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expedite all judicial proceedings, he has filed a petition which merely raises issues that have long been resolved with finality. By so doing, petitioner has gone beyond merely exhausting his available remedies and trodden in the realm of abusing legal processes.

WHEREFORE, premises considered, the petition is *DENIED*. The *Sandiganbayan* is ordered to proceed with the arraignment and trial of Criminal Case No. 26546. Petitioner and his counsel are *ADMONISHED* not to engage further in delaying tactics.

Costs against petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 162772. March 14, 2008]

MERLIZA A. MUÑOZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW FROM THE REGIONAL TRIAL COURTS TO THE COURT OF APPEALS; EFFECT OF FAILURE TO COMPLY WITH REQUIREMENTS; FAILURE TO SERVE COPY OF THE PETITION ON THE ADVERSE PARTY OR SHOW PROOF OF SERVICE THEREOF IS A FATAL DEFECT, FOR WHICH THE PETITION CAN BE DISMISSED UNDER SECTION 3, RULE 42 OF THE RULES OF COURT. — Except in criminal cases in which the penalty imposed is *reclusion perpetua* of death, an appeal is not a matter of right but of sound judicial discretion. It may be availed of only in the manner provided

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by law and the rules. Rule 42 prescribes the following requirements for the filing with the CA of a petition for review from a decision of the RTC. The timeliness of a petition depends not only on its seasonable filing but also on the prompt service of copy thereof on the adverse party and the RTC. Thus, the petition must be accompanied by proof of service as prescribed under Rule 13. Failure to serve copy of the petition on the adverse party or to show proof of service thereof is a fatal defect, for which the petition can be dismissed under Section 3, Rule 42, thus: Section 3. *Effect of failure to comply with requirements*. The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

2. ID.; CIVIL PROCEDURE; PLEADINGS; SERVICE OF; SERVICE ON THE ASSISTANT CITY PROSECUTOR, WHO WAS NO LONGER COUNSEL OF THE ADVERSE PARTY WHEN THE CASE WAS BROUGHT TO THE COURT OF APPEALS, NOR WAS SPECIFICALLY DEPUTIZED OR DESIGNATED BY THE SOLICITOR GENERAL TO REPRESENT HIM OR RECEIVE NOTICES FOR HIM, DOES NOT AMOUNT TO SERVICE ON THE ADVERSE PARTY. — In the present case, petitioner failed to serve copy of her petition on the Solicitor General as counsel of the adverse party, the People of the Philippines. Hence, the CA did not commit any reversible error in dismissing her petition. Petition did not even show substantial compliance with the requirement of service of pleading. Although she served copy of her Petition for Review on Assistant City Prosecutor Catalino C. Serrano, the latter was no longer counsel of the adverse party when the case brought to the CA, nor was he specifically deputized or designated by the Solicitor General to represent him or receive notices for him. Hence, service on the Assistant City Prosecutor did not amount to service on the Solicitor General.

3. ID.; ID.; ID.; ID.; PETITIONER FAILED TO CONVINCE THE COURT THAT THE SUBSTANTIAL GROUNDS CITED IN HER PETITION FAR TRANSCEND ITS TECHNICAL DEFICIENCIES AS WOULD JUSTIFY THE RESOLUTION ON ITS MERITS RATHER THAN FORM. — It is true that oftentimes

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the Court applied the rules with flexibility in order that the merits of a case will be fully adjudicated upon, notwithstanding its technical imperfections. But what impels the Court to do so is neither a party's empty invocations of liberality nor its mechanical correction of the imperfections. Rather, only a clear showing of *prima facie* merit of the petition will persuade the Court to take the extraordinary effort of setting aside its rules to give way to the imperfect petition. After all, the rationale for liberality is to bring to light the merits of the petition, unobstructed by mere deficiencies in its form, such that if the petition has not an iota of merit in it, then there is nothing for the Court to bring to light at all. In the present case, while upon motion for reconsideration, petitioner supplied what were lacking in her petition for review filed with the CA, she utterly failed to convince the Court that the substantial grounds cited therein far ***transcend*** its technical deficiencies as would justify the resolution of her petition on its merits rather than form.

4. ID.; ID.; ID.; ID.; PETITIONER IS ALREADY BARRED FROM RAISING THE ISSUE OF LACK OF AUTHORITY OF THE COMPLAINANT TO FILE THE COMPLAINT. — The issue of whether a corporate officer may bring suit on behalf of his corporation for violation of B.P. Blg. 22 is not novel. In *Tam Wing Tak v. Makasiar,* the Court affirmed the dismissal of a criminal case for violation of B.P. Blg. 22 for lack of authority of the private complainant, thus: Second, it is not disputed in the instant case that Concord, a domestic corporation, was the payee of the bum check, not petitioner. Therefore, it is Concord, as payee of the bounced check, which is the injured party. Since petitioner was neither a payee nor a holder of the bad check, he had neither the personality to sue nor a cause of action against Vic Ang Siong. ***Under Section 36 of the Corporation Code, read in relation to Section 23, it is clear that where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. Note that petitioner failed to show any proof that he was authorized or deputized or granted specific powers by Concord's board of director to sue Victor And Siong for and on behalf of the firm. Clearly, petitioner as a minority stockholder and member of the board of directors had no such power or authority to sue on Concord's behalf.*** xxx We applied the same rule just recently to *Ilusorio v. Ilusorio,* which involved a criminal complaint for robbery and

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qualified trespass. However, it bears emphasis that in both cases, the deficiency in the complaint was challenged by the accused at the preliminary investigation stage, or before he entered a plea upon arraignment. On the contrary, in the present case, petitioner questioned the authority of Elizaldy Co after arraignment and completion of the prosecution's presentation of evidence. Thus, she is barred from raising such objection under Section 9, Rule 117 of the Rules of Court, to wit: Section 9. *Failure to move to quash or to allege any ground therefore*.— The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule. The deficiency in the complaint/information arising from the lack of authority of Elizaldy Co was not jurisdictional. It did not detract from the unquestioned authority of the Assistant City Prosecutor to file the Information, nor impair the jurisdiction of the MTCC to act on the same.

5. ID.; ID.; ID.; THE PETITION FOR REVIEW OF PETITIONER WAS CORRECTLY DISMISSED BY THE COURT OF APPEALS FOR DEFICIENCY IN FORM AND FOR LACK OF SHOWING THAT HER APPEAL TO THE COURT OF APPEALS WAS MERITORIOUS. — Petitioner harps on the purported lack of notice to her of the dishonor of the RCBC check. This contention files in the face of documentary evidence consisting of the March 20, 2001 letter of petitioner to Sunwest where she expressly acknowledged receiving the March 14, 2001 notice of dishonor of the RCBC check. In fine, for deficiency in form and for lack of showing that her appeal to the CA was meritorious, the petition for review of petitioner was correctly dismissed by the CA.

APPEARANCES OF COUNSEL

Lucas C. Carpio, Jr. for petitioner.
The Solicitor General for public respondent.
Batocabe & Associates Law Offices for private respondent.

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D E C I S I O N

AUSTRIA-MARTINEZ, *J.*:

By way of a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, Merliza A. Muñoz (petitioner) assails the November 19, 2003 Resolution[1] of the Court of Appeals (CA) sustaining her conviction for violation of *Batas Pambansa Bilang* 22 (B.P. Blg. 22); and the March 10, 2004 CA Resolution[2] denying her Motion for Reconsideration.

The antecedent facts are as stated by the trial courts.

Petitioner is the wife of Ludolfo P. Muñoz, Jr. (Ludolfo), owner and operator of L.P. Munoz Construction (Muñoz Construction). On August 3, 2000, Ludolfo took a loan of ₱500,000.00, at 5% interest, from Sunwest Construction and Development Corporation (Sunwest). Ludolfo issued to Sunwest a Development Bank of the Philippines (DBP) check, postdated September 3, 2000, for ₱500,000.00.[3]

On September 3, 2000, Ludolfo sought an extension of his loan by replacing the DBP check with Rizal Commercial Banking Corporation (RCBC) Check No. 0000057285 for ₱500,000.00, drawn by petitioner[4] and postdated December 3, 2000. Sunwest accepted the replacement check.[5]

On February 5, 2001 Sunwest deposited the RCBC check with the Bank of the Philippine Islands (BPI), Legaspi City,[6] which presented it to the drawee bank RCBC, but the latter dishonored the check for insufficiency of funds.[7] Thus, on

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[1] Penned by Associate Justice Mercedes Gozo-Dadole and concurred in by Associate Justices Eugenio S. Labitoria and Rosmari D. Carandang; *rollo*, p. 29.

[2] *Id.* at 31.

[3] MTCC Decision, *rollo*, p. 91; RTC Decision, *id.* at 99.

[4] *Id.* at 91.

[5] *Id.* at 55.

[6] *Id.*

[7] *Id.* at 56.

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February 8, 2001, Sunwest sent by registered mail a letter addressed to Ludolfo, informing him of the dishonor of the RCBC check and demanding that he make good the check or pay the amount thereof within five days from receipt of said notice.[8] The letter was received on the same day by Eden Barnedo at the postal address "L.P. Muñoz, Jr. [sic] Construction, Fernando Avenue, Doña Maria Subd., Daraga, Albay."[9]

On March 14, 2001, Sunwest sent by registered mail another letter, this time addressed to petitioner, informing her of the dishonor of the RCBC check and demanding that she pay the said check within five days from receipt of the letter.[10] The letter was received on March 20, 2001 by Eden Barnedo at the postal address, "Fernando Avenue, Doña Maria Subd., Daraga, Albay."[11]

In her March 20, 2001 reply to Sunwest, petitioner explained that Sunwest and Muñoz Construction had mutual claims against each other: Muñoz Construction had a claim against Sunwest for ₱10,000,000.00, including a 15% advance payment, for two river control projects, while Sunwest had a claim against Muñoz Construction for ₱500,000.00. Given that the claim of Muñoz Construction was bigger than that of Sunwest, petitioner treated the first claim as having automatically offset, covered or paid the second claim as represented by the amount of the RCBC check. This explains why petitioner did "not give emphasis" anymore to the RCBC check, the amount of which she considered as having been already settled. Petitioner reminded Sunwest that it was made aware of the offsetting of the amount of the RCBC check as early as February 15, 2001.[12]

Upon a criminal complaint[13] filed by Elizaldy S. Co, Sunwest president, an Information[14] was filed by the City Prosecutor

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[8] *Id.* at 57.

[9] *Id*.

[10] *Rollo*, p. 58.

[11] *Id*.

[12] RTC Decision, *id*. at 99-100; MTCC Decision, *id*. at 92.

[13] *Id.* at 52.

[14] *Id.* at 60.

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before the Municipal Trial Court in Cities (MTCC), Legaspi City, charging petitioner with violation of B.P. Blg. 22. Petitioner entered a plea of "Not Guilty."[15]

After trial, the MTCC rendered a Decision dated August 19, 2003,[16] finding petitioner guilty beyond reasonable doubt of the crime charged, and sentencing her to pay a fine of ₱200,000.00; to pay Sunwest ₱500,000.00, representing the amount of RCBC Check No. 0000057285, plus interest thereon at the rate of 12% per annum computed from April 23, 2001, the date of the filing of the information, until fully paid; and to pay the costs.[17]

On appeal by petitioner, the Regional Trial Court (RTC), Legaspi City, in a Decision dated October 16, 2003, affirmed the MTCC Decision *in toto*.[18]

Petitioner filed a Petition for Review with the CA but the latter dismissed it outright in the November 19, 2003 Resolution assailed herein, citing the following grounds:

> (a) Failure to attach or incorporate an Affidavit of Service as required under Section 13, Rule 13 in relation to Section 3, Rule 42 of the 1997 Rules of Civil Procedure, as amended; and
>
> (b) Failure to furnish copy of the petition and its annexes to the Office of the Solicitor General which is the counsel of the People of the Philippines.[19]

With the denial by the CA of her Motion for Reconsideration, petitioner is now before the Court raising the following issues:

Whether or not the Fifth Division of the Court of Appeals gravely erred in dismissing the petition for review filed by herein petitioner purely on technical grounds.

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[15] MTCC Decision, *id*. at 90.

[16] *Id.* at 90-97.

[17] *Rollo*, p 97.

[18] *Id.* at p. 103.

[19] *Id*. at p. 29.

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Whether or not the court *a quo* gravely erred in convicting the petitioner notwithstanding the fact that the criminal complaint was filed by an unauthorized representative of the private complainant corporation.

Whether or not the court *a quo* gravely erred in convicting the petitioner notwithstanding the fact that the prosecution failed to prove the element of knowledge of insufficiency of funds in or credit with the drawee bank on the part of the petitioner.

Whether or not the court *a quo* gravely erred when it held the petitioner civilly liable notwithstanding the absence of authority of Elizaldy S. Co to file the instant case for and in behalf of the private complainant corporation.[20]

The Court finds no merit in the Petition.

Except in criminal cases in which the penalty imposed is *reclusion perpetua* or death, an appeal is not a matter of right but of sound judicial discretion. It may be availed of only in the manner provided by law and the rules.[21]

Rule 42 prescribes the following requirements for the filing with the CA of a petition for review from a decision of the RTC:

Section 1. *How appeal taken; time for filing*. A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said Court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be ***filed and served within fifteen (15) days*** from notice of the decision sought to be reviewed or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Emphasis supplied.)

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[20] *Id.* at 12-13.

[21] *Tamayo v. Court of Appeals,* 467 Phil. 603, 607-608 (2004).

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Clearly, therefore, the timeliness of a petition depends not only on its seasonable filing but also on the prompt service of copy thereof on the adverse party and the RTC. Thus, the petition must be accompanied by proof of service as prescribed under Rule 13, *viz*:

> Section 13. *Proof of service*. Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

Failure to serve copy of the petition on the adverse party or to show proof of service thereof is a fatal defect,[22] for which the petition can be dismissed under Section 3, Rule 42, thus:

> Section 3. *Effect of failure to comply with requirements*. The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

In the present case, petitioner failed to serve copy of her petition on the Solicitor General as counsel of the adverse party, the People of the Philippines.[23] Hence, the CA did not commit any reversible error in dismissing her petition.[24]

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[22] *Ferrer v. Villanueva*, G.R. No. 155025, August 24, 2007, 531 SCRA 97, 102.

[23] Section 35 (1), Chapter 12, Title III, Book III of Executive Order No. 292, otherwise known as the 1987 Administrative Code.

[24] *Castillo v. Monzon*, G.R. No. 143418, January 22, 2001 Resolution; *Magcalas v. Reyes*, G.R. No. 136605, July 12, 1999 and April 7, 1999 Resolutions; *Franco v. Court of Appeals*, G.R. No. 136346, April 12, 1999 and January 20, 1999 Resolutions.

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Petitioner did not even show substantial compliance with the requirement of service of pleading.[25] Although she served copy of her Petition for Review on Assistant City Prosecutor Catalino C. Serrano, the latter was no longer counsel of the adverse party when the case was brought to the CA, nor was he specifically deputized or designated by the Solicitor General to represent him or receive notices for him.[26] Hence, service on the Assistant City Prosecutor did not amount to service on the Solicitor General.[27]

However, petitioner argues that, rather than dismiss her petition, the CA should have advised her to correct the deficiency or taken the initiative of furnishing the Solicitor General with a copy of the petition and requiring the latter to comment on it.[28] Furthermore, petitioner appeals for liberality in the treatment of her appeal, so that it may be decided on the merits rather than on technicality.[29]

It is true that oftentimes the Court applied the rules with flexibility in order that the merits of a case will be fully adjudicated upon, not-withstanding its technical imperfections.[30] But what impels the Court to do so is neither a party's empty invocations of liberality nor its mechanical correction of the imperfections.[31] Rather, only a clear showing of *prima facie* merit of the petition will persuade the Court to take the extraordinary effort of setting aside its rules to give way to the imperfect petition.[32] After all, the rationale

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[25] *Austria v. Sta. Maria*, G.R. No. 165643, April 13, 2005. See also *Tagabi v. Tanque*, G.R. No. 144024, July 27, 2006.

[26] See *People of the Philippines v. Gabriel*, G.R. No. 147832, December 6, 2006, 510 SCRA 197, 201-202.

[27] *Republic of the Philippines v. Planes*, 430 Phil. 848, 866 (2002).

[28] Petition, *rollo*, p. 15.

[29] *Id.* at 16.

[30] *Wee v. Galvez*, G.R. No. 147394, August 11, 2004, 436 SCRA 96, 110; *Orbeta v. Sendiong*, G.R. No. 155236, July 8, 2005, 463 SCRA 180; *Donato v. Court of Appeals*, 462 Phil. 676, 692 (2003).

[31] *Clavecilla v. Quitain*, G.R. No. 147989, February 20, 2006, 482 SCRA 623, 634.

[32] *Makamanggagawa v. Associated Anglo American Tobacco Corporation*, G.R. No. 156613, February 18, 2008.

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for liberality is to bring to light the merits of the petition, unobstructed by mere deficiencies in its form, such that if the petition has not an iota of merit in it, then there is nothing for the Court to bring to light at all.

In the present case, while upon motion for reconsideration, petitioner supplied what were lacking in her petition for review filed with the CA,[33] she utterly failed to convince the Court that the substantial grounds cited therein far ***transcend*** its technical deficiencies as would justify the resolution of her petition on its merits rather than form.

A cursory assessment of the arguments of petitioner is necessary.

First, petitioner insists that the criminal case filed against her, as well as the civil case that was deemed instituted with it, should have been dismissed for lack of authority of Elizaldy Co to file the same on behalf of Sunwest, the payee of the RCBC check.[34]

The issue of whether a corporate officer may bring suit on behalf of his corporation for violation of B.P. Blg. 22 is not novel. In *Tam Wing Tak v. Makasiar*,[35] the Court affirmed the dismissal of a criminal case for violation of B.P. Blg. 22 for lack of authority of the private complainant, thus:

> Second, it is not disputed in the instant case that Concord, a domestic corporation, was the payee of the bum check, not petitioner. Therefore, it is Concord, as payee of the bounced check, which is the injured party. Since petitioner was neither a payee nor a holder of the bad check, he had neither the personality to sue nor a cause of action against Vic Ang Siong. ***Under Section 36 of the Corporation Code, read in relation to Section 23, it is clear that where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. Note that petitioner failed to show any proof that he was authorized or deputized or granted specific***

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[33] CA *rollo*, pp. 39-42.

[34] Petition, *rollo*, p. 17.

[35] 403 Phil. 391 (2001).

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powers by Concord's board of director to sue Victor And Siong for and on behalf of the firm. Clearly, petitioner as a minority stockholder and member of the board of directors had no such power or authority to sue on Concord's behalf. x x x[36] (Emphasis supplied)

We applied the same rule just recently to Ilusorio v. Ilusorio,[37] which involved a criminal complaint for robbery and qualified trespass.

However, it bears emphasis that in both cases, the deficiency in the complaint was challenged by the accused at the preliminary investigation stage, or before he entered a plea upon arraignment. On the contrary, in the present case, petitioner questioned the authority of Elizaldy Co after arraignment and completion of the prosecution's presentation of evidence. Thus, she is barred from raising such objection under Section 9, Rule 117 of the Rules of Court, to wit:

> Section 9. *Failure to move to quash or to allege any ground therefor*. – The failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule.

The deficiency in the complaint/information arising from the lack of authority of Elizaldy Co was not jurisdictional. It did not detract from the unquestioned authority of the Assistant City Prosecutor to file the Information, nor impair the jurisdiction of the MTCC to act on the same.[38]

Second, petitioner harps on the purported lack of notice to her of the dishonor of the RCBC check. This contention flies

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[36] *Id.* at 402-403.

[37] G.R. No. 171659, December 13, 2007.

[38] *Cf. People of the Philippines v. Garfin*, G.R. No. 153176, March 29, 2004, 426 SCRA 393; *Cruz v. Sandiganbayan*, G.R. No. 134493, August 16, 2005, 467 SCRA 52; *Romualdez v. Sandiganbayan*, 434 Phil. 670; *Cudia v. Court of Appeals*, 348 Phil. 190 (1998).

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in the face of documentary evidence consisting of the March 20, 2001 letter of petitioner to Sunwest where she expressly acknowledged receiving the March 14, 2001 notice of dishonor of the RCBC check.[39]

In fine, for deficiency in form and for lack of showing that her appeal to the CA was meritorious, the petition for review of petitioner was correctly dismissed by the CA.

WHEREFORE, the petition is *DENIED*.

Costs against petitioner.

SO ORDERED.

Ynares-Santiago (Chairperson), Chico-Nazario, Nachura, and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 166006. March 14, 2008]

PLANTERS PRODUCTS, INC., *petitioner, vs.* **FERTIPHIL CORPORATION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; JUDICIAL DEPARTMENT; REQUIREMENTS BEFORE A COURT MAY DECLARE A LAW UNCONSTITUTIONAL; CAPACITY TO SUE OR *LOCUS STANDI*; RESPONDENT HAS *LOCUS STANDI* BECAUSE IT SUFFERED DIRECT INJURY. — The doctrine of *locus standi* or the right of appearance in a court of justice has been adequately discussed by this Court in a catena of cases. Succinctly put, the doctrine requires a litigant to have a material interest in the outcome of a case. In private suits, *locus standi* requires a litigant to be a "real party in interest", which is defined

[39] *Supra* at 12