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complainant, this actuality is not conclusive evidence that such event did not take place. As claimed by respondent, complainant's clerk was only able to record a part of the argument. We cannot then discount the probability that there is more to the argument than what was caught on video and there remains the possibility that what respondent narrated and what complainant recorded both actually transpired.

WHEREFORE, respondent Alfredo T. Pallanan is **ADMONISHED** and **WARNED** to be always courteous in dealing with the public in the performance of official duties. A repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Peralta, Abad, Mendoza, and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 159926. January 20, 2014]

PINAUSUKAN SEAFOOD HOUSE, ROXAS BOULEVARD, INC., *petitioner, vs.* **FAR EAST BANK & TRUST COMPANY, NOW BANK OF THE PHILIPPINE ISLANDS and HECTOR I. GALURA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENT/FINAL ORDER; ELUCIDATED.— The objective of the remedy of annulment of judgment or final order is to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense. If the ground relied upon is lack of jurisdiction, the entire proceedings are set aside without

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prejudice to the original action being refiled in the proper court. If the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the CA may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein. The remedy is by no means an appeal whereby the correctness of the assailed judgment or final order is in issue; hence, the CA is not called upon to address each error allegedly committed by the trial court. Given the extraordinary nature and the objective of the remedy of annulment of judgment or final order, [one] must be mindful of and should closely comply with the following statutory requirements for the remedy as set forth in Rule 47 of the *Rules of Court*.

2. ID.; ID.; ID.; REQUIREMENTS; THAT THE REMEDY IS AVAILABLE ONLY WHEN ORDINARY OR OTHER REMEDIES CAN NO LONGER BE RESORTED TO THROUGH NO FAULT OF PETITIONER; ELUCIDATED.— The first requirement prescribes that the remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner. This means that the remedy, although seen as "a last remedy," is not an alternative to the ordinary remedies of new trial, appeal and petition for relief. The petition must aver, therefore, that the petitioner failed to move for a new trial, or to appeal, or to file a petition for relief without fault on his part. But this requirement to aver is not imposed when the ground for the petition is lack of jurisdiction (whether alleged singly or in combination with extrinsic fraud), simply because the judgment or final order, being void, may be assailed at any time either collaterally or by direct action or by resisting such judgment or final order in any action or proceeding whenever it is invoked, unless the ground of lack of jurisdiction is meanwhile barred by laches.

3. ID.; ID.; ID.; ID.; THAT THE GROUND FOR ANNULMENT OF JUDGMENT IS LIMITED TO EITHER EXTRINSIC FRAUD OR LACK OF JURISDICTION; EXTRINSIC FRAUD, ELUCIDATED AND DISTINGUISHED FROM INTRINSIC FRAUD.— The second requirement limits the ground for the action of annulment of judgment to either extrinsic fraud or lack of jurisdiction. Not every kind of fraud

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justifies the action of annulment of judgment. Only extrinsic fraud does. Fraud is extrinsic, according to *Cosmic Lumber Corporation v. Court of Appeals*, "where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority connives at his defeat; these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment and open the case for a new and fair hearing." The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented the petitioner from having his day in court. Nonetheless, extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief. In contrast, intrinsic fraud refers to the acts of a party at a trial that prevented a fair and just determination of the case, but the difference is that the acts or things, like falsification and false testimony, could have been litigated and determined at the trial or adjudication of the case. In other words, intrinsic fraud does not deprive the petitioner of his day in court because he can guard against that kind of fraud through so many means, including a thorough trial preparation, a skillful cross-examination, resorting to the modes of discovery, and proper scientific or forensic applications. Indeed, forgery of documents and evidence for use at the trial and perjury in court testimony have been regarded as not preventing the participation of any party in the proceedings, and are not, therefore, constitutive of extrinsic fraud.

4. ID.; ID.; ID.; ID.; ID.; LACK OF JURISDICTION, ELUCIDATED.— Lack of jurisdiction on the part of the trial court in rendering the judgment or final order is either lack of jurisdiction over the subject matter or nature of the action, or lack of jurisdiction over the person of the petitioner. The former is a matter of substantive law because statutory law defines the jurisdiction of the courts over the subject matter or nature of the action. The latter is a matter of procedural law, for it involves the service of summons or other process on the petitioner. A judgment or final order issued by the trial

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court without jurisdiction over the subject matter or nature of the action is always void, and, in the words of Justice Street in *Banco Español-Filipino v. Palanca*, "in this sense it may be said to be a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head." But the defect of lack of jurisdiction over the person, being a matter of procedural law, may be waived by the party concerned either expressly or impliedly.

5. ID.; ID.; ID.; ID.; ON THE TIME AND FILING OF THE ACTION; THE ACTION BASED ON EXTRINSIC FRAUD MUST BE FILED WITHIN FOUR YEARS FROM THE DISCOVERY AND THAT THE ACTION BASED ON INTRINSIC FRAUD MUST BE BROUGHT BEFORE IT IS BARRED BY LACHES AND ESTOPPEL; LACHES AND ESTOPPEL, ELUCIDATED.— The third requirement sets the time for the filing of the action. The action, if based on extrinsic fraud, must be filed within four years from the discovery of the extrinsic fraud; and if based on lack of jurisdiction, must be brought before it is barred by laches or estoppel. Laches is the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence could nor should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. Its other name is stale demands, and it is based upon grounds of public policy that requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted. The existence of four elements must be shown in order to validate laches as a defense, to wit: (*a*) conduct on the part of the defendant, or of one under whom a claim is made, giving rise to a situation for which a complaint is filed and a remedy sought; (*b*) delay in asserting the rights of the complainant, who has knowledge or notice of the defendant's conduct and has been afforded an opportunity to institute a suit; (*c*) lack of knowledge or notice on the part of the defendant that the complainant will assert the right on which the latter has based the suit; and (*d*) injury or prejudice to the defendant in the event that the complainant is granted a relief or the suit is not deemed barred. Estoppel precludes a person who has

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admitted or made a representation about something as true from denying or disproving it against anyone else relying on his admission or representation. Thus, our law on evidence regards estoppel as conclusive by stating that "[w]henever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it."

6. ID.; ID.; ID.; ID.; THE PETITION SHOULD BE VERIFIED AND SHOULD ALLEGE WITH PARTICULARITY THE FACTS AND THE LAW RELIED UPON, AND THOSE SUPPORTING THE PETITIONER'S GOOD AND SUBSTANTIAL CAUSE OF ACTION OR DEFENSE.— The fourth requirement demands that the petition should be verified, and should allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be. The need for particularity cannot be dispensed with because averring the circumstances constituting either fraud or mistake with particularity is a universal requirement in the rules of pleading. The petition is to be filed in seven clearly legible copies, together with sufficient copies corresponding to the number of respondents, and shall contain essential submissions, specifically: (*a*) the certified true copy of the judgment or final order or resolution, to be attached to the original copy of the petition intended for the court and indicated as such by the petitioner; (*b*) the affidavits of witnesses or documents supporting the cause of action or defense; and (*c*) the sworn certification that the petitioner has not theretofore commenced any other action involving the same issues in the Supreme Court, the CA or the different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same, and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the CA, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the said courts and other tribunal or agency thereof within five days therefrom. The purpose of these requirements of the sworn verification and the particularization of the allegations of the extrinsic fraud in the petition, of the submission of the certified true copy of

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the judgment or final order or resolution, and of the attachment of the affidavits of witnesses and documents supporting the cause of action or defense is to forthwith bring all the relevant facts to the CA's cognizance in order to enable the CA to determine whether or not the petition has substantial merit. Should it find *prima facie* merit in the petition, the CA shall give the petition due course and direct the service of summons on the respondent; otherwise, the CA has the discretion to outrightly dismiss the petition for annulment.

APPEARANCES OF COUNSEL

Gina C. Garcia and *R.A.V. Saguisag* for petitioner.

Benedicto Verzosa Gealogo & Burkley for respondent FEBTC/BPI.

D E C I S I O N

BERSAMIN, *J.*:

Extrinsic fraud, as a ground for the annulment of a judgment, must emanate from an act of the adverse party, and the fraud must be of such nature as to have deprived the petitioner of its day in court. The fraud is not extrinsic if the act was committed by the petitioner's own counsel.

The Case

This appeal seeks to undo the dismissal by the Court of Appeals (CA) of the petitioner's action for annulment of judgment through the assailed resolution promulgated on July 31, 2003,[1] as well as the denial of its motion for reconsideration on September 12, 2003.[2]

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[1] *Rollo*, pp. 37-38; penned by Associate Justice Arturo D. Brion (now a Member of this Court), with the concurrence of Associate Justice Roberto A. Barrios (retired/deceased) and Associate Justice Josefina Guevara-Salonga (retired).

[2] *Id.* at 41-45.

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Antecedents

On various dates in 1993, Bonier de Guzman (Bonier), then the President of petitioner corporation (Pinausukan, for short), executed four real estate mortgages involving the petitioner's 517 square meter parcel of land situated in Pasay City [3] in favor of Far East Bank and Trust Company (now Bank of Philippine Islands), to be referred to herein as the Bank. The parcel of land was registered in Transfer Certificate of Title No. 126636 of the Register of Deeds of Pasay City under the name of Pinausukan.[4] When the unpaid obligation secured by the mortgages had ballooned to ₱15,129,303.67 as of June 2001, the Bank commenced proceedings for the extrajudicial foreclosure of the mortgages on August 13, 2001 in the Office of the *Ex Officio* Sheriff, Regional Trial Court (RTC), in Pasay City.[5] Two weeks thereafter, the sheriff issued the notice of sheriff's sale, setting the public auction on October 8, 2001 at the main entrance of the Hall of Justice of Pasay City.[6]

Learning of the impending sale of its property by reason of the foreclosure of the mortgages, Pinausukan, represented by Zsae Carrie de Guzman, brought against the Bank and the sheriff an action for the annulment of real estate mortgages in the RTC on October 4, 2001 (Civil Case No. 01-0300), averring that Bonier had obtained the loans only in his personal capacity and had constituted the mortgages on the corporate asset without Pinausukan's consent through a board resolution. The case was assigned to Branch 108.[7] Pinausukan applied for the issuance of a temporary restraining order or writ of preliminary injunction

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[3] *Id.* at 164-183 (The real estate mortgages were to secure the payment of the following loans, to wit: ₱2,000,000.00 dated February 19, 1993; ₱1,500,000.00 dated May 4, 1993; ₱262,500.00 dated June 25, 1993; and ₱2,000,000.00 dated September 2, 1993).

[4] *Id.* at 161-162.

[5] *Id.* at 184-187.

[6] *Id.* at 188.

[7] *Id.* at 52-65.

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to enjoin the Bank and the sheriff from proceeding with the extrajudicial foreclosure and the public auction.

In the ensuing trial of Civil Case No. 01-0300, Pinausukan presented Zsae Carrie de Guzman as its first witness on May 30, 2002. However, the subsequent hearing dates were reset several times. In August 2002, the parties informed the RTC about their attempts to settle the case.

The counsels of the parties did not appear in court on the hearing scheduled on September 5, 2002 despite having agreed thereto. Accordingly, on October 31, 2002, the RTC dismissed Civil Case No. 01-0300 for failure to prosecute.[8] The order of dismissal attained finality.[9]

On June 24, 2003, the sheriff issued a notice of extrajudicial sale concerning the property of Pinausukan.[10] The notice was received by Pinausukan a week later.

Claiming surprise over the turn of events, Pinausukan inquired from the RTC and learned that Atty. Michael Dale Villaflor (Atty. Villaflor), its counsel of record, had not informed it about the order of dismissal issued on October 31, 2002.

On July 24, 2003, Pinausukan brought the petition for annulment in the CA seeking the nullification of the order of October 31, 2002 dismissing Civil Case No. 01-0300. Its petition, under the verification of Roxanne de Guzman-San Pedro (Roxanne), who was one of its Directors, and concurrently its Executive Vice President for Finance and Treasurer, stated that its counsel had been guilty of gross and palpable negligence in failing to keep track of the case he was handling, and in failing to apprise Pinausukan of the developments on the case. It further pertinently stated as follows:

6. Inquiry from counsel, Atty. Michael Dale T. Villaflor disclosed that although the Registry Return Receipt indicated that he received

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[8] *Id.* at 48.

[9] *Id.* at 190.

[10] *Id.* at 159-160.

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the Order on November 28, 2002, according to him, as of said date, he no longer holds office at 12th Floor, Ever Gotesco Corporate Center, 1958 C.M. Recto Avenue, Manila but has transferred to Vecation (sic) Club, Inc., with office address 10th Floor Rufino Tower, Ayala Avenue, Makati City. Petitioner was never notified of the change of office and address of its attorney.

7. The palpable negligence of counsel to keep track of the case he was handling constituted professional misconduct amounting to extrinsic fraud properly warranting the annulment of the Order dated October 31, 2003 as petitioner was unduly deprived of its right to present evidence in Civil Case No. 01-0300 through no fault of its own.[11]

On July 31, 2003, the CA dismissed the petition for annulment,[12] citing the failure to attach the affidavits of witnesses attesting to and describing the alleged extrinsic fraud supporting the cause of action as required by Section 4, Rule 47 of the *Rules of Court*; and observing that the verified petition related only to the correctness of its allegations, a requirement entirely different and separate from the affidavits of witnesses required under Rule 47 of the *Rules of Court*.

On September 12, 2003,[13] the CA denied Pinausukan's motion for reconsideration.

Issue

Pinausukan posits that the requirement for attaching the affidavits of witnesses to the petition for annulment should be relaxed; that even if Roxanne had executed the required affidavit as a witness on the extrinsic fraud, she would only repeat therein the allegations already in the petition, thereby duplicating her allegations under her oath; that the negligence of Atty. Villaflor, in whom it entirely relied upon, should not preclude it from obtaining relief; and that it needed a chance to prove in the RTC that Bonier had no right to mortgage its property.

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[11] CA *rollo*, pp. 4-5.

[12] *Supra* note 1.

[13] *Supra* note 2.

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Ruling

The appeals lacks merit.

1.
Nature and statutory requirements for an action to annul a judgment or final order

The remedy of annulment of judgment has been long authorized and sanctioned in the Philippines. In *Banco Español-Filipino v. Palanca*,[14] of 1918 vintage, the Court, through Justice Street, recognized that there were only two remedies available under the rules of procedure in force at the time to a party aggrieved by a decision of the Court of First Instance (CFI) that had already attained finality, namely: that under Sec. 113, *Code of Civil Procedure*, which was akin to the petition for relief from judgment under Rule 38, *Rules of Court*; and that under Sec. 513, *Code of Civil Procedure*, which stipulated that the party aggrieved under a judgment rendered by the CFI "upon default" and who had been "deprived of a hearing by fraud, accident, mistake or excusable negligence" and the CFI had "finally adjourned so that no adequate remedy exists in that court" could "present his petition to the Supreme Court within sixty days after he first learns of the rendition of such judgment, and not thereafter, setting forth the facts and praying to have judgment set aside."[15] It categorically ruled out a mere motion filed for that purpose in the same action as a proper remedy.

The jurisdiction over the action for the annulment of judgment had been lodged in the CFI as a court of general jurisdiction on the basis that the subject matter of the action was not capable of pecuniary estimation. Section 56, paragraph 1, of Act No. 136 (*An Act providing for the Organization of Courts in the Philippine Islands*), effective on June 11, 1901, vested original jurisdiction in the CFI over "all civil actions in which the subject of litigations is not capable of pecuniary estimation." The CFI retained its jurisdiction under Section 44(a) of Republic Act

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[14] 37 Phil. 921 (1918).

[15] *Id.* at 948.

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No. 296 (*The Judiciary Act of 1948*), effective on June 17, 1948, which contained a similar provision vesting original jurisdiction in the CFI over "all civil actions in which the subject of the litigation is not capable of pecuniary estimation."

In the period under the regimes of Act No. 136 and Republic Act No. 296, the issues centered on which CFI, or branch thereof, had the jurisdiction over the action for the annulment of judgment. It was held in *Mas v. Dumara-og*[16] that "the power to open, modify or vacate a judgment is not only possessed by, *but is restricted to the court in which the judgment was rendered*." In *J.M. Tuason & Co., Inc. v. Torres*,[17] the Court declared that "the jurisdiction to annul a judgment of a branch of the Court of First Instance belongs *solely* to the very same branch which rendered the judgment." In *Sterling Investment Corporation v. Ruiz*,[18] the Court enjoined a branch of the CFI of Rizal from taking cognizance of an action filed with it to annul the judgment of another branch of the same court.

In *Dulap v. Court of Appeals*,[19] the Court observed that the philosophy underlying the pronouncements in these cases was the policy of judicial stability, as expressed in *Dumara-og*, to the end that the judgment of a court of competent jurisdiction could not be interfered with by any court of concurrent jurisdiction. Seeing that the pronouncements in *Dumara-og, J.M. Tuason & Co., Inc.* and *Sterling Investment* confining the jurisdiction to annul a judgment to the court or its branch rendering the judgment would "practically amount to judicial legislation," the Court found the occasion to re-examine the pronouncements. Observing that the plaintiff's cause of action in an action to annul the judgment of a court "springs from the alleged nullity of the judgment based on one ground or another, particularly fraud, which fact affords the plaintiff a right to judicial interference in his behalf," and that that the two cases were

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[16] No. L-16252, September 29, 1964, 12 SCRA 34, 37.

[17] No. L-24717, December 4, 1967, 21 SCRA 1169, 1172.

[18] No. L-30694, October 31, 1969, 30 SCRA 318, 322.

[19] No. L-28306, December 18, 1971, 42 SCRA 537.

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distinct and separate from each other because "the cause of action (to annul judgment) is entirely different from that in the action which gave rise to the judgment sought to be annulled, for a direct attack against a final and executory judgment is not incidental to, but is the main object of, the proceeding," the Court concluded that "there is no plausible reason why the venue of the action to annul the judgment should necessarily follow the venue of the previous action" if the outcome was not only to violate the existing rule on venue for personal actions but also to limit the opportunity for the application of such rule on venue for personal actions.[20] The Court observed that the doctrine under *Dumara-og, J.M. Tuason & Co., Inc.* and *Sterling Investment* could then very well "result in the difficulties precisely sought to be avoided by the rules; for it could be that at the time of the filing of the second action for annulment, neither the plaintiff nor the defendant resides in the same place where either or both of them did when the first action was commenced and tried," thus unduly depriving the parties of the right expressly given them by the *Rules of Court* "to change or transfer venue from one province to another by written agreement – a right conferred upon them for their own convenience and to minimize their expenses in the litigation – and renders innocuous the provision on waiver of improper venue in Section 4 (of Rule 4 of the *Revised Rules of Court*)."[21] The Court eventually ruled:

> Our conclusion must therefore be that a court of first instance or a branch thereof has the authority and jurisdiction to take cognizance of, and to act in, a suit to annul a final and executory judgment or order rendered by another court of first instance or by another branch of the same court. The policy of judicial stability, which underlies the doctrine laid down in the cases of *Dumara-og, J.M. Tuason & Co., Inc.* and *Sterling Investment Corporation, et al., supra,* should be held subordinate to an orderly administration of justice based on the existing rules of procedure and the law.[22] x x x

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[20] *Id.* at 541-543.

[21] *Id.* at 542.

[22] *Id.* at 545.

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In 1981, the Legislature enacted *Batas Pambansa Blg.* 129 (*Judiciary Reorganization Act of 1980*).[23] Among several innovations of this legislative enactment was the formal establishment of the annulment of a judgment or final order as an action independent from the generic classification of litigations in which the subject matter was not capable of pecuniary estimation, and expressly vested the exclusive original jurisdiction over such action in the CA.[24] The action in which the subject of the litigation was incapable of pecuniary estimation continued to be under the exclusive original jurisdiction of the RTC, which replaced the CFI as the court of general jurisdiction.[25] Since then, the RTC no longer had jurisdiction over an action to annul the judgment of the RTC, eliminating all concerns about judicial stability. To implement this change, the Court introduced a new procedure to govern the action to annul the judgment of the RTC in the 1997 revision of the *Rules of Court* under Rule 47, directing in Section 2 thereof that "[t]he annulment may be based only on the grounds of extrinsic fraud and lack of jurisdiction."[26]

The Court has expounded on the nature of the remedy of annulment of judgment or final order in *Dare Adventure Farm Corporation v. Court of Appeals*,[27] *viz*:

> A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions.

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[23] Approved on August 14, 1981.

[24] *Batas Pambansa Blg.* 129, Section 9, (2).

[25] *Id.*, Section 19, (1).

[26] The *1997 Rules of Civil Procedure*, which was adopted by the Court in Baguio City on April 8, 1997 in Bar Matter No. 803, took effect on July 1, 1997.

[27] G.R. No. 161122, September 24, 2012, 681 SCRA 580, 586-587.

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The Court has thus instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the *Rules of Court* that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. A petition for annulment that ignores or disregards any of the safeguards cannot prosper.

The attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid corner stone in the dispensation of justice by the courts. The doctrine of immutability and unalterability serves a two-fold purpose, namely: (*a*) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (*b*) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. As to the first, a judgment that has acquired finality becomes immutable and unalterable and is no longer to be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest court of the land. As to the latter, controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

The objective of the remedy of annulment of judgment or final order is to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense. If the ground relied upon is lack of jurisdiction, the entire proceedings are set aside without prejudice to the original action being refiled in the proper court.[28] If the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the CA may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein.[29] The remedy is by no means an appeal

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[28] *Rules of Court*, Rule 47, Section 7.

[29] *Id.*

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whereby the correctness of the assailed judgment or final order is in issue; hence, the CA is not called upon to address each error allegedly committed by the trial court.[30]

Given the extraordinary nature and the objective of the remedy of annulment of judgment or final order, Pinausukan must be mindful of and should closely comply with the following statutory requirements for the remedy as set forth in Rule 47 of the *Rules of Court*.

The first requirement prescribes that the remedy is available only when the petitioner can no longer resort to the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies through no fault of the petitioner.[31] This means that the remedy, although seen as "a last remedy,"[32] is not an alternative to the ordinary remedies of new trial, appeal and petition for relief. The petition must aver, therefore, that the petitioner failed to move for a new trial, or to appeal, or to file a petition for relief without fault on his part. But this requirement to aver is not imposed when the ground for the petition is lack of jurisdiction (whether alleged singly or in combination with extrinsic fraud), simply because the judgment or final order, being void, may be assailed at any time either collaterally or by direct action or by resisting such judgment or final order in any action or proceeding whenever it is invoked, unless the ground of lack of jurisdiction is meanwhile barred by laches.[33]

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[30] *Republic v. Heirs of Sancho Magdato*, G.R. No. 137857, September 11, 2000, 340 SCRA 115, 124.

[31] *Rules of Court*, Rule 47, Section 1.

[32] 2 Feria & Noche, *Civil Procedure, Annotated*, 2001 Edition, Central Lawbook Publishing, Quezon City, p. 219.

[33] *Ancheta v. Ancheta*, G.R. No. 145370. March 4, 2004, 424 SCRA 725, 735 (The respondent therein knew that the petitioner was already residing at another address, but he nevertheless alleged in his petition that the petitioner was residing at a different address. The sheriff served the summons and a copy of the petition by substituted service on the address stated in the petition. The petitioner was compelled to file a petition under

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The second requirement limits the ground for the action of annulment of judgment to either extrinsic fraud or lack of jurisdiction.

Not every kind of fraud justifies the action of annulment of judgment. Only extrinsic fraud does. Fraud is extrinsic, according to *Cosmic Lumber Corporation v. Court of Appeals*,[34] "where the unsuccessful party has been prevented from exhibiting fully his case, by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority connives at his defeat; these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment and open the case for a new and fair hearing."

The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented the petitioner from having his day in court.[35] Nonetheless, extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief.[36]

Rule 47 to assail the decision rendered despite lack of summons. The CA denied the petition on the ground that there was no "clear and specific averment by petitioner that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of petitioner. Neither is there any averment or allegation that the present petition is based only on the grounds of extrinsic fraud and lack of jurisdiction. Nor yet that, on the assumption that extrinsic fraud can be a valid ground therefor, that it was not availed of, or could not have been availed of, in a motion for new trial, or petition for relief.")

[34] G.R. No. 114311, November 29, 1996, 265 SCRA 168, 180.

[35] *Tolentino v. Leviste*, G.R. No. 156118, November 19, 2004, 443 SCRA 274, 282.

[36] *Arcenas v. Queen City Development Bank*, G.R. No. 166819, June 16, 2010, 621 SCRA 11, 18.

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In contrast, intrinsic fraud refers to the acts of a party at a trial that prevented a fair and just determination of the case, but the difference is that the acts or things, like falsification and false testimony, could have been litigated and determined at the trial or adjudication of the case.[37] In other words, intrinsic fraud does not deprive the petitioner of his day in court because he can guard against that kind of fraud through so many means, including a thorough trial preparation, a skillful cross-examination, resorting to the modes of discovery, and proper scientific or forensic applications. Indeed, forgery of documents and evidence for use at the trial and perjury in court testimony have been regarded as not preventing the participation of any party in the proceedings, and are not, therefore, constitutive of extrinsic fraud.[38]

Lack of jurisdiction on the part of the trial court in rendering the judgment or final order is either lack of jurisdiction over the subject matter or nature of the action, or lack of jurisdiction over the person of the petitioner. The former is a matter of substantive law because statutory law defines the jurisdiction of the courts over the subject matter or nature of the action. The latter is a matter of procedural law, for it involves the service of summons or other process on the petitioner. A judgment or final order issued by the trial court without jurisdiction over the subject matter or nature of the action is always void, and, in the words of Justice Street in *Banco Español-Filipino v. Palanca*,[39] "in this sense it may be said to be a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head."[40] But the defect of

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[37] *Ybañez v. Court of Appeals*, G.R. No. 117499, February 9, 1996, 253 SCRA 540, 551.

[38] *Strait Times, Inc. v. Court of Appeals*, G.R. No. 126673, August 28, 1998, 294 SCRA 714, 723.

[39] *Supra* note 14, at 949.

[40] In his dissent in the same case (*id.*, at 950-951), Justice Malcolm was equally expressive of the lack of value of a void judgment, quoting from the decision of the U.S. Supreme Court in *Mills v. Dickson* (6 Rich.

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lack of jurisdiction over the person, being a matter of procedural law, may be waived by the party concerned either expressly or impliedly.

The third requirement sets the time for the filing of the action. The action, if based on extrinsic fraud, must be filed within four years from the discovery of the extrinsic fraud; and if based on lack of jurisdiction, must be brought before it is barred by laches or estoppel.

Laches is the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence could nor should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[41] Its other name is stale demands, and it is based upon grounds of public policy that requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.[42] The existence of four elements must be shown in order to validate laches as a defense, to wit: (*a*) conduct on the part of the defendant, or of one under whom a claim is made, giving rise to a situation for which a complaint is filed and a remedy sought; (*b*) delay in asserting the rights of the complainant, who has knowledge or notice of the defendant's conduct and has been afforded an

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[S.C.], 487), to wit: "A judgment which is void upon its face, and which requires only an inspection of the judgment roll to demonstrate its want of vitality is a dead limb upon the judicial tree, which should be lopped off, if the power so to do exists. It can bear no fruit to the plaintiff, but is a constant menace to the defendant."

[41] *Olizon v. Court of Appeals*, G.R. No. 107075, September 1, 1994, 236 SCRA 148, 157-158, citing *Tejido v. Zamacoma*, G.R. No. 63040, August 7, 1985, 138 SCRA 78; *Tijam v. Sibonghanoy*, No. L-21450, April 15, 1968, 23 SCRA 29; *Sotto v. Teves*, No. L-38018, October 31, 1978, 86 SCRA 154, 183.

[42] *Pangilinan v. Court of Appeals*, G. R. No. 83588, September 29, 1997, 279 SCRA 590, 601.

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opportunity to institute a suit; (*c*) lack of knowledge or notice on the part of the defendant that the complainant will assert the right on which the latter has based the suit; and (*d*) injury or prejudice to the defendant in the event that the complainant is granted a relief or the suit is not deemed barred.[43]

Estoppel precludes a person who has admitted or made a representation about something as true from denying or disproving it against anyone else relying on his admission or representation.[44] Thus, our law on evidence regards estoppel as conclusive by stating that "[w]henever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it."[45]

The fourth requirement demands that the petition should be verified, and should allege with particularity the facts and the law relied upon for annulment, as well as those supporting the petitioner's good and substantial cause of action or defense, as the case may be.[46] The need for particularity cannot be dispensed with because averring the circumstances constituting either fraud or mistake with particularity is a universal requirement in the rules of pleading.[47] The petition is to be filed in seven clearly legible copies, together with sufficient copies corresponding to the number of respondents, and shall contain essential submissions, specifically: (*a*) the certified true copy of the judgment or final order or resolution, to be attached to the original

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[43] *Go Chi Gun v. Co Cho, et al.*, 96 Phil. 622, 637 (1955); *Maneclang v. Baun*, G.R. No. L-27876, April 22, 1992, 208 SCRA 179, 198.

[44] The *Civil Code* provides:

Article 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

[45] *Rules of Court*, Rule 131, Section 2(*a*).

[46] *Id.*, Rule 47, Section 4.

[47] *Id.*, Rule 8, Section 5.

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copy of the petition intended for the court and indicated as such by the petitioner;[48] (*b*) the affidavits of witnesses or documents supporting the cause of action or defense; and (*c*) the sworn certification that the petitioner has not theretofore commenced any other action involving the same issues in the Supreme Court, the CA or the different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same, and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the CA, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the said courts and other tribunal or agency thereof within five days therefrom.[49]

The purpose of these requirements of the sworn verification and the particularization of the allegations of the extrinsic fraud in the petition, of the submission of the certified true copy of the judgment or final order or resolution, and of the attachment of the affidavits of witnesses and documents supporting the cause of action or defense is to forthwith bring all the relevant facts to the CA's cognizance in order to enable the CA to determine whether or not the petition has substantial merit. Should it find *prima facie* merit in the petition, the CA shall give the petition due course and direct the service of summons on the respondent; otherwise, the CA has the discretion to outrightly dismiss the petition for annulment.[50]

2.
Pinausukan's petition for annulment was substantively and procedurally defective

A review of the dismissal by the CA readily reveals that Pinausukan's petition for annulment suffered from procedural and substantive defects.

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[48] *Id.*, Rule 47, Section 4.

[49] *Id.*

[50] *Id.*, Rule 47, Section 5.

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The procedural defect consisted in Pinausukan's disregard of the fourth requirement mentioned earlier consisting in its failure to submit together with the petition the affidavits of witnesses or documents supporting the cause of action. It is true that the petition, which narrated the facts relied upon, was verified under oath by Roxanne. However, the submission of the affidavits of witnesses together with the petition was not dispensable for that reason. We reiterate with approval the CA's emphatic observation in the resolution of July 31, 2003 dismissing the petition for annulment to the effect that Roxanne's verification related only "to the correctness of the allegations in the petition" and was "not the same [or] equivalent to the affidavit of witnesses that the above-cited Rule requires."[51] To us, indeed, the true office of the verification is merely to secure an assurance that the allegations of a pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith.[52]

Pinausukan's failure to include the affidavits of witnesses was fatal to its petition for annulment. Worthy to reiterate is that the objective of the requirements of verification and submission of the affidavits of witnesses is to bring all the relevant facts that will enable the CA to immediately determine whether or not the petition has substantial merit. In that regard, however, the requirements are separate from each other, for only by the affidavits of the witnesses who had competence about the circumstances constituting the extrinsic fraud can the petitioner detail the extrinsic fraud being relied upon as the ground for its petition for annulment. This is because extrinsic fraud cannot be presumed from the recitals alone of the pleading but needs to be particularized as to the facts constitutive of it. The distinction between the verification and the affidavits is made more pronounced when an issue is based on facts *not appearing of record*. In that instance, the issue may be heard on affidavits

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[51] *Supra* note 1.

[52] *Oshita v. Republic*, No. L-21180, March 31, 1967, 19 SCRA 700, 702.

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or depositions presented by the respective parties, subject to the court directing that the matter be heard wholly or partly on oral testimony or depositions.[53]

The substantive defect related to the supposed neglect of Atty. Villaflor to keep track of the case, and to his failure to apprise Pinausukan of the developments in the case, which the CA did not accept as constituting extrinsic fraud, because –

> Based solely on these allegations, we do not see any basis to give due course to the petition as these allegations do not speak of the extrinsic fraud contemplated by Rule 47. Notably, the petition's own language states that what is involved in this case is mistake and gross negligence of petitioner's own counsel. The petition even suggests that the negligence of counsel may constitute professional misconduct (but this is a matter for lawyer and client to resolve). What is certain, for purposes of the application of Rule 47, is that mistake and gross negligence cannot be equated to the extrinsic fraud that Rule 47 requires to be the ground for an annulment of judgment. By its very nature, extrinsic fraud relates to a cause that is collateral in character, *i.e.*, it relates to any fraudulent act of the prevailing party in litigation which is committed outside of the trial of the case, where the defeated party has been prevented from presenting fully his side of the cause, by fraud or deception practiced on him by his opponent. Even in the presence of fraud, annulment will not lie unless the fraud is committed by the adverse party, not by one's own lawyer. In the latter case, the remedy of the client is to proceed against his own lawyer and not to re-litigate the case where judgment had been rendered.[54]

We concur with the CA. Verily, such neglect of counsel, even if it was true, did not amount to extrinsic fraud because it did not emanate from any act of FEBTC as the prevailing party, and did not occur outside the trial of the case. Moreover, the failure to be fully aware of the developments in the case was Pinausukan's own responsibility. As a litigant, it should not entirely leave the case in the hands of its counsel, for it had

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[53] *Rules of Court*, Rule 133, Section 7.

[54] *Supra* note 2.

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the continuing duty to keep itself abreast of the developments if only to protect its own interest in the litigation. It could have discharged its duty by keeping in regular touch with its counsel, but it did not. Consequently, it has only itself to blame.

WHEREFORE, the Court **AFFIRMS** the assailed resolutions of the Court of Appeals promulgated on July 31, 2003 and September 12, 2003; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Villarama, Jr., and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 180972. January 20, 2014]

JONAS MICHAEL R. GARZA, *petitioner, vs.* **COCA-COLA BOTTLERS PHILIPPINES, INC. and CHRISTINE BANAL/CALIXTO MANAIG,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; DISHONESTY; FAILURE TO REMIT CASH COLLECTION FROM CUSTOMER; NEGATED BY COMPANY POLICY THAT DOES NOT ALLOW IT TO HAPPEN.— The sole basis for the CA's ruling that petitioner was validly dismissed is that he failed to remit the [October 15, 2003] cash collection of ₱8,160.00 from one of his customers. x x x [However,] one of CCBPI's policies requires that, on a daily basis, CCBPI Salesmen/ Account Specialists must account for their sales/collections and obtain clearance from the company