Republic of the Philippines
Supreme Court
Manila

**THIRD DIVISION**

**METROPOLITAN BANK & TRUST COMPANY,**
Petitioner,

*- versus -*

**CHUY LU TAN, MR. ROMEO TANCO, DR. SY SE HIONG, and TAN CHU HSIU YEN,**
Respondents.

**G.R. No. 202176**

**Present:**

VELASCO, JR., *J., Chairperson,*
PERALTA,
PEREZ,
REYES, and
JARDELEZA, *JJ.*

**Promulgated:**

August 1, 2016

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## DECISION

**PERALTA, *J.*:**

Before the Court is a petition for review on *certiorari* seeking to reverse and set aside the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated March 20, 2012 and June 11, 2012, respectively, in CA-G.R. CV No. 92543. The assailed CA Decision reversed and set aside the July 17, 2008 Decision[3] of the Regional Trial Court (*RTC*) of Makati City, Branch 61, in an action for collection of a sum of money, docketed as Civil Case No. 00-349, while the CA Resolution denied petitioner's motion for reconsideration.

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1 Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Andres B. Reyes, Jr. and Sesinando E. Villon, concurring; Annex "A" to Petition; *rollo*, pp. 44-57.

2 *Id.* at 58.

3 Penned by Judge J. Cedrick O. Ruiz; Annex "OO" to Petition; *id.* at 194-202.

The facts of the case are as follows:

Between February 26, 1996 and May 8, 1996, herein respondents Chuy Lu Tan (*Chuy*) and Romeo Tanco (*Tanco*) obtained five loans from herein petitioner Metropolitan Bank & Trust Company (*Metrobank*) with an aggregate amount of Nineteen Million Nine Hundred Thousand Pesos (₱19,900,000.00). These loans are evidenced by five Promissory Notes executed by Chuy and Tanco on various dates.[4] As security for the said loans, Chuy executed a Real Estate Mortgage[5] on February 26, 1996 over a 1,449.70 square meter parcel of land in Quezon City covered by Transfer Certificate of Title No. RT-53314 (288923). In addition to the said mortgage, herein respondents Sy Se Hiong (*Sy*) and Tan Chu Hsiu Yen (*Tan*) also executed a Continuing Surety Agreement[6] whereby they bound themselves to be solidarily liable with Chuy and Tanco for the principal amount of ₱19,900,000.00 "plus interests thereon at the rate or rates stated in the obligation secured thereby, any or all penalties, costs and expenses which may be incurred by [Metrobank] in granting and/or collecting the aforesaid obligations/indebtedness/instruments, and including those for the custody, maintenance, and preservation of the securities given therefor, as may be incurred by [Metrobank] before or after the date of [the] Surety Agreement."[7]

Subsequently, Chuy and Tanco failed to settle their loans despite Metrobank's repeated demands for payment. In a final demand letter dated October 27, 1999, Metrobank's counsel notified respondent Chuy that as of October 15, 1999, their obligations, comprising the principal amount loaned, together with interest and penalties, amounted to ₱24,353,062.03.[8] Consequently, on December 14, 1999, Metrobank extrajudicially foreclosed the mortgage and the property was sold to it (*Metrobank*) as the highest bidder for the amount of ₱24,572,268.00.[9]

However, in separate letters to the respondents, which were all dated January 26, 2000, Metrobank claimed that after application of the bid price to the respondents' outstanding obligation and the payment of the costs of foreclosure, accrued interest, penalty charges, attorney's fees and other related expenses, there remained a deficiency of ₱1,641,815.00, as of January 15, 2000.[10] As such, Metrobank demanded from respondents the payment of the said deficiency. For respondents' failure to heed Metrobank's

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4 See Annexes "E", "F", "G", "H" and "I" to Petition, *id.* at 66-70.
5 Annex "J" to Petition, *id.* at 71-72.
6 Annex "L" to Petition, *id.* at 75.
7 *Id.*
8 Annex "M" to Petition, *id.* at 76-77.
9 See Certificate of Sale, Annex "U" to Petition, *id.* at 89-90.
10 See Annexes "W", "X", "Y" and "Z" to Petition, *id.* at 92-103.

demand, the latter filed a suit for collection of a sum of money with the RTC of Makati.

The case was then set for pre-trial. Subsequently, Chuy was declared in default for failure to attend the pre-trial and to file her pre-trial brief.

Thereafter, trial ensued wherein Metrobank was allowed to present its evidence *ex parte* against Chuy.

On July 17, 2008, the RTC rendered its Decision[11] and disposed of the case as follows:

> **WHEREFORE**, premises duly considered, judgment is hereby rendered ordering the herein defendants, namely, Chuy Lu Tan (Ms. Chuy), Romeo Tanco (Mr. Tanco), Sy Se Hong (Mr. Sy) and Tan Chu Hsiu Yen (Mr. Tan) to **PAY**, jointly and severally, the herein plaintiff Metropolitan Bank and Trust Company (Metrobank) the sum of **ONE MILLION SIX HUNDRED FORTY-ONE THOUSAND EIGHT HUNDRED FIFTEEN PESOS (₱1,641,815.00)**, with interest at the legal rate from 16 January 2000 until the amount is fully paid, and the cost of suit.
>
> **SO ORDERED.**

Both petitioner and respondents, with the exception of Chuy, appealed the RTC Decision with the CA.

In its appeal, Metrobank made the following Assignment of Errors:

> A. THE TRIAL COURT ERRED IN NOT APPLYING THE INTEREST RATES, PENALTY CHARGES STIPULATED IN THE PROMISSORY NOTES ON THE UNPAID OBLIGATION OF [RESPONDENTS].
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> B. THE TRIAL COURT ERRED IN NOT AWARDING ATTORNEY'S FEES IN FAVOR OF X X X METROBANK.[12]

On the other hand, respondents raised the following issues in their appeal, to wit:

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11 Annex "OO" to Petition, *id.* at 194-202. (Emphasis in the original)

12 Annex "UU" to Petition, *id.* at 240.

I

WHETHER THE TRIAL COURT ERRED IN FAILING TO RESOLVE THE ISSUE OF THE EXCESSIVE AND UNFOUNDED AMOUNT OF THE ALLEGED DEFICIENCY BALANCE DUE TO X X X METROBANK IN THE AMOUNT OF ₱1,641,815.00 CONSISTING OF PENALTIES AND SURCHARGES, WHEN THE VALUE OF THE PROPERTY FORECLOSED WAS ALREADY MORE THAN ENOUGH TO PAY THE DEBT IN FULL.

II

WHETHER THE TRIAL COURT ERRED IN FINDING THAT [RESPONDENTS] ARE JOINTLY AND SEVERALLY LIABLE TO X X X METROBANK, DESPITE THE FACT THAT [RESPONDENTS] HAVE ESTABLISHED BY PREPONDERANCE OF EVIDENCE THAT [METROBANK] HAD ALREADY RECOVERED THE UNPAID BALANCE ON THE PRINCIPAL OBLIGATION AND ALREADY SUBSTANTIALLY GAINED FROM THE FORECLOSURE OF THE COLLATERAL PROPERTIES. AS A COURT OF EQUITY, THIS HONORABLE COURT SHOULD NOT TOLERATE AND SHOULD THEREFORE STRIKE OFF SUCH UNREASONABLE AND EXORBITANT PENALTIES AND SURCHARGES BEING CLAIMED BY [METROBANK] IN THIS CASE.

III

WHETHER THE TRIAL COURT ERRED IN FAILING TO RULE THAT RESPONDENT DR. SY'S CONJUGAL PARTNERSHIP [PROPERTIES] WITH HIS WIFE LYDIA SY CANNOT BE HELD ANSWERABLE FOR [METROBANK'S] CLAIMS. HAVING ENTERED INTO THE SURETYSHIP AGREEMENT WITHOUT THE CONSENT OF HIS WIFE, THE CONJUGAL ASSETS OF DR. SY CANNOT BE HELD ANSWERABLE FOR ANY OF [METROBANK'S] CLAIMS ABSENT ANY SHOWING THAT IT REDOUNDED TO THE BENEFIT OF THEIR CONJUGAL PARTNERSHIP.[13]

On March 20, 2012, the CA promulgated its assailed Decision by reversing and setting aside the July 17, 2008 Decision of the RTC and dismissing Metrobank's complaint. The CA ruled that to allow Metrobank to recover the amount it seeks from respondents would be iniquitous, unconscionable and would amount to unjust enrichment.

Metrobank filed a Motion for Reconsideration,[14] but the CA denied it in its Resolution dated June 11, 2012.

Hence, the present petition with a lone Assignment of Error, to wit:

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13 Annex "VV" to Petition, *id.* at 275-276.

14 Annex "AAA" to Petition, *id.* at 365-387.

> THE HONORABLE COURT OF APPEALS ERRED IN REVERSING AND SETTING ASIDE THE TRIAL COURT'S DECISION DATED 17 JULY 2008.[15]

In support of its contention, petitioner argues that the CA erred in denying its deficiency claim on the ground that such claim, which allegedly consisted almost entirely of interest and penalties, is iniquitous, unconscionable and exorbitant. Petitioner also posits that the CA erred in ruling that the mortgaged property is worth more than the bid price and, hence, bars petitioner from claiming any deficiency. Lastly, petitioner claims that its deficiency claim should not have been dismissed because respondents have admitted default in the payment of their obligations.

In the instant case, there is no dispute with respect to the total amount of the outstanding loan obligation that respondents owed petitioner at the time of the extrajudicial foreclosure sale of the property subject of the real estate mortgage. Likewise, it is uncontested that by subtracting the amount obtained at the sale of the property, a loan balance still remains. Petitioner merely contends that, contrary to the ruling of the CA, it has the right to collect from respondents the remainder of their obligation after deducting the amount obtained from the extrajudicial foreclosure sale. On the other hand, respondent avers that since the supposed value of the subject property shows that it is more than the amount of their outstanding obligation, then respondents can no longer be held liable for the balance, especially because it was petitioner who bought the property at the foreclosure sale.

The Court rules for the petitioner.

Settled is the rule that a creditor is not precluded from recovering any unpaid balance on the principal obligation if the extrajudicial foreclosure sale of the property subject of the real estate mortgage results in a deficiency.[16] In *Spouses Rabat v. Philippine National Bank*,[17] this Court held:

> x x x it is settled that if the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of the mortgage, the mortgagee is entitled to claim the deficiency from the debtor. For when the legislature intends to deny the right of a creditor to sue for any deficiency resulting from foreclosure of security given to guarantee an obligation it expressly provides as in the case of pledges [Civil Code, Art. 2115] and in chattel mortgages of a thing sold on installment basis [Civil Code, Art. 1484(3)]. Act No. 3135, which governs the extrajudicial foreclosure of

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15 *Rollo*, p. 23.

16 *Bank of the Philippine Islands v. Reyes*, 680 Phil. 718, 725 (2012).

17 688 Phil. 33 (2012).

> mortgages, while silent as to the mortgagee's right to recover, does not, on the other hand, prohibit recovery of deficiency. Accordingly, it has been held that a deficiency claim arising from the extrajudicial foreclosure is allowed.[18]

Indeed, the fact that the mortgaged property was sold at an amount less than its actual market value should not militate against the right to such recovery.[19] This Court has likewise ruled that in deference to the rule that a mortgage is simply a security and cannot be considered payment of an outstanding obligation, the creditor is not barred from recovering the deficiency even if it bought the mortgaged property at the extrajudicial foreclosure sale at a lower price than its market value notwithstanding the fact that said value is more than or equal to the total amount of the debtor's obligation.[20] Thus, in the case of *Suico Rattan & Buri Interiors, Inc. v. Court of Appeals*,[21] this Court explained that:

> **Hence, it is wrong for petitioners to conclude that when respondent bank supposedly bought the foreclosed properties at a very low price, the latter effectively prevented the former from satisfying their whole obligation.** Petitioners still had the option of either redeeming the properties and, thereafter, selling the same for a price which corresponds to what they claim as the properties' actual market value or by simply selling their right to redeem for a price which is equivalent to the difference between the supposed market value of the said properties and the price obtained during the foreclosure sale. In either case, petitioners will be able to recoup the loss they claim to have suffered by reason of the inadequate price obtained at the auction sale and, thus, enable them to settle their obligation with respondent bank. Moreover, petitioners are not justified in concluding that they should be considered as having paid their obligations in full since respondent bank was the one who acquired the mortgaged properties and that the price it paid was very inadequate. The fact that it is respondent bank, as the mortgagee, which eventually acquired the mortgaged properties and that the bid price was low is not a valid reason for petitioners to refuse to pay the remaining balance of their obligation. **Settled is the rule that a mortgage is simply a security and not a satisfaction of indebtedness.**

As to petitioner's entitlement to the amount sought to be recovered, respondents, in their Special and Affirmative Defenses,[22] contained in their Answer with Compulsory Counterclaim, as well as in their Appellant's Brief[23] filed with the CA, never disputed the amount and computation of the

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18 *Id.* at 47-48, citing *Philippine National Bank v. Court of Appeals,* G.R. No. 121739, June 14, 1999, 308 SCRA 229, 235.

19 *BPI Family Savings Bank, Inc. v. Spouses Avenido*, 678 Phil. 148, 162 (2011), citing *Prudential Bank v. Martinez*, 267 Phil. 644, 650 (1990).

20 *Bank of the Philippine Islands v. Reyes, supra* note 16.

21 524 Phil. 92, 113-114 (2006). (Emphasis ours)

22 *Rollo*, pp. 116-118.

23 *Id.* at 259-291.

deficiency sought to be recovered by petitioner. What respondents are insisting is that petitioner is barred from recovering any deficiency because the bid price is considerably inadequate as compared to the alleged actual value of the foreclosed property. However, as discussed above, the settled rule is that when there is right to redeem, the inadequacy of the price becomes immaterial since the judgment debtor may reacquire the property or sell his right to redeem.

In the same manner, what is being implied in the assailed CA Decision is that the bid price should approximate the value of the mortgaged property.

The Court does not agree.

Act No. 3135, which governs extrajudicial foreclosure of real estate mortgages, has no requirement for the determination of the mortgaged properties' appraisal value. Nothing in the law likewise indicates that the mortgagee-creditor's appraisal value shall be the basis for the bid price. **Neither is there any rule nor any guideline prescribing the minimum amount of bid, nor that the bid should be at least equal to the properties' current appraised value.** What the law only provides are the requirements, procedure, venue and the mortgagor's right to redeem the property.[24]

Throughout a long line of jurisprudence, this Court has declared that unlike in an ordinary sale, inadequacy of the price at a forced sale is immaterial and does not nullify a sale since, in a forced sale, a low price is more beneficial to the mortgage debtor for it makes redemption of the property easier.[25]

Thus, even if the Court were to assume that the valuation of the property at issue is correct, the Court still holds that the inadequacy of the price at which it was sold at public auction does not prevent petitioner from claiming any deficiency not covered by the said foreclosure sale.

Contrary to the ruling of the CA, the Court may not temper respondents' liability to the petitioner on the ground of equity. The Court is barred by its own often repeated admonition that equity, which has been

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[24] *Sycamore Ventures Corporation, et al. v. Metropolitan Bank and Trust Co.*, 721 Phil. 290, 300 (2013). (Emphasis ours)

[25] *Bank of the Philippines Islands v. Reyes, supra* note 16, at 727, citing *New Sampaguita Builders Construction Inc. v. Philippine National Bank*, 479 Phil. 483, 514-515 (2004); *The Abaca Corporation of the Phils. v. Garcia*, 338 Phil. 988, 993 (1997); *Gomez v. Gealone*, G.R. No. 58281, November 13, 1991, 203 SCRA 474, 486; *Prudential Bank v. Martinez, supra* note 19, at 650; *Francia v. Intermediate Appellate Court*, 245 Phil. 717, 726 (1988); *Vda. de Gordon v. Court of Appeals*, 196 Phil. 159, 165 (1981).

aptly described as "justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure.[26] For all its conceded merit, equity is available only in the absence of law and not as its replacement.[27] The law and jurisprudence on the matter are clear enough to close the door on a recourse to equity, insofar as the present case is concerned.

Indeed, Article 1159 of the Civil Code expressly provides that obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. In the present case, it is clear under the Promissory Notes, Real Estate Mortgage contract and the Continuing Surety Agreement executed by respondents that they voluntarily bound themselves to pay the amounts being claimed by petitioner.

Furthermore, there is no convincing evidence nor argument which would show that petitioner is not entitled to the deficiency it claims. The CA simply says that to allow petitioner to recover the amount it seeks, which is allegedly over and above the actual value of the property it bought at public auction, would amount to unjust enrichment. However, the Court does not see any unjust enrichment resulting from upholding the right of the petitioner to collect any deficiency from respondents. Unjust enrichment exists when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good governance.[28] As discussed above, there is a strong legal basis for petitioner's claim against respondents for the balance of their loan obligation.

Nonetheless, the Court does not totally agree with petitioner's contention that the rate of penalty charges which should be imposed on the deficiency claim, as well as the recoverable attorney's fees, should be that embodied in the contract entered into by the parties. As earlier mentioned, a contract is the law between the parties and courts have no choice but to enforce such contract.[29] This principle, however, is subject to the condition that the contract is not contrary to law, morals, good customs or public policy.[30]

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[26] *Bank of the Philippine Islands v. Reyes, supra* note 16, at 729.

[27] *The Parents-Teachers Association of St. Mathew Christian Academy, et al. v. The Metropolitan Bank and Trust Co.*, 627 Phil. 669, 690 (2010).

[28] *Bank of the Philippine Islands v. Reyes, supra* note 16, at 729.

[29] *Maynilad Water Supervisors Association v. Maynilad Water Services, Inc.*, G.R. No. 198935, November 27, 2013. 711 SCRA 110, 122.

[30] *Id.*

In the instant case, the Promissory Notes executed by respondents indicate that the interest rates were pegged at sixteen percent (16%) *per annum,* computed from the dates of execution thereof. Under settled jurisprudence, twenty-four percent (24%) interest rate is not considered unconscionable.[31] Hence, the Court finds the sixteen percent (16%) interest rate imposed by petitioner as fair.

With respect to the penalty charge, this Court has held that the surcharge or penalty stipulated in a loan agreement in case of default partakes of the nature of liquidated damages under Article 2226 of the Civil Code, and is separate and distinct from interest payment.[32] Also referred to as a penalty clause, it is expressly recognized by law. It is an accessory undertaking to assume greater liability on the part of an obligor in case of breach of an obligation.[33]

Nonetheless, under Article 2227 of the Civil Code, liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

In the same vein, Article 1229 of the same Code provides:

> The judge shall equitably reduce the penalty **when the principal obligation has been partly or irregularly complied** with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.[34]

In the instant case, the Court finds the eighteen percent (18%) penalty charge imposed by petitioner on the deficiency claim, computed from the time of default, as excessive and, accordingly, reduces it considering that petitioner was already able to recover a large portion of respondents' principal obligation. In consonance with prevailing jurisprudence,[35] the Court finds it proper to reduce the rate of penalty charge imposed on the deficiency claim from eighteen percent (18%) *per annum* to twelve percent (12%) *per annum.*

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31 *Spouses Mallari v. Prudential Bank (now Bank of the Philippines Islands)*, 710 Phil. 490, 498-499 (2013), citing *Villanueva v. Court of Appeals*, 671 Phil. 467, 478 (2011); *Garcia v. Court of Appeals*, 249 Phil. 739 (1988).

32 *Id.*, citing *Ruiz v. Court of Appeals*, 449 Phil. 419 (2003).

33 *Id.*

34 Emphasis supplied.

35 *RGM Industries, Inc. v. United Pacific Capital Corporation*, 689 Phil 660, 665 (2012); *Bank of the Philippine Islands, Inc. v. Spouses Yu, et al.*, 624 Phil. 408, 420 (2010).

As to the attorney's fees, the law allows a party to recover attorney's fees under a written agreement.[36] In *Barons Marketing Corporation v. Court of Appeals,*[37] the Court ruled that:

> [T]he attorney's fees here are in the nature of liquidated damages and the stipulation therefor is aptly called a penal clause. It has been said that so long as such stipulation does not contravene law, morals, or public order, it is strictly binding upon defendant. The attorney's fees so provided are awarded in favor of the litigant, not his counsel. x x x[38]

The foregoing notwithstanding, even if such attorney's fees are allowed by law, as in the case of the above-discussed penalty charge, the courts still have the power to reduce the same if the said fees are unreasonable.[39]

In the present case, the subject Promissory Notes provide for the payment of attorney's fees at the rate of ten percent (10%) of the amount due. The same must be equitably reduced taking into account the fact that: (1) petitioner has already recovered the principal amount it seeks during the foreclosure sale; (2) petitioner has likewise recovered a sizeable portion of the interest and penalty charges which were imposed on the principal amount due; (3) the attorney's fees are not an integral part of the cost of borrowing but a mere incident of collection; and (4) the attorney's fees were intended as penal clause to answer for liquidated damages, which is similar to the purpose of the imposition of penalty charge.[40] Hence, the rate of ten percent (10%) of the total amount due, as suggested by petitioner, is too onerous. Under the premises, attorney's fees equivalent to ten percent (10%) of the deficiency claim is reasonable.

Lastly, pursuant to prevailing jurisprudence,[41] the total monetary awards shall earn interest at the prevailing rate of six percent (6%) *per annum* from finality of this Decision until full satisfaction thereof, which takes the form of a judicial debt.

**WHEREFORE**, the petition is **PARTLY GRANTED**. The March 20, 2012 Decision and June 11, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 92543 are **REVERSED** and **SET ASIDE**. The July 17, 2008 Decision of the Regional Trial Court of Makati City, Branch 61 is **REINSTATED** with the **MODIFICATION** that the sum of ₱1,641,815.00

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36 *Lim v. Security Bank Corporation*, G.R. No. 188539, March 12, 2014, 718 SCRA 709, 718.

37 349 Phil. 769 (1998).

38 *Barons Marketing Corp. v. CA, supra,* at 780, citing *Polytrade Corporation v. Blanco*, 140 Phil. 604, 609 (1969).

39 *Lim v. Security Bank Corporation, supra* note 35.

40 *RGM Industries, Inc. v. United Pacific Capital Corporation, supra* note 34, at 665-666.

41 *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013).

due to petitioner shall earn interest at the rate of sixteen percent (16%) *per annum* and penalty charge at the rate of twelve percent (12%) *per annum*, computed from January 16, 2000 until finality of this Decision. Respondents are also **ORDERED** to **PAY** attorney's fees in the amount of ₱164,181.50, which is equivalent to ten percent (10%) of the deficiency claim. The total monetary awards shall earn interest at the rate of six percent (6%) *per annum*, computed from the finality of this Decision until their full satisfaction.

**SO ORDERED**.

**DIOSDADO M. PERALTA**
Associate Justice

**WE CONCUR:**

**PRESBITERO J. VELASCO, JR.**
Associate Justice
Chairperson

**JOSE PORTUGAL PEREZ**
Associate Justice

**BIENVENIDO L. REYES**
Associate Justice

**FRANCIS H. JARDELEZA**
Associate Justice

**ATTESTATION**

I attest 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.

**PRESBITERO J. VELASCO, JR.**
Associate Justice
Chairperson, Third Division

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

**MARIA LOURDES P. A. SERENO**
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPIÑAN
Division Clerk of Court
Third Division

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