Republic of the Philippines
Supreme Court
Manila

EN BANC

ANDREW JAMES MCBURNIE, Petitioner,	**G.R. Nos. 178034 & 178117** **G.R. Nos. 186984-85**
	Present:
- versus -	SERENO, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO,* ABAD,* VILLARAMA, JR., PEREZ, MENDOZA, REYES, PERLAS-BERNABE, and LEONEN,* *JJ.*
EULALIO GANZON, EGI-MANAGERS, INC. and E. GANZON, INC., Respondents.	Promulgated: **OCTOBER 17, 2013**

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RESOLUTION

REYES, *J.*:

For resolution are the –

(1) third motion for reconsideration[1] filed by Eulalio Ganzon (Ganzon), EGI-Managers, Inc. (EGI) and E. Ganzon, Inc.

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* On official leave.

1 *Rollo* (G.R. Nos. 186984-85), pp. 874-909; subject of the Motion for Leave to File Attached Third Motion for Reconsideration dated March 27, 2012, id. at 867-871.

(respondents) on March 27, 2012, seeking a reconsideration of the Court's Decision[2] dated September 18, 2009 that ordered the dismissal of their appeal to the National Labor Relations Commission (NLRC) for failure to post additional appeal bond in the amount of ₱54,083,910.00; and

(2) motion for reconsideration[3] filed by petitioner Andrew James McBurnie (McBurnie) on September 26, 2012, assailing the Court *en banc*'s Resolution[4] dated September 4, 2012 that (1) accepted the case from the Court's Third Division and (2) enjoined the implementation of the Labor Arbiter's (LA) decision finding him to be illegally dismissed by the respondents.

Antecedent Facts

The Decision dated September 18, 2009 provides the following antecedent facts and proceedings –

On October 4, 2002, McBurnie, an Australian national, instituted a complaint for illegal dismissal and other monetary claims against the respondents. McBurnie claimed that on May 11, 1999, he signed a five-year employment agreement[5] with the company EGI as an Executive Vice-President who shall oversee the management of the company's hotels and resorts within the Philippines. He performed work for the company until sometime in November 1999, when he figured in an accident that compelled him to go back to Australia while recuperating from his injuries. While in Australia, he was informed by respondent Ganzon that his services were no longer needed because their intended project would no longer push through.

The respondents opposed the complaint, contending that their agreement with McBurnie was to jointly invest in and establish a company for the management of hotels. They did not intend to create an employer-employee relationship, and the execution of the employment contract that was being invoked by McBurnie was solely for the purpose of allowing McBurnie to obtain an alien work permit in the Philippines. At the time McBurnie left for Australia for his medical treatment, he had not yet obtained a work permit.

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[2] Penned by Associate Justice Consuelo Ynares-Santiago (retired), with Associate Justices Minita V. Chico-Nazario (retired), Presbitero J. Velasco, Jr., Antonio Eduardo B. Nachura (retired) and Diosdado M. Peralta, concurring; id. at 481-493.
[3] Id. at 994-1010.
[4] Id. at 979.
[5] Id. at 165-169.

In a Decision[6] dated September 30, 2004, the LA declared McBurnie as having been illegally dismissed from employment, and thus entitled to receive from the respondents the following amounts: (a) US$985,162.00 as salary and benefits for the unexpired term of their employment contract, (b) ₱2,000,000.00 as moral and exemplary damages, and (c) attorney's fees equivalent to 10% of the total monetary award.

Feeling aggrieved, the respondents appealed the LA's Decision to the NLRC.[7] On November 5, 2004, they filed their Memorandum of Appeal[8] and Motion to Reduce Bond[9], and posted an appeal bond in the amount of ₱100,000.00. The respondents contended in their Motion to Reduce Bond, *inter alia*, that the monetary awards of the LA were null and excessive, allegedly with the intention of rendering them incapable of posting the necessary appeal bond. They claimed that an award of "more than ₱60 Million Pesos to a single foreigner who had no work permit and who left the country for good one month after the purported commencement of his employment" was a patent nullity.[10] Furthermore, they claimed that because of their business losses that may be attributed to an economic crisis, they lacked the capacity to pay the bond of almost ₱60 Million, or even the millions of pesos in premium required for such bond.

On March 31, 2005, the NLRC denied[11] the motion to reduce bond, explaining that "in cases involving monetary award, an employer seeking to appeal the [LA's] decision to the Commission is unconditionally required by Art. 223, Labor Code to post bond in the amount equivalent to the monetary award x x x."[12] Thus, the NLRC required from the respondents the posting of an additional bond in the amount of ₱54,083,910.00.

When their motion for reconsideration was denied,[13] the respondents decided to elevate the matter to the Court of Appeals (CA) *via* the Petition for *Certiorari* and Prohibition (With Extremely Urgent Prayer for the Issuance of a Preliminary Injunction and/or Temporary Restraining Order)[14] docketed as **CA-G.R. SP No. 90845**.

In the meantime, in view of the respondents' failure to post the required additional bond, the NLRC dismissed their appeal in a Resolution[15]

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6 Id. at 424-435.
7 Docketed as NLRC NCR CA No. 042913-05.
8 *Rollo* (G.R. Nos. 178034 and 178117), pp. 65-106.
9 *Rollo* (G.R. Nos. 186984-85), pp. 216-226.
10 Id. at 216.
11 Id. at 267-271.
12 Id. at 269.
13 Id. at 324-326.
14 *Rollo* (G.R. Nos. 178034 and 178117), pp. 130-181.
15 *Rollo* (G.R. Nos. 186984-85), pp. 328-330.

dated March 8, 2006. The respondents' motion for reconsideration was denied on June 30, 2006.[16] This prompted the respondents to file with the CA the Petition for C*ertiorari* (With Urgent Prayers for the Immediate Issuance of a Temporary Restraining Order and a Writ of Preliminary Injunction)[17] docketed as **CA-G.R. SP No. 95916**, which was later consolidated with **CA-G.R. SP No. 90845**.

CA-G.R. SP Nos. 90845 and 95916

On February 16, 2007, the CA issued a Resolution[18] granting the respondents' application for a writ of preliminary injunction. It directed the NLRC, McBurnie, and all persons acting for and under their authority to refrain from causing the execution and enforcement of the LA's decision in favor of McBurnie, conditioned upon the respondents' posting of a bond in the amount of ₱10,000,000.00. McBurnie sought reconsideration of the issuance of the writ of preliminary injunction, but this was denied by the CA in its Resolution[19] dated May 29, 2007.

McBurnie then filed with the Court a Petition for Review on *Certiorari*[20] docketed as **G.R. Nos. 178034 and 178117**, assailing the CA Resolutions that granted the respondents' application for the injunctive writ. On July 4, 2007, the Court denied the petition on the ground of McBurnie's failure to comply with the 2004 Rules on Notarial Practice and to sufficiently show that the CA committed any reversible error.[21] A motion for reconsideration was denied with finality in a Resolution[22] dated October 8, 2007.

Unyielding, McBurnie filed a Motion for Leave (1) To File Supplemental Motion for Reconsideration and (2) To Admit the Attached Supplemental Motion for Reconsideration,[23] which was treated by the Court as a second motion for reconsideration, a prohibited pleading under Section 2, Rule 56 of the Rules of Court. Thus, the motion for leave was denied by the Court in a Resolution[24] dated November 26, 2007. The Court's Resolution dated July 4, 2007 then became final and executory on November 13, 2007; accordingly, entry of judgment was made in **G.R. Nos. 178034 and 178117**.[25]

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16 Id. at 347-350.
17 Id. at 88-141.
18 *Rollo* (G.R. Nos. 178034 and 178117), pp. 251-252.
19 Id. at 263-265.
20 Id. at 28-51.
21 Id. at 297.
22 Id. at 320.
23 Id. at 322-324.
24 Id. at 350-351.
25 Id. at 240.

In the meantime, the CA ruled on the merits of **CA-G.R. SP No. 90845** and **CA-G.R. SP No. 95916** and rendered its Decision[26] dated October 27, 2008, allowing the respondents' motion to reduce appeal bond and directing the NLRC to give due course to their appeal. The dispositive portion of the CA Decision reads:

> WHEREFORE, in view of the foregoing, the petition for certiorari and prohibition docketed as CA GR SP No. 90845 and the petition for certiorari docketed as CA GR SP No. 95916 are GRANTED. Petitioners['] Motion to Reduce Appeal Bond is GRANTED. Petitioners are hereby DIRECTED to post appeal bond in the amount of ₱10,000,000.00. The NLRC is hereby DIRECTED to give due course to petitioners' appeal in CA GR SP No. 95916 which is ordered remanded to the NLRC for further proceedings.
>
> SO ORDERED.[27]

On the issue[28] of the NLRC's denial of the respondents' motion to reduce appeal bond, the CA ruled that the NLRC committed grave abuse of discretion in immediately denying the motion without fixing an appeal bond in an amount that was reasonable, as it denied the respondents of their right to appeal from the decision of the LA.[29] The CA explained that "(w)hile Art. 223 of the Labor Code requiring bond equivalent to the monetary award is explicit, Section 6, Rule VI of the NLRC Rules of Procedure, as amended, recognized as exception a motion to reduce bond upon meritorious grounds and upon posting of a bond in a reasonable amount in relation to the monetary award."[30]

On the issue[31] of the NLRC's dismissal of the appeal on the ground of the respondents' failure to post the additional appeal bond, the CA also found grave abuse of discretion on the part of the NLRC, explaining that an appeal bond in the amount of ₱54,083,910.00 was prohibitive and excessive. Moreover, the appellate court cited the pendency of the petition for *certiorari* over the denial of the motion to reduce bond, which should have prevented the NLRC from immediately dismissing the respondents' appeal.[32]

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[26] Penned by Associate Justice Arcangelita M. Romilla-Lontok (retired), with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Portia Aliño-Hormachuelos (retired), concurring; *rollo* (G.R. Nos. 186984-85), pp. 47-70.

[27] Id. at 70.

[28] Subject of CA-G.R. SP No. 90845.

[29] *Rollo* (G.R. Nos. 186984-85), p. 67.

[30] Id.

[31] Subject of CA-G.R. SP No. 95916.

[32] *Rollo* (G.R. Nos. 186984-85), p. 69.

Undeterred, McBurnie filed a motion for reconsideration. At the same time, the respondents moved that the appeal be resolved on the merits by the CA. On March 3, 2009, the CA issued a Resolution[33] denying both motions. McBurnie then filed with the Court the Petition for Review on *Certiorari*[34] docketed as **G.R. Nos. 186984-85**.

In the meantime, the NLRC, acting on the CA's order of remand, accepted the appeal from the LA's decision, and in its Decision[35] dated November 17, 2009, reversed and set aside the Decision of the LA, and entered a new one dismissing McBurnie's complaint. It explained that based on records, McBurnie was never an employee of any of the respondents, but a potential investor in a project that included said respondents, barring a claim of dismissal, much less, an illegal dismissal. Granting that there was a contract of employment executed by the parties, McBurnie failed to obtain a work permit which would have allowed him to work for any of the respondents.[36] In the absence of such permit, the employment agreement was void and thus, could not be the source of any right or obligation.

Court Decision dated September 18, 2009

On September 18, 2009, the Third Division of this Court rendered its Decision[37] which reversed the CA Decision dated October 27, 2008 and Resolution dated March 3, 2009. The dispositive portion reads:

> **WHEREFORE**, the petition is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. SP Nos. 90845 and 95916 dated October 27, 2008 granting respondents' Motion to Reduce Appeal Bond and ordering the National Labor Relations Commission to give due course to respondents' appeal, and its March 3, 2009 Resolution denying petitioner's motion for reconsideration, are **REVERSED** and **SET ASIDE**. The March 8, 2006 and June 30, 2006 Resolutions of the National Labor Relations Commission in NLRC NCR CA NO. 042913-05 dismissing respondents' appeal for failure to perfect an appeal and denying their motion for reconsideration, respectively, are **REINSTATED** and **AFFIRMED**.
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> **SO ORDERED**.[38]

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33 Id. at 44-45.
34 Id. at 3-36.
35 Id. at 640-655.
36 Id. at 655.
37 Id. at 481-493.
38 Id. at 492.

The Court explained that the respondents' failure to post a bond equivalent in amount to the LA's monetary award was fatal to the appeal.[39] Although an appeal bond may be reduced upon motion by an employer, the following conditions must first be satisfied: (1) the motion to reduce bond shall be based on meritorious grounds; and (2) a reasonable amount in relation to the monetary award is posted by the appellant. Unless the NLRC grants the motion to reduce the cash bond within the 10-day reglementary period to perfect an appeal from a judgment of the LA, the employer is mandated to post the cash or surety bond securing the full amount within the said 10-day period.[40] The respondents' initial appeal bond of ₱100,000.00 was grossly inadequate compared to the LA's monetary award.

The respondents' first motion for reconsideration[41] was denied by the Court for lack of merit *via* a Resolution[42] dated December 14, 2009.

Meanwhile, on the basis of the Court's Decision, McBurnie filed with the NLRC a motion for reconsideration with motion to recall and expunge from the records the NLRC Decision dated November 17, 2009.[43] The motion was granted by the NLRC in its Decision[44] dated January 14, 2010.[45]

Undaunted by the denial of their first motion for reconsideration of the Decision dated September 18, 2009, the respondents filed with the Court a Motion for Leave to Submit Attached Second Motion for Reconsideration[46] and Second Motion for Reconsideration,[47] which motion for leave was granted in a Resolution[48] dated March 15, 2010. McBurnie was allowed to submit his comment on the second motion, and the respondents, their reply to the comment. On January 25, 2012, however, the Court issued a Resolution[49] denying the second motion "for lack of merit," "considering that a second motion for reconsideration is a prohibited pleading x x x."[50]

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39 Id. at 490.
40 Id. at 489.
41 Id. at 494-546.
42 Id. at 595-596.
43 Id. at 657.
44 Id. at 657-659.
45 Id. at 659. The dispositive portion of the NLRC Decision reads:

> WHEREFORE, the foregoing considered, complainant's Motion for Reconsideration is hereby GRANTED. The Decision of the Commission, dated November 17, 2009, is SET ASIDE. However, let the Decision of the Commission remain on file with the case records.
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> SO ORDERED.

46 Id. at 598-601
47 Id. at 602-637.
48 Id. at 732-733.
49 Id. at 853.
50 Id.

The Court's Decision dated September 18, 2009 became final and executory on March 14, 2012. Thus, entry of judgment[51] was made in due course, as follows:

> ENTRY OF JUDGMENT
>
> This is to certify that on September 18, 2009 a decision rendered in the above-entitled cases was filed in this Office, the dispositive part of which reads as follows:
>
> x x x x
>
> and that the same has, on March 14, 2012 become final and executory and is hereby recorded in the Book of Entries of Judgments.[52]

The Entry of Judgment indicated that the same was made for the Court's Decision rendered in **G.R. Nos. 186984-85**.

On March 27, 2012, the respondents filed a Motion for Leave to File Attached Third Motion for Reconsideration, with an attached Motion for Reconsideration (on the Honorable Court's 25 January 2012 Resolution) with Motion to Refer These Cases to the Honorable Court *En Banc*.[53] The third motion for reconsideration is founded on the following grounds:

> I.
>
> THE PREVIOUS 15 MARCH 2010 RESOLUTION OF THE HONORABLE COURT ACTUALLY GRANTED RESPONDENTS' "MOTION FOR LEAVE TO SUBMIT A SECOND MOTION FOR RECONSIDERATION."
>
> HENCE, RESPONDENTS RESPECTFULLY CONTEND THAT THE SUBSEQUENT 25 JANUARY 2012 RESOLUTION CANNOT DENY THE "*SECOND MOTION FOR RECONSIDERATION*" ON THE GROUND THAT IT IS A PROHIBITED PLEADING.
>
> MOREOVER, IT IS RESPECTFULLY CONTENDED THAT THERE ARE VERY PECULIAR CIRCUMSTANCES AND NUMEROUS IMPORTANT ISSUES IN THESE CASES THAT CLEARLY JUSTIFY GIVING DUE COURSE TO RESPONDENTS' "SECOND MOTION FOR RECONSIDERATION," WHICH ARE:
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> II.
>
> THE 10 MILLION PESOS BOND WHICH WAS POSTED IN COMPLIANCE WITH THE OCTOBER 27, 2008 DECISION OF THE COURT OF APPEALS IS A SUBSTANTIAL AND SPECIAL

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51 Id. at 914.
52 Id.
53 Id. at 874-909.

MERITORIOUS CIRCUMSTANCE TO MERIT RECONSIDERATION OF THIS APPEAL.

III.

THE HONORABLE COURT HAS HELD IN NUMEROUS LABOR CASES THAT WITH RESPECT TO ARTICLE 223 OF THE LABOR CODE, THE REQUIREMENTS OF THE LAW SHOULD BE GIVEN A LIBERAL INTERPRETATION, ESPECIALLY IF THERE ARE SPECIAL MERITORIOUS CIRCUMSTANCES AND ISSUES.

IV.

THE [LA'S] JUDGMENT WAS PATENTLY VOID SINCE IT AWARDS MORE THAN [₱]60 MILLION PESOS TO A SINGLE FOREIGNER WHO HAD NO WORK PERMIT, AND NO WORKING VISA.

V.

PETITIONER MCBURNIE DID NOT IMPLEAD THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) IN HIS APPEAL HEREIN, MAKING THE APPEAL INEFFECTIVE AGAINST THE NLRC.

VI.

NLRC HAS DISMISSED THE COMPLAINT OF PETITIONER MCBURNIE IN ITS NOVEMBER 17, 2009 DECISION.

VII.

THE HONORABLE COURT'S 18 SEPTEMBER 2009 DECISION WAS TAINTED WITH VERY SERIOUS IRREGULARITIES.

VIII.

GR NOS. 178034 AND 178117 HAVE BEEN INADVERTENTLY INCLUDED IN THIS CASE.

IX.

THE HONORABLE COURT DID NOT DULY RULE UPON THE OTHER VERY MERITORIOUS ARGUMENTS OF THE RESPONDENTS WHICH ARE AS FOLLOWS:

> (A) PETITIONER NEVER ATTENDED ANY OF ALL 14 HEARINGS BEFORE THE [LA] (WHEN 2 MISSED HEARINGS MEAN DISMISSAL)[.]
>
> (B) PETITIONER REFERRED TO HIMSELF AS A "VICTIM" OF LEISURE EXPERTS, INC., BUT NOT OF ANY OF THE RESPONDENTS[.]
>
> (C) PETITIONER'S POSITIVE LETTER TO RESPONDENT MR. EULALIO GANZON CLEARLY SHOWS THAT HE WAS NOT ILLEGALLY DISMISSED NOR EVEN DISMISSED BY ANY OF THE RESPONDENTS AND PETITIONER EVEN PROMISED TO PAY HIS DEBTS FOR ADVANCES MADE BY RESPONDENT[S].

> (D) PETITIONER WAS NEVER EMPLOYED BY ANY OF THE RESPONDENTS. PETITIONER PRESENTED WORK FOR CORONADO BEACH RESORT WHICH IS [NEITHER] OWNED NOR CONNECTED WITH ANY OF THE RESPONDENTS.
>
> (E) THE [LA] CONCLUDED THAT PETITIONER WAS DISMISSED EVEN IF THERE WAS ABSOLUTELY NO EVIDENCE AT ALL PRESENTED THAT PETITIONER WAS DISMISSED BY THE RESPONDENTS[.]
>
> (F) PETITIONER LEFT THE PHILIPPINES FOR AUSTRALIA JUST 2 MONTHS AFTER THE START OF THE ALLEGED EMPLOYMENT AGREEMENT, AND HAS STILL NOT RETURNED TO THE PHILIPPINES AS CONFIRMED BY THE BUREAU OF IMMIGRATION.
>
> (G) PETITIONER COULD NOT HAVE SIGNED AND PERSONALLY APPEARED BEFORE THE NLRC ADMINISTERING OFFICER AS INDICATED IN THE COMPLAINT SHEET SINCE HE LEFT THE COUNTRY 3 YEARS BEFORE THE COMPLAINT WAS FILED AND HE NEVER CAME BACK.[54]

On September 4, 2012, the Court *en banc*[55] issued a Resolution[56] accepting the case from the Third Division. It also issued a temporary restraining order (TRO) enjoining the implementation of the LA's Decision dated September 30, 2004. This prompted McBurnie's filing of a Motion for Reconsideration,[57] where he invoked the fact that the Court's Decision dated September 18, 2009 had become final and executory, with an entry of judgment already made by the Court.

Our Ruling

In light of pertinent law and jurisprudence, and upon taking a second hard look of the parties' arguments and the records of the case, the Court has ascertained that a reconsideration of this Court's Decision dated September 18, 2009 and Resolutions dated December 14, 2009 and January 25, 2012, along with the lifting of the entry of judgment in G.R. No. 186984-85, is in order.

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54 Id. at 876-878.
55 By a vote of 12.
56 *Rollo* (G.R. Nos. 186984-85), p. 979.
57 Id. at 994-1010.

The Court's acceptance of the third motion for reconsideration

At the outset, the Court emphasizes that second and subsequent motions for reconsideration are, as a general rule, prohibited. Section 2, Rule 52 of the Rules of Court provides that "[n]o second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." The rule rests on the basic tenet of immutability of judgments. "At some point, a decision becomes final and executory and, consequently, all litigations must come to an end."[58]

The general rule, however, against second and subsequent motions for reconsideration admits of settled exceptions. For one, the present Internal Rules of the Supreme Court, particularly Section 3, Rule 15 thereof, provides:

> **Sec. 3.** ***Second motion for reconsideration***.**—**The Court shall not entertain a second motion for reconsideration, and **any exception to this rule can only be granted in the higher interest of justice** by the Court *en banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" **when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties**. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.
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> x x x x (Emphasis ours)

In a line of cases, the Court has then entertained and granted second motions for reconsideration "in the higher interest of substantial justice," as allowed under the Internal Rules when the assailed decision is "legally erroneous," "patently unjust" and "potentially capable of causing unwarranted and irremediable injury or damage to the parties." In *Tirazona v. Philippine EDS Techno-Service, Inc. (PET, Inc.)*,[59] we also explained that a second motion for reconsideration may be allowed in instances of "extraordinarily persuasive reasons and only after an express leave shall have been obtained."[60] In *Apo Fruits Corporation v. Land Bank of the Philippines,*[61] we allowed a second motion for reconsideration as the issue involved therein was a matter of public interest, as it pertained to the proper application of a basic constitutionally-guaranteed right in the government's implementation of its agrarian reform program. In *San Miguel Corporation*

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58 *Verginesa-Suarez v. Dilag*, A.M. No. RTJ-06-2014, August 16, 2011, 655 SCRA 454, 459-460.
59 G.R. No. 169712, January 20, 2009, 576 SCRA 625.
60 Id. at 628, citing *Ortigas and Company Limited Partnership v. Velasco*, 324 Phil. 483, 489 (1996).
61 G.R. No. 164195, April 5, 2011, 647 SCRA 207.

v. NLRC,[62] the Court set aside the decisions of the LA and the NLRC that favored claimants-security guards upon the Court's review of San Miguel Corporation's second motion for reconsideration. In *Vir-Jen Shipping and Marine Services, Inc. v. NLRC, et al.*,[63] the Court *en banc* reversed on a third motion for reconsideration the ruling of the Court's Division on therein private respondents' claim for wages and monetary benefits.

It is also recognized that in some instances, the prudent action towards a just resolution of a case is for the Court to suspend rules of procedure, for "the power of this Court to suspend its own rules or to except a particular case from its operations whenever the purposes of justice require it, cannot be questioned."[64] In *De Guzman v. Sandiganbayan*,[65] the Court, thus, explained:

> [T]he rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be avoided. Even the Rules of Court envision this liberality. This power to suspend or even disregard the rules can be so pervasive and encompassing so as to alter even that which this Court itself has already declared to be final, as we are now compelled to do in this case. x x x.
>
> x x x x
>
> The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering real justice have always been, as they in fact ought to be, conscientiously guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around. Truly then, technicalities, in the appropriate language of Justice Makalintal, "*should give way to the realities of the situation.*" x x x.[66] (Citations omitted)

Consistent with the foregoing precepts, the Court has then reconsidered even decisions that have attained finality, finding it more appropriate to lift entries of judgments already made in these cases. In *Navarro v. Executive Secretary*,[67] we reiterated the pronouncement in *De Guzman* that the power to suspend or even disregard rules of procedure can

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62 256 Phil. 271 (1989).
63 210 Phil. 482 (1983).
64 *De Guzman v. Sandiganbayan*, 326 Phil. 182, 188 (1996), citing *Vda. De Ronquillo, et al. v. Marasigan*, 115 Phil. 292 (1962); *Piczon v. Court of Appeals*, 268 Phil. 23 (1990).
65 326 Phil. 182 (1996).
66 Id. at 190-191.
67 G.R. No. 180050, April 12, 2011, 648 SCRA 400.

be so pervasive and compelling as to alter even that which this Court itself has already declared final. The Court then recalled in *Navarro* an entry of judgment after it had determined the validity and constitutionality of Republic Act No. 9355, explaining that:

> Verily, the Court had, on several occasions, sanctioned the recall of entries of judgment in light of attendant extraordinary circumstances. The power to suspend or even disregard rules of procedure can be so pervasive and compelling as to alter even that which this Court itself had already declared final. In this case, the compelling concern is not only to afford the movants-intervenors the right to be heard since they would be adversely affected by the judgment in this case despite not being original parties thereto, but also to arrive at the correct interpretation of the provisions of the [Local Government Code (LGC)] with respect to the creation of local government units. x x x.[68] (Citations omitted)

In *Munoz v. CA*,[69] the Court resolved to recall an entry of judgment to prevent a miscarriage of justice. This justification was likewise applied in *Tan Tiac Chiong v. Hon. Cosico*,[70] wherein the Court held that:

> The recall of entries of judgments, albeit rare, is not a novelty. In *Muñoz v. CA*, where the case was elevated to this Court and a first and *second* motion for reconsideration had been denied with *finality*, the Court, in the interest of substantial justice, recalled the Entry of Judgment as well as the letter of transmittal of the records to the Court of Appeals.[71] (Citation omitted)

In *Barnes v. Judge Padilla*,[72] we ruled:

> [A] final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.
>
> However, this Court has relaxed this rule in order to serve substantial justice considering (a) matters of life, liberty, honor or property, (b) the existence of special or compelling circumstances, (c) the merits of the case, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.[73] (Citations omitted)

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68 Id. at 436.
69 379 Phil. 809 (2000).
70 434 Phil. 753 (2002).
71 Id. at 762.
72 482 Phil. 903 (2004).
73 Id. at 915.

As we shall explain, the instant case also qualifies as an exception to, *first,* the proscription against second and subsequent motions for reconsideration, and *second,* the rule on immutability of judgments; a reconsideration of the Decision dated September 18, 2009, along with the Resolutions dated December 14, 2009 and January 25, 2012, is justified by the higher interest of substantial justice.

To begin with, the Court agrees with the respondents that the Court's prior resolve to **grant**, and not just merely note, in a Resolution dated March 15, 2010 the respondents' motion for leave to submit their second motion for reconsideration already warranted a resolution and discussion of the motion for reconsideration on its merits. Instead of doing this, however, the Court issued on January 25, 2012 a Resolution[74] denying the motion to reconsider for lack of merit, merely citing that it was a "prohibited pleading under Section 2, Rule 52 in relation to Section 4, Rule 56 of the 1997 Rules of Civil Procedure, as amended."[75] In *League of Cities of the Philippines (LCP) v. Commission on Elections*,[76] we reiterated a ruling that when a motion for leave to file and admit a second motion for reconsideration is granted by the Court, the Court therefore allows the filing of the second motion for reconsideration. In such a case, the second motion for reconsideration is no longer a prohibited pleading. Similarly in this case, there was then no reason for the Court to still consider the respondents' second motion for reconsideration as a prohibited pleading, and deny it plainly on such ground. The Court intends to remedy such error through this resolution.

More importantly, the Court finds it appropriate to accept the pending motion for reconsideration and resolve it on the merits in order to rectify its prior disposition of the main issues in the petition. Upon review, the Court is constrained to rule differently on the petitions. We have determined the grave error in affirming the NLRC's rulings, promoting results that are patently unjust for the respondents, as we consider the facts of the case, pertinent law, jurisprudence, and the degree of the injury and damage to the respondents that will inevitably result from the implementation of the Court's Decision dated September 18, 2009.

The rule on appeal bonds

We emphasize that the crucial issue in this case concerns the sufficiency of the appeal bond that was posted by the respondents. The present rule on the matter is Section 6, Rule VI of the 2011 NLRC Rules of

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74 *Rollo* (G.R. Nos. 186984-85), p. 853.
75 Id.
76 G.R. No. 176951, February 15, 2011, 643 SCRA 149.

Procedure, which was substantially the same provision in effect at the time of the respondents' appeal to the NLRC, and which reads:

RULE VI
APPEALS

> Sec. 6. BOND. – In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond. The appeal bond shall either be in cash or surety in an amount equivalent to the monetary award, exclusive of damages and attorney's fees.
>
> x x x x
>
> **No motion to reduce bond shall be entertained except on meritorious grounds and upon the posting of a bond in a reasonable amount in relation to the monetary award.**
>
> The filing of the motion to reduce bond without compliance with the requisites in the preceding paragraph shall not stop the running of the period to perfect an appeal. (Emphasis supplied)

While the CA, in this case, allowed an appeal bond in the reduced amount of ₱10,000,000.00 and then ordered the case's remand to the NLRC, this Court's Decision dated September 18, 2009 provides otherwise, as it reads in part:

> The posting of a bond is indispensable to the perfection of an appeal in cases involving monetary awards from the decision of the Labor Arbiter. The lawmakers clearly intended to make the bond a mandatory requisite for the perfection of an appeal by the employer as inferred from the provision that an appeal by the employer may be perfected "*only upon the posting of a cash or surety bond.*" The word *"only"* makes it clear that the posting of a cash or surety bond by the employer is the essential and exclusive means by which an employer's appeal may be perfected. x x x.
>
> Moreover, the filing of the bond is not only mandatory but a jurisdictional requirement as well, that must be complied with in order to confer jurisdiction upon the NLRC. Non-compliance therewith renders the decision of the Labor Arbiter final and executory. This requirement is intended to assure the workers that if they prevail in the case, they will receive the money judgment in their favor upon the dismissal of the employer's appeal. It is intended to discourage employers from using an appeal to delay or evade their obligation to satisfy their employees' just and lawful claims.
>
> x x x x

> Thus, it behooves the Court to give utmost regard to the legislative and administrative intent to strictly require the employer to post a cash or surety bond securing the ***full*** amount of the monetary award within the 10[-]day reglementary period. **Nothing in the Labor Code or the NLRC Rules of Procedure authorizes the posting of a bond that is *less* than the monetary award in the judgment, or would deem such insufficient posting as sufficient to perfect the appeal.**
>
> While the bond may be reduced upon motion by the employer, this is subject to the conditions that (1) the motion to reduce the bond shall be based on **meritorious grounds**; and (2) a **reasonable amount** in relation to the monetary award is posted by the appellant, otherwise the filing of the motion to reduce bond shall not stop the running of the period to perfect an appeal. The qualification effectively requires that unless the NLRC grants the reduction of the cash bond within the 10[-]day reglementary period, **the employer is still expected to post the cash or surety bond securing the full amount within the said 10-day period**. If the NLRC does eventually grant the motion for reduction after the reglementary period has elapsed, the correct relief would be to reduce the cash or surety bond already posted by the employer within the 10-day period.[77] (Emphasis supplied; underscoring ours)

To begin with, the Court rectifies its prior pronouncement – the unqualified statement that even an appellant who seeks a reduction of an appeal bond before the NLRC is expected to post a cash or surety bond securing the full amount of the judgment award within the 10-day reglementary period to perfect the appeal.

The suspension of the period to perfect the appeal upon the filing of a motion to reduce bond

To clarify, the prevailing jurisprudence on the matter provides that the filing of a motion to reduce bond, coupled with compliance with the ***two conditions*** emphasized in *Garcia v. KJ Commercial*[78] for the grant of such motion, namely, (1) a meritorious ground, and (2) posting of a bond in a reasonable amount, shall **suffice to suspend the running of the period to perfect an appeal from the labor arbiter's decision to the NLRC**.[79] To require the full amount of the bond within the 10-day reglementary period would only render nugatory the legal provisions which allow an appellant to seek a reduction of the bond. Thus, we explained in *Garcia*:

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77 *Rollo* (G.R. Nos. 186984-85), pp. 487-489.
78 G.R. No. 196830, February 29, 2012, 667 SCRA 396.
79 Id. at 409.

> **The filing of a motion to reduce bond and compliance with the two conditions stop the running of the period to perfect an appeal. x x x**
>
> x x x x
>
> The NLRC has full discretion to grant or deny the motion to reduce bond, and it may rule on the motion beyond the 10-day period within which to perfect an appeal. Obviously, at the time of the filing of the motion to reduce bond and posting of a bond in a reasonable amount, there is no assurance whether the appellant's motion is indeed based on "meritorious ground" and whether the bond he or she posted is of a "reasonable amount." Thus, the appellant always runs the risk of failing to perfect an appeal.
>
> x x x **In order to give full effect to the provisions on motion to reduce bond, the appellant must be allowed to wait for the ruling of the NLRC on the motion even beyond the 10-day period to perfect an appeal**. If the NLRC grants the motion and rules that there is indeed meritorious ground and that the amount of the bond posted is reasonable, then the appeal is perfected. If the NLRC denies the motion, the appellant may still file a motion for reconsideration as provided under Section 15, Rule VII of the Rules. If the NLRC grants the motion for reconsideration and rules that there is indeed meritorious ground and that the amount of the bond posted is reasonable, then the appeal is perfected. If the NLRC denies the motion, then the decision of the labor arbiter becomes final and executory.
>
> x x x x
>
> **In any case, the rule that the filing of a motion to reduce bond shall not stop the running of the period to perfect an appeal is not absolute. The Court may relax the rule**. In *Intertranz Container Lines, Inc. v. Bautista,* the Court held:
>
> > "Jurisprudence tells us that in labor cases, an appeal from a decision involving a monetary award may be perfected only upon the posting of cash or surety bond. The Court, however, has relaxed this requirement under certain exceptional circumstances in order to resolve controversies on their merits. These circumstances include: (1) fundamental consideration of substantial justice; (2) prevention of miscarriage of justice or of unjust enrichment; and (3) special circumstances of the case combined with its legal merits, and the amount and the issue involved."[80] (Citations omitted and emphasis ours)

A serious error of the NLRC was its outright denial of the motion to reduce the bond, without even considering the respondents' arguments and totally unmindful of the rules and jurisprudence that allow the bond's

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[80] Id. at 409-411.

reduction. Instead of resolving the motion to reduce the bond on its merits, the NLRC insisted on an amount that was equivalent to the monetary award, merely explaining:

> We are constrained to deny respondents[’] motion for reduction. As held by the Supreme Court in a recent case, in cases involving monetary award, **an employer seeking to appeal the Labor Arbiter’s decision to the Commission is unconditionally required by Art. 223, Labor Code to post bond in the amount equivalent to the monetary award** (Calabash Garments vs. NLRC, G.R. No. 110827, August 8, 1996). x x x[81] (Emphasis ours)

When the respondents sought to reconsider, the NLRC still refused to fully decide on the motion. It refused to at least make a preliminary determination of the merits of the appeal, as it held:

> We are constrained to dismiss respondents’ Motion for Reconsideration. Respondents’ contention that the appeal bond is excessive and based on a decision which is a patent nullity involve[s] the merits of the case. x x x[82]

Prevailing rules and jurisprudence allow the reduction of appeal bonds.

By such haste of the NLRC in peremptorily denying the respondents’ motion without considering the respondents’ arguments, it effectively denied the respondents of their opportunity to seek a reduction of the bond even when the same is allowed under the rules and settled jurisprudence. It was equivalent to the NLRC’s refusal to exercise its discretion, as it refused to determine and rule on a showing of meritorious grounds and the reasonableness of the bond tendered under the circumstances.[83] Time and again, the Court has cautioned the NLRC to give Article 223 of the Labor Code, particularly the provisions requiring bonds in appeals involving monetary awards, a liberal interpretation in line with the desired objective of resolving controversies on the merits.[84] The NLRC’s failure to take action on the motion to reduce the bond in the manner prescribed by law and jurisprudence then cannot be countenanced. Although an appeal by parties from decisions that are adverse to their interests is neither a natural right nor a part of due process, it is an essential part of our judicial system. Courts

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81 *Rollo* (G.R. Nos. 186984-85), p. 244.

82 Id. at 325.

83 *See Nicol v. Footjoy Industrial Corp*., 555 Phil. 275, 287 (2007).

84 *Cosico, Jr. v. NLRC*, 338 Phil. 1080 (1997), citing *Star Angel Handicraft v. National Labor Relations Commission*, G.R. No. 108914, September 20, 1994, 236 SCRA 580; *Dr. Postigo v. Phil. Tuberculosis Society, Inc.*, 515 Phil. 601 (2006); *Rada v. NLRC*, G.R. No. 96078, January 9, 1992, 205 SCRA 69, and *YBL (Your Bus Line) v. National Labor Relations Commission*, 268 Phil. 169 (1990).

should proceed with caution so as not to deprive a party of the right to appeal, but rather, ensure that every party has the amplest opportunity for the proper and just disposition of their cause, free from the constraints of technicalities.[85] Considering the mandate of labor tribunals, the principle equally applies to them.

Given the circumstances of the case, the Court's affirmance in the Decision dated September 18, 2009 of the NLRC's strict application of the rule on appeal bonds then demands a re-examination. Again, the emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[86] Section 2, Rule I of the NLRC Rules of Procedure also provides the policy that "[the] Rules shall be liberally construed to carry out the objectives of the Constitution, the Labor Code of the Philippines and other relevant legislations, and to assist the parties in obtaining just, expeditious and inexpensive resolution and settlement of labor disputes."[87]

In accordance with the foregoing, although the general rule provides that an appeal in labor cases from a decision involving a monetary award may be perfected only upon the posting of a cash or surety bond, the Court has relaxed this requirement under certain exceptional circumstances in order to resolve controversies on their merits. These circumstances include: (1) the fundamental consideration of substantial justice; (2) the prevention of miscarriage of justice or of unjust enrichment; and (3) special circumstances of the case combined with its legal merits, and the amount and the issue involved.[88] Guidelines that are applicable in the reduction of appeal bonds were also explained in *Nicol v. Footjoy Industrial Corporation.*[89] The bond requirement in appeals involving monetary awards has been and may be relaxed in meritorious cases, including instances in which (1) there was substantial compliance with the Rules, (2) surrounding facts and circumstances constitute meritorious grounds to reduce the bond, (3) a liberal interpretation of the requirement of an appeal bond would serve the desired objective of resolving controversies on the merits, or (4) the appellants, at the very least, exhibited their willingness and/or good faith by posting a partial bond during the reglementary period.[90]

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85 *Bolos v. Bolos*, G.R. No. 186400, October 20, 2010, 634 SCRA 429, 439.

86 *Aujero v. Philippine Communications Satellite Corporation*, G.R. No. 193484, January 18, 2012, 663 SCRA 467, 481-482, citing *Heirs of the Deceased Spouses Arcilla v. Teodoro*, G.R. No. 162886, August 11, 2008, 561 SCRA 545, 557.

87 *Garcia v. KJ Commercial,* supra note 78, at 410.

88 *Intertranz Container Lines, Inc. v. Bautista*, G.R. No. 187693, July 13, 2010, 625 SCRA 75, 84, citing *Rosewood Processing, Inc. v. NLRC*, 352 Phil. 1013 (1998).

89 555 Phil. 275 (2007).

90 Id. at 292.

In *Blancaflor v. NLRC*,[91] the Court also emphasized that while Article 223[92] of the Labor Code, as amended by Republic Act No. 6715, which requires a cash or surety bond in an amount equivalent to the monetary award in the judgment appealed from may be considered a jurisdictional requirement for the perfection of an appeal, nevertheless, adhering to the principle that substantial justice is better served by allowing the appeal on the merits to be threshed out by the NLRC, the foregoing requirement of the law should be given a liberal interpretation.

As the Court, nonetheless, remains firm on the importance of appeal bonds in appeals from monetary awards of LAs, we stress that the NLRC, pursuant to Section 6, Rule VI of the NLRC Rules of Procedure, shall only accept motions to reduce bond that are coupled with the posting of a bond in a reasonable amount. Time and again, we have explained that the bond requirement imposed upon appellants in labor cases is intended to ensure the satisfaction of awards that are made in favor of appellees, in the event that their claims are eventually sustained by the courts.[93] On the part of the appellants, its posting may also signify their good faith and willingness to recognize the final outcome of their appeal.

At the time of a motion to reduce appeal bond's filing, the question of what constitutes "a reasonable amount of bond" that must accompany the motion may be subject to differing interpretations of litigants. The judgment of the NLRC which has the discretion under the law to determine such amount cannot as yet be invoked by litigants until after their motions to reduce appeal bond are accepted.

Given these limitations, it is not uncommon for a party to unduly forfeit his opportunity to seek a reduction of the required bond and thus, to appeal, when the NLRC eventually disagrees with the party's assessment. These have also resulted in the filing of numerous petitions against the NLRC, citing an alleged grave abuse of discretion on the part of the labor tribunal for its finding on the sufficiency or insufficiency of posted appeal bonds.

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91 G.R. No. 101013, February 2, 1993, 218 SCRA 366.

92 Art. 223. *Appeal* – Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

x x x x

93 *See Mindanao Times Corporation v. Confesor,* G.R. No. 183417, February 5, 2010, 611 SCRA 748; *Computer Innovations Center v. NLRC*, 500 Phil. 573 (2005); *St. Gothard Disco Pub & Restaurant v. NLRC,* G.R. No. 102570, February 1, 1993, 218 SCRA 327.

It is in this light that the Court finds it necessary to set a parameter for the litigants' and the NLRC's guidance on the amount of bond that shall hereafter be filed with a motion for a bond's reduction. To ensure that the provisions of Section 6, Rule VI of the NLRC Rules of Procedure that give parties the chance to seek a reduction of the appeal bond are effectively carried out, without however defeating the benefits of the bond requirement in favor of a winning litigant, all motions to reduce bond that are to be filed with the NLRC shall be accompanied by the posting of a cash or surety bond equivalent to ***10% of the monetary award*** that is subject of the appeal, which shall provisionally be deemed the reasonable amount of the bond in the meantime that an appellant's motion is pending resolution by the Commission. In conformity with the NLRC Rules, the monetary award, for the purpose of computing the necessary appeal bond, shall exclude damages and attorney's fees.[94] Only after the posting of a bond in the required percentage shall an appellant's period to perfect an appeal under the NLRC Rules be deemed suspended.

The foregoing shall not be misconstrued to unduly hinder the NLRC's exercise of its discretion, given that the percentage of bond that is set by this guideline shall be **merely provisional**. The NLRC retains its authority and duty to resolve the motion and determine the final amount of bond that shall be posted by the appellant, still in accordance with the standards of **"meritorious grounds"** and **"reasonable amount"**. Should the NLRC, after considering the motion's merit, determine that a greater amount or the full amount of the bond needs to be posted by the appellant, then the party shall comply accordingly. The appellant shall be given a period of 10 days from notice of the NLRC order within which to perfect the appeal by posting the required appeal bond.

Meritorious ground as a condition for the reduction of the appeal bond

In all cases, the reduction of the appeal bond shall be justified by meritorious grounds and accompanied by the posting of the required appeal bond in a reasonable amount.

The requirement on the existence of a "meritorious ground" delves on the worth of the parties' arguments, taking into account their respective rights and the circumstances that attend the case. The condition was

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[94] 2011 NLRC Rules of Procedure, Rule VI, Section 6 reads:

SEC. 6. BOND.—In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

emphasized in *University Plans Incorporated v. Solano,*[95] wherein the Court held that while the NLRC's Revised Rules of Procedure "allows the [NLRC] to reduce the amount of the bond, the exercise of the authority is not a matter of right on the part of the movant, but lies within the sound discretion of the NLRC upon a showing of meritorious grounds."[96] By jurisprudence, the merit referred to may pertain to an appellant's lack of financial capability to pay the full amount of the bond,[97] the merits of the main appeal such as when there is a valid claim that there was no illegal dismissal to justify the award,[98] the absence of an employer-employee relationship,[99] prescription of claims,[100] and other similarly valid issues that are raised in the appeal.[101] For the purpose of determining a "meritorious ground", the NLRC is not precluded from receiving evidence, or from making a preliminary determination of the merits of the appellant's contentions.[102]

In this case, the NLRC then should have considered the respondents' arguments in the memorandum on appeal that was filed with the motion to reduce the requisite appeal bond. Although a consideration of said arguments at that point would have been merely preliminary and should not in any way bind the eventual outcome of the appeal, it was apparent that the respondents' defenses came with an indication of merit that deserved a full review of the decision of the LA. The CA, by its Resolution dated February 16, 2007, even found justified the issuance of a preliminary injunction to enjoin the immediate execution of the LA's decision, and this Court, a temporary restraining order on September 4, 2012.

Significantly, following the CA's remand of the case to the NLRC, the latter even rendered a Decision that contained findings that are inconsistent with McBurnie's claims. The NLRC reversed and set aside the decision of the LA, and entered a new one dismissing McBurnie's complaint. It explained that McBurnie was not an employee of the respondents; thus, they could not have dismissed him from employment. The purported employment contract of the respondents with the petitioner was qualified by the conditions set forth in a letter dated May 11, 1999, which reads:

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95 G.R. No. 170416, June 22, 2011, 652 SCRA 492.
96 Id. at 503-504, citing *Ramirez v. CA*, G.R. No. 182626, December 4, 2004, 607 SCRA 752, 765.
97 *See Nicol v. Footjoy Industrial Corp.*, supra note 89.
98 *See Semblante v. Court of Appeals*, G.R. No. 196426, August 15, 2011, 655 SCRA 444.
99 Id.
100 *See Star Angel Handicraft v. National Labor Relations Commission,* supra note 84.
101 *See YBL (Your Bus Line) v. NLRC*, supra note 84.
102 *See University Plans Incorporated v. Solano*, supra note 95; *Nicol v. Footjoy Industrial Corp.*, supra note 89.

> May 11, 1999
> MR. ANDREW MCBURNIE
> Re: Employment Contract
>
> Dear Andrew,
>
> It is understood that this Contract is made subject to the understanding that it is effective only when the project financing for our Baguio Hotel project pushed through.
>
> The agreement with EGI Managers, Inc. is made now to support your need to facilitate your work permit with the Department of Labor in view of the expiration of your contract with Pan Pacific.
>
> Regards,
>
> Sgd.
> Eulalio Ganzon (p. 203, Records)[103]

For the NLRC, the employment agreement could not have given rise to an employer-employee relationship by reason of legal impossibility. The two conditions that form part of their agreement, namely, the successful completion of the project financing for the hotel project in Baguio City and McBurnie's acquisition of an Alien Employment Permit, remained unsatisfied.[104] The NLRC concluded that McBurnie was instead a potential investor in a project that included Ganzon, but the said project failed to pursue due to lack of funds. Any work performed by McBurnie in relation to the project was merely preliminary to the business venture and part of his "due diligence" study before pursuing the project, "done at his own instance, not in furtherance of the employment contract but for his own investment purposes."[105] Lastly, the alleged employment of the petitioner would have been void for being contrary to law, since it is undisputed that McBurnie did not have any work permit. The NLRC declared:

> Absent an employment permit, any employment relationship that [McBurnie] contemplated with the [respondents] was void for being contrary to law. A void or inexistent contract, in turn, has no force and effect from the beginning as if it had never [been] entered into. Thus, without an Alien Employment Permit, the "Employment Agreement" is void and could not be the source of a right or obligation. In support thereof, the DOLE issued a certification that [McBurnie] has neither applied nor [been] issued [an] Alien Employment Permit (p. 204, Records).[106]

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103 *Rollo* (G.R. Nos. 186984-85), p. 649.
104 Id. at 650.
105 Id. at 650-651.
106 Id. at 654.

McBurnie moved to reconsider, citing the Court's Decision of September 18, 2009 that reversed and set aside the CA's Decision authorizing the remand. Although the NLRC granted the motion on the said ground *via* a Decision[107] that set aside the NLRC's Decision dated November 17, 2009, the findings of the NLRC in the November 17, 2009 decision merit consideration, especially since the findings made therein are supported by the case records.

In addition to the apparent merit of the respondents' appeal, the Court finds the reduction of the appeal bond justified by the substantial amount of the LA's monetary award. Given its considerable amount, we find reason in the respondents' claim that to require an appeal bond in such amount could only deprive them of the right to appeal, even force them out of business and affect the livelihood of their employees.[108] In *Rosewood Processing, Inc. v. NLRC,*[109] we emphasized: "Where a decision may be made to rest on informed judgment rather than rigid rules, the equities of the case must be accorded their due weight because labor determinations should not be '***secundum rationem*** but also ***secundum caritatem***.'"[110]

What constitutes a reasonable amount in the determination of the final amount of appeal bond

As regards the requirement on the posting of a bond in a "reasonable amount," the Court holds that the final determination thereof by the NLRC shall be based primarily on the merits of the motion and the main appeal.

Although the NLRC Rules of Procedure, particularly Section 6 of Rule VI thereof, provides that the bond to be posted shall be "in a reasonable amount *in relation to the monetary award*," the merit of the motion shall always take precedence in the determination. Settled is the rule that procedural rules were conceived, and should thus be applied in a manner that would only aid the attainment of justice. If a stringent application of the rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.[111]

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107 Id. at 640-655.
108 Id. at 64-65.
109 352 Phil. 1013 (1998).
110 Id. at 1031.
111 *City of Dumaguete v. Philippine Ports Authority*, G.R. No. 168973, August 24, 2011, 656 SCRA 102, 117, citing *Basco v. CA*, 392 Phil. 251, 266 (2000).

Thus, in *Nicol* where the appellant posted a bond of ₱10,000,000.00 upon an appeal from the LA's award of ₱51,956,314.00, the Court, instead of ruling right away on the reasonableness of the bond's amount solely on the basis of the judgment award, found it appropriate to remand the case to the NLRC, which should first determine the merits of the motion. In *University Plans*,[112] the Court also reversed the outright dismissal of an appeal where the bond posted in a judgment award of more than ₱30,000,000.00 was ₱30,000.00. The Court then directed the NLRC to first determine the merit, or lack of merit, of the motion to reduce the bond, after the appellant therein claimed that it was under receivership and thus, could not dispose of its assets within a short notice. Clearly, the rule on the posting of an appeal bond should not be allowed to defeat the substantive rights of the parties.[113]

Notably, in the present case, following the CA's rendition of its Decision which allowed a reduced appeal bond, the respondents have posted a bond in the amount of ₱10,000,000.00. In *Rosewood*, the Court deemed the posting of a surety bond of ₱50,000.00, coupled with a motion to reduce the appeal bond, as substantial compliance with the legal requirements for an appeal from a ₱789,154.39 monetary award "considering the clear merits which appear, *res ipsa loquitor,* in the appeal from the [LA's] Decision, and the petitioner's substantial compliance with rules governing appeals."[114] The foregoing jurisprudence strongly indicate that in determining the reasonable amount of appeal bonds, the Court primarily considers the merits of the motions and appeals.

Given the circumstances in this case and the merits of the respondents' arguments before the NLRC, the Court holds that the respondents had posted a bond in a "reasonable amount", and had thus complied with the requirements for the perfection of an appeal from the LA's decision. The CA was correct in ruling that:

> In the case of Nueva Ecija I Electric Cooperative, Inc. (NEECO I) Employees Association, President Rodolfo Jimenez[,] and members[,] Reynaldo Fajardo, et al. vs. NLRC, Nueva Ecija I Electric Cooperative, Inc. (NEECO I) and Patricio de la Peña (GR No. 116066, January 24, 2000), the Supreme Court recognized that: "the NLRC, in its Resolution No. 11-01-91 dated November 7, 1991 deleted the phrase "exclusive of moral and exemplary damages as well as attorney's fees in the determination of the amount of bond, and provided a safeguard against the imposition of excessive bonds by providing that "(T)he Commission may in meritorious cases and upon motion of the appellant, reduce the amount of the bond."

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112 Supra note 95.
113 Supra note 98.
114 Supra note 109, at 1031.

> In the case of *Cosico[,] Jr. vs. NLRC[,]* 272 SCRA 583, it was held:
>
> > "The unreasonable and excessive amount of bond would be oppressive and unjust and would have the effect of depriving a party of his right to appeal."
> >
> > x x x x
> >
> > In dismissing outright the motion to reduce bond filed by petitioners, NLRC abused its discretion. It should have fixed an appeal bond in a reasonable amount. Said dismissal deprived petitioners of their right to appeal the Labor Arbiter's decision.
> >
> > x x x x
> >
> > NLRC Rules allow reduction of appeal bond on meritorious grounds (Sec. 6, Rule VI, NLRC Rules of Procedure). This Court finds the appeal bond in the amount of [₱]54,083,910.00 prohibitive and excessive, which constitutes a meritorious ground to allow a motion for reduction thereof.[115]

The foregoing declaration of the Court requiring a bond in a reasonable amount, taking into account the merits of the motion and the appeal, is consistent with the oft-repeated principle that letter-perfect rules must yield to the broader interest of substantial justice.[116]

The effect of a denial of the appeal to the NLRC

In finding merit in the respondents' motion for reconsideration, we also take into account the unwarranted results that will arise from an implementation of the Court's Decision dated September 18, 2009. We emphasize, moreover, that although a remand and an order upon the NLRC to give due course to the appeal would have been the usual course after a finding that the conditions for the reduction of an appeal bond were duly satisfied by the respondents, given such results, the Court finds it necessary to modify the CA's order of remand, and instead rule on the dismissal of the complaint against the respondents.

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115 *Rollo* (G.R. Nos. 186984-85), pp. 67, 69.

116 *Nicol v. Footjoy Industrial Corp.*, supra note 89, at 290, citing *Rosewood Processing, Inc. v. NLRC*, supra note 109.

Without the reversal of the Court's Decision and the dismissal of the complaint against the respondents, McBurnie would be allowed to claim benefits under our labor laws despite his failure to comply with a settled requirement for foreign nationals.

Considering that McBurnie, an Australian, alleged illegal dismissal and sought to claim under our labor laws, it was necessary for him to establish, first and foremost, that he was qualified and duly authorized to obtain employment within our jurisdiction. A requirement for foreigners who intend to work within the country is an employment permit, as provided under Article 40, Title II of the Labor Code which reads:

> Art. 40. *Employment permit for non-resident aliens.* Any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor.

In *WPP Marketing Communications, Inc. v. Galera*,[117] we held that a foreign national's failure to seek an employment permit prior to employment poses a serious problem in seeking relief from the Court.[118] Thus, although the respondent therein appeared to have been illegally dismissed from employment, we explained:

> This is Galera's dilemma: Galera worked in the Philippines without proper work permit but now wants to claim employee's benefits under Philippine labor laws.
>
> x x x x
>
> The law and the rules are consistent in stating that the employment permit must be acquired **prior** to employment. The Labor Code states: "Any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor." Section 4, Rule XIV, Book I of the Implementing Rules and Regulations provides:
>
> > "*Employment permit required for entry.* – No alien seeking employment, whether as a resident or non-resident, may enter the Philippines without first securing an employment permit from the Ministry. If an alien enters the country under a non-working visa and wishes to be employed thereafter, he may be allowed to be employed upon presentation of a duly approved employment permit."

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117 G.R. No. 169207, March 25, 2010, 616 SCRA 422.
118 Id. at 442-443.

> Galera cannot come to this Court with unclean hands. To grant Galera's prayer is to sanction the violation of the Philippine labor laws requiring aliens to secure work permits **before** their employment. We hold that the *status quo* must prevail in the present case and we leave the parties where they are. This ruling, however, does not bar Galera from seeking relief from other jurisdictions.[119] (Citations omitted and underscoring ours)

Clearly, this circumstance on the failure of McBurnie to obtain an employment permit, by itself, necessitates the dismissal of his labor complaint.

Furthermore, as has been previously discussed, the NLRC has ruled in its Decision dated November 17, 2009 on the issue of illegal dismissal. It declared that McBurnie was never an employee of any of the respondents.[120] It explained:

> **All these facts and circumstances prove that [McBurnie] was never an employee of Eulalio Ganzon or the [respondent] companies, but a potential investor in a project with a group including Eulalio Ganzon and Martinez but said project did not take off because of lack of funds.**
>
> [McBurnie] further claims that in conformity with the provision of the employment contract pertaining to the obligation of the [respondents] to provide housing, [respondents] assigned him Condo Unit # 812 of the Makati Cinema Square Condominium owned by the [respondents]. He was also allowed to use a Hyundai car. If it were true that the contract of employment was for working visa purposes only, why did the [respondents] perform their obligations to him?
>
> There is no question that [respondents] assigned him Condo Unit # 812 of the MCS, but this was not free of charge. If it were true that it is part of the compensation package as employee, then [McBurnie] would not be obligated to pay anything, but clearly, he admitted in his letter that he had to pay all the expenses incurred in the apartment.
>
> Assuming for the sake of argument that the employment contract is valid between them, record shows that [McBurnie] worked from September 1, 1999 until he met an accident on the last week of October. During the period of employment, [the respondents] must have paid his salaries in the sum of US$26,000.00, more or less.

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119 Id.

120 *Rollo* (G.R. Nos. 186984-85), p. 652.

> However, [McBurnie] failed to present a single evidence that [the respondents] paid his salaries like payslip, check or cash vouchers duly signed by him or any document showing proof of receipt of his compensation from [the respondents] or activity in furtherance of the employment contract.
>
> Granting again that there was a valid contract of employment, it is undisputed that on November 1, 1999, [McBurnie] left for Australia and never came back. x x x.[121] (Emphasis supplied)

Although the NLRC's Decision dated November 17, 2009 was set aside in a Decision dated January 14, 2010, the Court's resolve to now reconsider its Decision dated September 18, 2009 and to affirm the CA's Decision and Resolution in the respondents' favor effectively restores the NLRC's basis for rendering the Decision dated November 17, 2009.

More importantly, the NLRC's findings on the contractual relations between McBurnie and the respondents are supported by the records.

First, before a case for illegal dismissal can prosper, an employer-employee relationship must first be established.[122] Although an employment agreement forms part of the case records, respondent Ganzon signed it with the notation "per my note."[123] The respondents have sufficiently explained that the note refers to the letter[124] dated May 11, 1999 which embodied certain conditions for the employment's effectivity. As we have previously explained, however, the said conditions, particularly on the successful completion of the project financing for the hotel project in Baguio City and McBurnie's acquisition of an Alien Employment Permit, failed to materialize. Such defense of the respondents, which was duly considered by the NLRC in its Decision dated November 17, 2009, was not sufficiently rebutted by McBurnie.

Second, McBurnie failed to present any employment permit which would have authorized him to obtain employment in the Philippines. This circumstance negates McBurnie's claim that he had been performing work for the respondents by virtue of an employer-employee relationship. The absence of the employment permit instead bolsters the claim that the supposed employment of McBurnie was merely simulated, or did not ensue due to the non-fulfillment of the conditions that were set forth in the letter of May 11, 1999.

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121 Id. at 652-653.

122 *Lopez v. Bodega City* (*Video-Disco Kitchen of the Phils.*) *and/or Torres-Yap*, 558 Phil. 666, 674 (2007).

123 *Rollo* (G.R. Nos. 186984-85), p. 169.

124 Supra note 103.

Third, besides the employment agreement, McBurnie failed to present other competent evidence to prove his claim of an employer-employee relationship. Given the parties' conflicting claims on their true intention in executing the agreement, it was necessary to resort to the established criteria for the determination of an employer-employee relationship, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct.[125] The rule of thumb remains: the *onus probandi* falls on the claimant to establish or substantiate the claim by the requisite quantum of evidence. Whoever claims entitlement to the benefits provided by law should establish his or her right thereto.[126] McBurnie failed in this regard. As previously observed by the NLRC, McBurnie even failed to show through any document such as payslips or vouchers that his salaries during the time that he allegedly worked for the respondents were paid by the company. In the absence of an employer-employee relationship between McBurnie and the respondents, McBurnie could not successfully claim that he was dismissed, much less illegally dismissed, by the latter. Even granting that there was such an employer-employee relationship, the records are barren of any document showing that its termination was by the respondents' dismissal of McBurnie.

Given these circumstances, it would be a circuitous exercise for the Court to remand the case to the NLRC, more so in the absence of any showing that the NLRC should now rule differently on the case's merits. In *Medline Management, Inc. v. Roslinda,*[127] the Court ruled that when there is enough basis on which the Court may render a proper evaluation of the merits of the case, the Court may dispense with the time-consuming procedure of remanding a case to a labor tribunal in order "to prevent delays in the disposition of the case," "to serve the ends of justice" and when a remand "would serve no purpose save to further delay its disposition contrary to the spirit of fair play."[128] In *Real v. Sangu Philippines, Inc.*,[129] we again ruled:

> With the foregoing, it is clear that the CA erred in affirming the decision of the NLRC which dismissed petitioner's complaint for lack of jurisdiction. In cases such as this, the Court normally remands the case to the NLRC and directs it to properly dispose of the case on the merits. "However, when there is enough basis on which a proper evaluation of the merits of petitioner's case may be had, the Court may dispense with the time-consuming procedure of remand in order to prevent further delays in the disposition of the case." "It is already an accepted rule of procedure for us to strive to settle the entire controversy in a single proceeding,

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125 *Javier v. Fly Ace Corporation*, G.R. No. 192558, February 15, 2012, 666 SCRA 382.
126 Id. at 397-398.
127 G.R. No. 168715, September 15, 2010, 630 SCRA 471.
128 Id. at 486.
129 G.R. No. 168757, January 19, 2011, 640 SCRA 67.

> leaving no root or branch to bear the seeds of litigation. If, based on the records, the pleadings, and other evidence, the dispute can be resolved by us, we will do so to serve the ends of justice instead of remanding the case to the lower court for further proceedings." x x x.[130] (Citations omitted)

It bears mentioning that although the Court resolves to grant the respondents' motion for reconsideration, the other grounds raised in the motion, especially as they pertain to insinuations on irregularities in the Court, deserve no merit for being founded on baseless conclusions. Furthermore, the Court finds it unnecessary to discuss the other grounds that are raised in the motion, considering the grounds that already justify the dismissal of McBurnie's complaint.

All these considered, the Court also affirms its Resolution dated September 4, 2012; accordingly, McBurnie's motion for reconsideration thereof is denied.

WHEREFORE, in light of the foregoing, the Court rules as follows:

(a) The motion for reconsideration filed on September 26, 2012 by petitioner Andrew James McBurnie is **DENIED;**

(b) The motion for reconsideration filed on March 27, 2012 by respondents Eulalio Ganzon, EGI-Managers, Inc. and E. Ganzon, Inc. is **GRANTED.**

(c) The Entry of Judgment issued in G.R. Nos. 186984-85 is **LIFTED**. This Court's Decision dated September 18, 2009 and Resolutions dated December 14, 2009 and January 25, 2012 are **SET ASIDE**. The Court of Appeals Decision dated October 27, 2008 and Resolution dated March 3, 2009 in CA-G.R. SP No. 90845 and CA-G.R. SP No. 95916 are **AFFIRMED WITH MODIFICATION**. In lieu of a remand of the case to the National Labor Relations Commission, the complaint for illegal dismissal filed by petitioner Andrew James McBurnie against respondents Eulalio Ganzon, EGI-Managers, Inc. and E. Ganzon, Inc. is **DISMISSED**.

Furthermore, on the matter of the filing and acceptance of motions to reduce appeal bond, as provided in Section 6, Rule VI of the 2011 NLRC Rules of Procedure, the Court hereby **RESOLVES** that **henceforth**, the following guidelines shall be observed:

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130 Id. at 89-90.

(a) The filing of a motion to reduce appeal bond shall be entertained by the NLRC subject to the following conditions: (1) there is meritorious ground; and (2) a bond in a reasonable amount is posted;

(b) For purposes of compliance with condition no. (2), a motion shall be accompanied by the posting of a **provisional cash or surety bond equivalent to ten percent (10%) of the monetary award** subject of the appeal, exclusive of damages and attorney's fees;

(c) Compliance with the foregoing conditions shall suffice to suspend the running of the 10-day reglementary period to perfect an appeal from the labor arbiter's decision to the NLRC;

(d) The NLRC retains its authority and duty to resolve the motion to reduce bond and determine the final amount of bond that shall be posted by the appellant, still in accordance with the standards of "meritorious grounds" and "reasonable amount"; and

(e) In the event that the NLRC denies the motion to reduce bond, or requires a bond that exceeds the amount of the provisional bond, the appellant shall be given a fresh period of ten (10) days from notice of the NLRC order within which to perfect the appeal by posting the required appeal bond.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

ANTONIO T. CARPIO
Associate Justice

C no part
PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

(On official leave)
MARIANO C. DEL CASTILLO
Associate Justice

(On official leave)
ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

No Part
ESTELA M. PERLAS-BERNABE
Associate Justice

(On official leave)
MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice