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Second. An incapacity to bring legal actions peculiar to petitioner also obtains. Petitioner's suspension from the practice of law bars him from performing "any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience."[10] Certainly, preparing a petition raising carefully crafted arguments on equal protection grounds and employing highly legalistic rules of statutory construction to parse Section 23 of RA 7157 falls within the proscribed conduct.

Third. A supervening event has rendered this case academic and the relief prayed for moot. Respondent Davide resigned his post at the UN on 1 April 2010.

WHEREFORE, we *DISMISS* the petition.

SO ORDERED.

Corona, C.J., Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Brion, J., on leave.

SECOND DIVISION

[G.R. No. 162175. June 28, 2010]

MIGUEL J. OSSORIO PENSION FOUNDATION, INCORPORATED, *petitioner, vs.* **COURT OF APPEALS and COMMISSIONER OF INTERNAL REVENUE,** *respondents*.

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[10] *Cayetano v. Monsod*, G.R. No. 100113, 3 September 1991, 201 SCRA 210, 214.

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SYLLABUS

1. CIVIL LAW; IMPLIED TRUSTS; WHEN A CO-OWNER ALLOWS THE REGISTRATION OF HIS PROPORTIONATE SHARE IN THE NAME OF HIS CO-OWNER, TRUST IS CREATED BY FORCE OF LAW; WHERE "COMMON CONSENT" IS REQUIRED. — The law **expressly allows** a co-owner (first co-owner) of a parcel of land to register his proportionate share in the name of his co-owner (second co-owner) in whose name the entire land is registered. The second co-owner serves as a legal trustee of the first co-owner insofar as the proportionate share of the first co-owner is concerned. The first co-owner remains the owner of his proportionate share and not the second co-owner in whose name the entire land is registered. Article 1452 of the Civil Code provides: Art. 1452. If two or more persons agree to purchase a property and by common consent the legal title is taken in the name of one of them for the benefit of all, **a trust is created by force of law** in favor of the others in proportion to the interest of each. For Article 1452 to apply, all that a co-owner needs to show is that there is "common consent" among the purchasing co-owners to put the legal title to the purchased property in the name of one co-owner for the benefit of all. Once this "common consent" is shown, "**a trust is created by force of law**." The BIR has no option but to recognize such legal trust as well as the beneficial ownership of the real owners because the trust is created by force of law. The fact that the title is registered solely in the name of one person is not conclusive that he alone owns the property.

2. ID.; ID.; ID.; THE TRUSTOR-BENEFICIARY IS NOT ESTOPPED FROM PROVING ITS OWNERSHIP OVER THE PROPERTY HELD IN TRUST. — The trustor-beneficiary is not estopped from proving its ownership over the property held in trust by the trustee when the purpose is not to contest the disposition or encumbrance of the property in favor of an innocent third-party purchaser for value. The BIR, not being a buyer or claimant to any interest in the MBP lot, has not relied on the face of the title of the MBP lot to acquire any interest in the lot. There is no basis for the BIR to claim that petitioner is estopped from proving that it co-owns, as trustee of the

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Employees' Trust Fund, the MBP lot. Article 1452 of the Civil Code recognizes the lawful ownership of the trustor-beneficiary over the property registered in the name of the trustee. Certainly, the Torrens system was not established to foreclose a trustor or beneficiary from proving its ownership of a property titled in the name of another person when the rights of an innocent purchaser or lien-holder are not involved. More so, when such other person, as in the present case, admits its being a mere trustee of the trustor or beneficiary.

3. ID.; ID.; WHAT IS REQUIRED TO CREATE A TRUSTOR AND TRUSTEE RELATIONSHIP. — No particular words are required for the creation of a trust, it being sufficient that a trust is clearly intended. It is immaterial whether or not the trustor and the trustee know that the relationship which they intend to create is called a trust, and whether or not the parties know the precise characteristic of the relationship which is called a trust because what is important is whether the parties manifested an intention to create the kind of relationship which in law is known as a trust.

4. TAXATION; TAX EXEMPTIONS; INCOME FROM EMPLOYEES' TRUST FUND IS EXEMPT FROM INCOME TAX. — The tax-exempt character of petitioner's Employees' Trust Fund is not at issue in this case. The tax-exempt character of the Employees' Trust Fund has long been settled. It is also settled that petitioner exists for the purpose of holding title to, and administering, the tax-exempt Employees' Trust Fund established for the benefit of VMC's employees. As such, petitioner has the personality to claim tax refunds due the Employees' Trust Fund.

APPEARANCES OF COUNSEL

Eva A. Vicencio-Rodriguez Andrew T. Pandan & Myrna Gift Malacamon-Go for petitioner.

Alberto R. Bomediano, Jr. for BIR.

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D E C I S I O N

CARPIO, *J.*:

The Case

The Miguel J. Ossorio Pension Foundation, Incorporated (petitioner or MJOPFI) filed this Petition for *Certiorari*[1] with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction to reverse the Court of Appeals' (CA) Decision[2] dated 30 May 2003 in CA-G.R. SP No. 61829 as well as the Resolution[3] dated 7 November 2003 denying the Motion for Reconsideration. In the assailed decision, the CA affirmed the Court of Tax Appeals' (CTA) Decision[4] dated 24 October 2000. The CTA denied petitioner's claim for refund of withheld creditable tax of ₱3,037,500 arising from the sale of real property of which petitioner claims to be a co-owner as trustee of the employees' trust or retirement funds.

The Facts

Petitioner, a non-stock and non-profit corporation, was organized for the purpose of holding title to and administering the employees' trust or retirement funds (Employees' Trust Fund) established for the benefit of the employees of Victorias Milling Company, Inc. (VMC).[5] Petitioner, as trustee, claims that the income earned by the Employees' Trust Fund is tax exempt under Section 53(b) of the National Internal Revenue Code (Tax Code).

Petitioner alleges that on 25 March 1992, petitioner decided to invest part of the Employees' Trust Fund to purchase a lot[6]

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[1] Under Rule 65 of the Rules of Court.

[2] Penned by Associate Justice Renato C. Dacudao with Associate Justices Godardo A. Jacinto and Danilo B. Pine, concurring.

[3] Penned by Associate Justice Renato C. Dacudao with Associate Justices Mario L. Guariña III and Danilo B. Pine, concurring.

[4] Penned by Associate Judge Ramon O. De Veyra with Presiding Judge Ernesto D. Acosta and Associate Judge Amancio Q. Saga, concurring.

[5] *Rollo*, p. 7.

[6] *Id.* at 6.

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in the Madrigal Business Park (MBP lot) in Alabang, Muntinlupa. Petitioner bought the MBP lot through VMC.[7] Petitioner alleges that its investment in the MBP lot came about upon the invitation of VMC, which also purchased two lots. Petitioner claims that its share in the MBP lot is 49.59%. Petitioner's investment manager, the Citytrust Banking Corporation (Citytrust),[8] in submitting its Portfolio Mix Analysis, regularly reported the Employees' Trust Fund's share in the MBP lot.[9] The MBP lot is covered by Transfer Certificate of Title No. 183907 (TCT 183907) with VMC as the registered owner.[10]

Petitioner claims that since it needed funds to pay the retirement and pension benefits of VMC employees and to reimburse advances made by VMC, petitioner's Board of Trustees authorized the sale of its share in the MBP lot.[11]

On 14 March 1997, VMC negotiated the sale of the MBP lot with Metropolitan Bank and Trust Company, Inc.

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[7] *Id.* at 159. Excerpts of the Minutes of the Meeting of the Board of Trustees of the Miguel J. Ossorio Pension Foundation, Inc. held on 25 March 1992 read as follows:

Mr. C.R. De Luzuriaga, Jr. informed the Board that VMC Co., Inc. and some of its subsidiaries are buying Ayala-Alabang lots in Muntinlupa. He inquired whether MJOPFI would be willing to invest in, or buy part, of the lots being purchased by VMC. Upon motion of Mr. Emilio Y. Hilado, Jr. seconded by Mr. Orlando D. Fuentes, it was unanimously-

Resolution No. 92-34

RESOLVED, That MJOPFI buy one-half (½) of one (1) Ayala-Alabang lot thru [VMC Co., Inc.], the purchase price thereof to be paid thru VMC and/or to be reimbursed to VMC.

[8] Now Bank of the Philippine Islands after their merger.

[9] *Rollo*, pp. 162-165. From 1994-1997, the Portfolio Mix Analysis reported that ₱5,504,748.25 was invested in real estate, specifically on the Madrigal Business Park I property.

[10] *Id.* at 59.

[11] *Id.* at 166. Excerpts of the Minutes of the Meeting of the Board of Trustees of the petitioner held on 24 July 1996 read as follows:

2. Mr. Gerardo B. Javellana informed the Board that there is a need to raise cash to pay pension benefits. Upon motion of Mr. Rolando Hautea, seconded by Mr. Orlando D. Fuentes, it was unanimously-

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(Metrobank) for ₱81,675,000, but the consummation of the sale was withheld.[12]

On 26 March 1997, VMC eventually sold the MBP lot to Metrobank. VMC, through its Vice President Rolando Rodriguez and Assistant Vice President Teodorico Escober, signed the Deed of Absolute Sale as the sole vendor.

Metrobank, as withholding agent, paid the Bureau of Internal Revenue (BIR) ₱6,125,625 as withholding tax on the sale of real property.

Petitioner alleges that the parties who co-owned the MBP lot executed a notarized Memorandum of Agreement as to the proceeds of the sale, the pertinent provisions of which state:[13]

Resolution No. 96-46

RESOLVED, that MJOPFI's property consisting of 500 sq. m. situated at Madrigal Park in Alabang, Muntinlupa, be sold at the best price available, and that any of the corporate officers, namely, Mr. C.R. De Luzuriaga, Jr., or Mr. Rolando Hautea, or Mr. Orlando D. Fuentes be authorized to sign the required deed of sale.

[12] *Id.* at 167. Excerpts of the Minutes of the Meeting of the Board of Directors of VMC on 17 March 1997 read as follows:

Mr. Gerardo Javellana informed the Board that pursuant to previous authority from the Board, VMC sold the Lot 1, Block 4 of the land, registered in VMC's name as TCT No. 183907 of the Registry of Deeds of Makati, which land is co-owned with Miguel J. Ossorio Pension Foundation, Inc. and Victorias Insurance Factors Corp., in favor of Metro Bank on March 14, 1997 for ₱81,675,000.00; that Metro Bank issued a check in favor of VMC of ₱75,549,375.00 (which is less of ₱6,125,625.00 withholding tax), which was supposed to have been deposited with Urban Bank, but in view of the latter's freezing all VMC's deposits, VMC advised Metro Bank not to fund the check (to stop payment), which it did. However, Metro Bank thereafter refused to release the proceeds of the check to VMC, saying that it would apply part of the proceeds of the sale to the obligations of VMC to Metrobank. As Metrobank's moves meant that it did not pay VMC, because a check amounted to payment only when cashed, upon motion of Mr. Manuel Manalac, seconded by Mr. Gerardo Javellana, it was unanimously —

RESOLVED, That in the event matters would not be amicably resolved or ironed out with Metrobank, a letter be sent to Metrobank rescinding or cancelling the deed of sale of Lot 1, Block 4 at the Madrigal Business Part (sic) in Muntinlupa, with TCT No. 183907.

[13] *Id.* at 13.

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2. The said parcels of land are actually co-owned by the following:

BLOCK 4, LOT 1 COVERED BY TCT NO. 183907

	%	SQ.M.	AMOUNT
MJOPFI	49.59%	450.00	₱ 5,504,748.25
VMC	32.23%	351.02	3,578,294.70
VFC	18.18%	197.98	2,018,207.30

3. Since Lot 1 has been sold for ₱81,675,000.00 (gross of 7.5% withholding tax and 3% broker's commission, MJOPFI's share in the proceeds of the sale is ₱40,500,000.00 (gross of 7.5% withholding tax and 3% broker's commission. However, MJO Pension Fund is indebted to VMC representing pension benefit advances paid to retirees amounting to ₱21,425,141.54, thereby leaving a balance of ₱14,822,358.46 in favor of MJOPFI. Check for said amount of ₱14,822,358.46 will therefore be issued to MJOPFI as its share in the proceeds of the sale of Lot 1. The check corresponding to said amount will be deposited with MJOPFI's account with BPI Asset Management & Trust Group which will then be invested by it in the usual course of its administration of MJOPFI funds.

Petitioner claims that it is a co-owner of the MBP lot as trustee of the Employees' Trust Fund, based on the notarized Memorandum of Agreement presented before the appellate courts. Petitioner asserts that VMC has confirmed that petitioner, as trustee of the Employees' Trust Fund, is VMC's co-owner of the MBP lot. Petitioner maintains that its ownership of the MBP lot is supported by the excerpts of the minutes and the resolutions of petitioner's Board Meetings. Petitioner further contends that there is no dispute that the Employees' Trust Fund is exempt from income tax. Since petitioner, as trustee, purchased 49.59% of the MBP lot using funds of the Employees' Trust Fund, petitioner asserts that the Employees' Trust Fund's 49.59% share in the income tax paid (or ₱3,037,697.40 rounded off to ₱3,037,500) should be refunded.[14]

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[14] *Id.* at 15.

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Petitioner maintains that the tax exemption of the Employees' Trust Fund rendered the payment of ₱3,037,500 as illegal or erroneous. On 5 May 1997, petitioner filed a claim for tax refund.[15]

On 14 August 1997, the BIR, through its Revenue District Officer, wrote petitioner stating that under Section 26 of the Tax Code, petitioner is not exempt from tax on its income from the sale of real property. The BIR asked petitioner to submit documents to prove its co-ownership of the MBP lot and its exemption from tax.[16]

On 2 September 1997, petitioner replied that the applicable provision granting its claim for tax exemption is not Section 26 but Section 53(b) of the Tax Code. Petitioner claims that its co-ownership of the MBP lot is evidenced by Board Resolution Nos. 92-34 and 96-46 and the memoranda of agreement among petitioner, VMC and its subsidiaries.[17]

Since the BIR failed to act on petitioner's claim for refund, petitioner elevated its claim to the Commissioner of Internal Revenue (CIR) on 26 October 1998. The CIR did not act on petitioner's claim for refund. Hence, petitioner filed a petition for tax refund before the CTA. On 24 October 2000, the CTA rendered a decision denying the petition.[18]

On 22 November 2000, petitioner filed its Petition for Review before the Court of Appeals. On 20 May 2003, the CA rendered a decision denying the appeal. The CA also denied petitioner's Motion for Reconsideration.[19]

Aggrieved by the appellate court's Decision, petitioner elevated the case before this Court.

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[15] *Id.*

[16] *Id.*

[17] *Id.* at 16.

[18] *Id.* at 17.

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

The Ruling of the Court of Tax Appeals

The CTA held that under Section 53(b)[20] [now Section 60(b)] of the Tax Code, it is not petitioner that is entitled to exemption from income tax but the income or earnings of the Employees' Trust Fund. The CTA stated that petitioner is not the pension trust itself but it is a separate and distinct entity whose function is to administer the pension plan for some VMC employees.[21] The CTA, after evaluating the evidence adduced by the parties, ruled that petitioner is not a party in interest.

To prove its co-ownership over the MBP lot, petitioner presented the following documents:

a. Secretary's Certificate showing how the purchase and eventual sale of the MBP lot came about.

b. Memoranda of Agreement showing various details:

i. That the MBP lot was co-owned by VMC and petitioner on a 50/50 basis;

ii. That VMC held the property in trust for North Legaspi Land Development Corporation, North Negros Marketing Co., Inc.,

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[20] Section 53(b) of the Tax Code.

Section 53. Imposition of Tax.

x x x

(b) Exception. - The tax imposed by this Title shall not apply to employee's trust which forms part of a pension, stock bonus or profit-sharing plan of an employer for the benefit of some or all of his employees (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust instrument it is impossible, at any time prior to satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees: Provided, That any amount actually distributed to any employee or distributee shall be taxable to him in the year in which so distributed to the extent that it exceeds the amount contributed by such employee or distributee.

[21] *Rollo*, pp. 114-115.

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Victorias Insurance Factors Corporation, Victorias Science and Technical Foundation, Inc. and Canetown Development Corporation.

iii. That the previous agreement (ii) was cancelled and it showed that the MBP lot was co-owned by petitioner, VMC and Victorias Insurance Factors Corporation (VFC).[22]

The CTA ruled that these pieces of evidence are self-serving and cannot by themselves prove petitioner's co-ownership of the MBP lot when the TCT, the Deed of Absolute Sale, and the Monthly Remittance Return of Income Taxes Withheld (Remittance Return) disclose otherwise. The CTA further ruled that petitioner failed to present any evidence to prove that the money used to purchase the MBP lot came from the Employees' Trust Fund.[23]

The CTA concluded that petitioner is estopped from claiming a tax exemption. The CTA pointed out that VMC has led the government to believe that it is the sole owner of the MBP lot through its execution of the Deeds of Absolute Sale both during the purchase and subsequent sale of the MBP lot and through the registration of the MBP lot in VMC's name. Consequently, the tax was also paid in VMC's name alone. The CTA stated that petitioner may not now claim a refund of a portion of the tax paid by the mere expediency of presenting Secretary's Certificates and memoranda of agreement in order to prove its ownership. These documents are self-serving; hence, these documents merit very little weight.[24]

The Ruling of the Court of Appeals

The CA declared that the findings of the CTA involved three types of documentary evidence that petitioner presented to prove its contention that it purchased 49.59% of the MBP lot with funds from the Employees' Trust Fund: (1) the memoranda of agreement executed by petitioner and other VMC subsidiaries; (2) Secretary's Certificates containing excerpts of the minutes

[22] *Id.* at 115.

[23] *Id.* at 116.

[24] *Id.* at 116-117.

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of meetings conducted by the respective boards of directors or trustees of VMC and petitioner; (3) Certified True Copies of the Portfolio Mix Analysis issued by Citytrust regarding the investment of ₱5,504,748.25 in Madrigal Business Park I for the years 1994 to 1997.[25]

The CA agreed with the CTA that these pieces of documentary evidence submitted by petitioner are largely self-serving and can be contrived easily. The CA ruled that these documents failed to show that the funds used to purchase the MBP lot came from the Employees' Trust Fund. The CA explained, thus:

> We are constrained to echo the findings of the Court of Tax Appeals in regard to the failure of the petitioner to ensure that legal documents pertaining to its investments, *e.g.* title to the subject property, were really in its name, considering its awareness of the resulting tax benefit that such foresight or providence would produce; hence, genuine efforts towards that end should have been exerted, this notwithstanding the alleged difficulty of procuring a title under the names of all the co-owners. Indeed, we are unable to understand why petitioner would allow the title of the property to be placed solely in the name of petitioner's alleged co-owner, *i.e.* the VMC, although it allegedly owned a much bigger (nearly half), portion thereof. Withal, petitioner failed to ensure a "fix" so to speak, on its investment, and we are not impressed by the documents which the petitioner presented, as the same apparently allowed "mobility" of the subject real estate assets between or among the petitioner, the VMC and the latter's subsidiaries. Given the fact that the subject parcel of land was registered and sold under the name solely of VMC, even as payment of taxes was also made only under its name, we cannot but concur with the finding of the Court of Tax Appeals that petitioner's claim for refund of withheld creditable tax is bereft of solid juridical basis.[26]

The Issues

The issues presented are:

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[25] *Id.* at 66.

[26] *Id.* at 67.

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1. Whether petitioner or the Employees' Trust Fund is estopped from claiming that the Employees' Trust Fund is the beneficial owner of 49.59% of the MBP lot and that VMC merely held 49.59% of the MBP lot in trust for the Employees' Trust Fund.
2. If petitioner or the Employees' Trust Fund is not estopped, whether they have sufficiently established that the Employees' Trust Fund is the beneficial owner of 49.59% of the MBP lot, and thus entitled to tax exemption for its share in the proceeds from the sale of the MBP lot.

The Ruling of the Court

We grant the petition.

The law **expressly allows** a co-owner (first co-owner) of a parcel of land to register his proportionate share in the name of his co-owner (second co-owner) in whose name the entire land is registered. The second co-owner serves as a legal trustee of the first co-owner insofar as the proportionate share of the first co-owner is concerned. The first co-owner remains the owner of his proportionate share and not the second co-owner in whose name the entire land is registered. Article 1452 of the Civil Code provides:

> Art. 1452. If two or more persons agree to purchase a property and by common consent the legal title is taken in the name of one of them for the benefit of all, **a trust is created by force of law** in favor of the others in proportion to the interest of each. (Emphasis supplied)

For Article 1452 to apply, all that a co-owner needs to show is that there is "common consent" among the purchasing co-owners to put the legal title to the purchased property in the name of one co-owner for the benefit of all. Once this "common consent" is shown, "**a trust is created by force of law**." The BIR has no option but to recognize such legal trust as well as the beneficial ownership of the real owners because the trust is created by force of law. The fact that the title is registered solely in the name of one person is not conclusive that he alone owns the property.

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Thus, this case turns on whether petitioner can sufficiently establish that petitioner, as trustee of the Employees' Trust Fund, has a common agreement with VMC and VFC that petitioner, VMC and VFC shall jointly purchase the MBP lot and put the title to the MBP lot in the name of VMC for the benefit petitioner, VMC and VFC.

We rule that petitioner, as trustee of the Employees' Trust Fund, has more than sufficiently established that it has an agreement with VMC and VFC to purchase jointly the MBP lot and to register the MBP lot solely in the name of VMC for the benefit of petitioner, VMC and VFC.

Factual findings of the CTA will be reviewed when judgment is based on a misapprehension of facts.

Generally, the factual findings of the CTA, a special court exercising expertise on the subject of tax, are regarded as final, binding and conclusive upon this Court, especially if these are substantially similar to the findings of the CA which is normally the final arbiter of questions of fact.[27] However, there are recognized exceptions to this rule,[28] such as when the judgment is based on a misapprehension of facts.

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[27] *Far East Bank and Trust Company v. Court of Appeals*, G.R. No. 129130, 9 December 2005, 477 SCRA 49, 52.

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

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Petitioner contends that the CA erred in evaluating the documents as self-serving instead of considering them as truthful and genuine because they are public documents duly notarized by a Notary Public and presumed to be regular unless the contrary appears. Petitioner explains that the CA erred in doubting the authenticity and genuineness of the three memoranda of agreement presented as evidence. Petitioner submits that there is nothing wrong in the execution of the three memoranda of agreement by the parties. Petitioner points out that VMC authorized petitioner to administer its Employees' Trust Fund which is basically funded by donation from its founder, Miguel J. Ossorio, with his shares of stocks and share in VMC's profits.[29]

Petitioner argues that the Citytrust report reflecting petitioner's investment in the MBP lot is concrete proof that money of the Employees' Trust Funds was used to purchase the MBP lot. In fact, the CIR did not dispute the authenticity and existence of this documentary evidence. Further, it would be unlikely for Citytrust to issue a certified copy of the Portfolio Mix Analysis stating that petitioner invested in the MBP lot if it were not true.[30]

Petitioner claims that substantial evidence is all that is required to prove petitioner's co-ownership and all the pieces of evidence have overwhelmingly proved that petitioner is a co-owner of the MBP lot to the extent of 49.59% of the MBP lot. Petitioner explains:

> Thus, how the parties became co-owners was shown by the excerpts of the minutes and the resolutions of the Board of Trustees of the petitioner and those of VMC. All these documents showed that as far as March 1992, petitioner already expressed intention to be co-owner of the said property. It then decided to invest the retirement funds to buy the said property and culminated in it owning 49.59% thereof. When it was sold to Metrobank, petitioner received its share in the proceeds from the sale thereof. The excerpts and resolutions of the parties' respective Board of Directors were certified under oath by their respective Corporate Secretaries at the time. The

[29] *Rollo*, pp. 351-352.

[30] *Id.* at 353.

corporate certifications are accorded verity by law and accepted as *prima facie* evidence of what took place in the board meetings because the corporate secretary is, for the time being, the board itself.[31]

Petitioner, citing Article 1452 of the Civil Code, claims that even if VMC registered the land solely in its name, it does not make VMC the absolute owner of the whole property or deprive petitioner of its rights as a co-owner.[32] Petitioner argues that under the Torrens system, the issuance of a TCT does not create or vest a title and it has never been recognized as a mode of acquiring ownership.[33]

The issues of whether petitioner or the Employees' Trust Fund is estopped from claiming 49.59% ownership in the MBP lot, whether the documents presented by petitioner are self-serving, and whether petitioner has proven its exemption from tax, are all questions of fact which could only be resolved after reviewing, examining and evaluating the probative value of the evidence presented. The CTA ruled that the documents presented by petitioner cannot prove its co-ownership over the MBP lot especially that the TCT, Deed of Absolute Sale and the Remittance Return disclosed that VMC is the sole owner and taxpayer.

However, the appellate courts failed to consider the genuineness and due execution of the notarized Memorandum of Agreement acknowledging petitioner's ownership of the MBP lot which provides:

2. **The said parcels of land are actually co-owned by the following**:

BLOCK 4, LOT 1 COVERED BY TCT NO. 183907

	%	SQ.M.	AMOUNT
MJOPFI	49.59%	450.00	₱5,504,748.25
VMC	32.23%	351.02	3,578,294.70
VFC	18.18%	197.98	2,018,207.30

[31] *Id.* at 354.

[32] *Id.* at 357.

[33] *Id.* at 358.

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Thus, there is a "common consent" or agreement among petitioner, VMC and VFC to co-own the MBP lot in the proportion specified in the notarized Memorandum of Agreement.

In *Cuizon v. Remoto*,[34] we held:

> Documents acknowledged before notaries public are public documents and public documents are admissible in evidence without necessity of preliminary proof as to their authenticity and due execution. They have in their favor the presumption of regularity, and to contradict the same, there must be evidence that is clear, convincing and more than merely preponderant.

The BIR failed to present any clear and convincing evidence to prove that the notarized Memorandum of Agreement is fictitious or has no legal effect. Likewise, VMC, the registered owner, did not repudiate petitioner's share in the MBP lot. Further, Citytrust, a reputable banking institution, has prepared a Portfolio Mix Analysis for the years 1994 to 1997 showing that petitioner invested ₱5,504,748.25 in the MBP lot. Absent any proof that the Citytrust bank records have been tampered or falsified, and the BIR has presented none, the Portfolio Mix Analysis should be given probative value.

The BIR argues that under the Torrens system, a third person dealing with registered property need not go beyond the TCT and since the registered owner is VMC, petitioner is estopped from claiming ownership of the MBP lot. This argument is grossly erroneous. The trustor-beneficiary is not estopped from proving its ownership over the property held in trust by the trustee when the purpose is not to contest the disposition or encumbrance of the property in favor of an innocent third-party purchaser for value. The BIR, not being a buyer or claimant to any interest in the MBP lot, has not relied on the face of the title of the MBP lot to acquire any interest in the lot. There is no basis for the BIR to claim that petitioner is estopped from proving that it co-owns, as trustee of the Employees' Trust Fund, the MBP lot. Article 1452 of the Civil

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[34] G.R. No. 143027, 11 October 2005, 472 SCRA 274, 282.

Code recognizes the lawful ownership of the trustor-beneficiary over the property registered in the name of the trustee. Certainly, the Torrens system was not established to foreclose a trustor or beneficiary from proving its ownership of a property titled in the name of another person when the rights of an innocent purchaser or lien-holder are not involved. More so, when such other person, as in the present case, admits its being a mere trustee of the trustor or beneficiary.

The registration of a land under the Torrens system does not create or vest title, because registration is not one of the modes of acquiring ownership. A TCT is merely an evidence of ownership over a particular property and its issuance in favor of a particular person does not foreclose the possibility that the property may be co-owned by persons not named in the certificate, or that it may be held in trust for another person by the registered owner.[35]

No particular words are required for the creation of a trust, it being sufficient that a trust is clearly intended.[36] It is immaterial whether or not the trustor and the trustee know that the relationship which they intend to create is called a trust, and whether or not the parties know the precise characteristic of the relationship which is called a trust because what is important is whether the parties manifested an intention to create the kind of relationship which in law is known as a trust.[37]

The fact that the TCT, Deed of Absolute Sale and the Remittance Return were in VMC's name does not forestall the possibility that the property is owned by another entity **because Article 1452 of the Civil Code expressly authorizes a person to purchase a property with his own money and to take conveyance in the name of another.**

In *Tigno v. Court of Appeals*, the Court explained, thus:

[35] *Naval v. Court of Appeals*, G.R. No. 167412, 22 February 2006, 483 SCRA 102, 113.

[36] Civil Code, Article 1444.

[37] De Leon, Hector, *Comments and Cases on Partnership, Agency and Trusts*, 5th ed., p. 665 (1999).

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An implied trust arises where a person purchases land with his own money and takes conveyance thereof in the name of another. In such a case, the property is held on resulting trust in favor of the one furnishing the consideration for the transfer, unless a different intention or understanding appears. The trust which results under such circumstances does not arise from a contract or an agreement of the parties, but from the facts and circumstances; that is to say, the trust results because of equity and it arises by implication or operation of law.[38]

In this case, the notarized Memorandum of Agreement and the certified true copies of the Portfolio Mix Analysis prepared by Citytrust clearly prove that petitioner invested ₱5,504,748.25, using funds of the Employees' Trust Fund, to purchase the MBP lot. Since the MBP lot was registered in VMC's name only, **a resulting trust is created by operation of law.** A resulting trust is based on the equitable doctrine that valuable consideration and not legal title determines the equitable interest and is presumed to have been contemplated by the parties.[39] Based on this resulting trust, the Employees' Trust Fund is considered the beneficial co-owner of the MBP lot.

Petitioner has sufficiently proven that it had a "common consent" or agreement with VMC and VFC to jointly purchase the MBP lot. The absence of petitioner's name in the TCT does not prevent petitioner from claiming before the BIR that the Employees' Trust Fund is the beneficial owner of 49.59% of the MBP lot and that VMC merely holds 49.59% of the MBP lot in trust, through petitioner, for the benefit of the Employees' Trust Fund.

The BIR has acknowledged that the owner of a land can validly place the title to the land in the name of another person. In BIR Ruling [DA-(I-012) 190-09] dated 16 April 2009, a certain Amelia Segarra purchased a parcel of land and registered it in the names of Armin Segarra and Amelito Segarra as trustees on the condition that upon demand by Amelia Segarra, the

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[38] G.R. No. 110115, 8 October 1997, 280 SCRA 262, 271.

[39] *Buan Vda. de Esconde v. Court of Appeals*, 323 Phil. 81, 89 (1996).

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trustees would transfer the land in favor of their sister, Arleen May Segarra-Guevara. The BIR ruled that an implied trust is deemed created by law and the transfer of the land to the beneficiary is not subject to capital gains tax or creditable withholding tax.

Income from Employees' Trust Fund is Exempt from Income Tax

Petitioner claims that the Employees' Trust Fund is exempt from the payment of income tax. Petitioner further claims that as trustee, it acts for the Employees' Trust Fund, and can file the claim for refund. As trustee, petitioner considers itself as the entity that is entitled to file a claim for refund of taxes erroneously paid in the sale of the MBP lot.[40]

The Office of the Solicitor General argues that the cardinal rule in taxation is that tax exemptions are highly disfavored and whoever claims a tax exemption must justify his right by the clearest grant of law. Tax exemption cannot arise by implication and any doubt whether the exemption exists is strictly construed against the taxpayer.[41] Further, the findings of the CTA, which were affirmed by the CA, should be given respect and weight in the absence of abuse or improvident exercise of authority.[42]

Section 53(b) and now Section 60(b) of the Tax Code provides:

SEC. 60. Imposition of Tax. —

(A) Application of Tax. — x x x

(B) Exception. — The tax imposed by this Title shall not apply to employee's trust which forms part of a pension, stock bonus or profit-sharing plan of an employer for the benefit of some or all of his employees (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust

[40] *Rollo*, p. 361.

[41] *Id.* at 324.

[42] *Id.* at 325.

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instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees: *Provided*, That any amount actually distributed to any employee or distributee shall be taxable to him in the year in which so distributed to the extent that it exceeds the amount contributed by such employee or distributee.

Petitioner's Articles of Incorporation state the purpose for which the corporation was formed:

Primary Purpose

To hold legal title to, control, invest and administer in the manner provided, pursuant to applicable rules and conditions as established, and in the interest and for the benefit of its beneficiaries and/or participants, **the private pension plan as established for certain employees of Victorias Milling Company, Inc., and other pension plans of Victorias Milling Company affiliates and/or subsidiaries,** the pension funds and assets, as well as accruals, additions and increments thereto, and such amounts as may be set aside or accumulated for the benefit of the participants of said pension plans; and in furtherance of the foregoing and as may be incidental thereto.[43] (Emphasis supplied)

Petitioner is a corporation that was formed to administer the Employees' Trust Fund. Petitioner invested ₱5,504,748.25 of the funds of the Employees' Trust Fund to purchase the MBP lot. When the MBP lot was sold, the gross income of the Employees' Trust Fund from the sale of the MBP lot was ₱40,500,000. The 7.5% withholding tax of ₱3,037,500 and broker's commission were deducted from the proceeds. In *Commissioner of Internal Revenue v. Court of Appeals*,[44] the Court explained the rationale for the tax-exemption privilege of income derived from employees' trusts:

It is evident that tax-exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings

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[43] *Id.* at 128.

[44] G.R. No. 95022, 23 March 1992, 207 SCRA 487, 495.

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would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intendment of the law.

In *Miguel J. Ossorio Pension Foundation, Inc. v. Commissioner of Internal Revenue*,[45] the CTA held that petitioner is entitled to a refund of withholding taxes paid on interest income from direct loans made by the Employees' Trust Fund since such interest income is exempt from tax. The CTA, in recognizing petitioner's entitlement for tax exemption, explained:

> In or about 1968, Victorias Milling Co., Inc. established a retirement or pension plan for its employees and those of its subsidiary companies pursuant to a 22-page plan. Pursuant to said pension plan, Victorias Milling Co., Inc. makes a (sic) regular financial contributions to the employee trust for the purpose of distributing or paying to said employees, the earnings and principal of the funds accumulated by the trust in accordance with said plan. Under the plan, it is imposable, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of said employees. Moreover, upon the termination of the plan, any remaining assets will be applied for the benefit of all employees and their beneficiaries entitled thereto in proportion to the amount allocated for their respective benefits as provided in said plan.
>
> The petitioner and Victorias Milling Co., Inc., on January 22, 1970, entered into a Memorandum of Understanding, whereby they agreed that petitioner would administer the pension plan funds and assets, as assigned and transferred to it in trust, as well as all amounts that may from time to time be set aside by Victorias Milling Co., Inc. "For the benefit of the Pension Plan, said administration is to be strictly adhered to pursuant to the rules and regulations of the Pension Plan and of the Articles of Incorporation and By Laws" of petitioner.

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[45] CTA Case No. 4244, 2 November 1990. On 2 November 1990, the CTA rendered this decision which was affirmed by the CA in a decision dated 20 January 1993 in CA G.R. SP No. 23980 and which became final and executory on 3 August 1993. In compliance with the decision, the CIR refunded to petitioner the amounts of ₱780,352.28 on 23 September 1994 and ₱312,606.40 on 19 September 1996.

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The pension plan was thereafter submitted to the Bureau of Internal Revenue for registration and for a ruling as to whether its income or earnings are exempt from income tax pursuant to Rep. Act 4917, in relation to Sec. 56(b), now Sec. 54(b), of the Tax Code.

In a letter dated January 18, 1974 addressed to Victorias Milling Co., Inc., the Bureau of Internal Revenue ruled that **"*the income of the trust fund of your retirement benefit plan is exempt from income tax, pursuant to Rep. Act 4917 in relation to Section 56(b) of the Tax Code.*"**

In accordance with petitioner's Articles of Incorporation (Annex A), petitioner would **"*hold legal title to, control, invest and administer, in the manner provided, pursuant to applicable rules and conditions as established, and in the interest and for the benefit of its beneficiaries and/or participants, the private pension plan as established for certain employees of Victorias Milling Co., Inc. and other pension plans of Victorias Milling Co. affiliates and/or subsidiaries, the pension funds and assets, as well as the accruals, additions and increments thereto, and such amounts as may be set aside or accumulated of said pension plans. Moreover, pursuant to the same Articles of Incorporations, petitioner is empowered to "settle, compromise or submit to arbitration, any claims, debts or damages due or owing to or from pension funds and assets and other funds and assets of the corporation, to commence or defend suits or legal proceedings and to represent said funds and assets in all suits or legal proceedings.*"**

Petitioner, through its investment manager, the City Trust Banking Corporation, has invested the funds of the employee trust in treasury bills, Central Bank bills, direct lending, *etc.* so as to generate income or earnings for the benefit of the employees-beneficiaries of the pension plan. *Prior to the effectivity of Presidential Decree No. 1959 on October 15, 1984, respondent did not subject said income or earning of the employee trust to income tax because they were exempt from income tax pursuant to Sec. 56(b), now Sec. 54(b) of the Tax Code and the BIR Ruling dated January 18, 1984 (Annex D)*. (Boldfacing supplied; italicization in the original)

x x x x x x x x x

It asserted that the pension plan in question was previously submitted to the Bureau of Internal Revenue for a ruling as to whether the income or earnings of the retirement funds of said plan are exempt

from income tax and in a letter dated January 18,1984, **the Bureau ruled that the earnings of the trust funds of the pension plan are exempt from income tax under Sec. 56(b) of the Tax Code**. (Emphasis supplied)

> "A close review of the provisions of the plan and trust instrument disclose that in reality the corpus and income of the trust fund are not at no time used for, or diverted to, any purpose other than for the exclusive benefit of the plan beneficiaries. This fact was likewise confirmed after verification of the plan operations by the Revenue District No. 63 of the Revenue Region No. 14, Bacolod City. Section X also confirms this fact by providing that if any assets remain after satisfaction of the requirements of all the above clauses, such remaining assets will be applied for the benefits of all persons included in such classes in proportion to the amounts allocated for their respective benefits pursuant to the foregoing priorities.
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> "In view of all the foregoing, this Office is of the opinion, as it hereby holds, that the income of the trust fund of your retirement benefit plan is exempt from income tax pursuant to Republic Act 4917 in relation to Section 56(b) of the Tax Code. (Annex "D" of Petition)

This CTA decision, which was affirmed by the CA in a decision dated 20 January 1993, became final and executory on 3 August 1993.

The tax-exempt character of petitioner's Employees' Trust Fund is not at issue in this case. The tax-exempt character of the Employees' Trust Fund has long been settled. It is also settled that petitioner exists for the purpose of holding title to, and administering, the tax-exempt Employees' Trust Fund established for the benefit of VMC's employees. As such, petitioner has the personality to claim tax refunds due the Employees' Trust Fund.

In *Citytrust Banking Corporation as Trustee and Investment Manager of Various Retirement Funds v. Commissioner of Internal Revenue*,[46] the CTA granted Citytrust's claim for refund

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[46] CTA Case No. 5083, 9 March 1998. In a Resolution dated 13 July 1998, the Court of Appeals in CA G.R. SP No. 47375 ruled:

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on withholding taxes paid on the investments made by Citytrust in behalf of the trust funds it manages, **including petitioner**.[47] Thus:

> In resolving the second issue, we note that the same is not a case of first impression. Indeed, the petitioner is correct in its adherence to the clear ruling laid by the Supreme Court way back in 1992 in the case of *Commissioner of Internal Revenue vs. The Honorable Court of Appeals*, *The Court of Tax Appeals and GCL Retirement Plan*, 207 SCRA 487 at page 496, *supra*, wherein it was succinctly held:
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> x x x x x x x x x
>
> > There can be no denying either that the final withholding tax is collected from income in respect of which employees' trusts are declared exempt (Sec. 56(b), now 53(b), Tax Code). The application of the withholdings system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of income taxes by requiring its payment at the source. If an employees' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place. x x x
>
> Similarly, the income of the trust funds involved herein is exempt from the payment of final withholding taxes.

This CTA decision became final and executory when the CIR failed to file a Petition for Review within the extension granted by the CA.

Similarly, in BIR Ruling [UN-450-95], Citytrust wrote the BIR to request for a ruling exempting it from the payment of withholding tax on the sale of the land by various BIR-approved

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For failure of the Commissioner of Internal Revenue to file the Petition for Review within the extension granted which expired on 11 April 1998, this case is considered abandoned and withdrawn and is ordered dismissed.

[47] Citytrust was refunded the amount of ₱5,114,260.44 representing erroneously paid final withholding taxes on the investments made by Citytrust in behalf of the trust funds it manages. Of this amount, petitioner was refunded ₱293,482.49.

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trustees and tax-exempt private employees' retirement benefit trust funds[48] represented by Citytrust. The BIR ruled that the private employees benefit trust funds, **which included petitioner**, have met the requirements of the law and the regulations and therefore qualify as reasonable retirement benefit plans within the contemplation of Republic Act No. 4917 (now Sec. 28(b)(7)(A), Tax Code). The income from the trust fund investments is therefore exempt from the payment of income tax and consequently from the payment of the creditable withholding tax on the sale of their real property.[49]

Thus, the documents issued and certified by Citytrust showing that money from the Employees' Trust Fund was invested in the MBP lot cannot simply be brushed aside by the BIR as self-serving, in the light of previous cases holding that Citytrust was indeed handling the money of the Employees' Trust Fund.

These documents, together with the notarized Memorandum of Agreement, clearly establish that petitioner, on behalf of the Employees' Trust Fund, indeed invested in the purchase of the MBP lot. Thus, the Employees' Trust Fund owns 49.59% of the MBP lot.

Since petitioner has proven that the income from the sale of the MBP lot came from an investment by the Employees' Trust Fund, petitioner, as trustee of the Employees' Trust Fund, is entitled to claim the tax refund of ₱3,037,500 which was erroneously paid in the sale of the MBP lot.

WHEREFORE, we *GRANT* the petition and *SET ASIDE* the Decision of 30 May 2003 of the Court of Appeals in CA-G.R. SP No. 61829. Respondent Commissioner of Internal

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[48] The list of BIR-approved duly trusteed and tax-exempt private employee's retirement benefit trust funds includes petitioner Miguel J. Ossorio Pension Foundation, Inc. Trust Fund under Trust Account No. TA # 5C-019A.

[49] Likewise, in BIR Ruling [DA-(C-033) 139-09] dated 5 March 2009, the BIR confirmed that the sale of the Bank of the Philippine Islands Group of Companies Retirement Fund's (BPI RTF) capital assets is exempt from capital gains tax and from the creditable expanded withholding tax.

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Revenue is directed to refund petitioner Miguel J. Ossorio Pension Foundation, Incorporated, as trustee of the Employees' Trust Fund, the amount of ₱3,037,500, representing income tax erroneously paid.

SO ORDERED.

Peralta, Abad, Perez,[*] and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 171872. June 28, 2010]

FAUSTO R. PREYSLER, JR., *petitioner, vs.* **MANILA SOUTHCOAST DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; NOTICE REQUIREMENTS; THREE-DAY NOTICE RULE, NOT ABSOLUTE. — The three-day notice rule is not absolute. A liberal construction of the procedural rules is proper where the lapse in the literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority. Indeed, Section 6, Rule 1 of the Rules of Court provides that the Rules should be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Rules of procedure are tools designed to facilitate the attainment of justice, and courts must avoid their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice. In *Somera Vda. De Navarro v. Navarro*, the Court held that there was substantial compliance of the

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[*] Designated additional member per Raffle dated 2 June 2010.