REPUBLIC OF THE PHILIPPINES
NATIONAL CAPITAL JUDICIAL REGION
REGIONAL TRIAL COURT
BRANCH 22, MANILA

PHILIPPINE INSTITUTE OF CIVIL ENGINEERS, INC., and LEO CLETO GAMOLO,

Petitioners,

- versus -

THE HONORABLE HERMOGENES EBDANE, JR. in his capacity as SECRETARY OF PUBLIC WORKS AND HIGHWAYS,

Respondent.

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UNITED ARCHITECTS OF THE PHILIPPINES,

Respondent-Intervenor

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CIVIL CASE NO. 05-112502
FOR: Declaratory Relief, Injunction With prayer for Writ of Preliminary Prohibition and/or Mandatory Injunction and Temporary Restraining Order

DECISION

(with initial PRBoA Anotations/ Comments as of 22 February 2008)

Before this court is a Petition for Declaratory Relief, Injunction with Prayer for a Writ of Preliminary Prohibition and/or Mandatory Injunction and Temporary Restraining Order filed by the Philippine Institute of Civil Engineers, Inc. (hereafter referred as PICE) and Leo Cleto Gamolo, seeking the nullity of the provisions of The Revised Implementing Rules and Regulations (hereafter referred to as IRR) of Presidential Decree 1096 (the National Building Code of the Philippines), particularly Section 302(3) in relation to Section 302(4) thereof, signed and promulgated on October 29, 2004, by respondent.

Petitioner PICE is a non-stock, non-profit corporation composed of civil engineers as members. As of date of filing of petition or on May 3, 2005, PICE has more than 60,100 members. There are more than 101,739 civil engineers registered with the Professional Regulation Commission (PRC), while petitioner Leo Cleto Gamolo, is its general counsel and is suing in his own personal capacity as a registered civil engineer.

Respondent Honorable Hermogenes E. Ebdane, Jr., is being sued in his official capacity as the then Incumbent Secretary of Public Works and Highways.

Intervenor United Architects of the Philippines (UAP) is a professional organization of architects. It is constituted under Republic Act No. 9266 (the Architecture Act of 2004) and its Implementing Rules and Regulations as the Integrated and Accredited Professional Organization of Architects(“IAPOA”).

II

Petitioner Gamolo and the members of PICE practice their profession as civil engineers under Republic Act No. 544, otherwise known as the “ Civil Engineering Law”. For several decades now, Building Officials accept and approve the plans prepared, signed/sealed by civil engineers or by architects as requirement for the issuance of building permit under Presidential Decree 1096.

otherwise known as the National Building Code and Ministry Order No. 57.

***PRBoA Anotation/ Comment**: The civil engineering (CE) law that is in effect is Republic Act (R.A.) No. 1582 of June 1956, not R.A. No. 544 of June 1950. These CE laws were passed at the same time as the old/ repealed architecture laws i.e. R.A. 545 of June 1950 and R.A. No. 1581 of June 1956.*

Of particular importance is R.A. No. 1582's Sec. 24 which clearly distinguishes the roles of the registered and licensed architect (RLA) and the registered and licensed civil engineer (CE).

On October 29, 2004, the then acting Secretary of Public Works and Highways, the Honorable Florante Soriquez, signed and promulgated The Revised Implementing Rules and Regulations of the National Building Code under which the civil engineers are no longer allowed to sign the architectural documents specified in Section 302(4); hence this action.

This petition for declaratory relief and injunction and temporary restraining order was filed on May 3, 2005. The Executive Judge, upon motion of petitioners, issued a seventy-two (72) hour Temporary Restraining Order. The petition dated April 28, 2005 was raffled to branch 17, of the Regional Trial Court of Manila, but the presiding judge thereof for valid reasons inhibited. The Case was re-raffled to this bench and after due hearing on the application for TRO, the Court extended the May 3, 2005 72-hour TRO to twenty (20) days.

In the hearing on the application for a writ of preliminary injunction on May 17, 2005, respondent, represented by the Office of the Solicitor General, filed an Opposition to the application for the writ of preliminary prohibition and/or mandatory injunction. It was agreed by the contending counsels, with the concurrence of the Court, that there being no factual issues involved and the main

issue being purely legal- the validity and constitutionality of subject IRR will be resolved solely on the basis of the pleadings. Three days or on May 20,2005, petitioners submitted to the court their Reply To Opposition and also a Manifestation informing the Court that another civil engineer Felipe Cruz filed a case involving the validity of the new IRR before Branch 219 of the Regional Trial Court of Quezon City, docketed as Case No. Q05-55243.

On May 24, 2005, the application for the issuance of a writ of preliminary injunction was granted, upon posting by the petitioners of an injunction bond in the amount of P100,000.00, enjoining, his agents and representatives and/or assigns from implementing and carrying out the questioned provisions of the subject IRR. Finding that the injunction bond was in order, the Court ordered the issuance of the aforesaid writ on June 1, 2005.

Respondent Secretary of Public Works and Highways filed an Answer on June 20, 2005. Three days later, respondent moved for the admission of a Department of Justice (DOJ) Opinion, which was inadvertently not attached to the Answer, which the Court granted. On the same day or on June 23, 2005, the legal counsel of the United Architects of the Philippines requested for photocopies of all pleadings, orders, and notices in the record of the case at bar.

On July 26, 2005, petitioners filed their Reply to the Answer. Upon motion

filed by petitioners on August 11, 2005, the Court set the Pre-Trials Conference on September 6, 2005. The parties respective Pre-Trial Briefs were received by the Court on September 2, 2005.

On September 14, 2005, a Motion for Leave to Intervene and Admit the Attached Answer/Comment in Intervention was filed by the United Architects of the Philippines (UAP). When the case was called for hearing on said motion, only counsel for the movant-intervenor was present. The Court gave petitioners five (5) days to file their Comment. On September 21, 2005, petitioners filed their Opposition to Motion for Leave to Intervene. Movant-Intervenor UAP filed their Motion to Admit Reply on October 7, 2005. The Court granted the motion for leave to intervene upon finding that "the movant has an interest on the matter of litigation which is of such direct and immediate character that it will either gain or lose by the direct legal operation and effect of the judgment sought in this case by the petitioner"

When the case was called for pre-trial on November 24, 2005, all counsels appeared and by agreement the pre-trial was set to January 10, 2006.

On December 16, 2005, movant-intervenor UAP filed an Urgent Motion to Lift and/or Dissolve Writ of Preliminary Injunction. The motion was called for hearing on December 20, 2005, where the Court required the petitioners to file

their written comment on the Motion to Lift and/or Dissolve Writ of Preliminary Injunction within fifteen (15) days, and movant to file their Reply, ten (10) days from receipt thereof.

On January 4, 2006, the petitioner filed a Motion for Reconsideration of the Order dated November 17, 2005 granting the intervention. On the following day, movant filed their Opposition to the said Motion including their Pre-Trial Brief.

On January 10, 2006, petitioners filed Reply *Ad Cautelam* to Answer/Comment in Intervention with Opposition *Ad Cautelam* to Urgent Motion to Lift and/or Dissolve Writ of Preliminary Injunction.

The contending parties agreed to submit the petition for resolution on the basis of their admissions and stipulations, and their respective memorandums.

III

The basic issue in this case is whether Section 302(3) and (4) of the Revised Implementing Rules and Regulations (IRR) of the National Building Code (P.D. 1096) are invalid and unconstitutional, as claimed by petitioners, for being contrary to the Civil Engineering Law (R.A. 544) and the National Building Code

(P.D. 1096) . Ancilliary to this are the issues on whether UAP has a right to intervene and the issue on whether there is forum shopping as claimed by the intervenor.

Before the main issue will be discussed, the Court will resolve the issue on the right of UAP to intervene. Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him to protect or preserve a right or interest which may be affected by such proceeding 6 [Manalo vs. Court of Appeals G.R. No. 141297, 08 October 2001, 366 SCRA 752, 76 (2001), citing First Philippine Holdings vs. Sandiganbayan, 253 SCRA 30 (1996) .]

Section 1, Rule 19 of the 1997 Rules of Civil Procedure, provides:

> " SECTION 1. *Who may Intervene,* --A person who has a legal interest in the matter in litigation, or in the success of either parties, or an interest against both or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding."

UAP sought intervention in this case asserting that they "have a legal interest in the matter of litigation and/or in the success of either parties,

considering that a resolution in favor of petitioners would adversely affect the architectural profession as governed by the Architecture Act of 2004". Petitioners on the other hand, contend that the case is about the practice of civil engineering because the assailed provisions restricts their practice and an intervention will unduly lengthen the case. The Court disagrees with the Petitioners. The Thrust of the petition is to invalidate provisions of the revised IRR that are beneficial to the practice of architecture. The present case also involves the interest of the architects and UAP's intervention will give this Court more insight on the issues involve in the interest of justice and fair play.

V

As to the main issue, the Court finds the petition devoid of merit.

Sections 302(3) and (4) of the Revised IRR provide :

" Section 302. APPLICATION FOR PERMITS

Xxx

3. Five (5) sets of survey plans, design plans, specifications and other documents prepared, signed and sealed over the printed names of the duly licensed and registered professionals (Fig. III.1 and III.2)

a. Geodetic Engineer, in case of lot survey plans;

b. Architect, in case of architectural documents, in case of architectural interior / interior design documents, either an architect or interior designer may sign;

c. Civil Engineer, in case of civil/structural documents.

d. Professional Electrical Engineer, in case of electrical documents;

e. Professional Mechanical Engineer, in case of Mechanical documents;

f. Sanitary Engineer, in case of sanitary documents;

g. Master Plumber, in case of plumbing documents;

h. Electronic Engineer, in case of electronic documents.

4. Architectural Documents

a. Architectural Plans/Drawings

i. Vicinity Map/Location Plan xxx

ii. Site Development Plan xxx

iii. Perspective xxx

iv. Floor Plans xxx

v. Elevations xxx

vi. Sections xxx

vii. Reflected Ceiling Plan xxx

viii. Details, in the form of plans, elevation/sections;

ix. Schedule of Doors and Windows xxx

x. Schedule of Finishes xxx

xi. Details of other major Architectural Elements.

b. Architectural Interior/Interior Design

i. Space Plan/s of layout of architectural interior/s.

ii. Architectural interior perspective/s.

iii. Furniture/furnishing/ equipment/process layout/s.

iv. Access plan/s, parking plans and the like.

v. Detail design of major architectural interior elements.

vi. Plan and layout of interior, wall, partitions, furnishing, furniture, equipment/appliances xxx.

vii. Interior wall elevations xxx

viii. Floor/ ceiling/wall patterns and finishing details.

ix. List of materials used.

x. Cost Estimates

c. Plans and specific locations of all accessibility facilities xxx.

d. detailed design of all such accessibility facilities xxx.

e. Fire Safety Documents.

Xxx

f. Other related documents, "[Emphasis supplied.]

Petitioners claim that the aforementioned sections of the Revised IRR "supplants" the National Building Code (P.D. 1096), and the Civil Engineering Law (R.A. 544).

Section 2. Article 1 of R.A. 544 defines the practice of civil engineering as:

"[SECTION 2.*Definition of terms*.] – (a) The practice of civil engineering within the meaning and intent of this Act shall embrace services in the form of consultation, design, preparation of plans, specifications, estimates, erection, installation and supervision of the construction of streets, bridges, highways, airports and hangars, portworks, canals, river and shore improvements, lighthouses, and dry docks; buildings, fixed structures for

irrigation, flood protection, drainage, water supply and sewage works; demolition of permanent structures; and tunnels. The enumeration of any work in this section shall not be construed as excluding any other work requiring civil engineering knowledge and application."[Emphasis supplied]

And Section 23, thereof on preparation of plans and supervision of construction by registered civil engineer provides that :

" It shall be unlawful for any person to order or otherwise cause the construction, reconstruction, or alteration of any building or structure intended for public gathering or assembly such as theaters, cinematographers, stadia, churches or structures mentioned in section two of this Act unless the designs, plans and specifications of the same have been prepared under the responsible charge of, and signed and sealed by a registered civil engineer, and unless the construction, reconstruction and/or alteration thereof are executed under the responsible charge and direct supervision of a civil engineer. Plans and designs of structures must be approved as provided by law or ordinance of a city or province or municipality where the said structure is to be construed." [Emphasis supplied.]

Under the foresaid law, petitioners claim that civil engineers have the right to prepare, sign and seal building plans including architectural documents that are required to be submitted in the issuance of building permits. Petitioners also based their claim on the last paragraph of Section 302 of Chapter 3 of the National Building Code which governs the application for building permits, relying mainly

on the version published by Atty. Vicente Foz in his textbook " The National Building Code of the Philippines and its Revised Implementing Rules and Regulations", 2005 edition, which contains the following:

" Sec. 302. *Application of Permits.* In order to obtain a building permit, the applicant shall file an application therefore in writing and on the prescribed form from the Office of the Building Official. Every application shall provide at least the following information:

(1) A description of the work to be covered by the permit applied for;
(2) Certified true copy of the TCT covering the lot on which the proposed work is to be done. If the applicant is not the registered owner, in addition to the TCT, a copy of the contract of least shall be submitted;
(3) The use or occupancy for which the proposal work is intended;
(4) Estimated cost of the proposed work.

To be submitted together with such application are at least five sets of corresponding plans and specifications prepared signed and sealed by a duly licensed architect or civil engineer in case of architectural and structural plans, mechanical engineer in case of mechanical plans, and by a registered electrical engineer in case of electrical plans, except in those cases exempted or not required by the Building Official under this Code." [Emphasis supplied.]

However, Section 302 of said law as appearing in the Official Gazette and as found in the Malacanang Records Office does not contain the above

emphasized phrase [licensed architect or civil engineer in case of architectural and structural plans]

" Sec. 302. *Application of Permits.* Xxx

Xxx

To be submitted together with such application are at least five sets of corresponding plans and specifications prepared, signed, and sealed by a duly [sic] mechanical engineer in the case of mechanical plans, and by a registered electrical engineer in cases of electrical plans, except in those cases exempted or not required by the Building Official under this Code." [Emphasis supplied]

Petitioners maintain that this right of civil engineers was supposed by Ministry Order No. 57 which was promulgated in 1976 pursuant to PD 1096. The National Building Code also provides that the Implementing Rules and Regulations of said law shall be promulgated by the Secretary of the Department (then Ministry) of Public Works and Highways (DPWH). Section 3.2 of said order provides:

" 3.2 Five (5) sets of plans and specifications prepared, signed and sealed

a) By a duly licensed architect or civil engineer, in case of architectural and structural plans;

b) by a duly licensed sanitary engineer or master plumber, in case of plumbing and sanitary installation plans;

c) by a duly licensed professional electrical engineer, in case of electrical plans;

d) by a duly licensed professional mechanical engineer, in case of mechanical plans.

xxx

3.2.1 Architectural Documents

a) Location plan xxx

b) Site Development and/or location plan xxx

c) Floor plans xxx

d) Elevations xxx

e) Sections xxx

f) Foundation Plan xxx

g) Floor-framing plan xxx

h) Roof-framing plan xxx

i) Details of footing/column xxx

j) Details of structural members xxx

[Emphasis supplied]

To reiterate, petitioners contend that under R.A. 544 and P.D. 1096, building plans prepared by civil engineers to be submitted to Building Officials as a requirement for building permit, were deemed acceptable. Likewise plans prepared by architects were also acceptable. With the promulgation of the Revised IRR on October 29, 2004, civil engineers like petitioner Gamolo and the members of petitioner association PICE can no longer sign the plans specified under Section

302 (4), and therefore no longer acceptable. Under the new IRR (Section 302[3] & [4]}, plans that were previously prepared and signed/sealed by Civil Engineers and/or Architects are to be signed exclusively by Architects. In other words, the new IRR restricts the practice of civil engineering by limiting the preparation of building plans under Section 302(4) only to architects.

Petitioners maintain that the new IRR, particularly Section 302(3) and (4) and related articles, is null and void, because it gives the architects the sole right to prepare, sign/seal the above mentioned plans to the exclusion of civil engineers, considering that administrative rules like the herein subject IRR cannot amend or vary the laws promulgated by legislature. Hence, they cannot be contrary to or inconsistent with the laws they seek to implement. Thus, the new IRR violate R.A. 544, because it, in effect, excludes what is included in the term practice of civil engineering under Article 1, Section 1(a) and 23 thereof (R.A. 544). They further contend that the new IRR should only implement P.D. 1096; it cannot supplant P.D. 1096. What the law allows cannot be prevented or prohibited by the rules to implement the same law.

In their Memorandum, petitioners further claim that Section 302 in relation to Section 308 of Chapter 3 of the National Building Code expressly recognized the rights of civil engineers to design buildings and consequently, and to prepare sign and seal building plans.

Section 308 of the National Building Code expressly provides that the design of the building can be made by civil engineers.

> " Section 308. Inspection and Supervision of Work. The owner of the building who is issued or granted a building permit under this Code shall engage the services of a duly licensed architect or civil engineer to undertake the full time inspection and supervision of the construction work.
>
> Such architect or civil engineer may or may not be the same architect or civil engineer who is responsible for the design of the building.
>
> It is understood however that in either case, the designing architect or civil is not precluded from conducting inspection of the construction work to check and determine compliance with the plans and specifications of the building as submitted.
>
> xxx"[Emphasis supplied.]

According to petitioners, the new IRR, if implemented, will arbitrarily deprived the civil engineers of their right to due process and equal protection of the law. Civil engineers will be barred from preparing, signing and sealing plans and specifications enumerated in Section 302(4) of the IRR, and thus deprived them of their right to practice part of their profession which they have been exercising for more than a century. In other words, the petitioners posit that the provisions of the IRR violate the due process clause of the Constitution and they constitute constraint of trade and of the profession of civil engineers.

The Court disagrees, Section 2 and 23, Article 1 of R.A. 544 do not state in clear and unequivocal language that civil engineers can prepare, sign and seal architectural documents. As the intervenor correctly pointed out, there is nothing in either the Civil Engineering Law or the Revised IRR that would indicate that the same "plans" enumerated under Section 302(4) of the Revised IRR are the plans mentioned in Section 2 and 23 of the Civil Engineering Law. Under the petitioners' interpretation of said Section 2 and 23, any plan remotely connected with the construction of a building is covered by the practice of civil engineering (UAP Reply Memorandum, page 2 and 3). This is absurd. Civil Engineers will also then be allowed to sign electrical, mechanical, sanitary etc. documents, which is beyond the scope of their practice and would constitute an overlapping of the different professions.

***PRBoA Anotation/ Comment**: Absurd indeed! The civil engineers (CEs) insist that they can prepare, sign and seal "building plans" but will not interfere with the practice of fellow engineers e.g. electrical, mechanical, sanitary, electronics and communications, etc. Instead they want to dabble in a totally alien profession such as architecture for which the CEs received no academic training whatsoever (not a single unit of architecture), no sub-professional preparation (no 2-year/ 3,840 hour architectural apprenticeship/ diversified architectural experience/ DAE), no licensure examination subjects on the architectural and space planning and design of buildings nor on the site planning of building environs, no architect's certificate and license, no integrated and accredited professional organization odf architects (IAPOA) certificate, no continuing professional education/ development (CPE/D) credits for architectural practice/ architectural specialization. Moreover, there is no official definition of the term "building plans" in the CE law (R.A. No. 1582, not 544) and more importantly, to date (or more than 58 years later), the CE law still does not have a set of implementing rules and regulations (IRR) that could amply define what they mean by the terms "building" or "building plans/ designs".*

Respondents stressed that petitioners neither have the authority to prepare, sign and seal architectural plans under the last paragraph of Section 302 of P.D. 1096. Under said law, the application for permits requires that the plans and specifications submitted should be prepared, signed and sealed by professionals specializing in their respective fields. As stated above, the official version of the National Building Code as published in the Official Gazette and as certified by the Malacanang Records Office, mentioned only two professionals, namely, mechanical and electrical engineers, while Atty. Vicente Foz' version mentions two additional professionals, "duly licensed architect or civil engineer in case of architectural and structural plans". The petitioners cannot validity invoke Section

302 of PD 1096 as the legal basis to justify the alleged authority of civil engineers to prepare, sign and seal architectural plans, said authority not having been expressly conferred under the official and correct version of the law. Neither may petitioners invoke Ministry Order No. 57, Implementing Rules and Regulations issued in 1976 since it is not supported by the very law it seeks to implement.

***PRBoA Anotation/ Comment**: The Court has affirmed that the civil engineers (CEs) have used the unofficial and incorrect (actually intercalated) version of Sec. 302 of P.D. No. 1096 (The 1977 National Building Code of the Philippines/ NBCP).*

What is important to also remember is that since Ministry Order No. 57 apparently does not say anything about CEs signing architectural documents, it has been likewise incorrectly used by the CEs in support of their 2005 application for temporary restraining order (TRO) and injunction filed before the Court.

The CEs and Atty. Foz may need to answer for their possible misrepresentation of the law. The registered and licensed architects (RLAs) must now take concrete steps to correct the Foz version of P.D. No. 1096 as sold over the counter at National Bookstore (NBS) branches nationwide.

Moreover, the Court agrees with the respondents, that the assailed provisions of the law are deemed to have been repealed or modified accordingly by RA 9266, particularly by Section 20(2) and (5), Article III, and Sections 25 and 29, Article IV, which read as follows:

> "SEC. 20. Seal, Issuance and Use of Seal. – A duly licensed architect shall affix The seal prescribed by the Board bearing the registrant's name, registration number And title "Architect" on all architectural plans, drawings, specifications and all Other contract documents prepared by or under his/her direct supervision.
>
> xxx
>
> (2) No officer or employee of this Republic, chartered cities, provinces and municipalities, now or hereafter charged with the enforcement of laws, alteration of buildings, shall accept or approve any architectural plans or specifications which have not been prepared and submitted in full accord with all the provisions of this Act: nor shall any payments be approved by any officer for any work, the plans and specifications for which have not been so prepared and signed and sealed by the author.

(5) All architectural plans, designs, specifications, drawings and architectural documents relative to the construction of a building shall bear the seal and signature only of an architect registered and licensed under this Act together with his/her professional identification card number and the date of its expiration. [Emphasis supplied]

xxx

ARTICLE IV.

Sec 25. *Registration of Architects Required.* – No person shall practice architecture in this country, or engage in preparing architectural plans, specifications or preliminary data for erection or alteration of any building located within the boundaries of this country or use the title " Architect, " or display the word " Architect " together with another word, display or use any title, sign card, advertisement, or other devise to indicate such person practices or offers to practice architecture, or is an architect, unless such person shall have received from the Board a Certificate of Registration and be issued a Professional Identification Card in the manner hereinafter provided and shall thereafter comply with the provision of this Act.

A foreign architect or any person not authorized to practice architecture in

the Philippines, who shall stay in the country and perform any of the activities mentioned in Section 3 and 4 of this Act, or any activity analogous thereto, in connection with the construction of any building/ structure/ edifice or land development project, shall be deemed engage in the unauthorized practice of architecture.

xxx

Sec. 29. *Prohibition in the Practice of Architecture and Penal Clause.*— Any person who shall practice architecture in the Philippines without being registered/licensed and who are not holders of temporary and special permits in accordance with the provisions of this Act, or any person presenting or attempting to use his/her own Certificate of Registration/ Professional Identification Card or seal of another or temporary or special permit, or any person who shall give any false or forged evidence of any kind to the Board or to any member thereof in obtaining a Certificate of Registration/ Professional Identification Card or temporary or special permit, or any person who shall falsely impersonate any registrant of like or different names, or any person who shall attempt to use a revoked or suspended Certificate of Registration/ Professional Identification Card or cancelled special/ temporary permit, or any person who shall use in connection with his/her name or otherwise assume, use or advertise any title or description tending to convey the impression that he/she is an architect when he/she is not an architect, or any person whether Filipino or foreigner, who knowingly allows the use, adoption, implementation of plans, designs or specifications made by any person, firm partnership or company not duly licensed to engage in the practice of architecture, or ant person who shall violate any of the provision of this Act, its implementing rules and regulations, the Code of Ethical Conduct and Standards of

Professional Practice, or any policy of the Board and the Commission, shall be guilty of misdemeanor and charged in court by the Commission and shall, upon conviction be sentenced to a fine of not less than One hundred thousand pesos (P100,000.00) but not more than Five million pesos (P5,000,000.00) or to suffer imprisonment for a period not less than six (6) months or not exceeding six (6) years, or both, at the discretion of the court."

The above-quoted provisions of RA 9266 are irreconcilably inconsistent and repugnant with the pertinent provisions of laws cited and invoked by petitioners, specifically R.A. 544 and P.D. 1096.

A repeal by implication, although frowned upon in this jurisdiction, nevertheless is allowed and recognized if it is manifest that the legislative authority so intended it, [Angat vs. Republic, 314 SCRA 438,447 (1999), citing Frivaldo vs. Comelec, 257 SCRA 727 (1996), Intia, Jr. vs. COA, 306 SCRA 593, 607-610 (1999)] or it is convincingly and unambiguously demonstrated that the subject laws or orders are clearly repugnant and patently inconsistent that they cannot co-exist.

In the case at bar, it can be deduced from the Explanatory Note and the Sponsorship Speech to the Bill and the contents of the law (R.A. 9266) itself that it was the legislature's intent to separate or delineate clearly the practice of civil engineering and the practice of architecture and avoid the overlapping of the functions of these professions.

The Explanatory Note of House Bill No. 334 filed by Rep. Neptali Gonzales II states the following :

" Republic Act No. 545, the law which governs the practice of architecture in the Phillipines was enacted more than four decades ago. Many events and developments have occurred since then that now render said law obsolete. The agencies, for example, mentioned in the law have been replaced by other agencies.

Said statute also creates confusion as to the delineation of the profession of Civil Engineering with Architecture. Enacted in June 1950 when there were only 350 architects in the country, R.A. 545 allowed civil engineers to participate in the preparation of plans and specifications of buildings, which is the primary function of an architect. Now that the devastation of the Second World War has been properly addressed, it is was but necessary to give unto the architects the performance of a function for which they were specifically trained."

The Sponsorship Speech of Sen. Aquilino Pimentel of Senate Bill 2710 contains the following :

" Eroding Architects Standing

Developments in recent years witness how the practice or architecture has been appropriated by many entities who are not academically trained or professionally qualified to engage in the practice of the profession. These includes **other professionals**, project managers, contractors/sub-contractors, developers, capitalist, investors, foreign

practitioners, and local and foreign corporations/ firms, directly or indirectly involved in land and property development work.

This situation had eroded the local and international professional standing of the Filipino architect and has resulted in the planning, design and construction of the buildings by **unqualified entities** who have no professional responsibility nor civil liability for the erected structures. This has placed the public at great risk considering graphic tragedies resulting from faulty planning or design such as Cherry Hills Subdivision tradegy sometime ago.

Qualified Architects

It is high time that the Filipino public be assured that the only individuals who have been **properly educated, qualified and trained** will undertake the planning and design of buildings and be held responsible for such acts.

At time of the enactment of the organic law 53 years ago, there were only 350 architects in the Philippines. Today, there are about 17,000 registered and licensed architects, representing 487% increase spread out over half a century.

The urgent need to pass this bill is, therefore, clearly indicated."

The petitioners contend that the explanatory note may not, however, be used as basis for giving statute a meaning that is inconsistent with what is expressed in the text of the statute. They maintain that Section 43 of the R.A. 9266 itself provides that

" this Act shall not be construed to affect or prevent the practice of any other legally recognized professions."

The Court disagrees with the petitioners.

Both the letter and spirit of the Architecture Act of 2004 prescribes the exercise by non-architects (especially civil engineers) of functions exclusively granted to architects, i.e. the preparation, signing and sealing of architectural documents. Such intent has been enacted into law, among others, in Section 20 (5);

"(5) All architectural plans, designs, specifications, drawings and architectural documents relative to the construction of a building shall bear the seal and signature only of an architect registered and licensed under this Act together with his/her professional identification card number and the date of expiration. xxx" [Emphasis supplied]

***PRBoA Anotation/ Comment**: The foregoing discussion and the Court Decision siding with the registered and licensed architects (RLAs) is most significant as the civil engineers (CEs) consistently claim that R.A. No. 9266 (The Architecture Act of 2004), when read together with their law (R.A. 544, but please note that the law that is in effect is actually R.A. No. 1581), supposedly still allows the CEs to prepare the architectural plans/ designs of buildings (specially when these are labeled as or called "building" plans and designs). This potential substitution or potential mislabeling of architectural documents is not specifically provided for under P.D. No. 1096 (The 1977 National Building Code of the Philippines/ NBCP) nor under its 2004 Revised implementing rules and regulations (IRR), which is now in full effect, by virtue of the Court Order lifting/ dissolving its 2005 injunction (forming a key but distinct part of this Decision).*

The PRBoA has consistently called for the Professional Regulation Commission (PRC) and the Professional Regulatory Board of Civil Engineering (PRBoCE) to produce any existing/ official CE-supplied definition that defines the terms "buildings" or "building plans/designs" . The PRBoCE is unable to oblige simply because for the past 58 years, the CE law has no IRR. With this, the PRBoA must consistently/ constantly block all CE attempts to introduce definitions of the said terms that shall be contrary to those found in the IRR of R.A. No. 9266 and contrary to the spirit and intent of R.A. No. 9266, contrary to P.D. No. 1096 itself and its 2004 Revised IRR and contrary to this Decision and the Order contained in the Decision lifting/ dissolving the 2005 injunction on Secs. 302.3 & 4 of the 2004 IRR of P.D. No. 1096 .

There are at least two other significant new provisions in the new Architecture Act of 2004 that clearly indicate that the preparation and signing of "architectural documents" mentioned in the assailed provision [Section 302(4)] in revised IRR is within the scope of the practice of architecture:

"SEC. 3. *Definition of Terms.* – As used in this Act, the following

terms shall be defined as follows

xxx

(4)"Scope of the Practice of Architecture" encompasses the provision of professional services in connection with site, physical and planning and the design, construction, enlargement, conservation, renovation, remodeling, restoration or alteration of building or group of a buildings. Services may include, but are not limited to:

a. planning, architectural designing and structural conceptualization;

b. consultation, consultancy, giving oral or written advice and directions, conferences , evaluations, investigations, quality surveys, appraisals and adjustments, architectural and operational planning, site analysis and other pre-design services.

c. **schematic design, design development**, contract documents and construction phases including professional consultancies.

d. preparation of preliminary, technical, economic and financial feasibility studies of plans, models and project promotional services.

e. Preparation of architectural plans, specifications, bill of materials, cost estimates, general conditions and bidding documents.

f. Construction and project management, giving general management, administration, supervision, coordination and responsible direction or the planning, architectural designing, construction, site and environs, intended for private or public use;

g. The planning, architectural lay-outing and utilization of spaces within and surrounding such buildings or structures, housing

design and community architecture, architectural interiors and space planning, architectural detailing, architectural lighting, acoustics, architectural lay-outing of mechanical, electrical, electronic, sanitary, plumbing, communications and other utility systems, equipment and fixtures ;

h. Building programming, building administration, construction arbitration and architectural conservation and restoration;

i. All works which relate to the **scientific, aesthetic and orderly coordination of all works and branches of the work, systems and processes necessary for the production of a complete building or structure**, whether for public or private use, in order to enhance and safeguard life, health and property and the promotion and enrichment of the quality of life, health and property and the promotion and enrichment of the quality of life, the architectural design of engineering structures or any part thereof; and

j. All other works, projects and activities which require the professional competence of an architect, including teaching of architectural subjects and architectural computer-aided design."[Emphasis supplied.]

The new Architecture Act of 2004 also provides as to who are allowed to practice architecture in the country, thus Section 25 of said law provides;

"SEC.25. Registration of Architects Required. – **No person shall practice architecture in this country, or engage in preparing architectural plans, specifications or preliminary data for the erection or alteration of any building** located within the boundaries of this country or use the title " Architect," or display the word " Architect" together with another word, or display or use any

title, sign card, advertisement, or other device to indicate such person practices or offers to practice architecture, or is an architect**, unless such person shall have received from the Board a Certificate of Registration and be issued a Professional Identification Card in the manner hereinafter provided** and shall thereafter comply with the provision of this Act.

xxx"[Emphasis supplied]

Based on the aforesaid provisions, it is manifested that only certified and licensed architects are allowed to practice architecture in the country. This is inconsistent with the provision of the Old Architecture Law (R.A. No. 545), particularly Section 12, which provides:

"Section 12.Registration of architects required. – In order to safeguard life, health and property, no person shall practice architecture in this country or engage in preparing plans, specifications or preliminary data for erection or alteration of any building located within the boundaries of this country, **except in this last case when he is a duly registered civil engineer**, or use the title "Architect", or display or use any title, sign card, advertisement, or other devise to indicate that such person practices or offers to practice architecture, or is an architect, unless such person shall have secured from the examining body a certificate of registration in the manner hereinafter provided, and shall thereafter comply with the provisions of the laws of the Philippines governing the registration and licensing of architects."[Emphasis supplied.]

R.A. 9266 does not include the phrase "except in the last case when he is a duly registered civil engineer" as an exemption to the exclusive practice of architecture in "preparing plans, specifications or preliminary data for the erection or alteration of any building located within the boundaries of this country."

VI

Furthermore, it must be emphasized that R.A. 545 (old Architecture Law promulgated in 1950), including the aforequoted phrase, has been expressly repealed by R.A. 9266 (the Architecture Act of 2004). Thus, Section 46 of said law provides;

> "[Sec.46.] *Repealing Clause*. – Republic Act No. 545, as amended by Republic Act No. 1581 is hereby repealed and all other laws, orders, rules and regulations, or part/s thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly."

***PRBoA Anotation/ Comment**: This basically affirms that the implied repeal clause of R.A. No. 9266 actually repeals or modifies whatever is stated in other professional regulatory laws that would seem to allow (or are possibly being deliberately misinterpreted to mean that) other regulated professionals e.g. civil engineers (CEs) can also prepare, sign and seal architectural plans, designs, drawings, specifications and documents.*

The Court's upholding of the repeal clause of R.A. No. 9266 is of particular importance when ranged against the provision of R.A. No. 7160 (The Local Government Code, also by Sen. Aquilino Q. Pimentel, Jr., the acknowledge father of R.A. No. 9266), that allows the position of Building Official (an appointive position under the DPWH Secretary) to be simultaneously assumed by Municipal or City Engineers (a position under the DILG Secretary). Sec. 35 of R.A. No. 9266 mandates that all government positions requiring the expertise of architects i.e. specifically the position of Building official, has to be filled only by a registered and licensed architect (RLA). This provision has already been in effect since 10 April 2007 (almost a year ago) and must now be forcefully implemented through the DPWH & DILG. Here again, a class suit, possibly in the form of a joint petition for mandamus (a civil action) to be filed by the RLAs (through the IAPOA-UAP, PIA, AAIF as supported by the PRBoA) against the Philippine national government (which includes all of the departments and agencies and GOCCs, etc.) and against all LGUs. The inclusion of the PRBoA in this complaint is crucial as their involvement may actually prevent the national and local governments from using the facilities of the Office of the Solicitor General (OSG) for their defense i.e. the national and local governments will need to hire private lawyers, as shall the PRBoA.

What is now clear** (based on the Order lifting/ dissolving the 2005 injunction and based on the Decision itself) **is that under Philippine law, only registered and licensed architects (RLAs) can prepare, sign and seal architectural documents. An RLA must be both certified and licensed i.e. holder of a valid Professional Regulation Commission (PRC) identification (ID) card, an IAPOA certificate holder (possibly with CPE/D units), to legally engage in the state-regulated practice of architecture. Otherwise, a mere registered architect (RA)** or a foreign architect (FA) or a former Filipino RLA practicing in the Philippines (or working on a Philippine project even if based overseas and without a PRC-issued Temporary/ Special Permit), **could also all be charged with the illegal practice of architecture under R.A. No. 9266.

VII

Finally it appears that forum shopping is present in this case, because of the petition for declaratory relief and injunction with prayer for issuance of writ of preliminary injunction and/or temporary restraining order filed by Felipe F. Cruz Sr. and David M. Consunji against the Secretary of Public Works and Highways, docketed as Civil Case No. 05-55273 before Branch 219, Regional Trial Court of Quezon City.

***PRBoA Anotation/ Comment**: Forum shopping, if supported by sufficient evidence, particularly the pleadings and others documents filed with the court may be the basis for criminal or civil action against the Petitioners in the second case (the one filed by PICE, et. al. against DPWH Sec. Ebdane at Manila RTC Branch 22) and possibly even administrative cases against the lawyers in the second (2nd) case, who should have probably known better. The registered and licensed architects (RLAs) represented by the UAP-IAPOA, PIA, AAIF, etc. with the assistance of the PRBoA may possibly cause the filing of such a case/ cases. The PICE, et. al. benefited immensely from the 24 May 2005 injunction as for almost three (3) years, the CEs have been able to prepare, sign and seal architectural documents despite the full effect of R.A. No. 9266 (a law that is valid and subsisting at the time of the injunction).*

"The litmus test to determine if forum-shopping exists is where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the other. Consequently, where a litigant (or one representing the same interest or person) sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending, the defense of *litis pendencia* in one case is a bar to the other; and, a final judgment in one would constitute *res judicata* and this would cause the dismissal of the rest. [First Philippine International Bank v. Court of Appeals, 322 Phil 283 (1996). What is truly important to consider in determining whether forum-shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different *fora* upon the same issue."

The case at bar and the Quezon City case are substantially identical. The following requisites of *litis pendentia* are present in this case; (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the order [Casil v. Court of Appeals, 285 SCRA 264 (1998)].

***PRBoA Anotation/ Comment**: The PICE (its Board of Directors & Officers), et. al., which/ who filed the second (2nd) case against DPWH Secretary Ebdane are the ones that may have willfully committed forum shopping. The Petitioners/ Complainants in the Manila RTC Branch 22 case may be held accountable for such an act (possibly a criminal complaint?), for using an intercalated version of Sec. 302 of P.D. No. 1096 (1977 National Building Code of the Philippines/ NBCP), for possibly misquoting Ministry Order No. 57, for possibly incorrectly using R.A. No. 544 (instead of the R.A. No. 1582, which is the prevailing CE law), etc. and for the ensuing and presently incalculable damages to all registered and licensed architects (RLAs) nationwide (a civil complaint) i.e. the civil engineers (CEs) illegally signed and sealed architectural plans, drawings, designs, specifications and documents on the strength of the injunction issued by the court on the basis of possible/ material misrepresentations of fact and law by the PICE, et. al., over the period 24 May 2005 to date (about 3 years), to the clear disadvantage of the registered and licensed architects (RLAs), the only regulated professionals authorized under Philippine law to prepare, sign and seal architectural documents.*

With the decision firmly listing and citing the potential misdeeds of the CEs, the RLAs (represented by the UAP-IAPOA, the PIA, the AAIF, as assisted by the PRBoA) may now need to consider filing a class suit against the PICE (particularly the responsible PICE directors/ officers who caused the filing and maintenance of the complaint) and its co-complainants, possibly for both criminal offenses and damages (civil action/s). Administrative complaints (that may be filed at the Integrated Bar of the Philippines and at the Supreme Court) against their lawyers may also be possibly considered/ initiated.

The Court does not agree with petitioners reliance on the literal meaning of "identity of parties". It is been held that "absolute identity of parties is not required. A substantial identity of parties is sufficient. There is substantial identity of parties when there is a community of interest between a party in the first case and that in the second one, even if the latter party was not impleaded in the first case.(Concepcion vs. Court of Appeals, G.R. No. 164797, February 13, 2006)"

The intervenor correctly cited Firestone Ceramics Inc. vs. Court of Appeals (G.R. 127022, September 2, 1999, 313 SCRA 522, 541), where it was held that the requirement of identity of parties is satisfied with "an identity of interest from flowed an identity of relief sought xxx (and) is sufficient to make them privy-in-law, one to the other (Esperanza Development Corp. vs. Court of Appeals, 218 SCRA 401) and meets the requisite of substantial identity of parties." The petitioners in both this case and the Quezon City case (Felipe F. Cruz and David Consunji vs. Secretary of Public Works and Highways, Civil Case No. 05-55273, Branch 219 of the Regional Trial Court of Quezon City) filed the petitions purportedly on behalf of all civil engineers. There is an identity of parties here. There is likewise an identity of relief sought, i.e. the invalidation of the Revised IRR.

All the elements of *litis pendentia* are thus present. Hence, there is forum shopping.

VII

On the basis of the foregoing, the Court finds that the questioned provisions, specifically paragraphs 3 and 4 of Section 302 of the Revised Implementing Rules and Regulations (IRR) of Presidential Decree 1096 (the National Building Code of the Philippines), are neither invalid nor unconstitutional.

***PRBoA Anotation/ Comment**: This basically affirms that the harmonization of the authentic Sec. 302 of P.D. No. 1096 (the 1977 National Building Code of the Philippines) with R.A. No. 9266 (The Architecture Act of 2004), which resulted in the erstwhile restrained Secs. 302.3 and 302.4 of the PICE/ CE-assailed 2004 Revised Implementing Rules and Regulations (R-IRR) of P.D. No. 1096, is legal and consistent with law i.e. while the 2004 R-IRR of P.D. No. 1096 is not part of the IRR of R.A. No. 9266, the intent of R.A. No. 9266 could be reflected in the 2004 R-IRR of P.D. No. 1096, particularly since its authentic/ official and correct Sec. 302 was silent on the matter of the signatory to architectural documents.*

***Note**: The harmonization of the 2004 R-IRR was initially undertaken by the then remaining three (3) registered and licensed architect (RLA)-members of the Department of Public Works and Highways (DPWH) Board of Consultants (BoC) i.e. Architects Armando Alli, Elmor Vita and Lorenzo Espeleta (all of the UAP and the AAIF), with their recommendations on Secs. 302.3 & 302.4 officially adopted in mid- through late 2004 by the BoC, the DPWH National Building Code Review Committee (NBCRC) and the then DPWH Secretary (Soriquez).*

WEREFORE, the instant Petition is hereby DISMISSED, and the Writ of Preliminary Injunction issued, is hereby lifted or dissolved.

***PRBoA Anotation/ Comment**: With the dismissal of the PICE petition and the lifting/ dissolution of the 24 May 2005 injunction, the registered and licensed architects (RLAs represented by the IAPOA-UAP, the PIA and the AAIF as supported by the PRBoA), must now exert continuing pressure on the DPWH to issue a memorandum/ order the soonest to all building officials (BOs) nationwide to abide by the Court Decision (particularly the Order contained therein that lifted/ dissolved the 2005 injunction) and to follow R.A. No. 9266 which is valid and subsisting. What we need to be wary about is the practice by many CEs nationwide who may be illegally labeling architectural documents as civil/ structural (C/S) documents to try to get around the law, with the possible connivance of some building officials (BOs) who are also CEs.*

What we need to always remember is that with this Decision's upholding of the validity of Secs. 302.3 and 302.4 of the 2004 Revised IRR of P.D. No. 1096, the CEs cannot now label the architectural documents that they produce as C/S documents nor can the CE-BOs now accept/review/process architectural documents that are labeled/packaged as C/S documents. Doing so would only make them all the more liable for violations of both R.A. No. 9266 and P.D. No. 1096, in addition to other laws e.g. R.A. No. 8981 (PRC Modernization Act of 2000), the Revised Penal Code and the Civil Code among others.

SO ORDERED.
Manila, January 29, 2008

MARINO M. DELA CRUZ, JR.
Presiding Judge

Copy furnished:
1. Philippine Institute of Civil Engineers
2. Leo Cleto Gamolo
3. Atty. Timoteo B. Aquino
4. Secretary of Public Works and Highways
5. Office of the Solicitor General
6. United Architects of the Philippines
7. Atty. Jose Antonio J. Hernandez