

Republic of the Philippines  
Supreme Court  
Manila

CERTIFIED TRUE COPY  
*[Signature]*  
V. VELASCO, JR., CHAIRMAN  
Division Clerk of Court  
Third Division  
FEB 14 2017

THIRD DIVISION

COMMUNICATION  
INFORMATION  
CORPORATION,

AND  
SYSTEMS

G.R. No. 192159

Petitioner,

Present:

VELASCO, JR., J., *Chairperson,*

MENDOZA,\*

PERLAS-BERNABE,\*

JARDELEZA, and

CAGUIOA,\*\* JJ.

- versus -

MARK SENSING AUSTRALIA PTY.  
LTD., MARK SENSING  
PHILIPPINES, INC. and OFELIA B.  
CAJIGAL,

Promulgated:

Respondents.

January 25, 2017

x-----*[Signature]*-----x

DECISION

JARDELEZA, J.:

This is a petition for review on *certiorari*<sup>1</sup> seeking to set aside the Decision<sup>2</sup> dated November 25, 2009 and Resolution<sup>3</sup> dated April 23, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 110511. The question is whether courts may approve an attachment bond which has been reinsured as to the excess of the issuer’s statutory retention limit.

I

Petitioner Communication and Information Systems Corporation (CISC) and respondent Mark Sensing Australia Pty. Ltd. (MSAPL) entered into a Memorandum of Agreement<sup>4</sup> (MOA) dated March 1, 2002 whereby MSAPL appointed CISC as “the exclusive AGENT of [MSAPL] to PCSO during the [lifetime] of the recently concluded Memorandum of Agreement entered into between [MSAPL], PCSO and other parties.” The recent

\* Designated as Additional Members per Raffle dated January 18, 2017.

\*\* Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

<sup>1</sup> *Rollo*, pp. 15-56.

<sup>2</sup> *Id.* at 57-86. Special Third Division, penned by Associate Justice Ricardo R. Rosario, with Associate Justices Jose C. Reyes, Jr. and Magdangal M. De Leon concurring.

<sup>3</sup> *Id.* at 87-88.

<sup>4</sup> *Id.* at 100-101. Executed by Gordon Harold Poole, as Chief Executive Officer of MSAPL, and Carolina de Jesus for CISC.

*[Signature]*

agreement referred to in the MOA is the thermal paper and bet slip supply contract (the Supply Contract) between the Philippine Charity Sweepstakes Office (PCSO), MSAPL, and three other suppliers, namely Lamco Paper Products Company, Inc. (Lamco Paper), Consolidated Paper Products, Inc. (Consolidated Paper) and Trojan Computer Forms Manufacturing Corporation (Trojan Computer Forms).<sup>5</sup> As consideration for CISC's services, MSAPL agreed to pay CISC a commission of 24.5% of future gross sales to PCSO, exclusive of duties and taxes, for six years.<sup>6</sup>

After initially complying with its obligation under the MOA, MSAPL stopped remitting commissions to CISC during the second quarter of 2004. MSAPL justified its action by claiming that Carolina de Jesus, President of CISC, violated her authority when she negotiated the Supply Contract with PCSO and three of MSAPL's competitors. According to MSAPL, it lost almost one-half of its business with PCSO because the Supply Contract provided that MSAPL's business with PCSO shall be limited to the latter's Luzon operations, with MSAPL supplying 70% of thermal rolls and 50% of bet slips. MSAPL pointed out that it used to have a Build Operate Transfer (BOT) Agreement with PCSO where it undertook to build a thermal paper and bet slip manufacturing facility to supply all requirements of PCSO. However, PCSO unilaterally cancelled the BOT Agreement and granted supply contracts to Lamco Paper, Consolidated Paper and Trojan Computer Forms, which ultimately resulted in litigation between the parties.<sup>7</sup> The suit was eventually settled when PCSO, MSAPL, and the three other suppliers entered into the Supply Contract, which was submitted and approved by the Regional Trial Court (RTC), Branch 224 of Quezon City, as a compromise agreement.<sup>8</sup> MSAPL felt shortchanged by CISC's efforts and thus decided to withhold payment of commissions.

As a result of MSAPL's refusal to pay, CISC filed a complaint before the RTC in Quezon City for specific performance against MSAPL, Mark Sensing Philippines, Inc. (MSPI), Atty. Ofelia Cajigal, and PCSO.<sup>9</sup> CISC prayed that private respondents be ordered to comply with its obligations under the MOA. It also asked the RTC to issue a writ of preliminary mandatory injunction and/or writ of attachment.<sup>10</sup> The RTC denied CISC's prayer for mandatory injunctive relief but ordered the PCSO to hold the amount being contested until the final determination of the case.<sup>11</sup> It later reversed itself, holding that its jurisdiction is limited to the amount stated in the complaint and therefore had no jurisdiction to order PCSO to withhold

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<sup>5</sup> Memorandum of Agreement dated January 17, 2003 executed by Ma. Livia de Leon, Chairman of PCSO, Gordon H. Poole, Managing Director of MSAPL, Giovanni Tan, President of Trojan Computer Forms, George Santos, Sales Director of Consolidated Paper, and Terry Sy, Vice-President of Lamco Paper, *id.* at 510-518.

<sup>6</sup> *Id.* at 100.

<sup>7</sup> *Id.* at 447-448.

<sup>8</sup> Docketed as Civil Case No. Q-99-37467. *Id.* at 519-528.

<sup>9</sup> Docketed as Civil Case No. 05-54756 and raffled to Branch 95. *Id.* at 89-99.

<sup>10</sup> *Id.* at 97-98.

<sup>11</sup> *Id.* at 124-129.



payments in excess of such amount.<sup>12</sup> This order of reversal became the subject of a separate petition for *certiorari* filed by CISC before the CA, docketed as CA-G.R. SP No. 96620.<sup>13</sup> The CA later reversed the RTC and ordered that the additional docket fees shall constitute a lien on the judgment.<sup>14</sup>

On September 10, 2007, the RTC granted CISC's application for issuance of a writ of preliminary attachment, stating that "the non-payment of the agreed commission constitutes fraud on the part of the defendant MSAPL in their performance of their obligation to the plaintiff."<sup>15</sup> The RTC found that MSAPL is a foreign corporation based in Australia, and its Philippine subsidiary, MSPI, has no other asset except for its collectibles from PCSO. Thus, the RTC concluded that CISC may be left without any security if ever MSAPL is found liable.<sup>16</sup> But the RTC limited the attachment to ₱4,861,312.00, which is the amount stated in the complaint, instead of the amount sought to be attached by CISC, *i.e.*, ₱113,197,309.10.<sup>17</sup> The RTC explained that it "will have to await the Supreme Court judgment over the issue of whether [it] has jurisdiction on the amounts in the excess of the amount prayed for by the plaintiff in their complaint" since MSAPL appealed the adverse judgment in CA-G.R. SP No. 96620 to us.<sup>18</sup> We later denied MSAPL's petition for review assailing the CA Decision in CA-G.R. SP No. 96620 (subsequently docketed as G.R. No. 179073) in a Resolution dated November 12, 2007.<sup>19</sup> It became final and executory on March 25, 2008.<sup>20</sup>

In view of this development, CISC moved to amend the order of attachment to include unpaid commissions in excess of the amount stated in the complaint. On December 22, 2008, the RTC granted CISC's motion and issued a new writ of preliminary attachment.<sup>21</sup> On **April 13, 2009**, the RTC, acting on the partial motions for reconsideration by both CISC and MSAPL, modified the amount covered by the writ to reflect the correct amount prayed for by CISC in its previous motion to amend the attachment order conditioned upon the latter's payment of additional docket fees. It also denied MSAPL's opposition to the attachment order for lack of merit.<sup>22</sup> On **July 2, 2009**, the RTC modified its order insofar as it allowed CISC to pay docket fees within a reasonable time.<sup>23</sup>

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<sup>12</sup> *Id.* at 130-146.

<sup>13</sup> Decision dated February 7, 2007 penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Bienvenido L. Reyes and Aurora Santiago-Lagman, concurring, *id.* at 178-191.

<sup>14</sup> *Id.*

<sup>15</sup> *Rollo*, p. 197.

<sup>16</sup> *Id.*

<sup>17</sup> *Rollo*, pp. 23-24; 197-198.

<sup>18</sup> *Id.* at 198.

<sup>19</sup> *Id.* at 192-193.

<sup>20</sup> *Id.* at 204-205.

<sup>21</sup> *Id.* at 221-229.

<sup>22</sup> *Id.* at 230-232.

<sup>23</sup> *Id.* at 241-244.

On **July 8, 2009**, CISC posted a bond in the amount of ₱113,197,309.10 through Plaridel Surety and Insurance Company (Plaridel) in favor of MSAPL, which the RTC approved on the same date.<sup>24</sup> Two days later, MSAPL filed a motion to determine the sufficiency of the bond because of questions regarding the financial capacity of Plaridel.<sup>25</sup> But before the RTC could act on this motion, MSAPL, apparently getting hold of Plaridel's latest financial statements, moved to recall and set aside the approval of the attachment bond on the ground that Plaridel had no capacity to underwrite the bond pursuant to Section 215 of the old Insurance Code<sup>26</sup> because its net worth was only ₱214,820,566.00 and could therefore only underwrite up to ₱42,964,113.20.<sup>27</sup> On **September 4, 2009**, the RTC denied MSAPL's motion, finding that although Plaridel cannot underwrite the bond by itself, the amount covered by the attachment bond "was likewise re-insured to sixteen other insurance companies."<sup>28</sup> However, "for the best interest of both parties," the RTC ordered Plaridel to submit proof that the amount of ₱95,819,770.91 was reinsured. Plaridel submitted its compliance on September 11, 2009, attaching therein the reinsurance contracts.<sup>29</sup>

On **September 18, 2009**, MSAPL, MSPI and Atty. Ofelia Cajigal<sup>30</sup> filed a petition for *certiorari* before the CA, docketed as CA-G.R. SP No. 110511, assailing the Orders of the RTC dated April 13, 2009, July 2, 2009, July 8, 2009, and September 4, 2009. In its now-assailed Decision dated November 25, 2009, the CA granted the petition.<sup>31</sup> It concluded that the petition for *certiorari* was filed on time because MSAPL did not abandon their right to impugn the evidence submitted in the application for the writ of preliminary attachment, because they filed a motion to determine the sufficiency of the bond. On the merits, it held that the RTC exceeded its authority when it "ordered the issuance of the writ [of preliminary attachment] despite a dearth of evidence to clearly establish [CISC's] entitlement thereto, let alone the latter's failure to comply with all requirements therefor."<sup>32</sup> Noting that the posting of the attachment bond is a jurisdictional requirement, the CA concluded that since Plaridel's capacity for single risk coverage is limited to 20% of its net worth, or ₱57,866,599.80, the RTC "should have set aside the second writ outright for non-compliance with Sections 3 and 4 of Rule 57."<sup>33</sup>

After the CA perfunctorily denied CISC's motion for reconsideration on April 23, 2010,<sup>34</sup> it filed this petition for review on *certiorari*.

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<sup>24</sup> *Id.* at 245.

<sup>25</sup> *Id.* at 68.

<sup>26</sup> Presidential Decree No. 612 (1974).

<sup>27</sup> *Rollo*, pp. 265-268.

<sup>28</sup> *Id.* at 68-69.

<sup>29</sup> *Id.* at 69.

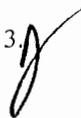
<sup>30</sup> For brevity, private respondents MSAPL, MSPI, and Atty. Ofelia Cajigal shall be collectively referred to as "MSAPL" from hereon.

<sup>31</sup> *Id.* at 32-34; 84-85.

<sup>32</sup> *Id.* at 74.

<sup>33</sup> *Id.* at 83.

<sup>34</sup> *Supra* note 3.



## II

CISC argues that the CA erred in giving due course to the petition insofar as it challenged the Orders dated April 13, 2009, July 2, 2009, and July 8, 2009 because the reglementary period to challenge these Orders already lapsed by the time private respondents filed their petition for *certiorari* below.<sup>35</sup> In response, MSAPL contends that since they continued to assail the additional attachment from the time it was first issued, the 60-day period should be counted from the final denial of their challenge to the additional attachment, which was on September 4, 2009.<sup>36</sup>

MSAPL's theory is similar to that proffered by one of the parties in the case of *San Juan, Jr. v. Cruz*.<sup>37</sup> The petitioner therein filed second and third motions for reconsideration from an interlocutory order by the trial court. When he filed the petition for *certiorari* with the CA, he counted the 60-day reglementary period from the notice of denial of his third motion for reconsideration. He argued that since there is no rule prohibiting the filing of a second or third motion for reconsideration of an interlocutory order, the 60-day period should be counted from the notice of denial of the last motion for reconsideration. In resolving the question of when the reglementary period for filing a petition for *certiorari* shall be counted, we held that the "60-day period shall be reckoned from the trial court's denial of his first motion for reconsideration, otherwise indefinite delays will ensue."<sup>38</sup>

Applying the rule in *San Juan*, MSAPL's challenge to the order dated April 13, 2009 was clearly time-barred. The 60-day reglementary period for challenging the RTC's issuance of the amended writ of attachment should be counted from April 27, 2009,<sup>39</sup> the date when MSAPL received a copy of the April 13, 2009 Order denying MSAPL's motion for reconsideration of the December 22, 2008 Order which granted CISC's motion to amend the writ of preliminary attachment. The CA, however, considered MSAPL's act of filing a motion to determine the sufficiency of the bond as a definitive indication that private respondents have not "abandoned their right to impugn the evidence submitted in the application for the second writ."<sup>40</sup> This is erroneous for two reasons: *first*, MSAPL's motion never impugned the propriety and factual bases of the RTC's issuance of the amended writ of attachment; and *second*, even if it did, the motion would be considered as a second motion for reconsideration, which could not have stayed the reglementary period within which to file a petition for *certiorari* assailing an interlocutory order. We emphasize that the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of

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<sup>35</sup> *Id.* at 36-41.

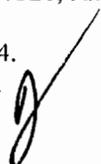
<sup>36</sup> *Rollo*, pp. 461-463.

<sup>37</sup> G.R. No. 167321, July 31, 2006, 497 SCRA 410.

<sup>38</sup> *Id.* at 424.

<sup>39</sup> *Rollo*, p. 304.

<sup>40</sup> *Id.* at 73-74.



judicial business. The timeliness of filing a petition for *certiorari* is mandatory and jurisdictional, and should not be trifled with.<sup>41</sup>

Meanwhile, the Orders dated July 2, 2009 and July 8, 2009 resolved incidental issues with respect to the issuance of the amended writ of attachment, namely: (1) when the additional docket fees should be paid; and (2) the approval of the attachment bond. As regards the first incidental issue, the RTC allowed CISC to pay the additional docket fees “within a reasonable time but in no case beyond its applicable prescriptive or reglementary period.”<sup>42</sup> MSAPL, instead of filing a motion for reconsideration of the July 2, 2009 Order, elected to file a motion to compel CISC to pay the required docket fees on August 14, 2009.<sup>43</sup> Evidently, MSAPL already recognized the validity of the July 2, 2009 Order and sought CISC’s compliance with the Order. Notably, the motion remained pending before the RTC when MSAPL filed its petition for *certiorari* with the CA. We find that the petition for *certiorari*, insofar as it questions the alleged non-payment of docket fees, was prematurely filed because the RTC has yet to rule on this issue. A petition for *certiorari* may be resorted to only when there is no plain, speedy, and adequate remedy in the ordinary course of law.<sup>44</sup> It is not up to parties to preempt the trial court’s action on their motions. Absent any showing of unreasonable delay on the part of the RTC—and there is none here, considering the short period between the filing of the motion and the petition for *certiorari*, as well as the various incidents pending *a quo*—MSAPL’s recourse to the CA was premature. The more appropriate remedy for MSAPL would have been to move for the RTC to resolve its pending motion instead of precipitately raising this matter in its petition for *certiorari*.<sup>45</sup>

This leaves the July 8, 2009 Order which approved the attachment bond Plaridel submitted. It was directly challenged by MSAPL when the latter filed a motion to determine the sufficiency of the bond because of questions regarding Plaridel’s financial capacity. Before the RTC could act on the motion, however, MSAPL filed an urgent motion to recall and set aside the approval of the attachment bond, dated July 21, 2009,<sup>46</sup> on the ground that the attachment bond underwritten by Plaridel exceeded its retention limit under the Insurance Code. The RTC resolved these two motions jointly in its September 4, 2009 Order, holding that Section 215 allows insurance companies to insure a single risk in excess of retention limits provided that the excess amount is ceded to reinsurers, and consequently affirming its approval of the attachment bond. In turn, the September 4, 2009 Order became the anchor of MSAPL’s petition for *certiorari*. Although not captioned as “motions for reconsideration,” the twin

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<sup>41</sup> *Visayan Electric Company Employees Union-ALU-TUCP v. Visayan Electric Company, Inc. (VECO)*, G.R. No. 205575, July 22, 2015, 763 SCRA 566, 577.

<sup>42</sup> *Rollo*, p. 244.

<sup>43</sup> *Id.* at 259-264; 305.

<sup>44</sup> RULES OF COURT, Rule 65, Sec. 1.

<sup>45</sup> *Santos v. Court of Appeals*, G.R. No. 155374, November 20, 2007, 537 SCRA 665, 671.

<sup>46</sup> *Rollo*, pp. 265-268.



motions filed by MSAPL directly challenged the approval of the attachment bond, and the September 4, 2009 Order was the second time the RTC passed upon the issue concerning the sufficiency of the bond. Therefore, the petition for *certiorari* filed by MSAPL on September 18, 2009, insofar as it assailed both the July 8, 2009 and September 4, 2009 Orders, was timely filed.

### III

We now resolve the sole substantive issue before us: whether the RTC committed grave abuse of discretion when it approved the attachment bond whose face amount exceeded the retention limit of the surety.

Section 215 of the old Insurance Code,<sup>47</sup> the law in force at the time Plaridel issued the attachment bond, limits the amount of risk that insurance companies can retain to a maximum of 20% of its net worth. However, in computing the retention limit, risks that have been ceded to authorized reinsurers are *ipso jure* deducted.<sup>48</sup> In mathematical terms, the amount of retained risk is computed by deducting ceded/reinsured risk from insurable risk.<sup>49</sup> If the resulting amount is below 20% of the insurer's net worth, then the retention limit is not breached. In this case, both the RTC and CA determined that, based on Plaridel's financial statement that was attached to its certificate of authority issued by the Insurance Commission, its net worth is ₱289,332,999.00.<sup>50</sup> Plaridel's retention limit is therefore ₱57,866,599.80, which is below the ₱113,197,309.10 face value of the attachment bond. However, it only retained an insurable risk of ₱17,377,938.19 because the remaining amount of ₱98,819,770.91 was ceded to 16 other insurance companies.<sup>51</sup> Thus, the risk retained by Plaridel is actually ₱40 Million below its maximum retention limit. Therefore, the approval of the attachment bond by the RTC was in order. Contrary to MSAPL's contention that the RTC acted with grave abuse of discretion, we find that the RTC not only correctly applied the law but also acted judiciously when it required Plaridel to submit proof of its reinsurance contracts after MSAPL questioned Plaridel's capacity to underwrite the attachment bond. Apparently, MSAPL failed to appreciate that by dividing the risk through reinsurance, Plaridel's attachment bond actually became more reliable—as it is no longer

<sup>47</sup> Superseded in 2013 by Republic Act No. 10607, An Act Strengthening the Insurance Industry, Further Amending Presidential Decree No. 612, Otherwise Known as "The Insurance Code", as Amended by Presidential Decree Nos. 1141, 1280, 1455, 1460, 1814, and 1981, and *Batas Pambansa Blg.* 874, and for Other Purposes (amended code). Section 215 of the old code was substantially reproduced in Section 221 of the amended code.

<sup>48</sup> Sec. 215. No insurance company other than life, whether foreign or domestic, shall retain any risk on any one subject of insurance in an amount exceeding twenty *per centum* of its net worth. For purposes of this section, the term "subject of insurance" shall include all properties or risks insured by the same insurer that customarily are considered by non-life company underwriters to be subject to loss or damage from the same occurrence of any hazard insured against.

Reinsurance ceded as authorized under the succeeding title shall be deducted in determining the risk retained. As to surety risk, deduction shall also be made of the amount assumed by any other company authorized to transact surety business and the value of any security mortgage, pledged, or held subject to the surety's control and for the surety's protection.

<sup>49</sup> Retained Risk = Insurable Risk – Reinsured Risk

<sup>50</sup> *Rollo*, pp. 69; 82.

<sup>51</sup> *Id.* at 273-292.

dependent on the financial stability of one company—and, therefore, more beneficial to MSAPL.

In cancelling Plaridel’s insurance bond, the CA also found that because the reinsurance contracts were issued in favor of Plaridel, and not MSAPL, these failed to comply with the requirement of Section 4, Rule 57 of the Rules of Court requiring the bond to be executed to the adverse party.<sup>52</sup> This led the CA to conclude that “the bond has been improperly and insufficiently posted.”<sup>53</sup> We reverse the CA and so hold that the reinsurance contracts were correctly issued in favor of Plaridel. A contract of reinsurance is one by which an insurer (the “direct insurer” or “cedant”) procures a third person (the “reinsurer”) to insure him against loss or liability by reason of such original insurance.<sup>54</sup> It is a separate and distinct arrangement from the original contract of insurance, whose contracted risk is insured in the reinsurance agreement.<sup>55</sup> The reinsurer’s contractual relationship is with the direct insurer, not the original insured, and the latter has no interest in and is generally not privy to the contract of reinsurance.<sup>56</sup> Put simply, reinsurance is the “insurance of an insurance.”<sup>57</sup>

By its nature, reinsurance contracts are issued in favor of the direct insurer because the subject of such contracts is the direct insurer’s risk—in this case, Plaridel’s contingent liability to MSAPL—and not the risk assumed under the original policy.<sup>58</sup> The requirement under Section 4, Rule 57 of the Rules of Court that the applicant’s bond be executed to the adverse party necessarily pertains only to the attachment bond itself and not to any underlying reinsurance contract. With or without reinsurance, the obligation of the surety to the party against whom the writ of attachment is issued remains the same.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated November 25, 2009 and Resolution dated April 23, 2010 of the Court of Appeals in CA-G.R. SP No. 110511 are **SET ASIDE**.

**SO ORDERED.**

  
**FRANCIS H. JARDELEZA**  
*Associate Justice*

<sup>52</sup> RULES OF COURT, Rule 57, Sec. 4. *Condition of applicant’s bond*. – The party applying for the order must thereafter give a bond executed to the adverse party in the amount fixed by the court in its order granting the issuance of the writ, conditioned that the latter will pay all the costs which may be adjudged to the adverse party and all damages which he may sustain by reason of the attachment, if the court shall finally adjudge that the applicant was not entitled thereto.

<sup>53</sup> *Rollo*, p. 84.

<sup>54</sup> Presidential Decree No. 612, Sec. 95. Reproduced verbatim in Republic Act No. 10607, Sec. 97.

<sup>55</sup> *Avon Insurance PLC v. Court of Appeals*, G.R. No. 97642, August 29, 1997, 278 SCRA 312, 322.

<sup>56</sup> Presidential Decree No. 612, Sec. 98. Reproduced verbatim in Republic Act No. 10607, Sec. 100.

<sup>57</sup> De Leon & De Leon, Jr., *The Insurance Code of the Philippines*, 2014 ed., p. 315.

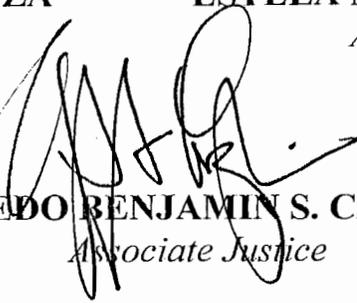
<sup>58</sup> Of course, the reinsurance policy is necessarily based upon the original policy, and the terms and conditions of the reinsurance policy are greatly affected by those of the original policy. *Id.* at 322.

WE CONCUR:

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

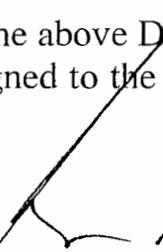
  
**JOSE C. MENDOZA**  
*Associate Justice*

  
**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*

  
**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

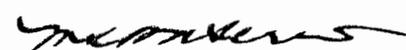
**ATTESTATION**

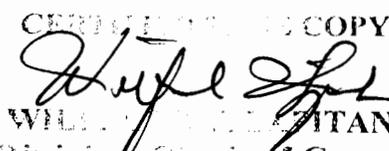
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**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, it is hereby certified 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  
  
**WILLIAM C. MELITÁN**  
 Division Clerk of Court  
 Third Division  
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