAL, JEMYLITO M. APIAG, JOVENAL P. ATAG, ARNULFO S. DASCO, CARLITO E. INFANTE, ALFREDO T. VISAYA, JAMES M. REAL, RENATO A. GUINGUE, ZACARIAS G. TALABOC, JR., GEORGE N. TAGUIAM, RANDY D. ABRENCILLO, MELECIO B. QUINIMON, CESAR B. JARANILLA, RIZALDE R. BARILE, HERICO A. BUENAVENTE, JERSON A. TATOY, MICHAEL L. CASIANO, FELIX M. DINIAY, PEDRO DELA CRUZ, JR., JHOSEL BOY G. ABAYON, AUGUSTO L.

## OCENAR, MARIO M. FUNELAS, AND AVELINO T. QUIÑONES, *Petitioners*, -versus- MAKATI DEVELOPMENT CORPORATION, DANTE ABANDO AND COURT OF APPEALS, *Respondents*.

G.R. No. 230696, THIRD DIVISION, August 30, 2017, MARTIRES, J.

#### RULE 46 Original Cases

**Section 3.** Contents and filing of petition; effect of noncompliance with requirements. -  $x \times x$ 

In actions filed under Rule 65, the petition shall further indicate the <u>material dates</u>showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed, and when notice of the denial thereof was received.

X X X X

The <u>failure of the petitioner to comply</u> with any of the requirements shall be sufficient <u>ground for the dismissal</u> of the petition.

#### RULE 65 Certiorari, Prohibition and Mandamus

**Section 1.** Petition for certiorari. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a <u>certified true copy of the judgment, order or resolution</u> subject thereof, <u>copies of all pleadings and documents relevant and pertinent thereto</u>, and a sworn certification of non-forum shopping as provided in the third paragraph of <u>Section 3, Rule 46</u>. (emphasis supplied)

Based on the foregoing rules, we rule that the CA was justified in initially dismissing the petition based on the petitioners' failure to attach to the petition the **certified true copies** of the assailed decision and resolution of the NLRC, as well as other portions of the records of the case. As noted by the CA, only photocopies, not the certified true copies, of the NLRC decision and resolution complained of were attached; neither were the pleadings and other papers filed before the labor arbiter and the NLRC appended. Absent such required documents, the CA correctly opined that it would have no basis to determine whether the NLRC gravely abused its discretion in finding the petitioners as project employees and that their termination was not illegal.

#### **FACTS:**

The case stemmed from a Complaint for Illegal Dismissal and Monetary Claims filed by the petitioners against private respondent Makati Development Corporation (MDC) before the Labor

Arbiter. Records show that the petitioners were former construction workers of MDC. In their complaint, the petitioners claimed that they were regular employees of MDC and were illegally dismissed for refusing to apply and be transferred to another contractor, Asiapro Multi-Purpose Cooperative. In due course, the Labor Arbiter dismissed the complaint for lack of merit. In affirming the status of the petitioners as project employees, the Labor Arbiter relied on the evidence of MDC showing that the petitioners had worked in several of its other projects before being engaged in the West Tower @ One Serendra Project and the North Triangle Building Project. The Labor Arbiter ruled that repeated re-employment does not make a project employee a regular employee.

On appeal, the National Labor Relations Commission (*NLRC*) Fourth Division affirmed *in toto* the decision of the Labor Arbiter.

The petitioners sought reconsideration of the said decision but it was denied by the NLRC in its Resolution, dated 26 July 2016.

Undaunted, the petitioners filed before the CA a Petition for Certiorari alleging grave abuse of discretion amounting to lack or excess of jurisdiction of the NLRC for issuing the order affirming the decision of the Labor Arbiter.

The CA dismissed the petition on two grounds:

- (1) the petition is non-compliant with Section 3, Rule 46 of the Rules of Court; and
- (2) the petition, on its face, lacks merit for failing to illustrate public respondent's grave abuse of discretion amounting to lack or excess of jurisdiction in renderinthe assailed 31 May 2016 Decision and 26 July 2016 Resolution.

The petitioners moved for reconsideration but to no avail. On 24 February 2017, they received the assailed resolution denying their motion for reconsideration. After two motions for extension to file a petition for review on certiorari, the petitioners filed the instant petition on 10 April 2017.

#### **ISSUE:**

Whether the CA was justified in dismissing the petition for certiorari due to the failure of the petitioners to attach the pertinent records of the case. (YES)

#### **RULING:**

While the pleading filed by the petitioners is denominated as "Petition for Review on Certiorari" pursuant to Rule 45 of the Rules of Court, its contents, however, particularly the ground raised and supporting arguments, assert grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the CA, an averment apposite in a petition for certiorari under Rule 65 of the Rules of Court. The seeming inconsistency of the petition's style and substance must be resolved as its proper characterization, on whether it is pursued under Rule 45 or Rule 65 of the Rules of Court, would objectively determine its outright dismissal for being the wrong remedy.

Accordingly, if the petition is to be treated as a petition for certiorari under Rule 65, then it should appropriately be dismissed because there is a plain, adequate, and speedy remedy available under the circumstances. It is settled that a special civil action for certiorari under Rule 65 is an original or

independent action based on grave abuse of discretion amounting to lack or excess of jurisdiction; and it will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. In this case, what the petitioners seek to be annulled are the resolutions of the CA dismissing their petition for certiorari and the motion for reconsideration from such dismissal being, without a doubt, a final order for the complete disposition of such petition. Consequently, the petitioner's right and available legal recourse to assail such resolutions is an appeal by certiorari under Rule 45 instead of a special civil action for certiorari under Rule 65.

The Court in *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, announced:

The proper remedy to obtain a reversal of judgment on the merits, final order or resolution is appeal. This holds true even if the error ascribed to the court rendering the judgment is its *lack of jurisdiction* over the subject matter, or the *exercise of power in excess thereof*, or *grave abuse of discretion* in the findings of fact or of law set out in the decision, order or resolution. The existence and availability of the right of appeal prohibits the resort to certiorari because one of the requirements for the latter remedy is that there should be no appeal. (emphasis supplied)

Consistent with *Malayang Manggagawa*, and in the spirit of liberality of the application of the rules, we can treat the present petition as an appeal by certiorari under Rule 45 despite allegations of grave abuse of discretion being ascribed to the CA in issuing the assailed resolutions. The intention of the petitioners to file an appeal by certiorari instead of a special civil action for certiorari is, in any event, clearly manifested by the two motions for extension of time to file a petition for review on certiorari under Rule 45 of the Rules of Court.

Proceeding to the merits, we find that the CA did not err, much less commit grave abuse of discretion amounting to lack of or excess of jurisdiction, in dismissing the petition for certiorari due to procedural lapses and lack of substantive merit of the said petition. The CA pointed to the petitioners' failure to state the material dates and to attach the certified true copies of the assailed decision and resolution of the NLRC as well as the other pertinent documents referred to in the petition, such as the labor arbiter's decision, the petitioner's Appeal Memorandum and Motion for Reconsideration. The CA also determined that the petition, on its face, did not establish the whimsical exercise of discretion which the NLRC supposedly had committed.

While the CA invoked several grounds in dismissing the petition, the petitioners raised before this Court only the issue on the necessity of attaching to the petition relevant portions of the case records.

We quote here the pertinent provisions of the Rules of Court that, in part, became the basis for the dismissal of the petition:

#### **RULE 46**

#### **Original Cases**

**Section 3.** Contents and filing of petition; effect of noncompliance with requirements. -  $x \times x$ 

In actions filed under Rule 65, the petition shall further indicate the **material dates** showing when

notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed, and when notice of the denial thereof was received.

X X X X

The <u>failure of the petitioner to comply</u> with any of the requirements shall be sufficient <u>ground</u> <u>for the dismissal</u> of the petition.

#### **RULE 65**

#### Certiorari, Prohibition and Mandamus

**Section 1.** *Petition for certiorari.* - When any tribunal, board or officer exercising judicial or quasijudicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a <u>certified true copy of the judgment, order or resolution</u> subject thereof, <u>copies of all pleadings and documents relevant and pertinent thereto</u>, and a sworn certification of non-forum shopping as provided in the third paragraph of <u>Section 3, Rule 46</u>. (emphasis supplied)

Based on the foregoing rules, we rule that the CA was justified in initially dismissing the petition based on the petitioners' failure to attach to the petition the *certified true copies* of the assailed decision and resolution of the NLRC, as well as other portions of the records of the case. As noted by the CA, only photocopies, not the certified true copies, of the NLRC decision and resolution complained of were attached; neither were the pleadings and other papers filed before the labor arbiter and the NLRC appended. Absent such required documents, the CA correctly opined that it would have no basis to determine whether the NLRC gravely abused its discretion in finding the petitioners as project employees and that their termination was not illegal. On the necessity of attaching legible duplicate original or certified true copy of the judgment, order, resolution or ruling subject of the petition, we explained in *Pinakamasarap Corporation v. NLRC* that:

There is a sound reason behind this policy and it is to ensure that the copy of the judgment or order sought to be reviewed is a faithful reproduction of the original so that the reviewing court would have a definitive basis in its determination of whether the court, body or tribunal which rendered the assailed judgment or order committed grave abuse of discretion.

On motion for reconsideration, however, the petitioners rectified their error by attaching the certified true copies of the NLRC decision and resolution, as well as legible copies of the Appeal Memorandum and Motion for Reconsideration (from the NLRC decision). Yet, the CA still denied their motion.

The petitioners bewail such denial of their motion for reconsideration arguing that the Appeal Memorandum and Motion for Reconsideration (from the NLRC decision) are sufficient to enable the CA to resolve their petition even without the pleadings and other portions of the records. Citing *Air* 

*Philippines*, the petitioners assert that the other portions of the case records need not be appended alluding to the so-called guideposts in determining the necessity of attaching pleadings and portions of the records to the petition.

The petitioners are correct that not all pleadings or papers need to be appended. As in *Air Philippines*, only such portions of the case records as may be relevant in resolving the issues before the court are necessary to accompany the petition. The court before whom the petition is filed has, at first instance, the opportunity to determine which of these portions of the case records are material to the resolution of the issue, that is, whether the public respondent committed grave abuse of discretion. Should the court find that the copies of the essential pleadings or portions of the case records are lacking, it may dismiss the petition. But if such copies of the pleadings and case records are later submitted, the court may, in the exercise of sound discretion, reinstate the case and decide the same on the merits.

In this case, however, the petitioners, after their petition was dismissed, submitted the certified true copies of the NLRC decision and resolution as well as their Appeal Memorandum and Motion for Reconsideration. After due consideration of the petition with the attached documents, and consistent with *Air Philippines*, the CA could have reinstated and decided the case on the merits; but the CA brushed it off, and after a careful review of the records, we find that its refusal to proceed was justified.

Even with copies of portions of the case records attached, the petitioners still failed to address the lacking statement of the material dates despite clear notice of such violation together with the other grounds for the dismissal of the petition set forth in the first assailed CA resolution. Indeed, the failure to state the material dates in a petition for certiorari is sufficient ground to dismiss it under Section 3, Rule 46 in relation to Rule 65 of the Rules of Court.

Section 3 of Rule 46 provides three material dates that must be stated in a petition for certiorari brought under Rule 65: the date when notice of the judgment or final order or resolution was received; the date when a motion for new trial or for reconsideration was filed; and the date when notice of the denial thereof was received. In this case, the petition filed with the CA failed to state the first and second dates. Thus, the CA rightfully dismissed the petition. Our pronouncement in *Santos v. Court of Appeals* is apt:

The requirement of setting forth the three (3) dates in a petition for certiorari under Rule 65 is for the purpose of determining its timeliness. Such a petition is required to be filed not later than sixty (60) days from notice of the judgment, order or Resolution sought to be assailed. Therefore, that the petition for certiorari was filed forty-one (41) days from receipt of the denial of the motion for reconsideration is hardly relevant. **The Court of Appeals was not in any position to determine when this period commenced to run and whether the motion for reconsideration itself was filed on time since the material dates were not stated.** x x x (emphasis in the original)

When they filed their motion for reconsideration of the dismissal of their CA petition, the petitioners could have easily supplied the missing dates, i.e., when they received the NLRC decision and when they filed their motion for reconsideration thereof. However, they failed to do so. As it is, the CA still could not determine the timeliness of the motion for reconsideration from the NLRC decision. Thus, the CA fittingly affirmed the dismissal of the petition for certiorari in the second assailed resolution for noncompliance with the rule on stating the material dates in a petition.

The petitioners cannot justifiably insist that the CA should have required them first to submit the lacking documents in the petition before giving due course to their petition and resolving the case on the merits because the failure to comply with any of the requirements under Section 3 of Rule 46, such as the statement of the material dates, is sufficient ground to dismiss the petition. They cannot likewise demand preferential treatment by the CA based on the liberal application of the rules. Twice were they given the chance to comply with the requirement pertaining to the material dates; and twice were they remiss in complying with the rules. As observed by the CA, the petitioners had "haphazardly filed their petition in grave disregard of the rules of procedure" and are, therefore, "not entitled to the liberality thereof considering that the petition is only partially rectified."

# SOUTHERN LUZON DRUG CORPORATION, Petitioner, -versus- THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT, THE NATIONAL COUNCIL FOR THE WELFARE OF DISABLED PERSONS, THE DEPARTMENT OF FINANCE, and THE BUREAU OF INTERNAL REVENUE, Respondents.

G.R. No. 199669, EN BANC, April 25, 2017, REYES, J.

Generally, the office of prohibition is to prevent the unlawful and oppressive exercise of authority and is directed against proceedings that are done without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy, and adequate remedy in the ordinary course of law. It is the remedy to prevent inferior courts, corporations, boards, or persons from usurping or exercising a jurisdiction or power with which they have not been vested by law. This is, however, not the lone office of an action for prohibition. In Diaz, et al. v. The Secretary of Finance, et al. and Social Weather Stations, Inc. v. Commission on Elections, prohibition has been found an appropriate remedy to challenge the constitutionality of various laws, rules, and regulations.

There is also no question regarding the jurisdiction of the CA to hear and decide a petition for prohibition. By express provision of the law, particularly Section 9(1) of Batas Pambansa Bilang 129, the CA was granted "original jurisdiction to issue writs of mandamus, prohibition, certiorari, habeas corpus, and quo warranto, and auxiliary writs or I processes, whether or not in aid of its appellate jurisdiction." This authority the CA enjoys concurrently with RTCs and this Court.

In the same manner, the supposed violation of the principle of the hierarchy of courts does not pose any hindrance to the full deliberation of the issues at hand. It is well to remember that "the judicial hierarchy of courts is not an iron-clad rule.

The instant petition presents an exception to the principle as it basically raises a legal question on the constitutionality of the mandatory discount and the breadth of its rightful beneficiaries. More importantly, the resolution of the issues will redound to the benefit of the public as it will put to rest the questions on the propriety of the granting of discounts to senior citizens and PWDs amid the fervent insistence of affected establishments that the measure transgresses their property rights. The Court, therefore, finds it to the best interest of justice that the instant petition be resolved.

#### **FACTS:**

On April 23, 1992, R.A. No. 7432, entitled "An Act to Maximize the Contribution of Senior Citizens to Nation-Building, Grant Benefits and Special Privileges and For Other Purposes," was enacted. Under the said law, a senior citizen, who must be at least 60 years old and has an annual income of not

more than P60,000.00,4 may avail of the privileges provided in Section 4 thereof, one of which is 20% discount on the purchase of medicines. The said provision states:

#### **Sec. 4**. *Privileges for the Senior Citizen.* - x x x:

a) the grant of twenty percent (20%) discount from all establishments relative to utilization of transportation services, hotels and similar lodging establishment, restaurants and recreation centers and purchase of medicine anywhere in the country: Provided, **That private establishments may claim the cost as tax credit**[.]  $x \times x \times x$  (Emphasis ours)

To recoup the amount given as discount to qualified senior citizens, covered establishments can claim an equal amount as tax credit which can be applied against the income tax due from them.

On February 26, 2004, then President Gloria Macapagal-Arroyo signed R.A. No. 9257, amending some provisions of R.A. No. 7432. The new law retained the 20% discount on the purchase of medicines but removed the annual income ceiling thereby qualifying all senior citizens to the privileges under the law. Further, R.A. No. 9257 modified the tax treatment of the discount granted to senior citizens, from tax credit to tax deduction from gross income, computed based on the net cost of goods sold or services rendered. The pertinent provision, as amended by R.A. No. 9257, reads as follows:

SEC. 4. *Privileges for the Senior Citizens.* - The senior citizens shall be entitled to the following:

#### X X X X

The establishment may claim the discounts granted under (a), (f), (g) and (h) as tax deduction based on the net cost of the goods sold or services rendered: *Provided*, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted. *Provided*, *further*, That the total amount of the claimed tax deduction net of value-added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended. (Emphasis ours)

On May 28, 2004, the DSWD issued the Implementing Rules and Regulations (IRR) of R.A. No. 9257. Article 8 of Rule VI of the said IRR provides:

Article 8. *Tax Deduction of Establishments.* - The establishment may claim the discounts granted under Rule V, Section 4 - Discounts for Establishments; Section 9, Medical and Dental Services in Private Facilities and Sections 10 and 11 -Air, Sea and Land Transportation as tax deduction based on the net cost of the goods sold or services rendered. **Provided, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted**; Provided, further, That the total amount of the claimed tax deduction net of value-added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code, as amended; Provided, finally, that the implementation of the tax deduction shall be subject to the Revenue Regulations to be issued by the Bureau of Internal Revenue (BIR) and approved by the Department of Finance (DOF). (Emphasis ours)

The change in the tax treatment of the discount given to senior citizens did not sit well with some drug store owners and corporations, claiming it affected the profitability of their business. Thus, on January 13, 2005, I Carlos Superdrug Corporation (Carlos Superdrug), together with other. corporation and proprietors operating drugstores in the Philippines, filed a Petition for Prohibition with Prayer for Temporary Restraining Order (TRO) I and/or Preliminary Injunction before this Court, entitled *Carlos Superdrug* I *Corporation v. DSWD*, docketed as G.R. No. 166494, assailing the constitutionality of Section 4(a) of R.A. No. 9257 primarily on the ground that it amounts to taking of private property without payment of just compensation. In a Decision dated June 29, 2007, the Court upheld the constitutionality of the assailed provision, holding that the same is a legitimate exercise of police power.

On August 1, 2007, Carlos Superdrug filed a motion for reconsideration of the foregoing decision. Subsequently, the Court issued Resolution dated August 21, 2007, denying the said motion with finality.

Meanwhile, on March 24, 1992, R.A. No. 7277 pertaining to the "Magna Carta for Disabled Persons" was enacted, codifying the rights and privileges of PWDs. Thereafter, on April 30, 2007, R.A. No. 9442 was enacted, amending R.A. No. 7277. One of the salient amendments in the law is the insertion of Chapter 8 in Title 2 thereof, which enumerates the other privileges and incentives of PWDs, including the grant of 20% discount on the purchase of medicines. Similar to R.A. No. 9257, covered establishments shall claim the discounts given to PWDs as tax deductions from the gross income, based on the net cost of goods sold or services rendered. Section 32 of R.A. No. 9442 reads:

CHAPTER 8. Other Privileges and Incentives

SEC. 32. Persons with disability shall be entitled to the following:

X X X X

The establishments may claim the discounts granted in subsections (a), (b), (c), (e), (t) and (g) as taxdeductions based on the net cost of the goods sold or services rendered: *Provided, however*, That the cost of the discount shall be allowed as deduction from gross income for the same taxable year that the discount is granted: *Provided, further*, That the total amount of the claimed tax deduction net of value-added tax if applicable, shall be included in their gross sales receipts for tax purposes and shall be subject to proper documentation and to the provisions of the National Internal Revenue Code (NIRC), as amended. (Emphasis ours)

On February 26, 2008, the petitioner filed a Petition for Prohibition with Application for TRO and/or Writ of Preliminary Injunction with the CA, seeking to declare as unconstitutional (a) Section 4(a) of R.A. No. 9257, and (b) Section 32 of R.A. No. 9442 and Section 5.1 of its IRR, insofar as these provisions only allow tax deduction on the gross income based on the net cost of goods sold or services rendered as compensation to private establishments for the 20% discount that they are required to grant to senior citizens and PWDs. Further, the petitioner prayed that the respondents be permanently enjoined from implementing the assailed provisions.

On June 17, 2011, the CA dismissed the petition, reiterating the ruling of the Court in *Carlos Superdrug* particularly that Section 4(a) of R.A. No. 9257 was a valid exercise of police power. Moreover, the CA held that considering that the same question had been raised by parties similarly situated and was resolved in *Carlos Superdrug*, the rule of *stare decisis* stood as a hindrance to any

further attempt to relitigate the same issue. It further noted that jurisdictional considerations also compel the dismissal of the action. It particularly emphasized that it has no original or appellate jurisdiction to pass upon the constitutionality of the assailed laws, the same pertaining to the Regional Trial Court (RTC). Even assuming that it had concurrent jurisdiction with the RTC, the principle of hierarchy of courts mandates that the case be commenced and heard by the lower court. The CA further ruled that the petitioner resorted to the wrong remedy as a petition for prohibition will not lie to restrain the actions of the respondents for the simple reason that they do not exercise judicial, quasi-judicial or ministerial duties relative to the issuance or implementation of the questioned provisions. Also, the petition was wanting of the allegations of the specific acts committed by the respondents that demonstrate the exercise of these powers which may be properly challenged in a petition for prohibition.

The petitioner filed its Motion for Reconsideration of the Decision dated June 17, 2011 of the CA, but the same was denied in a Resolution dated November 25, 2011.

#### **ISSUE:**

Whether or not the CA seriously erred when it ruled that a Petition for Prohibition filed with the CA is an improper remedy to assail the constitutionality of the 20%, sales discount for senior citizens and PWDs. (YES)

#### **RULING:**

Prohibition may be filed to question the constitutionality of a law

In the assailed decision, the CA noted that the action, although denominated as one for prohibition, seeks the declaration of the unconstitutionality of Section 4(a) of R.A. No. 9257 and Section 32 of R.A. No.9442. It held that in such a case, the proper remedy is not a special civil action but a petition for declaratory relief, which falls under the exclusive original jurisdiction of the RTC, in the first instance, and of the Supreme Court, on appeal.

The Court clarifies.

Generally, the office of prohibition is to prevent the unlawful and oppressive exercise of authority and is directed against proceedings that are done without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy, and adequate remedy in the ordinary course of law. It is the remedy to prevent inferior courts, corporations, boards, or persons from usurping or exercising a jurisdiction or power with which they have not been vested by law. This is, however, not the lone office of an action for prohibition. In *Diaz, et al. v. The Secretary of Finance, et al.*, prohibition was also recognized as a proper remedy to prohibit or nullify acts of executive officials that amount to usurpation of legislative authority. And, in a number of jurisprudence, prohibition was allowed as a proper action to assail the constitutionality of a law or prohibit its implementation.

In *Social Weather Stations, Inc. v. Commission on Elections,* therein petitioner filed a petition for prohibition to assail the constitutionality of Section 5.4 of R.A. No. 9006, or the *"Fair Elections Act,"* which prohibited the publication of surveys within 15 days before an election for national candidates, and seven days for local candidates. Included in the petition is a prayer to prohibit the

Commission on Elections from enforcing the said provision. The Court granted the Petition and struck down the assailed provision for being unconstitutional.

In Social Justice Society (SJS) v. Dangerous Drugs Board, et al., therein petitioner assailed the constitutionality of paragraphs (c), (d), (f) and (g) of Section 36 of R.A. No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," on the ground that they constitute undue delegation of legislative power for granting unbridled discretion to schools and private employers in determining the manner of drug 'testing of their employees, and that the law constitutes a violation of the right against unreasonable searches and seizures. It also sought to enjoin the Dangerous Drugs Board and the Philippine Drug Enforcement Agency from enforcing the challenged provision. The Court partially granted the petition by declaring Section 36(f) and (g) of R.A. No. 9165 unconstitutional, and permanently enjoined the concerned agencies from implementing them.

In another instance, consolidated petitions for prohibitions questioning the constitutionality of the Priority Development Assistance Fund were deliberated upon by this Court which ultimately granted the same.

Clearly, prohibition has been found an appropriate remedy to challenge the constitutionality of various laws, rules, and regulations.

There is also no question regarding the jurisdiction of the CA to hear and decide a petition for prohibition. By express provision of the law, particularly Section 9(1) of Batas Pambansa Bilang 129, the CA was granted "original jurisdiction to issue writs of *mandamus*, prohibition, *certiorari*, *habeas corpus*, and *quo warranto*, and auxiliary writs or I processes, whether or not in aid of its appellate jurisdiction." This authority the CA enjoys concurrently with RTCs and this Court.

In the same manner, the supposed violation of the principle of the hierarchy of courts does not pose any hindrance to the full deliberation of the issues at hand. It is well to remember that "the judicial hierarchy of courts is not an iron-clad rule. It generally applies to cases involving warring factual allegations. For this reason, litigants are required to [refer] to the trial courts at the first instance to determine the truth or falsity of these contending allegations on the basis of the evidence of the parties. Cases which depend on disputed facts for decision cannot be brought immediately before appellate courts as they are not triers of facts. Therefore, a strict application of the rule of hierarchy of courts is not necessary when the cases brought before the appellate courts do not involve factual but legal questions."

Moreover, the principle of hierarchy of courts may be set aside for special and important reasons, such as when dictated by public welfare and ' the advancement of public policy, or demanded by the broader interest of justice. Thus, when based on the good judgment of the court, the urgency and significance of the issues presented calls for its intervention, it should not hesitate to exercise its duty to resolve.

The instant petition presents an exception to the principle as it basically raises a legal question on the constitutionality of the mandatory discount and the breadth of its rightful beneficiaries. More importantly, the resolution of the issues will redound to the benefit of the public as it will put to rest the questions on the propriety of the granting of discounts to senior citizens and PWDs amid the fervent insistence of affected establishments that the measure transgresses their property rights. The Court, therefore, finds it to the best interest of justice that the instant petition be resolved.

# EVELYN ONGSUCO and ANTONIA SALAYA, Petitioners, -versus- HON. MARIANO M. MALONES, BOTH IN HIS PRIVATE AND OFFICIAL CAPACITY AS MAYOR OF THE MUNICIPALITY OF MAASIN, ILOILO, Respondent.

G.R. No. 182065, THIRD DIVISION, October 27, 2009, CHICO-NAZARIO, J.

In this case, petitioners' primary intention is to prevent respondent from implementing Municipal Ordinance No. 98-01, i.e., by collecting the goodwill fees from petitioners and barring them from occupying the stalls at the municipal public market. Obviously, the writ petitioners seek is more in the nature of prohibition (commanding desistance), rather than mandamus (compelling performance).

For a writ of prohibition, the requisites are: (1) the impugned act must be that of a "tribunal, corporation, board, officer, or person, whether exercising judicial, quasi-judicial or ministerial functions"; and (2) there is no plain, speedy, and adequate remedy in the ordinary course of law."

#### **FACTS:**

Petitioners are stall holders at the Maasin Public Market, which had just been newly renovated. In a letter dated 6 August 1998, the Office of the Municipal Mayor informed petitioners of a meeting scheduled on 11 August 1998 concerning the municipal public market. Revenue measures were discussed during the said meeting, including the increase in the rentals for the market stalls and the imposition of "goodwill fees" in the amount of ₱20,000.00, payable every month.

Sangguniang Bayan of Maasin approved Resolution No. 68, series of 1998, moving to have the meeting declared inoperative as a public hearing, because majority of the persons affected by the imposition of the goodwill fee failed to agree to the said measure. However, Resolution No. 68, series of 1998, of the Sangguniang Bayan of Maasin was vetoed by respondent on 30 September 1998. Respondent wrote a letter to petitioners informing them that they were occupying stalls in the newly renovated municipal public market without any lease contract, as a consequence of which, the stalls were considered vacant and open for qualified and interested applicants.

Petitioners filed a Petition for Prohibition/Mandamus, with prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction, against respondent. On 15 July 20013, the RTC found that petitioners could not avail themselves of the remedy of mandamus or prohibition because they failed to show a clear legal right to the use of the market stalls without paying the goodwill fees and also on the ground of non-exhaustion of administrative remedies.

On 12 August 2003, petitioners filed a Motion for Reconsideration. The RTC denied petitioners Motion for Reconsideration in a Resolution dated 18 June 2004.

Petitioners thereafter elevated the case to the Court of Appeals. However, on 28 November 2006, the appellate court ruled in respondent's favor. The CA held that even if respondent acted in grave abuse of discretion, petitioners' resort to a petition for prohibition was improper, since respondent's acts in question herein did not involve the exercise of judicial, quasi-judicial, or ministerial functions, as required under Section 2, Rule 65 of the Rules of Court. Also, the filing by petitioners of the Petition for Prohibition/Mandamus before the RTC was premature, as they failed to exhaust administrative remedies prior thereto.

Petitioners filed a Motion for Reconsideration, but it was denied by the CA on 8 February 2008. Hence, the present petition.

#### **ISSUE:**

Whether the petitioners availed themselves of the wrong remedy in filing a Petition for Prohibition/Mandamus before the RTC. (NO)

#### **RULING:**

Sections 2 and 3, Rule 65 of the Rules of the Rules of Court lay down under what circumstances petitions for prohibition and mandamus may be filed, to wit:

SEC. 2. Petition for prohibition. – When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

SEC. 3. Petition for mandamus. – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

In a petition for prohibition against any tribunal, corporation, board, or person -- whether exercising judicial, quasi-judicial, or ministerial functions -- who has acted without or in excess of jurisdiction or with grave abuse of discretion, the petitioner prays that judgment be rendered, commanding the respondent **to desist** from further proceeding in the action or matter specified in the petition. On the other hand, the remedy of mandamus lies **to compel** performance of a ministerial duty. The petitioner for such a writ should have a well-defined, clear and certain legal right to the performance of the act, and it must be the clear and imperative duty of respondent to do the act required to be done.

In this case, petitioners' primary intention is to prevent respondent from implementing Municipal Ordinance No. 98-01, *i.e.*, by collecting the goodwill fees from petitioners and barring them from occupying the stalls at the municipal public market. Obviously, the writ petitioners seek is more in the nature of prohibition (commanding desistance), rather than mandamus (compelling performance).

For a writ of prohibition, the requisites are: (1) the impugned act must be that of a "tribunal, corporation, board, officer, or person, whether exercising judicial, quasi-judicial or ministerial functions"; and (2) there is no plain, speedy, and adequate remedy in the ordinary course of law."

The Court notes that respondent already deemed petitioners' stalls at the municipal public market vacated. Without such stalls, petitioners would be unable to conduct their businesses, thus, depriving them of their means of livelihood. It is imperative on petitioners' part to have the implementation of Municipal Ordinance No. 98-01 by respondent stopped the soonest. There is no more need for petitioners to exhaust administrative remedies, considering that the fundamental issue between them and respondent is one of law, over which the courts have competence and jurisdiction. There is no other plain, speedy, and adequate remedy for petitioners in the ordinary course of law, except to seek from the courts the issuance of a writ of prohibition commanding respondent to desist from continuing to implement what is allegedly an invalid ordinance.

## RODOLFO LAYGO and WILLIE LAYGO, Petitioners, -versus- MUNICIPAL MAYOR OF SOLANO, NUEVA VIZCAYA, Respondent.

G.R. No. 188448, THIRD DIVISION, January 11, 2017, JARDELEZA, J.

Mandamus is a command issuing from a court of competent jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law. As a rule, mandamus will not lie in the absence of any of the following grounds: [a] that the court, officer, board, or person against whom the action is taken unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from office, trust, or station; or [b] that such court, officer, board, or person bas unlawfully excluded petitioner/relator from the use and enjoyment of a right or office to which he is entitled. Neither will the extraordinary remedy of mandamus lie to compel the performance of duties that are discretionary in nature.

#### **FACTS:**

In July 2005, Aniza Bandrang sent two letter-complaints to then Municipal Mayor Santiago O. Dickson and the *Sangguniang Bayan* of Solano, Nueva Vizcaya, informing them of the illegal sublease she entered into with petitioners Rodolfo Laygo and Willie Laygo over Public Market Stalls No. 77-A, 77-B, 78-A, and 78-B, which petitioners leased from the Municipal Government. Bandrang claimed that petitioners told her to vacate the stalls, which they subsequently subleased to another.

In August 2005, the *Sangguniang Bayan* endorsed the letter of Bandrang and a copy of Resolution No. 183-2004 to Mayor Dickson for appropriate action. The *Sanggunian* informed Mayor Dickson that the matter falls under the jurisdiction of his office since it *has* already passed and approved Resolution No. 183-2004, which authorized Mayor Dickson to enforce the provision against subleasing of stalls in the public market.

Mayor Dickson, in response, informed the *Sanggunian* that the stalls were constructed under a Build-Operate-Transfer scheme, which meant that the petitioners had the right to keep their stalls until the BOT agreement was satisfied. He then asked the *Sanggunian* if provisions were made to sanction lessees under the BOT scheme similar to the provision against subleasing (Item No. 9) in the contract of lease.

Thereafter, Bandrang wrote another letter to the *Sanggunian*, praying and recommending to Mayor Dickson, by way of a resolution, the cancellation of the lease contract between the Municipality and petitioners for violating the provision on subleasing. The *Sanggunian* once again referred the letter of Bandrang for appropriate action.

Mayor Dickson, however, did not act on the letter. Thus, Bandrang filed a Petition for *Mandamus* against him before the RTC of Bayombong. She sought an order directing Mayor Dickson to immediately cancel the lease between the Municipal Government and petitioners over the said public market stalls and to lease the vacated stalls to interested person.

In his Answer with Special and Affirmative Defenses, Mayor Dickson claimed that under the principle of *pari delicto*, Bandrang had no right to seek remedy with the court as she was guilty herself in leasing the market stalls. He likewise asserted that the subject of the *mandamus* was not proper as it entailed an act which was purely discretionary on his part.

On the other hand, petitioners clarified that Clarita Laygo, their mother, was the lessee of the stalls by virtue of a BOT scheme of the Municipality. At the time they entered into a contract of lease with Bandrang, it was agreed that the contract was subject to the consent of the other heirs of Clarita. The consent, however, was never given; hence, there was no subleasing to speak of.

Meanwhile, on July 23, 2007, the RTC issued an Order directing the substitution of then incumbent mayor Hon. Philip A. Dacayo as respondent in place of Mayor Dickson.

Thereafter, Bandrang filed a Motion for Summary Judgment arguing that no genuine factual issues existed to necessitate trial. Bandrang reiterated the violation of petitioners against subletting in their lease contracts with the Municipal Government. She also alleged for the first time that after the filing of the case, another violation besides the prohibition on subletting surfaced: the nonpayment of stall rental fees.

On January 28, 2008, the RTC granted the petition. Petitioners appealed to the CA, while then incumbent Mayor Dacayo filed a manifestation expressing his willingness to implement Resolutions No. 183-2004 and 135-2007.

The CA dismissed the appeal and sustained the resolution of the RTC that the contract between petitioners and the Municipal Government is a lease contract and, thus, Resolution No. 183-2004 applies to them. On the issue of whether *mandamus* is proper, the CA also affirmed the ruling of the RTC stating that although *mandamus* is properly availed of to compel a ministerial duty, it is also available to compel action in matters involving judgment and discretion but not to direct an action in a particular way.

#### **ISSUE:**

Whether the Petition for Mandamus is proper. (NO)

#### **RULING:**

*Mandamus* is a command issuing from a court of competent jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official

station of the party to whom the writ is directed or from operation of law. As a rule, mandamus will not lie in the absence of any of the following grounds: [a] that the court, officer, board, or person against whom the action is taken unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from office, trust, or station; or [b] that such court, officer, board, or person bas unlawfully excluded petitioner/relator from the use and enjoyment of a right or office to which he is entitled. Neither will the extraordinary remedy of *mandamus* lie to compel the performance of duties that are discretionary in nature.

Applying the foregoing, the Petition for *Mandamus* must fail because the acts sought to be done are discretionary in nature.

The petition sought an order to direct Mayor Dickson to cancel the lease contract of petitioners with the Municipal Government and to lease the vacated market stalls to interested persons. We have already settled in the early case of *Aprueba v. Ganzon* that the privilege of operating a market stall under license is always subject to the police power of the city government and may be refused or granted for reasons of puplic policy and sound public administration. Being a delegated police power falling under the general welfare clause of Section 16 of the Local Government Code, the grant or revocation of the privilege is, therefore, discretionary in nature.

DATU ANDAL AMPATUAN, JR., Petitioner, -versus- SEC. LEILA DE LIMA, CSP CLARO ARELLANO, and PANEL OF PROSECUTORS OF THE MAGUINDANAO MASSACRE, Respondents. G.R. No. 127921, FIRST DIVISION, April 3, 2003, BERSAMIN, J.

Mandamus shall issue when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act that the law specifically enjoins as a duty resulting from an office, trust, or station. It is proper when the act against which it is directed is one addressed to the discretion of the tribunal or officer. In matters involving the exercise of judgment and discretion, mandamus may only be resorted to in order to compel respondent tribunal, corporation, board, officer or person to take action, but it cannot be used to direct the manner or the particular way discretion is to be exercised, or to compel the retraction or reversal of an action already taken in the exercise of judgment or discretion.

#### **FACTS:**

Relying on the twin affidavits of one Kenny Dalandag, the panel of prosecutors charged 196 individuals with multiple murder in relation to the Maguindanao massacre. Dalandag was thereafter admitted into the witness protection program of the Department of Justice. Datu Andal Ampatuan, Jr., then Mayor of the Municipality of Datu Unsay and one of the principal suspects in the massacre wrote to Secretary of Justice Leila De Lima, requesting the inclusion of Dalandag in the information for murder considering that Dalandag had already confessed its participation in the massacre through his two sworn declarations. Secretary De Lima denied Ampatuan Jr.'s request, prompting Ampatuan Jr. to file a petition for mandamus before the RTC, seeking to compel Secretary De Lima to charge Dalandag as another accused.

#### **ISSUE:**

Whether Secretary De Lima can be compelled by writ of mandamus to charge Dalandag as a co-accused in the Maguindanao massacre despite his admission as state witness. (NO)

#### **RULING:**

While it is true that, as a general rule, the discharge or exclusion of a co-accused from the information in order that he may be utilized as a Prosecution witness rests upon the sound discretion of the trial court, such discretion is not absolute and may not be exercised arbitrarily, but with due regard to the proper administration of justice. Anent the requisite that there must be an absolute necessity for the testimony of the accused whose discharge is sought, the trial court has to rely on the suggestions of and the information provided by the public prosecutor. The reason is obvious – the public prosecutor should know better than the trial court, and the Defense for that matter, which of the several accused would best qualify to be discharged in order to become a state witness. The public prosecutor is also supposed to know the evidence in his possession and whomever he needs to establish his case, as well as the availability or non-availability of other direct or corroborative evidence, which of the accused is the 'most guilty' one, and the like.

On the other hand, there is no requirement under Republic Act No. 6981 for the Prosecution to first charge a person in court as one of the accused in order for him to qualify for admission into the Witness Protection Program. The admission as a state witness under Republic Act No. 6981 also operates as an acquittal and said witness cannot subsequently be included in the criminal information except when he fails or refuses to testify. The immunity for the state witness is granted by the DOJ, not by the trial court. Should such witness be meanwhile charged in court as an accused, the public prosecutor, upon presentation to him of the certification of admission into the Witness Protection Program, shall petition the trial court for the discharge of the witness. The Court shall then order the discharge and exclusion of said accused from the information.

Mandamus shall issue when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act that the law specifically enjoins as a duty resulting from an office, trust, or station. It is proper when the act against which it is directed is one addressed to the discretion of the tribunal or officer. In matters involving the exercise of judgment discretion, mandamus may only be resorted to in order to compel respondent tribunal, corporation, board, officer or person to take action, but it cannot be used to direct the manner or the particular way discretion is to be exercised, or to compel the retraction or reversal of an action already taken in the exercise of judgment or discretion.

As such, respondent Secretary of Justice may be compelled to act on the letter-request of petitioner but may not be compelled to act in a certain way, *i.e.*, to grant or deny such letter-request. Considering that respondent Secretary of Justice already denied the letter-request, *mandamus* was no longer available as petitioner's recourse.

## SPOUSES AUGUSTO G. DACUDAO AND OFELIA R. DACUDAO, Petitioners, -versus- SECRETARY OF JUSTICE RAUL M. GONZALES OF THE DEPARTMENT OF JUSTICE, Respondent.

G.R. No. 188056, EN BANC, January 8, 2013, BERSAMIN, J.

For a special civil action for certiorari to prosper, therefore, the following requisites must concur, namely: (a) it must be directed against a tribunal, board or officer exercising judicial or quasi-judicial functions; (b) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (c) there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. The burden of proof lies on petitioners to demonstrate that the assailed order was issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

The main objective of mandamus is to compel the performance of a ministerial duty on the part of the respondent. Plainly enough, the writ of mandamus does not issue to control or review the exercise of discretion or to compel a course of conduct, which, it quickly seems to us, was what petitioners would have the Secretary of Justice do in their favor. Consequently, their petition has not indicated how and where the Secretary of Justice's assailed issuances excluded them from the use and enjoyment of a right or office to which they were unquestionably entitled.

## **FACTS:**

Petitioners - residents of Bacaca Road, Davao City - were among the investors whom Celso G. Delos Angeles, Jr. and his associates in the Legacy Group of Companies allegedly defrauded through the Legacy Group's "buy back agreement" that earned them check payments that were dishonored. After their written demands for the return of their investments went unheeded, they initiated a number of charges for syndicated estafa against Delos Angeles, Jr., et al. in the Office of the City Prosecutor of Davao City on February 6, 2009. Three of the cases were docketed as NPS Docket No. XI-02-INV.-09-A-00356, Docket No. XI-02-INV.-09-C-00752, and Docket No. XI-02-INV.-09-C-00753.

On March 18, 2009, the Secretary of Justice issued Department of Justice Order No. 182, directing all Regional State Prosecutors, Provincial Prosecutors, and City Prosecutors to forward all cases already filed against Delos Angeles, Jr., et al. to the Secretariat of the DOJ Special Panel in Manila for appropriate action.

Pursuant to DO No. 182, the complaints of petitioners were forwarded by the Office of the City Prosecutor of Davao City to the Secretariat of the Special Panel of the DOJ.

Aggrieved by such turn of events, petitioners have directly come to the Court via petition for certiorari, prohibition and mandamus, ascribing to respondent Secretary of Justice grave abuse of discretion in issuing DO No. 182. They claim that DO No. 182 violated their right to due process, their right to the equal protection of the laws, and their right to the speedy disposition of cases. They insist that DO No. 182 was an obstruction of justice and a violation of the rule against enactment of laws with retroactive effect.

The Office of the Solicitor General, representing respondent Secretary of Justice, maintains the validity of DO No. 182 and DOJ Memorandum dated March 2, 2009, and prays that the petition be dismissed for its utter lack of merit.

## **ISSUE:**

Whether the petitioners properly bring their petition for certiorari, prohibition and mandamus directly to the Court. (NO)

#### **RULING:**

The petition for certiorari, prohibition and mandamus, being bereft of substance and merit, is dismissed.

Firstly, petitioners have unduly disregarded the hierarchy of courts by coming directly to the Court with their petition for certiorari, prohibition and mandamus without tendering therein any special, important or compelling reason to justify the direct filing of the petition.

We emphasize that the concurrence of jurisdiction among the Supreme Court, Court of Appeals and the Regional Trial Courts to issue the writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction did not give petitioners the unrestricted freedom of choice of court forum.

Secondly, even assuming arguendo that petitioners' direct resort to the Court was permissible, the petition must still be dismissed.

The writ of certiorari is available only 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.

For a special civil action for certiorari to prosper, therefore, the following requisites must concur, namely: (a) it must be directed against a tribunal, board or officer exercising judicial or quasijudicial functions; (b) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (c) there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law. The burden of proof lies on petitioners to demonstrate that the assailed order was issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Yet, petitioners have not shown a compliance with the requisites. To start with, they merely alleged that the Secretary of Justice had acted without or in excess of his jurisdiction. Also, the petition did not show that the Secretary of Justice was an officer exercising judicial or quasi-judicial functions. Instead, the Secretary of Justice would appear to be not exercising any judicial or quasi-judicial functions because his questioned issuances were ostensibly intended to ensure his subordinates' efficiency and economy in the conduct of the preliminary investigation of all the cases involving the Legacy Group. The function involved was purely executive or administrative.

The fact that the DOJ is the primary prosecution arm of the Government does not make it a quasi-judicial office or agency. Its preliminary investigation of cases is not a quasi-judicial proceeding. Nor does the DOJ exercise a quasi-judicial function when it reviews the findings of a public prosecutor on the finding of probable cause in any case.

Petitioners have self-styled their petition to be also for prohibition. However, we do not see how that can be. They have not shown in their petition in what manner and at what point the Secretary of Justice, in handing out the assailed issuances, acted without or in excess of his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. On the other hand, we already indicated why the issuances were not infirmed by any defect of jurisdiction. Hence, the blatant omissions of the petition transgressed Section 2, Rule 65 of the Rules of Court, to wit:

Section 2. Petition for prohibition. — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain,

speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (2a) Similarly, the petition could not be one for mandamus, which is a remedy available only when "any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court." The main objective of mandamus is to compel the performance of a ministerial duty on the part of the respondent. Plainly enough, the writ of mandamus does not issue to control or review the exercise of discretion or to compel a course of conduct, which, it quickly seems to us, was what petitioners would have the Secretary of Justice do in their favor. Consequently, their petition has not indicated how and where the Secretary of Justice's assailed issuances excluded them from the use and enjoyment of a right or office to which they were unquestionably entitled.

SPECIAL PEOPLE, INC. FOUNDATION, REPRESENTED BY ITS CHAIRMAN, ROBERTO P. CERICOS, Petitioner, -versus- NESTOR M. CANDA, BIENVENIDO LIPA YON, JULIAN D. AMADOR, BOHOL PROVINCIAL CHIEF, REGIONAL DIRECTOR, AND NATIONAL DIRECTOR, RESPECTIVELY, ENVIRONMENTAL MANAGEMENT BUREAU, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, ALL SUED IN BOTH THEIR OFFICIAL AND PRIVATE CAPACITIES, Respondents.

G.R. No. 160932, FIRST DIVISION, January 14, 2013, BERSAMIN, J.

It is axiomatic, to begin with, that a party who seeks the intervention of a court of law upon an administrative concern should first avail himself of all the remedies afforded by administrative processes. The issues that an administrative agency is authorized to decide should not be summarily taken away from it and submitted to a court of law without first giving the agency the opportunity to dispose of the issues upon due deliberation. The court of law must allow the administrative agency to carry out its functions and discharge its responsibilities within the specialized areas of its competence. This rests on the theory that the administrative authority is in a better position to resolve questions addressed to its particular expertise, and that errors committed by subordinates in their resolution may be rectified by their superiors if given a chance to do so.

#### **FACTS:**

The petitioner was a proponent of a water-resource development and utilization project in Barangay Jimilia-an in the Municipality of Loboc, Bohol that would involve the tapping and purifying of water from the Loboc River, and the distribution of the purified water to the residents of Loboc and six other municipalities. The petitioner applied for a Certificate of Non-Coverage with the Environmental Management Bureau of the Department of Environment and Natural Resources, Region 7, seeking to be exempt from the requirement of the Environmental Compliance Certificate under Section 4 of Presidential Decree No. 1586.

Upon evaluating the nature and magnitude of the environmental impact of the project, respondent Nestor M. Canda, then Chief of EMB in Bohol, rendered his findings in a letter dated December 4, 2001, as follows: 1) The project is located within a critical area; hence, Initial Environmental Examination is required; and that 2) the project is socially and politically sensitive therefore proof of social acceptability should be established. Proper indorsement from the Protected Area Management Bureau or PAMB should be secured.

On January 11, 2002, the petitioner appealed Canda's findings to respondent EMB Region 7 Director Bienvenido L. Lipayon, claiming that it should also be issued a CNC because the project was no different from the Loboc-Loay waterworks project of the Department of Public Works and Highways that had recently been issued a CNC.

n April 3, 2002, RD Lipayon notified the petitioner that its documents substantially complied with the procedural aspects of the EMB's review, and that the application was assigned EMB-DENR-7 Control No. CNC-02-080 for easy reference in case of follow-up and submission of additional requirements. Later on, RD Lipayon informed the petitioner that an Initial Environmental Examination document was required for the project due to its significant impact in the area.

On August 26, 2002, RD Lipayon required the petitioner to submit several documents to enable the EMB to determine whether the project was within an environmentally critical area or not.

On January 28, 2003, the petitioner submitted eight certifications, including the certification issued by the Philippine Institute of Volcanology and Seismology.

The petitioner failed to secure a certification from the Regional Office of the Mines and Geosciences Bureau to the effect that the project area was not located along a fault line/fault zone or a critical slope because RO-MGB did not have the data and expertise to render such finding, and thus had to forward the petitioner's request to the MGB Central Office.

Upon the MGB's advice, the petitioner sought and obtained the required certification from PHIVOLCS, but the certification did not state whether the project area was within a critical slope. Instead, the certification stated that the project site was approximately 18 kilometers west of the East Bohol Fault.

Given the tenor of the certification from PHIVOLCS, RD Lipayon's letter dated February 4, 2003 declared that the project was within an environmentally critical area, and that the petitioner was not entitled to the CNC.

On March 27, 2003, the petitioner filed a petition for mandamus and damages in the Regional Trial Court in Loay, Bohol, alleging that it was now entitled to a CNC as a matter of right after having

complied with the certification requirements; and that the EMB had earlier issued a CNC to the DPWH for a similar waterworks project in the same area.

In the decision dated November 18, 2003, the RTC dismissed the petition for mandamus. Hence, this appeal brought directly to the Court via petition for review on certiorari.

#### ISSUE:

Whether the act complained of against the respondents could not be compelled by mandamus. (YES)

## **RULING:**

Mandamus was an improper remedy for petitioner.

We dismiss the present recourse because the petitioner failed to exhaust the available administrative remedies, and because it failed to show that it was legally entitled to demand the performance of the act by the respondents.

It is axiomatic, to begin with, that a party who seeks the intervention of a court of law upon an administrative concern should first avail himself of all the remedies afforded by administrative processes. The issues that an administrative agency is authorized to decide should not be summarily taken away from it and submitted to a court of law without first giving the agency the opportunity to dispose of the issues upon due deliberation. The court of law must allow the administrative agency to carry out its functions and discharge its responsibilities within the specialized areas of its competence. This rests on the theory that the administrative authority is in a better position to resolve questions addressed to its particular expertise, and that errors committed by subordinates in their resolution may be rectified by their superiors if given a chance to do so.

The records show that the petitioner failed to exhaust the available administrative remedies. At the time RD Lipayon denied the petitioner's application for the CNC, Administrative Order No. 42 dated November 2, 2002 had just vested the authority to grant or deny applications for the ECC in the Director and Regional Directors of the EMB. Notwithstanding the lack of a specific implementing guideline to what office the ruling of the EMB Regional Director was to be appealed, the petitioner could have been easily guided in that regard by the Administrative Code of 1987, which provides that the Director of a line bureau, such as the EMB, shall have supervision and control over all division and other units, including regional offices, under the bureau. Verily, supervision and control include the power to "review, approve, reverse or modify acts and decisions of subordinate officials or units." Accordingly, the petitioner should have appealed the EMB Regional Director's decision to the EMB Director, who exercised supervision and control over the former.

The grant or denial of an application for ECC/CNC is not an act that is purely ministerial in nature, but one that involves the exercise of judgment and discretion by the EMB Director or Regional Director, who must determine whether the project or project area is classified as critical to the environment based on the documents to be submitted by the applicant.

KNIGHTS OF RIZAL, Petitioner, -versus- DMCI HOMES, INC., DMCI PROJECT DEVELOPERS, INC., CITY OF MANILA, NATIONAL COMMISSION FOR CULTURE AND THE ARTS, NATIONAL HISTORICAL COMMISSION OF THE PHILIPPINES, Respondents.

G.R. No. 213948, EN BANC, April 18, 2017, CARPIO, J.

The Rules on Civil Procedure are clear that mandamus only issues when there is a clear legal duty imposed upon the office or the officer sought to be compelled to perform an act, and when the party seeking mandamus has a clear legal right to the performance of such act.

#### **FACTS:**

On 5 July 2012 the DMCI-PDI obtained a building permit allowing the construction of a 49-storycondominium named Torre de Manila, located near Taft Avenue, Ermita. The building is 870 meters away to the rear of the Rizal Monument, and is visible from the Roxas Boulevard vantage point. On 24 July 2012, the City Council of Manila issued Resolution No. 121, ordering the temporary suspension of Torre de Manila's building permit. After some clarification sought by the respondents, and several consultations between the City of Manila and DMCI-PDI, the MZBAA issued a Zoning Board Resolution amending condition in the earlier resolution; and all previously issued permits, licenses and approvals issued by the City Council of Manila for Torre de Manila are ratified and confirmed.

On 12 September 2014, the Knights of Rizal (KOR), a "civic, patriotic, cultural, nonpartisan, non-sectarian and non-profit organization" created under Republic Act No. 646, filed a Petition for Injunction seeking a temporary restraining order, and later a permanent injunction, against the construction of DMCIPDI's Torre de Manila condominium project. The KOR argues that the Rizal Monument, as a National Treasure, is entitled to "full protection of the law" and the national government must abate the act or activity that endangers the nation's cultural heritage "even against the wishes of the local government hosting it."

On the other hand, DMCI-PDI argues that the KOR's petition should be dismissed. DMCI-PDI asserts that the Court has no original jurisdiction over actions for injunction. Even assuming that the Court has concurrent jurisdiction, DMCI-PDI maintains that the petition should still have been filed with the Regional Trial Court under the doctrine of hierarchy of courts and because the petition involves questions of fact. DMCI-PDI further asserts that the KOR availed of the wrong remedy since an action for injunction is not the proper remedy for abatement of a nuisance. DMCI-PDI opposes the KOR's application for a TRO and writ of preliminary injunction. DMCI-PDI asserts that the KOR has failed to establish "a clear and unmistakable right to enjoin I the construction of Torre de Manila, much less request its demolitior."

In its Comment, the City of Manila argues that the writ of mandamus cannot issue "considering that no property or substantive rights whatsoever in favor of [the KOR] is being affected or  $x \times x$  entitled to judicial protection[.]" The City of Manila also asserts that the "issuance and revocation of a Building Permit undoubtedly fall under the category of a discretionary act or duty performed by the proper officer in light of his meticulous appraisal and evaluation of the pertinent supporting documents of the application in accordance with the rules laid out under the National Building Code [and] Presidential Decree No. 1096," while the remedy of mandamus is available only to compel the performance of a ministerial duty

## **ISSUE:**

Whether the Court can issue a writ of mandamus against the officials of the City of Manila to stop the construction of DMCI-PDI's Torre de Manila project. (NO)

#### **RULING:**

The Rules on Civil Procedure are clear that mandamus only issues when there is a clear legal duty imposed upon the office or the officer sought to be compelled to perform an act, and when the party seeking mandamus has a clear legal right to the performance of such act.

In the present case, nowhere is it found in Ordinance No. 8119 or in any law, ordinance, or rule for that matter, that the construction of a building **outside** the Rizal Park is prohibited if the building is within the background sightline or view of the Rizal Monument. Thus, there is no legal duty on the part of the City of Manila **"to consider,"** in the words of the Dissenting Opinion, **"the standards set under Ordinance No. 8119"** in relation to the applications of DMCI-PDI for the Torre de Manila since under the ordinance **these standards can never be applied outside the boundaries of Rizal Park.** While the Rizal Park has been declared a National Historical Site, the area where Torre de Manila is being built is a privately-owned property that is "not pap: of the Rizal Park that has been declared as a National Heritage Site in 1095," and the Torre de Manila area is in fact "well-beyond" the Rizal Park, according to NHCP Chairperson Dr. Maria Serena I. Diokno. Neither has the area of the Torre de Manila been designated as a "heritage zone, a cultural property, a historical landmark or even a national treasure."

Moreover, the exercise of this Court's extraordinary *certiorari* power is limited to actual cases and controversies that necessarily involve a violation of the Constitution or the determination of the constitutionality or validity of a governmental act or issuance. Specific violation of a statute that does not raise the issue of constitutionality or validity of the statute cannot, as a rule, be the subject of the Court's direct exercise of its expanded *certiorari* power. Thus, the KOR's recourse lies with other judicial remedies or proceedings allowed under the Rules of Court.

# VANGIE BARRAZONA, Petitioner, -versus- REGIONAL TRIAL COURT, BRANCH 61, BAGUIO CITY and SAN-AN REALTY AND DEVELOPMENT CORPORATION, herein represented by RODRIGO CHUA TIU, Respondents.

G.R. No. 154282, SECOND DIVISION, April 7, 2006, SANDOVAL-GUTIERREZ, J.

While the rule is that before certiorari may be availed of, petitioner must first file a motion for reconsideration with the lower court of the act or order complained of, however, such rule is not without exception. We have, in several instances, dispensed with the filing of a motion for reconsideration of a lower court's ruling, such as: where the proceedings in which the error occurred is a patent nullity; where the question is purely of law; when public interest is involved; where judicial intervention is urgent or its application may cause great and irreparable damage; and where the court a quo has no jurisdiction, as in this case.

## **FACTS:**

San-an Realty and Development Corporation, respondent, owns a building located at Naguilian corner Asin Road, Baguio City. Vangie Barrazona, petitioner, has been leasing portions of the building identified as Units 203 A and B at the 2<sup>nd</sup> floor. The period of the lease is for 2 years, commencing July 15, 2001 and ending June 30, 2003. The monthly rental is P400.00 per square meter for Unit 203 A and P500.00 per square meter for Unit 203 B.

Starting August 2001, petitioner defaulted in the payment of the monthly rentals and failed to pay despite demands by respondent. Thus, on May 14, 2002, respondent filed with the RTC, Branch 61, Baguio City, a Complaint for Collection of Sum of Money with Damages, docketed as Civil Case No. 5238-R.

On June 3, 2002, petitioner filed with the RTC a Motion to Dismiss on the ground, among others, that the RTC has no jurisdiction over the complaint considering that the allegations therein clearly indicate that the action is one for ejectment (illegal detainer) which is under the exclusive jurisdiction of the MTC.

In an Order dated June 19, 2002, the RTC denied the Motion to Dismiss for lack of merit.

Forthwith, petitioner filed the instant Petition for *Certiorari*. On the other hand, the respondent prayed for the dismissal of the petition. The respondent contends that the petitioner should have first filed a motion for reconsideration before resorting to the extraordinary suit of *certiorari*.

#### **ISSUE:**

Whether the petitioner should have first filed a motion for reconsideration before resorting to the remedy of certiorari. (NO)

#### **RULING:**

While the rule is that before *certiorari* may be availed of, petitioner must first file a motion for reconsideration with the lower court of the act or order complained of, however, such rule is not without exception. We have, in several instances, dispensed with the filing of a motion for reconsideration of a lower court's ruling, such as: where the proceedings in which the error occurred is a patent nullity; where the question is purely of law; when public interest is involved; where judicial intervention is urgent or its application may cause great and irreparable damage; and where the court a quo has no jurisdiction, as in this case.

## BEATRIZ SIOK PING TANG, Petitioner, -versus- SUBIC BAY DISTRIBUTION, INC., Respondent. G.R. No. 162575, SECOND DIVISION, December 15, 2010, PERALTA, J.

The settled rule is that a motion for reconsideration is a condition sine qua non for the filing of a petition for certiorari. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as where the court a quo had no jurisdiction; (b) where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower

court are a nullity for lack of due process; (h) where the proceedings were ex parte, or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.

## **FACTS:**

Petitioner is doing business under the name and style of Able Transport. Respondent Subic Bay Distribution, Inc. (SBDI) entered in two Distributorship Agreements with petitioner and Able Transport in April 2002. Under the Agreements, respondent, as seller, will sell, deliver or procure to be delivered petroleum products, and petitioner, as distributor, will purchase, receive and pay for its purchases from respondent. The two Agreements had a period of one year, commencing on October 2001 to October 2002, which shall continue on an annual basis unless terminated by either party upon thirty days written notice to the other prior to the expiration of the original term or any extension thereof.

By virtue of the provision of the Distribution Agreement, petitioner applied for and was granted a credit line by the UCPB, IEBank, and SBC. Petitioner also applied with the AUB an irrevocable domestic standby letter of credit in favor of respondent. All these banks separately executed several undertakings setting the terms and conditions governing the drawing of money by respondent from these banks.

Petitioner allegedly failed to pay her obligations to respondent despite demand, thus, respondent tried to withdraw from these bank undertakings.

Petitioner then filed with the RTC separate petitions against the banks for declaration of nullity of the several bank undertakings and domestic letter of credit which they issued with the application for the issuance of a TRO and writ of preliminary injunction. The petitioner alleged that said contracts are oppressive, unreasonable and unconscionable on the ground, among others, that the prevailing market rate with which petitioner will be charged of as interests and penalties is exorbitant rendering it against public morals and policy.

On December 17, 2002, the RTC issued an Order granting the TRO and requiring petitioner to implead respondent as an indispensable party.

Respondent filed with the CA a petition for certiorari with prayer for the issuance of a TRO and writ of preliminary injunction against respondent Judge Pizarro and petitioner. Subsequently, petitioner filed her Comment and respondent filed its Reply.

On July 4, 2003, the CA issued a Resolution granting the TRO prayed for by respondent after finding that it was apparent that respondent has a legal right under the bank undertakings issued by UCPB, SBC, and IEBank; and that until those undertakings were nullified, respondent's rights under the same should be maintained. Thereafter, on October 17, 2003, the CA issued a Resolution lifting the TRO issued by the RTC.

In a Resolution dated March 5, 2004, petitioner's motion for reconsideration was denied. Hence, this petition.

## **ISSUE:**

Whether the CA *a quo* committed a serious and reversible error in giving due course and granting private respondent SBDI's petition when the latter admittedly failed to file a prior motion for reconsideration before the trial court. (NO)

#### **RULING:**

The settled rule is that a motion for reconsideration is a condition sine qua non for the filing of a petition for *certiorari*. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as where the court a quo had no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were ex parte, or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.

Respondent explained their omission of filing a motion for reconsideration before resorting to a petition for *certiorari* based on exceptions (b), (c) and (i). The CA brushed aside the filing of the motion for reconsideration based claiming the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court or are the same as those raised and passed upon in the lower court. We agree.

Respondent had filed its position paper in the RTC stating the reasons why the injunction prayed for by petitioner should not be granted. However, the RTC granted the injunction. Respondent filed a petition for *certiorari* with the CA and presented the same arguments which were already passed upon by the RTC. The RTC already had the opportunity to consider and rule on the question of the propriety or impropriety of the issuance of the injunction. We found no reversible error committed by the CA for relaxing the rule since respondent's case falls within the exceptions.

Petitioner's reliance on *Philippine National Construction Corporation v. National Labor Relations Commission,* where we required the filing of a motion for reconsideration before the filing of a petition for *certiorari* notwithstanding petitioner's invocation of the recognized exception, *i.e.,* the same questions raised before the public respondent were to be raised before us, is not applicable. In said case, we ruled that petitioner failed to convince us that his case falls under the recognized exceptions as the basis was only petitioner's bare allegation. In this case before us, the CA found, and to which we agree, that both parties have fully presented their respective arguments in the RTC on petitioner's prayer for the issuance of the writ of preliminary injunction, and that respondent's argument that petitioner is not entitled to the injunctive relief had been squarely resolved by the RTC.

ESTRELLITA JULIANO-LLAVE, Petitioner, -versus- REPUBLIC OF THE PHILIPPINES, HAJA PUTRI ZORAYDA A. TAMANO and ADIB AHMAD A. TAMANO, Respondents.

G.R. No. 169766, FIRST DIVISION, March 30,2011, DEL CASTILLO, J.

In upholding the RTC, the CA correctly ruled that the pendency of a petition for certiorari does not suspend the proceedings before the trial court. "An application for certiorari is an independent action which is not part or a continuation of the trial which resulted in the rendition of the judgment complained of." Rule 65 of the Rules of Court is explicit in stating that "[t]he petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case." In fact, the trial court respected the CA's temporary restraining order and only after the CA rendered judgment did the RTC again require Estrellita to present her evidence.

## **FACTS:**

Around 11 months before his death, Sen. Tamano married Estrellita twice – initially under the Islamic laws and tradition on May 27, 1993 in Cotabato City and, subsequently, under a civil ceremony officiated by an RTC Judge at Malabang, Lanao del Sur on June 2, 1993. In their marriage contracts, Sen. Tamano's civil status was indicated as 'divorced.' Since then, Estrellita has been representing herself to the whole world as Sen. Tamano's wife, and upon his death, his widow.

On November 23, 1994, private respondents Haja Putri Zorayda A. Tamano and her son Adib Ahmad A. Tamano, in their own behalf and in behalf of the rest of Sen. Tamano's legitimate children with Zorayda, filed a complaint with the RTC of Quezon City for the declaration of nullity of marriage between Estrellita and Sen. Tamano for being bigamous. The complaint alleged, inter alia, that Sen. Tamano married Zorayda on May 31, 1958 under civil rights, and that this marriage remained subsisting when he married Estrellita in 1993.

Summons was then served on Estrellita on December 19, 1994. Instead of submitting her answer, however, Estrellita filed a Motion to Dismiss on February 20, 1995, and argued that the RTC has no jurisdiction to take cognizance of the case because under Presidential Decree No. 1083, or the Code of Muslim Personal Laws of the Philippines, questions and issues involving Muslim marriages and divorce fall under the exclusive jurisdiction of sharia courts.

The trial court denied Estrellita's motion and asserted its jurisdiction over the case for declaration of nullity. Thus, Estrellita filed in November 1995 a certiorari petition with the Supreme Court questioning the denial of her Motion to Dismiss. On December 15, 1995, the petition was referred to the CA.

During the pendency of the case for the declaration of nullity of marriage, the RTC continued to try the case since there can be no default in cases of declaration of nullity of marriage even if the respondent failed to file an answer. Estrellita was allowed to participate in the trial while her opposing parties presented their evidence. When it was Estrellita's turn to adduce evidence, the hearings set for such purpose were postponed mostly at her instance until the trial court suspended the proceedings in view of the CA's temporary restraining order issued on February 29, 1996, enjoining it from hearing the case.

Eventually, however, the CA resolved the petition adverse to Estrellita in its Decision dated September 30, 1996. Estrellita then elevated the appellate court's judgment to this Court by way of a petition for review on certiorari docketed as G.R. No. 126603.

On June 29, 1998, the SC upheld the jurisdiction of the RTC of Quezon City, stating as one of the reasons that as shari'a courts are not vested with original and exclusive jurisdiction in cases of marriages celebrated under both the Civil Code and PD 1083, the RTC, as a court of general jurisdiction, is not precluded from assuming jurisdiction over such cases. In a Resolution dated August 24, 1998, the SC denied Estrellita's motion for reconsideration with finality.

Meanwhile, the RTC rendered the aforementioned judgment declaring Estrellita's marriage with Sen. Tamano as void ab initio.

The CA likewise denied Estrellita's appeal and Motion for Reconsideration/Supplemental Motion for Reconsideration. Hence, this petition.

#### ISSUE:

Whether the trial court prematurely issued its judgment, as it should have waited first for the resolution of the Motion to Dismiss before the CA and, subsequently, before the SC. (NO)

## **RULING:**

Estrellita's refusal to file an answer eventually led to the loss of her right to answer; and her pending petition for certiorari/review on certiorari questioning the denial of the motion to dismiss before the higher courts does not at all suspend the trial proceedings of the principal suit before the RTC of Quezon City.

In upholding the RTC, the CA correctly ruled that the pendency of a petition for certiorari does not suspend the proceedings before the trial court. "An application for certiorari is an independent action which is not part or a continuation of the trial which resulted in the rendition of the judgment complained of." Rule 65 of the Rules of Court is explicit in stating that "[t]he petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case." In fact, the trial court respected the CA's temporary restraining order and only after the CA rendered judgment did the RTC again require Estrellita to present her evidence.

Notably, when the CA judgment was elevated to us by way of Rule 45, we never issued any order precluding the trial court from proceeding with the principal action. With her numerous requests for postponements, Estrellita remained obstinate in refusing to file an answer or to present her evidence when it was her turn to do so, insisting that the trial court should wait first for our decision in G.R. No. 126603. Her failure to file an answer and her refusal to present her evidence were attributable only to herself and she should not be allowed to benefit from her own dilatory tactics to the prejudice of the other party. Sans her answer, the trial court correctly proceeded with the trial and rendered its Decision after it deemed Estrellita to have waived her right to present her side of the story. Neither should the lower court wait for the decision in G.R. No. 126603 to become final and executory, nor should it wait for its records to be remanded back to it because G.R. No. 126603 involves strictly the propriety of the Motion to Dismiss and not the issue of validity of marriage.

## SPOUSES NICASIO C. MARQUEZ AND ANITA J. MARQUEZ, Petitioners, -versus- SPOUSES CARLITO ALINDOG AND CARMEN ALINDOG, Respondents.

G.R. No. 184045, SECOND DIVISION, January 22, 2014, PERLAS-BERNABE, J.

It is an established rule that the purchaser in an extra-judicial foreclosure sale is entitled to the possession of the property and can demand that he be placed in possession of the same either during (with bond) or after the expiration (without bond) of the redemption period therefor. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function.

In this case, it is clear that the issuance of a writ of possession in favor of Sps. Marquez, who had already consolidated their title over the extra-judicially foreclosed property, is merely ministerial in nature. The general rule as herein stated – and not the exception found under Section 33, Rule 39 of the Rules – should apply since Sps. Alindog hinged their claim over the subject property on their purported purchase of the same from its previous owner, i.e., Sps. Gutierrez (with Gutierrez being the original mortgagor). Accordingly, it cannot be seriously doubted that Sps. Alindog are only the latter's (Sps. Gutierrez) successors-in-interest who do not have a right superior to them. Therefore, the RTC gravely abused its discretion when it issued the injunctive writ which enjoined Sps. Marquez from taking possession of the subject property.

## **FACTS:**

Anita Marquez extended a loan to a certain Benjamin Gutierrez. As security therefor, Gutierrez executed a Deed of Real Estate Mortgage over a parcel of land in Tagaytay City. The mortgage was duly annotated on the dorsal portion, which Spouses Marquez had verified as clean prior to the mortgage. Since Gutierrez defaulted in the payment of his loan obligation, Anita sought the extrajudicial foreclosure of the subject property. Anita emerged as the highest bidder in the public auction sale. Upon Gutierrez's failure to redeem the same property within the prescribed period therefor, the title was consolidated in the same of Spouses Marquez which, however, bore an annotation of adverse claim in the names of Spouses Alindog. Said adverse annotation was copied from an earlier annotation made only after the subject property's mortgage to Spouses Marquez.

Spouses Alindog filed a civil case for annulment of real estate mortgage and certificate of sale on the groud that they purchased the subject property from Gutierrez way back 1989 but was unable to secure a certificate of title in their names due to deception of a certain Agripina Gonzales. They eventually found out that the property had already been mortgaged to Spouses Marquez. Meanwhile, Anita filed an ex-parte petition for the issuance of a writ of possession claiming that the same is ministerial on the part of the court following the consolidation of her and her husband's title over the subject property. This was granted by the RTC and Spouses Alindog was served with a notice to vacate.

After further proceedings on the injunction case, the RTC issued a writ of preliminary injunction enjoining Spouses Marquez from taking possession of the subject property. RTC's appreciated the initial evidence adduced by Sps. Alindog, concluding that they appear to have a right to be protected. Thus, notwithstanding the consolidation of Sps. Marquez's title over the subject property, the RTC granted Sps. Alindog's prayer for injunctive relief, holding that any further dispossession on their part would cause them irreparable injury.

CA denied Sps. Marquez's petition as it found no grave abuse of discretion on the RTC's part when it issued the injunctive writ that enjoined Sps. Marquez from taking possession of the subject property. It observed that Sps. Alindog had indeed "adduced prima facie proof of their right to possess the subject property" while the annulment case was pending, adding that the latter's "right to remain in possession" proceeds from the fact of the subject property's earlier sale to them.

#### ISSUE:

Whether the CA erred in finding no grave abuse of discretion on the part of the RTC when it issued the injunctive writ. (YES)

## **RULING:**

It is an established rule that the purchaser in an extra-judicial foreclosure sale is entitled to the possession of the property and can demand that he be placed in possession of the same either during (with bond) or after the expiration (without bond) of the redemption period therefor. The issuance of a writ of possession to a purchaser in a public auction is a ministerial act. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function. The trial court has no discretion on this matter. Hence, any talk of discretion in connection with such issuance is misplaced.

In this case, it is clear that the issuance of a writ of possession in favor of Sps. Marquez, who had already consolidated their title over the extra-judicially foreclosed property, is merely ministerial in nature. The general rule as herein stated – and not the exception found under Section 33, Rule 39 of the Rules – should apply since Sps. Alindog hinged their claim over the subject property on their purported purchase of the same from its previous owner, i.e., Sps. Gutierrez (with Gutierrez being the original mortgagor). Accordingly, it cannot be seriously doubted that Sps. Alindog are only the latter's (Sps. Gutierrez) successors-in-interest who do not have a right superior to them.

That said, the RTC therefore gravely abused its discretion when it issued the injunctive writ which enjoined Sps. Marquez from taking possession of the subject property. To be sure, grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence. Here, while the RTC had initially issued a writ of possession in favor of Sps. Marquez, it defied existing jurisprudence when it effectively rescinded the said writ by subsequently granting Sps. Alindog's prayer for injunctive relief. The RTC's finding anent the initial evidence adduced by Sps. Alindog constitutes improper basis to justify the issuance of the writ of preliminary injunction in their favor since, in the first place, it had no authority to exercise any discretion in this respect.

# RALPH P. TUA, Petitioner, -versus- HON. CESAR A. MANGROBANG, PRESIDING JUDGE, BRANCH 22, REGIONAL TRIAL COURT, IMUS, CAVITE; AND ROSSANA HONRADO-TUA, Respondents.

G.R. No. 170701, THIRD DIVISION, January 22, 2014, PERALTA, J.

I it is within the court's discretion, based on the petition and the affidavit attached thereto, to determine that the violent acts against women and their children for the issuance of a TPO have been committed. It is settled doctrine that there is grave abuse of discretion when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is

exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross so as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

## **FACTS:**

On May 20, 2005, respondent Rossana Honrado-Tua filed with the RTC of Imus, Cavite a Verified Petition for herself and in behalf of her minor children, Joshua Raphael, Jesse Ruth Lois, and Jezreel Abigail, for the issuance of a protection order, pursuant to RA 9262 or the Anti-Violence Against Women and their Children Act of 2004, against her husband, petitioner Ralph Tua. The case was docketed as Civil Case No. 0464-05 and raffled-off to Branch 22. Respondent claimed that she and her children had suffered from petitioner's abusive conduct; that petitioner had threatened to cause her and the children physical harm for the purpose of controlling her actions or decisions; that she was actually deprived of custody and access to her minor children; and, that she was threatened to be deprived of her and her children's financial support.

On May 23, 2005, the RTC issued a Temporary Protection Order.

In his Comment to respondent's Petition with Urgent Motion to Lift TPO, petitioner denied respondent's allegations and alleged, among others, that he had been maintaining a separate abode from petitioner since November 2004; that it was respondent who verbally abused and threatened him whenever their children's stay with him was extended; that respondent had been staying with a certain Rebendor Zuñiga despite the impropriety and moral implications of such set-up; and, that respondent is mentally, psychologically, spiritually and morally unfit to keep the children in her custody. Petitioner contended that the issuance of the TPO on May 23, 2005 is unconstitutional for being violative of the due process clause of the Constitution.

Without awaiting for the resolution of his Comment on the petition and motion to lift TPO, petitioner filed with the CA a petition for *certiorari* with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order and preliminary injunction and hold departure order assailing the May 23, 2005 TPO issued by the RTC.

On June 9, 2005, the CA, in order not to render the petition moot and to avoid grave and irreparable injury, issued a temporary restraining order to temporarily enjoin the parties and their agents from enforcing the assailed May 23, 2005 TPO issued in Civil Case No. 0464-05.

Petitioner later filed an Urgent Motion for Issuance of a Writ of Preliminary Injunction with Manifestation, praying that the enforcement of all orders, decision to be issued by the RTC and all the proceedings therein be restrained.

Thereafter, on October 28, 2005, the CA issued its Decision and found that the petition filed by respondent under RA 9262 is still pending before the RTC; thus, the factual matters raised therein could not be passed upon in the petition for *certiorari* filed with it. The CA noted that during the pendency of the herein proceedings, petitioner filed an urgent motion to quash warrant issued by the RTC and which matter could not also be a subject of this petition which assails the TPO dated May 23, 2005 and that the motion to quash should have been filed with the RTC. It also found that the TPO dated May 23, 2005 was validly issued by the RTC and found no grave abuse of discretion in the issuance thereof as the same were in complete accord with the provision of RA 9262.

Dissatisfied, petitioner files the instant petition.

## **ISSUE:**

Whether the CA with due respect seriously erred in holding and finding in a manner contrary to established rules and jurisprudence that public respondent committed no grave abuse of discretion when the latter issued the TPO dated May 23, 2005 without observing due process of law and considerations of justice and basic human rights. (NO)

## **RULING:**

In Garcia v. Drilon, wherein petitioner therein argued that Section 15 of RA 9262 is a violation of the due process clause of the Constitution, we struck down the challenge and held:

The rules require that petitions for protection order be in writing, signed and verified by the petitioner thereby undertaking full responsibility, criminal or civil, for every allegation therein. Since "time is of the essence in cases of VAWC if further violence is to be prevented," the court is authorized to issue ex parte a TPO after raffle but before notice and hearing when the life, limb or property of the victim is in jeopardy and there is reasonable ground to believe that the order is necessary to protect the victim from the immediate and imminent danger of VAWC or to prevent such violence, which is about to recur. There need not ne any fear that the judge may have no rational basis to issue an ex parte order. The victim is required not only to verify the allegations in the petition, but also to attach her witnesses' affidavits to the petition.

The grant of a TPO ex parte cannot, therefore, be challenged as violative of the right to due process. Just like a writ of preliminary attachment which is issued without notice and hearing because the time in which the hearing will take could be enough to enable the defendant to abscond or dispose of his property, in the same way, the victim of VAWC may already have suffered harrowing experiences in the hands of her tormentor, and possibly even death, if notice and hearing were required before such acts could be prevented. It is a constitutional commonplace that the ordinary requirements of procedural due process must yield to the necessities of protecting vital public interests, among which is protection of women and children from violence and threats to their personal safety and security.

It is clear from the foregoing rules that the respondent of a petition for protection order should be apprised of the charges imputed to him and afforded an opportunity to present his side.  $x \times x$ . The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. "To be heard" does not only mean verbal arguments in court; one may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.

Clearly, the court is authorized to issue a TPO on the date of the filing of the application after ex parte determination that there is basis for the issuance thereof. Ex parte means that the respondent need not be notified or be present in the hearing for the issuance of the TPO. Thus, it is within the court's discretion, based on the petition and the affidavit attached thereto, to determine that the violent acts against women and their children for the issuance of a TPO have been committed. It is settled doctrine that there is grave abuse of discretion when there is a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, such as where the power is exercised in

an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross so as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. We find that the CA did not err when it found no grave abuse of discretion committed by the RTC in the issuance of the TPO.

## ADTEL, INC. AND/OR REYNALDO T. CASAS, Petitioners, -versus- MARIJOY A. VALDEZ, Respondent.

G.R. No. 189942, SECOND DIVISION, August 9, 2017, CARPIO, J.

Therefore, the rule is that in filing petitions for certiorari under Rule 65, a motion for extension is a prohibited pleading. However in exceptional or meritorious cases, the Court may grant an extension anchored on special or compelling reasons.

#### **FACTS:**

Adtel, Inc. is a domestic corporation engaged in the distribution of telephone units, gadgets, equipment, and allied products. On 9 September 1996, Adtel hired Marijoy A. Valdez to work as an accountant for the company. Adtel promoted respondent as the company's purchasing and logistics supervisor. Adtel then entered into a dealership agreement with respondent's husband, Mr. Angel Valdez, to distribute Adtel's wideband VHF-UHF television antennas. The dealership agreement was for 12 months and the agreement was extended for another 3 months. On 3 February 2006, Mr. Valdez filed a civil case against Adtel for specific performance and damages for the execution of the terms of the dealership agreement. On 10 May 2006, Mr. Valdez also instituted a criminal complaint for libel against Adtel's chairman, president, and officers.

On 22 May 2006, Adtel issued a memorandum directing respondent to show cause in writing why she should not be terminated for conflict of interest and/or serious breach of trust and confidence. The memorandum stated that the filing of cases by respondent's husband created a conflict of interest since respondent had access to vital information that can be used against Adtel. Respondent was placed under preventive suspension by Adtel. On 23 May 2006, respondent contended that the cases had nothing to do with her being an employee of Adtel and had not affected her performance in the company.

On 29 May 2006, Adtel terminated respondent from the company. Respondent filed a complaint for illegal dismissal with the Labor Arbiter. In her Position Paper, respondent alleged that she did not violate any company rule or policy; neither was she guilty of fraud, nor willful breach of trust.

On 24 May 2007, the Labor Arbiter dismissed respondent's complaint for illegal dismissal. The Labor Arbiter held that the civil and criminal cases initiated by respondent's husband indubitably created a conflict of interest that was a just cause for her dismissal by Adtel. The Labor Arbiter ruled that respondent was not an ordinary rank-and-file employee but a managerial employee with a fiduciary duty to protect the interest of Adtel.

On 21 May 2008, the National Labor Relations Commission reversed the decision of the Labor Arbiter. The NLRC ruled that Adtel illegally dismissed respondent. The NLRC held that Adtel failed

to substantially prove the existence of an act or omission personally attributable to the respondent to serve as a just cause to terminate her employment.

Adtel filed a Motion for Reconsideration which was denied by the NLRC on 24 December 2008. Adtel received the NLRC Resolution on 5 February 2009. On 7 April 2009, the last day for filing its petition for certiorari with the CA, Adtel filed a motion for extension of time with the CA. On 22 April 2009, 15 days after the last day for filing or the 75th day, Adtel filed its petition for certiorari with the CA.

On 28 May 2009, the CA denied the motion for extension and dismissed Adtel's petition for certiorari for being filed beyond the reglementary period. The CA ruled that Adtel had until 7 April 2009 to file its petition for certiorari. Instead of filing the petition for certiorari, Adtel filed a motion for extension of time on 7 April 2009 and subsequently filed its petition for certiorari on 22 April 2009, the last day of the extended period prayed for by Adtel. The CA held that the reglementary period to file a petition for certiorari can no longer be extended pursuant to A.M. No. 07-7-12-SC which amended Section 4, Rule 65 of the Rules of Court.

Adtel filed a motion for reconsideration which was denied on 8 October 2009. Hence, the instant petition.

## ISSUE:

Whether the Court of Appeals committed a reversible error in denying the petitioners' motion for reconsideration and in dismissing the petition for certiorari on the sole basis of technicality. (NO)

## **RULING:**

A.M. No. 07-7-12-SC states that in cases where a motion for reconsideration was timely filed, the filing of a petition for certiorari questioning the resolution denying the motion for reconsideration *must be made not later than sixty (60) days from the notice of the denial of the motion*. In *Laguna Metts Corporation v. Court of Appeals*, this Court held that following A.M. No. 07-7-12-SC, petitions for certiorari must be filed strictly within 60 days from the notice of judgment or from the order denying a motion for reconsideration. In *Laguna Metts Corporation*, this Court stated the rationale for the strict observance of the 60-day period to file a petition for certiorari, to wit:

The 60-day period is deemed reasonable and sufficient time for a party to mull over and to prepare a petition asserting grave abuse of discretion by a lower court. The period was specifically set to avoid any unreasonable delay that would violate the constitutional rights of the parties to a speedy disposition of their case.

In *Laguna Metts Corporation*, this Court ruled that the 60-day period was non-extendible and the CA no longer had the authority to grant the motion for extension in view of A.M. No. 07-7-12-SC which amended Section 4 of Rule 65.

However, in *Domdom v. Third and Fifth Divisions of the Sandiganbayan* this Court held that the strict observance of the 60-day period to file a petition for certiorari is not absolute. This Court ruled that absent any express prohibition under Rule 65, a motion for extension is still permitted, subject to the Court's sound discretion. Similarly, in *Labao v. Flores*, this Court recognized that the extension of the 60-day period may be granted by the Court in the presence of special or compelling

circumstances provided that there should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his or her failure to comply with the rules. Likewise, in *Mid-Islands Power Generation v. Court of Appeals* this Court held that a motion for extension was allowed in petitions for certiorari under Rule 65 subject to the Court's sound discretion **and only** under exceptional or meritorious cases.

Therefore, the rule is that in filing petitions for certiorari under Rule 65, a motion for extension is a prohibited pleading. However in exceptional or meritorious cases, the Court may grant an extension anchored on special or compelling reasons.

Adtel's motion for extension filed with the CA on 7 April 2009 reads:c

MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR CERTIORARI

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2. While a draft of the pleading had already been prepared, final revisions have yet to be completed. However, due to the undersigned counsel's heavy volume of work, petitioner is constrained to request for an additional period of fifteen (15) days from today or up to 22 April 2009 within which to file the Petition for Certiorari.

In *Yutingco v. Court of Appeals*, this Court held that the circumstance of *heavy workload alone*, absent a compelling or special reason, is not a sufficient justification to allow an extension of the 60-day period to file a petition for certiorari.

Accordingly, in the absence of a more compelling reason cited in the motion for extension of time other than the "undersigned counsel's heavy volume of work," the CA did not commit a reversible error in dismissing the petition for certiorari.

## DENNIS M. CONCEJERO, Petitioner, -versus- COURT OF APPEALS AND PHILIPPINE NATIONAL BANK, Respondents.

G.R. No. 223262, SECOND DIVISION, September 11, 2017, PERALTA, J.

The decision of the NLRC is appealable to the Court of Appeals through a petition for certiorari under Rule 65 of the Rules of Court, which provides:

SEC. 4. When and where petition filed. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

...If it involves the acts or omissions of a <u>quasi-judicial agency</u>, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

X	X	X
41	21	41

**FACTS:** 

Petitioner Dennis M. Concejero was the Assistant Vice-President and Head of the Branch Operations Review Department (*BORD*) of respondent Philippine National Bank (*PNB*). As head of the BORD, petitioner was responsible for the overall review of compliance of domestic branches with internal control policies, established procedures and guidelines of the bank, among others. His primary mandate was to eradicate fraud and prosecute fraudsters. He supervised 26 Branch Operations Review Officers in their operations review of all branches, gave authority to convene the Regional Fact-Finding Committees, reviewed the reports and indorsed fraud to legal and audit.

In a Memorandum dated January 24, 2013, respondent PNB, through its Administrative Board, charged petitioner with several acts constituting abuse of authority, concealment of knowledge of commission of fraud, deceit or other forms of irregularity, willful breach of trust resulting in loss of confidence and gross misconduct.

Petitioner submitted his Answer to the charge on February 4, 2013. On February 5, 2013, petitioner was placed under preventive suspension for 30 days, beginning February 8, 2013 until March 9, 2013. Also, on February 5, 2013, PNB's Administrative Board conducted an administrative hearing where both petitioner and his counsel appeared.

On February 13, 2013, respondent PNB, through its Chief Employee Relations Officer, issued an implementing Order on the administrative charge informing the petitioner that the Board found him guilty of willful breach of trust resulting in loss of confidence and he was meted the penalty of dismissal.

On April 4, 2013, petitioner filed a Complaint for illegal suspension and dismissal.

On February 18, 2014, the Labor Arbiter dismissed the complaint for lack of merit. On July 31, 2014, the NLRC likewise denied the appeal and affirmed the decision of the Labor Arbiter. Petitioner's motion for reconsideration was also denied by the NLRC in its Resolution dated September 17, 2014. Petitioner received a copy of the Resolution on September 23, 2014.

On October 8, 2014, or 21 days after receipt of the NLRC Resolution denying his motion for reconsideration, petitioner filed with the Court of Appeals a Motion for Extension of Time to File Petition for *Certiorari*. He stated therein that he received the NLRC Resolution denying his motion for reconsideration on September 23, 2014 and that he had until October 8, 2014 (or 15 days) to appeal the Resolution to the CA through a petition for *certiorari*. On November 3, 2014, the CA promulgated a Resolution dismissing the case docketed as CA-G.R. SP No. 137479.

Meanwhile, on October 23, 2014, petitioner's counsel filed a Manifestation and Motion stating that in filing the Motion for Extension of Time to File Petition for *Certiorari* on October 8, 2014, he overlooked Section 4, Rule 65 of the Rules of Court, which provides a period of 60 days to file a petition for *certiorari*. Hence, his last day to file the petition is on November 22, 2014.

On November 24, 2014, petitioner filed his Petition for *Certiorari* with the Court of Appeals. On January 27, 2015, the CA promulgated a Resolution, referring the Manifestation and Motion to the private respondent for Comment thereon within 10 days from notice thereof.

On February 20, 2015, respondent filed a Comment/Opposition to Manifestation and Motion, praying that petitioner's Manifestation and Motion be denied for lack of merit.

On March 10, 2015, the CA promulgated its Resolution stating that petitioner's "Manifestation and Motion" and private respondent's Comment/Opposition are now submitted for appropriate action.

On June 18, 2015, the Resolution dated November 3, 2015 became final and executory and was recorded in the Book of Entries of Judgment. Thereafter, petitioner filed a motion for reconsideration which was denied by the CA in a Resolution dated March 4, 2016.

Hence, this petition for *certiorari* under Rule 65 of the Rules of Court.

## **ISSUE:**

Whether the CA gravely abused its discretion in dismissing petitioner's appeal from the Decision of the NLRC through a petition for *certiorari* under Rule 65 of the Rules of Court in its Resolution dated November 3, 2014. (YES)

#### **RULING:**

The decision of the NLRC is appealable to the Court of Appeals through a petition for *certiorari* under Rule 65 of the Rules of Court, which provides:

SEC. 4. When and where petition filed. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

...If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

X X X

Petitioner received notice of the NLRC Resolution denying his motion for reconsideration on September 23, 2014. On October 8, 2014, or 21 days after receipt of the NLRC Resolution, petitioner filed a Motion for Extension of Time to File Petition for *Certiorari*, asking for an extension of 15 days or until October 23, 2014 to file his petition.

Petitioner had 60 days to file a petition for *certiorari* under Rule 65. Since petitioner received the NLRC Resolution denying his motion for reconsideration on September 23, 2014, he had until November 22, 2014 (the 60th day) within which to file his petition. However, November 22, 2014 fell on a Saturday; hence, petitioner had until the next working day or until November 24, 2014 (Monday) to file the petition under Section 1, Rule 22 of the Rules of Court.

In the Resolution dated November 3, 2014, the Court of Appeals dismissed the case because petitioner failed to file his petition for *certiorari* on October 23, 2014 as prayed for in his earlier motion for extension, even if the 60-day period to file the petition under Section 4, Rule 65 had not lapsed.

Therefore, the Court finds that the Court of Appeals gravely abused its discretion in dismissing the case on November 3, 2014 before the 60-day period to file the petition for *certiorari* expired. Even if petitioner, who sought an extension of 15 days, or until October 23, 2014 to file the petition

for *certiorari*, failed to file the petition on October 23, 2014, the case, however, was not yet dismissible because petitioner was entitled to a 60-day period within which to file the petition and had until November 24, 2014 to file it. The records show that petitioner timely filed his petition on November 24, 2014.

## MARIA JEANETTE C. TECSON and FELIX B. DESIDERIO, JR., Petitioners, -versus-The COMMISSION ON ELECTIONS, RONALD ALLAN KELLY POE (a.k.a. FERNANDO POE, JR.) and VICTORINO X. FORNIER, Respondents.

G.R. No. 161434, EN BANC, March 3, 2004, VITUG, J.

The rules categorically speak of the jurisdiction of the tribunal over contests relating to the election, returns and qualifications of the "President" or "Vice-President", of the Philippines, and not of "candidates" for President or Vice-President. A quo warranto proceeding is generally defined as being an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office. In such context, the election contest can only contemplate a post-election scenario. In Rule 14, only a registered candidate who would have received either the second or third highest number of votes could file an election protest. This rule again presupposes a post-election scenario.

## **FACTS:**

On 31 December 2003, respondent Ronald Allan Kelly Poe a.k.a. Fernando Poe, Jr., filed his certificate of candidacy for the position of President of the Republic of the Philippines under the Koalisyon ng Nagkakaisang Pilipino (KNP) Party, in the forthcoming national elections. In his certificate of candidacy, FPJ, representing himself to be a natural-born citizen of the Philippines, stated his name to be "Fernando Jr.," or "Ronald Allan" Poe, his date of birth to be 20 August 1939 and his place of birth to be Manila.

Various petitioners sought to disqualify FPJ in his bid for Presidency on the contention that he made a material misrepresentation in his CoC by claiming to be a natural-born Filipino citizen when in truth, his parents were foreigners. Moreover, they argue that granting Allan F. Poe, FPJ's father, was a Filipino citizen, he could not have transmitted his Filipino citizenship to his son, since FPJ is an illegitimate child of an alien mother, Bessie Kelley.

On January 23, 2004, the COMELEC dismissed the case for lack of merit. Three days later, Fornier filed his motion for reconsideration which was likewise denied by the COMELEC en banc. Hence, the petitioners elevated this matter to the Supreme Court invoking the provisions of Article VII, Section 4, paragraph 7, of the 1987 Constitution which provides that:

"The Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose."

The petition likewise prayed for a temporary restraining order, a writ of preliminary injunction or any other resolution that would stay the finality and/or execution of the COMELEC resolutions.

## **ISSUE:**

Whether the jurisdiction of the Supreme Court, defined by Article VII, Section 4, paragraph 7, of the 1987 Constitution, would include cases directly brought before it, questioning the qualifications of a candidate for the presidency or vice-presidency before the elections are held. (NO)

## **RULING:**

The provision is an innovation of the 1987 Constitution. The omission in the 1935 and the 1973 Constitution to designate any tribunal to be the sole judge of presidential and vice-presidential contests, has constrained this Court to declare, in Lopez vs. Roxas, as "not (being) justiciable" controversies or disputes involving contests on the elections, returns and qualifications of the President or Vice-President. The constitutional lapse prompted Congress, on 21 June 1957, to enact Republic Act No. 1793, "An Act Constituting an Independent Presidential Electoral Tribunal to Try, Hear and Decide Protests Contesting the Election of the President-Elect and the Vice-President-Elect of the Philippines and Providing for the Manner of Hearing the Same." Republic Act 1793 designated the Chief Justice and the Associate Justices of the Supreme Court to be the members of the tribunal. Although the subsequent adoption of the parliamentary form of government under the 1973 Constitution might have implicitly affected Republic Act No. 1793, the statutory set-up, nonetheless, would now be deemed revived under the present Section 4, paragraph 7, of the 1987 Constitution.

Ordinary usage would characterize a "contest" in reference to a post-election scenario. Election contests consist of either an election protest or a quo warranto which, although two distinct remedies, would have one objective in view, i.e., to dislodge the winning candidate from office. A perusal of the phraseology in Rule 12, Rule 13, and Rule 14 of the "Rules of the Presidential Electoral Tribunal," promulgated by the Supreme Court en banc on 18 April 1992, would support this premise –

"Rule 12. *Jurisdiction.* - The Tribunal shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President of the Philippines.

"Rule 13. How Initiated. - An election contest is initiated by the filing of an election protest or a petition for quo warranto against the President or Vice-President. An election protest shall not include a petition for quo warranto. A petition for quo warranto shall not include an election protest.

"Rule 14. *Election Protest.* - Only the registered candidate for President or for Vice-President of the Philippines who received the second or third highest number of votes may contest the election of the President or the Vice-President, as the case may be, by filing a verified petition with the Clerk of the Presidential Electoral Tribunal within thirty (30) days after the proclamation of the winner."

The rules categorically speak of the jurisdiction of the tribunal over contests relating to the election, returns and qualifications of the "President" or "Vice-President", of the Philippines, and not of "candidates" for President or Vice-President. A quo warranto proceeding is generally defined as being an action against a person who usurps, intrudes into, or unlawfully holds or exercises a public office. In such context, the election contest can only contemplate a post-election scenario. In Rule 14, only a registered candidate who would have received either the second or third highest number of votes could file an election protest. This rule again presupposes a post-election scenario.

It is fair to conclude that the jurisdiction of the Supreme Court, defined by Section 4, paragraph 7, of the 1987 Constitution, would not include cases directly brought before it, questioning the qualifications of a candidate for the presidency or vice-presidency before the elections are held.

Accordingly, G. R. No. 161434, entitled "Maria Jeanette C. Tecson, et al., vs. Commission on Elections et al.," and G. R. No. 161634, entitled "Zoilo Antonio Velez vs. Ronald Allan Kelley Poe a.k.a. Fernando Poe, Jr." would have to be dismissed for want of jurisdiction.

## SANTIAGO C. DIVINAGRACIA, Petitioner, -versus- CONSOLIDATED BROADCASTING SYSTEM, INC. and PEOPLE'S BROADCASTING SERVICE, INC., Respondents.

G.R. No. 162272, SECOND DIVISION, April 7, 2009, TINGA, J.

The special civil action of quo warranto is a prerogative writ by which the Government can call upon any person to show by what warrant he holds a public office or exercises a public franchise. It is settled that "[t]he determination of the right to the exercise of a franchise, or whether the right to enjoy such privilege has been forfeited by non-user, is more properly the subject of the prerogative writ of quo warranto, the right to assert which, as a rule, belongs to the State 'upon complaint or otherwise,' the reason being that the abuse of a franchise is a public wrong and not a private injury."

## **FACTS:**

Respondents Consolidated Broadcasting System, Inc. (CBS) and Peoples Broadcasting Service, Inc. (PBS) were incorporated in 1961 and 1965, respectively. Both are involved in the operation of radio broadcasting services in the Philippines, they being the grantees of legislative franchises by virtue of two laws, RA No. 7477 and RA No. 7582. RA No. 7477, granted PBS a legislative franchise to construct, install, maintain and operate radio and television stations within the Philippines for a period of 25 years.

RA No. 7582 extended CBSs previous legislative franchise to operate radio stations for another 25 years. The CBS and PBS radio networks are two of the three networks that comprise the well-known Bombo Radyo Philippines.

Section 9 of RA No. 7477 and Section 3 of RA No. 7582 contain a common provision predicated on the constitutional mandate to democratize ownership of public utilities.

The NTC issued 4 Provisional Authorities to PBS and 6 Provisional Authorities to CBS, allowing them to install, operate and maintain various AM and FM broadcast stations in various locations throughout the nation. These Provisional Authorities were issued between 1993 to 1998, or after the enactment of RA No. 7477 and RA No. 7582.

Petitioner Santiago C. Divinagracia filed two complaints both dated 1 March 1999 with the NTC, respectively lodged against PBS and CBS. He alleged that he was "the actual and beneficial owner of 12% of the shares of stock" of PBS and CBS separately, and that despite the provisions in RA No. 7477 and RA No. 7582 mandating the public offering of at least 30% of the common stocks of PBS and CBS, both entities had failed to make such offering. Thus, Divinagracia commonly argued in his

complaints that the failure on the part of PBS and CBS "to comply with the mandate of their legislative franchise is a misuse of the franchise conferred upon it by law and it continues to exercise its franchise in contravention of the law to the detriment of the general public and of complainant who are unable to enjoy the benefits being offered by a publicly listed company."

On 1 August 2000, the NTC issued a consolidated decision dismissing both complaints. The NTC ruled that it was not competent to render a ruling on that issue, the same being more properly the subject of an action for *quo warranto* to be commenced by the Solicitor General in the name of the Republic of the Philippines, pursuant to Rule 66 of the Rules of Court.

After the NTC had denied Divinagracia's motion for reconsideration, he filed a petition for review under Rule 43 of the Rules of Court with the Court of Appeals. On 18 February 2004, the Court of Appeals rendered a decision upholding the NTC. The appellate court agreed with the earlier conclusion that the complaints were indeed a collateral attack on the legislative franchises of CBS and PBS and that a *quo warranto* action was the proper mode to thresh out the issues raised in the complaints.

Hence, this petition.

## **ISSUE:**

Whether quo warranto exists as an available and appropriate remedy against the wrong imputed on private respondents. (YES)

#### **RULING:**

Under Section 1 of Rule 66, "an action for the usurpation of a public office, position or franchise may be brought in the name of the Republic of the Philippines against a person who usurps, intrudes into, or unlawfully holds or exercises public office, position or franchise." Even while the action is maintained in the name of the Republic, the Solicitor General or a public prosecutor is obliged to commence such action upon complaint, and upon good reason to believe that any case specified under Section 1 of Rule 66 can be established by proof.

The special civil action of *quo warranto* is a prerogative writ by which the Government can call upon any person to show by what warrant he holds a public office or exercises a public franchise. It is settled that "[t]he determination of the right to the exercise of a franchise, or whether the right to enjoy such privilege has been forfeited by non-user, is more properly the subject of the prerogative writ of *quo warranto*, the right to assert which, as a rule, belongs to the State 'upon complaint or otherwise,' the reason being that the abuse of a franchise is a public wrong and not a private injury." A forfeiture of a franchise will have to be declared in a direct proceeding for the purpose brought by the State because a franchise is granted by law and its unlawful exercise is primarily a concern of Government. *Quo warranto* is specifically available as a remedy if it is thought that a government corporation has offended against its corporate charter or misused its franchise.

If the courts conclude that private respondents have violated the terms of their franchise and thus issue the writs of *quo warranto* against them, then the NTC is obliged to cancel any existing licenses and CPCs since these permits draw strength from the possession of a valid franchise. If the point has not already been made clear, then licenses issued by the NTC such as CPCs and provisional authorities are junior to the legislative franchise enacted by Congress. The licensing authority of the

NTC is not on equal footing with the franchising authority of the State through Congress. The issuance of licenses by the NTC implements the legislative franchises established by Congress, in the same manner that the executive branch implements the laws of Congress rather than creates its own laws. And similar to the inability of the executive branch to prevent the implementation of laws by Congress, the NTC cannot, without clear and proper delegation by Congress, prevent the exercise of a legislative franchise by withholding or cancelling the licenses of the franchisee.

## REPUBLIC OF THE PHILIPPINES, REPRESENTED BY SOLICITOR GENERAL JOSE C. CALIDA, Petitioner, -versus- MARIA LOURDES P.A. SERENO, Respondent.

G.R. No. 237428, EN BANC, June 19, 2018, TIJAM, J.

Quo warranto as a remedy to oust an ineligible public official may be availed of when the subject act or omission was committed prior to or at the time of appointment or election relating to an official's qualifications to hold office as to render such appointment or election invalid. Acts or omissions, even if it relates to the qualification of integrity being a continuing requirement but nonetheless committed during the incumbency of a validly appointed and/or validly elected official cannot be the subject of a quo warranto proceeding, but of impeachment if the public official concerned is impeachable and the act or omission constitutes an impeachable offense, or to disciplinary, administrative or criminal action, if otherwise.

## **FACTS:**

Maria Lourdes Sereno served as a member of the faculty of the UP college of Law (UP) from 1986 to 2006. From 2003 to 2006, she was also employed as legal counsel for the Republic of the Philippines in two international arbitrations known as the PIATCO cases, and a Deputy Commissioner of the Commission on Human Rights.

The U.P. Human Resources Development Office (UP HRDO) certified that there was no record on respondent's file of any permission to engage in limited practice of profession. Its records also show that the Statement of Assets, Liabilities and Net Worth (SALN) available were those for 1985, 1990, 1991, 1993, 1994, 1995, 1996, 1997, and 2002 (9 SALN). In a manifestation, she attached her 1989 SALN which she supposedly sourced from "filing cabinets" or "drawers of UP". Her 2009 SALN was unsubscribed and was filed before the Office of the Clerk of Court only on 2012. In sum, only 11 out of 25 SALNs that ought to have been filed are available on record.

On August 2010, President Benigno Aquino III appointed the respondent as an Associate Justice. In 2012, the position of Chief Justice was declared vacant. The JBC announced the opening for applications and nominations, and required the applicants to submit all their previous SALNs up to 31 December 2011 for those in public service (instead of the usual last two years of public service). It was further provided that, "applicants with incomplete or out-of-date documentary requirements will not be interviewed or considered for nomination." The respondent, in a letter to the JBC, expressed that since she resigned from UP Law on 2006 and became a private practitioner, her nomination was considered as that coming from the private sector; thus, she is only required to comply with the requirements imposed on nominees from the private sector. The respondent likewise added that it is reasonable to consider it infeasible to retrieve her 15-year old government records and that the clearance issued by UP HRDO and CSC should be taken in her favor.

Despite the submission of only 3 SALNs, respondent was listed as applicant no. 14 with an annotation that she had complete requirements and a note stating that it is reasonable to consider it infeasible to retrieve all her government records. Thereafter, on August 2012, the respondent was appointed as the Chief Justice of the Supreme Court.

On August 2017, or 5 years after her appointment, Atty. Larry Gadon filed an impeachment complaint against respondent with the House Committee on Justice, alleging that the respondent failed to make truthful declarations in her SALNs. After the respondent has filed her reply, the House Committee on Justice conducted several hearings on the determination of probable cause, the last of which was held on February 27, 2018.

During the hearings, it was revealed that respondent purportedly failed to file her SALNs while she was a member of the faculty of the UP Law and that she filed her SALN only for the years 1998, 2002 and 2006. During the hearing on February 7, 2018, the House Committee on Justice, Justice Peralta, as a resource person being then acting ex-officio chairman of the JBC, was not made aware of the incomplete SALNs of Sereno.

Such complaint filed in the House spawned to 2 relevant incidents. One of which was the letter dated 21 February 2018 of Atty. Eligio Mallari to the OSG requesting the latter to initiate a quo warranto proceeding against Respondent. Invoking the Court's original jurisdiction, under Section 5(1), Article VIII of the Constitution in relation to the special civil action under Rule 66 of the Rules of Court, the OSG filed the petition for the issuance of the extraordinary writ of quo warranto to declare as void the appointment of the respondent as the Chief Justice and to oust and altogether exclude the respondent therefrom.

Through a Joint Motion for Leave to Intervene and Admit Attached Comment-In-Intervention, movant intervenors composed of Capistrano, et al., Zarate et al., the IBP, Senators Leila M. De Lima and Antonio Trillanes IV seek to intervene in the present petition as citizens and taxpayers and senators of the Republic.

The respondent then filed a Motion for Inhibition against Associate Justices Bersamin, Peralta, Jardeleza, Tijam, and Leonardo-De Castro, imputing actual bias for having testified against her on the impeachment hearing before the House of Representatives.

## The Case for the Republic

In justifying resort to a petition for quo warranto, the Republic argues that quo warranto is available as a remedy even as against impeachable officers, like the respondent. The Republic argues that a petition for quo warranto is different from the impeachment proceedings because in the former what is being sought is to question the validity of her appointment, while the impeachment complaint accuses her of committing culpable violation of the Constitution and betrayal of public trust while in office, citing Funa v. Chairman Villar, Estrada v. Desierto and Nacionalista Party v. De Vera.

The Republic further argues that an action for *quo warranto* is the proper remedy to question the validity of respondent's appointment and its imprescriptible right to bring such action under the maxim *nullum tempus occurit regi ("no time run against the king")*. Hence, the OSG seasonably filed the petition within the one-year reglementary period under Section 11, Rule 66 since the respondent's transgressions only came to light during the impeachment proceedings. Moreover,

even assuming that the one-year period is applicable to the OSG, considering that SALNs are not published, the OSG will have no other means by which to know the disqualification.

The Republic also contends that the respondent's failure to submit her SALNs disqualifies her from being a candidate for the position of the Chief Justice. She also failed to prove her integrity which is a requirement under Section 7(3), Article VIII of the Constitution. According to the Republic posits that the JBC's ostensible nomination of respondent does not extinguish the fact that the latter failed to comply with the SALN requirement as the filing thereof remains to be a constitutional and statutory requirement.

In sum, the Republic contends that respondent's failure to submit her SALNs as required by the JBC disqualifies her, at the outset, from being a candidate for the position of Chief Justice. Lacking her SALNs, respondent has not proven her integrity which is a requirement under the Constitution. The Republic thus concludes that since respondent is ineligible for the position of Chief Justice for lack of proven integrity, she has no right to hold office and may therefore be ousted via quo warranto.

## The Case for the Respondent

The respondent contends that an impeachable officer may only be ousted through impeachment as provided for in Section 2, Article XI of the Constitution and jurisprudence. The respondent further contends that the clear intention of the framers of the Constitution was to create an exclusive category of public officers who can be removed only by impeachment and not otherwise. Impeachment was chosen as the method of removing certain high-ranking government officers to shield them from harassment suits that will prevent them from performing their functions which are vital to the continued operations of government.

It is likewise argued by the respondent that the petition is time-barred as Section 11, Rule 66 of the ROC provides that a petition for quo warranto must be filed within 1 year from the "cause of ouster" and not from the discovery of the disqualification.

Moreover, the respondent argues that the Court cannot presume that she failed to file her SALNs because as a public officer, she enjoys the presumption that her appointment to office was regular. Hence, the Republic failed to overcome the presumption that her appointment to office was regular, pointing out that the UP HRDO had certified that she had been cleared of all administrative responsibilities. Her integrity is a political question which can only be decided by the JBC and the President and it did so in the affirmative when it included the respondent's name in the shortlist of nominees for the position of Chief Justice.

As to where her SALNs are, respondent avers that some of her SALNs were in fact found in the records of the UP HRDO and she was able to retrieve copies of some of her SALNs from UP Law. The respondent contends that the fact that SALNs are missing cannot give rise to the interference that they are not filed. The fact that 11 SALNs were filed should give an interference to a pattern of filing, not of non-filing.

## The Motions for Inhibition

Respondent seeks the inhibition of 5 Justices of the Court, namely: Associate Justices Bersamin, Peralta, Jardeleza, Tijam, and Leonardo-De Castro. She imputes actual bias on said Justices for having testified before the House Committee on Justice on the impeachment complaint, on Justice

Bersamin due to his personal resentment against the respondent, on Justice Jardeleza due to his challenging the integrity of the respondent during the nomination process, on Justice Tijam based on the latter's statement in an article that if the respondent is liable for culpable violation of the Constitution. She also mentioned of Justices Tijam and Bersamin wearing a touch of red during the "Red Monday" protest wherein judges and court employees called on the respondent to resign. She also seeks to disqualify Justice Martires for his insinuations questioning the respondent's mental or psychological fitness.

## **ISSUES:**

#### A. PRELIMINARY ISSUES:

- 1. Whether the Court should entertain the motion for intervention. (NO)
- 2. Whether the Court should grant the motion for the inhibition of Sereno against five Justices. (NO)

## **B. SUBSTANTIVE ISSUES**

- 1. Whether the Court can assume jurisdiction over the instant petition for *quo warranto*. (YES)
- 2. Whether the petition is dismissible outright on the ground of prescription. (NO)
- 3. Whether the respondent is eligible for the position of Chief Justice. (NO)
  - a. Whether the determination of a candidate's eligibility for nomination is the sole and exclusive function of the JBC, and whether such determination partakes of the character of a political question outside the Court's supervisory and review powers; (NO)
  - b. Whether Respondent failed to file her SALNs as mandated by the Constitution and required by the law and its implementing rules and regulations; and if so, whether the failure to file SALNs voids the nomination and appointment of Respondent as Chief Justice; (YES)
  - c. Whether Respondent failed to comply with the submission of SALNs as required by the JBC; and if so, whether the failure to submit SALNs to the JBC voids the nomination and appointment of Respondent as Chief Justice; (YES) and
  - d. In case of a finding that Respondent is ineligible to hold the position of Chief Justice, whether the subsequent nomination by the JBC and the appointment by the President cured such ineligibility. (NO)
- 4. Whether respondent is a de facto officer removable through a quo warranto. (YES)

## **RULING:**

## On the Preliminary Issues

#### 1. Motions for Intervention

The Court resolved to deny the motions for intervention respectively filed by Capistrano *et al.*, Zarate *et al.*, Senators De Lima and Trillanes, and to note the IBP's intervention. herein movant-intervenors' sentiments, no matter how noble, do not, in any way, come within the purview of the concept of "legal interest" contemplated under the Rules to justify the allowance of intervention. The intervenors failed to show any legal interest of such nature that they will either gain or lose by the direct legal operation of the judgment.

#### 2. Motions for Inhibition

There is no basis for the associate justices to inhibit in the case. Bias must be proven with clear and convincing evidence. Mere imputation of bias or partiality is not enough ground for inhibition. In this case, the court ruled that the appearance of the Associate Justices in the hearings of Committee on Justice was only in deference to the House of Representatives whose constitutional duty to investigate the impeachment complaint filed against Respondent could not be doubted. In addition to that, the their appearance was with the imprimatur of the Court En Banc.

The insinuations of Justice Tijam reveals that the intent was only to prod respondent to observe and respect the constitutional process of impleachment. As to the wearing of a red tie of Justices Tijam and Bersamin, respondent's allegations of personal bias are baseless and unfair. The Members of the Court are beholden to no one, except to the sovereign Filipino people who ordained and promulgated the Constitution. As a collegial body, the Supreme Court adjudicates without fear or favor.

## On the Substantive Issues

## 1. The Court has jurisdiction of the over the petition for Quo Warranto.

The Supreme Court has original jurisdiction over an action for quo warranto. Section 5, Article VIII of the Constitution provides that the Supreme Court shall exercise original jurisdiction over petitions for *certiorari, prohibition, mandamuns, quo warranto,* and *habeas corpus.* Section 7, Rule 66 of Rules of Court also provides that the venue for an action for *quo warranto* is in the Regional Trial Court of Manila, Court of Appeals, or Supreme Court when commenced by the Solicitor General.

While the hierarchy of courts serves as a general determinant of the appropriate forum for petitions for the extraordinary writs, a direct invocation of the SC's original jurisdiction in this case is allowed when there are special and important reasons therefor. In this case, direct resort to the Court is justified considering that the action for *quo warranto* questions the qualification of no less than a Member of the Court. It is a matter of public concern over which the government takes special interest as it cannot allow an intruder or impostor to occupy a public position.

Granting that the petition is likewise of transcendental importance and has far-reaching implications, the Court is empowered to exercise its power of judicial review. To exercise restraint in reviewing an impeachable officer's appointment is a clear renunciation of a judicial duty. An outright dismissal of the petition based on speculation that respondent will eventually be tried on impeachment is a clear abdication of the Court's duty to settle actual controversy squarely presented before it. *Quo warranto* proceedings are essentially judicial in character – it calls for the exercise of the Supreme Court's constitutional duty and power to decide cases and settle actual controversies. This constitutional duty cannot be abdicated or transferred in favor of, or in deference to, any other branch of the government including the Congress, even as it acts as an impeachment court through the Senate.

To differentiate, impeachment is a proceeding exercised by the legislative, as representatives of the sovereign, to vindicate the breach of the trust reposed by the people in the hands of the public officer by determining the public officer's fitness to stay in the office. Meanwhile, an action for *quo* 

*warranto*, involves a judicial determination of the eligibility or validity of the election or appointment of a public official based on predetermined rules.

Despite the difference in their origin and nature, *quo warranto* and impeachment may proceed independently of each other as these remedies are distinct as to (1) jurisdiction; (2) grounds; (3) applicable rules pertaining to initiation, filing and dismissal; and (4) limitations.

## 2. The petition is not dismissible on the ground of prescription.

Section 2, Rule 66 of the ROC makes it compulsory for the Solicitor General to commence a *quo warranto* action. The one-year limitation is not applicable when the Petitioner is not a mere private individual pursuing a private interest, but the government itself seeking relief for a public wrong and suing for public interest. Jurisprudence across the United States likewise richly reflect that when the Solicitor General files a *quo warranto* petition in behalf of the people and where the interests of the public is involved, the lapse of time presents no effective bar as in the cases of *People v. Bailey, State ex rel Stovall v. Meneley, and State ex rel Anaya v. McBride.* Indeed, when the government is the real party in interest, and is proceeding mainly to assert its rights, there can be no defense on the ground of !aches or prescription. Indubitably, the basic principle that "prescription does not lie against the State" which finds textual basis under Article 1108 (4) of the Civil Code, applies in this case.

The Republic cannot be faulted for questioning respondent's qualification for office only upon discovery of the cause of ouster. The respondent was never forthright as to whether or not she filed her SALNs covering the period of her employment in UP. Recall that in response to the JBC requiring her submission of previous SALNs, respondent never categorically said that she filed them. Instead, she cleverly hid the fact of non-filing by stating that she should not be required to submit the documents as she was considered to be coming from private practice and that it was not feasible to retrieve most of her records in the academe as they were more than 15 years old.

## 3. The respondent is not eligible for the position of Chief Justice.

a. The Supreme Court's supervisory authority over the JBC consists of seeing to it that the JBC complies with its own rules.

Section 8(1), Article VIII of the Constitution provides that "A Judicial and Bar Council is hereby created under the supervision of the Supreme Court." The power of supervision means "overseeing or the authority of an officer to see to it that the subordinate officers perform their duties." The JBC's duty to recommend or nominate, although calling for discretion, is neither absolute nor unlimited. Thus, the Supreme Court has authority, as an incident of its power of supervision over JBC, to insure that JBC faithfully executes its duties as the constitution requires of it. The Supreme Court has power to inquire into the process leading to the respondent's nomination for Chief Justice. Qualifications under the constitution cannot be waived or bargained away by JBC and one of which is that "a Member of the Judiciary must be a person of *proven* competence, *integrity*, probity, and independence.

b. Respondent failed to file her SALNs as mandated by the Constitution and required by the law and its implementing rules and regulations, which voids her nomination and appointment as Chief Justice.

Section 17, Article XI of the Constitution states that "A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth." This has likewise been required by RA 3019 and RA 6713. The filing of SALN is so important for purposes of transparency and accountability that failure to comply with such requirement may result in not only dismissal from public service but also criminal liability such as imprisonment, fine and disqualification to hold public office. For these reasons, a public official who has failed to comply with the requirement of filing the SALN cannot be said to be of proven integrity and the Court may consider him/her disqualified from holding public office.

Respondent chronically failed to file her SALNs and thus violated the Constitution, the law and the Code of Judicial Conduct. A member of the Judiciary who commits such violations cannot be deemed to be a person of proven integrity. Respondent could have easily dispelled doubts as to the filing or non-filing of the unaccounted SALNs by presenting them before the Court. Yet, respondent opted to withhold such information or such evidence, if at all, for no clear reason. Her defenses do not lie: 1) The *Doblada doctrine* does not persuade because in that case, Doblada was able to present contrary proof that the missing SALNs were, in fact, transmitted to the OCA; 2) Being on leave from government service is not equivalent to separation from service; 3) While respondent is not required by law to keep a record of her SALNs, logic dictates that she should have obtained a certification to attest to the fact of filing; 4) That UP HRDO never asked respondent to comply with the SALN laws holds no water as the duty to comply with such is incumbent with the respondent; 5) That respondent's compliance with the SALN requirement was reflected in the matrix of requirements and shortlist prepared by the JBC is dispelled by the fact that the appointment goes into her qualifications which were mistakenly believed to be present, and that she should have been disqualified at the outset.

In addition to that, the SALNs filed by respondent covering her years of government service in U.P. appear to have been executed and filed under suspicious circumstances; her SALNs filed with the UPHRDO were either belatedly filed or belatedly notarized, while SALNs filed as Chief Justice were also attended by irregularities.

## c. Respondent failed to comply with the submission of SALNs as required by the JBC.

The JBC required the submission of at least ten SALNs from those applicants who are incumbent Associate Justices, absent which, the applicant ought not to have been interviewed, much less been considered for nomination. From the minutes of the meeting of the JBC, it appeared that the respondent was singled out from the rest of the applicants for having failed to submit a single piece of SALN for her years of service in UP Law. The established and undisputed fact is respondent failed to submit the required number of SALNs in violation of the rules set by the JBC itself during the process of nomination. There was no indication that the JBC deemed the three SALNs submitted by Respondent for her 20 years as a professor in UP Law and two years as Justice, as substantial compliance. Subsequently, it appeared that it was only Sereno who was not able to substantially comply with the SALN requirement, and instead of complying, Sereno wrote a letter containing justifications why she should no longer be required to file the SALNs: that she resigned from UP in 2006 and then resumed government service only in 2009, thus her government service is not continuous; that her government records are more than 15 years old and thus infeasible to retrieve; and that UP cleared her of all academic and administrative responsibilities and charges.

Contrary to her argument that the SALNs are old and are infeasible to retrieve, the Republic was able to retrieve some of the SALNs dating back to 1985. For these reasons, the JBC should no longer have considered Respondent for interview as it already required the submission of, at least, the SALNs corresponding to the immediately preceding 10 years up to December 31, 2011.

The requirement to submit the SALNs, along with the waiver of bank deposits, is not an empty requirement that may easily be dispensed with, but was placed by the JBC itself for a reason — in order to allow the JBC to carry on its mandate of recommending only applicants of high standards and who would be unsusceptible to impeachment attacks due to inaccuracies in SALNs. Respondent's failure to submit her SALNs to the JBC means that she was not able to prove her integrity at the time of her application as Chief Justice.

## d. Subsequent nomination by the JBC and the appointment by the President did not cure the ineligibility.

The inclusion of the respondent's name in the matrix of candidates with complete requirements and in the shortlist nominated by the JBC does not ratify her compliance with the SALN requirement. The invalidity of the respondent's appointment springs from her lack of qualifications. Her inclusion in the shortlist does not negate nor supply her with the requisite proof of integrity. She should have been disqualified at the outset. Her letter of July 23, 2012 was not deliberated by JBC *en banc*. Thus, JBC *en banc* cannot be deemed to have considered her eligible because the failure to submit her SALNs was not squarely addressed by the body. Her nomination in the shortlist and subsequent appointment do not estop the Republic or the SC from looking into her qualifications. It appears that her inclusion was made under the erroneous belief that she complied with all the legal requirements.

Neither will the President's act of appointment cause to qualify the respondent. Although the JBC is an office constitutionally created, the participation of the President in the selection and nomination process is evident from the composition of the JBC itself.

## 3. The respondent is a de facto officer removable through quo warranto.

A de facto judge is one who exercises the duties of a judicial office under color of an appointment or election thereto. He differs from a mere usurper who undertakes to act officially without any color of right and from a judge de jure who is in all respects legally appointed and qualified.

The effect of finding that a person appointed to an office is ineligible therefore is that his presumably valid appointment will give him color of title that confers on him the status of a de facto officer. For lack of a constitutional qualification, the respondent is ineligible to hold the position of a Chief Justice and is merely holding a colorable right or title thereto. Thus, she never attained the status of an impeachable official and her removal from the office, other than by impeachment is justified. The remedy, therefore, of *a* quo warranto at the instance of the State is proper to oust respondent from the appointive position of Chief Justice.

MIKE A. FERMIN, Petitioner, -versus- COMMISSION ON ELECTIONS and UMBRA RAMIL BAYAM DILANGALEN, Respondents.

G.R. No. 179695, EN BANC, December 18, 2008, NACHURA, J.

## MIKE A. FERMIN, Petitioner, -versus- COMMISSION ON ELECTIONS and UMBRA RAMIL BAYAM DILANGALEN, Respondents.

G.R. No. 182369, EN BANC, December 18, 2008, NACHURA, J.

Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for quo warranto is filed after proclamation of the wining candidate.

## **FACTS:**

After the creation of Shariff Kabunsuan, the Regional Assembly of the ARMM, on November 22, 2006, passed Autonomy Act No. 205 creating the Municipality of Northern Kabuntalan in Shariff Kabunsuan. This new municipality was constituted by separating *Barangays* Balong, Damatog, Gayonga, Guiawa, Indatuan, Kapinpilan, P. Labio, Libungan, Montay, Sabaken and Tumaguinting from the Municipality of Kabuntalan.

Mike A. Fermin, the petitioner in both cases, was a registered voter of *Barangay* Payan, Kabuntalan. On December 13, 2006, claiming that he had been a resident of *Barangay* Indatuan for 1 year and 6 months, petitioner applied with the COMELEC for the transfer of his registration record to the said barangay. In the meantime, the creation of North Kabuntalan was ratified in a plebiscite on December 30, 2006, formally making *Barangay* Indatuan a component of Northern Kabuntalan.

Thereafter, the COMELEC approved petitioner's application for the transfer of his voting record and registration as a voter to Precinct 21A of *Barangay* Indatuan, Northern Kabuntulan. Consequently, Fermin filed his CoC for mayor of Northern Kabuntulan in the 2007 National and Local Elections.

On April 20, 2007, private respondent Umbra Ramil Bayam Dilangalen, another mayoralty candidate, filed a *Petition for Disqualification* [the Dilangalen petition] against Fermin, docketed as SPA (PES) No. A07-003 [re-docketed as SPA No. 07-372 before the COMELEC] with the Office of the Provincial Election Supervisor of Shariff Kabunsuan. The petition alleged that the petitioner did not possess the period of residency required for candidacy and that he perjured himself in his CoC and in his application for transfer of voting record.

Elections were held without any decision being rendered by the COMELEC in the said case. After the counting and canvassing of votes, Dilangalen emerged as the victor with 1,849 votes over Fermin's 1,640. The latter subsequently filed an election protest (Election Case No. 2007-022) with the RTC, Branch 13 of Cotabato City.

On June 29, 2007, the COMELEC 2<sup>nd</sup> Division, in SPA No. 07-372, disqualified Fermin for not being a resident of Northern Kabuntalan. It ruled that, based on his declaration that he is a resident of *Barangay* Payan as of April 27, 2006 in his oath of office before Datu Andal Ampatuan, Fermin could not have been a resident of *Barangay* Indatuan for at least one year. The COMELEC *En Banc*,

on September 20, 2007, affirmed the Division's ruling. Thus, petitioner instituted **G.R. No. 179695** before this Court and contends that the Dilangalen petition is a petition to deny due course to or cancel a CoC under Section 78 of the Omnibus Election Code (OEC).

In his comment, private respondent counters that the petition it filed is one for disqualification under Section 68 of the OEC which may be filed at any time after the last day for filing of the CoC but not later than the candidate's proclamation should he win in the elections.

During the pendency of G.R. No. 179695 with the Court, Dilangalen filed, on September 27, 2007, with the RTC of Cotabato a motion to dismiss Election Case No. 07-022. The RTC, however, denied this motion on September 28, 2007. On motion for reconsideration, the trial court remained steadfast in its stand that the election protest was separate and distinct from the COMELEC proceedings, and that, unless restrained by the proper authority, it would continue hearing the protest.

Assailing the RTC's denial of his motions, Dilangalen filed a *Petition for Certiorari and Prohibition*. On February 14, 2008, the COMELEC 1st Division set aside the aforesaid orders of the trial court for having been issued with grave abuse of discretion, prohibited the said court from acting on and proceeding with the protest, and ordered it to dismiss the same. The COMELEC En Banc, on March 13, 2008, denied petitioner's motion for the reconsideration of the division's ruling on account of Fermin's failure to pay the required fees.

These developments prompted Fermin to file another certiorari petition before this Court.

#### ISSUE:

Whether or not the Dilangalen petition is one under Section 68 of the OEC. (NO)

## **RULING:**

The petition contains the essential allegations of a "Section 78" petition, namely: (1) the candidate made a representation in his certificate; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate (the right to run for the election for which he filed his certificate); and (3) the candidate made the false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact which would otherwise render him ineligible. It likewise appropriately raises a question on a candidate's eligibility for public office, in this case, his possession of the one-year residency requirement under the law.

Lest it be misunderstood, the denial of due course to or the cancellation of the CoC is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. Section 78 of the OEC, therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a quo warranto proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with

the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the wining candidate.

At this point, we must stress that a "Section 78" petition ought not to be interchanged or confused with a "Section 68" petition. **They are different remedies, based on different grounds, and resulting in different eventualities**. Private respondent's insistence, therefore, that the petition it filed before the COMELEC in SPA No. 07-372 is in the nature of a disqualification case under Section 68, as it is in fact captioned a "Petition for Disqualification," does not persuade the Court.

## NATIONAL POWER CORPORATION v. APOLONIO V. MARASIGAN, FRANCISCO V. MARASIGAN, LILIA V. MARASIGAN, BENITO V. MARASIGAN, JR., AND ALICIA V. MARASIGAN G.R. No. 220367, FIRST DIVISION, November 20, 2017, TIJAM, J.

The value at the time of the filing of the complaint should be the basis for the determination of the value when the taking of the property involved coincides with or is subsequent to the commencement of the proceedings.

#### **FACTS:**

For purposes of constructing and maintaining its steel transmission lines and wooden electric poles, NPC filed on January 23, 2006, an expropriation complaint against respondents as registered owners of the parcels of land. Based on the tax declarations allegedly classifying the properties as agricultural and based on the corresponding BIR zoning valuation therefor, NPC offered to pay PhP 299,550.50.

The owners however claim PhP 47,064,400 for the affected land and seek payment of consequential damages for the areas left in between each transmission line, like the spaces underneath the infrastructure, commonly known as "dangling" portions. NPC maintains that it merely seeks to acquire a right-of-way thus necessitating the payment of a mere easement fee equivalent to 10% of the market value of the properties. Further, it argued that the award must be reckoned as of the time of the filing of the complaint instead as of the time of taking in 1970s.

RTC and CA held however that the just compensation to be paid for an easement of a right-of-way over lands should be the full value of the subject property at the time of filing.

#### **ISSUE:**

- 1. Whether or not the value of the property be reckoned at the time of the taking in the 1970s. (NO)
- 2. Whether or not consequential damages for the "dangling" area must be awarded. (YES)

#### **RULING:**

1. The value at the time of the filing of the complaint should be the basis for the determination of the value when the taking of the property involved coincides with or is subsequent to the commencement of the proceedings.

Sec. 4, Rule 67 lays down the basic rule that the value of the just compensation is to be determined as of the date of the taking of the property or the filing of the complaint, whichever came first. NPC's expropriation complaint filed on January 23, 2006 clearly sought "to acquire an easement of right-of-way over portions of the subject properties to enable it "to construct and maintain its steel transmission lines and wooden electric poles. NPC's action relative to the acquisition of an easement of right-of-way made prior to the filing of its expropriation complaint was limited only to the conduct of negotiations with the owners. Even then, such negotiations pertained to the construction of HVDC 350 KV transmission lines which was not among the transmission lines subject of the expropriation complaint. This, as much, was alleged by NPC itself in its expropriation complaint and was testified to by NPC's right-of-way officer who conducted the negotiations in 1996. The lower courts were thus correct in disregarding NPC's claim of actual taking in the 1970s as such was not alleged in the expropriation complaint nor was it successfully proven during the trial.

2. In arriving at its recommendation to pay consequential damages, the appraisal committee conducted an ocular inspection of the properties and observed that the areas before and behind the transmission lines could no longer be used either for commercial or residential purposes. Despite this determination, NPC insists that the affected areas cannot be considered "dangling" as these may still be used for agricultural purposes. In so arguing, NPC loses sight of the undisputed fact that the transmission lines conveying high-tension current posed danger to the lives and limbs of respondents and to potential farm workers, making the affected areas no longer suitable even for agricultural production. Thus, the Court finds no reason to depart from the assessment of the appraisal committee, as affirmed and adopted by the RTC.

### AIR TRANSPORTATION OFFICE (ATO) and MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY (MCIAA), Petitioners, -versus- APOLONIO GOPUCO, JR., Respondent.

G.R. No. 158563, SECOND DIVISION, June 30, 2005, CHICO-NAZARIO, J.

Notwithstanding the grant to individuals, the eminent domain, the highest and most exact idea of property, remains in the government, or in the aggregate body of people in their sovereign capacity; and they have the right to <u>resume the possession</u> of the property whenever the public interest so requires it."

#### **FACTS:**

Apolonio Gopuco, Jr. was the owner of Cadastral Lot No. 72 consisting of 995 square meters located in the vicinity of the Lahug Airport in Cebu City covered by TCT No. 13061-T.

The Lahug Airport had been turned over by the Unites States Army to the Republic of the Philippines sometime in 1947 through the Surplus Property Commission, which accepted it in behalf of the Philippine Government. In 1947, the Surplus Property Commission was succeeded by the Bureau of Aeronautics, which office was supplanted by the National Airport Corporation (NAC). The NAC was in turn dissolved and replaced with the Civil Aeronautics Administration (CAA).

Sometime in 1949, the NAC informed the owners of the various lots surrounding the Lahug Airport, including the herein respondent, that the government was acquiring their lands for purposes of expansion. Some landowners were convinced to sell their properties on the assurance that they would be able to repurchase the same when these would no longer be used by the airport. Others, including Gopuco, refused to do so.

Thus, on April 16, 1952, the CAA filed a complaint with the CFI of Cebu for the expropriation of Lot No. 72 and its neighboring realties. On December 29, 1961, the CFI promulgated its Decision in favor of CAA. No appeal was taken therefrom, and the judgment of condemnation became final and executory. Thereafter, absolute title to Lot No. 72 was transferred to the Republic of the Philippines.

Subsequently, when the Mactan International Airport commenced operations, the Lahug Airport was ordered closed by then President Corazon C. Aquino. Lot No. 72 was thus virtually abandoned.

On March 16, 1990, Gopuco, Jr. wrote the Bureau of Air Transportation, through the manager of the Lahug Airport, seeking the return of his lot and offering to return the money previously received by him as payment for the expropriation. This letter was ignored.

In the same year, Congress passed RA No. 6958 creating the Mactan-Cebu International Airport Authority and in part providing for the transfer of the assets of the Lahug Airport thereto. Consequently, the ownership of Lot No. 72 was transferred to MCIAA.

On August 6, 1992, Gopuco, Jr. filed an amended complaint for recovery of ownership of Lot No. 72 against the ATO and the Province of Cebu with the RTC of Cebu. He maintained that by virtue of the closure of the Lahug Airport, the original purpose for which the property was expropriated had ceased or otherwise been abandoned, and title to the property had therefore reverted to him.

On May 20, 1994, the trial court rendered a Decision dismissing Gopuco, Jr.'s complaint. Aggrieved, Gopuco, Jr. appealed to the CA, which overturned the RTC decision, ordered the herein petitioners to reconvey Lot No. 72 to Gopuco, Jr. upon payment of the reasonable price as determined by it.

The Motion for Reconsideration was denied on May 22, 2003, hence, this petition.

#### **ISSUE:**

Whether the CA erred in holding that respondent has the right to reclaim ownership over the subject expropriated lot. (YES)

#### **RULING:**

Eminent domain is generally described as "the highest and most exact idea of property remaining in the government" that may be acquired for some public purpose through a method in the nature of a forced purchase by the State. Also often referred to as expropriation and, with less frequency, as condemnation, it is, like police power and taxation, an inherent power of sovereignty and need not be clothed with any constitutional gear to exist; instead, provisions in our Constitution on the subject are meant more to regulate, rather than to grant, the exercise of the power. It is a right to take or <u>reassert</u> dominion over property within the state for public use or to meet a public exigency and is said to be an essential part of governance even in its most primitive form and thus inseparable from sovereignty. In fact, "all separate interests of individuals in property are held of the government under this tacit agreement or implied reservation. Notwithstanding the grant to individuals, the *eminent domain*, the highest and most exact idea of property, remains in the government, or in the aggregate body of people in their sovereign capacity; and they have the right to <u>resume the possession</u> of the property whenever the public interest so requires it."

Expropriation proceedings are not adversarial in the conventional sense, for the condemning authority is not required to assert any conflicting interest in the property. Thus, by filing the action, the condemnor in effect merely serves notice that it is taking title and possession of the property, and the defendant asserts title or interest in the property, not to prove a right to possession, but to prove a right to compensation for the taking. The only direct constitutional qualification is thus that "private property shall not be taken for public use without just compensation." This prescription is intended to provide a safeguard against possible abuse and so to protect as well the individual against whose property the power is sought to be enforced.

In this case, the judgment on the propriety of the taking and the adequacy of the compensation received have long become final. We have also already held that the terms of that judgment granted title in fee simple to the Republic of the Philippines. Therefore, pursuant to our ruling in *Fery*, as recently cited in *Reyes v. National Housing Authority*, no rights to Lot No. 72, either express or implied, have been retained by the herein respondent.

The trial court was thus correct in denying Gopuco's claim for the reconveyance of Lot No. 72 in his favor. However, for failure of the petitioners to present any proof that this case was clearly unfounded or filed for purposes of harassment, or that the herein respondent acted in gross and evident bad faith, the reimposition of litigation expenses and costs has no basis. It is not sound public policy to set a premium upon the right to litigate where such right is exercised in good faith, as in the present case.

NATIONAL POWER CORPORATION, *Petitioner*, - *versus* - HON. ENRIQUE T. JOCSON, in his capacity as Presiding Judge, Regional Trial Court, 6th Judicial Region, Branch 47, Bacolod City; JESUS, FERNANDO, MARIA CRISTINA and MICHAEL, all surnamed GONZAGA; LUIS, DIONISIO, ROBERTO, GABRIEL, BENJAMIN, ANA, ALEXANDER, CARLA, SOFIA and DANIEL, all surnamed GONZAGA; ROSARIO P. MENDOZA; CELSOY AGRO-IND. CORP.; EMMANUEL, LYDIA, HARRY, NOLI, CLIFFORD and CHRISTIAN DALE, all surnamed AÑO; MAYO L. LACSON; and LUCIA GOSIENFIAO, *Respondents*.

G.R. Nos. 94193-99, EN BANC, February 25, 1992, DAVIDE, JR., J.

P.D. No. 42 effectively removes the discretion of the court in determining the provisional value. What is to be deposited is an amount equivalent to the assessed value for taxation purposes. No hearing is required for that purpose. All that is needed is notice to the owner of the property sought to be condemned. In this case, the respondent Judge either deliberately disregarded P.D. No. 42 or was totally unaware of its existence and the cases applying the same. In any event, petitioner deposited the provisional value fixed by the court. As a matter of right, it was entitled to be placed in possession of the property involved in the complaints at once, pursuant to both Section 2 of Rule 67 and P.D. No. 42.

#### **FACTS:**

The petitioner filed 7 eminent domain cases in the acquisition of right of way easement over 7 parcels of land in relation to the necessity of building towers and transmission line for the common good with the offer of corresponding compensation to landowners affected with the expropriation process. However, both parties did not come to an agreement on just compensation thereby prompting petitioner to bring the eminent domain case. Respondent judge found existing paramount public interest for the expropriation and thereby issued an order determining the provisional market value of the subject areas based on tax declaration of the properties.

The petitioner, incompliance to the order of respondent judge, deposited corresponding amount of the assessed value of said lands in the amount of P23,180,828.00 with the Philippine National Bank. Respondents land owners filed motion for reconsideration asserting that the assessed value is way too low and that just compensation due them is estimated as P29,970,000.00. Immediately the following day, respondent judge increased the provisional value to that stated in the motion for reconsideration and ordered petitioner to deposit the differential amount within 24 hours from receipt of order while holding in abeyance the writ of possession order pending compliance to said order which the petitioner immediately complied.

Thereafter, respondent judge ordered petitioner to pay in full amount the defendants for their expropriated property. Petitioner assailed such order to be in violation of due process and abuse of discretion on the part of the respondent judge hence this petition.

#### **ISSUE:**

Whether or not respondent judge committed grave abuse of discretion amounting to lack or excess of jurisdiction.

#### **RULING:**

The SC finds merit in the petition. Respondent Judge committed grave abuse of discretion amounting to lack of jurisdiction, and is otherwise either unmindful or ignorant of the law.

In *Municipality Biñan vs. Hon. Jose Mar Garcia, et al.*, the Court ruled that there are two (2) stages in every action of expropriation:

"The first is concerned with the determination of the authority of the plaintiff to exercise the power of eminent domain and the propriety of its exercise in the context of the facts involved in the suit. It ends with an order, if not of dismissal of the action, 'of condemnation declaring that the plaintiff has a lawful right to take the property sought to be condemned, for the public use or purpose described in the complaint, upon the payment of just compensation to be determined as of the date of the filing of the complaint.

An order of dismissal, if this be ordained, would be a final one

The second phase of the eminent domain action is concerned with the determination by the Court of 'the just compensation for the property sought to be taken.' This is done by the Court with the assistance of not more than three commissioners. The order fixing the just compensation on the basis of the evidence before, and findings of, the commissioners would be final, too.

However, upon the filing of the complaint or at any time thereafter, the petitioner has the right to take or enter upon the possession of the property involved upon compliance with P.D. No. 42 which requires the petitioner, after due notice to the defendant, to deposit with the Philippine National Bank in its main office or any of its branches or agencies, an amount equivalent to the assessed value of the property for purposes of taxation.

P.D. No. 42 repealed the "provisions of Rule 67 of the Rules of Court and of any other existing law contrary to or inconsistent" with it. Accordingly, it repealed Section 2 of Rule 67 insofar as the

determination of the provisional value, the form of payment and the agency with which the deposit shall be made, are concerned.

Under said provision, the court has the discretion to determine the provisional value which must be deposited by the plaintiff to enable it "to take or enter upon the possession of the property." Notice to the parties is not indispensable. P.D. No. 42, however, effectively removes the discretion of the court in determining the provisional value. What is to be deposited is an amount equivalent to the assessed value for taxation purposes. No hearing is required for that purpose. All that is needed is notice to the owner of the property sought to be condemned.

Clearly, therefore, respondent Judge either deliberately disregarded P.D. No. 42 or was totally unaware of its existence and the cases applying the same. In any event, petitioner deposited the provisional value fixed by the court. As a matter of right, it was entitled to be placed in possession of the property involved in the complaints at once, pursuant to both Section 2 of Rule 67 and P.D. No. 42. Respondent Court had the corresponding duty to order the sheriff or any other proper officer to forthwith place the petitioner in such possession. Instead of complying with the clear mandate of the law, respondent Judge chose to ignore and overlook it. Moreover, upon separate motions for reconsideration filed by the defendants in Civil Cases Nos. 5938 and 5939, he issued a new Order increasing the provisional values of the properties involved therein. No hearing was held on the motions.

There was, moreover, a much stronger reason why the respondent Court should not have issued the 12 July 1990 Order increasing the provisional values of the Gonzaga lots in Civil Cases Nos. 5938 and 5939. After having fixed these provisional values, albeit erroneously, and upon deposit by petitioner of the said amounts, respondent Judge lost, as was held in *Manila Railroad Company vs. Paredes*, "plenary control over the order fixing the amount of the deposit, and has no power to annul, amend or modify it in matters of substance pending the course of the condemnation proceedings."

Compounding the above error and the capriciousness with which it was committed is respondent Judge's refusal to place the petitioner in possession of the property or issue the writ of possession despite the fact that the latter had likewise deposited the additional amount called for by the 12 July 1990 Order. Instead, respondent Judge issued the 16 July 1990 Order directing the defendants to state in writing within twenty-four hours whether or not they would accept and withdraw the amounts deposited by the petitioner for each of them "as final and full satisfaction of the value of their respective property (sic) affected by the expropriation" and stating at the same time that the writ of possession will be issued after such manifestation and acceptance and receipt of the amounts. The above Order has absolutely no legal basis even as it also unjustly, oppressively and capriciously compels the petitioner to accept the respondent Judge's determination of the provisional value as the just compensation after the defendants shall have manifested their conformity thereto. He thus subordinated his own judgment to that of the defendants' because he made the latter the final authority to determine such just compensation.

Nothing can justify the acts of respondent Judge. Either by design or sheer ignorance, he made a mockery of the procedural law on eminent domain by concocting a procedure which he believes to be correct. Judges must apply the law; they are not at liberty to legislate.

CITY OF MANILA, *Petitioner*, - *versus* - ALEGAR CORPORATION, TEROCEL REALTY CORPORATION, and FILOMENA VDA. DE LEGARDA, *Respondents*.

#### G.R. No. 187604, THIRD DIVISION, June 25, 2012, ABAD, J.

An expropriation proceeding of private lands has two stages: first, the determination of plaintiff's authority to exercise the power of eminent domain in the context of the facts of the case and, second, if there be such authority, the determination of just compensation. The first phase ends with either an order of dismissal or a determination that the property is to be acquired for a public purpose. In this case, the City's action was still in the first stage when the RTC called the parties to a pre-trial conference where, essentially, their task was to determine how the court may resolve the issue involved in the first stage: the City's authority to acquire by expropriation the particular lots for its intended purpose.

#### **FACTS:**

On March 1, 2001 the City Council of Manila passed Ordinance 8012 that authorized the City Mayor to acquire certain lots belonging to respondents use in the socialized housing project of petitioner City of Manila. The City offered to buy the lots at P1,500.00 per sqm but the owners rejected this as too low with the result that on December 2, 2003 the City filed a complaint for expropriation against them before the RTC of Manila.

The total aggregate value of the lots for taxation purpose was P809,280.00 but the City deposited P1,500,000.00 with the Land Bank of the Philippines to enable it to immediately occupy the same pending hearing of the case. Respondents questioned the legitimacy of the City's taking of their lots solely for the benefit of a few long-time occupants. Alegar also pointed out that, while it declined the City's initial offer, it did not foreclose the possibility of selling the lots for the right price. The filing of the suit was premature because the City made no effort in good faith to negotiate the purchase.

On June 9, 2004 the trial court issued a writ of possession in the City's favor. On February 12, 2008 the RTC dismissed the complaint on the ground that the City did not comply with Section 9 of Republic Act (R.A.) 7279 which set the order of priority in the acquisition of properties for socialized housing. Private properties ranked last in the order of priorities for such acquisition and the City failed to show that no other properties were available for the project. The City also failed to comply with Section 10 which authorized expropriation only when resort to other modes had been exhausted. The City also failed to show that it exhausted all reasonable efforts to acquire the lots through a negotiated sale. The CA affirmed the RTC.

#### **ISSUE:**

- 1. Whether or not the RTC denied the City its right to due process when it dismissed the case without hearing the City's side;
- 2. Whether or not the City failed to comply with the requirements of Sections 9 and 10 of R.A. 7279 in trying to acquire the subject lots by expropriation;
- 3. Whether or not the City failed to establish the existence of genuine necessity in expropriating the subject lots for public use or purpose; and
- 4. Whether or not the owners' withdrawal of its P1.5 million deposit constituted implied consent to the expropriation of their lots.

#### **RULING:**

1. The RTC did not deny the City its right to be heard on its action when that court dismissed the same. An expropriation proceeding of private lands has two stages: first, the determination of plaintiff's authority to exercise the power of eminent domain in the context of the facts of the case and, second, if there be such authority, the determination of just compensation. The first phase ends with either an order of dismissal or a determination that the property is to be acquired for a public purpose.

In this case, the City's action was still in the first stage when the RTC called the parties to a pre-trial conference where, essentially, their task was to determine how the court may resolve the issue involved in the first stage: the City's authority to acquire by expropriation the particular lots for its intended purpose.

2. The CA correctly ruled that the City failed to show that it complied with the requirements of Section 9 of R.A. 7279 which lays down the order of priority in the acquisition through expropriation of lands for socialized housing. Section 9 of Republic Act (R.A.) 7279 sets the order of priority in the acquisition of properties for socialized housing. Private properties ranked last in the order of priorities for such acquisition and the City failed to show that no other properties were available for the project. The City argues that it did not have to observe the order of priority provided above in acquiring lots for socialized housing since it found on-site development to be more practicable and advantageous to the beneficiaries who were these lots' long-time occupants. But the problem remains. The City did not adduce evidence that this was so.

Section 10 of R.A. 7279 also prefers the acquisition of private property by "negotiated sale" over the filing of an expropriation suit. It provides that such suit may be resorted to only when the other modes of acquisitions have been exhausted. Indeed, the Court has held that when the property owner rejects the offer but hints for a better price, the government should renegotiate by calling the property owner to a conference. The government must exhaust all reasonable efforts to obtain by agreement the land it desires. Its failure to comply will warrant the dismissal of the complaint. In this case, the City of Manila initially offered P1,500.00 per sqm to the owners for their lots. But after the latter rejected the offer, claiming that the offered price was even lower than their current zonal value, the City did not bother to renegotiate or improve its offer. The intent of the law is for the State or the local government to make a reasonable offer in good faith, not merely a pro forma offer to acquire the property

- 3. The owners directly challenged the validity of the objective of its action. They alleged that the taking in this particular case of their lots is not for public use or purpose since its action would benefit only a few. Whether this is the case or not, the owners' answer tendered a factual issue that called for evidence on the City's part to prove the affirmative of its allegations. As already stated, the City submitted the issue for the RTC's resolution without presenting evidence.
- 4. The City insists that it made a deposit of P1.5 million with the RTC by way of advance payment on the lots it sought to expropriate. But the advance deposit required under Section 19 of the Local Government Code constitutes an advance payment only in the event the expropriation prospers. Such deposit also has a dual purpose: as pre-payment if the expropriation succeeds and as indemnity for damages if it is dismissed. This advance payment, a prerequisite for the issuance of a writ of possession, should not be confused with payment of just compensation for the taking of property even if it could be a factor in eventually determining just compensation. If the proceedings fail, the money could be used to indemnify the owner for damages.

In this case, the owners' withdrawal of the deposit that the City made does not amount to a waiver of the defenses they raised against the expropriation. With the dismissal of the complaint, the amount or a portion of it could be awarded to the owners as indemnity to cover the expenses they incurred in defending their right.

## CITY OF ILOILO represented by HON. JERRY P. TREÑAS, City Mayor, *Petitioner*, - *versus* - HON. LOLITA CONTRERAS-BESANA, Presiding Judge, Regional Trial Court, Branch 32, and ELPIDIO JAVELLANA, *Respondents*.

G.R. No. 168967, SECOND DIVISION, February 12, 2010, DEL CASTILLO, J.

When the taking of the property sought to be expropriated coincides with the commencement of the expropriation proceedings, or takes place subsequent to the filing of the complaint for eminent domain, the just compensation should be determined as of the date of the filing of the complaint. Even under Sec. 4, Rule 67 of the 1964 Rules of Procedure, under which the complaint for expropriation was filed, just compensation is to be determined "as of the date of the filing of the complaint." Here, there is no reason to depart from the general rule that the point of reference for assessing the value of the Subject Property is the time of the filing of the complaint for expropriation.

#### **FACTS:**

On September 18, 1981, petitioner filed a Complaint for eminent domain against private respondent and Southern Negros Development Bank, the latter as mortgagee. The complaint sought to expropriate two parcels of land registered in Javellana's name to be used as a school site for Lapaz High School.

Petitioner alleged that the Subject Property was declared for tax purpose to have a value of P60.00 per square meter, or a total value of P43,560.00. Javellana filed his Answerwhere he admitted ownership of the Subject Property but denied the petitioner's avowed public purpose of the soughtfor expropriation, since the City of Iloilo already had an existing school site for Lapaz High School. Javellana also claimed that the true fair market value of his property was no less than P220.00 per square meter.

On May 11, 1982, petitioner filed a Motion for Issuance of Writ of Possession, alleging that it had deposited the amount of P40,000.00 with the Philippine National Bank-Iloilo Branch. Petitioner claimed that it was entitled to the immediate possession of the property, citing Section 1 of Presidential Decree No. 1533. The trial court granted petitioner's Motion for Issuance of Writ of Possession and authorized the petitioner to take immediate possession of the Subject Property. The expropriation proceedings remained dormant. Sixteen years later Javellana filed an Ex Parte Motion/Manifestation, where he alleged that when he finally sought to withdraw the P40,000.00 allegedly deposited by the petitioner, he discovered that no such deposit was ever made. Private respondent thus demanded his just compensation as well as interest. Petitioner could not present any evidence - whether documentary or testimonial - to prove that any payment was actually made to private respondent.

Thereafter, private respondent filed a Complaint against petitioner for Recovery of Possession, Fixing and Recovery of Rental and Damages. Petitioner filed its Answer, arguing that Javellana could no longer bring an action for recovery since the Subject Property was already taken for public use. Rather, private respondent could only demand for the payment of just compensation.

On November 20, 2003, private respondent filed a Motion/Manifestation claiming that before a commission is created, the trial court should first order the condemnation of the property, in accordance with the Rules of Court. The RTC denied the Motion.

Javellana filed on November 25, 2003, an Omnibus Motion to Declare Null and Void the Order and to Require Plaintiff to Deposit 10% or P254,000.00. Javellana claimed that the amount is equivalent to the 10% of the fair market value of the Subject Property.

RTC issued the First Assailed Order, directing the plaintiff to immediately deposit with the PNB the 10% of the just compensation after the Commission shall have rendered its report and have determined the value of the property not at the time it was condemned but at the time the complaint was filed in court. Neither party sought reconsideration of this Order. Nonetheless, about six months later, the RTC issued the Second Assailed Order, which it denominated as an "Amended Order". The Second Assailed Order was identical to the first, except that the reckoning point for just compensation was now the "time this order was issued". After the parties were able to fully ventilate their respective positions, the public respondent issued the Third Assailed Order, denying the Motion for Reconsideration

#### **ISSUE:**

- 1. Whether or not an order of expropriation becomes final.
- 2. Whether the reckoning point for the determination of just compensation is at the time the complaint was filed, at the time the property was condemned or at the time of the issuance of the order of expropriation.

#### **RULING:**

1. Expropriation proceedings have two stages. The first phase ends with an order of dismissal, or a determination that the property is to be acquired for a public purpose. Either order will be a final order that may be appealed by the aggrieved party. The second phase consists of the determination of just compensation. It ends with an order fixing the amount to be paid to the landowner. Both orders, being final, are appealable.

Javellana did not bother to file an appeal from the May 17, 1983 Order which granted petitioner's Motion for Issuance of Writ of Possession and which authorized petitioner to take immediate possession of the Subject Property. Thus, it has become final, and the petitioner's right to expropriate the property for a public use is no longer subject to review. On the first question, therefore, the SC ruled that the trial court gravely erred in nullifying the May 17, 1983 Order.

2. With regard to the reckoning date for the determination of just compensation, petitioner claims that the computation should be made as of September 18, 1981, the date when the expropriation complaint was filed. The SC agrees.

When the taking of the property sought to be expropriated coincides with the commencement of the expropriation proceedings, or takes place subsequent to the filing of the complaint for eminent domain, the just compensation should be determined as of the date of the filing of the complaint. Even under Sec. 4, Rule 67 of the 1964 Rules of Procedure, under which the complaint for expropriation was filed, just compensation is to be determined "as of the date of the filing of the complaint." Here, there is no reason to depart from the general rule that the point of reference for

assessing the value of the Subject Property is the time of the filing of the complaint for expropriation.

The Court commiserates with the private respondent. The school was constructed and has been in operation since 1985. Petitioner and the residents of Iloilo City have long reaped the benefits of the property. However, non-payment of just compensation does not entitle the private landowners to recover possession of their expropriated lot.

Concededly, Javellana also slept on his rights for over 18 years and did not bother to check with the PNB if a deposit was actually made by the petitioner. Evidently, from his inaction in failing to withdraw or even verify the amounts purportedly deposited, private respondent not only accepted the valuation made by the petitioner, but also was not interested enough to pursue the expropriation case until the end. As such, private respondent may not recover possession of the Subject Property, but is entitled to just compensation. It is high time that private respondent be paid what was due him after almost 30 years.

The City of Iloilo, however, should be held liable for damages for taking private respondent's property without payment of just compensation. In *Manila International Airport Authority v. Rodriguez*, the Court held that a government agency's prolonged occupation of private property without the benefit of expropriation proceedings undoubtedly entitled the landowner to damages. Such pecuniary loss entitles him to adequate compensation in the form of actual or compensatory damages, which in this case should be the legal interest (6%) on the value of the land at the time of taking, from said point up to full payment by the MIAA. This is based on the principle that interest "runs as a matter of law and follows from the right of the landowner to be placed in as good position as money can accomplish, as of the date of the taking. Hence, the award of exemplary damages and attorney's fees is in order.

REPUBLIC OF THE PHILIPPINES, represented by the NATIONAL IRRIGATION ADMINISTRATION (NIA), Petitioner, - versus - RURAL BANK OF KABACAN, INC., LITTIE SARAH A. AGDEPPA, LEOSA NANETTE AGDEPPA and MARCELINO VIERNES, MARGARITA TABOADA, PORTIA CHARISMA RUTH ORTIZ, represented by LINA ERLINDA A. ORTIZ and MARIO ORTIZ, IUAN MAMAC and GLORIA MATAS, Respondents.

G. R. No. 185124, SECOND DIVISION, January 25, 2012, SERENO, J.

The "just"-ness of the compensation could only be attained by using reliable and actual data as bases for fixing the value of the condemned property. In the instant case, the committee members based their recommendations on reliable data and, as aptly noted by the appellate court, considered various factors that affected the value of the land and the improvements.

#### **FACTS:**

National Irrigation Authority (petitioner) was a GOCC with original charter (RA 3601); it was specifically authorized under PD 552 to exercise the power of eminent domain. NIA needed parcels of land to construct the Malitubog-Marigadao Irrigation Project. On 8 September 1994, it filed with the RTC of Kabacan a complaint to expropriate a portion of three parcels of land.

On 11 July 1995, NIA filed an amended complaint to include Leosa Agdeppa and Marcelino Viernes

as registered owners of Lot 3039. 25 September 1995: NIA filed a second amended complaint to properly allege the area sought to be expropriates, the exact address of the properties and their owners. It also prayed to be authorized to take immediate possession of the properties after depositing with the PNB P19246.56 (provisional value).

Respondents filed an answer saying, among other allegations, that NIA's valuation of their property was inaccurate. The RTC issued an order forming a committee to determine the fair market value of the expropriated properties to establish just compensation. The committee formed by the RTC pegged the fair market value of the land at P65.00 per square meter. It also added to its computation the value of soil excavated from portions of two lots. RTC adopted the findings of the committee despite the objections of NIA to the inclusion of the value of the excavated soil in the computation of the value of the land.

NIA, through the Office of the Solicitor General, appealed to the Court of Appeals (CA) which affirmed with modification the RTC's decision. CA deleted the value of the soil in determination of compensation but affirmed RTC's valuation of the improvements made on the properties.

#### **ISSUE:**

- 1. Whether or not the trial court's finding of just compensation of the land and the improvements thereon based on the report of the commissioners was correct.
- 2. Whether or not the payment of just compensation for lot no. 3080 should be made to respondents.

#### **RULING:**

1. On the first issue, the **Petition** is not meritorious.

The constitutional limitation of "just compensation" is considered to be a sum equivalent to the market value of the property, broadly defined as the price fixed by the seller in open market in the usual and ordinary course of legal action and competition; or the fair value of the property; as between one who receives and one who desires to sell it, fixed at the time of the actual taking by the government.

In the instant case, the SC affirms the appellate court's ruling that the commissioners properly determined the just compensation to be awarded to the landowners whose properties were expropriated by petitioner. The records show that the trial court dutifully followed the procedure under Rule 67 of the 1997 Rules of Civil Procedure when it formed a committee that was tasked to determine the just compensation for the expropriated properties. The first set of committee members made an ocular inspection of the properties, subject of the expropriation. They also determined the exact areas affected, as well as the kinds and the number of improvements on the properties. When the members were unable to agree on the valuation of the land and the improvements thereon, the trial court selected another batch of disinterested members to carry out the task of determining the value of the land and the improvements.

The new committee members even made a second ocular inspection of the expropriated areas. They also obtained data from the BIR to determine the zonal valuation of the expropriated properties, interviewed the adjacent property owners, and considered other factors such as distance from the highway and the nearby town center. Further, the committee members also considered Provincial Ordinance No. 173, which was promulgated by the Province of Cotabato on 15 June 1999, and which provide for the value of the properties and the improvements for taxation purposes.

In *National Power Corporation v. Diato-Bernal*, it was held that the "just"-ness of the compensation could only be attained by using reliable and actual data as bases for fixing the value of the condemned property. In the instant case, the committee members based their recommendations on reliable data and, as aptly noted by the appellate court, considered various factors that affected the value of the land and the improvements.

#### 2. On the second issue, the Petition is meritorious.

It should be noted that eminent domain cases involve the expenditure of public funds. In this kind of proceeding, the SC requires trial courts to be more circumspect in their evaluation of the just compensation to be awarded to the owner of the expropriated property. Thus, it was imprudent for the appellate court to rely on the Rural Bank of Kabacan's mere declaration of non-ownership and non-participation in the expropriation proceeding to validate defendants-intervenors' claim of entitlement to that payment.

The law imposes certain legal requirements in order for a conveyance of real property to be valid. It should be noted that Lot No. 3080 is a registered parcel of land covered by TCT No. T-61963. In order for the reconveyance of real property to be valid, the conveyance must be embodied in a public document and registered in the office of the Register of Deeds where the property is situated. The Court have scrupulously examined the records of the case and found no proof of conveyance or evidence of transfer of ownership of Lot No. 3080 from its registered owner, the Rural Bank of Kabacan, to defendants-intervenors.

The trial court should have been guided by Rule 67, Section 9 of the 1997 Rules of Court, which provides thus:

SEC. 9. Uncertain ownership; conflicting claims. -- If the ownership of the property taken is uncertain, or there are conflicting claims to any part thereof, the court may order any sum or sums awarded as compensation for the property to be paid to the court for the benefit of the person adjudged in the same proceeding to be entitled thereto. But the judgment shall require the payment of the sum or sums awarded to either the defendant or the court before the plaintiff can enter upon the property, or retain it for the public use or purpose if entry has already been made.

Hence, the appellate court erred in affirming the trial court's Order to award payment of just compensation to the defendants-intervenors. There is doubt as to the real owner of Lot No. 3080. Despite the fact that the lot was covered by TCT No. T-61963 and was registered under its name, the Rural Bank of Kabacan manifested that the owner of the lot was no longer the bank, but the defendants-intervenors; however, it presented no proof as to the conveyance thereof. In this regard, the Court deems it proper to remand this case to the trial court for the reception of evidence to establish the present owner of Lot No. 3080 who will be entitled to receive the payment of just compensation.

## NATIONAL POWER CORP., *Petitioner*, vs. SPOUSES NORBERTO AND JOSEFINA DELA CRUZ, METROBANK, Dasmariñas, Cavite Branch, REYNALDO FERRER, and S.K. DYNAMICS MANUFACTURER CORP., *Respondents*.

The appointment of commissioners to ascertain just compensation for the property sought to be taken is a mandatory requirement in expropriation cases. In the instant expropriation case, where the principal issue is the determination of just compensation, a hearing before the commissioners is indispensable to allow the parties to present evidence on the issue of just compensation. While it is true that the findings of commissioners may be disregarded and the trial court may substitute its own estimate of the value, the latter may only do so for valid reasons, that is, where the commissioners have applied illegal principles to the evidence submitted to them, where they have disregarded a clear preponderance of evidence, or where the amount allowed is either grossly inadequate or excessive.

#### **FACTS:**

NAPOCOR decided to acquire an easement of right-of-way over portions of land within the areas of Dasmariñas and Imus, Cavite for the construction and maintenance of the proposed Dasmariñas Zapote 230 kV Transmission Line Project. Petitioner filed a Complaint for eminent domain and expropriation of an easement of right-of-way against respondents as registered owners of the parcels of land sought to be expropriated.

After respondents filed their respective answers to petitioner's Complaint, petitioner deposited P5,788.50 to cover the provisional value of the land in accordance with Section 2, Rule 67 of the Rules of Court. Then, petitioner filed an Urgent Ex-Parte Motion for the Issuance of a Writ of Possession, which the trial court granted. However, the trial court dropped the Dela Cruz spouses and their mortgagee, Metrobank, as parties-defendants, in view of the Motion to Intervene filed by respondent/intervenor Virgilio M. Saulog, who claimed ownership of the land.

On June 24, 1999, the trial court terminated the pre-trial in so far as respondent Ferrer was concerned, considering that the sole issue was the amount of just compensation, and issued an Order directing the constitution of a Board of Commissioners with respect to the property of respondent S.K. Dynamics. The commissioners conducted an ocular inspection of S.K. Dynamics' property, and subsequently, they submitted a report to the trial court, finding that the fair market value of the subject real properties is P10,000.00 per square meter.

The records show that the commissioners did not afford the parties the opportunity to introduce evidence in their favor, nor did they conduct hearings before them. In fact, the commissioners did not issue notices to the parties to attend hearings nor provide the concerned parties the opportunity to argue their respective causes. Respondent Ferrer filed a motion adopting in toto the commissioners' report with respect to the valuation of his property. The trial court consequently issued the Order approving the commissioners' report, and granted respondent Ferrer's motion to adopt the subject report.

Incidentally, respondent S.K. Dynamics filed a motion informing the trial court that in addition to the portion of its property sought to be expropriated by petitioner, the latter also took possession of an 8.55-square meter portion of S.K. Dynamics' property. Respondent S.K. Dynamics prayed that said portion be included in the computation of the just compensation to be paid by petitioner, and the same was granted.

On January 20, 2000, petitioner filed a Motion for Reconsideration of the abovementioned Order, but said motion was denied in the trial court's March 23, 2000 Order. Unsatisfied with the amount of just compensation, petitioner filed an appeal before the CA. In resolving the appeal, the CA found nothing on record which would warrant the reversal of the Order. Significantly, petitioner did not file a Motion for Reconsideration of the CA November 18, 2002 Decision, but it directly filed a petition for review before the SC.

#### **ISSUE:**

- 1. Whether or not the petitioner was deprived of due process when it was not given the opportunity to present evidence before the commissioners
- 2. Whether or not the legal basis for the determination of just compensation was insufficient

#### **RULING:**

The court finds this petition meritorious.

Rule 67 of the Rules of Court, reveals the following:

SEC. 6. Proceedings by commissioners.-Before entering upon the performance of their duties, the commissioners shall take and subscribe an oath that they will faithfully perform their duties as commissioners, which oath shall be filed in court with the other proceedings in the case. Evidence may be introduced by either party before the commissioners who are authorized to administer oaths on hearings before them, and the commissioners shall, unless the parties consent to the contrary, after due notice to the parties to attend, view and examine the property sought to be expropriated and its surroundings, and may measure the same, after which either party may, by himself or counsel, argue the case. The commissioners shall assess the consequential damages to the property not taken and deduct from such consequential damages the consequential benefits to be derived by the owner from the public use or purpose of the property taken, the operation of its franchise by the corporation or the carrying on of the business of the corporation or person taking the property. But in no case shall the consequential benefits assessed exceed the consequential damages assessed, or the owner be deprived of the actual value of his property so taken.

SEC. 7. Report by commissioners and judgment thereupon. The court may order the commissioners to report when any particular portion of the real estate shall have been passed upon by them, and may render judgment upon such partial report, and direct the commissioners to proceed with their work as to subsequent portions of the property sought to be expropriated, and may from time to time so deal with such property. The commissioners shall make a full and accurate report to the court of all their proceedings, and such proceedings shall not be effectual until the court shall have accepted their report and rendered judgment in accordance with their recommendations. Except as otherwise expressly ordered by the court, such report shall be filed within sixty (60) days from the date the commissioners were notified of their appointment, which time may be extended in the discretion of the court. Upon the filing of such report, the clerk of the court shall serve copies thereof on all interested parties, with notice that they are allowed ten (10) days within which to file objections to the findings of the report, if they so desire.

SEC. 8. Action upon commissioners' report.-Upon the expiration of the period of ten (10) days referred to in the preceding section, or even before the expiration of such period but after all the

interested parties have filed their objections to the report or their statement of agreement therewith, the court may, after hearing, accept the report and render judgment in accordance therewith; or, for cause shown, it may recommit the same to the commissioners for further report of facts; or it may set aside the report and appoint new commissioners; or it may accept the report in part and reject it in part; and it may make such order or render such judgment as shall secure to the plaintiff the property essential to the exercise of his right of expropriation, and to the defendant just compensation for the property so taken.

Based on these provisions, it is clear that in addition to the ocular inspection performed by the two (2) appointed commissioners in this case, they are also required to conduct a hearing or hearings to determine just compensation; and to provide the parties the following: (1) notice of the said hearings and the opportunity to attend them; (2) the opportunity to introduce evidence in their favor during the said hearings; and (3) the opportunity for the parties to argue their respective causes during the said hearings.

In this case, the fact that no trial or hearing was conducted to afford the parties the opportunity to present their own evidence should have impelled the trial court to disregard the commissioners' findings. The absence of such trial or hearing constitutes reversible error on the part of the trial court because the parties' right to due process was violated.

2. The trial court's reliance on the commissioners' report is a serious error considering that the recommended compensation was highly speculative and had no strong factual moorings. For one, the report did not indicate the fair market value of the lots occupied by the Orchard Golf and Country Club, Golden City Subdivision, Arcontica Sports Complex, and other business establishments cited. Also, the report did not show how convenience facilities, public transportation, and the residential and commercial zoning could have added value to the lots being expropriated.

Moreover, the trial court did not amply explain the nature and application of the "highest and best use" method to determine the just compensation in expropriation cases. No attempt was made to justify the recommended "just price" in the subject report through other sufficient and reliable means such as the holding of a trial or hearing at which the parties could have had adequate opportunity to adduce their own evidence, the testimony of realtors in the area concerned, the fair market value and tax declaration, actual sales of lots in the vicinity of the lot being expropriated on or about the date of the filing of the complaint for expropriation, the pertinent zonal valuation derived from the Bureau of Internal Revenue, among others.

More so, the commissioners did not take into account that the Asian financial crisis in the second semester of 1997 affected the fair market value of the subject lots. Furthermore, the commissioners' report itself is flawed considering that its recommended just compensation was pegged as of October 5, 1999, or the date when the said report was issued, and not the just compensation as of the date of the filing of the complaint for expropriation, or as of November 27, 1998.

TERESITA M. YUJUICO, *Petitioner – versus –* HON. JOSE L. ATIENZA, Chairman, City School, Board of Manila, DR. MA. LUISA S. QUIÑONES, Co-Chairman, City School Board, and Schools Division Superintendent, ROGER GERNALE, Member, City School Board of Manila, HON. MANUEL M. ZARCAL, (in substitution of ARLENE ORTIZ), Member, City School Board of Manila, BENJAMIN VALBUENA (In substitution of MILES ROCES), Member, City School Board

of Manila, LIBERTY TOLEDO, Member, City School Board of Manila, HON. FRANCESCA GERNALE (In substitution of PERCIVAL FLORIENDO), Member, City School Board of Manila, ISABELITA SANTOS, Secretary, City School Board of Manila, VICENTE MACARUBBO (In substitution of Isabelita Ching), Assistant Secretary, City School Board of Manila, CITY SCHOOL BOARD OF MANILA and JUDGE MERCEDES POSADA-LACAP, in her capacity as PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANILA, BRANCH 15, Respondents.

G.R. No. 164282, SECOND DIVISION, October 12, 2005, TINGA, J.

Sections 2 and 3, Rule 38 of the 1997 Rules of Civil Procedure provide that a petition for relief may be granted upon a showing that (1) through fraud, accident, mistake or excusable negligence, a party has been prevented from taking an appeal, and (2) the party has a good and substantial cause of action or defense. The above requisites notwithstanding, it bears stressing that relief from judgment is premised on equity. It is an act of grace which is allowed only in exceptional cases.

The question of whether the enactment of an ordinance to satisfy the appropriation of a final money judgment rendered against an LGU may be compelled by mandamus has already been settled in Municipality of Makati v. Court of Appeals. Clearly, mandamus is a remedy available to a property owner when a money judgment is rendered in its favor and against a municipality or city, as in this case. Moreover, the very ordinance authorizing the expropriation of petitioner's property categorically states that the payment of the expropriated property will be defrayed from the SEF.

#### **FACTS:**

On December 8, 1995, the city Council if Manila enacted an ordinance authoring the Mayor to acquire by negotiation or expropriation parcels of land for utilization as a site for the Francisco Benitez Elementary School. The property chosen was covered with different TCTs all registered under the name of the petitioner. The ordinance provides that an amount not to exceed the fair market value of the land will be allocated out of the Special Education Fund of the city.

The City filed a case for eminent domain upon the failure of the negotiation, which was granted by the RTC. The judgment became final and executory, no appeal having been interposed by either party. The motion for Execution of Judgment filed by petitioner was granted, and a writ of execution was issued. The sheriff served a Notice of Garnishment on the funds of the City deposited with the Land Bank.

The City filed a motion to quash the Notice of Garnishment. The lower court issued an order denying the motion to quash, stating that the counsel for the City manifested that the amount of P36,403.170 had been appropriated by the City School Board hence the trial court ordered the release to petitioner of the amount of P31,039,881.

Later on, petitioner submitted a manifestation requesting that she be informed by both the City and the CSB f a resolution had already been passed, but her queries were unanswered even after the lapse of the 30-day compliance period. Petitioner sent a letter to the CSB demanding compliance with the Order.

Petitioner filed a petition for contempt of court against the respondents and subsequently, the latter filed a motion to dismiss, alleging that they never disregarded the Order. Respondents argued

that the petitioner's failure to avail of the proper recourse to enforce the final and executory judgment should not be aground to hold them in contempt. The trial court denied the petition for contempt of court.

Petitioner filed a Petition for Mandamus seeking to compel the respondents to pass a resolution appropriating the amount necessary to pay the balance of the just compensation. The RTC directed the consolidation of the mandamus case with the expropriation case. The court granted the petition for mandamus. It ordered respondents to immediately pass a resolution appropriating the necessary amount and the corresponding disbursement thereof for the full and complete payment of the balance of the court-adjudged compensation.

The respondents filed a motion for reconsideration which was denied. The decision became final and executory and eventually, an entry of judgment was issued. The court granted the petitioner's motion for execution. The respondents filed a petition for relief from judgment invoking excusable negligence as a ground for failure to file an appeal; it was granted. Hence, this case.

#### **ISSUE:**

- 1. Whether or not the respondents are entitled to be relieved from judgment.
- 2. Whether or not the CSB has a personality separate and distinct from the city.
- 3. Whether or not the enactment of an ordinance to satisfy the appropriation of a final money judgment rendered against an LGU may be compelled by mandamus.

#### **RULING:**

1. No. Up for determination is the tenability of the RTC's favorable action on respondents' petition for relief from judgment. This engenders a look at the grounds and defenses relied upon by respondents in support of their petition. Sections 2 and 3, Rule 38 of the 1997 Rules of Civil Procedure provide that a petition for relief may be granted upon a showing that (1) through fraud, accident, mistake or excusable negligence, a party has been prevented from taking an appeal, and (2) the party has a good and substantial cause of action or defense.

The above requisites notwithstanding, it bears stressing that relief from judgment is premised on equity. It is an act of grace which is allowed only in exceptional cases. In this case, the situation does not present a case of excusable negligence which would warrant relief under Rule 38. Time and again, this Court has ruled that the inability to perfect an appeal in due time by reason of failure of a counsel's clerk to notify the handling lawyer is not a pardonable oversight. Reiterated in numerous cases is the rule that the clerks' faults are attributable to the handling lawyers. Thus, excuses offered based on the former's negligence are not deemed excusable. That the admonitions issued out by this Court were mostly directed against lawyers in law firms does not exempt respondents herein from the same treatment.

The negligence committed in the case at bar cannot be considered excusable, nor is it unavoidable. Time and again, the Court has admonished law firms to adopt a system of distributing pleadings and notices, whereby lawyers working therein receive promptly notices and pleadings intended for them, so that they will always be informed of the status of their cases. The Court has also often repeated that the negligence of clerks which adversely affect the cases handled by lawyers is binding upon the latter.

Even assuming that the negligence invoked by respondents could be considered excusable, still the petition should not have been granted. It must be borne in mind that two requisites must be satisfied before a petition under Rule 38 may be granted, the other being the existence of a good and substantial cause of action or defense.

2. No. Records of this case clearly show that the same counsel, the OCLO, represented the City in the expropriation case and now, all except one of the individual respondents in the case at bar. Manifestation in the Order on the Motion to Quash Notice of Garnishment over funds of the City stated, "Upon manifestation of the counsel for the plaintiff that it is the <u>City School Board which has the authority</u> to pass a resolution allocating funds for the full satisfaction of the just compensation fixed."

Same counsel who made manifestation now claims that the City should be made liable for payment of its own obligations, after previously stating that the CSB had authority to satisfy the obligation it had pursued. Through counsel, respondents are estopped. Petitioner and courts acted in accordance with the City's own manifestations by running after the CSB, therefore, respondents and OCLO cannot pass the obligation back to the City.

3. No. As stated in *Municipality of Makati v. Court of Appeals*:

"Nevertheless, this is not to say that private respondent and PSB are left with no legal recourse. Where a municipality fails or refuses, without justifiable reason, to effect payment of a final money judgment rendered against it, the claimant may avail of the remedy of mandamus in order to compel the enactment and approval of the necessary appropriation ordinance, and the corresponding disbursement of municipal funds therefore."

Clearly, mandamus is a remedy available to a property owner when a money judgment is rendered in its favor and against a municipality or city, as in this case. Moreover, the very ordinance authorizing the expropriation of petitioner's property categorically states that the payment of the expropriated property will be defrayed from the SEF.

### SPOUSES RICARDO ROSALES and ERLINDA SIBUG, Petitioners, - versus -SPOUSES ALFONSO and LOURDES SUBA, THE CITY SHERIFF OF MANILA, Respondents.

G.R. No. 137792, THIRD DIVISION, August 12, 2003, SANDOVAL-GUTIERREZ, J.

As a general rule, there is no right of redemption in a judicial foreclosure of mortgage. The only exemption is when the mortgagee is the Philippine National Bank or a bank or a banking institution. Since the mortgagee in this case is not one of those mentioned, no right of redemption exists in favor of petitioners. They merely have an equity of redemption, which, to reiterate, is simply their right, as mortgagor, to extinguish the mortgage and retain ownership of the property by paying the secured debt prior to the confirmation of the foreclosure sale. However, instead of exercising this equity of redemption, petitioners chose to delay the proceedings by filing several manifestations with the trial court. Thus, they only have themselves to blame for the consequent loss of their property.

#### **FACTS:**

The petitioner spouses in this case were indebted to one Felicimo Macaspac. The spouses failed to pay, prompting Macaspac to sue for the former's failure to pay. The RTC ruled that there existed an

equitable mortgage between the parties and ordered the spouses to pay Macaspac. Failure to do such will result to the foreclosure of the property.

Petitioner-spouses failed to pay Macaspac. The court ordered the sale of the land at a public auction. Respondent-spouses was the highest bidder. Subsequently, an order confirming the sale made to respondent spouses was issued by the RTC. Petitioner spouses filed an MR which was denied. The RTC ruled that there is no right of redemption in judicial foreclosures. The CA affirmed the RTC. Hence, this case.

#### **ISSUE:**

Whether or not the debtor-mortgagor can exercise the right of redemption in judicial foreclosure.

#### **RULING:**

The decision of the trial court, which is final and executory, declared the transaction between petitioners and Macaspac an equitable mortgage.

An equitable mortgage is not different from a real estate mortgage, and the lien created thereby ought not to be defeated by requiring compliance with the formalities necessary to the validity of a voluntary real estate mortgage. Since the parties' transaction is an equitable mortgage and that the trial court ordered its foreclosure, execution of judgment is governed by Sections 2 and 3, Rule 68 of the 1997 Rules of Civil Procedure, as amended, quoted as follows:

SEC. 2. Judgment on foreclosure for payment or sale. - If upon the trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and other charges as approved by the court, and costs, and shall render judgment for the sum so found due and order that the same be paid to the court or to the judgment obligee within a period of not less that ninety (90) days nor more than one hundred twenty (120) days from the entry of judgment, and that in default of such payment the property shall be sold at public auction to satisfy the judgment.

SEC. 3. Sale of mortgaged property, effect. - When the defendant, after being directed to do so as provided in the next preceding section, fails to pay the amount of the judgment within the period specified therein, the court, upon motion, shall order the property to be sold in the manner and under the provisions of Rule 39 and other regulations governing sales of real estate under execution. Such sale shall not affect the rights of persons holding prior encumbrances upon the property or a part thereof, and when confirmed by an order of the court, also upon motion, it shall operate to divest the rights in the property of all the parties to the action and to vest their rights in the purchaser, subject to such rights of redemption as may be allowed by law.

In Huerta *Alba Resort, Inc. vs. Court of Appeals*, the SC held that the right of redemption is not recognized in a judicial foreclosure. The right of redemption in relation to a mortgage-understood in the sense of a prerogative to re-acquire mortgaged property after registration of the foreclosure sale-exists only in the case of the extrajudicial foreclosure of the mortgage. No such right is recognized in a judicial foreclosure except only where the mortgagee is the Philippine National bank or a bank or a banking institution.

Where the foreclosure is judicially effected, however, no equivalent right of redemption exists. The law declares that a judicial foreclosure sale, when confirmed by an order of the court,  $x \times x$  shall

operate to divest the rights of all the parties to the action and to vest their rights in the purchaser, subject to such rights of redemption as may be allowed by law.

But, to repeat, no such right of redemption exists in case of judicial foreclosure of a mortgage if the mortgagee is not the PNB or a bank or banking institution. In such a case, the foreclosure sale, when confirmed by an order of the court, shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser. There then exists only what is known as the equity of redemption. This is simply the right of the defendant mortgagor to extinguish the mortgage and retain ownership of the property by paying the secured debt within the 90-day period after the judgment becomes final, in accordance with Rule 68, or even after the foreclosure sale but prior to its confirmation.

This is the mortgagor's equity (not right) of redemption which, as above stated, may be exercised by him even beyond the 90-day period `from the date of service of the order,' and even after the foreclosure sale itself, provided it be before the order of confirmation of the sale. After such order of confirmation, no redemption can be effected any longer.

As a general rule, there is no right of redemption in a judicial foreclosure of mortgage. The only exemption is when the mortgagee is the Philippine National Bank or a bank or a banking institution. Since the mortgagee in this case is not one of those mentioned, no right of redemption exists in favor of petitioners. They merely have an equity of redemption, which, to reiterate, is simply their right, as mortgagor, to extinguish the mortgage and retain ownership of the property by paying the secured debt prior to the confirmation of the foreclosure sale. However, instead of exercising this equity of redemption, petitioners chose to delay the proceedings by filing several manifestations with the trial court. Thus, they only have themselves to blame for the consequent loss of their property.

### RUPERTA CANO VDA. DE VIRAY and JESUS CARLO GERARD VIRAY, Petitioners, - versus - SPOUSES JOSE USI and AMELITA USI, Respondents.

G.R. No. 192486, THIRD DIVISION, November 21, 2012, VELASCO, JR., J.

Now then, it is a hornbook rule that once a judgment becomes final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment. Any attempt to reopen a close case would offend the principle of res judicata. In this case, the determination of the court in G.R. No. 122287 operates as a bar to the Usi's reivindicatory action to assail the April 29, 1986 conveyances and precludes the relitigation between the same parties of the settled issue of ownership and possession arising from ownership.

#### **FACTS:**

The case involves a piece of land, lot no. 733, registered under the name of Ellen and Moses Mendoza. The said lot was subdivided to 6 parts by Engr. Fajardo but was not officially approved by the LMB.

On April 29, 1986, Mendoza executed two separate deeds of absolute sale, the first, transferring Lot 733-F to Jesus Carlo Gerard Viray (Jesus Viray), and the second deed conveying Lot 733-A to spouses AvelinoViray and Margarita Masangcay (Sps. Viray).

The aforementioned conveyances notwithstanding, Mendoza, Emerenciana M. Vda.deMallari (Vda. de Mallari) and respondent spouses Jose Usi and Amelita T. Usi (Sps. Usi or the Usis), as purported co-owners of Lot 733, executed on August 20, 1990 a Subdivision Agreement, or the 1st subdivision agreement (1st SA) where lot no. 733 was divided to 3 lots: Lot 733-A, Lot 733-B and Lot 733-C. Lot 733-C was further subdivided to 13 lots under a 2<sup>nd</sup> subdivision agreement (2<sup>nd</sup> SA) where herein respondents appeared as owners of some the further subdivided lots covering a part of the lot sold to herein petitioners.

The foregoing overlapping transactions involving the same property or portions thereof spawned several suits and countersuits between petitioner and respondents herein. Spouses Usi instituted complaints against Viray, among others is a Petition for *accion publiciana/reivindicatoria* before the RTC. On the other hand, petitioners moved for the dismissal of the said petition, on the ground of *litis pende*ncia and res judicata. The RTC dismissed the petition for failure to establish preponderant evidence to support their claim of title, possession and ownership over the subject lots. Hence, they appealed before the CA. The CA reversed RTC's decision basing its ruling on the 2 notarized subject agreements. Viray appealed but was denied. Hence, this.

#### **ISSUE:**

- 1. Whether or not the two subdivision agreements partake of a bona fide and legally binding partition contracts.
- 2. Whether or not res judicata applies.

#### **RULING:**

1. The subdivision agreements do not partake of a bona fide partition of co-owners.

Partition, in general, is the separation, division, and assignment of a thing held in common by those to whom it may belong.

Contrary to the finding of the CA, the subdivision agreements forged by Mendoza and her alleged co-owners were not for the partition of pro-indiviso shares of co-owners of Lot 733 but were actually conveyances, disguised as partitions, of portions of Lot 733 specifically Lots 733-A and 733-B, and portions of the subsequent subdivision of Lot 733-C.

It is fairly clear that Lot 733, even from the fact alone of its being registered under the name of the late Moses Mendoza and Ellen Mendoza, formed part of the couple's conjugal property at the time Moses' demise on April 5, 1986. Equally clear, too, is that Vda. de Mallari became a co-owner of Lot 733 by virtue of the purchase of its 416-square meter portion on February 14, 1984, during the lifetime of Moses. Be that as it may and given that the Sps. Usi have not been shown to be co-owners of Mendoza and Vda. de Mallari prior to the sale by Mendoza on April 29, 1986 of Lots 733-A and 733-F (Fajardo Plan) to the Sps. Viray and Jesus Viray, respectively, then the execution of the 1st SA on August 20, 1990 could not have been a partition by co-owners of Lot 733. The same could be said of the 2nd SA of April 5, 1991 vis-à-vis Lot 733-C, for the records are similarly completely bereft of any evidence to show on how the purported participating co-owners, namely Sps. Usi, the Sps. Lacap, the Sps. Balingit and the Sps. Jordan became co-owners with Mendoza and her children, i.e., McDwight, Bismark, Beverly and Georgenia.

2. Res judicata applies. Notably, the Sps. Viray and Vda. de Viray, after peremptorily prevailing in their cases supportive of their claim of ownership and possession of the. Subject lots, cannot now be deprived of their rights by the expediency of the Sps. Usi maintaining, as here, an accion publiciana and/or *accion reivindicatoria*, two of the <a href="https://doi.org/10.1001/judicatoria">https://doi.org/10.1001/judicatoria</a>, two of the <a href="https://doi.org/10.100

The third, *accion interdictal*, comprises two distinct causes of action, namely forcible entry and unlawful detainer, the issue in both cases being limited to the right to physical possession or possession de facto, independently of any claim of ownership that either party may set forth in his or her pleadings, albeit the court has the competence to delve into and resolve the issue of ownership but only to address the issue of priority of possession. Both actions must be brought within one year from the date of actual entry on the land, in case of forcible entry, and from the date of last demand to vacate following the expiration of the right to possess, in case of unlawful detainer.

When the dispossession or unlawful deprivation has lasted more than one year, one may avail himself of *accion publiciana* to determine the better right of possession, or possession de jure, of realty independently of title. On the other hand, *accion reivindicatoria* is an action to recover ownership which necessarily includes recovery of possession.

Now then, it is a hornbook rule that once a judgment becomes final and executory, it may no longer be modified in any respect, even if the modification is meant to correct an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land, as what remains to be done is the purely ministerial enforcement or execution of the judgment. Any attempt to reopen a close case would offend the principle of res judicata.

The better right to possess and the right of ownership of Vda. de Viray (vice Jose Viray) and the Sps. Viray over the disputed parcels of land cannot, by force of the res judicata doctrine, be re-litigated thru actions to recover possession and vindicate ownership filed by the Sps. Usi. The Court, in G.R. No. 122287 has in effect determined that the conveyances and necessarily the transfers of ownership made to the Sps. Viray and Vda. de Viray on April 29, 1986 were valid. This determination operates as a bar to the Usi's reivindicatory action to assail the April 29, 1986 conveyances and precludes the relitigation between the same parties of the settled issue of ownership and possession arising from ownership. It may be that the spouses Usi did not directly seek the recovery of title or possession of the property in question in their action for annulment of the deed sale of sale. But it cannot be gainsaid that said action is closely intertwined with the issue of ownership, and affects the title, of the lot covered by the deed. The prevalent doctrine, to borrow from *Fortune Motors*, (*Phils.*), *Inc. v. Court of Appeals*," is that an action for the annulment or rescission of a sale of real property does not operate to efface the fundamental and prime objective and nature of the case, which is to recover said real property."

EMILIA FIGURACION-GERILLA, *Petitioner*, - *versus* - CAROLINA VDA. DE FIGURACION,\* ELENA FIGURACION-ANCHETA,\* HILARIA A. FIGURACION, FELIPA FIGURACION-MANUEL, QUINTIN FIGURACION and MARY FIGURACION-GINEZ, *Respondents*.

G.R. No. 154322, SECOND DIVISION, August 22, 2006, CORONA, J.

In estate settlement proceedings, there is a proper procedure for the accounting of all expenses for which the estate must answer. In this case, there needs to be a prior settlement of Leandro's intestate

estate before the properties can be partitioned or distributed. If it is any consolation at all to petitioner, the heirs or distributees of the properties may take possession thereof even before the settlement of accounts, as long as they first file a bond conditioned on the payment of the estate's obligations.

#### **FACTS:**

Spouses Leandro and respondent Carolina Figuracion had six children: petitioner and respondents Elena Figuracion-Ancheta, Hilaria Figuracion, Felipa Figuracion-Manuel, Quintin Figuracion and Mary Figuracion-Ginez. Leandro executed a deed of quitclaim over his real properties in favor of his six children. When he died in 1958, he left behind two parcels of land to his six children: (1) Lot 2299 and (2) Lot 705.

Leandro sold a portion of Lot 2299 to Lazaro Adviento, as a result of which the title was cancelled and a new one was issued to Lazaro Adviento. What gave rise to the complaint for partition, however, was a dispute between petitioner and her sister, respondent Mary, over the eastern half of Lot 707.

Lot 707 belonged to Eulalio Adviento When Adviento died, his two daughters, Agripina Adviento and respondent Carolina succeeded him to it. Agripina executed a quitclaim in favor of petitioner over the one-half eastern portion of Lot 707. Agripina died on July 28, 1963, single and without any issue. Before her half-sister's death, however, respondent Carolina adjudicated unto herself the entire Lot 707 which she later sold to respondents Felipa and Hilaria. The latter two immediately had the title cancelled and a new one issued in their names.

Petitioner filed a complaint in the RTC for partition, annulment of documents, reconveyance, quieting of title and damages against respondents. Respondents took the position that Leandro's estate should first undergo settlement proceedings before partition among the heirs could take place. And they claimed that an accounting of expenses chargeable to the estate was necessary for such settlement.

The RTC nullified Carolina's affidavit of self-adjudication and deed of absolute sale of Lot 707. It also declared Lots 2299 and 705 as exclusive properties of Leandro Figuracion and therefore part of his estate. The RTC, however, dismissed the complaint for partition, reconveyance and damages on the ground that it could not grant the reliefs prayed for by petitioner without any (prior) settlement proceedings wherein the transfer of title of the properties should first be effected.

The CA affirmed.

#### **ISSUE:**

Whether or not there needs to be a prior settlement of Leandro's intestate estate before the properties can be partitioned or distributed.

#### **RULING:**

Section 1, Rule 69 of the Rules of Court provides:

SECTION 1. Complaint in action for partition of real estate. A person having the right to compel the partition of real estate may do so as provided in this Rule, setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all other persons interested in the property.

There are two ways by which partition can take place under Rule 69: by agreement under Section 2 and through commissioners when such agreement cannot be reached, under Sections 3 to 6. While Section 8 of Rule 69 provides that there shall be an accounting of the real property's income (rentals and profits) in the course of an action for partition, there is no provision for the accounting of expenses for which property belonging to the decedent's estate may be answerable, such as funeral expenses, inheritance taxes and similar expenses enumerated under Section 1, Rule 90 of the Rules of Court.

In a situation where there remains an issue as to the expenses chargeable to the estate, partition is inappropriate. There remains an issue as to the expenses chargeable to the estate, partition is inappropriate. While petitioner points out that the estate is allegedly without any debt and she and respondents are Leandro Figuracion's only legal heirs, she does not dispute the finding of the CA that "certain expenses" including those related to her father's final illness and burial have not been properly settled. Thus, the heirs (petitioner and respondents) have to submit their father's estate to settlement because the determination of these expenses cannot be done in an action for partition.

## PEDRO SEPULVEDA, SR., substituted by SOCORRO S. LAWAS, Administratrix of His Estate, petitioner, - versus - ATTY. PACIFICO S. PELAEZ, respondent. G.R. No. 152195, SECOND DIVISION, January 31, 2005, CALLIO, SR., J.

The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. In the present action, the private respondent, as the plaintiff in the trial court, failed to implead the following indispensable parties: his father, Rodolfo Pelaez; the heirs of Santiago Sepulveda, namely, Paz Sepulveda and their children; and the City of Danao. Hence, the trial court should have ordered the dismissal of the complaint.

#### **FACTS:**

In1972, Atty. Pelaez filed a complaint against his granduncle, Sepulveda, Sr., with the then CFI of Cebu, for the recovery of possession and ownership of his one-half (1/2) undivided share of several parcels of land covered by several Tax Declarations; his undivided one-third (1/3) share in several other lots also covered by several tax declarations (all located in Danao, Cebu); and for the partition thereof among the co-owners.

The eleven (11) lots were among the twenty-five (25) parcels of land which the private respondent's mother, Dulce Sepulveda, inherited from her grandmother, Dionisia Sepulveda under the Project of Partition submitted by Pedro Sepulveda, Sr. as the administrator of the former's estate, duly approved by the then CFI of Cebu.

Under the said deed, Pedro Sepulveda, Sr. appeared to be the owner of an undivided portion of Lot No. 28199, while his brother and Dulce's uncle Santiago Sepulveda, was the undivided owner of one-half (1/2) of the parcels of land. Dulce and her uncles, Pedro and Santiago, were likewise

indicated therein as the co-owners of the eleven other parcels of land, each with an undivided one-third (1/3) share thereof.

Private respondent alleged that his mother Dulce died intestate on March 2, 1944, and aside from himself, was survived by her husband Rodolfo Pelaez and her mother Carlota Sepulveda. Despite repeated demands by Dulce, her mother Carlota, and respondent Pelaez, the petitioner allegedly refused to give Dulce's share in the eleven parcels of land.

The private respondent further narrated that his granduncle executed an affidavit stating that he was the sole heir of Dionisia when she died intestate when, in fact, the latter was survived by her three sons, Santiago, Pedro and Vicente. Pedro Sepulveda, Sr. also executed a Deed of Absolute Sale in 1968 over a property in favor of the City of Danao for P7,492.00 without his (private respondent's) knowledge.

Pedro Sepulveda, Sr. admitted having executed a deed of sale over said parcel of land in favor of Danao City but averred that the latter failed to pay the purchase price thereof; besides, the private respondent had no right to share in the proceeds of the said sale. He likewise denied having received any demand for the delivery of Dulce's share. During the trial, Pedro Sepulveda, Sr. died intestate. His daughter, Socorro Sepulveda Lawas, was appointed administratrix of his estate. According to the petitioner, Dulce and Pedro Sepulveda, Sr. had a verbal agreement wherein the eleven parcels of land covered by the complaint would serve as the latter's compensation for his services as administrator of Dionisia's estate. Thus, upon the termination of Special Proceeding No. 778-0, and subsequent to the distribution of the shares of Dionisia's heirs, Pedro Sepulveda, Sr. then became the sole owner of Dulce's shares.

The trial court rendered judgment in favor of the private respondent. It ruled that the private respondent's action for reconveyance based on constructive trust had not yet prescribed when the complaint was filed; that he was entitled to a share in the proceeds of the sale of the property to Danao City; and that the partition of the subject property among the adjudicatees thereof was in order.

Petitioner appealed the decision to the CA, which rendered judgment on January 31, 2002, affirming the appealed decision with modification. Hence, this case.

#### **ISSUE:**

Whether or not the CA erred in affirming the decision of the RTC.

#### **RULING:**

The petition is granted for the sole reason that the respondent failed to implead as parties, all the indispensable parties in his complaint.

It appears that when the private respondent filed the complaint, his father, Rodolfo Pelaez, was still alive. Thus, when his mother Dulce Pelaez died intestate, she was survived by her husband Rodolfo and their son, the private respondent. Under Article 996 of the New Civil Code, Rodolfo Pelaez, as surviving spouse, is entitled to a portion in usufruct equal to that corresponding by way of legitime to each of the legitimate children who has not received any betterment. In Gamis v. Court of Appeals, the SC held:

Under articles 807 and 834 of the old Civil Code the surviving spouse is a forced heir and entitled to a share in usufruct in the estate of the deceased spouse equal to that which by way of legitime corresponds or belongs to each of the legitimate children or descendants who have not been bettered or have not received any share in the one-third share destined for betterment. The right of the surviving spouse to have a share in usufruct in the estate of the deceased spouse is provided by law of which such spouse cannot be deprived and which cannot be ignored. Of course, the spouse may waive it but the waiver must be express.

Section 1, Rule 69 of the Rules of Court provides that in an action for partition, all persons interested in the property shall be joined as defendants.

Section 1. Complaint in action for partition of real estate. - A person having the right to compel the partition of real estate may do so as in this rule prescribed, setting forth in his complaint the nature and extent of his title and an adequate description of the real estate of which partition is demanded and joining as defendants all the other persons interested in the property.

Thus, all the co-heirs and persons having an interest in the property are indispensable parties; as such, an action for partition will not lie without the joinder of the said parties. The mere fact that Pedro Sepulveda, Sr. has repudiated the co-ownership between him and the respondent does not deprive the trial court of jurisdiction to take cognizance of the action for partition, for, in a complaint for partition, the plaintiff seeks, first, a declaration that he is a co-owner of the subject property; and, second, the conveyance of his lawful shares.

In the present action, the private respondent, as the plaintiff in the trial court, failed to implead the following indispensable parties: his father, Rodolfo Pelaez; the heirs of Santiago Sepulveda, namely, Paz Sepulveda and their children; and the City of Danao. Rodolfo Pelaez is an indispensable party he being entitled to a share in usufruct, equal to the share of the respondent in the subject properties. There is no showing that Rodolfo Pelaez had waived his right to usufruct.

Section 7, Rule 3 of the Rules of Court reads:

SEC. 7. Compulsory joinder of indispensable parties. Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

Indeed, the presence of all indispensable parties is a condition sine qua non for the exercise of judicial power. It is precisely when an indispensable party is not before the court that the action should be dismissed. Thus, the plaintiff is mandated to implead all the indispensable parties, considering that the absence of one such party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. One who is a party to a case is not bound by any decision of the court, otherwise, he will be deprived of his right to due process. Without the presence of all the other heirs as plaintiffs, the trial court could not validly render judgment and grant relief in favor of the private respondent. The failure of the private respondent to implead the other heirs as parties-plaintiffs constituted a legal obstacle to the trial court and the appellate court's exercise of judicial power over the said case, and rendered any orders or judgments rendered therein a nullity.

BETTY B. LACBAYAN, *Petitioner*, - *versus* - BAYANI S. SAMOY, JR., *Respondent*. G.R. No. 165427, THIRD DIVISION, March 21, 2011, VILLARAMA, JR., *J.* 

The determination as to the existence of co-ownership is necessary in the resolution of an action for partition. While it is true that the complaint involved here is one for partition, the same is premised on the existence or non-existence of co-ownership between the parties. Therefore, until and unless this issue of co-ownership is definitely and finally resolved, it would be premature to effect a partition of the disputed properties.

Title as a concept of ownership should not be confused with the certificate of title as evidence of such ownership although both are interchangeably used. Ownership is different from a certificate of title, the latter only serving as the best proof of ownership over a piece of land. The certificate cannot always be considered as conclusive evidence of ownership.

#### **FACTS:**

Petitioner and respondent met each other through a common friend. Despite respondent being already married, their relationship developed until petitioner gave birth to respondent's son. During their illicit relationship, petitioner and respondent, together with three more incorporators, were able to establish a manpower services company. Five parcels of land were also acquired and were registered in petitioner and respondent's names, ostensibly as husband and wife.

Eventually, however, their relationship turned sour and they decided to part ways. In 1998, both parties agreed to divide the said properties and terminate their business partnership by executing a Partition Agreement. Initially, respondent agreed to petitioner's proposal that the properties in Malvar St. and Don Enrique Heights be assigned to the latter, while the ownership over the three other properties will go to respondent. However, when petitioner wanted additional demands to be included in the partition agreement, respondent refused.

Petitioner filed a complaint for judicial partition of the said properties before the RTC. Respondent denied petitioner's claim of cohabitation and said that the properties were acquired out of his own personal funds without any contribution from petitioner. Petitioner claimed that they acquired the said real estate properties from the income of the company which she and respondent established. trial court rendered a decision dismissing the complaint for lack of merit.

The RTC decided to give considerable weight to petitioner's own admission that the properties were acquired not from her own personal funds but from the income of the manpower services company over which she owns a measly 3.33% share. Petitioner elevated the matter to the CA asserting that she is the *pro indiviso* owner of one-half of the properties in dispute, but the appeal was denied. Hence, this case.

#### **ISSUE:**

- 1. Whether an action for partition precludes a settlement on the issue of ownership;
- 2. Whether the Torrens title over the disputed properties was collaterally attacked in the action for partition
- 3. Whether respondent is estopped from repudiating co-ownership over the subject realties.

#### **RULING:**

1. In *Municipality of Biñan v. Garcia*, the SC explained that the determination as to the existence of co-ownership is necessary in the resolution of an action for partition.

The first phase of a partition and/or accounting suit is taken up with the determination of whether or not a co-ownership in fact exists, and a partition is proper. The second phase commences when it appears that the parties are unable to agree upon the partition directed by the court. While it is true that the complaint involved here is one for partition, the same is premised on the existence or non-existence of co-ownership between the parties. Petitioner insists she is a co-owner *pro indiviso* of the five real estate properties based on the transfer certificates of title (TCTs) covering the subject properties. Respondent maintains otherwise. Therefore, until and unless this issue of co-ownership is definitely and finally resolved, it would be premature to effect a partition of the disputed properties.

2. There is no dispute that a Torrens certificate of title cannot be collaterally attacked, but that rule is not material to the case at bar. What cannot be collaterally attacked is the certificate of title and not the title itself.

Petitioner apparently confuses title with the certificate of title. Title as a concept of ownership should not be confused with the certificate of title as evidence of such ownership although both are interchangeably used. Ownership is different from a certificate of title, the latter only serving as the best proof of ownership over a piece of land. The certificate cannot always be considered as conclusive evidence of ownership. In fact, mere issuance of the certificate of title in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate, or that the registrant may only be a trustee, or that other parties may have acquired interest over the property subsequent to the issuance of the certificate of title. Needless to say, registration does not vest ownership over a property, but may be the best evidence thereof.

3. Finally, as to whether respondent's assent to the initial partition agreement serves as an admission against interest, in that the respondent is deemed to have admitted the existence of co-ownership between him and petitioner, the Court rules in the negative.

Admission against interest is governed by Section 26 of Rule 130 of the Rules of Court, which provides:

Sec. 26. Admissions of a party. - The act, declaration or omission of a party as to a relevant fact may be given in evidence against him.

To be admissible, an admission must (a) involve matters of fact, and not of law; (b) be categorical and definite; (c) be knowingly and voluntarily made; and (d) be adverse to the admitter's interests, otherwise it would be self-serving and inadmissible.

A careful perusal of the contents of the so-called Partition Agreement indicates that the document involves matters which necessitate prior settlement of questions of law, basic of which is a determination as to whether the parties have the right to freely divide among themselves the subject properties. Respondent is not allowed by law to waive whatever share his lawful spouse may have on the disputed properties. Basic is the rule that rights may be waived, unless the waiver

is contrary to law, public order, public policy, morals, good customs or prejudicial to a third person with a right recognized by law.

Petitioner herself admitted that she did not assent to the Partition Agreement after seeing the need to amend the same to include other matters. Petitioner does not have any right to insist on the contents of an agreement she intentionally refused to sign.

HEIRS OF FLORES RESTAR namely: ESMENIA R. RESTAR, BERNARDITA R. RENTINO, LUCIA RESTAR, RODOLFO RESTAR, JANET R. RELOJERO, LORNA R. RAMOS, MANUEL RESTAR, NENITA R. BELLEZA, MIRASOL R. DELA CRUZ, ROSELLE R. MATORRE, POLICARPIO RESTAR and ADOLFO RESTAR, Petitioners, - versus - HEIRS OF DOLORES R. CICHON, namely: RUDY R. CICHON, NORMA C. LACHICA, NILDA C. JUMAYAO, LYDIA C. SANTOS, and NELSON R. CICHON; HEIRS OF PERPETUA R. STA. MARIA, namely GEORGE STA. MARIA, LILIA M. MANIAGO, DERLY M. CONCEPCION, GERVY STA. MARIA, DORY M. INDULO; HEIRS OF MARIA R. ROSE, namely: TERESITA R. MALOCO, ROLANDO ROSE, EDELYN R. PALACIO and MINERVA R. PASTRANA, DOMINICA RESTAR-RELOIERO and PACIENCIA RESTAR MANARES, Respondents.

G.R. No. 161720, THIRD DIVISION, November 22, 2005, CARPIO MORALES, J.

While tax declarations and receipts are not conclusive evidence of ownership and do not prove title to the land, nevertheless, when coupled with actual possession, they constitute evidence of great weight and can be the basis of a claim of ownership through prescription. The trial court's finding and conclusion that Flores and his heirs had for more than 38 years possessed the land in open, adverse and continuous possession in the concept of owner which length of possession had never been questioned, rebutted or disputed by any of respondents, being thus duly supported by substantial evidence, he and his heirs have become owner of the lot by extraordinary prescription. It is unfortunate that respondents slept on their rights. Dura lex sed lex.

#### **FACTS:**

In 1935, Emilio Restar died intestate, leaving eight children-compulsory heirs. In 1960, Restar's eldest child, Flores, caused the cancellation of Tax Declaration No. 6696 in Restar's name covering the subject lot. Flores died on June 10, 1989. The co-heirs of Flores discovered the cancellation of Restar's Tax Declaration No. 6696 and the issuance in lieu thereof of Tax Declaration No. 11134 in his name.

On January 21, 1999, the heirs of Flores' sisters filed a Complaint against Flores' heirs for "partition" [of the lot], declaration of nullity of documents, ownership with damages and preliminary injunction" before the RTC of Aklan. Flores' brothers Policarpio and Adolfo were impleaded also as defendants, they being unwilling co-plaintiffs.

The plaintiffs, herein respondents, alleged that, inter alia, during the lifetime of Flores, they were given their shares of palay from the lot and even after Flores death, his widow Esmenia appealed to them to allow her to hold on to the lot to finance the education of her children, to which they (the plaintiffs) agreed on the condition that after the children had finished their education, it would be divided into eight (8) equal parts.

By Answer, the defendants-herein petitioners Heirs of Flores claimed that they had been in possession of the lot in the concept of owner for more than thirty (30) years and have been paying realty taxes since time immemorial. They denied the claims of the respondents. They further claimed that after WW2, Flores caused the transfer of parcels of rice lands in Aklan to his siblings as their shares from the estate of their father Emilio and that an extra-judicial partition took place in 1973 which was notarized by an Atty. Jose Igtanloc and appointing among themselves 4 parcels of land.

Adolfo interposed no objection to the partition of the lot while Policarpio acknowledged Flores as the owner of the lot but part of it was sold to him which he prayed for the exclusion in the partition.

The RTC of Aklan stated that Flores and his heirs had performed acts sufficient to constitute repudiation of the co-ownership, and have acquired the lot by prescription. The RTC dismissed the complaint. The CA reversed the decision of the RTC .

#### ISSUE:

Whether or not the Heirs of Flores acquired the land through adverse possession.

#### **RULING:**

The petition is impressed with merit.

Article 494 of the New Civil Code expressly provides:

ART. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.

X X X

No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.

While the action to demand partition of a co-owned property does not prescribe, a co-owner may acquire ownership thereof by prescription where there exists a clear repudiation of the co-ownership, and the co-owners are apprised of the claim of adverse and exclusive ownership.

Resolving the main issue of whether petitioners acquired ownership over the lot by extraordinary prescription, the SC reverses the appellate court and finds that the records of the case support petitioner's claim that the requirement for extraordinary prescription had been met.

When Restar died in 1935, his eight children became pro indiviso co-owners of the lot by intestate succession. Respondents never possessed the lot, however, much less asserted their claim thereto until January 21, 1999 when they filed the complaint for partition subject of the present petition.

In contrast, Flores took possession of the lot after Restar's death and exercised acts of dominion thereon – tilling and cultivating the land, introducing improvements, and enjoying the produce thereof.

The statutory period of prescription, however, commenced not in 1935 but in 1960 when Flores, who had neither title nor good faith, secured a tax declaration in his name and may, therefore, be said to have adversely claimed ownership of the lot. And respondents were also deemed to have been on said date become aware of the adverse claim.

Flores' possession thus ripened into ownership through acquisitive prescription after the lapse of thirty years in accordance with the earlier quoted Article 1137 of the New Civil Code.

The evidence proved that as far back as 1959, Flores Restar adjudicated unto himself the whole land in question as his share from his father by means of a joint affidavit which he executed with one Helen Restar, and he requested the Provincial Treasurer/Assessor to have the land declared in his name. It was admitted by the parties during the pre-trial that this affidavit was the basis of the transfer of Tax Declaration No. 6686 from Emilio Restar to Flores Restar. So that from 1960 the land was declared in the name of Flores Restar (Exhibit 10). This was the first concrete act of repudiation made by Flores of the co-ownership over the land in question. x x x

Plaintiffs did not deny that aside from the verbal partition of one parcel of land in Carugdog, Lezo, Aklan way back in 1945, they also had an amicable partition of the lands of Emilio Restar in Cerrudo and Palale, Banga Aklan on September 28, 1973 (exhibit "20"). If they were able to demand the partition, why then did they not demand the inclusion of the land in question in order to settle once and for all the inheritance from their father Emilio Restar, considering that at that time all of the brothers and sisters, the eight heirs of Emilio Restar, were still alive and participated in the signing of the extra-judicial partition?

Also it was admitted that Flores died only in 1989. Plaintiffs had all the chances (sic) to file a case against him from 1960, or a period of 29 years when he was still alive, yet they failed to do so. They filed the instant case only on January 22, 1999, almost ten (10) years after Flores' death.

From the foregoing evidence, it can be seen that the adverse possession of Flores started in 1960, the time when the tax declaration was transferred in his name. The period of acquisitive prescription started to run from this date. Hence, the adverse possession of Flores Restar from 1960 vested in him exclusive ownership of the land considering the lapse of more than 38 years. Acquisitive prescription of ownership, laches and prescription of the action for partition should be considered in favor of Flores Restar and his heirs.

# SPOUSES BERNARDITO AND ARSENIA GAELA (DECEASED), SUBSTITUTED BY HER HEIRS NAMELY: BERNARDITO GAELA AND JOSELINE E. PAGUIRIGAN, Petitioners - versus - SPOUSES TAN TIAN HEANG AND SALLY TAN, Respondents G.R. No. 185627, March 15, 2017, THIRD DIVISION, REYES, J.

Nowhere does it appear in Section 1 of Rule 70 of the Rules of Court that, in an action for unlawful detainer, the plaintiff must be in prior physical possession of the property. The petitioners erroneously argued that the respondents' prior physical possession is necessary for an action for unlawful detainer to prosper.

Time and again, the Court had emphasized that when the property is registered under the Torrens system, the registered owner's title to the property is presumed legal and cannot be collaterally attacked, especially in a mere action for unlawful detainer, and it does not even matter if the party's title to the property is questionable. In this case, , the petitioners contended that the respondents

obtained their certificates of title through forgery. Obviously, this argument is equivalent to a collateral attack against the Torrens title of the respondents - an attack that the Court cannot allow in the instant unlawful detainer case.

#### **FACTS:**

The petitioners claimed that they are the lawful owners of the subject properties. They said that sometime in 2002, their daughter Bernardita Gaela took the certificates of title registered in their names and forged their signatures in the Real Estate Mortgage that Bernardita executed in favor of Alexander Tam Wong. Wong then sold the subject properties to the respondents.

Petitioners sought the annulment of sale of the subject properties and cancellation of the title in the name of the respondents. They averred that before the transfer of title from Wong to the respondents, they were able to cause the annotation of a notice of *lis pendens* on the respondents' titles.

The respondents countered that they are the lawful and legal owners of the subject properties which they acquired in good faith from its former owner Wong. On February 12, 2007, the MeTC rendered its Decision in favor of the petitioners, dismissing the complaint on the ground of lack of cause of action.

The RTC granted the appeal and set aside the MeTC's ruling. The RTC held that the respondents have the better right to possess the subject properties since they are the registered owners of the same. The respondents' lack of prior physical possession over the subject properties is of no moment since it is enough that they have a better right of possession over the petitioners. The RTC further said that the case for annulment of title and the annotation of a notice of lis pendens on the respondents' TCTs did not in any way legitimize the petitioners' continued possession of the subject properties.

The CA affirmed the RTC's judgment in toto. Hence, this case.

#### **ISSUE:**

Who between the parties has a better right to possess the subject property.

#### **RULING:**

The petition is bereft of merit.

At the outset, the Court noted that the issue of ownership between the parties herein is already the subject of a pending litigation before the RTC. Hence, the only matter to be resolved in this case is the issue of possession over the subject properties.

The conflicting findings of facts and rulings of the MeTC on one hand, and the RTC and the CA on the other, compel this Court to revisit the records of this case. But even if the Court were to re-evaluate the evidence presented, considering the divergent positions of the courts below, the petition would still fail.

After reviewing the records of this case, the Court sustains the findings of the RTC and the CA that the nature of action taken by the respondents is one for unlawful detainer. Unlawful detainer is an action to recover possession of real property from one who unlawfully withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession of the defendant in an unlawful detainer case is originally legal but becomes illegal due to the expiration or termination of the right to possess. The sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties.

The allegations of the respondents' complaint made out a case of unlawful detainer, vesting the MeTC with exclusive original jurisdiction over the complaint. The record showed that the respondents' TCTs were issued on February 21, 2005. Thereafter, the demand to vacate was made against the petitioners on March 16, 2005, which is the reckoning point of the petitioners' unlawful possession. Thus, the filing of the ejectment complaint on April 21, 2005 is within the one-year reglementary period.

Indeed, the cause of action of the respondents was to recover possession of the subject properties from the petitioners upon the latter's failure to comply with the former's demand to vacate the subject properties after the latter's right to remain thereon terminated. The respondents initiated the ejectment suit in the MeTC well within the one-year period from the date of the last demand. Thus, the possession of the petitioners, although lawful at its commencement, became unlawful upon its non-compliance with the respondents' demand to vacate

Also, the petitioners erroneously argued that the respondents' prior physical possession is necessary for an action for unlawful detainer to prosper. Contrary to the petitioners' argument, nowhere does it appear in Section 1 of Rule 70 of the Rules of Court that, in an action for unlawful detainer, the plaintiff must be in prior physical possession of the property.

The Court also noted that in assailing the respondents' right over the subject properties, the petitioners contended that the respondents obtained their certificates of title through forgery. Obviously, this argument is equivalent to a collateral attack against the Torrens title of the respondents - an attack that the Court cannot allow in the instant unlawful detainer case. Time and again, the Court had emphasized that when the property is registered under the Torrens system, the registered owner's title to the property is presumed legal and cannot be collaterally attacked, especially in a mere action for unlawful detainer, and it does not even matter if the party's title to the property is questionable.

The title holder is entitled to all the attributes of ownership of the property, including possession. Thus, the Court must uphold the age-old rule that the person who has a Torrens title over a land is entitled to its possession.

Lastly, it must be underscored that this award of possession de facto over the subject properties in favor of the respondents will not constitute res judicata or will not bar or prejudice the action between the parties involving their claim of ownership over the subject properties which are already the subject of a pending litigation.

## PROVINCE OF CAMARINES SUR, represented by GOVERNOR LUIS RAYMUND F. VILLAFUERTE, JR., Petitioner, - versus - BODEGA GLASSWARE, represented by its owner JOSEPH D. CABRAL, Respondent

G.R. No. 194199, THIRD DIVISION, March 22, 2017, JARDALEZA, J.

Where a donation has an automatic revocation clause, the occurrence of the condition agreed to by the parties as to cause the revocation, is sufficient for a party to consider the donation revoked without need of any judicial action. A judicial finding that the revocation is proper is only necessary when the other party actually goes to court for the specific purpose of challenging the propriety of the revocation. In this case, the Deed of Donation contains a clear automatic revocation clause. CASTEA's act of leasing the property to Bodega, in breach of the conditions stated in the Deed of Donation, is the very same act which caused the automatic revocation of the donation. Thus, it had no right, either as an owner or as an authorized administrator of the property to lease it to Bodega.

#### **FACTS:**

Petitioner is the registered owner of a parcel of land in Naga City. On September 28, 1966, petitioner donated around 600 square meters of this parcel of land to the Camarines Sur Teachers' Association, Inc. (CASTEA) through a Deed of Donation Inter Vivos.

The Deed of Donation included an automatic revocation clause which states:

That the condition of this donation is that the DONEE shall use the above-described portion of land subject of the present donation for no other purpose except the construction of its building to be owned and to be constructed by the above-named DONEE to house its offices to be used by the said Camarines Sur Teachers' Association, Inc. in connection with its functions under its charter and bylaws and the Naga City Teachers' Association as well as the Camarines Sur High School Alumni Association, PROVIDED FURTHERMORE, that the DONEE shall not sell, mortgage or incumber the property herein donated including any and all improvements thereon in favor of any party and provided, lastly, that the construction of the building or buildings referred to above shall be commenced within a period of one year from and after the execution of this donation, otherwise, this donation shall be deemed automatically revoked and voided and of no further force and effect.

CASTEA accepted the donation in. However, on August 15, 1995, CASTEA entered into a Contract of Lease with Bodega over the donated property to Bodega for a period of 20 years. Bodega took actual possession of the property. On November 11, 2007, petitioner sent a letter to Bodega. In this letter, petitioner stated that Bodega's occupation of the property was by mere tolerance of the petitioner. As it now intended to use the property for its developmental projects, petitioner demanded that Bodega vacate the property and surrender its peaceful possession. Bodega refused to comply with the demand.

Petitioner revoked its donation through a Deed of Revocation of Donation. It asserted that CASTEA violated the conditions in the Deed of Donation when it leased the property to Bodega. CASTEA never challenged this revocation.

Petitioner filed an action for unlawful detainer against Bodega before the MTC Naga City. The MTC Naga City ruled in favor of the petitioner. It ordered Bodega to vacate the property and to pay

P15,000 a month as reasonable compensation. Bodega appealed this Decision to the RTC Naga City which reversed it. In its assailed Decision, the CA affirmed the ruling of the RTC Naga City that the petitioner cannot demand that Bodega vacate the property.

According to the CA, while petitioner alleges that CASTEA violated the conditions of the donation and thus, the automatic revocation clause applies, it should have first filed an action for reconveyance of the property against CASTEA. The CA also found that petitioner's action has already prescribed. Petitioner had 10 years to file an action for reconveyance from the time the Deed of Donation was violated. The action for unlawful detainer was filed more than 12 years later. Hence, this case.

#### **ISSUE:**

- 1. Whether or not the petitioner should have first filed an action for reconveyance against CASTEA.
- 2. Whether or not the petitioner's action for reconveyance has already prescribed.

#### RULING:

1. An action for unlawful detainer must allege and establish the following key jurisdictional facts: (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.

When in an unlawful detainer action, the party seeking recovery of possession alleges that the opposing party occupied the subject property by mere tolerance, this must be alleged clearly and the acts of tolerance established. In De Luna, the SC held that judicial intervention is necessary not for purposes of obtaining a judicial declaration rescinding a contract already deemed rescinded by virtue of an agreement providing for rescission even without judicial intervention, but in order to determine whether or not the rescission was proper.

The SC then reiterated in the case of *Roman Catholic Archbishop of Manila vs. CA* that where a donation has an automatic revocation clause, the occurrence of the condition agreed to by the parties as to cause the revocation, is sufficient for a party to consider the donation revoked without need of any judicial action. A judicial finding that the revocation is proper is only necessary when the other party actually goes to court for the specific purpose of challenging the propriety of the revocation.

This ruling was repeated in *Dolar v. Barangay Lublub* (Now P.D. Monfort North) *Municipality of Dumangas*, wherein it was held that if a contract of donation provides for automatic rescission or reversion in case of a breach of a condition and the donee violates it or fails to comply with it, the property donated automatically reverts back to the donor without need of any judicial declaration. It is only when the donee denies the rescission or challenges its propriety that the court can intervene to conclusively settle whether the resolution was proper.

In this case, the Deed of Donation contains a clear automatic revocation clause. The last clause of this paragraph states that "otherwise, this donation shall be deemed automatically revoked  $x \times x$ ."

the Court reads the final clause of this provision as an automatic revocation clause which pertains to all three conditions of the donation. When CASTEA leased the property to Bodega, it breached the first and second conditions. Accordingly, petitioner takes the position that when CASTEA leased the property to Bodega, it violated the conditions in the Deed of Donation and as such, the property automatically reverted to it. Thus, as petitioner validly considered the donation revoked and CASTEA never contested it, the property donated effectively reverted back to it as owner.

In demanding the return of the property, petitioner sources its right of possession on its ownership. Under Article 428 of the Civil Code, the owner has a right of action against the holder and possessor of the thing in order to recover it. This right of possession prevails over Bodega's claim which is anchored on its Contract of Lease with CASTEA. CASTEA's act of leasing the property to Bodega, in breach of the conditions stated in the Deed of Donation, is the very same act which caused the automatic revocation of the donation. Thus, it had no right, either as an owner or as an authorized administrator of the property to lease it to Bodega. While a lessor need not be the owner of the property leased, he or she must, at the very least, have the authority to lease it out. None exists in this case. Bodega finds no basis for its continued possession of the property.

2. As to the question of prescription, the Court rules that the petitioner's right to file this ejectment suit against Bodega has not prescribed.

First, the SC reiterates that jurisprudence has definitively declared that Article 764 on the prescription of actions for the revocation of a donation does not apply in cases where the donation has an automatic revocation clause.

Second, the breach of the condition in the donation causes the automatic revocation. All the donor has to do is to formally inform the donee of the revocation. Judicial intervention only becomes necessary if the donee questions the propriety of the revocation. Even then, judicial intervention is required to merely confirm and not order the revocation. Hence, there can be no 10-year prescriptive period to file an action to speak of. When the donee does not contest the revocation, no court action is necessary.

Third, as owner of the property in this case, the petitioner is entitled to its possession. The petitioner's action for ejectment is anchored on this right to possess.

A party seeking to eject another from a property for unlawful detainer must file the action for ejectment within one year from the last demand to vacate. This is the prescriptive period that the petitioner is bound to comply with in this case. The records show that the petitioner served its last demand letter on November 11, 2007. It filed the action for ejectment on March 13, 2008 or around four months from the last demand. The action is clearly within the prescriptive period.

### HUBERT NUÑEZ, *Petitioner*, - *versus* - **SLTEAS** PHOENIX SOLUTIONS, INC., through its representative, CESAR SYLIANTENG *Respondent*.

G.R. No. 180542, SECOND DIVISION, April 12, 2010, PEREZ, J.

Possession can be acquired not only by material occupation, but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right. Possession can also be acquired by juridical acts to which the law gives the force of acts of possession, e.g., donations, succession, execution and registration of public instruments, inscription of possessory information titles and the like, it has been held that one need not have actual or physical

occupation of every square inch of the property at all times to be considered in possession. In this case, respondent appears to have caused the property to be registered in its name and to have paid the real property taxes due thereon.

### **FACTS:**

The subject matter of the instant suit is a parcel of land situated at Calle Solana, Intramuros, Manila and registered in the name of respondent SLTEAS Phoenix Solutions, Inc. Despite having acquired the same thru the 4 June 1999 Deed of Assignment executed in its favor by the Spouses Ong Tiko and Emerenciana Sylianteng, the respondent was constrained to leave the subject parcel idle and unguarded for some time due to important business concerns.

In October 2003, an ocular inspection conducted by respondent's representatives revealed that the property was already occupied by petitioner Hubert Nuñez and 21 other individuals. Respondent filed a complaint for forcible entry before the Metropolitan Trial Court (MeTC) of Manila. Respondent alleged that it had continuously possessed the subject realty, over which it exercised all attributes of ownership, including payment of real property taxes and other sundry expenses; that without the benefit of any lease agreement or possessory right, however, petitioners and his codefendants have succeeded in occupying the property by means of strategy and stealth.

Petitioner averred that the property occupied by him is owned by one Maria Ysabel Potenciano Padilla Sylianteng, with whom he had concluded a subsisting lease agreement over the same, and that, in addition to respondent's lack of cause of action against him, the MeTC had no jurisdiction over the case for lack of prior demand to vacate and referral of the controversy to the barangay authorities for a possible amicable settlement.

After an ocular inspection, the MeTC concluded that the crowding of the residential units on the subject parcel rendered the determination of its exact metes and bounds impossible. Respondent submitted a survey plan prepared by Geodetic Engineer Joseph Padilla who determined that petitioner was, indeed, occupying a portion of the subject parcel. Relying on said report, the MeTC rendered a decision in favor of the plaintiff and against all the defendants.

On appeal, the foregoing decision was affirmed in toto by the RTC of Manila. Petitioner elevated the case to the Court of Appeals by way of a petition for review, but the same was dismissed. Hence, this case.

### **ISSUE:**

Who has a better right over the subject land between the parties.

### **RULING:**

The Court finds the petition bereft of merit.

In actions for forcible entry, the following requisites are essential for the MeTC's acquisition of jurisdiction over the case, viz.: (a) the plaintiffs must allege their prior physical possession of the property; (b) they must assert that they were deprived of possession either by force, intimidation, threat, strategy or stealth; and, (c) the action must be filed within one (1) year from the time the owners or legal possessors learned of their deprivation of the physical possession of the property.

The one-year period within which to bring an action for forcible entry is generally counted from the date of actual entry on the land, except that when the entry is through stealth, the one-year period is counted from the time the plaintiff learned thereof.

The record shows that respondent's 9 January 2004 amended complaint was able to make out a cause of action for forcible entry against petitioner. As the registered owner of the subject parcel, respondent distinctly alleged that, by its representatives and thru its predecessors-in-interest, it had been in possession of the subject parcel and had exercised over the same all attributes of ownership, including the payment of realty taxes and other expenses; that an ocular inspection conducted in October 2003 revealed that petitioner and his co-defendants have succeeded in occupying the property by means of stealth and strategy; and, that its subsequent demands to vacate had been unheeded by said interlopers.

While prior physical possession is, admittedly, an indispensable requirement in forcible entry cases, the dearth of merit in petitioner's position is, however, evident from the principle that possession can be acquired not only by material occupation, but also by the fact that a thing is subject to the action of one's will or by the proper acts and legal formalities established for acquiring such right. Possession can also be acquired by juridical acts to which the law gives the force of acts of possession, e.g., donations, succession, execution and registration of public instruments, inscription of possessory information titles and the like, it has been held that one need not have actual or physical occupation of every square inch of the property at all times to be considered in possession.

In this case, respondent appears to have caused the property to be registered in its name and to have paid the real property taxes due thereon. Viewed in the light of the foregoing juridical acts, it consequently did not matter that, by the time respondent conducted its ocular inspection in October 2003, petitioner had already been occupying the land since 1999. Ordinarily reckoned from the date of actual entry on the land, the one year period is counted from the time the plaintiff acquired knowledge of the dispossession when, as here, the same had been effected by means of stealth.

In addition, petitioner is out on a limb in faulting the Court of Appeals with failure to apply the first paragraph of Article 1676 of the Civil Code of the Philippines in relation to the lease he claims to have concluded with one Maria Ysabel Potenciano Padilla Sylianteng. In the absence of proof of his lessor's title or respondent's prior knowledge of said contract of lease, petitioner's harping over the same provision simply amounts to an implied admission that the premises occupied by him lie within the metes and bounds of the subject parcel. Even then, the resolution of said issue is clearly inappropriate since ejectment cases are summary actions intended to provide an expeditious manner for protecting possession or right to possession without involvement of title. Moreover, if a defendant's mere assertion of ownership in an ejectment case will not oust the MeTC of its summary jurisdiction, the Court fails to see why it should be any different in this case where petitioner merely alleged his lessor's supposed title over the subject parcel.

### LOURDES DELA CRUZ, Petitioner, - versus - HON. COURT OF APPEALS and MELBA TAN TE, Respondents.

G.R. NO. 139442, THIRD DIVISION, December 6, 2006, VELASCO, JR., J.

An ejectment complaint based on possession by tolerance of the owner is a specie of unlawful detainer cases. In this case, Based on the complaint and the answer, it is apparent that the Tan Te ejectment complaint is after all a complaint for unlawful detainer. It was admitted that petitioner Dela Cruz was a lessee of the Reyeses for around four (4) decades. Thus, initially petitioner as lessee is the legal possessor of the subject lot by virtue of a contract of lease. When fire destroyed her house, the Reyeses considered the lease terminated; but petitioner Dela Cruz persisted in returning to the lot and occupied it by strategy and stealth without the consent of the owners. The Reveses however tolerated the continued occupancy of the lot by petitioner. Thus, when the lot was sold to respondent Tan Te, the rights of the Reyeses, with respect to the lot, were transferred to their subrogee, respondent Tan Te, who for a time also **tolerated** the stay of petitioner until she decided to eject the latter by sending several demands, the last being the January 14, 1997 letter of demand. Since the action was filed with the MeTC on September 8, 1997, the action was instituted well within the one (1) year period reckoned from January 14, 1997. Hence, the nature of the complaint is one of unlawful detainer and the Manila MeTC had jurisdiction over the complaint. Thus, an ejectment complaint based on possession by tolerance of the owner, like the Tan Te complaint, is a specie of unlawful detainer cases.

### **FACTS:**

The Reyes family owned a lot located at Lacson Street Sampaloc, Manila. Petitioner Lourdes Dela Cruz was one of their lessees for over 40 years. Sometime in 1989, a fire struck the premises and destroyed, among others, petitioner's dwelling. After the fire, petitioner and some tenants returned to the said lot and rebuilt their respective houses; simultaneously, the Reyes family made several verbal demands on the remaining lessees, including petitioner, to vacate the lot but the latter did not comply.

Petitioner was served a written demand to vacate said lot but refused to leave. Despite the setback, the Reyes family did not initiate court proceedings against any of the lessees; instead, the Reyes family sold the lot to respondent Melba Tan Te. Despite the sale, petitioner Dela Cruz did not give up the lot.

Petitioner was sent a written demand to relinquish the premises which she ignored, prompting respondent Tan Te to initiate conciliation proceedings at the barangay level. The settlement failed, prompting respondent Tan Te to file an ejectment complaint with damages before the Manila MeTC. Petitioner filed her answer and alleged that: (1) the MeTC had no jurisdiction over the case because it falls within the jurisdiction of the RTC as more than one year had elapsed from petitioner's forcible entry; (2) she was a rent-paying tenant protected by PD 20; (3) her lease constituted a legal encumbrance upon the property; and (4) the lot was subject of expropriation.

The MeTC rendered a judgment in favor of the plaintiff, but was reversed by the RTC. Tan Te's Complaint on the ground that it was the RTC and not the MeTC which had jurisdiction over the subject matter of the case. The RTC believed that since Tan Te's predecessor-in-interest learned of petitioner's intrusion into the lot as early as February 21, 1994, the ejectment suit should have been filed within the one-year prescriptive period which expired on February 21, 1995. Since the Reyes did not file the ejectment suit and respondent Tan Te filed the action only on September 8, 1997, then the suit had become an accion publiciana cognizable by the RTC. The CA rendered a Decision in favor of respondent Tan Te reversing the Manila RTC

### **ISSUE:**

- 1. Whether the Manila RTC or the Manila MeTC has jurisdiction over the Tan Te ejectment suit.
- 2. Whether or not respondent is entitled to the ejectment of petitioner Dela Cruz from the premises.

#### **RULING:**

1. On the Issue of Jurisdiction

Section 33 of Chapter III -- on Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts of B. P. No. 129 provides:

Section 33. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in civil cases. Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

X X X X

(2) Exclusive original jurisdiction over cases of forcible entry and unlawful detainer: Provided, That when, in such cases, the defendant raises the question of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

The exclusive, original jurisdiction over ejectment proceedings (accion interdictal) is lodged with the first level courts. This is clarified in Section 1, Rule 70 of the 1997 Rules of Civil Procedure that embraces an action for forcible entry, where one is deprived of physical possession of any land or building by means of force, intimidation, threat, strategy, or stealth.

The other kind of ejectment proceeding is unlawful detainer, where one unlawfully withholds possession of the subject property after the expiration or termination of the right to possess. Here, the issue of rightful possession is the one decisive; for in such action, the defendant is the party in actual possession and the plaintiff's cause of action is the termination of the defendant's right to continue in possession. The essential requisites of unlawful detainer are: (1) the fact of lease by virtue of a contract express or implied; (2) the expiration or termination of the possessor's right to hold possession; (3) withholding by the lessee of the possession of the land or building after expiration or termination of the right to possession; (4) letter of demand upon lessee to pay the rental or comply with the terms of the lease and vacate the premises; and (5) the action must be filed within one (1) year from date of last demand received by the defendant.

On the other hand, Section 19, of Chapter II of B.P. No. 129 on Regional Trial Courts provides:

Section 19. Jurisdiction in civil cases. Regional Trial Courts shall exercise exclusive original jurisdiction:

X X X X

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts.

Two (2) kinds of action to recover possession of real property which fall under the jurisdiction of the RTC are: (1) the plenary action for the recovery of the real right of possession (accion publiciana) when the dispossession has lasted for more than one year or when the action was filed more than one (1) year from date of the last demand received by the lessee or defendant; and (2) an action for the recovery of ownership (accion reivindicatoria) which includes the recovery of possession.

To determine whether a complaint for recovery of possession falls under the jurisdiction of the MeTC (first level court) or the RTC (second level court), the allegations of the complaint are material. The general rule is that what determines the nature of the action and the court that has jurisdiction over the case are the allegations in the complaint. However, while the allegations in the complaint make out a case for forcible entry, where tenancy is averred by way of defense and is proved to be the real issue, the case should be dismissed for lack of jurisdiction as the case should properly be filed with the then Court of Agrarian Relations.

In this case, the allegations in the complaint show that prior to the sale by Lino Reyes, representing the estate of his wife Emerlinda Reyes, he was in possession and control of the subject lot but were deprived of said possession when petitioner, by means of stealth and strategy, entered and occupied the same lot. These circumstances imply that he had prior physical possession of the subject lot and can make up a forcible entry complaint. On the other hand, the allegation that petitioner Dela Cruz was served several demands to leave the premises but refused to do so would seem to indicate an action for unlawful detainer since a written demand is not necessary in an action for forcible entry.

Based on the complaint and the answer, it is apparent that the Tan Te ejectment complaint is after all a complaint for unlawful detainer. It was admitted that petitioner Dela Cruz was a lessee of the Reyeses for around four decades. Thus, initially petitioner as lessee is the legal possessor of the subject lot by virtue of a contract of lease. When fire destroyed her house, the Reyeses considered the lease terminated; but petitioner Dela Cruz persisted in returning to the lot and occupied it by strategy and stealth without the consent of the owners. Thus, when the lot was sold to respondent Tan Te, the rights of the Reyeses, with respect to the lot, were transferred to their subrogee, respondent Tan Te, who for a time also tolerated the stay of petitioner until she decided to eject the latter by sending several demands, the last being the January 14, 1997 letter of demand. Since the action was filed with the MeTC on September 8, 1997, the action was instituted well within the one (1) year period reckoned from January 14, 1997. Hence, the nature of the complaint is one of unlawful detainer and the Manila MeTC had jurisdiction over the complaint.

Thus, an ejectment complaint based on possession by tolerance of the owner, like the Tan Te complaint, is a specie of unlawful detainer cases falling under the jurisdiction of the Manila MeTC. It is unequivocal that petitioner's possession after she intruded into the lot after the fire was by mere tolerance.

2. At the heart of every ejectment suit is the issue of who is entitled to physical possession of the lot or possession de facto.

The SC rules in favor of respondent Tan Te for the following reasons:

Petitioner admitted in her Answer that she was a rent-paying tenant of the Reyeses, predecessors-in-interest of respondent Tan Te. As such, she recognized the ownership of the lot by respondent, which includes the right of possession. After the fire raged over the structures on the subject lot in late 1989 the contracts of lease expired, as a result of which Lino Reyes demanded that all occupants, including petitioner, vacate the lot but the latter refused to abandon the premises. During the duration of the lease, petitioner's possession was legal but it became unlawful after the fire when the lease contracts were deemed terminated and demands were made for the tenants to return possession of the lot. Petitioner's possession is one by the Reyeses' tolerance and generosity and later by respondent Tan Te's.

Petitioner raises the ancillary issue that on March 15, 1998, the Manila City Council passed and approved Ordinance No. 7951. It readily appears that this issue was not presented before the Court of Appeals despite the fact that the respondent's petition was filed on September 25, 1998, six months after the ordinance was passed. Thus, this issue is proscribed as are all issues raised for the first time before the Court are proscribed.

CORAZON D. SARMIENTA, JOSE DERAMA, CATES RAMA, JOSIE MIWA, TOTO NOLASCO, JESUS OLIQUINO, NORBERTO LOPEZ, RUBEN ESPOSO, BERNARDO FLORESCA, MARINA DIMATALO, ROBLE DIMANDAKO, RICARDO PEÑA, EDUARDO ESPINO, ANTONIO GALLEGOS, VICTOR SANDOVAL, FELICITAS ABRANTES, MERCY CRUZ, ROSENDO ORGANO, RICKY BARENO, ANITA TAKSAGON, JOSIE RAMA and PABLO DIMANDAKO, Petitioners, - versus - MANALITE HOMEOWNERS ASSOCIATION, INC. (MAHA), Respondent. G.R. No. 182953, THIRD DIVISION, October 11, 2010, VILLARAMA, JR., J.

Well settled is the rule that a person who occupies the land of another at the latter's tolerance or permission, 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 is the proper remedy against him. In this case, the evidence proves that after MAHA acquired the property, MAHA tolerated petitioners' stay and gave them the option to acquire portions of the property by becoming members of MAHA. The moment MAHA required petitioners to leave, petitioners became deforciants illegally occupying the land.

### **FACTS:**

Respondent Manalite Homeowners Association, Inc. (MAHA) was the registered owner of the lot in dispute which was placed under community mortgage program (CMP). Through force, intimidation, threat, strategy and stealth, petitioners entered the premises and constructed their temporary houses and an office building. Sometime in 1992, petitioners sought for the annulment of respondent's title but it was dismissed by the RTC. Upon dismissal, respondent demanded petitioners to vacate the premises. Petitioners asked for a one-year extension for them to look for a place to transfer. However, it was repeatedly extended due to respondent's tolerance. Petitioners even propose to become members of MAHA so that they can be qualified to acquire portions of the lot but they failed to comply with the requirements despite repeated demands. MAHA then sent formal demand letters to petitioners to vacate the lot. Unheeded, MAHA filed the complaint for "Forcible Entry/Unlawful Detainer."

In their answer, petitioners averred that they are the owners of the subject lot, having been in actual physical possession thereof for more than thirty (30) years before MAHA intruded into the

land. They likewise argued that the complaint was irregular and defective because its caption states that it was for "Forcible Entry/Unlawful Detainer."

The MTCC dismissed the case for lack of cause of action for failure by the respondent to prove prior physical possession which is required in a complaint for forcible entry. On appeal, RTC reversed the MTCC decision stating that MAHA was able to prove by preponderance of evidence that petitioners' occupation was by mere tolerance and their occupation became illegal after MAHA demanded that they vacate the property. The CA affirmed the decision of the RTC ruling that the cause of action was an unlawful detainer case.

### **ISSUE:**

Whether the allegations in the complaint to make up a case of forcible entry or unlawful detainer

### **RULING:**

Well settled is the rule that what determines the nature of the action as well as the court which has jurisdiction over the case are the allegations in the complaint. In ejectment cases, the complaint should embody such statement of facts as to bring the party clearly within the class of cases under Section 1, Rule 70 of the 1997 Rules of Civil Procedure, as amended. Section 1 provides:

SECTION 1. Who may institute proceedings, and when.-- Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

In the present case, a thorough perusal of the complaint would reveal that the allegations clearly constitute a case of unlawful detainer.

A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (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.

The evidence proves that after MAHA acquired the property, MAHA tolerated petitioners' stay and gave them the option to acquire portions of the property by becoming members of MAHA. Petitioners' continued stay on the premises was subject to the condition that they shall comply with the requirements of the CMP. Thus, when they failed to fulfill their obligations, MAHA had the right to demand for them to vacate the property as their right of possession had already expired or had been terminated. The moment MAHA required petitioners to leave, petitioners became deforciants

illegally occupying the land. Well settled is the rule that a person who occupies the land of another at the latter's tolerance or permission, 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 is the proper remedy against him. Thus, the RTC and the CA correctly ruled in favor of MAHA.

As to petitioners' argument that MAHA's title is void for having been secured fraudulently, the SC finds that such issue was improperly raised. In an unlawful detainer case, the sole issue for resolution is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. Since the only issue involved is the physical or material possession of the premises, that is possession *de facto* and not possession *de jure*, the question of ownership must be threshed out in a separate action.

### JUANITA ERMITAÑO, represented by her Attorney-in-Fact, ISABELO ERMITAÑO, Petitioner, - versus - LAILANIE M. PAGLAS, Respondent.

G.R. No. 174436, THIRD DIVISION, January 23, 2013, PERALTA, J.

It is settled that during the period of redemption, it cannot be said that the mortgagor is no longer the owner of the foreclosed property, since the rule up to now is that the right of a purchaser at a foreclosure sale is merely inchoate until after the period of redemption has expired without the right being exercised. Stated differently, under Act. No. 3135, the purchaser in a foreclosure sale has, during the redemption period, only an inchoate right and not the absolute right to the property with all the accompanying incidents. He only becomes an absolute owner of the property if it is not redeemed during the redemption period. In this case, however, the redemption period expired on February 23, 2001. Since there is no allegation, much less evidence, that petitioner redeemed the subject property within one year from the date of registration of the certificate of sale, respondent became the owner thereof.

### **FACTS:**

On November 5, 1999, herein respondent and petitioner, through her representative, Isabelo R. Ermitaño, executed a Contract of lease wherein Juanita Ermitaño leased in favor of Lailanie Paglas a residential lot and a house.

Subsequent to the execution of the lease contract, Paglas received information that sometime in March 1999, Juanita mortgaged the subject property in favor of a certain Charlie Yap and that the same was foreclosed with Yap as the purchaser of the disputed lot in an extra-judicial foreclosure sale which was registered on February 22, 2000.

Paglas bought the subject property from Yap for P950,000.00. A Deed of Sale of Real Property was executed by the parties as evidence of the contract. However, it was made clear in the said Deed that the property was still subject to Juanita's right of redemption.

Prior to Paglas' purchase of the subject property, Juanita filed a suit for the declaration of nullity of the mortgage in favor of Yap as well as the sheriff's provisional certificate of sale. Juanita sent a letter demanding Paglas to pay the rentals which are due and to vacate the leased premises. A second demand letter was sent on March 25, 2001. Paglas ignored both letters.

Juanita filed with the MTCC a case of unlawful detainer against respondent. The MTCC dismissed the case. Petitioner filed an appeal with the RTC, which was affirmed by the latter with modifications.. The CA affirmed the RTC with modifications.

### **ISSUE:**

Whether or not the unlawful detainer case shall prosper.

### **RULING:**

At the outset, it bears to reiterate the settled rule that the only question that the courts resolve in ejectment proceedings is: who is entitled to the physical possession of the premises, that is, to the possession de facto and not to the possession de jure. It does not even matter if a party's title to the property is questionable. In an unlawful detainer case, the sole issue for resolution is the physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants. Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property.

In the instant case, pending final resolution of the suit filed by petitioner for the declaration of nullity of the real estate mortgage in favor of Yap, the MTCC, the RTC and the CA were unanimous in sustaining the presumption of validity of the real estate mortgage over the subject property in favor of Yap as well as the presumption of regularity in the performance of the duties of the public officers who subsequently conducted its foreclosure sale and issued a provisional certificate of sale. The MTCC, the RTC and the CA also sustained the validity of respondent's purchase of the disputed property from Yap. The Court finds no cogent reason to depart from these rulings of the MTCC, RTC and CA. Thus, for purposes of resolving the issue as to who between petitioner and respondent is entitled to possess the subject property, this presumption stands.

Going to the main issue in the instant petition, it is settled that in unlawful detainer, one unlawfully withholds possession thereof after the expiration or termination of his right to hold possession under any contract, express or implied.

There is no dispute that at the time that respondent purchased Yap's rights over the subject property, petitioner's right of redemption as a mortgagor has not yet expired. It is settled that during the period of redemption, it cannot be said that the mortgagor is no longer the owner of the foreclosed property, since the rule up to now is that the right of a purchaser at a foreclosure sale is merely inchoate until after the period of redemption has expired without the right being exercised. Stated differently, under Act. No. 3135, the purchaser in a foreclosure sale has, during the redemption period, only an inchoate right and not the absolute right to the property with all the accompanying incidents. He only becomes an absolute owner of the property if it is not redeemed during the redemption period.

As a consequence of the inchoate character of the purchaser's right during the redemption period, the purchaser is allowed, at the foreclosure sale, to take possession of the property only upon the filing of a bond, in an amount equivalent to the use of the property for a period of twelve (12) months, to indemnify the mortgagor in case it be shown that the sale was made in violation of the mortgage or without complying with the requirements of the law.

It, thus, clearly follows from the foregoing that, during the period of redemption, the mortgagor, being still the owner of the foreclosed property, remains entitled to the physical possession thereof subject to the purchaser's right to petition the court to give him possession and to file a bond pursuant to the provisions of Section 7 of Act No. 3135, as amended. The mere purchase and certificate of sale alone do not confer any right to the possession or beneficial use of the premises.

In the instant case, there is neither evidence nor allegation that respondent, as purchaser of the disputed property, filed a petition and bond in accordance with the provisions of Section 7 of Act No. 3135. In addition, respondent defaulted in the payment of her rents. Thusm absent respondent's filing of such petition and bond prior to the expiration of the period of redemption, coupled with her failure to pay her rent, she did not have the right to possess the subject property. Petitioner, as mortgagor and owner, was entitled not only to the possession of the disputed house and lot but also to the rents, earnings and income derived therefrom.

The situation became different, however, after the expiration of the redemption period on February 23, 2001. Since there is no allegation, much less evidence, that petitioner redeemed the subject property within one year from the date of registration of the certificate of sale, respondent became the owner thereof. Consolidation of title becomes a right upon the expiration of the redemption period. Having become the owner of the disputed property, respondent is then entitled to its possession. Hence, the only remaining right that petitioner can enforce is his right to the rentals during the time that he was still entitled to physical possession of the subject property.

### VELIA J. CRUZ, *Petitioner - versus -* SPOUSES MAXIMO and SUSAN CHRISTENSEN, *Respondents* G.R. No. 205539, THIRD DIVISION, October 4, 2017, LEONEN, *J.*

The prior service and receipt of a demand letter is unnecessary in a case for unlawful detainer if the demand to vacate is premised on the expiration of the lease, not on the non-payment of rentals or non-compliance of the terms and conditions of the lease. In this case, the verbal lease over the property had already expired sometime in 2002. They were explicitly told to vacate in 2005. They continued to occupy the property until petitioner sent her final demand letter in 2008. The demand letter would have been unnecessary since respondents' continued refusal to vacate despite the expiration of their verbal lease was sufficient ground to bring the action.

### **FACTS:**

Petitioner Cruz alleged that she was the owner of a parcel of land located at San Juan City, which she acquired through inheritance from her late mother Ruperta D. Javier. She further alleged that Susan Christensen had been occupying the property during Javier's lifetime, as they had a verbal lease agreement. Cruz claimed that she tolerated Susan's occupancy of the property. However, due to Susan's failure and refusal to pay rentals, she was constrained to demand that Susan vacate the property and pay all unpaid rentals.

Three years later, Cruz sent Susan a final demand letter. Susan refused to vacate and pay the accrued rentals from June 1989 to February 2009 in the amount of P237,000.00, computed at P1,000.00 per month. Thus, Cruz was constrained to file a Complaint for unlawful detainer.

Susan admitted to occupying a portion of the property since 1969 on a month-to-month lease agreement. However, she denied that she failed to pay her rentals since 1989 or that she refused to pay them, attaching receipts of her rental payments as evidence. She alleged that Cruz refused to

receive her rental payments sometime in 2002. Susan likewise denied receiving any demand letter from Cruz and claims that the signature appearing on the registry return card of the demand letter was not her signature

The Metropolitan Trial Court dismissed Cruz's Complaint, but it was reversed by the RTC. It found that the bare denial of receipt would not prevail over the registry return card showing actual receipt of the demand letter. The CA revesed the Regional Trial Court Decision and reinstated the MeTC Decision. According to the Court of Appeals, the filing of a memorandum of appeal within 15 days from the receipt of order is mandatory under Rule 40, Section 7(b) of the Rules of Court and the failure to comply will result in the dismissal of the appeal. It likewise concurred with the Metropolitan Trial Court's finding that registry receipts and return cards are insufficient proof of receipt.

### **ISSUE:**

- 1. Whether or not the Regional Trial Court should have dismissed the appeal considering that petitioner Velia J. Cruz's Memorandum of Appeals was not filed within the required period.
- 2. Whether or not a demand was necessary prior to the filing of unlawful detainer complaint.

### RULING:

1. Procedural rules of even the most mandatory character may be suspended upon a showing of circumstances warranting the exercise of liberality in its strict application.

Petitioner admits that her Memorandum of Appeal was filed nine (9) days beyond the 15-day period but that the Regional Trial Court opted to resolve her case on its merits in the interest of substantial justice. The rule requiring the filing of the memorandum within the period provided is mandatory. Failure to comply will result in the dismissal of the appeal.

In this instance, a Memorandum of Appeal was filed late but was nonetheless given due course by the Regional Trial Court. Thus, the jurisdictional defect was cured since petitioner was able to specifically assign the Municipal Trial Court's errors, which the Regional Trial Court was able to address and resolve. This Court also notes that all substantial issues have already been fully litigated before the Municipal Trial Court, the Regional Trial Court, and the Court of Appeals.

Liberality in the application of Rule 40, Section 7 is warranted in this case in view of the potential inequity that may result if the rule is strictly applied. As will be discussed later, petitioner's meritorious cause would be unduly prejudiced if this case were to be dismissed on technicalities.

2. Possession of a property belonging to another may be tolerated or permitted, even without a prior contract between the parties, as long as there is an implied promise that the occupant will vacate upon demand. Refusal to vacate despite demand will give rise to an action for summary ejectment. Thus, prior demand is a jurisdictional requirement before an action for forcible entry or unlawful detainer may be instituted.

Under Rule 70, Section 1 of the Rules of Civil Procedure, an action for unlawful detainer may be brought against a possessor of a property who unlawfully withholds possession after the termination or expiration of the right to hold possession. Rule 70, Section 2 of the Rules of Civil

Procedure requires that there must first be a prior demand to pay or comply with the conditions of the lease and to vacate before an action can be filed. The property in this case is owned by petitioner. Respondents had a month-to-month lease with petitioner's predecessor-in-interest. Petitioner contends that no prior demand was necessary in this case since her Complaint was premised on the expiration of respondents' lease, not on the failure to pay rent due or to comply with the conditions of the lease. The jurisdictional requirement of prior demand is unnecessary if the action is premised on the termination of lease due to expiration of the terms of contract. The complaint must be brought on the allegation that the lease has expired and the lessor demanded the lessee to vacate, not on the allegation that the lessee failed to pay rents. The cause of action which would give rise to an ejectment case would be the expiration of the lease. Thus, the requirement under Rule 70, Section 2 of a prior "demand to pay or comply with the conditions of the lease and to vacate" would be unnecessary.

Respondents admit that they only had a month-to-month lease since 1969. They contend that they had been continuously paying their monthly rent until sometime in 2002, when petitioner refused to receive it. Thus, as early as 2002, petitioner, as the lessor, already refused to renew respondents' month-to-month verbal lease. Therefore, respondents' lease had already long expired before petitioner sent her demand letters. Therefore, respondents' insistence on the non-receipt of the demand letter is misplaced. Their verbal lease over the property had already expired sometime in 2002. They were explicitly told to vacate in 2005. They continued to occupy the property until petitioner sent her final demand letter in 2008. The demand letter would have been unnecessary since respondents' continued refusal to vacate despite the expiration of their verbal lease was sufficient ground to bring the action.

Respondents have occupied the property since 1969, or for 48 years on a mere verbal month-tomonth lease agreement and by sheer tolerance of petitioner and her late mother. All this time, respondents have failed to formalize their agreement in order to protect their right of possession. Their continued occupation of the property despite the withdrawal of the property owner's consent and tolerance deprived the property owner of her right to use and enjoy the property as she sees fit.

### ROSA DELOS REYES, *Petitioner*, -versus- SPOUSES FRANCISCO ODONES AND ARWENIA ODONES, NOEMI OTALES, AND GREGORIO RAMIREZ, *Respondents*.

G.R. No. 178096, SECOND DIVISION, March 23, 2011, NACHURA, J.

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession by the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. The proceeding is summary in nature, jurisdiction over which lies with the proper MTC or metropolitan trial court. The action must be brought up within one year from the date of last demand, and the issue in the case must be the right to physical possession.

#### **FACTS:**

This case emanated from a complaint for *Unlawful Detainer with Preliminary Injunction* filed by petitioner Rosa delos Reyes against respondents spouses Arwenia and Francisco Odones, Noemi

Otales, and Gregorio Ramirez before the MTC. It alleged that petitioner is the owner of a parcel of land covered TCT No. 392430 and that respondents are staying on the said property with a house/improvements therein, with the mere tolerance of petitioner only without any contract whatsoever and for which there is an implied understanding to vacate upon the demand; that petitioner previously demanded verbally upon respondents to vacate which they refused and for which a written notice was sent advising them to vacate the said property within fifteen (15) days from receipt of the letter to vacate.

In their *Answer with Counterclaim*, respondents claimed that they are the owners of the lot, having purchased the same by virtue of an Extrajudicial Succession of Estate and Sale dated January 29, 2004, executed by the heirs of Donata Lardizabal, the land's original owner. Respondents denied that their occupancy of the property was by virtue of petitioner's tolerance. Respondents further argued that the basis of petitioner's TCT, which is a Deed of Absolute Sale dated April 18, 1972, was a forgery because the purported vendors therein, Donata Lardizabal and Francisco Razalan, died on June 30, 1926 and June 5, 1971, respectively. Incidentally, the said TCT and Deed of Absolute Sale are the subject of a pending case for annulment of title before the RTC, Branch 68, Camiling, Tarlac.

MTC ruled in favor of petitioner, and ordered respondents to vacate the property and to pay rent for the use and occupation of the same, plus attorney's fees. RTC set aside the MTC's judgment and dismissed the complaint. The RTC held that the complaint failed to aver acts constitutive of forcible entry or unlawful detainer since it did not state how entry was effected or how and when the dispossession started. Hence, the remedy should either be *accion publiciana* or *accion reivindicatoria* in the proper RTC. CA affirmed the judgment of the RTC.

### **ISSUE:**

Whether or not the MTC has jurisdiction. (YES)

### **RULING:**

Well-settled is the rule that what determines the nature of the action, as well as the court which has jurisdiction over the case, are the allegations in the complaint. In ejectment cases, the complaint should embody such statement of facts as to bring the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face to give the court jurisdiction without resort to parol evidence.

Unlawful detainer is an action to recover possession of real property from one who illegally withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. The possession by the defendant in unlawful detainer is originally legal but became illegal due to the expiration or termination of the right to possess. The proceeding is summary in nature, jurisdiction over which lies with the proper MTC or metropolitan trial court. The action must be brought up within one year from the date of last demand, and the issue in the

case must be the right to physical possession.

Contrary to the findings of the RTC and the CA, petitioner's allegations in the complaint clearly makes out a case for unlawful detainer, essential to confer jurisdiction over the subject matter on the MTC. Petitioner alleges that she is the owner of the lot, as shown by TCT No. 392430, issued by the Registry of Deeds of Tarlac; that respondents are occupying the lot by virtue of petitioner's tolerance; and that petitioner sent a letter to respondents on June 17, 2005, demanding that they vacate the property, but they failed and refused to do so. The complaint was filed on July 12, 2005, or within one year from the time the last demand to vacate was made.

Firm is the rule that as long as these allegations demonstrate a cause of action for unlawful detainer, the court acquires jurisdiction over the subject matter.

The requirement that the complaint should aver, as jurisdictional facts, when and how entry into the property was made by the defendants applies only when the issue is the timeliness of the filing of the complaint before the MTC, and not when the jurisdiction of the MTC is assailed because the case is one for *accion publiciana* cognizable by the RTC. This is because, in forcible entry cases, the prescriptive period is counted from the date of defendants' actual entry into the property; whereas, in unlawful detainer cases, it is counted from the date of the last demand to vacate. Hence, to determine whether the case was filed on time, there is a necessity to ascertain whether the complaint is one for forcible entry or for unlawful detainer; and since the main distinction between the two actions is when and how defendant entered the property, the determinative facts should be alleged in the complaint.

### ABIGAIL L. MENDIOLA, *Petitioner* -versus- VENERANDO P. SANGALANG, *Respondent* G.R. No. 205283, THIRD DIVISION, June 7, 2017, TIJAM, *J.*

The legal principle is that if the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee. Neither can the argument that a certificate of title is not subject to collateral attack would persuade us to rule otherwise. With the determination that petitioner and Vilma's title is void, the issue as to whether it is subject to direct or collateral attack is no longer relevant. Settled is the rule that an action to declare the nullity of a void title does not prescribe and is susceptible to direct, as well as to collateral attack.

### **FACTS:**

The property subject of the instant controversy is a parcel of land on which a residential house and a four-door, one-storey commercial building were built. Said property was originally registered in the name of Honorata G. Sangalang. Honorata had two siblings, Sinforosa and Angel. Sinforosa had three children, petitioner Abigail Mendiola, Vilma Aquino and Azucena De Leon; while Angel begot four children, respondent Venerando, Ma. Lourdes, AngeFno and Fernando, all surnamed Sangalang. Sinforosa and Angel predeceased Honorata, and on May 31, 1994, Honorata herself died

intestate without any issue. While Honorata was still alive, one-half of the residential house of the subject property was being used by petitioner and the other half by Vilma's son. The commercial building, on the other hand, was being leased to third persons. This set-up continued until after Honorata's death.

Respondent and his siblings discovered that the subject property was already registered in the names of petitioner and Vilma. Upon verification, they discovered that the title over the property had been transferred in favor of petitioner and Vilma by virtue of a Deed of Sale purportedly executed by Honorata in their favor. Consequently, a new title, TCT No. N-148021, was issued in the names of petitioner and Vilma. After Vilma's son left the residential house, that respondent, allegedly without asking permission from the petitioner or Vilma and with the use of force and violence upon things, broke open the door of the unit and had since detained the same.

Petitioner and Vilma demanded that respondent vacate the unit but the latter refused to do so. Petitioner and Vilma commenced their complaint for *accion publiciana* against respondent for the latter to return the illegally occupied unit and to pay reasonable rental therefor.

RTC rendered its Decision dismissing the complaint. The trial court noted that since respondent raised the defense of co-ownership, the case was converted from *accion publiciana* to *accion reivindicatoria*. The CA denied the appeal. While the appellate court disagreed with the trial court when it converted the complaint to *accion reivindicatoria*, it nevertheless agreed with the trial court when it dismissed the complaint for *accion publiciana*, for failure to prove the better right of possession.

### **ISSUE:**

Whether or not the petitioner has the better right of possession over the subject property as to successfully evict respondent. (NO)

### **RULING:**

In this case, it is undisputed that the Deed of Sale, through which ownership over the property had been purportedly transferred to the petitioner and Vilma, was executed in 1996. However, it is perfectly obvious that Honorata could not have signed the same as she passed away as early as 1994. If any, Honorata's signature thereon could only be a product of forgery. This makes the Deed of Sale void and as such, produces no civil effect; and it does not create, modify, or extinguish a juridical relation:

While it is true that petitioner and Vilma have in their favor a Torrens title over the property, it is nonetheless equally true that they acquired no right under the void Deed of Sale. Indeed, when the instrument presented is forged, even if accompanied by the owner's duplicate certificate of title, the registered owner does not thereby lose his title, and neither does the assignee in the forged deed

acquire any right or title to the property.

The legal principle is that if the registration of the land is fraudulent, the person in whose name the land is registered holds it as a mere trustee. Neither can the argument that a certificate of title is not subject to collateral attack would persuade us to rule otherwise. With the determination that petitioner and Vilma's title is void, the issue as to whether it is subject to direct or collateral attack is no longer relevant. Settled is the rule that an action to declare the nullity of a void title does not prescribe and is susceptible to direct, as well as to collateral attack. Hence, respondent is not precluded from questioning the validity of the petitioner and Vilma's title in the *accion publiciana*. A necessary and logical consequence of the foregoing pronouncements is that, title over the property remained in the name of Honorata as original registered owner thereof. By theory of succession, petitioner and respondent are co-owners of the property and equally entitled to possession thereof, either *de facto* or *de Jure*. As such, petitioner and Vilma had no right to exclude respondent from enjoying possession thereof through a possessory action.

### RURAL BANK OF STA. IGNACIA, INC., petitioner, -versus- PELAGIA DIMATULAC, GLORIA DIMATULAC, NORA M. VDA. DE GRACIA AND ANTONIO NUQUI, respondents.

G.R. No. 142015, SECOND DIVISION, April 29, 2003, QUISUMBING, J.

In ejectment cases the question is limited to which party among the litigants is entitled to the physical or material possession of the premises, that is to say, who should have possession de facto. Settled is the rule, however, that in an ejectment case, the assertion by a defendant of ownership over the disputed property does not serve to divest an inferior court of its jurisdiction. When the defendant raises the defense of ownership and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved for the purpose only of determining the issue of possession. Said judgment shall be conclusive with respect to the possession only, and shall in no wise bind the title of the realty, or affect the ownership thereof. It shall not bar an action between the same parties respecting title to the real property.

### **FACTS:**

Back in August 17, 1965, Prudencia Reyes purchased from the now defunct Rural Progress Administration (RPA), an 800-square meter parcel of land. As a result of the purchase, TCT No. 65765 was issued in her favor. However, the deed of sale in favor of Reyes was later cancelled by the DAR by reason of her non-occupancy of said property, and made the land available for distribution to the landless residents of San Rafael. In 1971, respondents took possession of the property and were allocated portions of 200 square meters each. They paid the purchase price and awaited their Emancipation Patent titles.

Despite her knowledge that the land had reverted to the government, Reyes sold the property to the spouses Maximo Valentin and Retina Razon in a Deed of Sale. The spouses thereafter obtained TCT No. 106153 thereon. On finding, however, that respondents were in possession of the property,

Valentin and Razon filed a complaint for recovery and damages against respondents. The trial court decided in favor of the spouses Maximo Valentin and Retina Razon. But on appeal, the appellate court reversed the judgment, cancelled the title of the spouses, and decreed the reversion of the property to the government for disposition to qualified beneficiaries. The decision of the Court of Appeals attained finality.

Meanwhile, Razon mortgaged the property to petitioner rural bank to secure a loan of £37,500.00. The property was subsequently extra-judicially foreclosed when Razon failed to pay the loan and on October 20, 1987, petitioner purchased the property. TCT No. 330969 was accordingly issued to herein petitioner. Petitioner filed a complaint for unlawful detainer and damages with the MTC.

In dismissing the complaint, the MTC found that the possession of respondents was not by mere tolerance but as lawful beneficiaries. It also declared that it had no jurisdiction over the case as it involved the issue of ownership. RTC affirmed the decision of the MTC. The CA dismissed the petition and ruled that the possession of respondents was not by mere tolerance but by lawful mandate of the law.

### **ISSUE:**

Whether or not the Court of Appeals commit a reversible error when it dismissed the petition of the bank. (NO)

### **RULING:**

In ejectment cases the question is limited to which party among the litigants is entitled to the physical or material possession of the premises, that is to say, who should have possession de facto. Settled is the rule, however, that in an ejectment case, the assertion by a defendant of ownership over the disputed property does not serve to divest an inferior court of its jurisdiction. When the defendant raises the defense of ownership and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved for the purpose only of determining the issue of possession. Said judgment shall be conclusive with respect to the possession only, and shall in no wise bind the title of the realty, or affect the ownership thereof. It shall not bar an action between the same parties respecting title to the real property.

Rule 39, Section 47(b) of the 1997 Rules of Civil Procedure, speaks of conclusiveness of judgment as "between the parties and their successors-in-interest by title subsequent to the commencement of the action." In the present case, petitioner herein derived its title from the Valentin and Razon spouses, after an extrajudicial foreclosure sale. Under the law which permits a successor in interest to redeem the property sold on execution, the term "successor-in-interest" includes one to whom the debtor has transferred his statutory right of redemption; one to whom the debtor has conveyed his interest in the property for the purpose of redemption; or one who succeeds to the interest of

the debtor by operation of law. Petitioner acquired its title while CA-G.R. CV No. 14909 was pending before the Court of Appeals. To acquire title, the successor-in-interest must do so *subsequent* to the commencement of the action, and not before such commencement. Having derived little from the Spouses Valentin and Razon, whose title was nullified by the final and executory decision of the Court of Appeals in CA-G.R. CV No. 14909, the petitioner cannot escape the effect of the appellate court's judgment in said case. The rural bank as purchaser at an auction sale does not have a better right to said property than their predecessors-in-interest, namely the Valentin and Razon couple.

### RUBEN MANALANG, CARLOS MANALANG, CONCEPCION GONZALES AND LUIS MANALANG, *Petitioners*, -versus- BIENVENIDO AND MERCEDES BACANI, *Respondents*.

G.R. No. 156995, FIRST DIVISION, January 12, 2015, BERSAMIN, J.

In the exercise of its appellate jurisdiction, the Regional Trial Court (RTC) shall decide the appeal of the judgment of the Municipal Trial Court (MTC) in unlawful detainer or forcible entry cases on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be required by the RTC. There is no trial de novo of the case.

### **FACTS:**

Petitioners Ruben Manalang, Amado Manalang, Carlos Manalang, Concepcion M. Gonzales, Ladislao Manalang and Luis Manalang were the co-owners of Lot No 4236 of the Guagua Cadastre, and declared for taxation purposes in the name of Tomasa B. Garcia. The land was covered by approved survey plan Ap-03-004154. Adjacent to Lot 4236 was the respondents' Lot No. 4235 covered by OCT No. N-216701. In 1997, the petitioners caused the relocation and verification survey of Lot 4236 and the adjoining lots, and the result showed that the respondents had encroached on Lot No. 4236 to the extent of 405 square meters. A preliminary relocation survey conducted by the DENR confirmed the result on the encroachment. When the respondents refused to vacate the encroached portion and to surrender peaceful possession thereof despite demands, the petitioners commenced this action for unlawful detainer in the MTC of Guagua (Civil Case No. 3309). MTC (Branch 2) dismissed Civil Case No. 3309 for lack of jurisdiction based on its finding that the action involved an essentially boundary dispute that should be properly resolved in an accion reivindicatoria. On appeal, however, the RTC reversed the MTC (Branch 2), and remanded the case for further proceedings, holding that because there was an apparent withholding of possession of the property and the action was brought within one year from such withholding of possession the proper action was ejectment which was within the jurisdiction of the MTC.

Upon remand, the MTC, Branch 1, ultimately dismissed the complaint and counterclaim for lack of merit. At that point, the RTC ordered the petitioners to conduct a relocation survey to determine their allegation of encroachment. RTC rendered its judgment whereby it reversed and set aside the MTC's decision, observing that the respondents had encroached on the petitioners' property. CA reversed the decision of the RTC. The CA concluded that the RTC, by ordering the relocation and verification survey "in aid of its appellate jurisdiction" upon motion of the petitioners and over the

objection of the respondents, and making a determination of whether there was an encroachment based on such survey and testimony of the surveyor, had acted as a trial court in complete disregard of the second paragraph of Section 18, Rule 70 of the *Rules of Court*. It declared such action by the RTC as unwarranted because it amounted to the reopening of the trial, which was not allowed under Section 13(3) Rule 70 of the *Rules of Court*. It observed that the relocation and verification survey was inconclusive inasmuch as the surveyor had himself admitted that he could not determine which of the three survey plans he had used was correct without a full-blown trial.

### **ISSUES:**

Whether or not the relocation and verification survey ordered by the RTC is proper. (NO)

### **RULING:**

To start with, the RTC, in an appeal of the judgment in an ejectment case, shall not conduct a rehearing or trial *de novo*. In this connection, Section 18, Rule 70 of the Rules of Court clearly provides:

Sec. 18. Judgment conclusive only on possession; not conclusive in actions involving title or ownership. —  $x \times x$ .

The judgment or final order shall be appealable to the appropriate Regional Trial Court which shall decide the same on the basis of the entire record of the proceedings had in the court of origin and such memoranda and/or briefs as may be submitted by the parties or required by the Regional Trial Court. (7a)

Hence, the RTC violated the foregoing rule by ordering the conduct of the relocation and verification survey "in aid of its appellate jurisdiction" and by hearing the testimony of the surveyor, for its doing so was tantamount to its holding of a trial de novo. The violation was accented by the fact that the RTC ultimately decided the appeal based on the survey and the surveyor's testimony instead of the record of the proceedings had in the court of origin.

Secondly, on whether or not Civil Case No. 3309 was an ejectment case within the original and exclusive jurisdiction of the MTC, decisive are the allegations of the complaint. Based on the allegations in the complaint, the case should be dismissed without prejudice to the filing of a non-summary action like *accion reivindicatoria*. In our view, the CA correctly held that a boundary dispute must be resolved in the context of *accion reivindicatoria*, not an ejectment case. The boundary dispute is not about possession, but encroachment, that is, whether the property claimed by the defendant formed part of the plaintiff's property. A boundary dispute cannot be settled summarily under Rule 70 of the *Rules of Court*, the proceedings under which are limited to unlawful detainer and forcible entry. In unlawful detainer, the defendant unlawfully withholds the

possession of the premises upon the expiration or termination of his right to hold such possession under any contract, express or implied. The defendant's possession was lawful at the beginning, becoming unlawful only because of the expiration or termination of his right of possession. In forcible entry, the possession of the defendant is illegal from the very beginning, and the issue centers on which between the plaintiff and the defendant had the prior possession *de facto*.

Thirdly, the MTC dismissed the action because it did not have jurisdiction over the case. The dismissal was correct. It is fundamental that the allegations of the complaint and the character of the relief sought by the complaint determine the nature of the action and the court that has jurisdiction over the action. To be clear, unlawful detainer is an action filed by a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract, express or implied. To vest in the MTC the jurisdiction to effect the ejectment from the land of the respondents as the occupants in unlawful detainer, therefore, the complaint should embody such a statement of facts clearly showing the attributes of unlawful detainer. However, the allegations of the petitioners' complaint did not show that they had permitted or tolerated the occupation of the portion of their property by the respondents; or how the respondents' entry had been effected, or how and when the dispossession by the respondents had started. All that the petitioners alleged was the respondents' "illegal use and occupation" of the property. As such, the action was not unlawful detainer.

HERMINIA ACBANG, *Petitioner*, -versus- HON. JIMMY H.F. LUCZON, JR., PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 01, SECOND JUDICIAL REGION, TUGUEGARAO CITY, CAGAYAN, and SPOUSES MAXIMO LOPEZ and HEIDI L. LOPEZ, *Respondents*.

G.R. No. 164246, FIRST DIVISION, January 15, 2014, BERSAMIN, J.

To stay the immediate execution of the judgment in an ejectment case, the defendant must perfect an appeal, file a supersedeas bond, and periodically deposit the rentals becoming due during the pendency of the appeal. Otherwise, the writ of execution will issue upon motion of the plaintiff.

### **FACTS:**

Respondent Spouses Maximo and Heidi Lopez commenced an ejectment suit against the petitioner, her son Benjamin Acbang, Jr. and his wife Jean in the Municipal Trial Court of Alcala, Cagayan (Civil Case No. 64). The defendants did not file their answer. Thus, the MTC rendered its decision in favor of the Spouses Lopez. In the meantime, the Spouses Lopez moved for the execution of the decision pending appeal in the RTC, alleging that the defendants had not filed a supersedeas bond to stay the execution. The Acbangs opposed the motion for execution pending appeal, insisting that the failure of the Spouses Lopez to move for the execution in the MTC constituted a waiver of their right to the immediate execution; and that, therefore, there was nothing to stay, rendering the filing of the supersedeas bond unnecessary. Judge Luczon granted the motion for immediate execution.

The petitioner moved for reconsideration, stressing that the filing of the supersedeas bond was for the purpose of staying the execution; and that she as a defendant would not be placed in a position to stay the execution by filing a supersedeas bond unless she was first notified of the filing of the motion for immediate execution. The RTC denied the petitioner's motion for reconsideration.

The petitioner then brought the petition for prohibition submitting that Judge Luczon thereby committed grave error in granting the motion for immediate execution of the Spouses Lopez without first fixing the supersedeas bond as prayed for by the Acbangs. It appears that the RTC rendered its decision in Civil Case No. 6302 on July 30, 2004, finding that the petitioner had not received the summons, and that the sheriff's return did not show the steps taken by the server to insure the petitioner's receipt of the summons, like the tender of the summons to her; that the non-service of the summons on her resulted in the MTC not acquiring jurisdiction over her; and that the MTC's decision in Civil Case No. 64 dated January 14, 2004 was void as far as she was concerned.

### **ISSUE:**

Whether or not the spouses Lopez entitled to the immediate execution of the judgment. (YES)

### **RULING:**

Here, there was no indication of the date when the petitioner filed her notice of appeal. Her petition stated simply that she had filed a "timely notice of appeal which was given due course without the respondents filing a motion for execution in the Municipal Trial Court of Alcala, the court a quo." On the other hand, the Spouses Lopez filed in the RTC their motion for execution pending appeal on February 19, 2004.

A judgment in favor of the plaintiff in an ejectment suit is immediately executory, but the defendant, to stay its immediate execution, must: (1) perfect an appeal; (2) file a supersede s bond; and (3) periodically deposit the rentals becoming due during the pendency of the appeal. Although the petitioner correctly states that the Spouses Lopez should file a motion for execution pending appeal before the court may issue an order for the immediate execution of the judgment, the spouses Lopez are equally correct in pointing out that they were entitled to the immediate execution of the judgment in view of the Ac bangs failure to comply with all of the three abovementioned requisites for staying the immediate execution. The filing of the notice of appeal alone perfected the appeal but did not suffice to stay the immediate execution without the filing of the sufficient supersede s bond and the deposit of the accruing rentals.

The foregoing notwithstanding, the decision of the RTC favored the petitioner because it declared the judgment of the MTC void as far as she was concerned for lack of jurisdiction over her person. The RTC thus directed the MTC to cause the service of the summons on her and to conduct further proceedings without any delay. In effect, the supervening declaration of the nullity of the judgment being sought to be executed against her has rendered moot and academic the issue in this special

civil action as far as she was concerned.

# ATTY. HERMINIO HARRY L. ROQUE, JR., Petitioner -versus- ARMED FORCES OF THE PHILIPPINES (AFP) CHIEF OF STAFF, GEN. GREGORIO PIO CATAPANG, BRIG GEN. ARTHUR ANG, CAMP AGUINALDO CAMP COMMANDER, and LT. COL. HAROLD CABUNOC, AFP PUBLIC AFFAIRS OFFICE CHIEF, Respondents

G.R. No. 214986, SECOND DIVISION, February 15, 2017, LEONEN, J.

This Court will not freely infringe on the constitutional right to freedom of expression. It may interfere, on occasion, for the proper administration of justice. However, the power of contempt should be balanced with the right to freedom of expression, especially when it may have the effect of stifling comment on public matters. Freedom of expression must always be protected to the fullest extent possible.

### **FACTS:**

Jeffrey Laude was allegedly killed at a motel in Olongapo City by 19-year old US Marine Private Joseph Scott Pemberton. Police had not been able to obtain Pemberton's latent fingerprints and oral swabs, because he was confined by his superiors on a ship and placed under their custody. Pemberton was eventually transferred from his ship to a facility in the headquarters of the AFP. However, Philippine authorities maintained that until a case was filed against Pemberton, custody over him remained with the United States of America. News broke out that Pemberton had been flown into Camp Aguinaldo.

Respondents state that petitioner, with his clients, forced their way inside the premises of the Mutual Defense Board-Security Engagement Board and gained entry despite having been instructed by Military Police personnel not to enter the compound, and even though the gates were closed. As narrated by respondents, petitioner fomented disorder by inciting his clients to scale the perimeter fence, to see Pemberton. Respondents allege that the foregoing events are of public knowledge, having been subject of various national television, radio, internet, and print media publications.

Respondents filed a disbarment complaint against petitioner, before the Integrated Bar of the Philippines. On the same day, respondent Cabunoc called a conference at Camp Aguinaldo, and publicly announced that a disbarment complaint had been filed against petitioner. Respondent Cabunoc also distributed a press statement, which reads: *Press Statement: AFP files disbarment complaint against Atty. Harry Roque;* 

Petitioner alleges that this press statement was reported on, and generously quoted from, by media. Petitioner asserts that respondents' acts are contumacious violations of Section 18, Rule 139-B of the Rules of Court. Further, petitioner claims that respondents' acts put to question his professional and personal reputation. Respondents argue that the press statements are not among the contumacious acts prescribed under Section 3, Rule 71 of the Rules of Court. The subject of the

disbarment case pertains to a serious breach of security of a military zone. The statements were official statements made in the performance of a public function to address a public concern. The circumstances, which led to the filing of the disbarment complaint and the acts alleged therein were witnessed by the public and duly reported by the media. The filing of the disbarment case was not meant to malign petitioner as a lawyer but rather was a response to the events that transpired at Camp Aguinaldo. Respondents also claim the issue is a matter of public interest, which is a defense in contempt proceedings such as this. With the Laude Murder case being of public concern, petitioner has attained the status of a public figure, susceptible of public comment in connection with his actions on the case. In any case, respondents instituted the disbarment complaint against petitioner in good faith. They are laymen, and are not familiar with the confidentiality rule.

### **ISSUE:**

Whether or not there is contempt of court. (NO)

### **RULING:**

The power to punish for contempt should be invoked only to ensure or promote the proper administration of justice. Accordingly, when determining whether to declare as contumacious alleged violations of the confidentiality rule, we apply a restrictive interpretation.

Petitioner assails two acts as violating the confidentiality rule: *first*, respondents' supposed public threats of filing a disbarment case against him, and *second*, respondents' public statement that they had filed a disbarment complaint. Where there are yet no proceedings against a lawyer, there is nothing to keep private and confidential. Respondents' threats were made before November 4, 2014, and there was no proceeding to keep private. As for the Press Statement made on November 4, 2014, a close examination reveals that it does not divulge anything that merits punishment for contempt. The Press Statement declared only three (3) things: *first*, respondent AFP filed a disbarment complaint against petitioner; *second*, petitioner is a lawyer, and thus, must conduct himself according to the standards of the legal profession; and *third*, petitioner's "unlawful conduct" is prohibited by the Code of Professional Responsibility. As regards the disbarment, the Press Statement only said:

At about 2 p.m. today, the AFP has filed a verified disbarment complaint before the Integrated Bar of the Philippines (IBP) against Atty. Harry Roque for violation of the Code of Professional Responsibility.

The Press Statement's coverage of the disbarment complaint was a brief, unembellished report that a complaint had been filed. Such an announcement does not, in and of itself, violate the confidentiality rule, particularly considering that it did not discuss the disbarment complaint itself. In any case, the Press Statement does not divulge any acts or character traits on the part of petitioner that would damage his personal and professional reputation. Although the Press Statement mentioned that a disbarment complaint had been filed against petitioner, no particulars

were given about the content of the complaint or the actual charges filed.

Furthermore, prior to the filing of the complaint, petitioner even made his own public statement regarding respondents' possible filing of a disbarment complaint. Even before any case against him had been filed, media reported that petitioner tweeted publicly that he looked forward to answering the complaint before the APP. In the articles cited by petitioner as evidence of respondents' violation of the confidentiality rule, he, too, is quoted, saying "the case is a chance for him to 'clarify a lawyer's role in pushing victims' rights and sovereignty." It is unlikely that petitioner's reputation could be further damaged by a factual report that a complaint had actually been filed. Petitioner has made it even more public by filing the instant case against the entire Armed Forces of the Philippines, instead of targeting only the individuals who participated in the disclosure.

Even the events that led to the filing of the disbarment case transpired in front of media. As alleged by petitioner, the question of custody over Pemberton was the subject of public discussion. In relation to that issue, petitioner accompanied his clients when they demanded to see Pemberton, when they were refused, and when they forced themselves into Pemberton's detention facility, in a serious breach of security of a military zone.

Thus, this Court agrees with respondents, that they should not be faulted for releasing a subsequent press statement regarding the disbarment complaint they filed against petitioner. The statements were official statements made in the performance of respondents' official functions to address a matter of public concern. It was the publication of an institutional action in response to a serious breach of security. Respondents, in the exercise of their public functions, should not be punished for responding publicly to such public actions.

This Court will not freely infringe on the constitutional right to freedom of expression. It may interfere, on occasion, for the proper administration of justice. However, the power of contempt should be balanced with the right to freedom of expression, especially when it may have the effect of stifling comment on public matters. Freedom of expression must always be protected to the fullest extent possible.

The question in every case, according to Justice Holmes, is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that congress has a right to prevent. It is a question of proximity and degree (Schenck vs. U.S., supra).

The "dangerous tendency" rule, on the other hand, has been adopted in cases where extreme difficulty is confronted in determining where the freedom of expression ends and the right of courts to protect their independence begins. There must be a remedy to borderline cases and the basic principle of this rule lies in that the freedom of speech and of the press, as well as the right to petition for redress of grievance, while guaranteed by the constitution, are not absolute. They are

subject to restrictions and limitations, one of them being the protection of the courts against contempt (Gilbert vs. Minnesota, 254 U.S. 325.)

This rule may be epitomized as follows: If the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent. (Gitlow vs. New York, 268 U.S. 652.)

### P/SUPT. HANSEL M. MARANTAN, *Petitioner*, -versus- ATTY. JOSE MANUEL DIOKNO and MONIQUE CU-UNJIENG LA'O, *Respondents*.

G.R. No. 205956, THIRD DIVISION, February 12, 2014, MENDOZA, J.

The sub judice rule restricts comments and disclosures pertaining to the judicial proceedings in order to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of this rule may render one liable for indirect contempt under Sec. 3(d), Rule 71 of the Rules of Court.

### **FACTS:**

Petitioner P/Supt. Hansel M. Marantan is the respondent in G.R. No. 199462, a petition filed but already dismissed although the disposition is not yet final. Respondent Monique Cu-Unjieng La'O is one of the petitioners in the said case, while respondent Atty. Jose Manuel Diokno is her counsel therein. G.R. No. 199462 relates to a pending criminal case before the RTC of Pasig City, Branch 265, where Marantan and his co-accused are charged with homicide. The criminal cases involve an incident which transpired on November 7, 2005, where Anton Cu-Unjieng (son of respondent La'O), Francis Xavier Manzano, and Brian Anthony Dulay, were shot and killed by police officers in front of the AIC Gold Tower at Ortigas Center, which incident was captured by a television crew from UNTV 37. In the meantime, a shooting incident occurred in Barangay Lumutan, Municipality of Atimonan, Province of Quezon, where Marantan was the ground commander in a police-military team, which resulted in the death of 13 men. This encounter, according to Marantan, elicited much negative publicity for him.

Marantan alleges that, riding on the unpopularity of the Atimonan incident, La'O and her counsel, Atty. Diokno, and one Ernesto Manzano, organized and conducted a televised/radio broadcasted press conference. During the press conference, they maliciously made intemperate and unreasonable comments on the conduct of the Court in handling G.R. No. 199462, as well as contumacious comments on the merits of the criminal cases before the RTC, branding Marantan and his co-accused guilty of murder in the Ortigas incident. This interview was featured in "TV Patrol," an ABS-CBN news program.

Marantan submits that the respondents violated the sub judice rule, making them liable for indirect contempt under Section 3(d) of Rule 71 of the Rules of Court, for their contemptuous statements and improper conduct tending directly or indirectly to impede, obstruct or degrade the administration of justice. He argues that their pronouncements and malicious comments delved not only on the supposed inaction of the Court in resolving the petitions filed, but also on the merits of the criminal cases before the RTC and prematurely concluded that he and his co-accused are guilty of murder. It is Maranta's position that the press conference was organized by the respondents for the sole purpose of influencing the decision of the Court in the petition filed before it and the outcome of the criminal cases before the RTC by drawing an ostensible parallelism between the Ortigas incident and the Atimonan incident.

### **ISSUE:**

Whether or not the act constitutes indirect contempt. (NO)

### **RULING:**

The sub judice rule restricts comments and disclosures pertaining to the judicial proceedings in order to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of this rule may render one liable for indirect contempt under Sec. 3(d), Rule 71 of the Rules of Court.

The proceedings for punishment of indirect contempt are criminal in nature. This form of contempt is conduct that is directed against the dignity and authority of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. Intent is a necessary element in criminal contempt, and no one can be punished for a criminal contempt unless the evidence makes it clear that he intended to commit it.

For a comment to be considered as contempt of court "it must really appear" that such does impede, interfere with and embarrass the administration of justice. What is, thus, sought to be protected is the all-important duty of the court to administer justice in the decision of a pending case. The specific rationale for the sub judice rule is that courts, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies.

The "clear and present danger" rule may serve as an aid in determining the proper constitutional boundary between these two rights. The "clear and present danger" rule means that the evil consequence of the comment must be "extremely serious and the degree of imminence extremely high" before an utterance can be punished. There must exist a clear and present danger that the utterance will harm the administration of justice. Freedom of speech should not be impaired

through the exercise of the power of contempt of court unless there is no doubt that the utterances in question make a serious and imminent threat to the administration of justice. It must constitute an imminent, not merely a likely, threat. $^{11}$ 

The contemptuous statements made by the respondents allegedly relate to the merits of the case, particularly the guilt of petitioner, and the conduct of the Court as to its failure to decide G.R. No. 199462.

As to the merits, the comments seem to be what the respondents claim to be an expression of their opinion that their loved ones were murdered by Marantan. This is merely a reiteration of their position in G.R. No. 199462, which precisely calls the Court to upgrade the charges from homicide to murder. The Court detects no malice on the face of the said statements. The mere restatement of their argument in their petition cannot actually, or does not even tend to, influence the Court. As to the conduct of the Court, a review of the respondents' comments reveals that they were simply stating that it had not yet resolved their petition. There was no complaint, express or implied, that an inordinate amount of time had passed since the petition was filed without any action from the Court. There appears no attack or insult on the dignity of the Court either.

LORENZO SHIPPING CORPORATION, OCEANIC CONTAINER LINES, INC., SOLID SHIPPING LINES CORPORATION, SULPICIO LINES, INC., ET AL., Petitioners, -versus- DISTRIBUTION MANAGEMENT ASSOCIATION OF THE PHILIPPINES, LORENZO CINCO, AND CORA CURAY, Respondents.

G.R. No. 155849, FIRST DIVISION, August 31, 2011, BERSAMIN, J.

Proceedings for contempt are sui generis, in nature criminal, but may be resorted to in civil as well as criminal actions, and independently of any action. They are of two classes, the criminal or punitive, and the civil or remedial. A criminal contempt consists in conduct that is directed against the authority and dignity of a court or of a judge acting judicially, as in unlawfully assailing or discrediting the authority and dignity of the court or judge, or in doing a duly forbidden act. A civil contempt consists in the failure to do something ordered to be done by a court or judge in a civil case for the benefit of the opposing party therein. It is at times difficult to determine whether the proceedings are civil or criminal.

### **FACTS:**

MARINA issued a Letter-Resolution, advising respondent Distribution Management Association of the Philippines (DMAP) that a computation of the required freight rate adjustment by MARINA was no longer required for freight rates officially considered or declared deregulated in accordance with MARINA Memorandum Circular No. 153 (MC 153).

For clarity, MARINA issued MC 153 pursuant to Executive Order No. 213 (EO 213) entitled *Deregulating Domestic Shipping Rates*.

In order to challenge the constitutionality of EO 213, MC 153, and the Letter-Resolution dated June 4, 2001, DMAP commenced in the CA a special civil action for *certiorari* and prohibition (CA-G.R. SP No. 65463). However, the CA dismissed the petition for *certiorari* and prohibition and upheld the constitutionality of EO 213, MC 153, and the Letter-Resolution.

DMAP held a general membership meeting (GMM) on the occasion of which DMAP, acting through its co-respondents Lorenzo Cinco, its President, and Cora Curay, a consultant/adviser to Cinco, publicly circulated the *Sea Transport Update*. Thereupon, the petitioners brought this special civil action for contempt against the respondents, insisting that the publication of the *Sea Transport Update* constituted indirect contempt of court for patently, unjustly and baselessly insinuating that the petitioners were privy to some illegal act, and, worse, that the publication unfairly debased the Supreme Court by making "scurrilous, malicious, tasteless, and baseless innuendo" to the effect that the Supreme Court had allowed itself to be influenced by the petitioners as to lead the respondents to conclude that the "Supreme Court ruling issued in one month only, normal lead time is at least 3 to 6 months." They averred that the respondents' purpose, taken in the context of the entire publication, was to "defy the decision, for it was based on technicalities, and the Supreme Court was influenced!"

### **ISSUE:**

Whether or not the statements contained in the *Sea Transport Update* constitute or amount to indirect contempt of court. (NO)

### **RULING:**

Proceedings for contempt are *sui generis*, in nature criminal, but may be resorted to in civil as well as criminal actions, and independently of any action. They are of two classes, the criminal or punitive, and the civil or remedial. A *criminal contempt* consists in conduct that is directed against the authority and dignity of a court or of a judge acting judicially, as in unlawfully assailing or discrediting the authority and dignity of the court or judge, or in doing a duly forbidden act. A *civil contempt* consists in the failure to do something ordered to be done by a court or judge in a civil case for the benefit of the opposing party therein. It is at times difficult to determine whether the proceedings are civil or criminal. In general, the character of the contempt of whether it is criminal or civil is determined by the nature of the contempt involved, regardless of the cause in which the contempt arose, and by the relief sought or dominant purpose. The proceedings are to be regarded as criminal when the purpose is primarily punishment, and civil when the purpose is primarily compensatory or remedial. Where the dominant purpose is to enforce compliance with an order of a court for the benefit of a party in whose favor the order runs, the contempt is civil; where the dominant purpose is to vindicate the dignity and authority of the court, and to protect the interests of the general public, the contempt is criminal.

The petitioners did not sufficiently show how the respondents' publication of the *Sea Transport Update* constituted any of the acts punishable as indirect contempt of court under Section 3 of Rule 71, *supra*.

The petitioners' mere allegation, that "said publication unfairly debases the Supreme Court because of the scurrilous, malicious, tasteless, and baseless innuendo therein that the Court allowed itself to be influenced by the petitioners as concocted in the evil minds of the respondents thus leading said respondents to unjustly conclude: Supreme Court ruling issued in one month only, normal lead time is at least 3 to 6 months," was insufficient, without more, to sustain the charge of indirect contempt.

Nor do we consider contemptuous either the phrase contained in the *Sea Transport Update* stating: "The Motion for Reconsideration filed with the Supreme Court was denied based on technicalities and not on the legal issue DMAP presented", or the phrase in the Sea Transport Update reading "Supreme Court ruling issued in one month only, normal leadtime is at least 3 to 6 months." Contrary to the petitioners' urging that such phrases be considered as "scurrilous, malicious, tasteless and baseless innuendo" and as indicative that "the Court allowed itself to be influenced by the petitioners" or that "the point that respondents wanted to convey was crystal clear: `defy the decision, for it was based on technicalities, and the Supreme Court was influenced!", we find the phrases as not critical of the Court and how fast the resolutions in G.R. No. 152914 were issued, or as inciting DMAP's members to defy the resolutions. The unmistakable intent behind the phrases was to inform DMAP's members of the developments in the case, and on the taking of the next viable move of going back to MARINA on the issues, as the ruling of the Court of Appeals instructed.

The test for criticizing a judge's decision is, therefore, whether or not the criticism is *bona fide* or done in good faith, and does not spill over the walls of decency and propriety. Viewed through the prism of the test, the *Sea Transport Update* was not disrespectful, abusive, or slanderous, and did not spill over the walls of decency and propriety. Thereby, the respondents were *not guilty* of indirect contempt of court. In this regard, then, we need to remind that the power to punish for contempt of court is exercised on the preservative and not on the vindictive principle, and only occasionally should a court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail.

## MARIANO Y. SIY, in his personal capacity, as well as in his capacity as owner of PHILIPPINE AGRI TRADING CENTER, *Petitioners*, -versus- NATIONAL LABOR RELATIONS COMMISSION and ELENA EMBANG, *Respondent*.

G.R. No. 158971, THIRD DIVISION, August 25, 2005, CORONA, J.

While a lawyer's violation of his duties as an officer of the court may also constitute contempt, the grounds for holding a person in contempt and for holding him administratively liable for the violation of his lawyer's oath are distinct and separate from each other. They are specified in Rule 71 of the Rules of Court. A finding of contempt on the part of a lawyer does not preclude the imposition of disciplinary sanctions against him for his contravention of the ethics of the legal profession.

### **FACTS:**

This case originated from a complaint for illegal dismissal and non-payment of holiday pay and holiday premium pay filed by Embang against petitioner and Philippine Agri Trading Center. The labor arbiter ruled in favor of Embang. NLRC denied petitioner's appeal and affirmed the decision of the labor arbiter with modification. Petitioner elevated the case to the CA by way of a petition for *certiorari*. Finding the petition to be without merit, the appellate court dismissed the same.

In accordance with the rules of procedure of the NLRC, Embang's counsel filed a motion for the issuance of a writ of execution before the labor arbiter. Subsequently, Atty. Quevedo entered his appearance for the petitioner and filed a comment to the motion for writ of execution. He alleged that Embang rejected the various offers of reinstatement extended to her by petitioner; hence, she should be entitled to backwages only up to September 29, 2000, the date of the promulgation of the labor arbiter's decision. This was followed by a protracted exchange of pleadings and motions between the parties. Finding that his office was never informed by petitioner and Philippine Agri Trading Center of any intention on their part to reinstate Embang to her former position, the labor arbiter issued an order granting the motion and directing that a writ of execution be issued.

Atty. Quevedo refused to be deterred. He filed an appeal with the NLRC. He insisted that the labor arbiter committed grave abuse of discretion in failing to specify in his order that the backwages should be computed until September 29, 2000 only and that no backwages should accrue thereafter because of Embang's refusal to be reinstated. Embang's counsel moved to dismiss the appeal. He contended that the appeal was not perfected because petitioner and Philippine Agri Trading Center did not post the required cash or surety bond. Pending the resolution of the appeal, Embang filed the instant motion to cite Atty. Quevedo in contempt of court.

By way of comment, Atty. Quevedo maintains that he did not delay the execution of the decision but only sought the consideration of Embang's refusal to be reinstated in any writ of execution that may be issued. He claims that such refusal on Embang's part constituted a supervening event that justified the filing of an appeal — notwithstanding the finality of the decision. He also asserts that an appeal was the proper remedy to question the July 30, 2004 order of the labor arbiter.

#### **ISSUE:**

Whether or not Atty. Quevedo is liable for contempt of court. (YES)

### **RULING:**

Atty. Quevedo should be sanctioned for indirect contempt. Indirect contempt is committed by a person who commits the following acts, among others: disobedience or resistance to a lawful writ, process, order or judgment of a court; any abuse of or any unlawful interference with the processes

or proceedings of a court not constituting direct contempt; and any improper conduct tending, directly or indirectly, to impede, obstruct or degrade the administration of justice.

We denied with finality the petitioner's petition for review on *certiorari* almost two years ago. But the decision of the labor arbiter (affirmed with modification by the NLRC and upheld by the CA and this Court) remains unsatisfied up to now because of Atty. Quevedo's sly maneuvers on behalf of his client.

Once a case is decided with finality, the controversy is settled and the matter is laid to rest. The prevailing party is entitled to enjoy the fruits of his victory while the other party is obliged to respect the court's verdict and to comply with it. The reason for this is that litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Courts must guard against any scheme calculated to bring about that result and must frown upon any attempt to prolong the controversies. The only exceptions to the general rule are the correction of clerical errors, the so-called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire *after* the finality of the decision rendering its execution unjust and inequitable. This case does not fall under any of the recognized exceptions. Contrary to Atty. Quevedo's contention, there existed no supervening event that would have brought the case outside the ambit of the general rule on the immutability of final and executory decisions.

Supervening events refer to facts which transpire *after* judgment becomes final and executory or to new circumstances which develop *after* judgment acquires finality. The "refusal" of Embang to be reinstated happened, assuming it really happened, **before** the finality of our September 22, 2003 resolution, *i.e.*, before the decision of the labor arbiter as modified by the NLRC became final and executory. Atty. Quevedo's client was bound by the finality of our affirmance of the modified decision of the labor arbiter. He should not have tried, under the guise of a flimsy appeal to the NLRC, to reopen a case already decided with finality. Nor should he have raised anew matters previously considered and issues already laid to rest.

Atty. Quevedo's act of filing a baseless appeal with the NLRC was obviously intended to defeat the implementation of a final and executory decision. Elementary is the rule that an order granting a motion for a writ of execution is not appealable. Thus, Atty. Quevedo's deceptively "innocent" appeal constituted either a willful disregard or gross ignorance of basic rules of procedure resulting in the obstruction of justice. By his acts, Atty. Quevedo has tried to prevent Embang from enjoying the fruits of her hard earned legal victory. In effect, he has been tying the hands of justice and preventing it from taking its due course. His conduct has thwarted the due execution of a final and executory decision. By appealing an order which he knew to be unappealable, he abused court processes and hindered the dispensation of justice. His dilatory tactics were an affront to the dignity of the Court, clearly constituting indirect contempt.

We note that the ground cited in the motion to cite Atty. Quevedo in contempt of court was his violation of Canon 12 and Rule 12.04 of the Code of Professional Responsibility. While a lawyer's violation of his duties as an officer of the court may also constitute contempt, the grounds for holding a person in contempt and for holding him administratively liable for the violation of his lawyer's oath are distinct and separate from each other. They are specified in Rule 71 of the Rules of Court. A finding of contempt on the part of a lawyer does not preclude the imposition of disciplinary sanctions against him for his contravention of the ethics of the legal profession.

Moreover, it has been held that the imposition of a fine as a penalty in a contempt proceeding is not considered *res judicata* to a subsequent charge for unprofessional conduct. In the same manner, an attorney's conviction for contempt was not collaterally estopped by reason of a subsequent disbarment proceeding in which the court found in his favor on essentially the same facts leading to conviction. It has likewise been the rule that a notice to a lawyer to show cause why he should not be punished for contempt cannot be considered as a notice to show cause why he should not be suspended from the practice of law, considering that they have distinct objects and for each of them a different procedure is established. Contempt of court is governed by the procedures laid down under Rule 71 of the Rules of Court, whereas disciplinary actions in the practice of law are governed by Rules 138 and 139 thereof.

RIVULET AGRO-INDUSTRIAL CORPORATION, *Petitioner*, -versus- ANTHONY PARUNGAO, NARCISO B. NIETO, in their respective capacity as Undersecretaries of Legal Affairs and Field Operations of the Department of Agrarian Reform; FELIX SERVIDAD, in his capacity as Provincial Agrarian Reform Officer II and the Officer-in-Charge of the Department of Agrarian Reform Provincial Office of Negros Occidental; and JEFFERSON DESCALLAR, in his capacity as Police Chief Inspector of the PNP-Negros Occidental Police Provincial Office, *Respondents*.

G.R. No. 197507, SECOND DIVISION, January 14, 2013, PERLAS-BERNABE, J.

Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity, and signifies not only a willful disregard of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice. To be considered contemptuous, an act must be clearly contrary to or prohibited by the order of the court. Thus, a person cannot be punished for contempt for disobedience of an order of the Court, unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required.

### **FACTS:**

Petitioner Rivulet Agro-Industrial Corporation was the registered owner of Hacienda Bacan, a 157.2992-hectare agricultural land situated in Barangay Guintubhan, Isabela, Negros Occidental covered by TCT No. T-105742. Despite the sale in favor of Atty. Jose Miguel Arroyo in a tax

delinquency sale held on April 8, 1994, title to Hacienda Bacan remained in Rivulet's name.

The DAR commenced the administrative process to acquire the subject property under R.A. No. 6657 and sent Notices of Coverage to Atty. Arroyo. Rivulet through its duly authorized representative, Ignacio T. Arroyo, Jr. voluntarily offered for sale to the government the subject property for the amount of ₱45,689,760.00. A NOC was likewise served to Rivulet through Mr. Ignacio. During the pendency of the administrative process, the Sangguniang Bayan of Isabela, Negros Occidental enacted an ordinance reclassifying Hacienda Bacan from agricultural to agroindustrial.

With this development, the PARO sought the legal opinion of the DAR Policy, Planning and Legal Affairs Office on whether or not the CARP coverage may still proceed as well as the propriety of the NOC issued to Atty. Arroyo considering that the sale to him was not annotated on Rivulet's title. Undersecretary Nestor R. Acosta issued DAR Opinion No. 26, S. 2007 finding Atty. Arroyo to be the owner of the land and declaring Rivulet's VOS through Mr. Ignacio to be ineffectual. Atty. Arroyo caused the annotation of a Declaration of Trust on TCT No. T-105742, declaring that he purchased the subject property as mere trustee of Rivulet and claims no interest thereon.

Meantime, the PARO requested the Register of Deeds of Negros Occidental to issue title in the name of the Republic of the Philippines. However, the request was not processed because the Certifications of Deposit (CODs) were in the name of Rivulet while the title carried an annotation of Declaration of Trust in favor of Atty. Arroyo, hence, the need to correct the CODs. Eventually, Rivulet's TCT No. T-105742 was canceled and TCT No. T-281475 was issued in the name of the Republic. CLOA No. 00916859 over a portion of the subject property was likewise issued and subsequently approved by authority of then President Gloria Macapagal-Arroyo.

The Court issued a TRO in G.R. No. 193585 enjoining the Register of Deeds of Negros Occidental and the LRA Administrator and/or all persons acting upon their orders or in their place and stead from canceling TCT No. T-105742 in Rivulet's name; issuing a new certificate of title in the name of the Republic; and issuing and distributing CLOAs in favor of anyone during the pendency of the case. In a letter, the OSG advised Undersecretary Paruñgao that there appears no legal obstacle to the installation of farmer-beneficiaries in Hacienda Bacan. It opined that the TRO was directed only against the Register of Deeds of Negros Occidental and the LRA Administrator and that the installation of farmer-beneficiaries was not among the acts enjoined. Moreover, the CARP Law directs the DAR to proceed with the distribution of the acquired land to the farmer-beneficiaries upon the issuance of CLOAs in their favor. Accordingly, the farmer-beneficiaries were installed in the subject landholding with the assistance of the members of the PNP.

Rivulet claims that the act of respondents in installing farmer-beneficiaries in the subject landholding constitutes an open defiance and disobedience of the Court's December 15, 2010 TRO for which they should be cited for indirect contempt of court.

### **ISSUE:**

Whether or not the acts of respondents in installing farmer-beneficiaries constitutes indirect contempt. (NO)

### **RULING:**

Contempt of court is defined as a disobedience to the court by acting in opposition to its authority, justice, and dignity, and signifies not only a willful disregard of the court's order, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or, in some manner, to impede the due administration of justice. To be considered contemptuous, an act must be clearly contrary to or prohibited by the order of the court. Thus, a person cannot be punished for contempt for disobedience of an order of the Court, unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required.

In the present case, while the DAR was an intervenor in G.R. No. 193585, the December 15, 2010 TRO issued by the Court was only expressly directed against the LRA Administrator, the Register of Deeds of Negros Occidental and/or all persons acting upon their order or in their place and stead. Clearly, the DAR and its officials were not among those enjoined. Neither can they be considered agents of the LRA Administrator and the Register of Deeds of Negros Occidental. Moreover, the installation of farmer-beneficiaries was not among the acts specifically restrained, negating the claim that the performance thereof was a contumacious act.

It bears to stress that in G.R. No. 193585, the Court had already ruled that the issuance of title in the name of the Republic was a necessary part of the implementation of the government's Comprehensive Agrarian Reform Program. As such, it is the ministerial duty of the Register of Deeds to register the land in the name of the Republic after full payment has been made and no injunctive relief can be issued, except by the Court, pursuant to Section 55 of R.A. No. 6657, as amended by R.A. No. 9700. While the Court issued a TRO, records reveal that the acts sought to be enjoined had already been accomplished prior to its issuance, rendering the same of no practical purpose. Besides, the installation of farmer-beneficiaries on Hacienda Bacan was undertaken only after respondent Undersecretaries had sought the legal support and clearance of the OSG, notwithstanding that the first paragraph of Section 24 of R.A. No. 6657 as amended by R.A. No. 9700 provides that the award to beneficiaries, including their receipt of a duly registered emancipation patent or CLOA and their actual physical possession of the awarded land, shall be completed not more than one hundred eighty (180) days from the date of registration of the title in the name of the Republic.

Time and again, the Court has stressed that the power to punish for contempt should be exercised on the preservative, not on the vindictive principle, and only when necessary in the interest of justice. Under the foregoing circumstances, the Court finds no contumacious disobedience on the

part of respondents, particularly with respect to the TRO in G.R. No. 1935R5.

### MA. CONCEPCION L. REGALADO, Petitioner, -versus- ANTONIO S. GO, Respondent.

G.R. No. 167988, THIRD DIVISION, February 6, 2007, CHICO-NAZARIO, J.

In cases where the court did not initiate the contempt charge, the Rules prescribe that a verified petition which has complied with the requirements of initiatory pleadings as outlined in the heretofore quoted provision of second paragraph, Section 4, Rule 71 of the Rules of Court, must be filed.

### **FACTS:**

The present controversy stemmed from the complaint of illegal dismissal filed before the Labor Arbiter by herein respondent Antonio S. Go against Eurotech Hair Systems, Inc., and its President Lutz Kunack and General Manager Jose E. Barin. In a Decision, the Labor Arbiter ruled that respondent Go was illegally dismissed from employment. On appeal to the National Labor Relations Commission (NLRC), EHSI, Kunack and Barin employed the legal services of De Borja Medialdea Bello Guevarra and Gerodias Law Offices where herein petitioner Atty. Regalado worked as an associate. NLRC rendered a Decision reversing the Labor Arbiter's decision and declaring that respondent Go's separation from employment was legal for it was attended by a just cause and was validly effected by EHSI, Kunack and Barin. Court of Appeals promulgated a Decision setting aside the ruling of the NLRC and reinstating the decision of the Labor Arbiter adjudging EHSI, Kunack and Barin guilty of illegal dismissal. The appellate court thus ordered EHSI, Kunack and Barin to pay respondent Go full backwages, separation pay, moral and exemplary damages.

After the promulgation of the CA decision but prior to the receipt of the parties of their respective copies, the parties decided to settle the case and signed a Release Waiver and Quitclaim with the approval of the Labor Arbiter. In view of the amicable settlement, the Labor Arbiter, on the same day, issued an Order dismissing the illegal dismissal case with prejudice. The execution of the compromise agreement was attended by the counsel for EHSI, Kunack and Barin, petitioner Atty. Regalado, and respondent Go, but in the absence and without the knowledge of respondent Go's lawyer.

After the receipt of a copy of the Court of Appeals decision, respondent Go, through counsel, filed, on 29 July 2003, a Manifestation with Omnibus Motion seeking to nullify the Release Waiver and Quitclaim on the ground of fraud, mistake or undue influence. In the same motion, respondent Go, through counsel, moved that petitioner Atty. Regalado be made to explain her unethical conduct for directly negotiating with respondent Go without the knowledge of his counsel. It is likewise prayed for EHSI, Kunack and Barin's counsel, particularly Atty. Ma. Concepcion Regalado, to be required to explain why no disciplinary action should be taken against them for their unethical conduct of directly negotiating with respondent Go without the presence of undersigned counsel, and for submitting the Release, Waiver and Quitclaim before Labor Arbiter Waldo Emerson Gan knowing

fully well that the controversy between respondent Go and EHSI is still pending before this Honorable Court.

For her part, petitioner Atty. Regalado submitted a Compliance and explained that she never took part in the negotiation for the amicable settlement of the illegal dismissal case with respondent Go which led to the execution of a compromise agreement by the parties on 16 July 2003. EHSI, Kunack and Barin, through a Mr. Ragay, a former EHSI employee and a close ally of respondent Go, were the ones who negotiated the settlement.

Further, petitioner Atty. Regalado maintained that she never met personally respondent Go, not until 16 July 2003, when the latter appeared before the Labor Arbiter for the execution of the Release Waiver and Quitclaim. Petitioner Atty. Regalado claimed that she was in fact apprehensive to release the money to respondent Go because the latter cannot present any valid identification card to prove his identity. It was only upon the assurance of Labor Arbiter Gan that Antonio S. Go and the person representing himself as such were one and the same, that the execution of the agreement was consummated.

# **ISSUE:**

Whether or not the proceedings conducted in convicting petitioner is done in accordance with law. (NO)

# **RULING:**

The power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and consequently, to the due administration of justice. Thus, contempt proceedings has a dual function: (1) vindication of public interest by punishment of contemptuous conduct; and (2) coercion to compel the contemnor to do what the law requires him to uphold the power of the Court, and also to secure the rights of the parties to a suit awarded by the Court.

In our jurisdiction, the Rules of Court penalizes two types of contempt, namely direct contempt and indirect contempt. Direct contempt is committed in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, and includes disrespect toward the court, offensive personalities toward others, or refusal to be sworn or answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so. On the other hand, Section 3, Rule 71 of the Rules of Court enumerates particular acts which constitute indirect contempt. Indirect contempt proceedings may be initiated only in two ways: (1) *motu proprio* by the court; or (2) through a verified petition and upon compliance with the requirements for initiatory pleadings. Procedural requirements as outlined must be complied with.

There is no doubt that the complained acts of Atty. Regalado would fall under paragraphs (a) and (d) of Section 3, Rule 71, as in fact, she was adjudged guilty of indirect contempt. In the instant case, the indirect contempt proceedings was initiated by respondent Go through a Manifestation with Omnibus Motion. It was based on the aforesaid Motion that the appellate court issued a, requiring petitioner Atty. Regalado to show cause why she should not be cited for contempt.

Clearly, respondent Go's Manifestation with Omnibus Motion was the catalyst which set everything in motion and led to the eventual conviction of Atty. Regalado. It was respondent Go who brought to the attention of the appellate court the alleged misbehavior committed by petitioner Atty. Regalado. Without such positive act on the part of respondent Go, no indirect contempt charge could have been initiated at all. We cannot, therefore, argue that the Court of Appeals on its own initiated the indirect contempt charge without contradicting the factual findings made by the very same court which rendered the questioned resolution.

In cases where the court did not initiate the contempt charge, the Rules prescribe that a verified petition which has complied with the requirements of initiatory pleadings as outlined in the heretofore quoted provision of second paragraph, Section 4, Rule 71 of the Rules of Court, must be filed.

The manner upon which the case at bar was commenced is clearly in contravention with the categorical mandate of the Rules. Respondent Go filed a Manifestation with Omnibus Motion, which was unverified and without any supporting particulars and documents. Such procedural flaw notwithstanding, the appellate court granted the motion and directed petitioner Atty. Regalado to show cause why she should not be cited for contempt. Upon petitioner Atty. Regalado's compliance with the appellate court's directive, the tribunal proceeded in adjudging her guilty of indirect contempt and imposing a penalty of fine, completely ignoring the procedural infirmities in the commencement of the indirect contempt action.

As explained by Justice Florenz Regalado, the filing of a verified petition that has complied with the requirements for the filing of initiatory pleading, is mandatory, and thus states:

1. This new provision clarifies with a regularity norm the proper procedure for commencing contempt proceedings. While such proceeding has been classified as special civil action under the former Rules, the heterogenous practice tolerated by the courts, has been for any party to file a motion without paying any docket or lawful fees therefore and without complying with the requirements for initiatory pleadings, which is now required in the second paragraph of this amended section.

X X X X

Henceforth, except for indirect contempt proceedings initiated motu propio by order

of or a formal charge by the offended court, all charges **shall be commenced by a verified petition** with full compliance with the requirements therefore and shall be disposed in accordance with the second paragraph of this section.

Time and again we rule that the use of the word "shall" underscores the mandatory character of the Rule. The term "shall" is a word of command, and one which has always or which must be given a compulsory meaning, and it is generally imperative or mandatory.

# MEMORIA G. ENCINAS and ADOLFO A. BALBOA, *Petitioners*, -versus- NATIONAL BOOKSTORE, INC., *Respondent*.

G.R. No. 162704, SECOND DIVISION, July 28, 2005, Tinga, J.

Direct contempt, or contempt in facie curiae, is misbehavior committed in the presence of or so near a court or judge so as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, and can be punished summarily without hearing. It is conduct directed against or assailing the authority and dignity of the court or a judge, or in the doing of a forbidden act.

# **FACTS:**

In the *Resolution*, the Court required Atty. Ricardo T. Calimag, counsel for Roberto P. Madrigal-Acopiado and his attorney-in-fact Datu Mohaldin R.B. Sulaiman, to show cause why he should not be cited for contempt of court for his participation in the submission of a fake judicial decision to this Court.

Counsel explains that he filed the *Motion for Intervention with Leave of Court* and *Petition-In-Intervention* (to which was appended a copy of the fake decision) on behalf of his clients to seek the truth in order that justice will prevail. He reasons that he was misled in the appreciation of the evidence (referring to the forged judicial decision) made available to him at the time of submission of the *Motion* and *Petition-In-Intervention*. At the same time, he asserts that there was an honest mistake in the appreciation of the documents and that there was never any malice intended in the submission of the questioned documents. In fact, he even welcomes the referral of the incident to the National Bureau of Investigation so as to identify the mastermind of the production of the fake decision.

#### **ISSUE:**

Whether or not the act of Atty. Calimag constitutes direct contempt of court. (YES)

#### **RULING:**

Direct contempt, or contempt *in facie curiae*, is misbehavior committed in the presence of or so near a court or judge so as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, and can be punished summarily without hearing. It is conduct directed against or assailing the authority and dignity of the court or a judge, or in the doing of a forbidden act.

As had been earlier observed, it is insulting to assert a claim before this Supreme Court based on an obvious and incompetent forgery and conceived by one with so primitive a sense of what normative standards would pass judicial muster. We cannot accept counsel's declarations of good faith and honest mistake since, as a member of the Bar and an officer of the court, he is presumed to know better. He is required to thoroughly prepare himself on the law and facts of his case and the evidence he will adduce. The minimum he could have done was to verify with the appropriate authorities the documents upon which his clients based their claims, and not have relied on his clients' assertions.

# RE: LETTER DATED 21 FEBRUARY 2005 OF ATTY. NOEL S. SORREDA.

A.M. No. 05-3-04-SC, EN BANC, July 22, 2005, GARCIA, J.

Unfounded accusations or allegations or words tending to embarrass the court or to bring it into disrepute have no place in a pleading. Their employment serves no useful purpose. On the contrary, they constitute direct contempt of court or contempt in facie curiae and a violation of the lawyer's oath and a transgression of the Code of Professional Responsibility.

# **FACTS:**

In a letter to the Chief Justice, with copies thereof furnished all the Associate Justices of the Court and other government entities, RTC judges and counsels listed thereunder, Atty. Noel S. Sorreda, who identified himself as "member, Philippine Bar", expressed his frustrations over the unfavorable outcome of and the manner by which the Court resolved the cases filed by him. In said letter, Atty. Sorreda recounted the alleged circumstances surrounding the dismissal of the very first case he filed with the Court, *UDK-12854*, entitled *Ramon Sollegue vs. Court of Appeals, et al.* Frustrated with the adverse ruling thereon, Atty. Sorreda had previously written a letter addressed to the Chief Justice, copy furnished all the Associate Justices of this Court, the Court of Appeals and the Office of the Solicitor General, denouncing the Court, as follows:

Mr. Chief Justice, I believe the manner the Court comported itself in the aforesaid case is totally execrable and atrocious, entirely unworthy of the majesty and office of the highest tribunal of the land. It is the action not of men of reason or those who believe in the rule of law, but rather of bullies and tyrants from whom "might is right." I say, shame on the High Court, for shoving down a hapless suitor's throat a ruling which, from all appearances, it could not justify.

Reacting to the above, the Court, in an *en banc* Resolution required Atty. Sorreda to show cause why he should not be properly disciplined "for degrading, insulting and dishonoring the Supreme Court by using vile, offensive, intemperate and contemptuous derogatory language against it".

In response to the "show cause" order, Atty. Sorreda addressed two (2) more letters to the Court arguing for the propriety of his action and practically lecturing the Court on his concepts of Legal and Judicial Ethics and Constitutional Law. In an *en banc* Resolution, the Court again required Atty. Sorreda to show cause why he should not be disciplinarily dealt with or held in contempt for maliciously attacking the Court and its Justices.

By way of compliance to the second "show cause" order, Atty Sorreda, in his letter again with copies thereof furnished the Justices, judges and lawyers thereunder listed, states that he "does not see the need to say any more" because the "cause" has "already been shown as clear as day" in his earlier letter, adding that "The need is for the High Tribunal to act on the instant matter swiftly and

decisively". While admitting "the great seriousness of the statements and imputations I have leveled against the Court", he dared the Court whether "it is capable of a judgment that will be upheld by the 'Supreme Judge'".

#### **ISSUE:**

Whether or not the act of Atty. Sorreda constitute direct contempt of court. (YES)

# **RULING:**

Atty. Sorreda mockingly stated that the Court does not know how to count when it dismissed the *Sollegue case* on ground of failure to file the petition therein within the reglementary period. For the enlightenment of the good counsel, the Court dismissed the petition in *Sollegue* not only for failure to have it filed within the period fixed in Sec. 4, Rule 65 but also for failure to submit the duplicate original or certified true copy of the questioned resolution of the Court of Appeals dated June 28, 1999 in accordance with Sec. 1, Rule 65 and Sec. 3, Rule 46, in relation to Sec. 2, Rule 56. In another case, *Ronilo Sorreda vs. CA*, Atty. Sorreda claimed that said case was dismissed on the mere ground of insufficient verification. Again, Atty. Sorreda must be reminded that the petition was dismissed not merely for defective verification but more so because the petition was evidently used as a substitute for a lost remedy of appeal. We see no need to belabor the grounds for the dismissal of the other cases enumerated by counsel, said grounds having been stated in the respective minute resolutions which were plain, clear, simply worded and understandable to everyone, even to those who do not have a formal education in law. Suffice it to say that the dismissal of those petitions was the result of a thorough deliberation among members of this Court.

Atty. Sorreda's imputation of manipulation in the assignment and raffle of cases is utterly baseless and at best a mere figment of his imagination.

Unfounded accusations or allegations or words tending to embarrass the court or to bring it into disrepute have no place in a pleading. Their employment serves no useful purpose. On the contrary, they constitute direct contempt of court or contempt in *facie curiae* and a violation of the lawyer's oath and a transgression of the Code of Professional Responsibility.

# FERDINAND A. CRUZ, *Petitioner*, -versus- JUDGE HENRICK F. GINGOYON,[Deceased] JUDGE JESUS B. MUPAS, ACTING PRESIDING JUDGE, REGIONAL TRIAL COURT BRANCH 117, PASAY CITY, *Respondent*.

G.R. No. 170404, FIRST DIVISION, September 28, 2011, DEL CASTILLO, J.

"Contemptuous statements made in pleadings filed with the court constitute direct contempt." "A pleading x x x containing derogatory, offensive or malicious statements submitted to the court or judge in which the proceedings are pending x x x has been held to be equivalent to `misbehavior committed in the presence of or so near a court or judge as to interrupt the proceedings before the same' within the meaning of Rule 71, Sec. 1 of the Rules of Court and, therefore, constitutes direct contempt."

#### **FACTS:**

This case stemmed from a Civil Complaint filed by petitioner against his neighbor, Benjamin Mina, Jr. for abatement of nuisance. In the said case, petitioner sought redress from the court to declare as a nuisance the "basketball goal" which was permanently attached to the second floor of Mina's residence but protrudes to the alley which serves as the public's only right of way. After trial, Judge Gingoyon, declared the basketball goal as a public nuisance but dismissed the case on the ground that petitioner lacked "*locus standi.*" In the same Decision, Judge Gingoyon also opined that: Plaintiffs must learn to accept the sad reality of the kind of place they live in. x x x Their place is bursting with people most of whom live in cramped tenements with no place to spare for recreation, to laze around or doing their daily household chores.

Thus, residents are forced by circumstance to invade the alleys. The alleys become the grounds where children run around and play, the venue where adults do all sorts of things to entertain them or pass the time, their wash area or even a place to cook food in. Take in a few ambulant vendors who display their wares in their choice spots in the alley and their customers that mill around them, and one can only behold chaos if not madness in these alleys. But for the residents of the places of this kind, they still find order in this madness and get out of this kind of life unscathed. It's because they all simply live and let live. Walking through the alleys daily, the residents of the area have become adept at [weaving] away from the playthings that children at play throw every which way, sidestepping from the path of children chasing each other, dodging and [ducking] from awnings or canopies or clotheslines full of dripping clothes that encroach [on] the alleys. Plaintiffs appear to be fastidious and delicate and they cannot be faulted for such a desirable trait. But they can only do so within their own abode. Once they step outside the doors of their home, as it were, they cannot foist their delicacy and fastidiousness upon their neighbors. They must accept their alleys as the jungle of people and the site of myriad of activities that it is. They must also learn to accept the people in their place as they are; they must live and let live. Unless they choose to live in a less blighted human settlement or better still move to an upscale residential area, their only remaining choice is for them to live in perpetual conflict with their neighbors all the days of their lives.

In his Motion for Reconsideration, he took exception to the advice given by Judge Gingoyon. In an Order, Judge Gingoyon set the motion for hearing and directed him to substantiate his serious charge or show cause on even date why he should not be punished for contempt. Petitioner, however, did not appear. Judge Gingoyon then *motu proprio* issued an Order in open court to give petitioner another 10 days to show cause. In his Compliance to the Show Cause Order, petitioner maintained that the alleged contumacious remarks he made have a leg to stand on for the same were based on the circumstances of the instant case. He even reiterated his insinuation that Judge Gingoyon communicated with Mina by posing the query: "...where then did this court gather an exact description of the alley and the myriad of [sic] activities that the inhabitants of interior Edang do in relation to the alley, when the defendant was held in default and absent plaintiff's evidence so exacting as the description made by this court in paragraphs 12 and 13 of his Decision dated October 21, 2005." Judge Gingoyon issued an Order finding petitioner guilty of direct contempt of court.

# **ISSUE:**

Whether or not the respondent court properly adjudged petitioner in direct contempt of court. (YES)

# **RULING:**

"Contemptuous statements made in pleadings filed with the court constitute direct contempt." "A pleading  $x \times x$  containing derogatory, offensive or malicious statements submitted to the court or judge in which the proceedings are pending  $x \times x$  has been held to be equivalent to `misbehavior committed in the presence of or so near a court or judge as to interrupt the proceedings before the same' within the meaning of Rule 71, Sec. 1 of the Rules of Court and, therefore, constitutes direct contempt."

The Motion for Reconsideration filed by petitioner with the respondent court contained a serious allegation that Judge Gingoyon has been communicating with the defendant off the record, which is considered as a grave offense. This allegation is unsubstantiated and totally bereft of factual basis. In fact, when asked to adduce proof of the allegation, petitioner was not able to give any, but repeatedly argued that it is his "fair observation or conclusion."

Petitioner vehemently stood by his suspicion and repeated the allegation in the Compliance to the show-cause Order dated November 11, 2005 which he filed with the respondent court. The allegation was repeated despite Judge Gingoyon's outright denial of communicating with the defendant and explanation in the Orderdated November 25, 2005 that Judge Gingoyon was familiar with the area as he was detailed in Pasay City since 1991 as State Prosecutor, and thereafter, as judge since 1997.

Instead of showing proof of the alleged communication between Judge Gingoyon and the defendant off the record, petitioner stubbornly insisted that there is nothing contumacious about his allegation against the Judge as he was just giving his *fair* and *logical* observation. Clearly, petitioner openly accused Judge Gingoyon of wrongdoing without factual basis. Suffice it to say that this accusation is a dangerous one as it exposes Judge Gingoyon to severe reprimand and even removal from office.

On the other hand, a careful perusal of the description as provided by Judge Gingoyon in the Decision shows but a general description of what is normally seen and what normally happens in places such as Edang Street, to wit: " $x \times x$  place is bursting with people most of whom live in cramped tenements with no place to spare for recreation, to laze around or [do] their daily household chores  $x \times x$ . The alleys become the grounds where children run around and play, the venue where adults do all sorts of things to entertain [themselves] or pass the time, their wash area or even a place to cook food in  $x \times x$ . Ambulant vendors who display their wares in the alley and their customers that mill around

them;  $x \times x$  children chasing each other, dodging and [ducking] from awnings or canopies;  $x \times x$  clotheslines full of dripping clothes that encroach [on] the alleys  $x \times x \times x$ ."

The act of petitioner in openly accusing Judge Gingoyon of communicating with the defendant off the record, without factual basis, brings the court into disrepute. The accusation in the Motion for Reconsideration and the Compliance submitted by the petitioner to the respondent court is derogatory, offensive and malicious. The accusation taints the credibility and the dignity of the court and questions its impartiality. It is a direct affront to the integrity and authority of the court, subjecting it to loss of public respect and confidence, which ultimately affects the administration of justice.

Furthermore, assuming that the conclusion of petitioner is justified by the facts, it is still not a valid defense in cases of contempt. "Where the matter is abusive or insulting, evidence that the language used was justified by the facts is not admissible as a defense. Respect for the judicial office should always be observed and enforced."

# SUBIC BAY METROPOLITAN AUTHORITY, *Petitioner*, -versus- MERLINO E. RODRIGUEZ and WIRA INTERNATIONAL TRADING CORP., both represented herein by HILDA M. BACANI, as their authorized representative, *Respondents*.

G.R. No. 160270, SECOND DIVISION, April 23, 2010, CARPIO, J.

Contempt constitutes disobedience to the court by setting up an opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. There are two kinds of contempt punishable by law: direct contempt and indirect contempt. Direct contempt is committed when a person is guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so. Indirect contempt or constructive contempt is that which is committed out of the presence of the court.

# **FACTS:**

A cargo shipment described as "agricultural product" and valued at US\$6,000 arrived at the Port of Subic, Subic Bay Freeport Zone. On the basis of its declared value, the shipment was assessed customs duties and taxes totaling ₱57,101 which were paid by respondent WIRA, the shipment's consignee. Raval Manalas, Acting COO III of the Bureau of Customs, Port of Subic, issued a Memorandum addressed to the BOC Subic Port District Collector, stating that upon examination, the subject shipment was found to contain rice. The Memorandum further stated as follows: that the importer claimed there was a misshipment since it also had a pending order for rice; that the "warehousing entry" was amended to reflect the change in description from "agricultural product" to rice; that the shipment, as a warehoused cargo inside the freeport zone, was duty and tax free, and was not recommended for any imposition of penalty and surcharge; that the consumption entry was changed to reflect a shipment of rice; and that the consumption entry, together with supporting documents belatedly received by the importer, was submitted to the bank although not yet filed with the BOC.

Hilda Bacani (respondents' authorized representative) wrote BOC Subic Port District Collector Billy Bibit, claiming that she was the representative of Metro Star Rice Mill, the importer of the subject cargo. She stated that there was a "misshipment" of cargo which actually contained rice, and that Metro Star is an authorized importer of rice as provided in the permits issued by the NFA. Bacani requested that the "misshipment" be upgraded from "agricultural product" to a shipment of rice, and at the same time manifested willingness to pay the appropriate duties and taxes. The following day, the BOC issued Hold Order No. 14/C1/2001 1025-101, directing BOC Subic Port officers to (1) hold the delivery of the shipment, and (2) to cause its transfer to the security warehouse. Respondent WIRA, as the consignee of the shipment, paid the amount of ₱259,874 to the BOC representing additional duties and taxes for the upgraded shipment.

In accordance with the shipment upgrade, respondent WIRA paid a further amount of ₱206,212 as customs duties and taxes. Fertony G. Marcelo, Officer-in-Charge of the Cash Division of BOC Subic Port issued a certification/letter addressed to Mr. Augusto Canlas, General Manager of the Seaport Department. Despite the above certification/letter, petitioner SBMA, through Seaport Department General Manager Augusto Canlas, refused to allow the release of the rice shipment.

A complaint for Injunction and Damages with prayer for issuance of Writ of Preliminary Prohibitory and Mandatory Injunction and/or Temporary Restraining Order was filed by the plaintiff/petitioners Mernilo E. Rodriguez, doing business under the name and style "Metro Star Rice Mill," represented by Attorney-in-fact Hilda M. Bacani, and WIRA International Trading, Inc. likewise represented by Hilda M. Bacani as authorized representative, against SBMA and Augusto L. Canlas. An Order was issued by the Executive Judge of the RTC, where plaintiffs/petitioners' application for injunctive relief was granted. Copy of the complaint with summons together with aforesaid TRO was served by Sheriff Rabanes and Madarang upon the defendants/respondents on the same day. The following day, the same Sheriffs went back to defendants/respondents' office to determine whether or not the TRO issued by Branch 72 and served by them was followed. They were however, met by defendants/respondents Attys. Abella and Katalbas, in the office of defendant/respondent Canlas, who after much discussion, refused to honor the TRO alleging among others, that said Order was illegal and therefore, will not be followed by the defendants/respondents.

Plaintiffs/petitioners-movants filed in the instant case a verified indirect contempt charge alleging therein that because of the defiance exhibited by the defendants/respondents, specifically Augusto L. Canlas, Attys. Francisco A. Abella, Jr. and Rizal V. Katalbas. Jr., in not honoring the court's TRO, they prayed that said defendants/respondents, after due notice and hearing, be declared and adjudged guilty of indirect contempt committed against the court for having directly failed and refused to comply with the TRO and that they be punished with imprisonment and/or fine in accordance with Rule 71 of the 1997 Rules of Civil Procedure.

RTC issued an Order on the indirect contempt case, finding all of the defendants/respondents guilty of indirect contempt of court.

# **ISSUE:**

Whether or not the disobedience done by SBMA constitute contempt of court. (NO)

#### **RULING:**

Contempt constitutes disobedience to the court by setting up an opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders but such conduct as tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. There are two kinds of contempt punishable by law: direct contempt and indirect contempt. Direct contempt is committed when a person is guilty of misbehavior in the presence of or so near a court as to obstruct or interrupt the proceedings before the same, including disrespect toward the court, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so. Indirect contempt or constructive contempt is that which is committed out of the presence of the court.

When the TRO issued by the RTC was served upon the SBMA officers on 13 June 2002, there was already an existing warrant of seizure and detention (dated 22 May 2002) issued by the BOC against the subject rice shipment. Thus, as far as the SBMA officers were concerned, exclusive jurisdiction over the subject shipment remained with the BOC, and the RTC had no jurisdiction over cases involving said shipment. Consequently, the SBMA officers refused to comply with the TRO issued by the RTC.

Considering the foregoing circumstances, we believe that the SBMA officers may be considered to have acted in good faith when they refused to follow the TRO issued by the RTC. The SBMA officers' refusal to follow the court order was not contumacious but due to the honest belief that jurisdiction over the subject shipment remained with the BOC because of the existing warrant of seizure and detention against said shipment. Accordingly, these SBMA officers should not be held accountable for their acts which were done in good faith and not without legal basis. Thus, we hold that the RTC Order dated 21 November 2002 which found the SBMA officers guilty of indirect contempt for not complying with the RTC's TRO should be invalidated.

Finally, the RTC stated in its Order dated 27 November 2002 that based on the records, "there is a *pending case with the Bureau of Customs* District XIII, Port of Subic, Olongapo City, identified and docketed as *Seizure Identification No. 2002-10* and involving the same 2,000 bags of imported rice that is also the subject matter of the case herein. The existence and pendency of said case before the Bureau of Customs have in fact been admitted by the parties."

The RTC then proceeded to order the suspension of court proceedings, and directed the BOC Subic Port Chief of the Law Division and Deputy Collector for Administration, Atty. Titus Sangil, to resolve the seizure case and submit to the RTC its resolution within fifteen (15) days from receipt of the court order.

We find the issuance of the RTC Order dated 27 November 2002 improper. The pendency of the BOC seizure proceedings which was made known to the RTC through petitioner's consolidated motion to dismiss should have prompted said court to dismiss the case before it. As previously discussed, the BOC has exclusive original jurisdiction over seizure cases under Section 602 of the Tariff and Customs Code. The rule that the RTC must defer to the exclusive original jurisdiction of the BOC in cases involving seizure and forfeiture of goods is absolute. Thus, the RTC had no jurisdiction to issue its Order dated 27 November 2002.

RIZAL COMMERCIAL BANKING CORPORATION, *Petitioner* -versus- FEDERICO A. SERRA, SPOUSES EDUARDO and HENEDINA ANDUEZA, ATTY. LEOMAR R. LANUZA, MR. JO VITO· C.

# SORIANO, ATTY. EDWIN L. RANA, ATTY. PARIS G. REAL, ATTY. PRUDENCIO B. DENSING, JR., HON. JUDGE MAXIMINO R. ABLES, and ATTY. ERWIN S. OLIVA, Respondents

G.R. No. 216124, SECOND DIVISION, July 19, 2017, CARPIO, J.

Contempt of court has been defined as a willful disregard or disobedience of a public authority. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court.

# **FACTS:**

RCBC filed a motion for execution before RTC-Makati. RCBC sought to execute the RTC-Makati's Order which directed respondent Federico A. Serra to sell to RCBC a parcel of land in Masbate covered by OCT No. 0-232 on which the Masbate Business Center of RCBC is located. During the pendency of civil case, Serra mortgaged the subject property to respondent Spouses Eduardo M. Andueza and Henedina V. Andueza. In an Order, the RTC-Makati denied RCBC's motion for execution for lack of basis. The RTC-Makati found that it had been almost 18 years after the 5 January 1989 Order had become final and executory that RCBC filed the motion for execution. Neither did RCBC file an action to revive judgment within ten years from the date the Order became final.

RCBC filed a petition for review with this Court assailing the RTC-Makati's Orders. In its petition, RCBC prayed for the issuance of a TRO to prevent any attempt to remove it from the subject property, since Serra and Atty. Gina Besa-Serra had already caused the service of a notice to vacate and demand for the payment of accrued back rentals. The Court issued a TRO, which restrained Serra and the RTC-Makati from implementing and enforcing the Orders and from performing any act to remove or threaten RCBC from the subject property. The Court issued a Decision granting the petition which decision became final and executory.

Meanwhile, Andueza filed a petition for extrajudicial foreclosure of real estate mortgage. Pursuant to the Decision in G.R. No. 203241, RCBC filed a new motion for execution before the RTC-Makati. Andueza, a non-party to the case, filed an opposition to the motion for execution with affirmative reliefs. RTC-Makati granted the motion for execution and dismissed the opposition of Andueza. The RTC-Makati held that the real estate mortgage is inferior *to* RCBC's right since the mortgage was constituted when Serra no longer had ownership and free disposal of the subject property. Accordingly, the RTC-Makati ordered the issuance of a writ of execution.

RCBC filed a petition for injunction before the RTC-Masbate to enjoin the extrajudicial foreclosure sale and public auction of the subject property. Respondent Judge Maximina R. Ables as Executive Judge of the RTC Masbate, issued a 72-hour TRO on 25 June 2014. The public auction sale of the subject property proceeded on 24 September 2014, with Andueza being the highest bidder. A Certificate of Sale was issued by Soriano, noted by Atty. Lanuza and approved by Judge Ables. The certificate of sale showed that the subject property was sold to Andueza.

In an Order, the RTC-Makati granted RCBC's motion to divest Serra of his title. The RTC-Makati also granted RCBC's prayer to have the Registry of Deeds for Masbate cancel Entry No. 2011000513, representing the mortgage of the subject property. Spouses Andueza pleaded that the RTC-Makati vacate its 26 September 2014 Order. Spouses Andueza claimed that the RTC-Makati erred in

cancelling the real estate mortgage without the trial court conducting any full-blown hearing. They also alleged that they were not parties in Civil Case No. 10054; thus, they are not bound by whatever decision or order the trial court issued in the case. RCBC opposed the motion.

Andueza filed before the RTC-Masbate an ex-parte motion for issuance of writ of possession, which was granted by Judge Ables in an Order. On 29 January 2015, respondent Atty. Rana, Clerk of Court of RTC-Masbate, Branch 47 and Assistant Provincial Sheriff of RTC-Masbate, issued a writ of possession, directing the provincial sheriff to place Andueza in possession of the subject property, and to eject all persons claiming rights under Serra. On the same day, Atty. Rana issued a Notice to Vacate, directed against Serra and RCBC, and all persons claiming any right under Serra. The Notice to Vacate was served on RCBC on 30 January 2015. The Notice to Vacate directed RCBC to "vacate the subject property and to peaceably turn-over its possession in favor of the mortgagee within five (5) working days from receipt hereof." The Notice to Vacate also stated that RCBC will be forcibly evicted from the subject property should it refuse to vacate.

RCBC filed the present petition for indirect contempt with prayer for a TRO to enjoin respondents from enforcing the Notice to Vacate and the Writ of Possession issued by RTC-Masbate, and to enjoin the respondent Register of Deeds from annotating on OCT No. 0-232 the Notice to Vacate and Writ of Possession. RCBC pleaded that respondents be declared guilty of indirect contempt for disregarding the Court's decisions in G.R. Nos. 103338, 182478, 182664, and 203241, as well as the permanent restraining order in G.R. No. 203241.

On 11 February 2015, the Court issued a TRO, enjoining respondents, the RTC-Masbate, the Register of Deeds of Masbate City, their agents, representatives, and all other persons acting on their behalf from (1) enforcing or causing the enforcement of the Notice to Vacate and the Writ of Possession, and (2) annotating on OCT No. 0-232 the Notice to Vacate and Writ of Possession.

In its petition for indirect contempt, RCBC argues that Serra is liable for indirect contempt of court for refusing to obey the Court's restraining order and Decision in G.R. No. 203241, the RTC-Makati's 5 January 1989 Order, and for colluding with Spouses Andueza for the illegal mortgage and foreclosure of the subject property.

# **ISSUE:**

Whether or not respondents are liable for indirect contempt. (YES)

#### **RULING:**

In Castillejos Consumers Association, Inc. v. Dominguez, the Court defined contempt of court, as follows:

Contempt of court has been defined as a willful disregard or disobedience of a public authority. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court.

There are two (2) kinds of contempt of court, namely: direct and indirect. Indirect contempt or constructive contempt is that which is committed out of the presence of the court. A person who is guilty of disobedience or of resistance to a lawful order of a court or who commits any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice may be punished for indirect contempt.

RCBC alleges that respondents are guilty of indirect contempt for disregarding this Court's final and executory decisions in G.R. Nos. 103338, 182478, 182664, and 203241, which essentially upheld RCBC's superior right over the subject property.

In G.R. No. 103338, which became final and executory on 15 April 1994, the Court found that "the contract of 'LEASE WITH OPTION TO BUY' between [Serra] and [RCBC] is valid, effective and enforceable, the price being certain and that there was consideration distinct from the price to support the option given to the lessee."

In G.R. Nos. 182478 and 182664, the Court issued separate Resolutions dated 30 June 2008 and 22 October 2008, which became final and executory on 27 August 2008 and 3 March 2009, respectively, finding neither reversible error nor grave abuse of discretion on the part of the Court of Appeals which held that Serra's donation of the subject property to Ablao was simulated and was done solely to evade Serra's obligation of selling the subject property to RCBC. Consequently, the deed of donation was null and void. In its Resolution of 3 December 2012 in G.R. No. 203241, the Court issued a TRO. In its Decision of 10 July 2013 in G.R. No. 203241, the Court directed the RTC-Makati to issue the writ of execution in Civil Case No. 10054 and made the TRO permanent.

As a party in G.R. No. 203241, Serra cannot feign ignorance of the Court's decision and restraining order in that case. The TRO was issued on 3 December 2012 while the decision was promulgated on 10 July 2013. By virtue of the TRO, which was made permanent, Serra was enjoined to perform any act to remove RCBC from the subject property. Yet, by defaulting on his loan obligation with Andueza, and Andueza's foreclosure of the real estate mortgage, Serra in effect allowed the removal of RCBC from the subject property. Serra's conduct tended to impede the administration of justice by effectively allowing RCBC to be removed from the premises of the subject property, in contravention of the clear directive in the decision and restraining order in G.R. No. 203241. Therefore, Serra is guilty of indirect contempt and accordingly fined \$\mathbb{P}30,000.

Serra also claims that "he can no longer execute a Deed of Absolute Sale in favor of [RCBC] because the subject property was already foreclosed and sold in public auction in favor of Spouses Eduardo and Dina Andueza x x x." In other words, Serra alleges that a supervening event - the foreclosure sale in favor of Spouses Andueza - occurred precluding the execution of the Court's decision in G.R. No. 203241.

The Court is not convinced that a supervening event occurred which would effectively prevent the execution of the decision in G.R. No. 203241. While the foreclosure sale proceeded on 24 September 2014, after the finality of the decision in G.R. No. 203241, the real estate mortgage in favor of Spouses Andueza was executed on 21 September 2011 while G.R. No. 203241 was pending. Serra could not possibly be unaware that a foreclosure sale would likely transpire since he was the mortgagor who defaulted on his loan obligation. Clearly, Serra performed acts intended to defeat and circumvent the conclusive effects of the final decision in G.R. No. 203241. Serra defaulted on his loan obligation and did not lift a finger to prevent Andueza or any person for that matter from removing RCBC from the subject property.

The 5 January 1989 Order of the RTC-Makati, which directed Serra to sell to RCBC the subject property, became final and executory on 15 April 1994. Serra has delayed for 23 years the execution of this Order. As the Court observed in G.R. No. 203241, "Serra has continued to evade his obligation by raising issues of technicality." Clearly, Serra deserves to be sanctioned for such reprehensible conduct of delaying for 23 years the execution of the final and executory order of the RTC-Makati, as affirmed by this Court in G.R. No. 203241.

Despite being non-parties in G.R. No. 203241, Spouses Andueza have notice of the pendency of such action. On 14 February 2013, RCBC had the TRO issued by this Court annotated on OCT No. 0-232 under Entry No. 2013000087. Therefore, Spouses Andueza have actual knowledge of the Court's TRO in G.R. No. 203241 prior to their filing of the petition for extrajudicial foreclosure of the subject property on 13 August 2013. Further, the decision in G.R. No. 203241 was promulgated prior to the Spouses Andueza's initiation of foreclosure proceedings. Spouses Andueza cannot therefore invoke lack of knowledge of RCBC's interest over the subject property when they filed the petition for extrajudicial foreclosure. Hence, such knowledge should have prevented, or at the very least cautioned, the Spouses Andueza from proceeding with the foreclosure which had the effect of removing RCBC from the property, in contravention of the clear language of the Court in G.R. No. 203241. In other words, the Spouses Andueza's act of instituting the petition for extrajudicial foreclosure, which would ultimately result in removing RCBC from the subject property, obviously tended to impede the administration of justice and thus constitutes indirect contempt of court. Accordingly, the Spouses Andueza are likewise adjudged guilty of indirect contempt and fined \$\bar{2}30,000.

The other respondents, namely the counsels of the Spouses Andueza, merely acted to protect the interests of their clients over the subject property while the public respondents simply acted pursuant to their ministerial duties and responsibilities in foreclosure proceedings. These acts do not constitute indirect contempt of court absent any clear and convincing evidence that they willfully disobeyed the \_decision and restraining order in G.R. No. 203241 or committed any act which tended to impede the administration of justice.

# CAPITOL HILLS GOLF & COUNTRY CLUB, INC. and PABLO B. ROMAN, JR., *Petitioners*, -versus MANUEL O. SANCHEZ, *Respondent*.

G.R. No. 182738, THIRD DIVISION, February 24, 2014, PERALTA, J.

In contempt proceedings, the respondent must be given the right to defend himself or herself and have a day in court – a basic requirement of due process. This is especially so in indirect contempt proceedings, as the court cannot decide them summarily pursuant to the Rules of Court. As We have stated in Calimlim, in indirect contempt proceedings, the respondent must be given the opportunity to comment on the charge against him or her, and there must be a hearing, and the court must investigate the charge and consider the respondent's answer.

# **FACTS:**

Respondent Manuel O. Sanchez, a stockholder of petitioner Capitol Hills Golf & Country Club, Inc. filed a petition for the nullification of the annual meeting of stockholders of May 21, 2002 and the special meeting of stockholders of April 23, 2002. Petitioners, along with their co-defendants, filed an Answer with Counterclaims and, thereafter, a Motion for Preliminary Hearing of Defendants'

Affirmative Defenses which was denied. Respondent filed a Motion for Production and Inspection of Documents, which the court granted in an Order.

Petitioners filed a motion for reconsideration of the August 9, 2002 Order, which denied their motion for preliminary hearing. Subsequently, they filed a Supplement to Defendants' Motion for Reconsideration, attaching therewith an alleged certification issued by the National Printing Office to support their contention of lack of cause of action on the grounds, among others, that the SEC Memorandum Circular No. 5, Series of 1996, as amended, has not been duly published in accordance with law and jurisprudence. Pending resolution of the MR, petitioners filed a Motion for Deferment of Implementation of the September 10, 2002 Order. For his part, respondent filed an Omnibus Motion to immediately allow him to inspect and photocopy the documents and to compel petitioners to deposit with the court the documents subject of the September 10, 2002 Order.

On December 9, 2002, then Presiding Judge Bruselas issued an Order denying petitioners' MR of the Order and considered respondent's omnibus motion as a reiteration of his earlier motion for inspection and production of documents; thus, the immediate implementation of the September 10, 2002 Order was simultaneously ordered. When this Court settled petitioners' challenge to the Orders dated August 9, 2002 and December 9, 2002, respondent filed a Manifestation with Omnibus Motion for Clarification and to Resolve Plaintiff's Pending Motion for the Issuance of a Writ of Execution and to Set the Case for Pre-Trial Conference. Acting thereon, Judge Ramon Paul L. Hernando, issued the July 10, 2006 Order, which directed the immediate execution of the September 10, 2002 Order, and set the case for pre-trial.

During the January 11, 2007 inspection, the only document produced by the Acting Corporate Secretary, Atty. Antonio V. Meriz, and one of the staff, Malou Santos, was the Stock and Transfer Book of the Corporation. They alleged that they could not find from the corporate records the copies of the proxies submitted by the stockholders, including the tape recordings taken during the stockholders' meetings, and that they needed more time to locate and find the list of stockholders as of March 2002, which was in the bodega of the Corporation. This prompted respondent to file a Manifestation with Omnibus Motion praying that an order be issued in accordance with Section 3, Paragraphs (a) to (d) of Rule 29 of the Rules of Court, in relation to Section 4, Rule 3 of the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799.

The trial court issued a Resolution. Petitioners questioned the aforesaid Resolution via Petition for Certiorari. In resolving the petition, the CA ruled that there is no indication that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction. Anent the argument against the threatened imposition of sanction for contempt of court and the possible payment of a hefty fine, the CA opined that the case of Dee v. Securities and Exchange Commissioncited by petitioners is inapplicable, since the September 3, 2007 Resolution merely warned petitioners that they would be cited for contempt and be fined if they fail to comply with the court's directive. Moreover, it said that the penalty contained in the September 3, 2007 Resolution is in accord with Section 4, Rule 3 of the Interim Rules, in relation to Section 3, Rule 29 of the Rules.

# **ISSUE:**

Whether or not the act constitute indirect contempt of court. (NO)

#### **RULING:**

A person guilty of disobedience of or resistance to a lawful order of a courtor commits any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justicemay be punished for indirect contempt. In particular, Section 4, Rule 3 of the Interim Rules states that, in addition to a possible treatment of a party as non-suited or as in default, the sanctions prescribed in the Rules for failure to avail of, or refusal to comply with, the modes of discovery shall apply. Under Section 3, Rule 29 of the Rules, if a party or an officer or managing agent of a party refuses to obey an order to produce any document or other things for inspection, copying, or photographing or to permit it to be done, the court may make such orders as are just. The enumeration of options given to the court under Section 3, Rule 29 of the Rules is not exclusive, as shown by the phrase "among others."

If adjudged guilty of indirect contempt, the respondent who committed it against a Regional Trial Court or a court of equivalent or higher rank may be punished with a fine not exceeding thirty thousand pesos, or imprisonment not exceeding six (6) months, or both. In this case, the threatened sanction of possibly ordering petitioners to solidarily pay a fine of ₱10,000.00 for every day of delay in complying with the September 10, 2002 Order is well within the allowable range of penalty.

As far as the proceedings for indirect contempt is concerned, the case of Baculi v. Judge Belen is instructive:

x x x Under the Rules of Court, there are two ways of initiating indirect contempt proceedings: (1) motu proprio by the court; or (2) by a verified petition.

In the Matter of the Contempt Orders against Lt. Gen. Jose M. Calimlim and Atty. Domingo A. Doctor, Jr. (Calimlim) clarified the procedure prescribed for indirect contempt proceedings. We held in that case:

In contempt proceedings, the prescribed procedure must be followed. Sections 3 and 4, Rule 71 of the Rules of Court provide the procedure to be followed in case of indirect contempt. First, there must be an order requiring the respondent to show cause why he should not be cited for contempt. Second, the respondent must be given the opportunity to comment on the charge against him. Third, there must be a hearing and the court must investigate the charge and consider respondent's answer. Finally, only if found guilty will respondent be punished accordingly. (Citations omitted.)

As to the second mode of initiating indirect contempt proceedings, that is, through a verified petition, the rule is already settled in Regalado v. Go:

In cases where the court did not initiate the contempt charge, the Rules prescribe that a verified petition which has complied with the requirements of initiatory pleadings as outlined in the heretofore quoted provision of second paragraph, Section 4, Rule 71 of the Rules of Court, must be filed.

The Rules itself is explicit on this point:

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and

decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision. (Emphasis added.)

Thus, where there is a verified petition to cite someone in contempt of court, courts have the duty to ensure that all the requirements for filing initiatory pleadings have been complied with. It behooves them too to docket the petition, and to hear and decide it separately from the main case, unless the presiding judge orders the consolidation of the contempt proceedings and the main action.

But in indirect contempt proceedings initiated motu proprio by the court, the above rules, as clarified in Regalado, do not necessarily apply. First, since the court itself motu proprio initiates the proceedings, there can be no verified petition to speak of. Instead, the court has the duty to inform the respondent in writing, in accordance with his or her right to due process. This formal charge is done by the court in the form of an Order requiring the respondent to explain why he or she should not be cited in contempt of court.

Second, when the court issues motu proprio a show-cause order, the duty of the court (1) to docket and (2) to hear and decide the case separately from the main case does not arise, much less to exercise the discretion to order the consolidation of the cases. There is no petition from any party to be docketed, heard and decided separately from the main case precisely because it is the show-cause order that initiated the proceedings.

What remains in any case, whether the proceedings are initiated by a verified petition or by the court motu proprio, is the duty of the court to ensure that the proceedings are conducted respecting the right to due process of the party being cited in contempt. In both modes of initiating indirect contempt proceedings, if the court deems that the answer to the contempt charge is satisfactory, the proceedings end. The court must conduct a hearing, and the court must consider the respondent's answer. Only if found guilty will the respondent be punished accordingly.

In contempt proceedings, the respondent must be given the right to defend himself or herself and have a day in court – a basic requirement of due process. This is especially so in indirect contempt proceedings, as the court cannot decide them summarily pursuant to the Rules of Court. As We have stated in Calimlim, in indirect contempt proceedings, the respondent must be given the opportunity to comment on the charge against him or her, and there must be a hearing, and the court must investigate the charge and consider the respondent's answer.

In this case, the proceedings for indirect contempt have not been initiated. To the Court's mind, the September 3, 2007 Resolution could be treated as a mere reiteration of the September 10, 2002 Order. It is not yet a "judgment or final order of a court in a case of indirect contempt" as contemplated under the Rules. The penalty mentioned therein only serves as a reminder to caution petitioners of the consequence of possible non-observance of the long-overdue order to produce and make available for inspection and photocopying of the requested records/documents. In case of another failure or refusal to comply with the directive, the court or respondent could formally initiate the indirect contempt proceedings pursuant to the mandatory requirements of the Rules and existing jurisprudence.

Even if We are to treat the September 3, 2007 Resolution as a "judgment or final order of a court in a case of indirect contempt," this would still not work to petitioners' advantage. Section 11, Rule 71

of the Rules of Court lays down the proper remedy from a judgment in indirect contempt proceedings. It states:

Sec. 11. Review of judgment or final order; bond for stay.—The judgment or final order of a court in a case of indirect contempt may be appealed to the proper court as in criminal cases. But execution of the judgment or final order shall not be suspended until a bond is filed by the person adjudged in contempt, in an amount fixed by the court from which the appeal is taken, conditioned that if the appeal be decided against him he will abide by and perform the judgment or final order.

The recourse provided for in the above-mentioned provision is clear enough: the person adjudged in indirect contempt must file an appeal under Rule 41 (Appeal from the Regional Trial Courts) and post a bond for its suspension pendente lite. Obviously, these were not done in this case. Instead, petitioners filed a petition for certiorari under Rule 65 of the Rules and did not post the required bond, effectively making the September 3, 2007 Resolution final and executory.

FEDERICO S. ROBOSA, ROLANDO E. PANDY, NOEL D. ROXAS, ALEXANDER ANGELES, VERONICA GUTIERREZ, FERNANDO EMBAT, and NANETTE H. PINTO, *Petitioners*, -versus NATIONAL LABOR RELATIONS COMMISSION (First Division), CHEMO-TECHNISCHE MANUFACTURING, INC. and its responsible officials led by FRANKLIN R. DE LUZURIAGA, and PROCTER & GAMBLE PHILIPPINES, INC., *Respondents*.

G.R. No. 176085, SECOND DIVISION, February 8, 2012, BRION, J.

Under Article 218 of the Labor Code, the NLRC (and the labor arbiters) may hold any offending party in contempt, directly or indirectly, and impose appropriate penalties in accordance with law. The penalty for direct contempt consists of either imprisonment or fine, the degree or amount depends on whether the contempt is against the Commission or the labor arbiter. The Labor Code, however, requires the labor arbiter or the Commission to deal with indirect contempt in the manner prescribed under Rule 71 of the Rules of Court.

#### **FACTS:**

Federico S. Robosa, Rolando E. Pandy, Noel D. Roxas, Alexander Angeles, Veronica Gutierrez, Fernando Embat and Nanette H. Pinto were rank-and-file employees of respondent Chemo-Technische Manufacturing, Inc., the manufacturer and distributor of "Wella" products. They were officers and members of the CTMI Employees Union-DFA.

CTMI issued a memorandum announcing that effective that day: (1) all sales territories were demobilized; (2) all vehicles assigned to sales representatives should be returned to the company and would be sold; (3) sales representatives would continue to service their customers through public transportation and would be given transportation allowance; (4) deliveries of customers' orders would be undertaken by the warehouses; and (5) revolving funds for ex-truck selling held by sales representatives should be surrendered to the cashier or to the supervisor, and truck stocks should immediately be surrendered to the warehouse.

The union asked for the withdrawal and deferment of CTMI's directives, branding them as union busting acts constituting unfair labor practice. CTMI ignored the request. Instead, it issued a notice of termination of employment to the sales drivers, due to the abolition of the sales driver positions. The union and its affected members filed a complaint for illegal dismissal and unfair labor practice,

with a claim for damages, against CTMI, De Luzuriaga and other CTMI officers. The union also moved for the issuance of a writ of preliminary injunction and/or temporary restraining order.

The labor arbiter handling the case denied the union's motion for a stay order on the ground that the issues raised by the petitioners can best be ventilated during the trial on the merits of the case. This prompted the union to file with the NLRC, a petition for the issuance of a preliminary mandatory injunction and/or TRO. NLRC issued a TRO. It directed CTMI, De Luzuriaga and other company executives to (1) cease and desist from dismissing any member of the union and from implementing the July 23, 1991 memorandum terminating the services of the sales drivers, and to immediately reinstate them if the dismissals have been effected; (2) cease and desist from implementing the July 15, 1991 memorandum grounding the sales personnel; and (3) restore the status quo ante prior to the formation of the union and the conduct of the consent election.

Allegedly, the respondents did not comply with the NLRC's August 23, 1991 resolution. They instead moved to dissolve the TRO and opposed the union's petition for preliminary injunction. NLRC upgraded the TRO to a writ of preliminary injunction. The respondents moved for reconsideration. The union opposed the motion and urgently moved to cite the responsible CTMI officers in contempt of court. Meanwhile, the NLRC heard the contempt charge. It issued a resolution dismissing the charge. It ordered the labor arbiter to proceed hearing the main case on the merits. The petitioners moved for, but failed to secure, a reconsideration from the NLRC on the dismissal of the contempt charge. They then sought relief from the CA by way of a petition for certiorari under Rule 65.

#### **ISSUES:**

Whether or not the NLRC has contempt powers.

# **RULING:**

Under Article 218of the Labor Code, the NLRC (and the labor arbiters) may hold any offending party in contempt, directly or indirectly, and impose appropriate penalties in accordance with law. The penalty for direct contempt consists of either imprisonment or fine, the degree or amount depends on whether the contempt is against the Commission or the labor arbiter. The Labor Code, however, requires the labor arbiter or the Commission to deal with indirect contempt in the manner prescribed under Rule 71 of the Rules of Court.

Rule 71 of the Rules of Court does not require the labor arbiter or the NLRC to initiate indirect contempt proceedings before the trial court. This mode is to be observed only when there is no law granting them contempt powers. As is clear under Article 218(d) of the Labor Code, the labor arbiter or the Commission is empowered or has jurisdiction to hold the offending party or parties in direct or indirect contempt. The petitioners, therefore, have not improperly brought the indirect contempt charges against the respondents before the NLRC.

Section 11, Rule 71 of the Rules of Court states that the judgment or final order of a court in a case of indirect contempt may be appealed to the proper court as in a criminal case. This is not the point at issue, however, in this petition. It is rather the question of whether the dismissal of a contempt charge, as in the present case, is appealable. The CA held that the NLRC's dismissal of the contempt charges against the respondents amounts to an acquittal in a criminal case and is not subject to appeal.

In the earlier case of The Insurance Commissioner v. Globe Assurance Co., Inc.,<sup>30</sup> the Court dismissed the appeal from the ruling of the lower court denying a petition to punish the respondent therein from contempt for lack of evidence. The Court said in that case:

It is not the sole reason for dismissing this appeal. In the leading case of In re Mison, Jr. v. Subido, it was stressed by Justice J.B.L. Reyes as ponente, that the contempt proceeding far from being a civil action is "of a criminal nature and of summary character in which the court exercises but limited jurisdiction." It was then explicitly held: "Hence, as in criminal proceedings, an appeal would not lie from the order of dismissal of, or an exoneration from, a charge of contempt of court."

Did the NLRC commit grave abuse of discretion in dismissing the contempt charges against the respondents? An act of a court or tribunal may only be considered as committed in grave abuse of discretion when it was performed in a capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or personal hostility.

The petitioners insist that the respondents violated the NLRC directives, especially the status quo ante order, for their failure to reinstate the dismissed petitioners and to pay them their benefits. In light of the facts of the case as drawn above, we cannot see how the status quo ante or the employer-employee situation before the formation of the union and the conduct of the consent election can be maintained. As the NLRC explained, CTMI closed its manufacturing and marketing operations after the termination of its licensing agreement with WELLA AG of Germany. In fact, the closure resulted in the termination of CTMI's remaining employees on January 31, 1992, aside from the sales drivers who were earlier dismissed but reinstated in the payroll, in compliance with the NLRC injunction. The petitioners' termination of employment, as well as all of their money claims, was the subject of the illegal dismissal and unfair labor practice complaint before the labor arbiter. The latter was ordered by the NLRC on October 31, 2000 to proceed hearing the case. The NLRC thus subsumed all other issues into the main illegal dismissal and unfair labor practice case pending with the labor arbiter.

We find no grave abuse of discretion in the assailed NLRC ruling. It rightly avoided delving into issues which would clearly be in excess of its jurisdiction for they are issues involving the merits of the case which are by law within the original and exclusive jurisdiction of the labor arbiter. To be sure, whether payroll reinstatement of some of the petitioners is proper; whether the resignation of some of them was compelled by dire economic necessity; whether the petitioners are entitled to their money claims; and whether quitclaims are contrary to law or public policy are issues that should be heard by the labor arbiter in the first instance. The NLRC can inquire into them only on appeal after the merits of the case shall have been adjudicated by the labor arbiter.

The NLRC correctly dismissed the contempt charges against the respondents. The CA likewise committed no grave abuse of discretion in not disturbing the NLRC resolution.

LAND BANK OF THE PHILIPPINES, petitioner, -versus- SEVERINO LISTANA, SR., respondent. G.R. No. 152611, FIRST DIVISION, August 5, 2003, YNARES-SANTIAGO, J.

**FACTS:** 

Respondent Severino Listana is the owner of a parcel of land. He voluntarily offered to sell the said land to the government, through the DAR, under Section 20 of R.A. 6657. The DAR valued the property at P5,871,689.03, which was however rejected by the respondent. Hence, the DARAB of Sorsogon commenced summary administrative proceedings to determine the just compensation of the land.

DARAB rendered a Decision setting aside the prior valuation made by the LBP and setting up a new valuation in the amount of P10,956,963.25. Thereafter, a Writ of Execution was issued by the PARAD directing the manager of Land Bank to pay the respondent the aforesaid amount as just compensation in the manner provided by law.

Respondent filed a Motion for Contempt with the PARAD, alleging that petitioner Land Bank failed to comply with the Writ of Execution issued on June 18, 1999. He argued that such failure of the petitioner to comply with the writ of execution constitutes contempt of the DARAB. PARAD issued an Order granting the Motion for Contempt.

#### **ISSUE:**

Whether or not the PARAD did not acquire jurisdiction over the contempt proceedings.

# **RULING:**

Rule XVIII of the 2003 DARAB Rules reads, in pertinent part:

Section 2. *Indirect Contempt.* – The Board or any of its members or its Adjudicator may also cite and punish any person for indirect contempt on any of the grounds and in the manner prescribed under Rule 71 of the Revised Rules of Court.

In this connection, Rule 71, Section 4 of the 1997 Rules of Civil Procedure, which deals with the commencement of indirect contempt proceedings, provides:

Sec. 4. *How proceedings commenced.* — Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

Therefore, there are only two ways a person can be charged with indirect contempt, namely, (1) through a verified petition; and (2) by order or formal charge initiated by the court *motu proprio*. In the case at bar, neither of these modes was adopted in charging Mr. Lorayes with indirect contempt.

More specifically, Rule 71, Section 12 of the 1997 Rules of Civil Procedure, referring to indirect contempt against quasi-judicial entities, provides:

Sec. 12. Contempt against quasi-judicial entities. — Unless otherwise provided by law, this Rule shall apply to contempt committed against persons, entities, bodies or agencies exercising quasi-judicial functions, or shall have suppletory effect to such rules as they may have adopted pursuant to authority granted to them by law to punish for contempt. The *Regional Trial Court* of the place wherein the contempt has been committed shall have jurisdiction over such charges as may be filed therefore. (emphasis supplied)

The foregoing amended provision puts to rest once and for all the questions regarding the applicability of these rules to quasi-judicial bodies, to wit:

1. This new section was necessitated by the holdings that the former Rule 71 applied only to superior and inferior courts and did not comprehend contempt committed against administrative or quasi-judicial officials or bodies, unless said contempt is clearly considered and expressly defined as contempt of court, as is done in the second paragraph of Sec. 580, Revised Administrative Code. The provision referred to contemplates the situation where a person, without lawful excuse, fails to appear, make oath, give testimony or produce documents when required to do so by the official or body exercising such powers. For such violation, said person shall be subject to discipline, as in the case of contempt of court, upon application of the official or body with the Regional Trial Court for the corresponding sanctions. (emphasis in the original)

Evidently, quasi-judicial agencies that have the power to cite persons for indirect contempt pursuant to Rule 71 of the Rules of Court can only do so by initiating them in the proper Regional Trial Court. It is not within their jurisdiction and competence to decide the indirect contempt cases. These matters are still within the province of the Regional Trial Courts. In the present case, the indirect contempt charge was filed, not with the Regional Trial Court, but with the PARAD, and it was the PARAD that cited Mr. Lorayes with indirect contempt.

Hence, the contempt proceedings initiated through an unverified "Motion for Contempt" filed by the respondent with the PARAD were invalid for the following reasons: *First*, the Rules of Court clearly require the filing of a verified petition with the Regional Trial Court, which was not complied with in this case. The charge was not initiated by the PARAD *motu proprio;* rather, it was by a motion filed by respondent. *Second*, neither the PARAD nor the DARAB have jurisdiction to decide the contempt charge filed by the respondent. The issuance of a warrant of arrest was beyond the power of the PARAD and the DARAB. Consequently, all the proceedings that stemmed from respondent's "Motion for Contempt," specifically the Orders of the PARAD dated August 20, 2000 and January 3, 2001 for the arrest of Alex A. Lorayes, are null and void.

