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authorizes neither oppression nor self-destruction of the employer. In any event, we sustain the Labor Arbiter's award of US$3,000.00 as financial assistance in the interest of equity and compassionate justice. Besides, the same was not properly assailed by the petitioners via an appeal to the NLRC. As such, the same had attained finality and could no longer be questioned by petitioners.

**WHEREFORE,** the Petition is **GRANTED**. The January 20, 2012 Decision and May 8, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 117050 are **REVERSED and SET ASIDE**. The September 29, 2009 Decision of Labor Arbiter Aliman D. Mangandog in NLRC-NCR Case No. (M) NCR-03-03817-09 dismissing respondent's claim for disability benefits and awarding US$3,000.00 as financial assistance is **REINSTATED and AFFIRMED**.

**SO ORDERED.**

*Sereno, C.J. (Chairperson), Leonardo-de Castro, Jardeleza,* and *Tijam, JJ.,* concur.

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**THIRD DIVISION**

[G.R. No. 211519. August 14, 2017]

**BANK OF COMMERCE,** *petitioner, vs.* **HEIRS OF RODOLFO DELA CRUZ,** *respondent*.

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY PETITION FOR REVIEW ON *CERTIORARI*; LIMITED ONLY TO QUESTIONS OF LAW; QUESTIONS OF LAW AND QUESTIONS OF FACT, DISTINGUISHED.** — An appeal by petition for review on *certiorari* is limited to

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questions of law because the Court is not a trier of facts. In this regard, the dichotomy between questions of law and questions of fact is jurisprudentially settled. 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 the facts being admitted. In contrast, a question of fact exists when a 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.

2. **ID.; ID.; ID.; ID.; ID.; EXCEPTIONS.—**Generally, the Court shuns away from delving into questions of fact, the same being outside the ambit of an appeal under Rule 45 of the *Rules of Court*. However, there are recognized instances wherein the Court may settle factual disputes that a party raises, and such instances include the following, namely: (a) when the inference made is manifestly mistaken, absurd or impossible; (b) when there is grave abuse of discretion; (c) when the finding is grounded entirely on speculations, surmises or conjectures; (d) when the judgment of the CA is based on misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the CA, in making its findings, went beyond the issues of the case, and the same is contrary to the admissions of both the appellant and the appellee; (g) when the findings of the CA are contrary to those of the trial court; (h) when the findings of fact are conclusions without citation of specific evidence on which they are based; (i) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and (j) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.

3. **ID.; EVIDENCE; OFFER OF EVIDENCE; THE JUDGE IS MANDATED TO REST THE FINDINGS OF FACTS AND THE JUDGMENT ONLY AND STRICTLY UPON THE EVIDENCE OFFERED BY THE PARTIES AT THE TRIAL.—** The CA and the RTC are upheld in this regard.

Section 34, Rule 132 of the *Rules of Court* commands that "the court shall consider no evidence which has not been formally offered," and that "the purpose for which the evidence is offered must be specified." The formal offer of evidence was necessary because the judge was mandated to rest the findings of facts and the judgment only and strictly upon the evidence offered by the parties at the trial. The function of the formal offer was to enable the trial judge to know the purpose or purposes for which the proponent was presenting the evidence. Such formal offer would also enable the opposing parties to examine the evidence and to reasonably object to their admissibility. The formal offer would further facilitate the review by the appellate court by limiting the review to the documents previously scrutinized by the trial court. Accordingly, any document is merely a scrap of paper barren of probative weight unless and until admitted by the trial court as evidence for the purpose or purposes for which it is offered.

**4. ID.; ID.; ID.; ID.; WHEN EVIDENCE NOT FORMALLY OFFERED MAY BE CONSIDERED BY THE TRIAL COURT; CONDITIONS; NOT ESTABLISHED IN CASE AT BAR.—** [T]he trial court may consider evidence even if it was not formally offered provided that: (a) the same was duly identified by testimony duly recorded; and (b) the same was incorporated in the records of the case. Considering that, as observed by the CA, the Purchase and Sale Agreement and Deed of Assignment were not marked as exhibits, and their contents were not revealed in the records, and in the case of the Purchase and Sale Agreement, the petitioner did not competently identify it during the trial, the general rule should apply in this case.

**5. ID.; ID.; JUDICIAL NOTICE; THREE MATERIAL REQUISITES; ELEMENT OF NOTORIETY AS BASIS FOR TAKING JUDICIAL NOTICE, LACKING IN CASE AT BAR.—** [The Court] reiterated the requisite of notoriety for the taking of judicial notice in the recent case of *Expertravel & Tours, Inc. v. Court of Appeals*, which cited *State Prosecutors*:Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The

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principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable. x x x Contrary to the findings and conclusions of the RTC, the merger of the petitioner and Panasia was not of common knowledge. It was overly presumptuous for the RTC to thereby assume the merger because the element of notoriety as basis for taking judicial notice of the merger was loudly lacking. x x x [T]here were several specific facts whose existence must be shown (not assumed) before the merger of two or more corporations can be declared as established. Among such facts are the plan of merger that includes the terms and mode of carrying out the merger and the statement of the changes, if any, of the present articles of the surviving corporation; the approval of the plan of merger by majority vote of each of the boards of directors of the concerned corporations at separate meetings; the submission of the plan of merger for the approval of the stockholders or members of each of the corporations at separate corporate meetings duly called for the purpose; the affirmative vote of 2/3 of the outstanding capital in case of stock corporations, or 2/3 of the members in case of non-stock corporations; the submission of the approved articles of merger executed by each of the constituent corporations to the SEC; and the issuance of the certificate by the SEC on the approval of the merger. In this case, because dela Cruz's allegation of the merger was specifically denied by the petitioner, the RTC had absolutely no factual and legal bases to take constructive notice of any of the foregoing circumstances. It should have required proof of the acquisition of the liability of Panasia on the part of the petitioner.

**6. MERCANTILE LAW; CORPORATION LAW; CORPORATIONS; MERGER; DOES NOT BECOME EFFECTIVE UPON THE MERE AGREEMENT OF THE CONSTITUENT CORPORATIONS, BUT UPON THE APPROVAL OF THE ARTICLES OF MERGER.—**A merger is the union of two or more existing corporations in which the surviving corporation

absorbs the others and continues the combined business. The merger dissolves the non-surviving corporations, and the surviving corporation acquires all the rights, properties and liabilities of the dissolved corporations. Considering that the merger involves fundamental changes in the corporation, as well as in the rights of the stockholders and the creditors, there must be an express provision of law authorizing the merger. The merger does not become effective upon the mere agreement of the constituent corporations, but upon the approval of the articles of merger by the Securities and Exchange Commission issuing the certificate of merger as required by Section 79 of the *Corporation Code*. Should any party in the merger be a special corporation governed by its own charter, the *Corporation Code* particularly mandates that a favorable recommendation of the appropriate government agency should first be obtained.

**APPEARANCES OF COUNSEL**

*Rodrigo Berenguer and Guno* for petitioner.
*Arnel P. Kho* for respondents.

**D E C I S I O N**

**BERSAMIN, *J.*:**

The terms of merger between two corporations, when determinative of their joint or respective liabilities towards third parties, cannot be assumed. The party alleging the corporations' joint liabilities should establish the allegation. Otherwise, the liabilities of each of them shall be separate.

**The Case**

We review the decision promulgated on August 29, 2013,[1] whereby the Court of Appeals (CA) dismissed the appeal of the petitioner and affirmed the judgment rendered on April 28,

[1] *Rollo*, pp. 43-51; penned by Associate Justice Amelita G. Tolentino (retired), and concurred by Associate Justice Ramon R. Garcia and Associate Justice Danton Q. Bueser.

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2010 in Civil Case No. C-19332 by the Regional Trial Court (RTC), Branch 13, in Caloocan City adjudging the petitioner and Panasia Banking, Inc. (Panasia) jointly and severally liable to pay to the respondents the amount of ₱56,223,066.00, less ₱27,150,000.00 by way of a legal set-off, and attorney's fees.[2]

**Antecedents**

The CA summarized the factual and procedural antecedents, to wit:

> This case has its roots from a *Complaint* for collection of sum of money and damages with prayer for a writ of preliminary injunction and/or temporary restraining order filed by the late plaintiff Rodolfo Dela Cruz (Dela Cruz) against defendant Panasia Banking, Inc. (Panasia). The complaint was lodged with the Regional Trial Court of Caloocan City, docketed as RTC Case No. C-19332, and raffled off to Branch 131.
>
> However, this complaint was amended to include defendant-appellant Bank of Commerce (Bank of Commerce) as additional defendant. Thereafter, Dela Cruz filed an Urgent Motion to Re-Amend Complaint and for Issuance of a Temporary Restraining Order to amend anew the complaint so as to include the Clerk of Court and Ex-officio Sheriff of the Regional Trial Court of Manila, Jesusa P. Maningas and her Deputy, Eufracio B. Pilipina as additional defendants, which was granted by the court *a quo* in its order dated March 28, 2001. The re-amended complaint was admitted and as prayed for, the court *a quo* ordered the issuance of a temporary restraining order against the defendants Panasia, Bank of Commerce, the Clerk of Court and Ex-Officio Sheriff of Manila, Jesusa P. Maningas and her deputy, Eufracio B. Pilipina, and all persons claiming rights under them, to refrain from committing or pursuing any and all acts which will bring about the auction sale scheduled on March 29, 2001 of the mortgaged parcels of land covered by TCT No. 194509 mentioned in the Notice of Extra-Judicial Sale bearing the date March 1, 2001 and also of TCT Nos. 291630 and 262200 of the Registry of Deeds of Caloocan City, until the issue of the issuance of preliminary injunction shall have been duly heard and determined by the court *a quo*. In its order dated April 23, 2001, the court *a quo* ordered the

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[2] *Id*. at 130-134.

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issuance of a writ of preliminary injunction upon posting by Dela Cruz of an injunctive bond in the amount of ₱1.5 million executed in favor of defendant-appellant Bank of Commerce.

Defendant Panasia has been declared in default in the order of December 15, 2000 and again, it has been declared in default for failure to file the pre-trial brief in the order dated April 5, 2002.

On July 21, 2003, plaintiff Dela Cruz died and he was substituted by his surviving spouse Perla Pulgar Dela Cruz, his children namely: Leewardo P. Dela Cruz, Allan P. Dela Cruz and Joan P. Dela Cruz. His heirs are represented by Leewardo P. Dela Cruz.

As gleaned from the records, the antecedents are as follows:

Plaintiff Dela Cruz is the sole owner and proprietor of the Mamertha General Merchandising (Mamertha), an entity engaged in sugar trading since 1970. He maintained a bank account with defendant Panasia, in its branch in Grace Park, Caloocan City, in the name of Mamertha General Merchandising under Savings Account No. 002-004-00008-1.

Sometime in October 1998, Dela Cruz discovered that Panasia allowed his son, Allan Dela Cruz to withdraw money from the said bank account/deposit without his consent and/or authority. Upon discovery, he immediately instructed Panasia not to allow his son to make any withdrawals from his bank account and even sent a letter dated October 5, 1998 to Panasia, stating therein that his son, Allan Dela Cruz is neither authorized to make any withdrawal from his bank account nor sign any check drawn against the bank account unless with his written/expressed consent or authority. The said letter was personally received by Panasia's Grace Park Branch Manager and Operation Officer, Vicky Nubla and Lorraine de Leon, respectively, on October 16, 1998.

Despite said instruction and receipt of the letter dated October 5, 1998 Panasia still allowed and continued to allow Dela Cruz's son, Allan Dela Cruz to withdraw from the said bank account/deposit without his knowledge and consent. The unauthorized withdrawals amounted to Fifty Six Million Two Hundred Twenty Three Thousand Sixty Six Pesos and 7/100 (₱56,223,066.07) as evidenced by Panasia's banking counter checks.

Dela Cruz demanded from Panasia the restoration of the said amount to his bank account/deposit. However, despite said demand, Panasia failed to do so. Hence, through a letter sent to Panasia, Dela Cruz

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made a formal demand from Panasia to pay and/or re-deposit the amount of Fifty Six Million Two Hundred Twenty Three Thousand Sixty Six Pesos and 7/100 (₱56,223,066.07) to his bank account/ deposit within five (5) days from receipt hereof. Still, Panasia failed to heed the said demand of Dela Cruz, claiming that all transactions were pursuant to the existing banking policies and procedures.

On August 7, 2000, Dela Cruz instituted a suit for collection of sum of money against Panasia to collect the amount of the unauthorized withdrawals on his bank account/deposit. In the meantime, sometime in September, 2000, the Bank of Commerce demanded payment from Dela Cruz the amount of Twenty Seven Million One Hundred Fifty Thousand Pesos (₱27,150,000.00). Not having any knowledge of obtaining or having obtained a loan from the Bank of Commerce, Dela Cruz upon verification from the said bank discovered that the loan payment demanded by the bank refers to the loan he obtained from Panasia and that pursuant to a Purchase and Sale Agreement entered into between Panasia and Bank of Commerce on July 27, 2000, Panasia has been acquired by Bank of Commerce transferring to the latter the former's assets and liabilities on bank deposits.

As a consequence thereof, Dela Cruz demanded from the Bank of Commerce to pay the liability of Panasia to him and offered to compensate/set off his secured loan obligation with Panasia in the amount of ₱27,150,000.00 by deducting the same from his outstanding claim of ₱56,223,066.07. Dela Cruz claimed that he is entitled to legal compensation or set-off and therefore, the Bank of Commerce had no right to foreclose the mortgaged properties since the principal obligation has already been extinguished.

The Bank of Commerce claimed that it purchased from Panasia only selected accounts and liabilities. Dela Cruz's loan account who does business under the name and style of Mamertha General Merchandising was among those acquired by it from Panasia by virtue of the Purchase and Sale Agreement dated July 27, 2000 and Deed of Assignment dated September 18, 2000, both entered into by and between Panasia and Bank of Commerce. Dela Cruz obtained loans in the principal amount of ₱16,650,000.00 and ₱2,850,000.00 from Panasia secured by Real Estate Mortgage dated September 2, 1998 and April 17, 2000 using Transfer Certificate of Title (TCT) Nos. 262200 and 291630. Likewise, Dela Cruz executed six (6) promissory notes which became past due and demandable and the former refused to settle his outstanding obligations. Hence, it filed a petition for

extra-judicial foreclosure of real estate mortgage under Act. 3135, as amended. It had to foreclose on the mortgage when Dela Cruz refused to pay his obligation and maintained that Dela Cruz cannot ask for set-off or legal compensation.[3]

**Judgment of the RTC**

After trial, the RTC declared the petitioner and Panasia jointly and severally liable to the late Rodolfo dela Cruz. It concluded that dela Cruz had successfully established the negligence of Panasia in its fudiciary relationship with him by allowing his son to withdraw from his account despite the lack of authority to withdraw, and, worse, despite the express instructions of dela Cruz himself; and that the petitioner's defense that it had not assumed the liability of Panasia was unworthy of consideration because common sense dictated that the petitioner, by taking over Panasia, had absorbed all the assets and liabilities of Panasia.

The RTC disposed:

**WHEREFORE**, judgment is hereby rendered in favor of the plaintiff and against the defendants Panasia Banking, Inc., and Bank of Commerce to:

1. Jointly and severally pay plaintiff the amount of FIFTY SIX MILLION TWO HUNDRED TWENTY THREE THOUSAND SIXTY SIX and 7/100 (₱56,223,066.00) PESOS and therefrom the amount of ₱27,150,000.00 loan obligation of the herein plaintiffs from defendant PANASIA Banking Inc., the payment of which has been demanded by the defendant Bank of Commerce;
2. Jointly and severally to pay plaintiff the amount of ₱50,000.00 as and for attorney's fees;
3. The cost of suit.

**SO ORDERED.**[4]

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[3] *Id*. at 44-46.

[4] *Id*. at 134.

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**Decision of the CA**

On appeal, the CA concurred with the RTC's conclusion, and affirmed the judgment of the RTC,[5] pointing out that the failure of the petitioner to formally offer the documents denominated as Purchase and Sale Agreement and the Deed of Assignment was fatal to the petitioner's defense of not having assumed Panasia's liabilities; and that the factual findings by the RTC on the negligence on the part of Panasia were correct. The *fallo* of the CA's decision reads:

> **WHEREFORE**, for all the foregoing considerations, the appeal is **DISMISSED**. Accordingly, the decision dated April 28, 2010 of the Regional Trial Court of Caloocan, Branch 131 in Civil Case No. C-19332 is **AFFIRMED**.
>
> **SO ORDERED.**[6]

The CA denied the petitioner's motion for reconsideration on February 25, 2014.[7]

**Issue**

Hence, this appeal, whereby the petitioner seeks the reversal of the decision of the CA. It argues that its failure to formally offer the documents that would prove that it had acquired from Panasia only selected assets and liabilities was not fatal to its defense because the genuineness and due execution of the documents had been alleged to have been admitted by dela Cruz in his amended complaint and pre-trial brief; that there was no evidence on which to base its solidary liability for the negligence of Panasia; and that Panasia had not been negligent in allowing dela Cruz's son to withdraw from his account because such withdrawals had been authorized.[8]

In response, respondent dela Cruz, now represented by his heirs, submits that the fact that he had mentioned the documents

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[5] *Supra* note 1.

[6] *Id*. at 50.

[7] *Rollo*, pp. 64-65.

[8] *Id*. at 17-18.

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in his pleadings did not dispense with the requirement for the petitioner to still make a formal offer of the documents.

Did the CA and the RTC err in pronouncing the petitioner solidarily liable with Panasia for the latter's negligence?

**Ruling of the Court**

The appeal has merit.

An appeal by petition for review on *certiorari* is limited to questions of law because the Court is not a trier of facts. In this regard, the dichotomy between questions of law and questions of fact is jurisprudentially settled. 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 the facts being admitted. In contrast, a question of fact exists when a 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.[9]

Generally, the Court shuns away from delving into questions of fact, the same being outside the ambit of an appeal under Rule 45 of the *Rules of Court*. However, there are recognized instances wherein the Court may settle factual disputes that a party raises, and such instances include the following, namely: (a) when the inference made is manifestly mistaken, absurd or impossible; (b) when there is grave abuse of discretion; (c) when the finding is grounded entirely on speculations, surmises or conjectures; (d) when the judgment of the CA is based on misapprehension of facts; (e) when the findings of fact are conflicting; (f) when the CA, in making its findings, went beyond

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[9] *Republic v. Vega*, G.R. No. 177790, January 17, 2011, 639 SCRA 541, citing *New Rural Bank of Guimba, (N.E.) Inc. v. Abad*, G.R. No. 161818, 20 August 2008, 562 SCRA 503, 509-510.

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the issues of the case, and the same is contrary to the admissions of both the appellant and the appellee; (g) when the findings of the CA are contrary to those of the trial court; (h) when the findings of fact are conclusions without citation of specific evidence on which they are based; (i) when the CA manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion; and j) when the findings of fact of the CA are premised on the absence of evidence and are contradicted by the evidence on record.[10]

The petitioner raises the following errors herein, to wit:

I.

THE HONORABLE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT RULED THAT THE FAILURE OF PETITIONER TO OFFER THE PURCHASE AND SALE AGREEMENT WITH PANASIA AS EVIDENCE WAS FATAL TO ITS DEFENSE.

II.

THE HONORABLE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT HELD PETITIONER LIABLE FOR THE ACTS COMMITTED BY PANASIA

III.

THE HONORABLE COURT OF APPEALS ERRED ON A QUESTION OF FACT IN DISREGARDING THE ADMISSION OF RODOLFO THAT HE AUTHORIZED HIS SON TO WITHDRAW FROM THE SUBJECT SAVINGS ACCOUNT.[11]

Of the foregoing errors, the third poses a question of fact. In this regard, the petitioner has not shown that its case comes under any of the earlier mentioned recognized exceptions. Moreover, the findings about Panasia's negligence and the declaration of Panasia's liability based on such negligence already

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[10] *Cosmos Bottling Corporation v. Nagrama, Jr.*, G.R. No. 164403, March 4, 2008, 547 SCRA 571, 585.

[11] *Rollo*, pp. 17-18.

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attained finality in light of its non-appeal of the adverse judgment rendered herein.

The remaining substantive issue is whether or not the petitioner was properly held to be solidarily liable with Panasia for the latter's negligence.

The CA and the RTC were in unison in declaring that the petitioner's failure to formally offer the Purchase and Sale Agreement and Deed of Assignment was fatal to its defense. They rejected the petitioner's assertion that Panasia's liability adjudged herein was not one of the liabilities it had assumed. Hence, the petitioner now urges a review and reversal considering that the omission to formally offer was not fatal in view of dela Cruz's admission of the existence and due execution of the Purchase and Sale Agreement and Deed of Assignment.

The CA and the RTC are upheld in this regard. Section 34, Rule 132 of the *Rules of Court* commands that "the court shall consider no evidence which has not been formally offered," and that "the purpose for which the evidence is offered must be specified." The formal offer of evidence was necessary because the judge was mandated to rest the findings of facts and the judgment only and strictly upon the evidence offered by the parties at the trial. The function of the formal offer was to enable the trial judge to know the purpose or purposes for which the proponent was presenting the evidence. Such formal offer would also enable the opposing parties to examine the evidence and to reasonably object to their admissibility. The formal offer would further facilitate the review by the appellate court by limiting the review to the documents previously scrutinized by the trial court.[12] Accordingly, any document is merely a scrap of paper barren of probative weight unless and until admitted by the trial court as evidence for the purpose or purposes for which it is offered.[13]

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[12] *Heirs of Pedro Pasag v. Parocha*, G.R. No. 155483, April 27, 2007, 522 SCRA 410, 416.

[13] *Westmont Investment Corporation v. Francia, Jr.*, G.R. No. 194128, December 7, 2011, 661 SCRA 787, 794.

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On the other hand, the trial court may consider evidence even if it was not formally offered provided that: (a) the same was duly identified by testimony duly recorded; and (b) the same was incorporated in the records of the case.[14] Considering that, as observed by the CA, the Purchase and Sale Agreement and Deed of Assignment were not marked as exhibits, and their contents were not revealed in the records, and in the case of the Purchase and Sale Agreement, the petitioner did not competently identify it during the trial, the general rule should apply in this case.

Nonetheless, the exclusion of the Sale and Purchase Agreement from the body of evidence for consideration in the resolution of the case caused a void in the link between the petitioner and Panasia necessary to support the pronouncement of the personal liability of the petitioner for the negligence on the part of Panasia. Verily, without the Sale and Purchase Agreement being admitted in evidence, implicating the petitioner in the negligence of Panasia had no factual basis for the simple reason that there was no showing at all of the petitioner having specifically merged with Panasia and thereby assumed the latter's liabilities.

Yet, dela Cruz precisely did not establish that the petitioner had assumed Panasia's liabilities. The allegations of his amended complaint, being averments of ultimate facts,[15] did not constitute

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[14] *People v. Villanueva*, G.R. No. 181829, September 1, 2010, 629 SCRA 720, 736.

[15] Section 1, Rule 8 of the *Rules of Court*, which states:

> Section 1. *In general*. — Every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts. (1)
>
> If a defense relied on is based on law, the pertinent provisions thereof and their applicability to him shall be clearly and concisely stated. (n)

According to *Nacua-Jao v. China Banking Corporation*, G.R. No. 149468, October 23, 2006, 505 SCRA 56, 64, citing *Barcelona v. Court of Appeals*, G.R. No. 130087, September 24, 2003, 412 SCRA 41, 48, ultimate facts refer to the principal, determinative, constitutive facts upon the existence of which the cause of action rests; **the term does not refer to details of probative matter or particulars of evidence which establish the material elements.**

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proof of his cause of action against the petitioner. With the petitioner having specifically denied having merged with Panasia, averring instead that its purchase had concerned only selected assets and liabilities of Panasia, it became the burden of dela Cruz to prove the merger with Panasia, and the petitioner's becoming the surviving corporation. His failure in this respect left his cause of action against the petitioner unproved.

In pronouncing the solidary liability of the petitioner with Panasia despite the gap in the evidence, the RTC observed that:

> Common sense dictates that when Bank of Commerce took over Panasia, it likewise took over its assets but also its liabilities. It cannot say that only selected assets and liabilities were the subject matter of the purchase agreement. It cannot just pick its choice and forget the other obligations which are not favorable to its business. The act of Bank of Commerce is one way of evading an obligation. It is using the purchase and sale agreement as a shield to get away from it.[16]

Therein lay the error of the CA. It should have undone the RTC's unfounded assumption that the petitioner had merged with Panasia and had thereby taken over all of the assets and liabilities of the latter, including that for the negligent handling of dela Cruz's account. Such assumption had neither factual nor legal support in the records. Instead, the RTC should have required dela Cruz to present evidence of the merger, including its terms, in view of the petitioner's specific denial of the same. Merger was an act that could not be assumed; its details must be shown, and its effects must be based on the terms adopted by the parties concerned (through their respective boards of directors) and approved by the proper government office or agency regulating the merging parties.

Simply stated, judicial notice of the terms of merger and the consequences of merger, which the trial and the appellate courts took in adjudging the petitioner jointly and severally liable with Panasia, could not be justified. Thereby, the lower courts grossly erred. In *Latip v. Chua*,[17] the Court laid down the instances

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[16] *Rollo*, p. 134.

[17] G.R. No. 177809, October 16, 2009, 604 SCRA 163, 174-176.

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when judicial notice could be properly taken of facts that would normally take the place of evidence, to wit:

Sections 1 and 2 of Rule 129 of the Rules of Court declare when the taking of judicial notice is mandatory or discretionary on the courts, thus:

> **SECTION 1.** *Judicial notice, when mandatory*. A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.
>
> **SEC. 2.** *Judicial notice, when discretionary*. A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration or ought to be known to judges because of their judicial functions.

On this point, *State Prosecutors v. Muro* is instructive:

> I. The doctrine of judicial notice rests on the wisdom and discretion of the courts. **The power to take judicial notice is to be exercised by courts with caution; care must be taken that the requisite notoriety exists; and every reasonable doubt on the subject should be promptly resolved in the negative.**
>
> Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. **The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety.**
>
> To say that a court will take judicial notice of a fact is merely another way of saying that the usual form of evidence will be dispensed with if knowledge of the fact can be otherwise acquired. This is because the court assumes that the matter is so notorious that it will not be disputed. **But judicial notice is**

> **not judicial knowledge. The mere personal knowledge of the judge is not the judicial knowledge of the court, and he is not authorized to make his individual knowledge of a fact, not generally or professionally known, the basis of his action.** Judicial cognizance is taken only of those matters which are commonly known.
>
> Things of common knowledge, of which courts take judicial notice, may be matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially noticed, provided they are of such universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person.

We reiterated the requisite of notoriety for the taking of judicial notice in the recent case of *Expertravel & Tours, Inc. v. Court of Appeals*, which cited *State Prosecutors*:

> Generally speaking, matters of judicial notice have three material requisites: (1) the matter must be one of common and general knowledge; (2) it must be well and authoritatively settled and not doubtful or uncertain; and (3) it must be known to be within the limits of the jurisdiction of the court. The principal guide in determining what facts may be assumed to be judicially known is that of notoriety. Hence, it can be said that judicial notice is limited to facts evidenced by public records and facts of general notoriety. Moreover, a judicially noticed fact must be one not subject to a reasonable dispute in that it is either: (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resorting to sources whose accuracy cannot reasonably be questionable.
>
> Things of common knowledge, of which courts take judicial notice, may be matters coming to the knowledge of men generally in the course of the ordinary experiences of life, or they may be matters which are generally accepted by mankind as true and are capable of ready and unquestioned demonstration. Thus, facts which are universally known, and which may be found in encyclopedias, dictionaries or other publications, are judicially

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> noticed, provided, they are such of universal notoriety and so generally understood that they may be regarded as forming part of the common knowledge of every person. As the common knowledge of man ranges far and wide, a wide variety of particular facts have been judicially noticed as being matters of common knowledge. *But a court cannot take judicial notice of any fact which, in part, is dependent on the existence or non-existence of a fact of which the court has no constructive knowledge.* [citations omitted; bold underscoring supplied for emphasis]

Contrary to the findings and conclusions of the RTC, the merger of the petitioner and Panasia was not of common knowledge. It was overly presumptuous for the RTC to thereby assume the merger because the element of notoriety as basis for taking judicial notice of the merger was loudly lacking. A merger is the union of two or more existing corporations in which the surviving corporation absorbs the others and continues the combined business. The merger dissolves the non-surviving corporations, and the surviving corporation acquires all the rights, properties and liabilities of the dissolved corporations. Considering that the merger involves fundamental changes in the corporation, as well as in the rights of the stockholders and the creditors, there must be an express provision of law authorizing the merger. The merger does not become effective upon the mere agreement of the constituent corporations, but upon the approval of the articles of merger by the Securities and Exchange Commission issuing the certificate of merger as required by Section 79 of the *Corporation Code*.[18] Should any party in the merger be a special corporation governed by its own charter, the *Corporation Code* particularly mandates that a favorable recommendation of the appropriate government agency should first be obtained.[19]

It is plain enough, therefore, that there were several specific facts whose existence must be shown (not assumed) before the

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[18] *Poliand Industrial Limited v. National Development Company*, G.R. No. 143866, August 22, 2005 and G.R. No. 143877, August 22, 2005; 467 SCRA 500, 528-529.

[19] *Id*. at 529.

merger of two or more corporations can be declared as established. Among such facts are the plan of merger that includes the terms and mode of carrying out the merger and the statement of the changes, if any, of the present articles of the surviving corporation; the approval of the plan of merger by majority vote of each of the boards of directors of the concerned corporations at separate meetings; the submission of the plan of merger for the approval of the stockholders or members of each of the corporations at separate corporate meetings duly called for the purpose; the affirmative vote of 2/3 of the outstanding capital in case of stock corporations, or 2/3 of the members in case of non-stock corporations; the submission of the approved articles of merger executed by each of the constituent corporations to the SEC; and the issuance of the certificate by the SEC on the approval of the merger.[20]

In this case, because dela Cruz's allegation of the merger was specifically denied by the petitioner, the RTC had absolutely no factual and legal bases to take constructive notice of any of the foregoing circumstances. It should have required proof of the acquisition of the liability of Panasia on the part of the petitioner. Accordingly, if the RTC and the CA could not reasonably declare the petitioner solidarily liable with Panasia for the latter's negligence, the dismissal of the amended complaint of dela Cruz against the petitioner was in order.

**WHEREFORE,** the Court **GRANTS** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on August 29, 2013 by the Court of Appeals subject to the **MODIFICATION** that Civil Case No. C-19332 is **DISMISSED** insofar as petitioner Bank of Commerce is concerned for lack of cause of action; and **ORDERS** the respondents to pay the costs of suit.

**SO ORDERED.**

*Velasco, Jr. (Chairperson), Leonen, Martires*, and *Gesmundo, JJ.*, concur.

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[20] *Id*. at 529-530.