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Wilfredo V. Lapitan
 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

FEB 12 2018

Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

COMMISSIONER OF INTERNAL G.R. No. 227544
 REVENUE,

Petitioner,

Present:

-versus-

VELASCO, JR.,* J.,
 BERSAMIN,** Acting Chairperson,
 LEONEN,
 MARTIRES, and
 GESMUNDO, JJ.

TRANSITIONS
 PHILIPPINES, INC.,
 Respondent.

OPTICAL

Promulgated:

November 22, 2017

X-----*Wilfredo V. Lapitan*-----X

DECISION

LEONEN, J.:

Estoppel applies against a taxpayer who did not only raise at the earliest opportunity its representative's lack of authority to execute two (2) waivers of defense of prescription, but was also accorded, through these waivers, more time to comply with the audit requirements of the Bureau of Internal Revenue. Nonetheless, a tax assessment served beyond the extended period is void.

This Petition for Review on Certiorari¹ seeks to nullify and set aside the June 7, 2016 Decision² and September 26, 2016 Resolution³ of the Court

* On official leave.

** Designated Acting Chairperson per S.O. No. 2514 dated November 8, 2017.

¹ *Rollo*, pp. 30-63.

² *Id.* at 71-84. The Decision was penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Presiding Justice Roman G. Del Rosario (with separate concurring opinion, pp. 85-92)

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of Tax Appeals En Banc in CTA EB No. 1251. The Court of Tax Appeals En Banc affirmed its First Division's September 1, 2014 Decision,⁴ cancelling the deficiency assessments against Transitions Optical Philippines, Inc. (Transitions Optical).

On April 28, 2006, Transitions Optical received Letter of Authority No. 00098746 dated March 23, 2006 from Revenue Region No. 9, San Pablo City, of the Bureau of Internal Revenue. It was signed by then Officer-in-Charge-Regional Director Corazon C. Pangcog and it authorized Revenue Officers Jocelyn Santos and Levi Visaya to examine Transition Optical's books of accounts for internal revenue tax purposes for taxable year 2004.⁵

On October 9, 2007, the parties allegedly executed a Waiver of the Defense of Prescription (First Waiver).⁶ In this supposed First Waiver, the prescriptive period for the assessment of Transition Optical's internal revenue taxes for the year 2004 was extended to June 20, 2008.⁷ The document was signed by Transitions Optical's Finance Manager, Pamela Theresa D. Abad, and by Bureau of Internal Revenue's Revenue District Officer, Myrna S. Leonida.⁸

This was followed by another supposed Waiver of the Defense of Prescription (Second Waiver) dated June 2, 2008. This time, the prescriptive period was supposedly extended to November 30, 2008.⁹

Thereafter, the Commissioner of Internal Revenue, through Regional Director Jaime B. Santiago (Director Santiago), issued a Preliminary Assessment Notice (PAN) dated November 11, 2008, assessing Transitions Optical for its deficiency taxes for taxable year 2004. Transitions Optical filed a written protest on November 26, 2008.¹⁰

The Commissioner of Internal Revenue, again through Director Santiago, subsequently issued against Transitions Optical a Final Assessment Notice (FAN) and a Formal Letter of Demand (FLD) dated

and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Contangco-Manalastas of the Court of Tax Appeals, Quezon City.

³ Id. at 94–96. The Resolution was penned by Associate Justice Ma. Belen M. Ringpis-Liban and concurred in by Presiding Justice Roman G. Del Rosario and associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla of the Court of Tax Appeals, Quezon City.

⁴ Id. at 97–121. The Decision, docketed as CTA Case No. 8442, was penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justice Cielito N. Mindaro-Grulla.

⁵ Id. at 72.

⁶ Id.

⁷ Id. at 32.

⁸ Id. at 150–151.

⁹ Id. at 32–33 and 152–153.

¹⁰ Id. at 72.

November 28, 2008 for deficiency income tax, value-added tax, expanded withholding tax, and final tax for taxable year 2004 amounting to ₱19,701,849.68.¹¹

In its Protest Letter dated December 8, 2008 against the FAN, Transitions Optical alleged that the demand for deficiency taxes had already prescribed at the time the FAN was mailed on December 2, 2008. In its Supplemental Protest, Transitions Optical pointed out that the FAN was void because the FAN indicated 2006 as the return period, but the assessment covered calendar year 2004.¹²

Years later, the Commissioner of Internal Revenue, through Regional Director Jose N. Tan, issued a Final Decision on the Disputed Assessment dated January 24, 2012, holding Transitions Optical liable for deficiency taxes in the total amount of ₱19,701,849.68 for taxable year 2004, broken down as follows:

Tax	Amount
Income Tax	₱ 3,153,371.04
Value-Added Tax	1,231,393.47
Expanded Withholding Tax	175,339.51
Final Tax on Royalty	14,026,247.90
Final Tax on Interest Income	1,115,497.76
Total	₱ 19,701,849.68¹³

On March 16, 2012, Transitions Optical filed a Petition for Review before the Court of Tax Appeals.¹⁴

In her Answer, the Commissioner of Internal Revenue interposed that Transitions Optical's claim of prescription was inappropriate because the executed Waiver of the Defense of Prescription extended the assessment period. She added that the posting of the FAN and FLD was within San Pablo City Post Office's exclusive control. She averred that she could not be faulted if the FAN and FLD were posted for mailing only on December 2, 2008, since November 28, 2008 fell on a Friday and the next supposed working day, December 1, 2008, was declared a Special Holiday.¹⁵

After trial and upon submission of the parties' memoranda, the First Division of the Court of Tax Appeals (First Division) rendered a Decision on

¹¹ Id. at 73.

¹² Id.

¹³ Id. at 73 and 158-159. The total sum indicated in the Formal Letter of Demand is ₱19,614,438.97 but the correct total sum is ₱19,701,849.68.

¹⁴ Id. at 34.

¹⁵ Id. at 73.

September 1, 2014.¹⁶ It held:

In summary therefore, the Court hereby finds the subject Waivers to be defective and therefore void. Nevertheless, granting for the sake of argument that the subject Waivers were validly executed, for failure of respondent however to present adequate supporting evidence to prove that it issued the FAN and the FLD within the extended period agreed upon in the 2nd Waiver, the subject assessment must be cancelled for being issued beyond the prescriptive period provided by law to assess.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Final Assessment Notice, Formal Letter of Demand and Final Decision on Disputed Assessment finding petitioner Transitions Optical Philippines, Inc. liable for deficiency income tax, deficiency expanded withholding tax, deficiency value-added tax and deficiency final tax for taxable year 2004 in the total amount of **P19,701,849.68** are hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.¹⁷ (Emphasis in the original)

The Commissioner of Internal Revenue filed a Motion for Reconsideration, which was denied by the First Division in its Resolution¹⁸ dated November 7, 2014.

The Court of Tax Appeals En Banc affirmed the First Division Decision¹⁹ and subsequently denied the Commissioner of Internal Revenue's Motion for Reconsideration.²⁰

Hence, this Petition was filed before this Court. Transitions Optical filed its Comment.²¹

Petitioner contends that “[t]he two Waivers executed by the parties on October 9, 2007 and June 2, 2008 substantially complied with the requirements of Sections 203 and 222 of the [National Internal Revenue Code].”²² She adds that technical rules of procedure of administrative bodies, such as those provided in Revenue Memorandum Order (RMO) No. 20-90 issued on April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01 issued on August 2, 2001, must be liberally applied to promote justice.²³ At any rate, petitioner maintains that respondent is estopped from questioning the validity of the waivers since their execution

¹⁶ Id. at 74.

¹⁷ Id. at 120.

¹⁸ Id. at 123–127.

¹⁹ Id. at 83.

²⁰ Id. at 96.

²¹ Id. at 283–313.

²² Id. at 37.

²³ Id. at 38.

was caused by the delay occasioned by respondent's own failure to comply with the orders of the Bureau of Internal Revenue to submit documents for audit and examination.²⁴

Furthermore, petitioner argues that the assessment required to be issued within the three (3)-year period provided in Sections 203 and 222 of the National Internal Revenue Code refer to petitioner's actual issuance of the notice of assessment to the taxpayer or what is usually known as PAN, and not the FAN issued in case the taxpayer files a protest.²⁵

On the other hand, respondent contends that the Court of Tax Appeals properly found the waivers defective, and therefore, void. It adds that the three (3)-year prescriptive period for tax assessment primarily benefits the taxpayer, and any waiver of this period must be strictly scrutinized in light of the requirements of the laws and rules.²⁶ Respondent posits that the requirements for valid waivers are not mere technical rules of procedure that can be set aside.²⁷

Respondent further asserts that it is not estopped from questioning the validity of the waivers as it raised its objections at the earliest opportunity.²⁸ Besides, the duty to ensure compliance with the requirements of RMO No. 20-90 and RDAO No. 05-01, including proper authorization of the taxpayer's representative, fell primarily on petitioner and her revenue officers. Thus, petitioner came to court with unclean hands and cannot be permitted to invoke the doctrine of estoppel.²⁹ Respondent insists that there was no clear showing that the signatories in the waivers were duly sanctioned to act on its behalf.³⁰

Even assuming that the waivers were valid, respondent argues that the assessment would still be void as the FAN was served only on December 4, 2008, beyond the extended period of November 30, 2008.³¹ Contrary to petitioner's stance, respondent counters that the assessment required to be served within the three (3)-year prescriptive period is the FAN and FLD, not just the PAN.³² According to respondent, "it is the FAN and FLD that formally notif[y] the taxpayer, and categorically [demand] from him, that a deficiency tax is due."³³

²⁴ Id. at 37-38.

²⁵ Id. at 56-57.

²⁶ Id. at 297.

²⁷ Id. at 300.

²⁸ Id. at 302-303.

²⁹ Id. at 304 and 309.

³⁰ Id. at 302.

³¹ Id. at 304-305.

³² Id. at 308.

³³ Id. at 307.

The issues for this Court's resolution are:

First, whether or not the two (2) Waivers of the Defense of Prescription entered into by the parties on October 9, 2007 and June 2, 2008 were valid; and

Second, whether or not the assessment of deficiency taxes against respondent Transitions Optical Philippines, Inc. for taxable year 2004 had prescribed.

This Court denies the Petition. The Court of Tax Appeals committed no reversible error in cancelling the deficiency tax assessments.

I

As a general rule, petitioner has three (3) years to assess taxpayers from the filing of the return. Section 203 of the National Internal Revenue Code provides:

Section 203. Period of Limitation Upon Assessment and Collection. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

An exception to the rule of prescription is found in Section 222(b) and (d) of this Code, *viz*:

Section 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. —

....

- (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

....



- (d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5) - year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

Thus, the period to assess and collect taxes may be extended upon the Commissioner of Internal Revenue and the taxpayer's written agreement, executed before the expiration of the three (3)-year period.

In this case, two (2) waivers were supposedly executed by the parties extending the prescriptive periods for assessment of income tax, value-added tax, and expanded and final withholding taxes to June 20, 2008, and then to November 30, 2008.

The Court of Tax Appeals, both its First Division and En Banc, declared as defective and void the two (2) Waivers of the Defense of Prescription for non-compliance with the requirements for the proper execution of a waiver as provided in RMO No. 20-90 and RDAO No. 05-01. Specifically, the Court of Tax Appeals found that these Waivers were not accompanied by a notarized written authority from respondent, authorizing the so-called representatives to act on its behalf. Likewise, neither the Revenue District Office's acceptance date nor respondent's receipt of the Bureau of Internal Revenue's acceptance was indicated in either document.³⁴

However, Presiding Justice Roman G. Del Rosario (Justice Del Rosario) in his Separate Concurring Opinion³⁵ in the Court of Tax Appeals June 7, 2016 Decision, found that respondent is estopped from claiming that the waivers were invalid by reason of its own actions, which persuaded the government to postpone the issuance of the assessment. He discussed:

In the case at bar, respondent performed acts that induced the BIR to defer the issuance of the assessment. Records reveal that to extend the BIR's prescriptive period to assess respondent for deficiency taxes for taxable year 2004, respondent executed two (2) waivers. The first Waiver dated October 2007 extended the period to assess until June 20, 2008, while the second Waiver, which was executed on June 2, 2008, extended the period to assess the taxes until November 30, 2008. As a consequence of the issuance of said waivers, petitioner delayed the issuance of the assessment.

Notably, when respondent filed its protest on November 26, 2008 against the Preliminary Assessment Notice dated November 11, 2008, it merely argued that it is not liable for the assessed deficiency taxes and did

³⁴ Id. at 77 and 112-115.

³⁵ Id. at 85-92.

not raise as an issue the invalidity of the waiver and the prescription of petitioner's right to assess the deficiency taxes. In its protest dated December 8, 2008 against the FAN, respondent argued that the year being audited in the FAN has already prescribed at the time such FAN was mailed on December 2, 2008. Respondent even stated in that protest that it received the letter (referring to the FAN dated November 28, 2008) on December 5, 2008, which accordingly is five (5) days after the waiver it issued had prescribed. The foregoing narration plainly does not suggest that respondent has any objection to its previously executed waivers. By the principle of estoppel, respondent should not be allowed to question the validity of the waivers.³⁶

In *Commissioner of Internal Revenue v. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*,³⁷ this Court recognized the doctrine of estoppel and upheld the waivers when both the taxpayer and the Bureau of Internal Revenue were *in pari delicto*. The taxpayer's act of impugning its waivers after benefitting from them was considered an act of bad faith:

In this case, respondent, after deliberately executing defective waivers, raised the very same deficiencies it caused to avoid the tax liability determined by the BIR during the extended assessment period. It must be remembered that by virtue of these Waivers, respondent was given the opportunity to gather and submit documents to substantiate its claims before the [Commissioner of Internal Revenue] during investigation. It was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. Yet, after enjoying these benefits, respondent challenged the validity of the Waivers when the consequences thereof were not in its favor. In other words, respondent's act of impugning these Waivers after benefitting therefrom and allowing petitioner to rely on the same is an act of bad faith.³⁸

This Court found the taxpayer estopped from questioning the validity of its waivers:

Respondent executed *five* Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.³⁹ (Emphasis in the original)

Parenthetically, this Court stated that when both parties continued to deal with each other in spite of knowing and without rectifying the defects of the waivers, their situation is "dangerous and open to abuse by unscrupulous

³⁶ Id. at 90-91.

³⁷ 774 Phil. 428 (2015) [Per J. Velasco, Jr., Third Division].

³⁸ Id. at 442.

³⁹ Id. at 444-445.

taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.”⁴⁰

Estoppel similarly applies in this case.

Indeed, the Bureau of Internal Revenue was at fault when it accepted respondent’s Waivers despite their non-compliance with the requirements of RMO No. 20-90 and RDAO No. 05-01.

Nonetheless, respondent’s acts also show its implied admission of the validity of the waivers. *First*, respondent never raised the invalidity of the Waivers at the earliest opportunity, either in its Protest to the PAN, Protest to the FAN, or Supplemental Protest to the FAN.⁴¹ It thereby impliedly recognized these Waivers’ validity and its representatives’ authority to execute them. Respondent only raised the issue of these Waivers’ validity in its Petition for Review filed with the Court of Tax Appeals.⁴² In fact, as pointed out by Justice Del Rosario, respondent’s Protest to the FAN clearly recognized the validity of the Waivers,⁴³ when it stated:

This has reference to the Final Assessment Notice (“[F]AN”) issued by your office, dated November 28, 2008. The said letter was received by Transitions Optical Philippines[,] Inc. (TOPI) on December 5, 2008, **five days after the waiver we issued which was valid until November 30, 2008 had prescribed.**⁴⁴ (Emphasis supplied)

Second, respondent does not dispute petitioner’s assertion⁴⁵ that respondent repeatedly failed to comply with petitioner’s notices, directing it to submit its books of accounts and related records for examination by the Bureau of Internal Revenue. Respondent also ignored the Bureau of Internal Revenue’s request for an Informal Conference to discuss other “discrepancies” found in the partial documents submitted. The Waivers were necessary to give respondent time to fully comply with the Bureau of Internal Revenue notices for audit examination and to respond to its Informal Conference request to discuss the discrepancies.⁴⁶ Thus, having benefitted from the Waivers executed at its instance, respondent is estopped from claiming that they were invalid and that prescription had set in.

⁴⁰ Id. at 445.

⁴¹ *Rollo*, p. 124.

⁴² Id. at 184–188.

⁴³ Id. at 91.

⁴⁴ Id. at 167.

⁴⁵ Id. at 44–45.

⁴⁶ Id. at 45.

II

But, even as respondent is estopped from questioning the validity of the Waivers, the assessment is nonetheless void because it was served beyond the supposedly extended period.

The First Division of the Court of Tax Appeals found that “the date indicated in the envelope/mail matter containing the FAN and the FLD is December 4, 2008, which is considered as the date of their mailing.”⁴⁷ Since the validity period of the second Waiver is only until November 30, 2008, prescription had already set in at the time the FAN and the FLD were actually mailed on December 4, 2008.

For lack of adequate supporting evidence, the Court of Tax Appeals rejected petitioner’s claim that the FAN and the FLD were already delivered to the post office for mailing on November 28, 2008 but were actually processed by the post office on December 2, 2008, since December 1, 2008 was declared a Special Holiday.⁴⁸ The testimony of petitioner’s witness, Dario A. Consignado, Jr., that he brought the mail matter containing the FAN and the FLD to the post office on November 28, 2008 was considered self-serving, uncorroborated by any other evidence. Additionally, the Certification presented by petitioner certifying that the FAN issued to respondent was delivered to its Administrative Division for mailing on November 28, 2008 was found insufficient to prove that the actual date of mailing was November 28, 2008.

This Court finds no clear and convincing reason to overturn these factual findings of the Court of Tax Appeals.

Finally, petitioner’s contention that the assessment required to be issued within the three (3)-year or extended period provided in Sections 203 and 222 of the National Internal Revenue Code refers to the PAN is untenable.

Considering the functions and effects of a PAN *vis à vis* a FAN, it is clear that the assessment contemplated in Sections 203 and 222 of the National Internal Revenue Code refers to the service of the FAN upon the taxpayer.

A PAN merely informs the taxpayer of the initial findings of the Bureau of Internal Revenue.⁴⁹ It contains the proposed assessment, and the

⁴⁷ Id. at 118.

⁴⁸ Id. at 119.

⁴⁹ TAX CODE, §c. 228; *Commissioner of Internal Revenue v. Menguito*, 587 Phil. 234 (2008) [Per J. Austria-Martinez, Third Division].

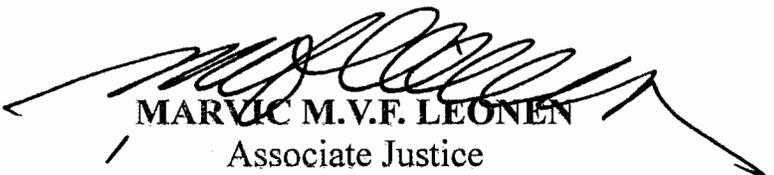
facts, law, rules, and regulations or jurisprudence on which the proposed assessment is based.⁵⁰ It does not contain a demand for payment but usually requires the taxpayer to reply within 15 days from receipt. Otherwise, the Commissioner of Internal Revenue will finalize an assessment and issue a FAN.

The PAN is a part of due process.⁵¹ It gives both the taxpayer and the Commissioner of Internal Revenue the opportunity to settle the case at the earliest possible time without the need for the issuance of a FAN.

On the other hand, a FAN contains not only a computation of tax liabilities but also a demand for payment within a prescribed period.⁵² As soon as it is served, an obligation arises on the part of the taxpayer concerned to pay the amount assessed and demanded. It also signals the time when penalties and interests begin to accrue against the taxpayer. Thus, the National Internal Revenue Code imposes a 25% penalty, in addition to the tax due, in case the taxpayer fails to pay the deficiency tax within the time prescribed for its payment in the notice of assessment.⁵³ Likewise, an interest of 20% per annum, or such higher rate as may be prescribed by rules and regulations, is to be collected from the date prescribed for payment until the amount is fully paid.⁵⁴ Failure to file an administrative protest within 30 days from receipt of the FAN will render the assessment final, executory, and demandable.

WHEREFORE, the Petition is **DENIED**. The June 7, 2016 Decision and September 26, 2016 Resolution of the Court of Tax Appeals En Banc in CTA EB No. 1251 are **AFFIRMED**.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

On official leave
PRESBITERO J. VELASCO, JR.
Associate Justice

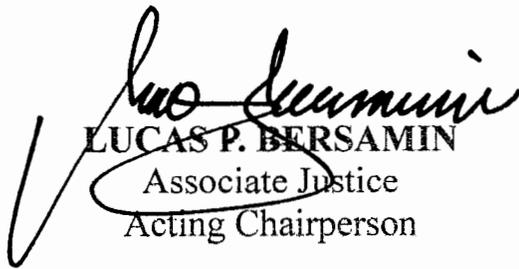
⁵⁰ Revenue Regulation No. 12-99, sec. 3.1.2.

⁵¹ See *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172 (2010) [Per J. Mendoza, Second Division].

⁵² Revenue Regulation No. 12-99, sec. 3.1.4.

⁵³ TAX CODE, sec. 248 (A)(3).

⁵⁴ TAX CODE, sec. 249.

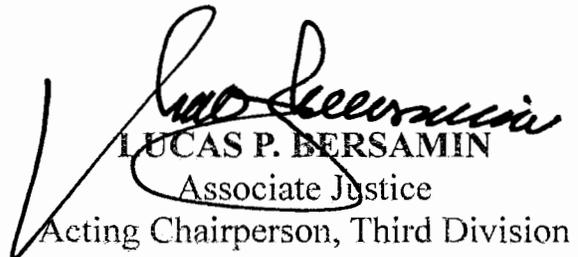

LUCAS P. BERSAMIN
 Associate Justice
 Acting Chairperson


SAMUEL R. MARTIRES
 Associate Justice


ALEXANDER G. GESMUNDO
 Associate Justice

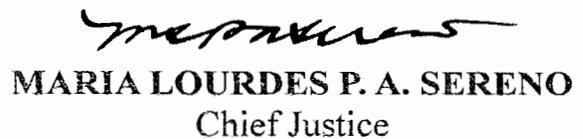
ATTESTATION

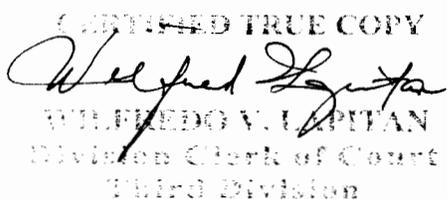
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


LUCAS P. BERSAMIN
 Associate Justice
 Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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

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WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

FEB 12 2018