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opted to re-apply and were, subsequently, re-hired[32] in private respondent PICOP's other departments. The rest chose to file the instant case.

WHEREFORE, premises considered, the instant petition is *DISMISSED* for lack of merit. The questioned Decision of 10 July 1992 of the NLRC and its Resolution of 06 June 1994 in NLRC OC No. M-00002 are hereby *AFFIRMED in toto*. No costs.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Callejo, Sr., and *Tinga, JJ.,* concur.

SECOND DIVISION

[G.R. No. 143866. August 22, 2005]

POLIAND INDUSTRIAL LIMITED, *petitioner, vs.* **NATIONAL DEVELOPMENT COMPANY, DEVELOPMENT BANK OF THE PHILIPPINES, and THE HONORABLE COURT OF APPEALS (Fourteenth Division),** *respondents*.

[G.R. No. 143877. August 22, 2005]

NATIONAL DEVELOPMENT COMPANY, *petitioner, vs.* **POLIAND INDUSTRIAL LIMITED,** *respondent*.

SYLLABUS

1. POLITICAL LAW; LETTERS OF INSTRUCTION; GENERALLY, LETTERS OF INSTRUCTION DO NOT HAVE THE

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[32] CA *Rollo,* p. 134.

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FORCE AND EFFECT OF A LAW AND CANNOT BE A VALID SOURCE OF OBLIGATION.— As a general rule, letters of instructions are simply directives of the President of the Philippines, issued in the exercise of his administrative power of control, to heads of departments and/or officers under the executive branch of the government for observance by the officials and/or employees thereof. Being administrative in nature, they do not have the force and effect of a law and, thus, cannot be a valid source of obligation.

2. **ID.; ID.; ID.; EXCEPTION; PRESIDENT MARCOS ISSUED CERTAIN DECREES, ORDERS AND LETTERS OF INSTRUCTION WHICH THE COURT HAS DECLARED AS HAVING THE FORCE AND EFFECT OF A STATUTE.—** However, during the period when then President Marcos exercised extraordinary legislative powers, he issued certain decrees, orders and letters of instruction which the Court has declared as having the force and effect of a statute. As pointed out by the Court in *Legaspi v. Minister of Finance*, paramount considerations compelled the grant of extraordinary legislative power to the President at that time when the nation was beset with threats to public order and the purpose for which the authority was granted was specific to meet the exigencies of that period[.]

3. **ID.; ID.; ID.; ID.; CONDITIONS THAT MUST BE ESTABLISHED BEFORE A LETTER OF INSTRUCTION MAY BE CONSIDERED A LAW.—** The following conditions must be established before a letter of instruction may be considered a law: To form part of the law of the land, the decree, order or LOI must be issued by the President in the exercise of his extraordinary power of legislation as contemplated in Section 6 of the 1976 amendments to the Constitution, whenever in his judgment, there exists a grave emergency or threat or imminence thereof, or whenever the interim Batasan Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action. Only when issued under any of the two circumstances will a decree, order, or letter be qualified as having the force and effect of law. The decree or instruction should have been issued either when there existed a grave emergency or threat or imminence or when the Legislature failed or was unable to act adequately on the matter. The qualification that *there exists a grave emergency or threat or imminence thereof* must be

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interpreted to refer to the prevailing peace and order conditions because the particular purpose the President was authorized to assume legislative powers was to address the deteriorating peace and order situation during the martial law period.

4. **ID.; ID.; ID.; ID.; LETTER OF INSTRUCTION NO. 1155 WAS IN THE NATURE OF A MERE ADMINISTRATIVE ISSUANCE TO UNDERTAKE A POLICY MEASURE.—** Although LOI No. 1155 was undoubtedly issued at the time when the President exercised legislative powers granted under Amendment No. 6 of the 1973 Constitution, the language and purpose of LOI No. 1155 precludes this Court from declaring that said LOI had the force and effect of law in the absence of any of the conditions set out in *Parong*. The subject matter of LOI No. 1155 is not connected, directly or remotely, to a grave emergency or threat to the peace and order situation of the nation in particular or to the public interest in general. Nothing in the language of LOI No. 1155 suggests that it was issued to address the security of the nation. Obviously, LOI No. 1155 was in the nature of a mere administrative issuance directed to NDC, DBP and MARINA to undertake a policy measure, that is, to rehabilitate a private corporation.

5. **MERCANTILE LAW; CORPORATION LAW; MERGER AND CONSOLIDATION OF CORPORATION; MERGER SHALL ONLY BE EFFECTIVE UPON THE ISSUANCE OF A CERTIFICATE OF MERGER BY THE SECURITIES AND EXCHANGE COMMISSION (SEC).—** Ordinarily, in the merger of two or more existing corporations, one of the combining corporations survives and continues the combined business, while the rest are dissolved and all their rights, properties and liabilities are acquired by the surviving corporation. The merger, however, does not become effective upon the mere agreement of the constituent corporations. As specifically provided under Section 79 of said Code, the merger shall only be effective upon the issuance of a certificate of merger by the Securities and Exchange Commission (SEC), subject to its prior determination that the merger is not inconsistent with the Code or existing laws. Where a party to the merger is a special corporation governed by its own charter, the Code particularly mandates that a favorable recommendation of the appropriate government agency should first be obtained. The issuance of the certificate of merger is crucial because not only does it bear

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out SEC's approval but also marks the moment whereupon the consequences of a merger take place. By operation of law, upon the effectivity of the merger, the absorbed corporation ceases to exist but its rights, and properties as well as liabilities shall be taken and deemed transferred to and vested in the surviving corporation.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI*; GENERALLY, AN APPELLATE COURT MAY ONLY PASS UPON ERRORS ASSIGNED; EXCEPTIONS.— Generally, an appellate court may only pass upon errors assigned. However, this rule is not without exceptions. In the following instances, the Court ruled that an appellate court is accorded a broad discretionary power to waive the lack of assignment of errors and consider errors not assigned: (a) Grounds not assigned as errors but affecting the jurisdiction of the court over the subject matter; (b) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of a justice or to avoid dispensing piecemeal justice; (d) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) Matters not assigned as errors on appeal but closely related to an error assigned; (f) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.

7. MERCANTILE LAW; CODE OF COMMERCE; ARTICLE 378 THEREOF GOVERNS THE SALE OF VESSELS IN A FOREIGN PORT; NOT APPLICABLE IN CASE AT BAR.— NDC cites Articles 578 and 580 of the Code of Commerce to bolster its argument that the foreclosure of the vessels extinguished all claims against the vessels including POLIAND's claim. Article 578 of the Code of Commerce is not relevant to the facts of the instant case because it governs the sale of vessels in a foreign port. Said provision outlines the formal and registration requirements in order that a sale of a vessel on voyage or in a foreign port becomes effective as against third persons. On the other hand, the resolution of the instant case depends on the determination as to which creditor is entitled to the proceeds

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of the foreclosure sale of the vessels. Clearly, Article 578 of the Code of Commerce is inapplicable.

8. ID.; PRESIDENTIAL DECREE NO. 1521 (SHIP MORTGAGE DECREE OF 1978); PREFFERED MORTGAGE LIEN; SECTION 17 THEREOF REPEALED ARTICLE 580 OF THE CODE OF COMMERCE.— Article 580, while providing for the order of payment of creditors in the event of sale of a vessel, had been repealed by the pertinent provisions of Presidential Decree (P.D.) No. 1521, otherwise known as the Ship Mortgage Decree of 1978. In particular, Article 580 provides that in case of the judicial sale of a vessel for the payment of creditors, the debts shall be satisfied in the order specified therein. On the other hand, Section 17 of P.D. No. 1521 also provides that in the judicial or extrajudicial sale of a vessel for the enforcement of a preferred mortgage lien constituted in accordance with Section 2 of P.D. No. 1521, such preferred mortgage lien shall have priority over all pre-existing claims against the vessel, save for those claims enumerated under Section 17, which have preference over the preferred mortgage lien in the order stated therein. Since P.D. No. 1521 is a subsequent legislation and since said law in Section 17 thereof confers on the preferred mortgage lien on the vessel superiority over all other claims, thereby engendering an irreconcilable conflict with the order of preference provided under Article 580 of the Code of Commerce, it follows that the Code of Commerce provision is deemed repealed by the provision of P.D. No. 1521, as the posterior law.

9. ID.; ID.; ID.; IF IT IS CONSTITUTED FOR THE PURPOSE STATED UNDER SECTION 2 THEREOF, THE MORTGAGE OBTAINS A PREFERRED STATUS.— If the mortgage on the vessel is constituted for the purpose stated under Section 2, the mortgage obtains a preferred status provided the formal requisites enumerated under Section 4 are complied with. Upon enforcement of the preferred mortgage and eventual foreclosure of the vessel, the proceeds of the sale shall be first applied to the claim of the mortgage creditor unless there are superior or preferential liens, as enumerated under Section 17[.]

10. ID.; ID.; ID.; ITS PROVISION ON THE ORDER OF PREFERENCE IN THE SATISFACTION OF THE CLAIMS AGAINST THE VESSEL IS MORE APPLICABLE COMPARED

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TO THE CIVIL CODE PROVISIONS ON THE CONCURRENCE AND PREFERENCE OF CREDITS.— The provision of P.D. No. 1521 on the order of preference in the satisfaction of the claims against the vessel is the more applicable statute to the instant case compared to the Civil Code provisions on the concurrence and preference of credit. General legislation must give way to special legislation on the same subject, and generally be so interpreted as to embrace only cases in which the special provisions are not applicable.

11. **ID.; ID.; ID.; MARITIME LIEN ARISING PRIOR IN TIME TO THE RECORDING OF THE PREFERRED MORTGAGE IS CONSIDERED TO BE SUPERIOR TO THE LATTER.—** Before POLIAND's claim may be classified as superior to the mortgage constituted on the vessel, it must be shown to be one of the enumerated claims which Section 17, P.D. No. 1521 declares as having preferential status in the event of the sale of the vessel. One of such claims enumerated under Section 17, P.D. No. 1521 which is considered to be superior to the preferred mortgage lien is a maritime lien arising prior in time to the recording of the preferred mortgage. Such maritime lien is described under Section 21, P.D. No. 1521[.] x x x Under the aforequoted provision, the expense must be incurred upon the order of the owner of the vessel or its authorized person and prior to the recording of the ship mortgage. Under the law, it must be established that the credit was extended to the vessel itself.

12. **ID.; ID.; ID.; EXPENSE ON THE VESSEL INDISPENSABLE TO THE MAINTENANCE AND NAVIGATION OF THE VESSEL MAY PROPERLY BE TREATED AS A MARITIME LIEN FOR NECESSARIES.—** As stated in Section 21, P.D. No. 1521, a maritime lien may consist in "other necessaries spent for the vessel." The ship modification cost may properly be classified under this broad category because it was a necessary expenses for the vessel's navigation. As long as an expense on the vessel is indispensable to the maintenance and navigation of the vessel, it may properly be treated as a maritime lien for necessaries under Section 21, P.D. No. 1521. With respect to the claim for salary and wages of the crew, there is no doubt that it is also one of the enumerated claims under Section 17, P.D. No. 1521, second only to judicial costs and taxes due the

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government in preference and, thus, having a status superior to DBP's mortgage lien.

13. REMEDIAL LAW; EVIDENCE; CREDIBILITY; GENERALLY, FINDINGS OF FACT OF LOWER COURTS ARE DEEMED CONCLUSIVE AND BINDING UPON THE SUPREME COURT.— All told, the determination of the existence and the amount of POLIAND's claim for maritime lien is a finding of fact which is within the province of the courts below. Findings of fact of lower courts are deemed conclusive and binding upon the Supreme Court except when the findings are grounded on speculation, surmises or conjectures; when the inference made is manifestly mistaken, absurd or impossible; when there is grave abuse of discretion in the appreciation of facts; when the factual findings of the trial and appellate courts are conflicting; when the Court of Appeals, in making its findings, has gone beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; when the judgment of the appellate court is premised on a misapprehension of facts or when it has failed to notice certain relevant facts which, if properly considered, will justify a different conclusion; when the findings of fact are conclusions without citation of specific evidence upon which they are based; and when findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record. The Court finds no sufficient justification to reverse the findings of the trial court and the appellate court in respect to the existence and amount of maritime lien.

14. MERCANTILE LAW; PRESIDENTIAL DECREE NO. 1521; PREFERRED MORTGAGE LIEN; THIRD PERSON WHO SATISFIES THE OBLIGATION TO AN ORIGINAL MARITIME LIEN MAY CLAIM FROM THE DEBTOR.— The first argument is absurd. Although POLIAND or its predecessors-in-interest are not sailors entitled to wages, they can still make a claim for the advances spent for the salary and wages of the crew under the principle of legal subrogation. As explained in *Philippine National Bank v. Court of Appeals*, a third person who satisfies the obligation to an original maritime lienor may claim from the debtor because the third person is subrogated to the rights of the maritime lienor over the vessel.

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15. CIVIL LAW; OBLIGATIONS AND CONTRACTS; STATUTE OF FRAUDS; INAPPLICABLE WHEN THERE IS NO CONTRACT BETWEEN THE PARTIES.— DBP's reliance on the Statute of Frauds is misplaced. Article 1403 (2) of the Civil Code, which enumerates the contracts covered by the Statue of Frauds, is inapplicable. To begin with, there is no privity of contract between POLIAND or its predecessors-in-interest, on one hand, and DBP, on the other. POLIAND hinges its claim on the maritime lien based on LOI No. 1195 and P.D. No. 1521, and not on any contract or agreement.

16. ID.; PROPERTY; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION OF ACTIONS; PRESCRIPTIVE PERIOD WAS TOLLED WHEN A WRITTEN DEMAND FOR THE SATISFACTION OF OBLIGATION WAS MADE.— Neither can DBP invoke prescription or laches against POLIAND. Under Article 1144 of the Civil Code, an action upon an obligation created by law must be brought within ten years from the time the right of action accrues. The right of action arose after January 15, 1982, when NDC partially paid off GALLEON's obligations to POLIAND's predecessor-in-interest, Asian Hardwood. At that time, the prescriptive period for the enforcement by action of the balance of GALLEON's outstanding obligations had commenced. Prescription could not have set in because the prescriptive period was tolled when POLIAND made a written demand for the satisfaction of the obligation on September 24, 1991, or before the lapse of the ten-year prescriptive period. Laches also do not lie because there was no unreasonable delay on the part of POLIAND in asserting its rights. Indeed, it instituted the instant suit seasonably.

17. MERCANTILE LAW; PRESIDENTIAL DECREE NO. 1521; PREFERRED MORTGAGE LIEN; MARITIME LIEN IS INSEPARABLE FROM THE VESSEL AND UNTIL DISCHARGED, IT FOLLOWS THE VESSEL.— All things considered, however, the Court finds that only NDC is liable for the payment of the maritime lien. A maritime lien is akin to a mortgage lien in that in spite of the transfer of ownership, the lien is not extinguished. The maritime lien is inseparable from the vessel and until discharged, it follows the vessel. Hence, the enforcement of a maritime lien is in the nature and character of a proceeding *quasi in rem*. The expression "action in *rem*" is, in its narrow application, used only with reference to certain

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proceedings in courts of admiralty wherein the property alone is treated as responsible for the claim or obligation upon which the proceedings are based. Considering that DBP subsequently transferred ownership of the vessels to NDC, the Court holds the latter liable on the maritime lien. Notwithstanding the subsequent transfer of the vessels to NDC, the maritime lien subsists.

18. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; WHEN IT CAN BE AWARDED.— This Court finds no reversible error with the award as upheld by the appellate court. Under Article 2208 of the Civil Code, attorney's fees may be awarded *inter alia* when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest or in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation be recovered.

19. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; WHERE THE INEVITABLE CONCLUSION FROM THE BODY OF THE DECISION IS SO CLEAR AS TO SHOUT THAT THERE WAS A MISTAKE IN THE DISPOSITIVE PORTION, THE BODY OF THE DECISION WILL PREVAIL.— The general rule is that where there is conflict between the dispositive portion or the *fallo* and the body of the decision, the *fallo* controls. This rule rests on the theory that the *fallo* is the final order while the opinion in the body is merely a statement ordering nothing. However, where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will prevail. In the instant case, it is clear from the trial court records and the Court of Appeals' Rollo that the bigger amount awarded in the dispositive portion of the Court of Appeals' *Decision* was a typographical mistake. Considering that the appellate court's *Decision* merely affirmed the trial court's finding with respect to the amount of maritime lien, the bigger amount stated in the dispositive portion of the Court of Appeals' *Decision* must have been awarded through indavertence.

APPEARANCES OF COUNSEL

The Office of the Government Corporate Counsel for NDC, *et al*.

Villaraza & Angcangco for Poliand Industrial, Limited.

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D E C I S I O N

TINGA, *J.*:

Before this Court are two Rule 45 consolidated petitions for review seeking the review of the *Decision*[1] of the Court of Appeals (Fourth Division) in CA-G.R. CV No. 53257, which modified the *Decision* of the Regional Trial Court, Branch 61, Makati City in Civil Case No. 91-2798. Upon motion of the Development Bank of the Philippines (DBP), the two petitions were consolidated since both assail the same *Decision* of the Court of Appeals.

In G.R. No. 143866, petitioner Poliand Industrial Limited (POLIAND) seeks judgment declaring the National Development Company (NDC) and the DBP solidarily liable in the amount of US$2,315,747.32, representing the maritime lien in favor of POLIAND and the net amount of loans incurred by Galleon Shipping Corporation (GALLEON). It also prays that NDC and DBP be ordered to pay the attorney's fees and costs of the proceedings as solidary debtors. In G.R. No. 143877, petitioner NDC seeks the reversal of the Court of Appeals' *Decision* ordering it to pay POLIAND the amount of One Million Nine Hundred Twenty Thousand Two Hundred Ninety-Eight and 56/100 United States Dollars (US$1,920,298.56), corresponding to the maritime lien in favor of POLIAND, plus interest.

ANTECEDENTS

The following factual antecedents are matters of record.

Between October 1979 and March 1981, Asian Hardwood Limited (Asian Hardwood), a Hong Kong corporation, extended credit accommodations in favor of GALLEON totaling US$3,317,747.32.[2] At that time, GALLEON, a domestic

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[1] Penned by Justice Conchita Carpio-Morales, Chairman, Fourth Division, now Associate Justice of the Court, and concurred in by *JJ*. Teodoro Regino and Mercedes Gozo-Dadole.

[2] CA Decision, p. 1; G.R. No. 143877, *Rollo*, p. 60.

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corporation organized in 1977 and headed by its president, Roberto Cuenca, was engaged in the maritime transport of goods. The advances were utilized to augment GALLEON's working capital depleted as a result of the purchase of five new vessels and two second-hand vessels in 1979 and competitiveness of the shipping industry. GALLEON had incurred an obligation in the total amount of US$3,391,084.91 in favor of Asian Hardwood.

To finance the acquisition of the vessels, GALLEON obtained loans from Japanese lenders, namely, Taiyo Kobe Bank, Ltd., Mitsui Bank Ltd. and Marubeni Benelux. On October 10, 1979, GALLEON, through Cuenca, and DBP executed a *Deed of Undertaking*[3] whereby DBP guaranteed the prompt and punctual payment of GALLEON's borrowings from the Japanese lenders. To secure DBP's guarantee under the *Deed of Undertaking*, GALLEON promised, among others, to secure a first mortgage on the five new vessels and on the second-hand vessels. Thus, GALLEON executed on January 25, 1982 a mortgage contract over five of its vessels namely, M/V "Galleon Honor," M/V "Galleon Integrity," M/V "Galleon Dignity," M/V "Galleon Pride," and M/V "Galleon Trust" in favor of DBP.[4]

Meanwhile, on January 21, 1981, President Ferdinand Marcos issued Letter of Instruction (LOI) No. 1155, directing NDC to acquire the entire shareholdings of GALLEON for the amount originally contributed by its shareholders payable in five (5) years without interest cost to the government. In the same LOI, DBP was to advance to GALLEON within three years from its effectivity the principal amount and the interest thereon of GALLEON's maturing obligations.

On August 10, 1981, GALLEON, represented by its president, Cuenca, and NDC, represented by Minister of Trade Roberto Ongpin, forged a *Memorandum of Agreement*,[5] whereby NDC

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[3] G.R. No. 143877, *Rollo,* pp. 127-139.

[4] *Id*. at 140.

[5] *Id*. at 123-126.

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and GALLEON agreed to execute a share purchase agreement within sixty days for the transfer of GALLEON's shareholdings. Thereafter, NDC assumed the management and operations of GALLEON although Cuenca remained president until May 9, 1982.[6] Using its own funds, NDC paid Asian Hardwood on January 15, 1982 the amount of US$1,000,000.00 as partial settlement of GALLEON's obligations.[7]

On February 10, 1982, LOI No. 1195 was issued directing the foreclosure of the mortgage on the five vessels. For failure of GALLEON to pay its debt despite repeated demands from DBP, the vessels were extrajudicially foreclosed on various dates and acquired by DBP for the total amount of ₱539,000,000.00. DBP subsequently sold the vessels to NDC for the same amount.[8]

On April 22, 1982, the Board of Directors of GALLEON amended the Articles of Incorporation changing the corporate name from Galleon Shipping Corporation to National Galleon Shipping Corporation and increasing the number of directors from seven to nine.[9]

Asian Hardwood assigned its rights over the outstanding obligation of GALLEON of US$2,315,747.32 to World Universal Trading and Investment Company, S.A. (World Universal), embodied in a *Deed of Assignment* executed on April 29, 1989.[10] World Universal, in turn, assigned the credit to petitioner POLIAND sometime in July 1989.[11]

On March 24, 1988, then President Aquino issued Administrative Order No. 64, directing NDC and Philippine Export and Foreign Loan Guarantee Corporation (now Trade

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[6] G.R. No. 143866, *Rollo*, p. 1658.

[7] *Id*. at 821-837.

[8] *Id*. at 70.

[9] *Id*. at 694-695.

[10] G.R. No. 143866, *Rollo*, pp. 294-297.

[11] *Id*. at 297-A.

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and Investment Development Corporation of the Philippines) to transfer some of their assets to the National Government, through the Asset Privatization Trust (APT) for disposition. Among those transferred to the APT were the five GALLEON vessels sold at the foreclosure proceedings.

On September 24, 1991, POLIAND made written demands on GALLEON, NDC, and DBP for the satisfaction of the outstanding balance in the amount of US$2,315,747.32.[12] For failure to heed the demand, POLIAND instituted a collection suit against NDC, DBP and GALLEON filed on October 10, 1991 with the Regional Trial Court, Branch 61, Makati City. POLIAND claimed that under LOI No. 1155 and the *Memorandum of Agreement* between GALLEON and NDC, defendants GALLEON, NDC, and DBP were solidarily liable to POLIAND as assignee of the rights of the credit advances/ loan accommodations to GALLEON. POLIAND also claimed that it had a preferred maritime lien over the proceeds of the extrajudicial foreclosure sale of GALLEON's vessels mortgaged by NDC to DBP. The complaint prayed for judgment ordering NDC, DBP, and GALLEON to pay POLIAND jointly and severally the balance of the credit advances/loan accommodations in the amount of US$2,315,747.32 and attorney's fees of ₱100,000.00 plus 20% of the amount recovered. By way of an alternative cause of action, POLIAND sought reimbursement from NDC and DBP for the preferred maritime lien of US$1,193,298.56.[13]

In its *Answer with Compulsory Counterclaim and Cross-claim*, DBP denied being a party to any of the alleged loan transactions. Accordingly, DBP argued that POLIAND's complaint stated no cause of action against DBP or was barred by the Statute of Frauds because DBP did not sign any memorandum to act as guarantor for the alleged credit advances/ loan accommodations in favor of POLIAND. DBP also denied any liability under LOI No. 1155, which it described as immoral

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[12] *Id.* at 311-312.

[13] *Id*. at 85-94.

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and unconstitutional, since it was rescinded by LOI No. 1195. By way of its *Affirmative Allegations and Defenses*, DBP countered that it was unaware of the maritime lien on the five vessels mortgaged in its favor and that as far as GALLEON's foreign borrowings are concerned, DBP agreed to act as guarantor thereof only under the conditions laid down under the *Deed of Undertaking*. DBP prayed for the award of actual, moral and exemplary damages and attorney's fees against POLIAND as compulsory counterclaim. In the event that it be adjudged liable for the payment of the loan accommodations and the maritime liens, DBP prayed that its co-defendant GALLEON be ordered to indemnify DBP for the full amount.[14]

For its part, NDC denied any participation in the execution of the loan accommodations/credit advances and acquisition of ownership of GALLEON, asserting that it acted only as manager of GALLEON. NDC specifically denied having agreed to the assumption of GALLEON's liabilities because no purchase and sale agreement was executed and the delivery of the required shares of stock of GALLEON did not take place.[15]

Upon motion by POLIAND, the trial court dropped GALLEON as a defendant, despite vigorous oppositions from NDC and DBP. At the pre-trial conference on April 29, 1993, the trial court issued an *Order* limiting the issues to the following: (1) whether or not GALLEON has an outstanding obligation in the amount of US$2,315,747.32; (2) whether or not NDC and DBP may be held solidarily liable therefor; and (3) whether or not there exists a preferred maritime lien of ₱1,000,000.00 in favor of POLIAND.[16]

After trial on the merits, the court *a quo* rendered a decision on August 9, 1996 in favor of POLIAND. Finding that GALLEON's loan advances/credit accommodations were duly established by the evidence on record, the trial court concluded

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[14] *Id*. at 105-119.

[15] *Id*. at 122-130.

[16] G.R. No. 143877, *Rollo*, p. 97.

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that under LOI No. 1155, DBP and NDC are liable for those obligations. The trial court also found NDC liable for GALLEON's obligations based on the *Memorandum of Agreement* dated August 1981 executed between GALLEON and NDC, where it was provided that NDC shall prioritize repayments of GALLEON's valid and subsisting liabilities subject of a meritorious lawsuit or which have been arranged and guaranteed by Cuenca. The trial court was of the opinion that despite the subsequent issuance of LOI No. 1195, NDC and DBP's obligation under LOI No. 1155 subsisted because "vested rights of the parties have arisen therefrom." Accordingly, the trial court interpreted LOI No. 1195's directive to "limit and protect" to mean that "DBP and NDC should not assume or incur additional exposure with respect to GALLEON."[17]

The trial court dismissed NDC's argument that the *Memorandum of Agreement* was merely a preliminary agreement, noting that under paragraph nine thereof, the only condition for the payment of GALLEON's subsisting loans by NDC was the determination by the latter that those obligations were incurred in the ordinary course of GALLEON's business. The trial court did not regard the non-execution of the stock purchase agreement as fatal to POLIAND's cause since its non-happening was solely attributable to NDC. The trial court also ruled that POLIAND had preference to the maritime lien over the proceeds of the extrajudicial foreclosure sale of GALLEON's vessels since the loan advances/credit accommodations utilized for the payment of expenses on the vessels were obtained prior to the constitution of the mortgage in favor of DBP.

In sum, NDC and DBP were ordered to pay POLIAND as follows:

WHEREFORE, premises above considered, judgment is hereby rendered for plaintiff as against defendants DBP and NDC, who are hereby ORDERED as follows:

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[17] G.R. No. 143866, *Rollo*, pp. 1085-1106.

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1. To jointly and severally PAY plaintiff POLIAND the amount of TWO MILLION THREE HUNDRED FIFTEEN THOUSAND SEVEN HUNDRED FORTY SEVEN AND 21/100 [*sic*] United States Dollars (US$2,315,747.32) computed at the official exchange rate at the time of payment, plus interest at the rate of 12% per annum from 25 September 1991 until fully paid;

2. To PAY the amount of ONE MILLION (₱1,000,000.) Pesos, Philippine Currency, for and as attorney's fees; and

3. To PAY the costs of the proceedings.

SO ORDERED.[18]

Both NDC and DBP appealed the trial court's decision.

The Court of Appeals rendered a modified judgment, absolving DBP of any liability in view of POLIAND's failure to clearly prove its action against DBP. The appellate court also discharged NDC of any liability arising from the credit advances/loan obligations obtained by GALLEON on the ground that NDC did not acquire ownership of GALLEON but merely assumed control over its management and operations. However, NDC was held liable to POLIAND for the payment of the preferred maritime lien based on LOI No. 1195 which directed NDC to "discharge such maritime liens as may be necessary to allow the foreclosed vessels to engage on the international shipping business," as well as attorney's fees and costs of suit. The dispositive portion of the *Decision* reads:

WHEREFORE, the assailed decision is MODIFIED, in accordance with the foregoing findings, as follows:

The case against defendant-appellant DBP is hereby DISMISSED.

Defendant-appellant NDC is hereby ordered to pay plaintiff-appellee POLIAND the amount of US$1,920,298.56 plus legal interest effective September 12, 1984.

The award of attorney's fees and cost of suit is addressed only against NDC.

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[18] *Id*. at 1106.

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Costs against defendant-appellant NDC.

SO ORDERED.[19]

Not satisfied with the modified judgment, both POLIAND and NDC elevated it to this Court via two separate petitions for review on *certiorari*. In G.R. No. 143866 filed on August 21, 2000, petitioner POLIAND raises the following arguments:

RESPONDENT COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERRORS IN ITS QUESTIONED DECISION DATED 29 JUNE 2000 AND DECIDED QUESTIONS CONTRARY TO LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN IT MODIFIED THE DECISION DATED 09 AUGUST 1996 RENDERED BY THE REGIONAL TRIAL COURT (BRANCH 61) CONSIDERING THAT:

A.

CONTRARY TO THE FINDINGS OF RESPONDENT COURT OF APPEALS, RESPONDENT NDC NOT ONLY TOOK OVER TOTALLY THE MANAGEMENT AND CONTROL OF GALLEON BUT ALSO ASSUMED OWNERSHIP OF GALLEON PURSUANT TO LOI NO. 1155 AND THE MEMORANDUM OF AGREEMENT DATED 10 AUGUST 1981; THUS, RESPONDENT NDC'S ACQUISITION OF FULL OWNERSHIP AND CONTROL OF GALLEON CARRIED WITH IT THE ASSUMPTION OF THE LATTER'S LIABILITIES TO THIRD PARTIES SUCH AS ASIAN HARDWOOD, PETITIONER POLIAND'S PREDECESSOR-IN-INTEREST.

B.

RESPONDENT COURT OF APPEALS, IN VIOLATION OF THE CONSTITUTION AND THE RULES OF COURT, DISMISSED THE CASE AGAINST RESPONDENT DBP WITHOUT STATING CLEARLY AND DISTINCTLY THE REASONS FOR SUCH A DISMISSAL.

C.

CONTRARY TO THE FINDINGS OF RESPONDENT COURT OF APPEALS, PETITIONER POLIAND WAS ABLE TO ESTABLISH THAT RESPONDENT DBP IS SOLIDARILY LIABLE, TOGETHER WITH RESPONDENT NDC, WITH RESPECT TO THE NET TOTAL AMOUNT OWING TO PETITIONER POLIAND.

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[19] G.R. No. 143877, *Rollo*, p. 23.

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D.

RESPONDENT COURT OF APPEALS GRAVELY ERRED ALSO IN NOT FINDING THAT RESPONDENT DBP IS JOINTLY AND SOLIDARILY LIABLE WITH RESPONDENT NDC FOR THE PAYMENT OF MARITIME LIENS PLUS INTEREST PURSUANT TO SECTION 17 OF PRESIDENTIAL DECREE 1521.[20]

On August 25, 2000, NDC filed its petition, docketed as G.R. No. 143877, imputing the following errors to the Court of Appeals:

I.

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER NDC IS LIABLE TO PAY GALLEON'S OUTSTANDING OBLIGATION TO RESPONDENT POLIAND IN THE AMOUNT OF US$ 1,920,298.56, TO SATISFY THE PREFERRED MARITIME LIENS OVER THE PROCEEDS OF THE FORECLOSURE SALE OF THE FIVE GALLEON VESSELS.

(A) PRESIDENTIAL DECREE NO. 1521 OTHERWISE KNOWN AS THE 'SHIP MORTGAGE DECREE OF 1978 IS NOT APPLICABLE IN THE CASE AT BAR.

(B) PETITIONER NDC DOES NOT HOLD THE PROCEEDS OF THE FORECLOSURE SALE OF THE FIVE (5) GALLEON VESSELS.

(C) THE FORECLOSURE SALE OF THE FIVE (5) GALLEON VESSELS EXTINGUISHES ALL CLAIMS AGAINST THE VESSELS.

II.

THE COURT OF APPEALS ERRED IN AWARDING ATTORNEY'S FEES TO RESPONDENT POLIAND.[21]

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[20] G.R. No. 143866, *Rollo*, pp. 40-41.

[21] G.R. No. 143877, *Rollo*, p. 14.

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The two petitions were consolidated considering that both petitions assail the same Court of Appeals' *Decision*, although on different fronts. In G.R. No. 143866, POLIAND questions the appellate court's finding that neither NDC nor DBP can be held liable for the loan accommodations to GALLEON. In G.R. No. 143877, NDC asserts that it is not liable to POLIAND for the preferred maritime lien.

ISSUES

The bone of contention revolves around two main issues, namely: (1) Whether NDC or DBP or both are liable to POLIAND on the loan accommodations and credit advances incurred by GALLEON, and (2) Whether POLIAND has a maritime lien enforceable against NDC or DBP or both.

RULING of the COURT

I. Liability on loan accommodations and credit advances incurred by GALLEON

The Court of Appeals reversed the trial court's conclusion that NDC and DBP are both liable to POLIAND for GALLEON's debts on the basis of LOI No. 1155 and the *Memorandum of Agreement*. It ratiocinated thus:

> With respect to appellant NDC, resolution of the matters raised in its assignment of errors hinges on whether or not it acquired the shareholdings of GALLEON as directed by LOI 1155; and if in the negative, whether or not it is liable to pay GALLEON's outstanding obligation.
>
> The Court answers the issue in the negative. The MOA executed by GALLEON and NDC following the issuance of LOI 1155 called for the execution of a "formal share purchase agreement and the transfer of all the shareholdings of seller to Buyer." Since no such execution and consequent transfer of shareholdings took place, NDC did not acquire ownership of GALLEON. It merely assumed "actual control over the management and operations" of GALLEON in the exercise of which it, on January 15, 1982, after being satisfied of the existence

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of GALLEON's obligation to ASIAN HARDWOOD, partially paid the latter One Million ($1,000,000.00) US dollars.[22]

. . . . . .

With respect to defendant-appellant DBP, POLIAND failed to clearly prove its cause of action against it. This leaves it unnecessary to dwell on DBP's other assigned errors, including that bearing on its claim for damages and attorney's fees which does not persuade.[23]

POLIAND's cause of action against NDC is premised on the theory that when NDC acquired all the shareholdings of GALLEON, the former also assumed the latter's liabilities, including the loan advances/credit accommodations obtained by GALLEON from POLIAND's predecessors-in-interest. In G.R. No. 143866, POLIAND argues that NDC acquired ownership of GALLEON pursuant to paragraphs 1 and 2 of LOI No. 1155, which was implemented through the execution of the *Memorandum of Agreement*. It believes that no conditions were required prior to the assumption by NDC of GALLEON's ownership and subsisting loans. Even assuming that conditions were set, POLIAND opines that the conditions were deemed fulfilled pursuant to Article 1186 of the Civil Code because of NDC's apparent intent to prevent the execution of the share purchase agreement.[24]

On the other hand, NDC asserts that it could not have acquired GALLEON's equity and, consequently, its liabilities because LOI No. 1155 had been rescinded by LOI No. 1195, and therefore, became inoperative and non-existent. Moreover, NDC, relying on the pronouncements in *Philippine Association of Service Exporters, Inc. et al. v. Ruben D. Torres*[25] and *Parong*,

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[22] G.R. No. 143877, *Rollo*, p. 21.

[23] *Id.* at 22.

[24] G.R. No. 143866, *Rollo*, pp. 44-46.

[25] G.R. No. 98472, August 19, 1993, 225 SCRA 417.

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et al. v. Minister Enrile,[26] is of the opinion that LOI No. 1155 does not have the force and effect of law and cannot be a valid source of obligation.[27] NDC denies POLIAND's contention that it deliberately prevented the execution of the share purchase agreement considering that Cuenca remained GALLEON's president seven months after the signing of the *Memorandum of Agreement*.[28] NDC contends that the *Memorandum of Agreement* was a mere preliminary agreement between Cuenca and Ongpin for the intended purchase of GALLEON's equity, prescribing the manner, terms and conditions of said purchase.[29]

NDC, not liable under LOI No. 1155

As a general rule, letters of instructions are simply directives of the President of the Philippines, issued in the exercise of his administrative power of control, to heads of departments and/or officers under the executive branch of the government for observance by the officials and/or employees thereof.[30] Being administrative in nature, they do not have the force and effect of a law and, thus, cannot be a valid source of obligation. However, during the period when then President Marcos exercised extraordinary legislative powers, he issued certain decrees, orders and letters of instruction which the Court has declared as having the force and effect of a statute. As pointed out by the Court in *Legaspi v. Minister of Finance*,[31] paramount considerations compelled the grant of extraordinary legislative power to the President at that time when the nation was beset with threats to public order and the purpose for which the

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[26] 206 Phil. 393 (1983).

[27] G.R. No. 143866, *Rollo*, pp. 1642-1643.

[28] *Ibid*.

[29] *Id*. at 1645.

[30] *People v. Court of First Instance of Bulacan*, G.R. No. L-53674-75, July 6, 1988, 163 SCRA 430, 433.

[31] 201 Phil. 8 (1982).

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authority was granted was specific to meet the exigencies of that period, thus:

> True, without loss of time, President Marcos made it clear that there was no military take-over of the government, and that much less was there being established a revolutionary government, even as he declared that said martial law was of a double-barrelled type, unfamiliar to traditional constitutionalists and political scientists — for two basic and transcendental objectives were intended by it: (1) the quelling of nation-wide subversive activities characteristic not only of a rebellion but of a state of war fanned by a foreign power of a different ideology from ours, and not excluding the stopping effectively of a brewing, if not a strong separatist movement in Mindanao, and (2) the establishment of a New Society by the institution of disciplinary measures designed to eradicate the deep-rooted causes of the rebellion and elevate the standards of living, education and culture of our people, and most of all the social amelioration of the poor and underprivileged in the farms and in the barrios, to the end that hopefully insurgency may not rear its head in this country again.[32]

Thus, before a letter of instruction is declared as having the force and effect of a statute, a determination of whether or not it was issued in response to the objectives stated in *Legaspi* is necessary. *Parong, et al. v. Minister Enrile*[33] differentiated between LOIs in the nature of mere administrative issuances and those forming part of the law of the land. The following conditions must be established before a letter of instruction may be considered a law:

> To form part of the law of the land, the decree, order or LOI must be issued by the President in the exercise of his extraordinary power of legislation as contemplated in Section 6 of the 1976 amendments to the Constitution, whenever in his judgment, there exists a grave emergency or threat or imminence thereof, or whenever the interim Batasan Pambansa or the regular National Assembly fails or is unable

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[32] *Id*. at 24.

[33] 206 Phil. 392 (1983).

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to act adequately on any matter for any reason that in his judgment requires immediate action.[34]

Only when issued under any of the two circumstances will a decree, order, or letter be qualified as having the force and effect of law. The decree or instruction should have been issued either when there existed a grave emergency or threat or imminence or when the Legislature failed or was unable to act adequately on the matter. The qualification that *there exists a grave emergency or threat or imminence thereof* must be interpreted to refer to the prevailing peace and order conditions because the particular purpose the President was authorized to assume legislative powers was to address the deteriorating peace and order situation during the martial law period.

There is no doubt that LOI No. 1155 was issued on July 21, 1981 when then President Marcos was vested with extraordinary legislative powers. LOI No. 1155 was specifically directed to DBP, NDC and the Maritime Industry Authority to undertake the following tasks:

LETTER OF INSTRUCTIONS NO. 1155

DEVELOPMENT BANK OF THE PHILIPPINES
NATIONAL DEVELOPMENT COMPANY
MARITIME INDUSTRY AUTHORITY

DIRECTING A REHABILITATION PLAN FOR GALLEON SHIPPING CORPORATION

. . . . . .

1. NDC shall acquire 100% of the shareholdings of Galleon Shipping Corporation from its present owners for the amount of ₱46.7 million which is the amount originally contributed by the present shareholders, payable after five years with no interest cost.

2. NDC to immediately infuse ₱30 million into Galleon Shipping Corporation in lieu of is previously approved subscription to Philippine

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[34] *Id*. at 428.

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National Lines. In addition, NDC is to provide additional equity to Galleon as may be required.

3. DBP to advance for a period of three years from date hereof both the principal and the interest on Galleon's obligations falling due and to convert such advances into 12% preferred shares in Galleon Shipping Corporation.

4. DBP and NDC to negotiate a restructuring of loans extended by foreign creditors of Galleon.

5. MARINA to provide assistance to Galleon by mandating a rational liner shipping schedule considering existing freight volumes and to immediately negotiate a bilateral agreement with the United States in accordance with UNCTAD resolutions.

. . . . . .

Although LOI No. 1155 was undoubtedly issued at the time when the President exercised legislative powers granted under Amendment No. 6 of the 1973 Constitution, the language and purpose of LOI No. 1155 precludes this Court from declaring that said LOI had the force and effect of law in the absence of any of the conditions set out in *Parong*. The subject matter of LOI No. 1155 is not connected, directly or remotely, to a grave emergency or threat to the peace and order situation of the nation in particular or to the public interest in general. Nothing in the language of LOI No. 1155 suggests that it was issued to address the security of the nation. Obviously, LOI No. 1155 was in the nature of a mere administrative issuance directed to NDC, DBP and MARINA to undertake a policy measure, that is, to rehabilitate a private corporation.

NDC, not liable under the Corporation Code

The Court cannot accept POLIAND's theory that with the effectivity of LOI No. 1155, NDC *ipso facto* acquired the interests in GALLEON without disregarding applicable statutory requirements governing the acquisition of a corporation. Ordinarily, in the merger of two or more existing corporations, one of the combining corporations survives and continues the combined business, while the rest are dissolved and all their rights, properties and liabilities are acquired by the surviving

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corporation.[35] The merger, however, does not become effective upon the mere agreement of the constituent corporations.[36]

As specifically provided under Section 79[37] of said Code, the merger shall only be effective upon the issuance of a certificate of merger by the Securities and Exchange Commission (SEC), subject to its prior determination that the merger is not inconsistent with the Code or existing laws. Where a party to the merger is a special corporation governed by its own charter, the Code particularly mandates that a favorable recommendation of the appropriate government agency should first be obtained. The issuance of the certificate of merger is crucial because not only does it bear out SEC's approval but also marks the moment whereupon the consequences of a merger take place. By operation of law, upon the effectivity of the merger, the absorbed corporation ceases to exist but its rights, and properties

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[35] *Associated Bank v. Court of Appeals*, 353 Phil. 702, 712 (1998).

[36] *Ibid*.

[37] "SEC. 79. *Securities and Exchange Commission's approval and effectivity of merger and consolidation*. — The articles of merger or of consolidation, signed and certified as hereinabove required, shall be submitted to the Securities and Exchange Commission in quadruplicate for its approval: *Provided*, That in the case of merger or consolidation of banks or banking institutions, building and loan associations, trust companies, insurance companies, public utilities, educational institutions and other special corporations governed by special laws, the favorable recommendation of the appropriate government agency shall first be obtained. Where the commission is satisfied that the merger or consolidation of the corporations concerned is not inconsistent with the provisions of this Code and existing laws, it shall issue a certificate of merger or of consolidation, as the case may be, at which time the merger or consolidation shall be effective.

If, upon investigation, the Securities and Exchange Commission has reason to believe that the proposed merger or consolidation is contrary to or inconsistent with the provisions of this Code or existing laws, it shall set a hearing to give the corporations concerned the opportunity to be heard. Written notice of the date, time and place of said hearing shall be given to each constituent corporation at least two (2) weeks before said hearing. The Commission shall thereafter proceed as provided in this Code."

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as well as liabilities shall be taken and deemed transferred to and vested in the surviving corporation.[38]

The records do not show SEC approval of the merger. POLIAND cannot assert that no conditions were required prior to the assumption by NDC of ownership of GALLEON and its subsisting loans. Compliance with the statutory requirements is a condition precedent to the effective transfer of the shareholdings in GALLEON to NDC. In directing NDC to acquire the shareholdings in GALLEON, the President could not have intended that the parties disregard the requirements of law. In the absence of SEC approval, there was no effective transfer of the shareholdings in GALLEON to NDC. Hence, NDC did not acquire the rights or interests of GALLEON, including its liabilities.

DBP, not liable under LOI No. 1155

POLIAND argues that paragraph 3 of LOI No. 1155 unequivocally obliged DBP to advance the obligations of GALLEON.[39] DBP argues that POLIAND has no cause of action against it under LOI No. 1155 which is void and unconstitutional.[40]

The Court affirms the appellate court's ruling that POLIAND does not have any cause of action against DBP under LOI No. 1155. Being a mere administrative issuance, LOI No. 1155 cannot be a valid source of obligation because it did not create any privity of contract between DBP and POLIAND or its predecessors-in-interest. At best, the directive in LOI No. 1155 was in the nature of a grant of authority by the President on DBP to enter into certain transactions for the satisfaction of GALLEON's obligations. There is, however, nothing from the records of the case to indicate that DBP had acted as surety or guarantor, or had otherwise accommodated GALLEON's obligations to POLIAND or its predecessors-in-interest.

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[38] Section 80, Corporation Code.

[39] G.R. No. 143866, *Rollo*, p. 55.

[40] *Id*. at 1679.

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II. Liability on maritime lien

On the second issue of whether or not NDC is liable to POLIAND for the payment of maritime lien, the appellate court ruled in the affirmative, to wit:

> Non-acquisition of ownership of GALLEON notwithstanding, NDC is liable to pay ASIAN HARDWOOD's successor-in-interest POLIAND the equivalent of US$1,930,298.56 representing the proceeds of the loan from Asian Hardwood which were spent by GALLEON for ship modification and salaries of crew, to satisfy the preferred maritime liens over the proceeds of the foreclosure sale of the 5 vessels.[41]

POLIAND contends that NDC can no longer raise the issue on the latter's liability for the payment of the maritime lien considering that upon appeal to the Court of Appeals, NDC did not assign it as an error.[42] Generally, an appellate court may only pass upon errors assigned. However, this rule is not without exceptions. In the following instances, the Court ruled that an appellate court is accorded a broad discretionary power to waive the lack of assignment of errors and consider errors not assigned:

(a) Grounds not assigned as errors but affecting the jurisdiction of the court over the subject matter;

(b) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;

(c) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of a justice or to avoid dispensing piecemeal justice;

(d) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;

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[41] G.R. No. 143877, *Rollo*, pp. 21-22.

[42] *Id*. at 217.

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(e) Matters not assigned as errors on appeal but closely related to an error assigned;

(f) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.[43]

It is noteworthy that the question of NDC and DBP's liability on the maritime lien had been raised by POLIAND as an alternative cause of action against NDC and DBP and was passed upon by the trial court. The Court of Appeals, however, reversed the trial court's finding that NDC and DBP are liable to POLIAND for the payment of the credit advances and loan accommodations and instead found NDC to be solely liable on the preferred maritime lien although NDC did not assign it as an error.

The records, however, reveal that the issue on the liability on the preferred maritime lien had been properly raised and argued upon before the Court of Appeals not by NDC but by DBP who was also adjudged liable thereon by the trial court. DBP's appellant's brief[44] pointed out POLIAND's failure to present convincing evidence to prove its alternative cause of action, which POLIAND disputed in its appellee's brief.[45] The issue on the maritime lien is a matter of record having been adequately ventilated before and passed upon by the trial court and the appellate court. Thus, by way of exception, NDC is not precluded from again raising the issue before this Court even if it did not specifically assign the matter as an error before the Court of Appeals. Besides, this Court is clothed with ample authority to review matters, even if they are not assigned as errors in the appeal if it finds that their consideration is necessary in arriving at a just decision of the case.[46]

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[43] *Diamonon v. DOLE, et al.*, 384 Phil. 15, 22-23; cited cases omitted.

[44] G.R. No. 143866, *Rollo*, pp. 1294-1332.

[45] *Id*. at 1334.

[46] *Soco v. Militante*, 208 Phil. 151, 170 (1983).

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Articles 578 and 580 of the Code of Commerce, not applicable

NDC cites Articles 578[47] and 580[48] of the Code of Commerce to bolster its argument that the foreclosure of the vessels

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[47] ARTICLE 578. If the vessel being on a voyage or in a foreign port, its owner or owners should voluntarily alienate it, either to Filipinos or to foreigners domiciled in the capital or in a port of another country, the bill of sale shall be executed before the consul of the Republic of the Philippines at the port where it terminates its voyage and said instrument shall produce no effect with respect to third persons if it is not inscribed in the registry of the consulate. The consul shall immediately forward a true copy of the instrument of purchase and sale of the vessel to the registry of vessels of the port where said vessel is inscribed and registered.

In every case the alienation of the vessel must be made to appear with a statement of whether the vendor receives its price in whole or in part, or whether he preserves in whole or in part any claim on said vessel. In case the sale is made to a Filipino, this fact shall be stated in the certificate of navigation.

When a vessel, being on a voyage, shall be rendered useless for navigation, the captain shall apply to the competent judge on court of the port of arrival, should it be in the Philippines; and should it be in a foreign country, to the consul of the Republic of the Philippines, should there be one, or, where there is none, to the judge or court or to the local authority; and the consul, or the judge or court, shall order an examination of the vessel to be made.

If the consignee or the insurer should reside at said port, or should have representatives there, they must be cited in order that they may take part in the proceedings on behalf of whoever may be concerned.

[48] ARTICLE 580. In all judicial sales of any vessel for the payment of creditors, the following shall have preference in the order stated:

1. The credit in favor of the public treasury proven by means of an official certificate of competent authority.

2. The judicial costs of the proceedings, according to an appraisement approved by the judge or court.

3. The pilotage charges, tonnage dues, and the other sea or port charges, proven by means of proper certificates of the officers intrusted with the collection thereof.

4. The salaries of the depositaries and keepers of the vessel and any other expenses for its preservation from the time of arrival at the port until the sale, which appear to have been paid or be due by virtue of an account verified and approved by the judge or court.

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extinguished all claims against the vessels including POLIAND's claim.[49] Article 578 of the Code of Commerce is not relevant to the facts of the instant case because it governs the sale of vessels in a foreign port. Said provision outlines the formal and registration requirements in order that a sale of a vessel on voyage or in a foreign port becomes effective as against third persons. On the other hand, the resolution of the instant case depends on the determination as to which creditor is entitled

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5. The rent of the warehouse where the rigging and stores of the vessel have been taken care of, according to contract.

6. The salaries due the captain and crew during its last voyage, which shall be verified by means of the liquidation to be made in view of the lists and of the books of account of the vessel, approved by the chief of the Bureau of Merchant Marine, where there is one, and in his absence by the consul or judge or court.

7. The reimbursement for the goods of the freight which the captain may have sold in order to repair the vessel, provided that the sale has been ordered through a judicial proceedings held with the formalities required in such cases, and recorded in the certificate of registry of the vessel.

8. The part of the price which has not been paid to the said vendor, the unpaid credits for materials and labor in the construction of the vessel, when it has not navigated, and those arising from the repair and equipment of the vessels and from its provisioning with victuals and fuel during the last voyage.

In order that the credits provided for in this subdivision may enjoy this preference, they must appear by contracts recorded in the registry of vessels, or if they were contracted for the vessel while on a voyage and said vessel has not returned to the port where it is registered, they must be made with the authorization required for such cases and annotated in the certificate of registration of the vessel.

9. The amount borrowed on bottomry on the hull, keel, tackle, and stores of the vessel before its departure, proven by means of the contract executed according to law and recorded in the registry of vessels; those borrowed during the voyage with the authorization mentioned in the preceding subdivision, satisfying the same requisites; and the insurance premium, proven by the insurance policy or a certificate taken from the books of the broker.

10. The indemnity due the shipper for the value of the goods shipped which were not delivered to the consignees, or for averages suffered for which the vessel is liable, provided that either appear in a judicial or arbitration decision.

[49] G.R. No. 143877, *Rollo*, p. 51.

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to the proceeds of the foreclosure sale of the vessels. Clearly, Article 578 of the Code of Commerce is inapplicable.

Article 580, while providing for the order of payment of creditors in the event of sale of a vessel, had been repealed by the pertinent provisions of Presidential Decree (P.D.) No. 1521, otherwise known as the Ship Mortgage Decree of 1978. In particular, Article 580 provides that in case of the judicial sale of a vessel for the payment of creditors, the debts shall be satisfied in the order specified therein. On the other hand, Section 17 of P.D. No. 1521[50] also provides that in the judicial or extrajudicial sale of a vessel for the enforcement of a preferred mortgage lien constituted in accordance with Section 2 of P.D. No. 1521, such preferred mortgage lien shall have priority over all pre-existing claims against the vessel, save for those claims enumerated under Section 17, which have preference over the preferred mortgage lien in the order stated therein. Since P.D. No. 1521 is a subsequent legislation and since said law in Section 17 thereof confers on the preferred mortgage lien on the vessel

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[50] SECTION 17. Preferred Maritime Lien, Priorities, Other Liens. — (a) Upon the sale of any mortgaged vessel in any extra-judicial sale or by order of a district court of the Philippines in any suit *in rem* in admiralty for the enforcement of a preferred mortgage lien thereon, all pre-existing claims in the vessel, including any possessory common-law lien of which a lienor is deprived under the provisions of Section 16 of this Decree, shall be held terminated and shall thereafter attach in like amount and in accordance with the priorities established herein to the proceeds of the sale. The preferred mortgage lien shall have priority over all claims against the vessel, except the following claims in the order stated: (1) expenses and fees allowed and costs taxed by the court and taxes due to the Government; (2) crew's wages; (3) general average; (4) salvage; including contract salvage; (5) maritime liens arising prior in time to the recording of the preferred mortgage; (6) damages arising out of tort; and (7) preferred mortgage registered prior in time.

(b) If the proceeds of the sale should not be sufficient to pay all creditors included in one number or grade, the residue shall be divided among them pro rata. All credits not paid, whether fully or partially shall subsist as ordinary credits enforceable by personal action against the debtor. The record of judicial sale or sale by public auction shall be recorded in the Record of Transfers and Encumbrances of Vessels in the port of documentation.

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superiority over all other claims, thereby engendering an irreconcilable conflict with the order of preference provided under Article 580 of the Code of Commerce, it follows that the Code of Commerce provision is deemed repealed by the provision of P.D. No. 1521, as the posterior law.[51]

P.D. No. 1521 is applicable, not the Civil Code provisions on concurrence/preference of credits

Whether or not the order of preference under Section 17, P.D. No. 1521 may be properly applied in the instant case depends on the classification of the mortgage on the GALLEON vessels, that is, if it falls within the ambit of Section 2, P.D. No. 1521, defining how a preferred mortgage is constituted.

NDC and DBP both argue that POLIAND's claim cannot prevail over DBP's mortgage credit over the foreclosed vessels because the mortgage executed in favor of DBP pursuant to the October 10, 1979 *Deed of Undertaking* signed by GALLEON and DBP was an ordinary ship mortgage and not a preferred one, that is, it was not given in connection with the construction, acquisition, purchase or initial operation of the vessels, but for the purpose of guaranteeing GALLEON's foreign borrowings.[52]

Section 2 of P.D. No. 1521 recognizes the constitution of a mortgage on a vessel, to wit:

SECTION 2. Who may Constitute a Ship Mortgage. — Any citizen of the Philippines, or any association or corporation organized under

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[51] P.D. No. 1521, SECTION 29. *Repealing Clause*. — The provisions of the New Civil Code, the Code of Commerce, the Chattel Mortgage Law, the Revised Rules of Court and of such other laws, decrees, executive orders, rules and regulations which are in conflict or inconsistent with the provisions of this Decree are hereby repealed, amended or modified accordingly. If for any reason, any section, subsection, sentence, clauses or term of this Decree is held to be unconstitutional such decision shall not affect the validity of the other provisions of this Decree.

[52] G.R. No. 143877, *Rollo*, pp. 44-45.

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the laws of the Philippines, at least sixty per cent of the capital of which is owned by citizens of the Philippines may, for the purpose of financing the construction, acquisition, purchase of vessels or initial operation of vessels, freely constitute a mortgage or any other lien or encumbrance on his or its vessels and its equipment with any bank or other financial institutions, domestic or foreign.

If the mortgage on the vessel is constituted for the purpose stated under Section 2, the mortgage obtains a preferred status provided the formal requisites enumerated under Section 4[53]

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[53] SECTION 4. Preferred Mortgages. — (a) A valid mortgage which at the time it is made includes the whole of any vessel of domestic ownership shall have, in respect to such vessel and as of the date of recordation, the preferred status given by the provisions of Section 17 hereof, if —

(1) The mortgage is recorded as provided in Section 3 hereof;

(2) An affidavit is filed with the record of such mortgage to the effect that the mortgage is made in good faith and without any design to hinder, delay, or defraud any existing or future creditor of the mortgagor or any lien or of the mortgaged vessel;

(3) The mortgage does not stipulate that the mortgagee waives the preferred status thereof.

(b) Any mortgage which complies with the above conditions is hereafter called a "preferred mortgage." For purposes of this Decree, a vessel holding a Provisional Certificate of Philippine Registry is considered a vessel of domestic ownership such that it can be subject of preferred mortgage. The Philippine Coast Guard is hereby authorized to enter a vessel holding a Provisional Certificate of Philippine Registry in the Registry of Vessels and to record any mortgage executed thereon. Such mortgage shall have the preferred status as of the date of recordation upon compliance with the above conditions.

(c) There shall be endorsed upon the documents of a vessel covered by a preferred mortgage —

(1) The names of the mortgagor and mortgagee;

(2) The time and date the endorsement is made;

(3) The amount and date of maturity of the mortgage; and

(4) Any amount required to be endorsed by the provisions of paragraphs (e) or (f) of this Section.

(d) Such endorsement shall be made (1) by the Coast Guard District or Station Commander of the port of documentation of the mortgaged vessel, or (2) by the Coast Guard District or Station Commander of any port in

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are complied with. Upon enforcement of the preferred mortgage and eventual foreclosure of the vessel, the proceeds of the sale shall be first applied to the claim of the mortgage creditor unless there are superior or preferential liens, as enumerated under Section 17, namely:

SECTION 17. Preferred Maritime Lien, Priorities, Other Liens. — (a) Upon the sale of any mortgaged vessel in any extra-judicial sale or by order of a district court of the Philippines in any suit *in rem* in admiralty for the enforcement of a preferred mortgage lien thereon, all pre-existing claims in the vessel, including any possessory

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which the vessel is found, if such Coast Guard District or Station Commander is directed to make the endorsement by the Coast Guard District or Station Commander of the port of documentation. The Coast Guard District or Station Commander of the port of documentation shall give such direction by wire or letter at the request of the mortgagee and upon the tender of the cost of communication of such direction. Whenever any new document is issued for the vessel, such endorsement shall be transferred to and endorsed upon the new document by the Coast Guard District or Station Commander.

In the case of a vessel holding a provincial certificate of Philippine Registry, the endorsement shall be made by the Philippine consul abroad upon direction by wire or letter from the Maritime Industry Authority at the request of the mortgagee and upon tender of the cost of communication of such direction. A certificate of such endorsement, giving the place, time and description of the endorsement, shall be recorded with the records of registration to be maintained at the Philippine Consulate.

(e) A mortgage which includes property other than a vessel shall not be held a preferred mortgage unless the mortgage provides for the separate discharge of such property by the payment of a specified portion of the mortgage indebtedness. If a preferred mortgage so provides for the separate discharge, the amount of the portion of such payment shall be endorsed upon the documents of the vessel.

(f) A preferred mortgage includes more than one vessel and provides for the separate discharge of each vessel by the payment of a portion of mortgage indebtedness, the amount of such portion of such payment shall be endorsed upon the documents of the vessel. In case such mortgage does not provide for the separate discharge of a vessel and the vessel is to be sold upon the order of a district court of the Philippines in a suit *in rem* in admiralty, the court shall determine the portion of the mortgage indebtedness increased by 20 *per centum* (1) which, in the opinion of the court, the approximate value of all the vessels covered by the mortgage, and (2) upon the payment of which the vessel shall be discharged from the mortgage.

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common-law lien of which a lienor is deprived under the provisions of Section 16 of this Decree, shall be held terminated and shall thereafter attach in like amount and in accordance with the priorities established herein to the proceeds of the sale. The preferred mortgage lien shall have priority over all claims against the vessel, except the following claims in the order stated: *(1) expenses and fees allowed and costs taxed by the court and taxes due to the Government; (2) crew's wages; (3) general average; (4) salvage including contract salvage; (5) maritime liens arising prior in time to the recording of the preferred mortgage; (6) damages arising out of tort; and (7) preferred mortgage registered prior in time.*

(b) If the proceeds of the sale should not be sufficient to pay all creditors included in one number or grade, the residue shall be divided among them pro rata. All credits not paid, whether fully or partially shall subsist as ordinary credits enforceable by personal action against the debtor. The record of judicial sale or sale by public auction shall be recorded in the Record of Transfers and Encumbrances of Vessels in the port of documentation. (Italics supplied.)

There is no question that the mortgage executed in favor of DBP is covered by P.D. No. 1521. Contrary to NDC's assertion, the mortgage constituted on GALLEON's vessels in favor of DBP may appropriately be characterized as a preferred mortgage under Section 2, P.D. No. 1521 because GALLEON constituted the same for the purpose of financing the construction, acquisition, purchase of vessels or initial operation of vessels. While it is correct that GALLEON executed the mortgage in consideration of DBP's guarantee of the prompt payment of GALLEON's obligations to the Japanese lenders, DBP's undertaking to pay the Japanese banks was a condition *sine qua non* to the acquisition of funds for the purchase of the GALLEON vessels. Without DBP's guarantee, the Japanese lenders would not have provided the funds utilized in the purchase of the GALLEON vessels. The mortgage in favor of DBP was therefore constituted to facilitate the acquisition of funds necessary for the purchase of the vessels.

NDC adds that being an ordinary ship mortgage, the Civil Code provisions on concurrence and preference of credits and not P.D. No. 1521 should govern. NDC contends that under

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Article 2246, in relation to Article 2241 of the Civil Code, the credits guaranteed by a chattel mortgage upon the thing mortgaged shall enjoy preference (with respect to the thing mortgaged), to the exclusion of all others to the extent of the value of the personal property to which the preference exists.[54] Following NDC's theory, DBP's mortgage credit, which is fourth in the order of preference under Article 2241, is superior to POLIAND's claim, which enjoys no preference.

NDC's argument does not persuade the Court.

The provision of P.D. No. 1521 on the order of preference in the satisfaction of the claims against the vessel is the more applicable statute to the instant case compared to the Civil Code provisions on the concurrence and preference of credit. General legislation must give way to special legislation on the same subject, and generally be so interpreted as to embrace only cases in which the special provisions are not applicable.[55]

POLIAND's alternative cause of action for the payment of maritime liens is based on Sections 17 and 21 of P.D. No. 1521. POLIAND also contends that by virtue of the directive in LOI No. 1195 on NDC to discharge maritime liens to allow the vessels to engage in international business, NDC is liable therefor.[56]

POLIAND's maritime lien is superior to DBP's mortgage lien

Before POLIAND's claim may be classified as superior to the mortgage constituted on the vessel, it must be shown to be one of the enumerated claims which Section 17, P.D. No. 1521 declares as having preferential status in the event of the sale of the vessel. One of such claims enumerated under Section 17, P.D. No. 1521 which is considered to be superior to the

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[54] G.R. No. 143877, *Rollo*, p. 47.

[55] *Leveriza v. Intermediate Appellate Court*, G.R. No. 66614, January 25, 1988, 157 SCRA 282, 294.

[56] G.R. No. 143877, *Rollo*, pp. 232-235.

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preferred mortgage lien is a maritime lien arising prior in time to the recording of the preferred mortgage. Such maritime lien is described under Section 21, P.D. No. 1521, which reads:

> SECTION 21. Maritime Lien for Necessaries; persons entitled to such lien. — Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit *in rem*, and it shall be necessary to allege or prove that credit was given to the vessel.

Under the aforequoted provision, the expense must be incurred upon the order of the owner of the vessel or its authorized person and prior to the recording of the ship mortgage. Under the law, it must be established that the credit was extended to the vessel itself.[57]

The trial court found that GALLEON's advances obtained from Asian Hardwood were used to cover for the payment of bunker oil/fuel, unused stores and oil, bonded stores, provisions, and repair and docking of the GALLEON vessels.[58] These expenses clearly fall under Section 21, P.D. No. 1521.

The trial court also found that the advances from Asian Hardwood were spent for ship modification cost and the crew's salary and wages. DBP contends that a ship modification cost is omitted under Section 17, P.D. No. 1521, hence, it does not have a status superior to DBP's preferred mortgage lien.

As stated in Section 21, P.D. No. 1521, a maritime lien may consist in "other necessaries spent for the vessel." The ship modification cost may properly be classified under this broad category because it was a necessary expenses for the vessel's navigation. As long as an expense on the vessel is indispensable to the maintenance and navigation of the vessel, it may properly

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[57] *K.K. Shell Sekiyu Osaka Hatsubaisho, et al. v. Court of Appeals, et al.*, G.R. Nos. 90306-07, July 30, 1990; 188 SCRA 145, 152.

[58] G.R. No. 143877, *Rollo*, p. 119.

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be treated as a maritime lien for necessaries under Section 21, P.D. No. 1521.

With respect to the claim for salary and wages of the crew, there is no doubt that it is also one of the enumerated claims under Section 17, P.D. No. 1521, second only to judicial costs and taxes due the government in preference and, thus, having a status superior to DBP's mortgage lien.

All told, the determination of the existence and the amount of POLIAND's claim for maritime lien is a finding of fact which is within the province of the courts below. Findings of fact of lower courts are deemed conclusive and binding upon the Supreme Court except when the findings are grounded on speculation, surmises or conjectures; when the inference made is manifestly mistaken, absurd or impossible; when there is grave abuse of discretion in the appreciation of facts; when the factual findings of the trial and appellate courts are conflicting; when the Court of Appeals, in making its findings, has gone beyond the issues of the case and such findings are contrary to the admissions of both appellant and appellee; when the judgment of the appellate court is premised on a misapprehension of facts or when it has failed to notice certain relevant facts which, if properly considered, will justify a different conclusion; when the findings of fact are conclusions without citation of specific evidence upon which they are based; and when findings of fact of the Court of Appeals are premised on the absence of evidence but are contradicted by the evidence on record.[59] The Court finds no sufficient justification to reverse the findings of the trial court and the appellate court in respect to the existence and amount of maritime lien.

Only NDC is liable on the maritime lien

POLIAND maintains that DBP is also solidarily liable for the payment of the preferred maritime lien over the proceeds of the foreclosure sale by virtue of Section 17, P.D. No. 1521. It claims that since the lien was incurred prior to the constitution

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[59] *Solid Homes, Inc. v. Court of Appeals*, 341 Phil. 261, 275 (1997).

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of the mortgage on January 25, 1982, the preferred maritime lien attaches to the proceeds of the sale of the vessels and has priority over all claims against the vessels in accordance with Section 17, P.D. No. 1521.[60]

In its defense, DBP reiterates the following arguments: (1) The salary and crew's wages cannot be claimed by POLIAND or its predecessors-in-interest because none of them is a sailor or mariner;[61] (2) Even if conceded, POLIAND's preferred maritime lien is unenforceable pursuant to Article 1403 of the Civil Code; and (3) POLIAND's claim is barred by prescription and laches.[62]

The first argument is absurd. Although POLIAND or its predecessors-in-interest are not sailors entitled to wages, they can still make a claim for the advances spent for the salary and wages of the crew under the principle of legal subrogation. As explained in *Philippine National Bank v. Court of Appeals*,[63] a third person who satisfies the obligation to an original maritime lienor may claim from the debtor because the third person is subrogated to the rights of the maritime lienor over the vessel. The Court explained as follows:

> From the foregoing, it is clear that the amount used for the repair of the vessel M/V "Asean Liberty" was advanced by Citibank and was utilized for the purpose of paying off the original maritime lienor, Hong Kong United Dockyards, Ltd. As a person not interested in the fulfillment of the obligation between PISC and Hong Kong United Dockyards, Ltd., Citibank was subrogated to the rights of Hong Kong United Dockyards, Ltd. as a maritime lienor over the vessel, by virtue of Article 1302, par. 2 of the New Civil Code. By definition, subrogation is the transfer of all the rights of the creditor to a third person, who substitutes him in all his rights. Considering that Citibank paid off the debt of PISC to Hong Kong United Dockyards, Ltd. it became

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[60] G.R. No. 143866, *Rollo*, p. 57.

[61] *Id*. at 1683.

[62] *Id*. at 1684-1687.

[63] G.R. No. 128661, August 8, 2000, 337 SCRA 381.

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the transferee of all the rights of Hong Kong Dockyards, Ltd. as against PISC, including the maritime lien over the vessel M/V "Asian Liberty."[64]

DBP's reliance on the Statute of Frauds is misplaced. Article 1403 (2) of the Civil Code, which enumerates the contracts covered by the Statue of Frauds, is inapplicable. To begin with, there is no privity of contract between POLIAND or its predecessors-in-interest, on one hand, and DBP, on the other. POLIAND hinges its claim on the maritime lien based on LOI No. 1195 and P.D. No. 1521, and not on any contract or agreement.

Neither can DBP invoke prescription or laches against POLIAND. Under Article 1144 of the Civil Code, an action upon an obligation created by law must be brought within ten years from the time the right of action accrues. The right of action arose after January 15, 1982, when NDC partially paid off GALLEON's obligations to POLIAND's predecessor-in-interest, Asian Hardwood. At that time, the prescriptive period for the enforcement by action of the balance of GALLEON's outstanding obligations had commenced. Prescription could not have set in because the prescriptive period was tolled when POLIAND made a written demand for the satisfaction of the obligation on September 24, 1991, or before the lapse of the ten-year prescriptive period. Laches also do not lie because there was no unreasonable delay on the part of POLIAND in asserting its rights. Indeed, it instituted the instant suit seasonably.

All things considered, however, the Court finds that only NDC is liable for the payment of the maritime lien. A maritime lien is akin to a mortgage lien in that in spite of the transfer of ownership, the lien is not extinguished. The maritime lien is inseparable from the vessel and until discharged, it follows the vessel. Hence, the enforcement of a maritime lien is in the nature and character of a proceeding *quasi in rem*.[65] The

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[64] *Id* at 404.

[65] *Quasha & Associates v. Hon. Juan, et al.,* 204 Phil. 141, 153-154 (1982).

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expression "action *in rem*" is, in its narrow application, used only with reference to certain proceedings in courts of admiralty wherein the property alone is treated as responsible for the claim or obligation upon which the proceedings are based.[66] Considering that DBP subsequently transferred ownership of the vessels to NDC, the Court holds the latter liable on the maritime lien. Notwithstanding the subsequent transfer of the vessels to NDC, the maritime lien subsists.

This is a unique situation where the extrajudicial foreclosure of the GALLEON vessels took place without the intervention of GALLEON's other creditors including POLIAND's predecessors-in-interest who were apparently left in the dark about the foreclosure proceedings. At that time, GALLEON was already a failing corporation having borrowed large sums of money from banks and financial institutions. When GALLEON defaulted in the payment of its obligations to DBP, the latter foreclosed on its mortgage over the GALLEON ships. The other creditors, including POLIAND's predecessors-in-interest who apparently had earlier or superior rights over the foreclosed vessels, could not have participated as they were unaware and were not made parties to the case.

On this note, the Court believes and so holds that the institution of the extrajudicial foreclosure proceedings was tainted with bad faith. It took place when NDC had already assumed the management and operations of GALLEON. NDC could not have pleaded ignorance over the existence of a prior or preferential lien on the vessels subject of foreclosure. As aptly held by the Court of Appeals:

> NDC's claim that even if maritime liens existed over the proceeds of the foreclosure sale of the vessels which it subsequently purchased from DBP, it is not liable as it was a purchaser in good faith fails, given the fact that in its "actual control over the management and operations" of GALLEON, it was put on notice of the various obligations of GALLEON including those secured from ASIAN HARDWOOD as in fact it even paid ASIAN HARDWOOD

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[66] *El Banco Español-Filipino v. Palanca,* 37 Phil. 921, 928 (1918).

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US$1,000,000.00 in partial settlement of GALLEON's obligations, before it (NDC) mortgaged the 5 vessels to DBP on January 25, 1982.

Parenthetically, LOI 1195 directed NDC to "discharge such maritime liens as may be necessary to allow the foreclosed vessels to engage on the international shipping business."

In fine, it is with respect to POLIAND's claim for payment of US$1,930,298.56 representing part of the proceeds of GALLEON's loan which was spent by GALLEON "for ship modification and salaries of crew" that NDC is liable.[67]

Thus, NDC cannot claim that it was a subsequent purchaser in good faith because it had knowledge that the vessels were subject to various liens. At the very least, to evince good faith, NDC could have inquired as to the existence of other claims against the vessels apart from DBP's mortgage lien. Considering that NDC was also in a position to know or discover the financial condition of GALLEON when it took over its management, the lack of notice to GALLEON's creditors suggests that the extrajudicial foreclosure was effected to prejudice the rights of GALLEON's other creditors.

NDC also cannot rely on Administrative Order No. 64,[68] which directed the transfer of the vessels to the APT, on its hypothesis that such transfer extinguished the lien. APT is a mere conduit through which the assets acquired by the National Government are provisionally held and managed until their eventual disposal or privatization. Administrative Order No. 64 did not divest NDC of its ownership over the GALLEON vessels because APT merely holds the vessels in trust for NDC until the same are disposed. Even if ownership was transferred to APT, that would not be sufficient to discharge the maritime lien and deprive POLIAND of its recourse based on the lien. Such denouement

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[67] G.R. No. 143877, *Rollo*, p. 22.

[68] ENTITLED "APPROVING THE IDENTIFICATION OF AND TRANSFER TO THE NATIONAL GOVERNMENT OF CERTAIN ASSETS AND LIABILITIES OF THE PHILIPPINE EXPORT AND FOREIGN LOAN GUARANTEE CORPORATION AND THE NATIONAL DEVELOPMENT COMPANY."

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would smack of denial of due process and taking of property without just compensation.

NDC's liability for attorney's fees

The lower court awarded attorney's fees to POLIAND in the amount of ₱1,000,000.00 on account of the amount involved in the case and the protracted character of the litigation.[69] The award was affirmed by the Court of Appeals as against NDC only.[70]

This Court finds no reversible error with the award as upheld by the appellate court. Under Article 2208[71] of the Civil Code, attorney's fees may be awarded *inter alia* when the defendant's act or omission has compelled the plaintiff to incur expenses to protect his interest or in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation be recovered.

One final note. There is a discrepancy between the dispositive portion of the Court of Appeals' *Decision* and the body thereof with respect to the amount of the maritime lien in favor of POLIAND. The dispositive portion ordered NDC to pay POLIAND "the amount of US$1,920,298.56" plus interest[72]

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[69] G.R. No. 143877, *Rollo*, p. 120.

[70] *Id*. at 23.

[71] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered except:

. . . .

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

. . . .

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[72] G.R. No. 143877, *Rollo*, p. 23; Court of Appeals' Decision, p. 17.

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despite a finding that NDC's liability to POLIAND represents the maritime lien[73] which according to the complaint[74] is the alternative cause of action of POLIAND in the smaller amount of US$1,193,298.56, as prayed for by POLIAND in its complaint.

The general rule is that where there is conflict between the dispositive portion or the *fallo* and the body of the decision, the *fallo* controls. This rule rests on the theory that the *fallo* is the final order while the opinion in the body is merely a statement ordering nothing. However, where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of

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[73] *Id*. at 8; Court of Appeals' Decision, p. 2.

[74] *Id*. at 78-87. Paragraph of the Complaint, reads:

4.7. Assuming that defendants NDC and DBP are not liable for the total obligation of Two Million Three Hundred Fifteen Thousand Seven Hundred Forty Seven and 32/100 United States Dollars (US$2,315,747.32) under the First Cause Of Action, they are still liable for the amount of One Million One Hundred Ninety Three Thousand Two Hundred Ninety Eight and 56/100 United States Dollars (US$1,193,298.56) under the Second Cause Of Action. *Id*. at 85.

The pertinent part of the prayer of the Complaint reads:

WHEREFORE, it is most respectfully prayed that judgment be rendered in favor of plaintiff Poliand Industrial Limited ordering:

. . . . . .

2. Defendants National Development Company, Development Bank of the Philippines to pay plaintiff Poliand Industrial Limited the equivalent in Philippine currency of the amount of One Million Hundred Ninety Three Thousand Two Hundred Ninety Eight and 56/100 United States Dollars (US$1,193,298.56), plus legal interest accruing after the dates of foreclosure, to satisfy the preferred maritime liens over the proceeds of the foreclosure sale of the five (5) vessels of defendant National Galleon Shipping Corporation which were assigned to Poliand Industrial Limited, in the event that this Honorable Court rules that defendants National Development Company and Development Bank of the Philippines are not liable for the amount of Two Million Three Hundred Fifteen Thousand Seven Hundred Forty Seven and 32/100 United States Dollars (US$2,315,747.32) under the First Cause of Action; . . . .

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the decision will prevail.[75] In the instant case, it is clear from the trial court records and the Court of Appeals' *Rollo* that the bigger amount awarded in the dispositive portion of the Court of Appeals' *Decision* was a typographical mistake. Considering that the appellate court's *Decision* merely affirmed the trial court's finding with respect to the amount of maritime lien, the bigger amount stated in the dispositive portion of the Court of Appeals' *Decision* must have been awarded through inadvertence.

WHEREFORE, both Petitions in G.R. No. 143866 and G.R. No. 143877 are *DENIED*. The *Decision* of the Court of Appeals in CA-G.R. CV No. 53257 is *MODIFIED* to the extent that National Development Company is liable to Poliand Industrial Limited for the amount of One Million One Hundred Ninety Three Thousand Two Hundred Ninety Eight US Dollars and Fifty-Six US Cents (US$ 1,193,298.56), plus interest of 12% *per annum* computed from 25 September 1991 until fully paid. In other respects, said *Decision* is *AFFIRMED*. No pronouncement as to costs.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Callejo, Sr., and *Chico-Nazario, JJ.,* concur.

SECOND DIVISION

[G.R. No. 153699. August 22, 2005]

CIRSE FRANCISCO "CHOY" TORRALBA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent*.

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[75] *Asian Center for Career v. NLRC*, 358 Phil. 380, 386 (1998).