Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

UNITED COCONUT PLANTERS BANK, Petitioner,	**G.R. No. 209601**
- versus -	Present: PERALTA, *C.J.*, *Chairperson*, CAGUIOA, CARANDANG, ZALAMEDA, and GAERLAN, *JJ.*
SECRETARY OF JUSTICE, OFFICE OF THE CHIEF PROSECUTOR, TIRSO ANTIPORDA, JR. and GLORIA CARREON, Respondents.	Promulgated: JAN 12 2021

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DECISION

CAGUIOA, *J.*:

At the outset, the Court notes that the purported "point of law still undecided in our jurisprudence — *i.e.*, whether Section 144 of the Corporation Code, which provides penal sanctions for violations of 'any provision of this Code or its amendments not otherwise specifically penalized therein,' is applicable to violations under Section 31 of the same Code, which provides for a civil indemnity,"[1] as posited by petitioner, has, in fact, already been resolved by the Court in *Ient v. Tullett Prebon (Philippines), Inc.*[2] (*Ient*). In this connection, the Court also notes at the outset that *Batas Pambansa Blg.* 68, otherwise known as "The Corporation Code of the Philippines," has been repealed by Republic Act No. 11232[3] otherwise known as the "Revised Corporation Code of the Philippines."

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1 *Rollo*, Vol. I, p. 12.

2 G.R. Nos. 189158 and 189530, January 11, 2017, 814 SCRA 184. Rendered by the First Division; penned by Associate Justice Teresita J. Leonardo-De Castro, and concurred in by Chief Justice Maria Lourdes P. A. Sereno and Associate Justices Mariano C. Del Castillo, Francis H. Jardeleza and Alfredo Benjamin S. Caguioa.

3 AN ACT PROVIDING FOR THE REVISED CORPORATION CODE OF THE PHILIPPINES. Approved on February 20, 2019; took effect on February 23, 2019 upon completion of its publication in Manila Bulletin and the Business Mirror on February 23, 2019, see <http://www.sec.gov.ph/wp-content/uploads/2019/11/2019Legislation_RevisedCorporationCodeEffectivity.pdf>.

Before the Court is a Petition for Review on *Certiorari*[4] (Petition) under Rule 45 of the Rules of Court filed by petitioner United Coconut Planters Bank (UCPB) assailing the Decision[5] dated May 24, 2013 and the Resolution[6] dated October 17, 2013 of the Court of Appeals[7] (CA) in CA-G.R. S.P. No. 114184.[8] The CA Decision dismissed the Rule 65 petition for *certiorari* filed by UCPB and affirmed the Resolutions dated July 30, 2008 and March 1, 2010 of the Department of Justice (DOJ) Secretary while the CA Resolution denied the motion for partial reconsideration filed by UCPB.

The Facts and Antecedent Proceedings

The CA Decision narrates the factual antecedents as follows:

> x x x [UCPB], through its Legal Services Division Head, x x x Jose A. Barcelon, filed the Complaint-Affidavit dated 23 July 2007, for violation of Section 31 in relation to Section 144 of the Corporation Code against private respondents [Tirso Antiporda Jr. (Antiporda) and Gloria Carreon (Carreon)], docketed as I.S. No. 2007-633, before the [DOJ].
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> The Complaint-Affidavit alleged: [Antiporda and Carreon] were [UCPB's] former Chairman and Chief Executive Officer ("CEO"), and former President and Chief Operating Officer ("COO"), respectively; UCPB Capital, Inc. ("UCAP"), a wholly owned subsidiary of [UCPB], was engaged in trading, underwriting of securities and syndication of loans from 1996 to 1998; sometime in 1998, [Antiporda and Carreon] authorized the payment of bonuses, to some of [UCPB's] corporate officers and directors, for this purpose, 50 manager's checks amounting to Php 117,872,269.43 were released from 6 April to 31 July 1998; on 27 February 1998, due to substantial losses, [UCPB's] Board of Directors resolved to shorten the corporate existence of UCAP effective 31 March 1998 and approved the takeover, purchase of assets and assumption of liabilities of UCAP by [UCPB]; when UCAP was absorbed by [UCPB], it had liabilities in the amount of Php 4.4 Billion; notwithstanding, [Antiporda's and Carreon's] knowledge of UCAP's losses, they declared bonuses in 1998 in bad faith, with gross negligence and in violation of [UCPB's] by-laws which requires a board authority prior to declaration of bonuses; thus, [Antiporda and Carreon] are liable under Section 31 of the Corporation Code which provides for the liability of directors or officers who conduct the affairs of a corporation in bad faith; and, [Antiporda and Carreon] are criminally liable under Section 144 which provides for penalties for violations of the Corporation Code.
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> [Antiporda] filed [a] Counter-Affidavit and alleged: his actions as Chairman and CEO were not done in bad faith as he was merely guided by [UCPB's] audited Financial Statements, by-laws and policies; [UCPB's] by-laws provided that 10% of [UCPB's] net profit is allot[t]ed as bonuses to its directors and officers, and, what is subject to Board approval is only the manner by which [UCPB's] President distributes the 4% of the net

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4 *Rollo*, Vol. I, pp. 12-48, excluding Annexes.

5 Id. at 50-70. Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Francisco P. Acosta and Socorro B. Inting concurring.

6 Id. at 72-73.

7 Special Thirteenth Division and Former Special Thirteenth Division, respectively.

8 Also CA-G.R. SP No. 114184 in some parts of the *rollo*.

profit to other officers; it had been the practice of [UCPB] to pay bonuses without a board resolution; the [Bangko Sentral ng Pilipinas (BSP)] examiners never questioned the absence of a board resolution in [UCPB's] previous grant of bonuses; there was factual and legal basis in the payment of bonus since [UCPB's] financial statements in 1997 showed a consolidated net income of Php 2.115 billion; there was no evidence of [UCPB's] losses amounting to Php 4.4 billion; the Php 4.4 billion losses referred by [UCPB] was due to depreciation in the market values of the foreclosed real properties in 1998, thus, it is appropriate to charge these losses to years 1999 to 2003; while UCAP suffered a loss in 1997, other subsidiaries and affiliates of [UCPB] earned profits in excess of the Php 149 million loss incurred by UCAP, which formed the basis to declare bonuses in 1998; UCAP's loss of Php 149 million in 1997 is a mere fraction of the Php 2.115 billion earned by [UCPB], as the parent bank; and, the action had prescribed since the alleged violation was committed in April 1998 and more than 9 years passed when the complaint was filed in 2007.

Carreon filed [a] Counter-Affidavit and alleged: there was sufficient legal and factual justification for the grant of bonuses since (a) it was expressly authorized by [UCPB's] by-laws, (b) it was the long-established policy and practice of [UCPB], and (c) the financial condition of [UCPB] allowed the grant of the bonuses; the bonuses given in a fiscal year are based on the net profit of [UCPB] in the immediately preceding fiscal year, since [UCPB] had a net profit of Php 2.115 billion in 1997, there was a basis of bonus in 1998; the allegation of substantial losses was contradicted by the audited financial statements of [UCPB] for 1997 and 1998; the financial statements showing [UCPB's] losses were only released subsequent to her tenure with [UCPB]; there is no evidence that UCAP incurred losses of Php 4.4 billion in 1997; assuming that there were losses, she could not have known, because both the internal auditors and the independent auditors did not attest to the losses; she was not involved in the approval or distribution of bonuses since her participation was limited in evaluating the officers' performance; for the period covering her stay from 1993 to 1998, [UCPB's] internal and external auditors, and the examiners of BSP never questioned the grant and distribution of the bonuses, notwithstanding, the lack of a board resolution authorizing its grant; the presumption of regular performance of duties (Section 3[p] and 3[q], Rule 131 of the Revised Rules of Evidence) should operate in her favor; and, the action had prescribed.

[UCPB] filed [a] Consolidated Reply-Affidavit and alleged: the release of the bonuses was surreptitious since there was no board approval as certified by the Certification dated 9 January 2007; [Antiporda and Carreon] were aware of [UCPB's] losses since they participated in the board meeting where UCAP's financial problems were discussed, particularly, the Php 4 billion worth of UCAP's liabilities; [Antiporda] admitted in his counter-affidavit that he had knowledge of [UCPB's] losses; as high-ranking officers of [UCPB, Antiporda and Carreon] cannot just rely on the findings of a subordinate controller; x x x Carreon's argument that her participation was limited, was negated by the demands and the seniority of her position and the bonuses will not be released without [Antiporda's and Carreon's] authorization; while the 10% bonus is specifically authorized by [UCPB's] by-laws, the manner and the procedure of the grant of the bonus[es] require the approval of the board of directors; the action had not prescribed since the reckoning period is not

the commission of the violation but from discovery and institution of judicial proceedings, since, the issuance of bonuses was concealed from [UCPB]; and, prescription should only run upon the discovery of the unauthorized payment of bonuses through the special audit report of KPMG [o]n 30 June 2003.

[Antiporda] filed [a] Rejoinder Affidavit and alleged: [UCPB] did not refute that the grant and release of the bonuses without a board resolution was a long-standing practice; [UCPB] did not deny that it is the profits of [UCPB], as the parent bank, which were considered in granting the bonuses; thus, the Php 2.115 billion profits of [UCPB] were sufficient basis for the bonus; [UCPB's] financial statements showed that its losses through its assumption of liabilities from UCAP only amounted to Php 140.860 million not Php 4.4 billion, since the Php 4.430 billion loss did not appear in [UCPB's] audited financial statements in 1997 and 1998, it is logical to assume that the losses did not exist at such time; the cumulative losses acquired through several years could not affect the granting of the bonus in 1998 since the bonus in question was solely dependent on the net profits in 1997; prescription must be based on the commission of the alleged offense not on the discovery, since the grant of the bonus was publicly-known; the checks for the bonuses were signed by the controller and were cleared by the auditor and distributed to [UCPB's] directors and officers, thus, as early as 1998, [UCPB] had full knowledge of the facts of the alleged offense; and, the alleged discovery of the offense on 30 June 2003, through the KPMG report, was unsubstantiated.

Carreon filed [a] Rejoinder Affidavit and alleged that the offense had prescribed since the grant of the bonus could have been discovered since all the pertinent records would have been available to [UCPB] in October 1998.

[UCPB] and [Antiporda] filed their respective Memoranda.

On 8 April 2008, the DOJ Task Force On Bank Fraud Cases issued the Resolution, finding probable cause against [Antiporda and Carreon] for violation of Section 31 in relation to Section 144 of the Corporation Code. It held: the action was not barred by prescription since [UCPB's] management discovered the unauthorized payment of bonuses only through the special audit report of KPMG on 30 June 2003; a board resolution is required before the grant of bonus as indicated in [UCPB's] by-laws; and, arguments raised by [Antiporda and Carreon] are matters of defense which they will have to present during trial.

The corresponding Information was filed, docketed as Criminal Case No. 08-1106 before the Regional Trial Court ("RTC"), Makati.

[Antiporda] filed the Petition for Review before the DOJ Secretary seeking to set aside the Resolution dated 8 April 2008, and praying the Information in Criminal Case No. 08-1106, be withdrawn. It alleged: [UCPB] did not submit the KPMG special audit report as evidence; the Investigating Prosecutor erred in disregarding the long standing practice of the bank in granting bonuses based on [UCPB's] profits and without a board resolution; the practice of granting bonuses without a board resolution was never questioned through the years, and was ratified by [UCPB's] Board of directors; the BSP examiners did not cite the absence of a board resolution authorizing the annual payment of bonuses as an audit exception; he acted in good faith in relying on [UCPB's] practice

> that no board resolution is necessary; there was no finding that his acts indicated bad faith or gross negligence, which is not presumed; there was no finding as to the presence of any of the elements penalized under Section 31 of the Corporation Code; it was unfair that [Antiporda and Carreon] were the only officers charged by [UCPB]; and [UCPB's] business is a heavily regulated industry and whose operations were documented, thus, the discovery rule should not be applied.
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> In the assailed 30 July 2008 Resolution, the DOJ Secretary ruled Section 144 was not applicable to violations of Section 31 of the Corporation Code, and the action against [Antiporda and Carreon] had prescribed. It held: the penalties in Section 144 of the Corporation Code apply, only when the other provisions of the Corporation Code, do not provide penalties; since Section 31 provides for the remedy of civil action for damages, Section 144 does not apply anymore; the act of "gross negligence and bad faith in directing the affairs of the corporation" can be committed only by the directors and trustees of the corporation, thus, consistent with the principle of strict construction of penal laws, [Antiporda and Carreon] as [UCPB's] officers, are not liable; the action has prescribed since the alleged violation, which was committed by the payment of the bonus in early 1998, occurred more than 9 years ago; the allegation that the grant of the bonuses was only discovered through the KPMG audit report was unsubstantiated; the granting of the bonuses was made in public, thus, as early as 1998, [UCPB] had full knowledge of the offense and there was no need for the KPMG audit report; and, the findings of the DOJ Secretary were equally applicable to Carreon although she failed to appeal.
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> The 30 July 2008 DOJ Secretary Resolution set aside the DOJ Task Force On Bank Fraud Cases Resolution of 8 April 2008, and directed the Office of the Chief State Prosecutor to withdraw the Information in Criminal Case No. 08-1106.
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> [UCPB] filed the Motion for Reconsideration. [Antiporda and Carreon] separately filed their Oppositions to [UCPB's] Motion for Reconsideration. [UCPB] filed [a] Consolidated-Reply (To Respondents-Appellants' Oppositions). However, the DOJ Secretary denied the Motion for Reconsideration in the assailed Resolution of 1 March 2010.
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> Thus, [UCPB filed a Rule 65] Petition for Certiorari [before the CA].[9]

Ruling of the CA

The CA, in its Decision[10] of May 24, 2013, dismissed the Rule 65 *certiorari* petition of UCPB. With the CA holding that Section 31 of the Corporation Code was clear and categorical, there was therefore no room for construction or interpretation, but only for application.[11] The CA observed that there would be no basis to subject directors, trustees, or corporate officers liable under Section 31 to the penalties under Section 144 of the Corporation Case because Section 31 itself provides for the proper remedy,

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9 *Rollo*, Vol. I, pp. 51-58.
10 Supra note 5.
11 Id. at 65-66.

which is civil sanction for damages rather than criminal sanction under Section 144.[12] According to the CA, by providing the remedy of damages, the legislative intent is clear that Section 31 violations are excluded from the application of Section 144; and to apply Section 144 to acts committed under Section 31 would unduly extend its application to situations not intended by the legislature and would also violate the principle of strict construction of penal laws.[13]

The CA also ruled that Antiporda and Carreon, as members of UCPB's Board of Directors, could be held liable for violating Section 31 of the Corporation Code because Antiporda was sued in his capacity as UCPB's Chairman of the Board while Carreon was sued in her capacity as Director, which were their designations at the time of the alleged Section 31 violation.[14]

Further, the CA ruled that the action for violation of Section 31 of the Corporation Code had prescribed.[15] The CA disagreed with the DOJ Secretary in applying the provisions of Act No. 3326,[16] specifically Section 1[17] on the issue of prescription.[18] The CA applied Article 1146[19] of the Civil Code because Section 31 only provides for payment of damages as penalty to erring directors and not fine and/or imprisonment.[20] Counting four years from the commission of the offense in 1998, and not from the KPMG special audit report in 2003, which does not pertain to the financial losses suffered by UCPB at the time of the approval of the bonuses in 1998 and does not support UCPB's allegation that it was only in 2003 when it could have discovered the offense committed by Antiporda and Carreon, the action had prescribed in 2002.[21] Thus, when the Complaint-Affidavit of UCPB was filed on July 23, 2007, the action had already prescribed.[22] Also, the discovery rule was inapplicable given that the approval and grant of the questioned bonuses were widely and publicly known and that UCPB belongs

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12 Id. at 66.

13 Id.

14 Id.

15 Id.

16 AN ACT TO ESTABLISH PERIODS OF PRESCRIPTION FOR VIOLATIONS PENALIZED BY SPECIAL ACTS AND MUNICIPAL ORDINANCES AND TO PROVIDE WHEN PRESCRIPTION SHALL BEGIN TO RUN, December 4, 1926.

17 SECTION 1. Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (*a*) after a year for offenses punished only by a fine or by imprisonment for not more than one month, or both; (*b*) after four years for those punished by imprisonment for more than one month, but less than two years; (*c*) after eight years for those punished by imprisonment for two years or more, but less than six years; and (*d*) after twelve years for any other offense punished by imprisonment for six years or more, except the crime of treason, which shall prescribe in twenty years. Violations penalized by municipal ordinances shall prescribe after two months.

18 *Rollo*, Vol. 1, p. 66.

19 Article 1146 of the Civil Code provides:

ART. 1146. The following actions must be instituted within four years:

(1) Upon an injury to the rights of the plaintiff;

(2) Upon a quasi-delict;

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20 *Rollo*, Vol. 1, p. 67.

21 Id. at 67-68.

22 Id. at 67.

to the heavily-regulated banking industry whose transactions are documented and audited by the BSP on a regular basis.[23]

Finally, the CA ruled that the DOJ Secretary did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when he dismissed UCPB's complaint and ordered the withdrawal of the Information.[24]

The dispositive portion of the CA Decision states:

> **WHEREFORE**, the Petition For Certiorari is **DISMISSED**. The Resolution dated 30 July 2008, and the Resolution dated 1 March 2010, are **AFFIRMED**.
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> **SO ORDERED.**[25]

Not satisfied, UCPB filed a Motion for Partial Reconsideration,[26] which the CA denied in its Resolution[27] dated October 17, 2013.

Hence, the present UCPB's Rule 45 *certiorari* Petition dated December 13, 2013. Antiporda filed his Comment[28] dated March 18, 2014. Carreon filed her Comment[29] dated March 19, 2014. UCPB filed its Consolidated Reply[30] dated June 5, 2014. Antiporda filed his Memorandum[31] dated April 13, 2015, while Carreon filed her Memorandum[32] dated April 23, 2015. UCPB filed its Memorandum[33] dated May 11, 2015.

The Issues

The Petition raises two issues:

(1) whether the CA erred in ruling that Section 144 of the Corporation Code does not apply to Section 31 thereof; and

(2) whether the CA erred in ruling that the action based on Section 31 of the Corporation Code had prescribed.

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23 Id. at 68.
24 Id. at 68-69.
25 Id. at 69.
26 Id. at 74-90.
27 Supra note 6.
28 *Rollo*, Vol. II, pp. 779-806.
29 Id. at 652-682, excluding Annexes.
30 Id. at 892-931.
31 Id. at 987-1033.
32 Id. at 1034-1077.
33 Id. at 1090-1151.

The Ruling of the Court

The present case calls for the application of Sections 31 and 144 of the Corporation Code. As noted at the outset, the Corporation Code has been repealed by the Revised Corporation Code (RCC), which became effective on February 23, 2019. Despite the passage of the later law, the former is to be applied in this case because the alleged violation committed by Antiporda and Carreon happened in 1998 while the Corporation Code was in effect.

Section 31 of the Corporation Code provides:

> SECTION 31. *Liability of Directors, Trustees or Officers.* – Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.
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> When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal on his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

The counterpart provision in the RCC is Section 30, which states:

> SEC. 30. *Liability of Directors, Trustees or Officers.* – Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.
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> A director, trustee or officer **shall not attempt** to acquire or **acquire** [ ] any interest adverse to the corporation in respect of any matter which has been reposed in **them** in confidence, **and upon which,** equity imposes a disability upon **themselves** to deal **in their** own behalf; **otherwise the said director, trustee or officer** shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.[34]

Section 144 of the Corporation Code, in turn, provides:

> SECTION 144. *Violations of the Code.* – Violations of any of the provisions of this Code or its amendments not otherwise specifically

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[34] Emphasis and [ ] provided to show the changes introduced in the RCC as compared to Section 31 of the Corporation Code.

> penalized therein shall be punished by a fine of not less than one thousand (P1,000.00) pesos but not more than ten thousand (P10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: *Provided*, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: *Provided, further*, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.

The counterpart provision in the RCC is Section 170, which states:

> SEC. 170. ***Other** Violations of the Code; **Separate Liability.*** – Violations of any of the **other** provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than **Ten** thousand **pesos** (P**10**,000.00) but not more than **One million pesos (P1,000,000.00)** [ ]. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the [ ] Commission: *Provided*, That such dissolution shall not preclude the institution of appropriate action against the director, trustee, or officer of the corporation responsible for said violation: *Provided, further*, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.
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> **Liability for any of the foregoing offenses shall be separate from any other administrative, civil, or criminal liability under this Code and other laws.**[35]

Proceeding to the first issue, UCPB argues that the civil sanction for damages under Section 31 of the Corporation Code is not the same as the imposition of penalty because damages refer to the sum of money that the law awards or imposes as pecuniary compensation, recompense or satisfaction for an injury done or a wrong sustained as a consequence of a breach of a contractual obligation, a tortious act or an illegal act while a penalty is the suffering inflicted by the State for the transgression of a law.[36] Citing *Ramos v. Gonong*,[37] UCPB posits that civil liability is not part of the penalty of the crime committed and when it is imposed for the commission of crimes, it is neither part of, nor intended to be merged into, the punishment of the crime.[38]

UCPB further argues that since Section 31 of the Corporation Code refers to "all damages x x x suffered by the corporation" and considering that civil liability is not a penalty for the commission of a crime, the violation of Section 31 is not, by the words used in Section 144 of the

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35 Emphasis and [ ] provided to show the changes introduced in the RCC as compared to Section 144 of the Corporation Code.

36 *Rollo*, Vol. I, p. 27. Citations omitted.

37 No. L-42010, August 31, 1976, 72 SCRA 559.

38 *Rollo*, Vol. I, pp. 27-28.

Corporation Code, "specifically penalized therein."[39] UCPB thus concludes that Section 144 should apply.[40]

Moreover, UCPB cites the Decision of the Special Third Division of the CA in *Ient v. Gonzalez and Tullett Prebon*,[41] wherein the DOJ Secretary's directive to file an Information against corporate directors and officers for violation of Sections 31 and 34[42] in relation to Section 144 of the Corporation Code was upheld.[43]

UCPB's arguments are not persuasive enough for the Court to overturn or abandon its ruling in *Ient*.[44]

As mentioned at the outset, the Court has already ruled in *Ient* on the issue of the applicability of Section 144 to Section 31 of the Corporation Code. The Court, applying the rule of lenity,[45] ruled in *Ient* that any violation of Section 31 of the Corporation Code was not considered as a violation of any provision of such Code not otherwise specifically penalized therein pursuant to Section 144. In other words, Section 144 did not apply to or include in its coverage Section 31 of the Corporation Code. The Court justified its ruling in *Ient*, as follows:

> After a meticulous consideration of the arguments presented by both sides, the Court comes to the conclusion that there is a textual ambiguity in Section 144; moreover, such ambiguity remains even after an examination of its legislative history and the use of other aids to statutory construction, necessitating the application of the rule of lenity in the case at bar.
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> There is no provision in the Corporation Code using similarly emphatic language[46] that evinces a categorical legislative intent to treat as a criminal offense each and every violation of that law. Consequently, there is no compelling reason for the Court to construe Section 144 as

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39 Id.

40 Id.

41 CA-G.R. SP No. 109094, August 12, 2009.

42 SECTION 34. *Disloyalty of a Director*. – Where a director, by virtue of his office, acquires for himself a business opportunity which should belong to the corporation, thereby obtaining profits to the prejudice of such corporation, he must account to the latter for all such profits by refunding the same, unless his act has been ratified by a vote of the stockholders owning or representing at least two-thirds (2/3) of the outstanding capital stock. This provision shall be applicable, notwithstanding the fact that the director risked his own funds in the venture.
Section 33 of the RCC is the counterpart provision of Section 34 of the Corporation Code.

43 *Rollo*, Vol. I, p. 32.

44 Supra note 2. The CA, Special Third Division, Decision in CA-G.R. SP No. 109094 was assailed in G.R. Nos. 189158 and 189530.

45 In American jurisprudence, the following are the two schools of thought regarding the application of the rule of lenity — a textually ambiguous penal statute being given more lenient interpretation in favor of a criminal defendant: (1) the rule is to be applied *after* resort to the language and structure, legislative history and motivating policies of the statute; and (2) the existence of textual ambiguity in the penal statute is sufficient for the rule's application. *Ient v. Tullett Prebon (Philippines), Inc.*, supra note 2, at 211-212, citing *United States v. R.L.C.*, 503 U.S. 291, 305-308 (1992).

46 Referring to Section 45 on Election Offenses, which include: "j) Violation of any of the provisions of this Act" or the Voter's Registration Act, and Section 46 on Penalties of Republic Act No. 8189.

similarly employing the term "penalized" or "penalty" solely in terms of criminal liability.

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x x x We agree with petitioners that the lack of specific language imposing criminal liability in Sections 31 and 34 shows legislative intent to limit the consequences of their violation to the civil liabilities mentioned therein. Had it been the intention of the drafters of the law to define Sections 31 and 34 as offenses, they could have easily included similar language as that found in Section 74.[47]

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x x x Sections 31 to 34 were introduced into the Corporation Code to define what acts are covered, as well as the consequences of such acts or omissions amounting to a failure to fulfill a director's or corporate officer's fiduciary duties to the corporation. A closer look at the subsequent deliberations on [Cabinet Bill (C.B.)] No. 3 [(the bill that was enacted into the Corporation Code)], particularly in relation to Sections 31 and 34, would show that the discussions focused on the civil liabilities or consequences prescribed in said provisions themselves. x x x

x x x x

Verily, in the instances that Sections 31 and 34 were taken up on the floor, legislators did not veer away from the civil consequences as stated within the four corners of these provisions. Contrasted with the interpellations on Section 74 (regarding the right to inspect the corporate records), the discussions on said provision leave no doubt that legislators intended both civil and penal liabilities to attach to corporate officers who violate the same x x x.

x x x x

Quite apart that no legislative intent to criminalize Sections 31 and 34 was manifested in the deliberations on the Corporation Code, it is noteworthy from the same deliberations that legislators intended to codify the common law concepts of corporate opportunity and fiduciary obligations of corporate officers as found in American jurisprudence into said provisions. In common law, the remedies available in the event of a breach of director's fiduciary duties to the corporation are civil remedies. If a director or officer is found to have breached his duty of loyalty, an

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47 SECTION 74. *Books to be Kept; Stock Transfer Agent.* – x x x

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Any officer or agent of the corporation who shall refuse to allow any director, trustee, stockholder or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code x x x.

x x x x

Section 73 of the RCC is the counterpart provision of Section 174 of the Corporation Code. The offense mentioned in Section 73 is now punishable under Section 161 (Violation of Duty to Maintain Records, to Allow their Inspection, or Reproduction) of the RCC, which imposes a fine ranging from ₱10,000.00 to ₱200,000.00, at the discretion of the court, taking into consideration the seriousness of the violation and its implications, and a fine ranging from ₱20,000.00 to ₱400,000.00 when the violation is injurious or detrimental to the public.

> injunction may be issued or damages may be awarded. A corporate officer guilty of fraud or mismanagement may be held liable for lost profits. A disloyal agent may also suffer forfeiture of his compensation. There is nothing in the deliberations to indicate that drafters of the Corporation Code intended to deviate from common law practice and enforce the fiduciary obligations of directors and corporate officers through penal sanction aside from civil liability. On the contrary, there appears to be a concern among the drafters of the Corporation Code that even the imposition of the civil sanctions under Sections 31 and 34 might discourage competent persons from serving as directors in corporations.
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> The Corporation Code was intended as a regulatory measure, not primarily as a penal statute. Sections 31 [and] 34 in particular were intended to impose exacting standards of fidelity on corporate officers and directors but without unduly impeding them in the discharge of their work with concerns of litigation. Considering the object and policy of the Corporation Code to encourage the use of the corporate entity as a vehicle for economic growth, we cannot espouse a strict construction of Sections 31 and 34 as penal offenses in relation to Section 144 in the absence of unambiguous statutory language and legislative intent to that effect.
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> When Congress intends to criminalize certain acts it does so in plain, categorical language, otherwise such a statute would be susceptible to constitutional attack. As earlier discussed, this can be readily seen from the text of Section 45(j) of Republic Act No. 8189 and Section 74 of the Corporation Code.
>
> We stress that had the Legislature intended to attach penal sanctions to Sections 31 and 34 of the Corporation Code it could have expressly stated such intent in the same manner that it did for Section 74 of the same Code.[48]

In view of the foregoing, the Court finds that the CA did not err in ruling that Section 144 of the Corporation Code did not cover or apply to Section 31 of the same Code.

With the passage of the RCC, will the Court arrive at the same ruling on the first issue as it did in *Ient* using the same legal framework? The answer will depend upon the factual milieu of the proceeding before the Court wherein the issue on the coverage or applicability of Section 170 to Section 30 of the RCC will be resolved. However, it must be noted, that under the RCC, there is now a provision on administrative sanctions that the Securities and Exchange Commission (Commission) can impose if, after due notice and hearing, it finds that any provision of the RCC has been violated, *viz.*:

> SEC. 158. *Administrative Sanctions.* – If, after due notice and hearing, the Commission finds that any provision of this Code, rules or regulations, or any of the Commission's orders has been violated, the Commission may impose any or all of the following sanctions, taking into

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[48] *Ient v. Tullett Prebon (Philippines), Inc.*, supra note 2, at 212-233. Citations omitted.

consideration the extent of participation, nature, effects, frequency and seriousness of the violation:

(a) Imposition of a fine ranging from Five thousand pesos (P5,000.00) to Two million pesos (P2,000,000.00), and not more than One thousand pesos (P1,000.00) for each day of continuing violation but in no case to exceed Two million pesos (P2,000,000.00);

(b) Issuance of a permanent cease and desist order;

(c) Suspension or revocation of the certificate of incorporation; and

(d) Dissolution of the corporation and forfeiture of its assets under the conditions in Title XIV of this Code.

The Court notes that the wording of the RCC reinforces the Court's interpretation that a violation of Section 31 of the Corporation Code, now Section 30 of the RCC, is not covered by Section 144 of the Corporation Code, now Section 170 of the RCC. While Section 170 of the RCC now clarifies that the said Section applies to "*Other Violations of the Code*" or "[v]iolations of any of the other provisions of this Code or its amendments not otherwise specifically penalized therein" and provides for "*Separate Liability*" to the effect that "[l]iability for any of the foregoing offenses [or such violations] shall be separate from any other administrative, civil, or criminal liability under this Code and other laws," such language is still consistent with the violations contemplated under Section 144 of the Corporation Code — "[v]iolations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein," the operative phrase "not otherwise specifically penalized therein" being retained. Also, the civil liability provided under Section 31 of the Corporation Code — "liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons" and "liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation" — is phrased similarly in Section 30 of the RCC. In either Section, no administrative or criminal liability is provided. However, as stated earlier, under the RCC, there is now Section 158 on administrative sanctions, above quoted, that the Commission can impose if, after due notice and hearing, it finds that any provision of the RCC has been violated.

Thus, under the RCC, the Commission has now the authority to impose any or all of the foregoing sanctions in case "any provision of [the RCC,] rules or regulations, or any of the Commission's orders has been violated x x x, taking into consideration the extent of participation, nature, effects, frequency and seriousness of the violation."

As to the second issue, UCPB's argument is anchored on the applicability of Section 144 of the Corporation Code to Section 31.[49] Since

[49] *Rollo*, Vol. I, p. 35.

Section 144 provided as penalty imprisonment for not less than 30 days but not more than 5 years, then the period of prescription, according to UCPB, should be 8 years for violations penalized under special laws by imprisonment for 2 years or more, but less than 6 years pursuant to Act No. 3326.[50] Citing Section 2 of Act No. 3326, which provides that "[p]rescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment," UCPB posits that at the time of the commission of the alleged violation in 1998, there was no way that it could have taken action on the undue payment of bonuses because the recipients of the bonuses comprised the management of the bank with Antiporda and Carreon being the top two officers, and even when the bank changed administrations, *i.e.*, from the administration of Antiporda and Carreon to the next administration, there was no way the new administration could have taken action against Antiporda and Carreon until it had evidentiary basis, which came through only with the KPMG report of 2003.[51] To UCPB, the prescriptive period should have started to run only in 2003 when UCPB allegedly discovered the undue payment of bonuses from the KPMG report.[52]

The Court having already ruled on the first issue that Section 144 of the Corporation Code did not include violations of Section 31 as "[v]iolations of any provisions of [that] Code or its amendments not otherwise specifically penalize therein," wherein imprisonment for not less than 30 days but not more than 5 years was the imposable penalty, then Act No. 3326 is not the applicable law on prescription.

The liability of the erring director, trustee or officer under Section 31 of the Corporation Code being purely civil, *i.e.*, "all damages resulting [from its violation] suffered by the corporation, its stockholders or members and other persons," the Court holds that it is the Civil Code that is the controlling law. The Court thus agrees with the CA that it is Article 1146 of the Civil Code which determines the prescriptive period. It provides:

> ART. 1146. The following actions must be instituted within four years:
>
> (1) Upon an injury to the rights of the plaintiff;
>
> (2) Upon a quasi-delict. (n)

To recall, the questioned bonuses were paid through 50 manager's checks amounting to ₱117,872,269.43, which were released to the concerned UCPB corporate officers and directors from April 6 to July 31, 1998. The

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50 Id.
51 Id. at 36-38.
52 Id. at 38.

KPMG special audit report[53] was dated June 30, 2003. The Complaint-Affidavit of UCPB is dated July 23, 2007 and filed on even date with the DOJ.[54]

Even if the Court were to uphold UCPB's actual discovery theory, the action upon the injury to its right under Section 31 of the Corporation Code or the damages that it had suffered by virtue of the alleged unauthorized payment of bonuses had prescribed on July 1, 2007 or four years from June 30, 2003, the purported day of actual discovery by UCPB. This is pursuant to *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*,[55] where the Court held that Section 31 of the Administrative Code of 1987, which provides that "year" shall be understood to be twelve calendar months, governs the computation of periods, being the more recent law as compared to the Article 13 of the Civil Code, which provides that a year consists of 365 days. When UCPB thus filed its Complaint-Affidavit on July 23, 2007, the four years or 48 calendar months prescriptive period had already lapsed.

Under Article 1155 of the Civil Code, the prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor. The filing of the Complaint-Affidavit by UCPB with the DOJ did not interrupt the prescription of its action not only because this was beyond the 48 calendar months prescriptive period based on Section 31 of the Corporation Code, but also because it was not filed before the proper court and finally because the Complaint-Affidavit cannot even be deemed as an extrajudicial demand for damages given its prayer: "On the basis of the foregoing, [Antiporda and Carreon] should be held liable under *Section 31, in relation to Section 144 of the Corporation Code* for being guilty of gross bad faith/and/or gross negligence in directing the affairs of the corporation."[56] Put simply, UCPB did not make a claim for any damage in the Complaint-Affidavit it filed.

Regarding the KPMG special audit report, the Court cannot make a determination based on the "Executive Summary"[57] thereof, which UCPB attached to its Petition, that UCPB came to know of the payment of the questioned bonuses only on June 30, 2003. The "Executive Summary" merely mentions that UCPB "has been incurring net losses since 2000 x x x [and] its Audit Committee has recommended a special audit to determine the performance and accountabilities of the BOD and management, as appropriate, from 1986 to 2002;"[58] and the primary objective of the special

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53 Only the cover page of KPMG's UCPB Special Audit Report 30 June 2003, Final Draft for Discussion, showing the Executive Summary was attached as Annex "B" to UCPB's Motion for Reconsideration dated August 15, 2008 before the DOJ. *Rollo*, Vol. 1, p. 166.

54 *Rollo*, Vol. 1, pp. 167-175.

55 G.R. No. 162155, August 28, 2007, 531 SCRA 436.

56 *Rollo*, Vol. 1, p. 174.

57 Id. at 166; see note 52.

58 Id.

audit is: "to evaluate the performance and establish accountabilities of the BOD and management from 1986 to 2002."[59] The unauthorized payment of the bonuses was not even mentioned therein. Thus, the actual discovery theory of UCPB does not even appear to have a factual leg to stand on.

Given that there is no factual basis from which actual discovery of the payment of the questioned bonuses by UCPB, assuming the same to have been concealed by Antiporda and Carreon, can be based and that, according to the CA, said payment had been widely and publicly known given that UCPB belongs to the heavily-regulated banking industry whose transactions are documented and audited by the BSP on a regular basis, the filing of the action for damages based on Section 31 of the Corporation Code had already prescribed 48 calendar months or 4 years from July 31, 1998, the last release date of the 50 manager's checks, at the latest.

Parenthetically, if the second issue is to be resolved under the aegis of the RCC and assuming that Section 170 applies to Section 30 of the RCC, prosecution of any violation of Section 30 prescribes in a year or 12 calendar months pursuant to Section 1, Act No. 3326, given that the penalty of any Section 30 violation is fine only.

WHEREFORE, the Petition is hereby **DENIED**. The Decision dated May 24, 2013 and the Resolution dated October 17, 2013 of the Court of Appeals in CA-G.R. S.P. No. 114184 are **AFFIRMED**.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

[59] Id.

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

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

DIOSDADO M. PERALTA
Chief Justice