to deny [Perez's] optional retirement benefits request but still offered her a substantial amount in the form of gratis that was almost equivalent to the entire balance that remained in the retirement fund.[26]

In all, we agree with the NLRC and the appellate court's finding that: (1) Perez is not entitled to optional retirement benefits without the consent thereto of CII to the grant under the Retirement Plan; (2) neither is she entitled to the same benefits under the CBA where there is no established company practice on such benefit; and (3) Perez is likewise not entitled to separation pay due to a retrenchment of personnel.

**WHEREFORE,** the petition is **DENIED.** The Decision of the Court of Appeals in CA-G.R. CEB SP. No. 05473 is **AFFIRMED**. No costs.

**SO ORDERED.**

*Velasco, Jr.* (*Chairperson*), *Peralta, Reyes,* and *Jardeleza, JJ.,* concur.

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**SPECIAL SECOND DIVISION**

[G.R. No. 198127. October 5, 2016]

**CO IT a.k.a. GONZALO CO IT,** *petitioner*, *vs*. **ANTHONY CO, MARY CO CHO, PETER CO and LUCY SO HUA TAN CO,** *respondents*.

**SYLLABUS**

**REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; ONCE A JUDGMENT ATTAINS FINALITY IT BECOMES**

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[26] *Rollo*, pp. 58-60.

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**IMMUTABLE AND UNALTERABLE AND CAN NO LONGER BE MODIFIED IN ANY RESPECT EXCEPT IN CONSIDERATION OF THE GREATEST INTEREST OF JUSTICE.—** Indeed, nothing is more settled in law than that a judgment, once it attains finality, becomes immutable and unalterable and can no longer be modified in any respect, regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. Once a case is decided with finality, the controversy is settled and the matter is laid to rest. Such a rule rests on public policy and a sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law. All litigation must come to an end; any contrary posturing renders justice inutile and reduces to futility the winning party's capacity to benefit from a resolution of the case. However, in one occasion, *Sacdalan v. Court of Appeals,* we specifically affirmed the reinstatement of an appeal before the appellate court, which dismissal had likewise become final and executory, considering the greater interest of justice. The applicability of *Sacdalan* to the case and motion herein is unavoidable because of common facts: x x x Palpably, the interest of substantial justice demand that Gonzalo be allowed to pursue his appeal, reinstatement of the petition imperative to further thresh out the issues involved herein.

**APPEARANCES OF COUNSEL**

*Ramon M. Maronilla* for petitioner.
*Estelito P. Mendoza* for respondents.

**R E S O L U T I O N**

**PEREZ, *J.*:**

We here have a case between members of the Co family, incorporating stockholders of Green Cross, Inc., manufacturer of the ubiquitous Green Cross alcohol.

We resolve the Respectful Motion to Reinstate Petition filed by petitioner Gonzalo Co It (Gonzalo) which we had allowed

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to be withdrawn, upon motion of Gonzalo, by Minute Resolution[1] dated 30 January 2012.

Previously, Gonzalo filed a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] of the Court of Appeals in CA-G.R. CV No. 95095 which, in turn, affirmed the Regional Trial Court, Branch 114, Pasay City's dismissal of Gonzalo's complaint for Reconveyance with Damages against respondents Anthony Co (Anthony), Mary Co Cho (Mary), Peter Co (Peter), Gonzalo's siblings, and Lucy So Hua Tan Co, wife of Gonzalo's deceased brother Joseph Co (Joseph), involving shares of stock in the family-owned Green Cross, Inc.[3]

We have to consult the facts antecedent to the current events.

On 29 June 2009, Gonzalo filed the aforementioned complaint[4] for Reconveyance with Damages against respondents alleging that:

1. In 1952, he established Gonzalo Laboratories, a sole proprietorship, formulator and maker of Green Cross alcohol, with the trade mark and name registered in his name with the Philippine Patent Office (PPO).[5]

2. He is the legitimate son and the eldest among the five children of the deceased spouses Co Ay Tian and Ang Si. The other legitimate children of said spouses are respondents Anthony, Mary and Peter.

3. In 1971, he incorporated the business as Gonzalo Laboratories, Inc. (GLI), subscribing to 20% of the authorized

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[1] *Rollo*, p. 529.

[2] *Id*. at 192-208; Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Ricardo R. Rosario and Samuel H. Gaerlan concurring.

[3] *Id*. at 278-284.

[4] *Id*. at 214-225.

[5] Renamed as the Intellectual Property Office pursuant to Republic Act No. 8293.

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capital stock. To honor his parents, Gonzalo caused the registration of some GLI shares in the name of his mother, Ang Si.

4. Moreover, to comply with the five-incorporator requirement set by law, Gonzalo caused the registration of some GLI shares in the names of his siblings, herein respondents: 400 shares were registered in the name of Anthony; while Ang Si, Joseph and Mary each had 200 shares. Eventually, Gonzalo caused some shares to be registered in respondent Peter's name.

5. He paid for all the shares of his mother and respondent-siblings, who all simply held the shares in trust for him without payment of consideration therefor.

6. In 1977, he caused the registration of some of his shares in the name of his father, Co Ay Tian. By 1978, Gonzalo held 500 shares; Anthony, 300 shares; Joseph, 300 shares; Peter, 300 shares; Mary, 100 shares, Co Ay Tian, 250 shares; and Ang Si, 250 shares. At that time, Gonzalo was led to believe that this additional transfer of shares to his siblings did not affect the initial "trust" character thereof.

7. Through Gonzalo's efforts, GLI flourished and became very profitable. However, upon the increase in capital stock of GLI, respondents, taking advantage of their relationship as siblings, deceived Gonzalo into waiving his pre-emptive rights over the additional subscription thereby reducing his shareholdings to a lone stock. Correspondingly, respondents increased their shareholdings in GLI, to wit: Co Ay Tian held 759 shares; Ang Si, 910 shares; Anthony, 908 shares; Joseph, 1060 shares; Peter, 1060 shares; and Mary, 302 shares.

8. Respondents machinated the increase in GLI's capital stock from 5,000 to 25,000 which issuance of 20,000 additional stocks was subscribed to by respondents in total of 15,000 stocks, further diluting Gonzalo's share in GLI. The additional shares were distributed among respondents, thus: Joseph and Peter for 3,180 shares, respectively; Anthony for 2,725; Ang Si for 2,730; Mary, 910; and Co Ay Tian received 2,275 shares. These subscriptions were paid for by respondents through the unlawful distribution of dividends from transactions unknown to Gonzalo.

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9. In August 1989, the corporate name of GLI was changed to its present name Green Cross, Inc. Within the same month, Ang Si died intestate. At the time of her death, she was the registered owner of 3,640 shares in Green Cross with a par value of ₱100.00 per share or an aggregate of ₱364,000.00.

10. At the time of Co Ay Tian's death in 1991, he held 3,034 Green Cross shares in his name, excluding his inchoate share in the stocks ostensibly owned by Ang Si at the time of her death. As of date of filing of the complaint, both Ang Si's and Co Ay Tian's estates have yet to be settled.

11. In 1992, another family member, Joseph, died. By the year 1994, respondent Lucy transferred all of Joseph's shares in Green Cross in her name without proper documentation of the transfer and without payment of taxes and fees.

12. In the same narrative of deception, respondents appropriated for themselves alone their parents' shares in Green Cross, to the exclusion of their sibling, Gonzalo.

13. In any event, Gonzalo is a compulsory heir (as legitimate child) of his parents, entitling him to a share equal that of other legitimate children in Green Cross stocks registered in Co Ay Tian's and Ang Si's names.

Gonzalo, upon motion of respondents to the trial court, filed a Bill of Particulars. The RTC found it sufficient and admitted it as part of Gonzalo's complaint.

Thereafter, respondents filed a Motion to Dismiss the complaint on the following grounds: (1) the RTC has no jurisdiction over the subject matter of the complaint; (2) the causes of action are barred by the Statute of Limitations. In their motion to dismiss, respondents averred that: (1) only a probate court can settle the estates of the decedents Co Ay Tian and Ang Si which cannot be settled through the filing of an ordinary civil action; and (2) Gonzalo's cause of action is barred by prescription, respondents having acquired ownership of the shares of stock through eight years of uninterrupted possession, reckoned from the registration of the shares of stock in their

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name upon the death of the decedents in 1989 and 1991, respectively.

Gonzalo filed an Opposition to the Motion to Dismiss, contending that: (1) the motion is patently dilatory; (2) jurisdiction depends on the allegations of the complaint; (3) prescription does not run against a co-owner; (4) and movable possessed through a crime can never be acquired through prescription.

On 11 January 2010, the RTC granted respondents' Motion to Dismiss on the ground that the causes of action in the Complaint are barred by the Statute of Limitations. On the issue of whether it has jurisdiction, the RTC ruled that the complaint properly pleaded a cause of action for reconveyance and thus it had jurisdiction over the subject matter of the case. Subsequently, the RTC denied Gonzalo's Motion for Reconsideration thereof.

On appeal by Gonzalo, the Court of Appeals affirmed the RTC's dismissal of Gonzalo's complaint.

As previously adverted to, Gonzalo appealed to us by *certiorari* on the lower courts' uniform dismissal of his complaint, positing the following issues:

**I.**

**THE COURT OF APPEALS ACTED NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE OF THE HONORABLE COURT WHEN IT ISSUED A *DECISION* WHICH DID NOT, AND STILL DOES NOT, CONFORM, WITH EXISTING LEGAL AND JURISPRUDENTIAL REQUIREMENTS IN ISSUING DECISIONS.**

**II.**

**THE COURT OF APPEALS ACTED NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE OF THE HONORABLE COURT WHEN IT RULED THAT THE COURT *A QUO* CORRECTLY ACQUIRED AND EXERCISED JURISDICTION OVER PETITIONER'S *COMPLAINT* WHETHER IT BE FOR RECONVEYANCE WITH DAMAGES**

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**OR FOR SETTLEMENT OF THE ESTATE OF A DECEASED PERSON.**

**III.**

**THE COURT OF APPEALS ACTED NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE OF THE HONORABLE COURT WHEN IT RULED THAT PETITIONER IS ESTOPPED FROM ASSAILING THE JURISDICTION OF THE COURT *A QUO*.**

**IV.**

**THE COURT OF APPEALS ACTED NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE OF THE HONORABLE COURT WHEN IT RULED THAT PETITIONER IS BARRED BY PRESCRIPTION FROM DEMANDING THE RECONVEYANCE OF THE "TRUST SHARES."**

**V.**

**THE COURT OF APPEALS ACTED NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE OF THE HONORABLE COURT WHEN IT RULED THAT PETITIONER IS BARRED BY PRESCRIPTION TO DEMAND THE SETTLEMENT OF THE ESTATES OF HIS DECEASED PARENTS, CO AY TIAN AND ANG SI.**

**VI.**

**THE COURT OF APPEALS ACTED NOT IN ACCORD WITH LAW AND APPLICABLE JURISPRUDENCE OF THE HONORABLE COURT WHEN IT RULED THAT THE CERTIFICATE OF INCREASE OF CAPITAL STOCK OF GREEN CROSS DATED 28 OCTOBER 1996, AND/OR THE EXECUTION THEREOF, WAS A VALID AND SUFFICIENT REPUDIATION OF THE TRUST FOR PURPOSES OF APPLYING THE RULES ON ACQUISITVE PRESCRIPTION.**[6]

In a Minute Resolution[7] dated 23 November 2011, we required respondents to file their Comment on the Petition.

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[6] *Id*. at 52-53.

[7] *Id*. at 512.

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On 28 November 2011, Gonzalo filed the aforementioned Motion to Withdraw consisting of two pages:

1.1 The *Petition* is a case among relatives, to wit:

(a) Respondents Anthony Co, Mary Co Cho and Peter Co are the siblings of [Gonzalo]; and

(b) Lucy So Hua Tan Co is the sister-in-law of [Gonzalo], the former being the wife of [Gonzalo's deceased' brother], Joseph Co.

2. However, in light of the upcoming yuletide season, not to mention [Gonzalo's] own failing health and advanced age, he honestly believes that it would be to his, his family and his relatives' best interest that the instant appeal be withdrawn to pave the way for a long-delayed reconciliation by and among blood relatives.

3. Thus, [Gonzalo], with utmost respect, most humbly moves for the withdrawal of his *Petition* and the dismissal of the above-captioned case.

4. This motion is being filed due solely to the foregoing reasons.[8]

On 16 January 2012, respondents filed a Manifestation (In Lieu of Comment on the Petition) stating their receipt of: (1) our 23 November 2011 Resolution requiring them to file Comment on the Petition and (2) Gonzalo's Motion to Withdraw Petition. In view of the latter Motion, respondents manifested their lack of objection thereto and asked to be excused from the filing of further Comment on the Petition, thus:

4. Respondents do not object to, in fact greatly appreciate, the "Motion to Withdraw" of Co It [Gonzalo] as it will finally put to rest any misunderstanding among the parties.[9]

Consequently, we issued a Resolution dated 30 January 2012 resolving to:

1. **GRANT** [Gonzalo's] motion to withdraw (re: the petition for review on certiorari dated 30 September 2011) with conformity

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[8] *Id*. at 513-514.

[9] *Id*. at 521.

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of [Gonzalo], dated 28 November 2011, praying for the withdrawal of the petition and the dismissal of the case to pave the way for a long-delayed reconciliation by and among blood relatives; and

2. **INFORM** the Court of Appeals and the parties that the judgment sought to be reviewed has now become final and executory, and to **DECLARE** this case **CLOSED** and **TERMINATED**.

Accordingly, respondents' manifestation (in lieu of comment to the petition) dated 16 January 2012 that they do not object to, in fact greatly appreciate, [Gonzalo's] "Motion to Withdraw" as it will finally put to rest any misunderstanding among the parties and that respondents be excused from filing comment on the petition is **NOTED WITHOUT ACTION**.[10]

On 8 March 2012, our 30 January 2012 Resolution became final and executory and accordingly recorded in the Book of Entries of Judgments.[11] Corollary thereto, the Decision of the appellate court in CA-G.R. CV No. 95095 affirming the trial court's dismissal of Gonzalo's complaint likewise became final and executory, ostensibly settling the issue of ownership of the subject shares of stock in Green Cross, Inc.

Unexpectedly, in May 2014, we received several pleadings from Gonzalo's front:

1. Notice of Withdrawal of Appearance dated 15 May 2014 stating that:

Please be notified that, upon the demand of Petitioner Co It a.k.a. Gonzalo Co It, the undersigned is hereby formally withdrawing as counsel of record in the above-captioned case. Petitioner's express conformity and consent is evidenced by Petitioner's *letters* dated 22 April 2014 and 6 May 2014, attached hereto as ANNEX "A-SERIES" and made integral parts hereof.[12]

2. Entry of Appearance of Gonzalo's new counsel, Ramon M. Maronilla;[13] and

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[10] *Id.* at 529.

[11] *Id.* at 531.

[12] *Id.* at 537-539.

[13] *Id.* at 540-541.

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3. Respectful Motion to Reinstate Petition narrating the events subsequent to Gonzalo's withdrawal of his Petition, to wit:

(06) **[Gonzalo] was advised by his lawyers that respondents have decided to reconcile with him in the spirit of Christmas and in consideration of his old age, and to settle the inheritance problem amicably. Naturally, [Gonzalo] welcomed this information. Thus, [Gonzalo] was expecting that the supposed reconciliation will bear fruit, and that his rightful share of the inheritance will be, upon the assurance of his lawyer, give to him at last. Accordingly, and upon the instruction and recommendation of his lawyers, [Gonzalo] signed his conformity to the MOTION TO WITHDRAW. At that time, [Gonzalo] was ninety-one [91] years old already. As of this writing, [Gonzalo] is ninety-four [94] years old.** (Emphasis supplied)

(07) By way of its RESOLUTION promulgated on January 30, 2012, this Honorable Supreme Court granted the aforesaid MOTION TO WITHDRAW and declared the instant case terminated. Thereafter, the corresponding ENTRY OF JUDGMENT dated March 8, 2012 was issued.

(08) To the utmost disappointment and disgust of [Gonzalo], the "long delayed **reconciliation** by and among blood relatives" upon which the MOTION TO WITHDRAW was based, **never** materialized.

(09) But before the Honorable Supreme Court granted the petition to withdraw the case, [Gonzalo] had a meeting with respondents sometime January 16, 2012 at the Heritage Hotel to finalize their amicable settlement. In said meeting, [Gonzalo] was shocked to learn that respondents expressed no desire to amicably settle the case. Respondents even berated [Gonzalo] for the cases [Gonzalo] filed against them. Worse, respondents demanded that [Gonzalo] make a public apology to the chinese community in a chinese newspaper before they even talk of reconciliation or compromise.

(10) Equally disturbing for [Gonzalo] was his realization that his lawyers, led him to believe in a reconciliation that was never considered by respondents to begin with.

(11) As a consequence of the withdrawal of [Gonzalo's] PETITION FOR REVIEW ON *CERTIORARI* in G.R. No. 198127, respondents had their way with the inheritance from the deceased parents of [Gonzalo]. Sadly, [Gonzalo] was left with virtually nothing from

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the inheritance. [Gonzalo] is a victim of gross injustice which, regrettably, was visited upon him by reason of the misplaced trust he reposed in his lawyers.

(12) It appears that at the time [Gonzalo] was made by his lawyers to sign his conformity to the MOTION TO WITHDRAW dated November 28, 2011, his lawyers had absolutely nothing in their possession, not even a single document, which will protect the interests of their client [the herein petitioner Co It] in the event that respondents refused to reconcile with their client, or in the event that no amicable settlement is reached by the parties.

(13) At the very least, [Gonzalo] respectfully submits that there was negligence on the part of his lawyers when they advised [Gonzalo] to sign his conformity to the MOTION TO WITHDRAW. [Gonzalo] maintain that his lawyers failed to protect the interests of their client – [Gonzalo].

x x x x x x x x x

(16) **Undoubtedly, the withdrawal of the PETITION FOR REVIEW ON *CERTIORARI* resulted in gross injustice to [Gonzalo] inasmuch as the reason for withdrawal of the PETITION, which is, the reconciliation never materialized, hence, the withdrawal was based on a non-existent consideration.** Certainly, [Gonzalo], did not intend to cause such injustice to be visited upon himself. Being a non-lawyer and being a person of advance age, [Gonzalo] completely relied on the advice given by his legal counsel. That is why he signed his conformity to the MOTION TO WITHDRAW. [Gonzalo], therefore, humbly submits that the withdrawal of the PETITION FOR REVIEW ON *CERTIORARI* was sought with excusable improvidence.

x x x x x x x x x

ALL TOLD, and in the interest of substantial justice, [Gonzalo] respectfully moves for the reinstatement of the PETITION FOR REVIEW ON *CERTIORARI* dated September 30, 2011.[14]

Respondents filed an Opposition to Gonzalo's motion to reinstate petition emphasizing that the Decision of the appellate court in CA-G.R. CV No. 95095 had already attained finality

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[14] *Id*. at 545-548.

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with the issuance of Entry of Judgment (dated 8 March 2012) in this case docketed as G.R. No. 198127. Thus, with the finality of our 30 January 2012 Resolution, respondents point out that we had already lost jurisdiction over the case. Specifically, respondents aver that the ruling of the trial court dismissing Gonzalo's complaint for Reconveyance of 333.7 shares in Green Cross, Inc. is conclusive on Gonzalo who is ultimately estopped from further assailing the finding that his causes of action are barred by prior final judgment.

Curiously, respondents did not delve into the impetus for Gonzalo's Motion to Withdraw Petition, *i.e.* Gonzalo's expectancy, albeit mistaken, of a reconciliation with respondents, his siblings, and amicable settlement of their respective ownership of shares in Green Cross, Inc. Respondents' opposition simply dwelt on the consequences of Gonzalo's conformity to the withdrawal of his Petition and the finality of judgment thereon which precludes him from reinstating his appeal of the appellate court's ruling in CA-G.R. CV No. 95095.

Lastly, respondents argued that Gonzalo's remedy is not through the filing of a motion to reinstate appeal but *via* a petition for annulment of judgment under Rule 47 of the Rules of Court. However, such remedy, respondents asseverate, is likewise not available to Gonzalo, without the occurrence of extrinsic fraud and where such is not claimed by him, which fraud annuls a final and executory judgment.

In his Reply (attached to his Motion for Leave to File Reply), Gonzalo points out that respondents only discussed the general rule on finality of judgments and the consequences thereof. Gonzalo insists that the rule on immutability of final judgments is not without exceptions: as when circumstances which transpire after the finality of the decision renders its execution unjust and inequitable; and blind adherence thereto will involve the sacrifice of justice for technicality.

Indeed, nothing is more settled in law than that a judgment, once it attains finality, becomes immutable and unalterable and can no longer be modified in any respect, regardless of whether

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the modification is attempted to be made by the court rendering it or by the highest court of the land.[15] Once a case is decided with finality, the controversy is settled and the matter is laid to rest.[16] Such a rule rests on public policy and sound practice that at the risk of occasional error, the judgment of courts and the award of quasi-judicial agencies must become final at some definite date fixed by law.[17] All litigation must come to an end; any contrary posturing renders justice inutile and reduces to futility the winning party's capacity to benefit from a resolution of the case.[18]

However, in one occasion, *Sacdalan v. Court of Appeals*,[19] we specifically affirmed the reinstatement of an appeal before the appellate court, which dismissal had likewise become final and executory, considering the greater interest of justice.

The applicability of *Sacdalan* to the case and motion herein is unavoidable because of the following common facts:

(1) Belen Vda. de Guia, original owner of two parcels of land registered in her name, filed a civil case for cancellation of sale, reconveyance and damages against her son Carlos de Guia and two (2) other subsequent sales of the subject real property;

(2) The trial court, formerly Court of First Instance, dismissed Belen's complaint;

(3) On appeal by Belen to the then Intermediate Appellate Court, the latter dismissed the appeal for non-payment of docket fees;

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[15] *Ocampo v. RPN-9*, G.R. No. 192947, 9 December 2015.

[16] *Siy v. National Labor Relations Commission*, 505 Phil. 265, 273 (2005).

[17] *Filipro, Inc. v. Permanent Savings & Loan Bank*, 534 Phil. 551, 560 (2006).

[18] *Id*.

[19] 472 Phil. 652 (2004).

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(4) The dismissal became final and executory on 17 May 1983; an Entry of Judgment was issued on June 21, 1983; records of the case were remanded to the CFI on July 6, 1983; and on motion of one of the defendants therein, a writ of execution was issued;

(5) Subsequently, Belen's counsel found out about the dismissal of Belen's appeal for non-payment of docket fees, not having received notice of the dismissal. Forthwith, Belen filed a motion to reinstate the appeal; and

(6) On 21 May 1984, the appellate court granted the reinstatement of the appeal grounded on the interest of justice, and ordered the CFI to elevate the records of the case.

With the reinstatement of the appeal, the IAC ultimately reversed the lower court's dismissal of Belen's complaint for reconveyance, cancelled the subsequent sales made by Belen's son of the subject property, and ordered the Register of Deeds of Bulacan to reinstate the Transfer Certificate of Title in Belen's name as "the true and valid title over the lands described therein."

From this incident, other events transpired which branched out into cases: (1) for contempt filed by Belen against subsequent possessors of the subject property; and (2) ejectment filed by Belen against tenants of the subject property before the Department of Agrarian Reform and Adjudication Board (DARAB).

The second case reached the appellate court after the DARAB denied Belen's complaint for ejectment and curiously, affirmed the titles of therein respondents-tenants over the same subject property. The appellate court, in CA-G.R. SP No. 39315 reversed the DARAB's ruling, ordered the vacation of therein petitioners (tenants) from the property, and once again affirmed Belen's title over the subject property.

Appeal from this ruling of the appellate court reached us in *Sacdalan v. Court of Appeals*.[20] Petitioners therein claimed that

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[20] *Supra* note 19.

the first case before the IAC in AC-G.R. CV No. 02883, which had become final and executory and remanded to the lower court for execution, can no longer be reinstated. As had been stated, we affirmed the reinstatement of the appeal, thus:

> The Court has recognized instances when reinstatement of an appeal was deemed just and proper considering the greater interest of justice. This case is one of them. The IAC, on April 19, 1983, dismissed Belen de Guia's appeal for non-payment of docket fees. It is settled however that failure to pay the appeal docket fee confers on the court a mere directory power to dismiss an appeal which must be exercised with sound discretion and with a great deal of circumspection considering all attendant circumstances. Dismissal of an appeal based on this ground is discretionary with the appellate court and should be exercised wisely and prudently with a view to substantial justice.
>
> As noted by the IAC in its decision dated May 21, 1984 in AC-G.R. CV No. 5524-UDK, Belen failed to pay the appeal docket fee, not because of lack of interest, but because of lack of proper notice. It was only upon the inquiry of Belen's corroborating counsel that they found out, for the first time, the dismissal of her appeal. The Court is aware of its ruling in *Arambulo vs. Court of Appeals* that failure of the counsel to inquire from either the trial or the appellate court the status of their appeal particularly as to the payment of docket fees, constitutes negligence sufficient to merit the dismissal of the appeal. **However, the fact that the appeal of Belen involved her claim that her own son Carlos de Guia forged her signature in a deed of sale transferring to him the ownership of her two parcels of land, the IAC did not commit any reversible error nor grave abuse of discretion in reinstating the appeal. The interest of substantial justice far outweighs whatever negligence Belen and her counsel might have committed.**[21] (Emphasis supplied)

Clearly, we can draw a parallel from *Sacdalan*.

First, our grant and allowance of the Motion to Withdraw was based on the movant's, Gonzalo's, prayer, which in turn, was grounded on his earnest belief of reconciliation with his family, siblings, herein respondents. Consequently, we directed the finality of judgment of the appellate court in CA-G.R. CV

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[21] *Id*. at 667-668.

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No. 95097. Such does not detract from the fact that the finality of judgment was reached only because Gonzalo chose to withdraw his Petition based on his previous counsel's representations of a possible and long-awaited reconciliation with his siblings. This finality of judgment was not based on our ruling on the propriety of the appellate court's decision to dismiss Gonzalo's complaint before the RTC.

From Gonzalo's motions, he clarifies that he would not have withdrawn his Petition had his counsel fully and completely explained to him the legal consequences thereof where the reconciliation is only, and remains, an expectancy, as respondents' counsel have put it. In his conformity to the Motion to Withdraw undeniably prepared by his then counsel, the tenor speaks volume of Gonzalo's desire to reconcile with his family and his commitment and sincerity in offering the olive branch to pave the way for reconciliation. That is the sole focus of Gonzalo, regrettably, without awareness of the accompanying cost it would have to his claims should reconciliation not happen, as it did here.

Second, and in the same vein, the very same Motion to Withdraw does not specify the legal consequences of such a withdrawal, including the consequence of no reconciliation with his siblings and complete preclusion from pursuing all his legal remedies to claim his share of ownership in Green Cross, Inc. It did not state that Gonzalo is aware that the Decision of the Court of Appeals in CA-G.R. CV No. 95095 will attain finality and subsequently bar Gonzalo, the original sole proprietor of Gonzalo Laboratories, formulator of Green Cross Rubbing Alochol, from staking his claim in Green Cross, Inc., in his own right, by virtue of his allegation of the shares of his siblings being held simply in trust or, in the alternative, as a co-heirs of his parents' shares.

It appears that Gonzalo indeed received the raw end of the deal when his expected reconciliation with his siblings did not materialize. We cannot countenance such an injustice and validate a stance that our approval of a clearly lopsided Motion completely precludes Gonzalo from pursuing his legal remedies.

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More importantly, we are not unmindful of a lawyer's fealty to his client. We observe that the short Motion to Withdraw, if not for the aspiration of a good familial relationship for the remainder of Gonzalo's twilight years, was made without qualification. Respondents readily latched onto this and gave no indication whatsoever that the reconciliation they are amenable to would only be on all terms dictated by them. Given that reconciliation was not possible in the early stages of the case, before the lower court and even in the appellate court,[22] Gonzalo's previous counsel should have advised his client not to withdraw his Petition without any guarantee of reconciliation between Gonzalo and his siblings.

Indeed, Rule 19.03 of the Code of Professional Responsibility directs that:

> Rule 19.03 – A lawyer shall not allow his client to dictate the procedure in handling the case.

We are not now resolving the merits of this case. Considering that the parties have not reconciled and reached an agreement which petitioner was led to believe as possible, we simply allow the reinstatement of the instant Petition to provide Gonzalo the opportunity to avail of, and pursue, all his legal remedies concerning his supposed stake in Green Cross Incorporated, such issue not having been definitively resolved by this Court. Considering all attendant circumstances, especially that which has led to Gonzalo's initial Motion to Withdraw Petition, the following issues must be allowed to determine the respective rights of the herein parties:

1. Green Cross, originally a sole proprietorship, was established by Gonzalo who was advised to incorporate as a better vehicle to handle his business.[23] During incorporation, Gonzalo placed incorporating shares in the name of his loved ones, his parents and siblings, who did not pay consideration therefor and who held the shares merely in trust for Gonzalo.

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[22] The complaint of Gonzalo was dismissed after the grant of respondents' Motion to Dismiss.

[23] See Section 2 of the Corporation Code.

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2. The fraud allegedly effected by his parents and siblings, represented by herein respondents, purportedly diluting Gonzalo's shares in Green Cross reducing it to 1 share.

3. At the time of both Ang Si's and Co Ay Tian's death in 1989 and 1991, respectively, their estates were never settled such that there was no actual partition thereof and distribution of the proceeds to their heirs, the parties herein.

4. The subsequent transfer of the shares in respondents' name does not denote actual knowledge of Gonzalo that his share of inheritance in the shares of stocks in his parents' name was being and actually appropriated by his siblings, excluding him from that part of their parents' respective estates.

5. In all, Gonzalo claims continuing and persistent fraud where the transactions on which the transfer of the shares of the parties' parents who allegedly did not actually own the Green Cross shares in their names, is one for declaration of nullity of shares of stock in respondents' names. Thus, the action to declare their inexistence is imprescriptible.[24]

Palpably, the interest of substantial justice demand that Gonzalo be allowed to pursue his appeal, reinstatement of the petition imperative to further thresh out the issues involved herein.

**WHEREFORE,** the Motion to Reinstate Petition is **GRANTED**. Respondents Anthony Co, Mary Co Cho, Peter Co, Lucy So Hua Tan Co, likewise pursuant to our Resolution dated 23 November 2011, are ordered to file their **COMMENT** on the petition within ten (10) days from notice hereof.

**SO ORDERED.**

*Carpio, Acting C.J.* (*Chairperson*), *Reyes,* and *Perlas-Bernabe, JJ.,* concur.

*Sereno, C.J.,* on official leave.

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[24] Article 1410 of the Civil Code.