REMEDIAL LAW

UCPB GENERAL INSURANCE CO., INC. *v.* PASCUAL LINER, INC.

G.R. NO. 242328, 26 APRIL 2021, *THIRD DIVISION*, (LOPEZ, *J.*)

DOCTRINE OF THE CASE

(1) *Timely objection made by a party against the evidence presented by the other party is significant since the Rules mandates that objections to evidence must be made as soon as the grounds therefor become reasonably apparent. In the case of testimonial evidence, the objection must be made when the objectionable question is asked or after the answer is given if the objectionable features become apparent only by reason of such answer, otherwise, the objection is waived and such evidence will form part of the records of the case as competent and complete evidence and all parties are thus amenable to any favorable or unfavorable effects resulting from the evidence. In the case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made. When a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived. This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time.*

Poring over the pleadings submitted in support of the arguments raised by the parties, the Court found that no timely objection was made by Pascual Liner on the admissibility of the Traffic Accident Report.

(2) *The doctrine of res ipsa loquitor is an exception to the rule that hearsay evidence is devoid of probative value. This is because the doctrine of res ipsa loquitor establishes a rule on negligence, whether the evidence is subjected to cross-examination or not. It is a rule that can stand on its own independently of the character of the evidence presented as hearsay.*

The elements of res ipsa loquitur are: (1) the accident is of such character as to warrant an inference that it would not have happened except for the defendant's negligence; (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured.

In the instant case, the Traffic Accident Report of P03 Quila and the Traffic Accident Sketch showed that all three vehicles involved in the accident were traversing the same direction. Being at the rear end of the vehicles, it was Cadavido who had a clear view of the traffic direction and the presence of the vehicles in front of him. It was him who had the responsibility to observe the proper distance between vehicles and had the last opportunity to take the needed maneuvers to avoid a collision. As he failed to take the necessary precautions, it was Cadavido who set into motion the vehicles that caused the vehicular accident, hitting the insured vehicle in the rear and the latter vehicle in turn hitting the rear of the aluminum van that was in front. There was also no evidence adduced to show contributory negligence on the part of the insured vehicle.

FACTS

UCPB General Insurance Co., Inc. (UCPB) issued a Comprehensive Car Insurance Policy to its assured, Rommel B. Lojo (Lojo), over the latter's vehicle. The insured vehicle was cruising northbound along the South Luzon Expressway when it was bumped at the rear portion by Pascual Liner, Inc.'s bus driven by Leopoldo L. Cadavido *(Cadavido)*. As a result of the impact, the insured vehicle was pushed forward, causing it to hit a van.

The vehicular accident was investigated by the Traffic Management and Security Department of the Philippine National Construction Corporation Skyway Corporation, for which Solomon Tatlonghari (Tatlonghari) prepared a Traffic Accident Sketch. Thereafter, the matter was endorsed to the Philippine National Police, for which PO3 Joselito Quila (Quila) prepared a Traffic Accident Report.

Lojo filed a claim with UCPB under his insurance policy. The claim was found to be compensable by UCPB. In turn, UCPB paid Lojo the amount of P520,000.00, while Lojo issued a Release of Claim.

UCPB filed a complaint for sum of money against Pascual Liner Inc. (Pascual Liner) and Cadavido alleging that as a result of Lojo's receipt of the insurance indemnity it paid arising from the damage caused on the insured vehicle, it was subrogated to the rights of Lojo. It asked the court to order Pascual Liner and Cadavido to pay the amount of P350,000.00 equivalent to the amount it paid to Lojo minus the salvage value.

Upon Motion for Reconsideration, the Metropolitan Trial Court (MeTC) set aside its Decision and rendered an Order, this time finding Pascual Liner liable to pay P350,000.00, plus interest at the rate of 6% *per annum* and attorney's fees. In rendering such judgment, the MeTC applied the doctrine of *res ipsa loquitor,* which creates a presumption of negligence on the part of Cadavido who was in control of the bus, without which, the insured vehicle would not have been bumped. Such negligence gave rise to the obligation to pay the insured.

The Regional Trial Court (RTC) affirmed *in toto* the MeTC order. The Court of Appeals (CA) reversed the RTC decision and held that the Traffic Accident Sketch and the Traffic Accident Report were inadmissible in evidence as they failed to comply with the requisites of Entries in Official Records as an exception to the Hearsay Rule.

It found that since neither the police officer who prepared the report nor the traffic enforcer who prepared the sketch gave a testimony in support thereof, these documents were not exempted from the Hearsay Rule. It opined that the vehicular incident was investigated by the Traffic Management and Security Department of the PNCC Skyway Corporation, which prepared a Traffic Accident Sketch. The incident was only endorsed to the PNP, which in turn prepared a Traffic Accident Report. Thus, the matters indicated in the Traffic Accident Report were not personally known to the investigating officer. Rather, it was the PNCC traffic enforcer, Tatlonghari, who had personal knowledge of the facts stated in the Traffic Accident Report. Yet, no affidavit of his testimony was submitted before the MeTC.

ISSUES

(1) Is the Traffic Accident Report admissible even if PO3Quila did not have personal knowledge of the contents thereof?

(2) Does the Traffic Accident Report have probative value?

RULING

(1) **YES.** While hearsay evidence is generally considered inadmissible in evidence, there are exceptions thereto. One of the exceptions is entries made in official records. Jurisprudence has laid down the requisites for this exception to apply as follows:

> (a) that the entry was made by a public officer, or by another person specially enjoined by law to do so;
> (b) that it was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and
> (c) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.

In the present case, the first and second requisites are undeniably present. The entries made in the Traffic Accident Report was made by a public officer, PO3 Quila, and done in the performance of his duties. The bone of contention, however, revolves around the presence of the third requisite.

UCPB's argument that it was actually PO3 Quila who investigated the accident and had personal knowledge of the contents he entered in the Traffic Accident Report is bereft of evidentiary support. As found by the CA, UCPB presented Christian S. Cruz, whose testimony merely proved the existence of the insurance policy on Lojo's vehicle, while Mary Jane Villamor merely showed the legal fees incurred by UCPB in connection with the case. Thus, none of the evidence presented by UCPB supports its argument.

Nevertheless, with respect to the absence of a timely objection on the issue of admissibility of the Traffic Accident Report, the same requires further examination. The SC took this occasion to harmonize its ruling in *Standard Insurance Co. Inc. vs. Cuaresma* as applied by the CA and the case of *Malayan Insurance Co., Inc. vs. Spouses Reyes* espoused by UCPB.

It is the absence of a timely objection that differentiates *Standard Insurance* on one hand and the case of *Malayan Insurance,* on the other hand. As the Court found in *Malayan Insurance*, the failure of the respondent therein to raise timely objection to the admissibility of the police report despite the absence of proof as to whether the police officer who prepared it had personal knowledge of the facts contained therein, resulted in the admissibility of the said report despite being hearsay evidence.

Timely objection made by a party against the evidence presented by the other party is significant since the Rules mandates that objections to evidence must be made as soon as the grounds therefore become reasonably apparent. In the case of testimonial evidence, the objection must be made when the objectionable question is asked or after the answer is given if the objectionable features become apparent only by reason of such answer, otherwise, the objection is waived and such evidence will form part of the records of the case as competent and complete evidence and all parties are thus amenable to any favorable or unfavorable effects resulting from the evidence.

In the case of documentary evidence, offer is made after all the witnesses of the party making the offer have testified, specifying the purpose for which the evidence is being offered. It is only at this time, and not at any other, that objection to the documentary evidence may be made. When a party failed to interpose a timely objection to evidence at the time they were offered in evidence, such objection shall be considered as waived. This is true even if by its nature the evidence is inadmissible and would have surely been rejected if it had been challenged at the proper time. Moreover, grounds for objection must be specified in any case. Grounds for objections not raised at the proper time shall be considered waived, even if the evidence was objected to on some other ground. Thus, even on appeal, the appellate court may not consider any other ground of objection, except those raised at the proper time.

Poring over the pleadings submitted in support of the arguments raised by the parties, the Court found that no timely objection was made by Pascual Liner on the admissibility of the Traffic Accident Report. An oversight committed by the CA in ruling the inadmissibility of the Traffic Accident Report lies in the characterization of the complaint filed by UCPB as one falling under the Rules on Summary Procedure. Had the claim of UCPB fallen within the coverage of the Rules on Summary Procedure at the time it was filed, it would only be on appeal when the issue of admissibility of evidence could be assailed by Pascual Liner. This is because the Rules on Summary Procedure does not provide rules on offer of evidence; rather, it requires the submission of position papers and affidavits of witnesses of the parties before a judgment is rendered. However, the amount sought to be recovered by UCPB was P350,000.00, which is above the threshold set by the prevailing Rules on Summary Procedure at the time of the filing of the complaint. The ordinary rules on offer and objection should, therefore, be applied,

and the issue of admissibility of the Traffic Accident Report as hearsay evidence should not have been entertained by the CA.

(2) **YES**. Hearsay evidence, whether objected to or not, cannot be given credence except in very unusual circumstances. One of the circumstances for which hearsay evidence must be given probative value is when it establishes proof that is independent of its character as hearsay. Under the superseded Rules, the standard for which hearsay evidence was appreciated is the opportunity to subject the person who has the actual personal knowledge of the facts being testified by a witness, to cross-examination. However, this no longer holds true when the evidence, despite its hearsay character, establishes a presumption or a fact which does not necessitate the conduct of cross-examination.

The doctrine of *res ipsa loquitor* is an exception to the rule that hearsay evidence is devoid of probative value. This is because the doctrine of *res ipsa loquitor* establishes a rule on negligence, whether the evidence is subjected to cross-examination or not. It is a rule that can stand on its own independently of the character of the evidence presented as hearsay. The doctrine was eloquently explained in the case of *Solidum vs. People*:

Res ipsa loquitur is literally translated as "the thing or the transaction speaks for itself." The doctrine *res ipsa loquitur* means that "where the thing which causes injury is shown to be under the management of the defendant, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of an explanation by the defendant, that the accident arose from want of care." xxx

As such, the applicability of the doctrine of *res ipsa loquitor* establishes a presumption of negligence based on the occurrence of the incident in itself. In cases involving vehicular accidents, it is sufficient that the accident itself be established, and once established through the admission of evidence, whether hearsay or not, the rule on *res ipsa loquitor* already starts to apply.

In the case of hearsay evidence seeking to prove negligence, which is not objected to, as in the instant case, the same becomes admissible in evidence because of the waiver by the other party as to its admissibility. With respect to its probative value, unlike other hearsay evidence, where the truth could not still be determined by the court despite its admissibility because of the issue of reliability

of the source of the information and the absence of opportunity on the part of the court to examine the truth of such hearsay evidence, hearsay evidence that seek to prove negligence can stand on their own despite their character as hearsay. This is because the doctrine of *res ipsa loquitor* establishes a rule on negligence, which pinpoints the person guilty of negligence based on a given set of facts. It springs from common knowledge by which liability can already be determined from the occurrence of the mishap or accident. As such, it fills in the gap that usually accompanies the appreciation of the probative value of a hearsay evidence that is not objected to. Once negligence is established, there is no need for the court to make further examination simply because the presumption of negligence is already provided by the rule of *res ipsa loquitor,* as the event, which is a vehicular accident in this case, already speaks for itself. Thus, while as a general rule, hearsay evidence does not have probative value whether it be objected to or not, an exception to this is a hearsay evidence that seeks to prove negligence under the doctrine of *res ipsa loquitor,* which carries probative weight when not objected to.

The elements of *res ipsa loquitur* are: (1) the accident is of such character as to warrant an inference that it would not have happened except for the defendant's negligence; (2) the accident must have been caused by an agency or instrumentality within the exclusive management or control of the person charged with the negligence complained of; and (3) the accident must not have been due to any voluntary action or contribution on the part of the person injured.

In the instant case, the Traffic Accident Report of P03 Quila and the Traffic Accident Sketch showed that all three vehicles involved in the accident were traversing the same direction. Being at the rear end of the vehicles, Cadavido had a clear view of the traffic direction and the presence of the vehicles in front of him. He had the responsibility to observe the proper distance between vehicles and had the last opportunity to take the needed maneuvers to avoid a collision. As he failed to take the necessary precautions, it was Cadavido who set into motion the vehicles that caused the vehicular accident, hitting the insured vehicle in the rear and the latter vehicle in turn hitting the rear of the aluminum van that was in front. There was also no evidence adduced to show contributory negligence on the part of the insured vehicle.

Cadavido's signature on the said sketch served as an admission of the location of the damage caused by the collision to the vehicles involved. It was also

an affirmation that the Traffic Accident Sketch was able to accurately reflect the respective positions of the vehicles involved in the accident.

The rule is when an employee causes damage due to their own negligence while performing their own duties, there arises a presumption that their employer is negligent. This presumption can be rebutted only by proof of observance by the employer of the diligence of a good father of a family in the selection and supervision of its employees. In this case, Pascual Liner did not adduce proof to show that it observed the required diligence of a good father of a family. Thus, it is liable for the negligence committed by its employee.

VICENTE J. CAMPA, JR. AND PERFECTO M. PASCUA *V.* HON. EUGENE C. PARAS, PRESIDING JUDGE, RTC, BR. 58, MAKATI CITY AND PEOPLE OF THE PHILIPPINES

G.R. NO. 250504, 12 JULY 2021, *SECOND DIVISION* (LAZARO-JAVIER, *J.*)

DOCTRINE OF THE CASE

To aid the courts in determining whether there is inordinate delay our jurisdiction has adopted the Balancing Test as established in the case of Cagang v. Sandiganbayan which involves the assessment of four (4) criteria: first, the length of the delay; second, the reason for the delay; third, the defendant's assertion or non-assertion of his or her right; and fourth, the prejudice to the defendant because of the delay.

Applying the Balancing test, the Supreme Court found that there was inordinate delay. First, it is undisputed that the DOJ took about ten (10) years and five (5) months from filing of the complaint before it issued a Resolution dated 08 February 2019 finding probable cause to indict Campa, Jr. and Pascua. Second, the delay was purely imputable on the prosecution and Campa, Jr. and Pascua did not cause or contributed to the delay. Third, Campa, Jr. and Pascua had actually timely assailed the subject resolution through a Manifestation with Motion to Adopt and Entry of Appearance with Motion to Dismiss. Moreover, when the trial court denied their motions, Campa, Jr. and Pascua did not take much time on assailing the Orders of denial through the present Petition for Certiorari. Fourth, Campa, Jr. and Pascua were unduly prejudiced by the ten (10) – year delay because access to records and contact to witnesses could prove to be too difficult to effectively defend themselves in trial.

FACTS

On 12 September 2007, the Bangko Sentral ng Pilipinas (BSP) filed a complaint before the DOJ against the officers of Bank Wise, Inc. including Vicente Campa, Jr. (Campa, Jr.) and Perfecto Pascua (Pascua) and five others, for violation of Monetary Board Resolution No. 1460 in relation to Section 3, Republic Act No. 7653 (R.A. No. 7653). In the complaint, the BSP charged Campa, Jr., et al. with issuing unfunded manager's checks and failing to present documents to support the bank's disbursements in acquiring assets. After due proceedings, the case was deemed submitted for resolution on 29 August 2008.

More than ten (10) years thereafter, the Department of Justice (DOJ) found probable cause to hold Campa, Jr. and Pascua. for the offense charged as

indicated under Resolution dated 08 February 2019. The DOJ then filed before the Regional Trial Court (RTC) eleven (11) Informations against Campa, Jr. and five (5) against Pascua for violation of Monetary Board Resolution No. 1460 in relation to Section 3, R.A. No. 7653.

By filing Manifestation with Motion to Adopt and Entry of Appearance with Motion to Dismiss, Campa Jr. and Pascua sought the dismissal of the cases before the trial court on the ground of inordinate delay. According to them, the unreasonable length of the investigation before the DOJ violated their right to speedy disposition of their cases as enshrined under Section 16, Article III of the 1987 Constitution. The RTC ruled that the delay of ten (10) years and five (5) months was neither vexatious, capricious, nor oppressive and may be attributed to the complexity of the case, which involved voluminous documents. After their motion for reconsideration was denied, Campa, Jr. and Pascua filed the present petition for *certiorari* before the Supreme Court.

ISSUES

I. Did the delay in the preliminary investigation before the DOJ violate Campa, Jr. and Pascua's constitutional right to a speedy disposition of their cases?

II. Did the RTC act in grave abuse of discretion when it denied Campa, Jr. and Pascua's motion to dismiss and/or quash?

RULING

(1) **YES**. Campa, Jr. and Pascua's right to speedy disposition of case was violated. The right to speedy disposition of cases under Section 16, Art. III of the 1987 Constitution may be invoked against all judicial, quasi-judicial or administrative bodies, in civil, criminal, or administrative cases before them and inordinate delay in the resolution of cases warrant their dismissal. Delay is determined through the examination of the facts and circumstances surrounding each case, not through the mere mathematical reckoning. To aid the courts in determining whether there is inordinate delay our jurisdiction has adopted the Balancing Test as established in the case of *Cagang v. Sandiganbayan* which involves the assessment of four (4) criteria: first, the length of the delay; second, the reason for the delay; third, the defendant's assertion or non-assertion of his or her right; and fourth, the prejudice to the defendant because of the delay.

Applying the Balancing test, the Supreme Court found that there was inordinate delay. First, it is undisputed that the DOJ took about ten (10) years and five (5) months from filing of the complaint on 12 September 2007 before it issued a Resolution dated 08 February 2019 finding probable cause to indict Campa, Jr. and Pascua for violation of Monetary Board Resolution No. 1460 in relation to Section 3, R.A. No. 7653. Second, the delay was purely imputable on the prosecution and Campa, Jr. and Pascua did not cause or contributed to the delay. Third, Campa, Jr. and Pascua had actually timely assailed the subject resolution through a Manifestation with Motion to Adopt and Entry of Appearance with Motion to Dismiss. Moreover, when the trial court denied their motions, Campa, Jr. and Pascua did not take much time on assailing the Orders of denial through the present Petition for *Certiorari*. Fourth, Campa, Jr. and Pascua were unduly prejudiced by the ten (10) – year delay because access to records and contact to witnesses could prove to be too difficult to effectively defend themselves in trial.

(2) **YES.** Grave abuse of discretion is the capricious or whimsical exercise of judgment equivalent to lack or excess of jurisdiction and is required to be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.

In this case, Campa, Jr. and Pascua sufficiently established that the trial court acted in grave abuse of discretion. Procedural rules are clear on the periods for resolving cases and jurisprudence provides analogous situations on which the trial court could have based its rulings. In spite of these, the trial court denied Campa, Jr. and Pascua's motions without properly determining the existence of inordinate delay by applying the balance test in accordance with *Cagang v. Sandiganbayan*. If the trial court otherwise applied the same, it would have discovered for itself that inordinate delay had indeed attended the DOJ investigation and that Campa, Jr. and Pascua's right to speedy disposition of their cases had been violated.

PEDRITO M. NEPOMUCENO *v.* PRESIDENT RODRIGO R. DUTERTE, ET AL.

UDK NO. 16838, 11 MAY 2021, *EN BANC* (LOPEZ, *J.*)

DOCTRINE OF THE CASE

Section 3, Rule 65 of the Revised Rules of Court is the governing provision that provides the requirements for a party to avail the relief of a writ of mandamus. It provides that a writ of mandamus may be issue in either situations: first, "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"; second, "when any tribunal, corporation, board, officer or person . . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled."

The instant petition contemplates the first situation. Nepomuceno must raise the specific provision of law that enjoins Pres. Duterte et al. to perform a duty resulting from their office, but which they unlawfully neglected to perform. He must also show that the act sought to be compelled concerns the performance of a ministerial duty, not a discretionary one.

If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion [n]or judgment.

Nepomuceno failed to point out the existence of a ministerial duty, which the law compels the respondents to perform with regard to the conduct of trial and procurement of vaccines for COVID-19, as prayed for in the petition. During the time when the national government planned to procure and enter into contracts for the procurement of the Sinovac vaccine, there was no law in effect that required the mandatory conduct of clinical trial for the procurement of any COVID-19 vaccine, including that produced by Sinovac. Further, discretion was given to the government officials in addressing the spread of COVID-19, giving them enough leeway to decide the interventions they may see as proper.

FACTS

Pedrito Nepomuceno (Nepomuceno) filed a writ of mandamus petition against President Rodrigo Duterte, Health Secretary Francisco Duque, and Gen. Carlito Galvez, Jr. (Ret.) as Chief Implementer of the National Task Force against COVID-19 (Pres. Duterte *et al.),* seeking to compel Pres. Rodrigo *et al.* to follow

FDA rules on drug acquisition, procurement, and use, particularly on the issue of trials and procurement and use of COVID-19 vaccine (Sinovac Vaccine). Nepomuceno further requested the issuance of a Cease-and-Desist Order prohibiting the purchase and use of the Sinovac vaccine, as well as that it and any other COVID-19 vaccines undergo the necessary trials in the Philippines before being approved for emergency and/or routine use.

At the heart of the petition is the Nepomuceno's concern about the national government's proposal to buy Sinovac vaccinations for distribution and administration to the Filipino people in order to prevent the spread of infection caused by the COVID-19 virus, despite reports casting doubt on the Sinovac vaccine's efficiency and the lack of a comprehensive investigation on how it performs in combating COVID-19.

ISSUES

(1) Should Pres. Duterte, as the incumbent President of the Republic of the Philippines, be dropped as a respondent?

(2) Is there a ministerial duty on the part of the Pres. Duterte *et al.* that would warrant the issuance of a writ of mandamus?

(3) Is Nepomuceno's direct resort before the Supreme Court proper?

RULING

(1) **YES.** Pres. Duterte, as the incumbent President of the Republic of the Philippines, must be dropped as a respondent. Settled is the rule that the President of the Republic of the Philippines cannot be sued during his/her tenure. This immunity from suit applies to Pres. Duterte regardless of the nature of the suit filed against him for as long as he sits as the President of the Republic of the Philippines. Presidential immunity applies regardless of the nature of the suit brought against an incumbent President. As discussed in *Soliven v. Makasiar*, the rationale for the grant to the President of the privilege of immunity from suit is to assure the exercise of Presidential duties and functions free from any hindrance of distraction, considering that being the Chief Executive of the Government is a job that, aside from requiring all of the office-holder's time, also demands undivided attention.

In this case, the presidential immunity from suit shields President Duterte from facing any complaint or petition during his tenure. While he remains accountable to the people, the only proceeding for which he may be involved in litigation during his term of office is an impeachment proceeding, which is clearly not the present case. Hence, he is not a proper party to be sued in the instant petition.

(2) **NO.** Nepomuceno failed to point out any ministerial duty on the part of Pres Duterte *et al.* that would justify the issuance of a writ of mandamus.

Section 3, Rule 65 of the Revised Rules of Court is the governing provision that provides the requirements for a party to avail the relief of a writ of mandamus. It provides that a writ of mandamus may be issue in either situations: first, "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"; second, "when any tribunal, corporation, board, officer or person . . . unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled." The instant petition contemplates the first situation. Nepomuceno must raise the specific provision of law that enjoins the respondents to perform a duty resulting from their office, but which they unlawfully neglected to perform. He must also show that the act sought to be compelled concerns the performance of a ministerial duty, not a discretionary one.

"Discretion," means a power or right conferred upon them by law or acting officially, under certain circumstances, uncontrolled by the judgment or conscience of others. A purely ministerial act or duty in contradiction to a discretionary act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion [n]or judgment.

Nepomuceno failed to point out the existence of a ministerial duty, which the law compels the Pres. Duterte *et al.* to perform with regard to the conduct of trial and procurement of vaccines for COVID-19, as prayed for in the petition.

During the time when the national government planned to procure and enter into contracts for the procurement of the Sinovac vaccine, there was no law in effect that required the mandatory conduct of clinical trial for the procurement of any COVID-19 vaccine, including that produced by Sinovac. Further, discretion was given to the government officials in addressing the spread of COVID-19, giving them enough leeway to decide the interventions they may see as proper.

The grant of discretion in favor of the President with respect to the manner of performing his duty to address the pandemic brought about by the spread of COVID-19 is fortified by the enactment of Republic Act No. 114949 (R.A. 11494). The law paved the way for President Duterte to exercise powers that are necessary and proper to undertake and implement COVID-19 response and recovery interventions. When R.A. 11494 granted the President the authority "to exercise powers that are necessary and proper xxx," Congress devolved its power in favor of the President to give him full authority in terms of the direction to be taken by the government in its response to the spread of COVID-19. He was even given the authority to procure vaccines that did not undergo Phase IV trials as required by the Universal Health Care Law. The only standard that has to be taken, into account is that these vaccines are recommended and approved by the WHO and/or other internationally recognized health agencies.

To grant Nepomuceno the relief he is seeking would further render nugatory Executive Order No. 121 (E.O. 121) which was issued consistent with the authority granted by Congress to the President under R.A. 11494 The issuance of an Emergency Usage Authorization (EUA) precludes the need for the completion of the conduct of clinical trials. As long as the conditions are met, any vaccine given an EUA may now be administered in the Philippines.

The absence of a ministerial duty to conduct clinical trials and to observe the general procurement requirement of public bidding as prayed for in the petition, is further strengthened by the enactment of Republic Act No. 11525 (R.A. 11525), or the "COVID-19 Vaccination Program Act of 2021." Signed into law on February 26, 2021, R.A. 11525 exempted the procurement of COVID-19 vaccines, including its ancillary supplies and services, from the general procurement requirement of public bidding, explicitly allowing its negotiated procurement under emergency cases. R.A. 11525 also provides that only COVID-19 vaccines that are registered with the FDA as evidenced by a Certificate of Product Registration or which possess an Emergency Use Authorization (EUA)

can be validly procured. As the FDA had already issued an EUA in favor of the Sinovac vaccine on February 22, 2021 pursuant to the authority granted to it under E.O. 121 and with the allowance of its procurement through negotiated procurement, no valid ground exists to require the conduct of further clinical trials and public bidding.

It bears stressing that ample authority has been granted by the legislative department in favor of Pres. Duterte to be able to speedily address the rising cases of COVID-19 in the Philippines. Extraordinary times that present an invisible threat to the health of individuals, unbeknown to humanity, require an immediate, exceptional response from the government. This exceptional response must of course be in line with the guidelines and actions undertaken by an international central authority which, in this case, is the WHO and trusted international agencies.

In all, Nepomuceno failed to point out any provision of law that imposes a ministerial duty on the part of the Pres. Duterte *et al.* to perform an act in compliance with a specific mandate for conduct of clinical trial and procurement of COVID-19 vaccines, specifically that produced by Sinovac. The contrary even appears, Pres. Duterte *et al.* are given sufficient leeway to be exempted from the usual procedures in the conduct of clinical trials and usual procurement processes.

(3) **NO.** The direct resort to the Supreme Court was improper. A challenge to the efficacy of the Sinovac vaccine is a question of fact that is beyond the scope of this Court's jurisdiction. To go into the details of a vaccine's efficacy would require the presentation of its clinical trial results and a comparative analysis of the various results of the other vaccines in order to determine the acceptable standard of what an effective COVID-19 vaccine should be. The Supreme Court is not a trier of facts. The doctrine of hierarchy of courts requires a party to file the appropriate petition in the proper court, especially when the petition calls for an examination of the factual issues raised in the petition. In the case of a petition for mandamus, Section 21 of Batas Pambansa Bilang (B.P.) 129 grants the regional trial court original jurisdiction in resolving a petition for the issuance of a writ of mandamus.

The doctrine of hierarchy of courts, thus, reverberates the authority given by law at every level of the Judiciary. The exceptions that will allow the direct resort to the Supreme Court was enumerated in *Gios-Samar* are as follows:

> "(1) when there are genuine issues of constitutionality that must be addressed at the most immediate time;
> (2) when the issues involved are of transcendental importance;
> (3) cases of first impression;
> (4) the constitutional issues raised are better decided by the Court;
> (5) exigency in certain situations;
> (6) the filed petition reviews the act of a constitutional organ;
> (7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; [and]
> (8) the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."

Nepomuceno failed to point out any question of law worthy of consideration by the Supreme Court. He also failed to present any circumstance or nature of the question raised in the petition that would fall in any of the exceptions for which the legality of the actions taken by the respondents may be thoroughly examined. As discussed, the petition failed to comply with the requisites of a petition for mandamus, in addition to the infirmities that failed to take into account well-established principles in law and jurisprudence.

As the judicial branch of the government tasked to interpret laws, settle actual controversies, and keep every government office within the scope of their authority, it is not within the office of the Court to go beyond what the law requires, including those involving the procurement of COVID-19 vaccines. As the law has expressly excluded the conduct of clinical trials and exempted its procurement from the general rules of the bidding process, the Court cannot step in to add another layer of requirement before the procurement of COVID-19 vaccines, and their use, specifically those granted with EUA.

CYNTHIA A. VILLAR, FORMER MEMBER, HOUSE OF REPRESENTATIVES, LONE DISTRICT OF LAS PIÑAS CITY *V.* ALLTECH CONTRACTORS, INC., PHILIPPINE RECLAMATION AUTHORITY, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, ENVIRONMENTAL MANAGEMENT BUREAU, AND CITIES OF LAS PINAS, PARANAQUE, AND BACOOR

G.R. NO. 208702, 11 MAY 2021, *EN BANC* (CARANDANG, *J.*)

DOCTRINE OF THE CASE

It must be clarified that in assailing the issuance of an ECC, the proper remedy is to file an appeal before the proper reviewing authority instead of a petition for writ of kalikasan.

In Paje v. Casino, the Court already recognized that the validity of an ECC may be challenged via a writ of kalikasan with qualification. It was explained that:

A party, therefore, who invokes the writ based on alleged defects or irregularities in the issuance of an ECC must not only allege and prove such defects or irregularities, but must also provide ***causal link or, at least, a reasonable connection*** *between the defects or irregularities in the issuance of an ECC and the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the Rules.*

Unfortunately, while Villar raised alleged irregularities in the issuance of the ECC (i.e., the use of an improper form of assessment study, lack of public hearing and consultation, and absence of a project alternative), these are not material and necessary due to the nature of the proposed project. Therefore, no compelling reason was presented to warrant the intervention of the Court. In addition, it has been determined that there is no actual or imminent threat that can be attributed to the proposed project that would prejudice the life, health, or property of residents of the cities of Las Piñas and Parañaque. Hence, the issuance of a writ of kalikasan is not warranted.

FACTS

In 2009, Alltech Contractors, Inc. (Alltech) submitted a proposal to the cities of Las Piñas and Parañaque. Its purpose is to develop, finance, engineer,

design and reclaim hectares of lands from both cities. These cities eventually accepted Alltech's proposal and executed their respective Joint Venture Agreement (JVA).

Later on, the Las Piñas and Parañaque Coastal Bay Project (proposed project) was approved by the Philippine Reclamation Authority (PRA). Such approval was subject to full compliance with existing laws, rules, and regulations in relation to the environment.

In March 2010, the Environmental Management Bureau (EMB) directed Alltech to submit before the Department of Environment and Natural Resources an Environmental Performance Report Management Plan (EPRMP) for the proposed reclamation project. The submitted proposal was subsequently reviewed by the Environmental Impact Assessment Review Committee (EIARC).

In 2011, EIARC recommended the issuance of the Environmental Compliance Certificate for the proposed project after it had reviewed the biophysical, social, and economic impact it may cause.

Fearing that the proposed project will impede the flow of rivers that might raise the risk of flooding and danger to its residents, then-Representative Villar collected signatures to oppose the proposed project. Subsequently, she filed a petition for the issuance of a writ of *kalikasan*, invoking the right to a balanced and healthful ecology of her constituents.

In 2012, the Court issued the writ of *kalikasan* against Alltech. The case was then remanded to the Court of Appeals (CA) to accept the return of the writ, and to conduct the necessary hearing, reception of evidence and rendition of judgment.

The CA denied the petition for the issuance of the writ of *kalikasan*. Based on the totality of evidence, the proposed project underwent the required EIA review process in compliance with the law, and the submission of the EPRMP was proper and lawful. In addition, Tricore Solutions, Inc. (Tricore) and Center for Environmental Concerns-Philippines (CEC-P), the companies commissioned by Villar, did not conduct a comprehensive objective assessment and lacked expertise in the field in order to competently conclude that the proposed project will cause environmental damage. It also did not apply the precautionary principle

since there was numerous data that ruled out the uncertainty of the nature and scope of the anticipated threat. Motion for Reconsideration was also denied.

Villar contended the following: (1) that the issuance of an ECC for the proposed coastal bay project is illegal and unlawful because Alltech did not prepare the appropriate EIA study, and (2) that the proposed project impinges on the viability and sustainability of the Las Piñas-Parañaque Critical Habitat and Ecotourism Area (LPPCHEA).

Hence, this petition.

ISSUES

(1) Is a petition for writ of *kalikasan* proper in assailing the issuance of the ECC for Alltech's proposed project?

(2) Did Alltech use an improper form of assessment study which warrants the invalidity of the ECC?

(3) Was there an actual or imminent threat that can be attributed to the proposed project that would prejudice the life, health, or property of residents of the cities of Las Piñas and Parañaque?

(4) Is the precautionary principle applicable in this case?

(5) Will the proposed project impinge the viability and sustainability of the LPPCHEA?

RULING

(1) **NO.** Villar failed to establish the causal link between the alleged irregularities in the issuance of Alltech 's ECC to justify resorting to the extraordinary remedy of filing a petition for a writ of *kalikasan*.

To promote the government's environmental protection programs, P.D. No. 1586 was enacted declaring inter alia that:

No person, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an

Environmental Compliance Certificate issued by the President or his duly authorized representative. xxx (Emphasis supplied)

In the current structure of the government, it is the DENR-EMB, under the authority of the DENR Secretary, that is authorized to issue ECCs.

A petition for writ of *kalikasan* is an extraordinary remedy classified as a special civil action under the Rules of Procedure for Environmental Cases (RPEC). Under Section 1, Rule 7 of the RPEC, the essential requisites for the issuance of a writ of *kalikasan* are: (I) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. As a rule, the party claiming the privilege bears the *onus* of proving the requisites listed above.

In filing a petition for writ of *kalikasan*, Villar argued at length the alleged irregularities in the issuance by the EMB of the ECC for the proposed project. However, it must be clarified that in assailing the issuance of an ECC, the proper remedy is to file an appeal before the proper reviewing authority instead of a petition for writ of *kalikasan*.

Nevertheless, in *Paje v. Casino*, the Court already recognized that the validity of an ECC may be challenged via a writ of kalikasan with qualification. It was explained that:

A party, therefore, who invokes the writ based on alleged defects or irregularities in the issuance of an ECC must not only allege and prove such defects or irregularities, but must also provide **causal link or, at least, a reasonable connection** between the defects or irregularities in the issuance of an ECC and the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the Rules.

Unfortunately, while Villar raised alleged irregularities in the issuance of the ECC (i.e., the use of an improper form of assessment study, lack of public hearing and consultation, and absence of a project alternative), these are not

material and necessary due to the nature of the proposed project. Therefore, no compelling reason was presented to warrant the intervention of the Court.

(2) **NO.** Alltech submitted the proper form of study required for the proposed project.

In securing an ECC, the proponent is required to submit a form of study depending on the classification of the proposed project under the EIS System. These reports include: (1) EIS; (2) Programmatic EIS; (3) Initial Environmental Examination Report; (4) Initial Environmental Examination Checklist; (5) Project Description Report (PDR); (6) EPRMP; and (7) Programmatic EPRMP (PEPRMP).

In Alltech's application, the DENR-EMB required an EPRMP which refers to a "documentation of the actual cumulative environmental impacts and effectiveness of current measures for single projects that are already operating but without ECCs." On the other hand, EIS pertains to a "document, prepared and submitted by the project proponent and/or EIA Consultant that serves as an application for an ECC. It is a comprehensive study of the significant impacts of a project on the environment. It includes an Environmental Management Plan/Program that the Proponent will fund and implement to protect the environment." Based on this definition, an EIS is wider in scope than an EPRMP. However, it does not automatically mean that an EIS is the appropriate EIA report to be submitted in all projects.

In the present case, the EPRMP that Alltech submitted was the proper form of study. As pointed out by the DENR-EMB, the proposed project is premised on the existence of a reclamation project covered by an ECC previously issued to the PEA, now PRA, and Amari. Under the Revised Procedural Manual for DAO No. 2003-30, the type of EIA report for a project which had previously operated or existing with previous ECCs intended to be modified, expanded or restart operations is not an EIS but an EPRMP or PEPRMP. There was no grave abuse of discretion proven to be attributed to the DENR-EMB when it instructed the project proponent to file an EPRMP. Hence, it enjoys the presumption of regularity in the performance of its official duties. Based on its technical expertise, it found that the information provided in an EPRMP sufficiently addressed the environmental concerns of the government.

It is within the DENR-EMB's function and expertise to determine the category or classification of a proposed project as it is equipped with the knowledge and competence to resolve issues involving the highly technical field of EIS System. Alltech merely complied with the instruction of the DENR-EMB to submit an EPRMP. The project proponent should not be faulted for this as it is not in the position to substitute the assessment or technical opinion of the DENR-EMB with its own judgment. It is within the sphere of the technical knowledge and expertise of the DENR-EMB, and not the Court nor the project proponent, to determine the appropriate EIA report to submit for a particular project.

(3) **NO.** The CA determined that there is no actual or imminent threat that can be attributed to the proposed project that would prejudice the life, health, or property of residents of the cities of Las Piñas and Parañaque.

The companies commissioned by Villar, CEC-P and Tricore, failed to conduct a comprehensive and objective assessment of the proposed project and lacked the expertise necessary in the field of hydrology and hydraulics to competently conclude that the proposed project will cause environmental damage. They claimed that the proposed project will cause flooding in the cities of Las Piñas and Parañaque.

The study of CEC-P is inaccurate and unreliable as it depended on the EPRMP submitted in August 2010 and not the final EPRMP that the Alltech submitted in December 2010. Therefore, the study of CEC-P, that was based on wrong and inaccurate data, cannot be considered a reliable reference in concluding that the proposed project lacked clear scientific study on the flooding hazards of reclamation and the appropriate mitigation measures to be adopted by the project proponent.

On the other hand, the companies commission by Alltech to DHI presented a comprehensive analysis of the consequences of the implementation of the proposed project before the CA. Its finding was supported by the Flooding Impact Assessment and a Flushing Impact Assessment conducted that adds credibility and persuasive value to the proposed project. DCCD also presented its flood assessment survey determined that the current flooding problems in the Las Piñas and Parañaque areas were largely due to the fact that the existing drainage system cannot adequately drain the low-lying areas. With the implementation of

the proposed project, and adopting the mitigating measures included in the proposed project. The communities will actually benefit as engineering interventions will be introduced to address the flooding issues.

Between the study conducted by CEC-P and those produced by DCCD, Surbana, and DHI, the Court is inclined to give more weight to the studies commissioned by Alltech which appear to be duly supported by scientific research. Unlike CEC-P, Surbana has amassed over 45 years of experience in planning and managing land reclamation and coastal development.

While Villar's intention in taking a proactive role in advancing her constituents' right to a balanced and healthful ecology is laudable, the Court cannot simply apply the extraordinary remedy of a Writ of Kalikasan to all environmental issues. As ruled in *Paje v. Casiño*, the Writ of Kalikasan is a highly prerogative writ that issues only when there is a showing of actual or imminent threat and when there is such inaction on the part of the relevant administrative bodies that will make an environmental catastrophe inevitable.

In this case, there is no actual or imminent threat that can be attributed to the proposed project that would prejudice the life, health, or property of residents of the cities of Las Piñas and Parañaque that warrants the issuance of a writ of *kalikasan*.

(4) **NO.** The precautionary principle is not applicable to the present case.

Section 1, Rule 20 of the RPEC states:
Section 1. Applicability. - When there is a lack of full scientific certainty in establishing a causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it. The constitutional right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.

It is not meant to apply to all environmental cases. Essential to the application of the precautionary principle is the presence of scientific uncertainty.

In the present case, the threat was not established and the volumes of data generated by objective and expert analyses ruled out the scientific uncertainty of the nature and scope of the anticipated threat.

(5) **NO.** There is no sufficient basis to hold that the proposed project will impinge on the viability and sustainability of LPPCHEA.

Section 4 of R.A. No. 11038 establishes LPPCHEA as a "protected area" or a portion of land and/or water set aside by reason of its "unique physical and biological significance, manages to enhance biological diversity and protected against destructive human exploitation.

It must be clarified that the classification of LPPCHEA as a "protected area" under the ENIPAS does not automatically result to a prohibition of reclamation activities within the area, or alongside it. There is nothing in the NIPAS and ENIPAS expressly declaring that reclamation activities within or alongside a critical habitat is an incompatible activity that is not allowed.

Moreover, the metes and bounds of the LPPCHEA remain intact. No portion of the LPPCHEA will be utilized for the proposed project, as shown in the geographical illustrations submitted by Alltech and its consultants. Even the Tricore report Villar commissioned acknowledged that LPPCHEA was located adjacent to the project site. This recognition is critical in validating the assertion of Alltech that no portion of the proposed project will traverse the LPPCHEA.