Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LENN MORALES,
Petitioner,

G.R. No. 182475

Present:

- *versus* -

CARPIO, *J.*,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

METROPOLITAN BANK AND TRUST COMPANY,
Respondent.

Promulgated:

NOV 2 1 2012

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DECISION

PEREZ, *J.*:

Filed pursuant to Rule 45 of the *1997 Rules on Civil Procedure*, the Petition for Review on *Certiorari* at bench primarily assails the Decision[1] dated 20 September 2007 rendered by the then Nineteenth Division of the Court of Appeals (CA) in CA-G.R. SP No. 02405,[2] the dispositive portion of which states:

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[1] Penned by Court of Appeals Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Priscilla Baltazar-Padilla and Stephen C. Cruz.

[2] CA *rollo*, 20 September 2007 Decision in CA-G.R. SP No. 02405, pp. 307-317.

> WHEREFORE, the petition for certiorari filed by [Morales] is hereby xxx DENIED for lack of merit. Accordingly, the assailed decision and resolution of the NLRC dated June 28, 2006 and September 15, 2006, are hereby UPHELD respectively.
>
> SO ORDERED.[3]

The facts are not in dispute.

Sometime in August 1992, petitioner Lenn ***Morales*** was hired by Solidbank as Teller for its Rizal Avenue Branch in Tacloban City. With said bank's merger with respondent Metropolitan Bank & Trust Company (***Metrobank***) in September 2000, the latter, as surviving entity, absorbed Morales and assigned him to its Customer Service Relations-Reserve Pool (CSR-RP) which was composed of employees who, with no permanent places of assignment, acted as relievers whenever temporary vacancies arise in other branches. Designated as reliever for Metrobank's Main Branch in Tacloban City, Morales was likewise assigned to work in the same capacity for the bank's other Visayas Region III branches. From a job with a grade four rank, Morales was subsequently promoted in April 2003[4] to the position of Customer Service Representative (CSR), with a job grade 6 rank and a gross monthly salary of ₱16,250.00. It was while occupying the latter position that Morales was informed by Federico ***Mariano***, the Senior Manager of Metrobank's Tacloban City Main Branch, that he was covered by the bank's Special Separation Program (SSP) and that, in accordance therewith, his employment was going to be terminated on the ground of redundancy.[5]

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3 Id. at 317.

4 Stated as April 2004 int p. 5 of Morales' Rule 65 Petition for *Certiorari* dated 19 December 2006.

5 CA *rollo*, pp. 4-5, 122 and 308.

On 27 August 2003, Morales was furnished a copy of a memorandum of the same date informing him that, after a review of its organizational structure, Metrobank had found his services redundant and will consider him separated effective 1 October 2003. Assured that his termination was through no fault of his own but mainly due to business exigencies and developments in the banking industry, Morales was notified that he shall be paid the following: (a) a redundancy premium/separation pay, on top of his entitlements under the bank's retirement plan; (b) proportionate 13th month pay; (c) cash conversion of his outstanding vacation and sick leave credits; and, if applicable, (d) the return of his Provident Fund contributions; and, (e) cash surrender value of his Insurance.[6] Having signed a form on the same day signifying his unqualified and unconditional acceptance of Metrobank's decision to terminate his employment,[7] Morales executed on 10 November 2003 a *Release, Waiver and Quitclaim* acknowledging receipt of the sum of ₱158,496.95 as full payment of his monetary entitlements.[8]

On 20 February 2004, Morales filed against Metrobank a complaint for illegal dismissal, separation pay, backwages, moral and exemplary damages as well as attorney's fees.[9] Together with a similar complaint filed by one Raymundo ***Piczon***, Morales' complaint was docketed as NLRC RAB Case No. 2-0046-04 before the Regional Arbitration Branch No. VIII of the National Labor Relations Commission (NLRC). In support of his complaint, Morales alleged that, despite being an organic member of the Rizal Avenue Branch, he was assigned to Metrobank's Zamora St. Branch in view of his having signed a petition against the driver of the armored car who was eventually dismissed. With his actions suddenly closely watched and blown out of proportion, Morales claimed that he started receiving directives for

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6 Metrobank's 27 August 2003 Memorandum, id. at 174.
7 Morales' 27 August 2003 Letter, id. at 176.
8 Morales' 10 November 2003 Release, Waiver and Quitclaim, id. at 178-179 .
9 Morales' 18 February 2004 Complaint, id. at 79.

him to explain his unauthorized absences and out of town allowances which, far from being infractions, were simply the results of miscommunication. Arbitrarily singled out for termination, he was supposedly forced to sign the *Release, Waiver and Quitclaim* by Mariano who embarrassed him by announcing that his services had already been terminated and that he was no longer required to report for work.[10]

In its position paper, Metrobank averred that it had adopted the SSP since 1995 as a way of addressing worsening economic conditions and stiff competition with strategies designed to make its operations efficient but cost-effective. Towards said end, it claimed to have embarked on a major component of SSP called the Headcount Rationalization Program (HRP) which, taking into consideration the volume of its transactions *vis-à-vis* the massive computerization and automation of its operating systems, targeted the reduction of its existing workforce by 10% by the end of 2003. Having created and/or consolidated branches, centralized loan processing and adopted a branch headcount reduction scheme, Metrobank asserted that it identified 291 positions as superfluous, utilizing as criteria such factors as performance, work attitude and cost. Among the areas where the HRP was conducted was Visayas Region III which was directed to reduce the manpower of its 13 branches spread out in three provinces by 15 employees. Affected was its eight-man reserve pool which was composed of former Solidbank employees who acted as relievers whenever temporary vacancies occurred in the Region's branches.[11]

Metrobank further asserted that the volume of the Region's transactions required only six employees in the reserve pool, thereby rendering two positions superfluous. As a member of the reserve pool,

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[10] Id. at 30-33.

[11] Metrobank's 24 September 2004 Position Paper, id. at 112-148.

Morales allegedly had a record of unauthorized absences as well as complaints for undesirable and unprofessional conduct from various Branch Heads. In view of the absence of redeployment opportunities for him, Metrobank claimed Morales was included in the SSP and was eventually considered for termination on the ground of redundancy. Aside from the fact that Morales was duly informed of the management's decision more than one month ahead of his actual severance from service, Metrobank claimed to have served the Department of Labor and Employment (DOLE) the required Establishment Termination Report on 29 August 2003. Likewise accorded the separation benefits included in the SSP, Morales supposedly expressed his unqualified and unconditional acceptance of his termination and, upon receipt of his monetary entitlements, voluntarily executed the aforesaid *Release, Waiver and Quitclaim.* Claiming good faith in the implementation of its redundancy program, Metrobank prayed for the dismissal of Morales' complaint for lack of merit.[12]

On 11 November 2005, Executive Labor Arbiter Jesselito Latoja rendered a decision finding Morales' termination from service illegal on the ground that his promotion in April 2003 contradicted Metrobank's claim that his poor work performance contributed to his inclusion in the SSP. Brushing aside the *Release, Waiver and Quitclaim* for having been prepared by Metrobank, the Labor Arbiter ruled that Morales was entitled to reinstatement without loss of seniority rights, backwages assessed at ₱390,005.00 at the time of the rendition of the decision, 13th month pay in the sum of ₱32,500.50, quarterly bonus in the sum of ₱130,002.00 and CBA signing bonus in the sum of ₱120,000.00. On the ground that Morales' dismissal from service was tainted with bad faith and malice, the Labor Arbiter likewise held Metrobank liable to pay said employee ₱100,000.00 in moral damages, ₱100,000.00 in exemplary damages and attorney's fees

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12 Id.

which, at 10% of the total award, was computed at ₱87,250.65. From the grand total of ₱959,757.15 in monetary awards, the Labor Arbiter decreed the deduction of the sum of ₱158,496.95 which Morales had acknowledged to have received by way of separation benefits.[13]

On appeal, the foregoing decision was reversed and set aside in the 20 July 2006 Decision rendered by the Fourth Division of the NLRC in NLRC Case No. V-000200-2006. Finding that Metrobank validly implemented the HRP on a nationwide scale in connection with the SSP, the NLRC ruled that Morales termination in accordance therewith belied the latter's claim that he was arbitrarily singled out for dismissal from service. Given that the reserve pool in Visayas Region III was overstaffed, Morales was legitimately terminated in view of his poor work performance and negative attitude which, at one point, gravely jeopardized the operations of the branch to which he was temporarily assigned. Applying the general rule that the characterization of an employee's services as redundant is a management prerogative which should not be interfered with absent showing of abuse, the NLRC also upheld the validity of the *Release, Waiver and Quitclaim* on the ground that the ₱158,496.95 Morales received represented a reasonable settlement of his claims.[14] Morales' motion for reconsideration of the decision was denied for lack of merit in the NLRC's Resolution dated 15 September 2006.[15]

Aggrieved, Morales filed the Rule 65 Petition for *Certiorari* docketed before the CA Cebu City Station as CA-G.R. SP No. 02405, on the ground that the NLRC gravely abused its discretion in reversing the Labor Arbiter's decision. Maintaining that Metrobank's claim of redundancy was belied by its hiring of one Abigail Perez as replacement for his position, Morales also

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13 Labor Arbiter's 11 November 2005 Decision, id. at 15-25.
14 NLRC's 20 July 2006 Decision, id. at 27-50.
15 NLRC's 15 September 2006 Resolution, id. at 64-65.

argued that Metrobank did not comply with the notice requirement for a termination of employment on the ground of redundancy.[16] On 20 September 2007, however, the CA's Nineteenth Division rendered the herein assailed decision, denying the foregoing petition for lack of merit. Upholding the validity of Morales' termination from employment, the CA discounted the grave abuse of discretion imputed against the NLRC for ruling that Metrobank's redundancy program legitimately entailed reduction of its workforce to make it more responsive to the actual demands and necessities of its business. Considering that Abigail Perez was hired as a clerk on a permanent status for the bank's Ormoc Branch, the CA also ruled that said employee could not be considered as Morales' replacement. Finding that Metrobank complied with the notice requirement under Article 283 of the *Labor Code*, the CA ultimately sustained the validity of the *Release, Waiver and Quitclaim* executed by Morales.[17]

Dissatisfied, Morales filed the Rule 45 petition for review at bench,[18] seeking the reversal of the CA's 20 September 2007 Decision on the following grounds:

(a)

THE COURT OF APPEALS ERRONEOUSLY UPHELD THE DISMISSAL OF HEREIN PETITIONER ON AUTHORIZED CAUSE OF REDUNDANCY WHICH WAS MADE KNOWN TO PETITIONER ON [THE] SAME DATE HE WAS INFORMED HE [WAS] NO LONGER REQUIRED TO REPORT FOR OFFICE AND WITHOUT SUBJECTING OTHER SIMILARLY SITUATED EMPLOYEES OF THE SAME POSITION AND RESPONSIBILITIES TO THE STANDARD OF TERMINATION ON REDUNDANCY

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16 Morales' 19 December 2006 Petition for *Certiorari*, id. at 3-12.
17 CA's 20 September 2007 Decision, id. at 307-317.
18 *Rollo*, G.R. No. 182475, Morales' 16 April 2008 Petition for Review on *Certiorari*, pp. 3-17.

(b)

THE COURT OF APPEALS ERRONEOUSLY UPHELD THE DISMISSAL OF HEREIN PETITIONER THOUGH THE DISMISSAL IS TAINTED WITH ARBITRARINESS AND BAD FAITH AS FOUND BY THE LABOR ARBITER AS THE HEREIN PETITIONER WAS EVEN PROMOTED FIVE MONTHS BEFORE HIS TERMINATION CONTRARY TO THE CRITERIA IN THE SSP OR HRP ON NON-PROMOTION WITHIN THE PERIOD OF FIVE YEARS

(c)

THE COURT OF APPEALS ERRONEOUSLY UPHELD THE DISMISSAL ON AMBIVALENT AND EQUIVOCAL PROGRAMS WHICH ON ANALYSIS ARE ACTUALLY RETRENCHMENT PROGRAM[S] AND THE REQUISITES FOR VALID TERMINATION BY RETRENCHMENT NOT HAVING BEEN COMPLIED WITH

(d)

THE COURT OF APPEALS ERRONEOUSLY UPHELD THE VALIDITY OF THE QUITCLAIM ALTHOUH IT [IS] APPARENT THAT THE PETITIONER WAS COMPELLED TO ACCEDE TO IT BY ECONOMIC REASONS.[19]

We find the petition bereft of merit.

One of the authorized causes for the dismissal of an employee,[20] redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the business enterprise.[21] A position is redundant when it is superfluous, and superfluity of a position or positions could be the result of a number of factors, such as

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19 Id. at 9.

20 *Dole Philippines, Inc. v. National Labor Relations Commission*, 417 Phil. 428, 439 (2001).

21 *Soriano, Jr. v. National Labor Relations Commission*, G.R. No. 165594, 23 April 2007, 521 SCRA 526, 543.

the overhiring of workers, a decrease in the volume of business or the dropping of a particular line or service previously manufactured or undertaken by the enterprise.[22] Time and again, it has been ruled that an employer has no legal obligation to keep more employees than are necessary for the operation of its business.[23] For the implementation of a redundancy program to be valid, however, the employer must comply with the following requisites: (1) written notice served on both the employees and the DOLE at least one month prior to the intended date of termination of employment; (2) payment of separation pay equivalent to at least one month pay for every year of service; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.[24]

Contrary to the first and second errors Morales imputes against the CA, our perusal of the record shows that Metrobank has more than amply proven compliance with the third and fourth of the above-enumerated requisites for the validity of his termination from service on the ground of redundancy. Under the SSP which Metrobank adopted in 1995, employees who voluntarily gave up their employment were paid the amount of separation pay they were entitled under the law and a premium equivalent to 50%-75% of their salaries. It appears that employees "whose work evaluation showed consistent poor performance and/or those who had not been promoted for five years" were also considered primary candidates for optional separation from service.[25] In order to meet the challenges of the business and to make its operations efficient and cost effective, however, it

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22 *Edge Apparel, Inc. v. NLRC*, 349 Phil. 972, 982 (1998) citing *American Home Assurance Co. v. NLRC*, 328 Phil. 606, 618 (1996).

23 *Almodiel v. National Labor Relations Commission*, G.R. No. 100641, 14 June 1993, 223 SCRA 341, 348.

24 *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, G.R. No. 170464, 12 July 2010, 624 SCRA 705, 718.

25 CA *rollo*, CA-G.R. SP No. 02405, 26 July 2004 Affidavit of Ricardo Villanueva, Metrobank's Head of Employee Relations and Benefits Division, Human Resources Management Group (HRMG), pp. 152-153.

was shown that Metrobank further conducted a bank-wide operational review and study which resulted in the adoption in March 2003 of the HRP, a major component of the SSP which was designed to reduce its workforce by 10%. Entailing various initiatives like conversion of regular branches into mini-branches, consolidation of branches, centralization of loans processing and branch headcount reduction, the HRP yielded 291 employees who could no longer be redeployed, fifteen (15) of whom belonged to Visayas Region III.[26]

In implementing a redundancy program, it has been ruled that the employer is required to adopt a fair and reasonable criteria, taking into consideration such factors as (a) preferred status; (b) efficiency; and (c) seniority,[27] among others. Consistent with this principle, Metrobank established that, as a direct result of the adoption of the HRP, it was determined that the volume of transactions in Visayas Region III required the further reduction of its eight-man reserve pool by two employees.[28] As these employees had no permanent place of assignment and merely acted as relievers whenever temporary vacancies arise in other branches, they were the most logical candidates for inclusion in the SSP. Already lacking preferred status in Metrobank's hierarchy of positions, Morales was included in the SSP because of his poor work performance which reportedly caused complaints from the branches where he was temporarily assigned as reliever.[29] To our mind, the foregoing circumstances contradict Morales' claim that he was arbitrarily singled out for termination by Metrobank which, having validly determined the surplus in its manpower complement,

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26 26 July 2004 Affidavit of Crisostomo De Guzman, Metrobank's Head of Organization, Planning and Placements Division-HRMG, id. at 149-151.

27 *Lopez Sugar Corp. v. Franco*, 497 Phil. 806, 819 (2005).

28 CA *rollo*, CA-G.R. SP No. 02405, 27 July 2004 Affidavit of Federico Mariano, Metrobank's Head of its Tacloban-Main Branch, pp. 154-157.

29 Id.

appears to have appropriately identified him as a candidate for the SSP on account of his work attitude.

As evidence of the bad faith which supposedly attended his termination from service, Morales argues that his promotion in April 2003 should have excluded him from the coverage of the SSP. Aside from the fact that his promotion rendered his position less cost-effective, however, Morales loses sight of the fact that it was precisely his work performance subsequent to his promotion which was cited by Metrobank as reason for his inclusion in the SSP. In his 19 May 2003 Memorandum, R.D. ***Barrientos***, the Branch Manager of Metrobank's Baybay Branch, reported that Morales caused delay in the processing of over-the-counter transactions on a busy Monday when he was absent himself without an approved leave. Since it was Morales' third absence while he was assigned at said branch as reliever of an employee who was on maternity leave, Barrientos even requested for another reliever on the ground that the risk of losing clients as a consequence of Morales' unpredictability which was inimical to the bank's interest.[30] Despite being advised against being absent from work on Mondays and Fridays in view of the expected volume of transactions on said days,[31] it appears, however, that Morales obstinately went ahead with his planned absence and simply apprised a colleague and the branch security guard of his decision not to report for work on 19 May 2003.[32]

Given Morales' previous record of not reporting for work for one whole week without prior leave of absence while assigned as reliever in its Borongan, Samar Branch,[33] we find that Metrobank cannot be faulted for including him in the list of employees covered by the SSP. The rule is

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30 Barrientos' 19 May 2003 Memorandum, id. at 160.
31 CTY Banez' 30 May 2003 E-mail, id. at 163.
32 Morales' 29 May 2003 Memorandum, id. at 162.
33 Id. at 155; 168.

settled that "the determination that the employee's services are no longer necessary or sustainable and, therefore, properly terminable for being redundant is an exercise of business judgment of the employer."[34] "While it is true that management may not, under the guise of invoking its prerogative, ease out employees and defeat their constitutional right to security of tenure,"[35] the wisdom and soundness of such characterization or decision is not subject to discretionary review unless a violation of law or arbitrary or malicious action is shown.[36] Against Morales' bare assertion that he was arbitrarily and maliciously terminated from service, Metrobank was able to establish that its action was based on the fair application of a criterion established in connection with the implementation of a well-thought redundancy program. For these reasons, we find that the CA cannot be faulted for upholding the NLRC's finding that Morales' termination pursuant to the SSP was valid.

Morales next insists that Metrobank failed to comply in good faith with the notice requirement under Article 283 of the *Labor Code* which allows the employer to terminate the employment of any employee due to redundancy by serving a written notice on the worker and the DOLE at least one (1) month before the intended date thereof. Intended to enable the employee to prepare himself for the legal battle to protect his tenure of employment and to find other means of employment and ease the impact of the loss of his job and his income,[37] said notice requirement is also designed to allow the DOLE to ascertain the verity of the cause for the termination.[38] As correctly determined by the CA, Metrobank's compliance with this requirement is evident from its service of the 27 August 2003 notice of

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34 *AMA Computer College, Inc. v. Garcia*, G.R. No. 166703, 14 April 2008, 551 SCRA 254, 264.
35 *Santos v. Court of Appeals*, 413 Phil. 41, 56 (2001).
36 *Smart Communications, Inc. v. Astorga*, G.R. Nos. 148132, 151079 & 151372, 28 January 2008, 542 SCRA 434, 448.
37 *Serrano v. NLRC*, 380 Phil. 416, 458-459 (2000).
38 *International Hardware, Inc. v. NLRC (Third Division)*, 257 Phil. 261, 264 (1989).

termination upon Morales on the same date, effective 1 October 2003 or 30 days after the date of said notice.[39] On 29 August 2003, Metrobank similarly served the DOLE with an *Establishment Termination Report*, together with a list of the 43 employees about to be terminated on the ground of redundancy, effective 1 October 2003.[40]

By and of themselves, the notices of termination Metrobank served to the DOLE and Morales one month before their intended effectivity date significantly belie the latter's claim that he was told not to report for work anymore immediately upon receipt thereof. As proof of the bad faith and malice which supposedly attended his separation from service, Morales asserted that Mariano caused him great embarrassment by announcing that he was no longer required to report for work, within hearing distance of his colleagues. For one who claims to have been immediately terminated from employment, however, Morales quite distinctly indicated in his 18 February 2004 complaint that he was dismissed on 30 September 2003.[41] Reckoned from the service of notice of termination upon Morales on 27 August 2003, said admitted date of dismissal clearly confirms Metrobank's compliance with the above-discussed one-month prior notice that the law requires for severance from service on the ground of redundancy.

Neither are we inclined to entertain Morales' belated argument that the real cause for his termination was retrenchment to prevent losses and that Metrobank failed to establish the requirements therefor. For one, said theory contradicts Morales' claim that he was dismissed from employment for personal reasons, in a manner amounting to constructive dismissal. For another, not having been raised before the Labor Arbiter, the NLRC and the CA, it stands to reason that Morales' theory of termination to preserve the

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39 CA *rollo*, CA-G.R. SP No. 02405, Metrobank's 27 August 2003 Memorandum, p 164.
40 Id. at 181-183.
41 Id. at 79.

viability of Metrobank's business cannot be entertained for the first time in connection with the petition at bench. Consistent with the principle that issues not raised *a quo* cannot be raised for the first time on appeal,[42] points of law, theories and arguments not brought to the attention of the CA need not – and ordinarily will not – be considered by this Court.[43] For a reviewing court to allow otherwise would be offensive to the basic rules of fair play, justice and due process.[44]

Morales, finally, argues that the CA erred in upholding the validity of the 10 November 2003 *Release, Waiver and Quitclaim* which he supposedly signed out dire economic necessity. While "it may be accepted as ground to annul [a] quitclaim if the consideration is unconscionably low and the employee was tricked into accepting it, [dire necessity is not, however,] an acceptable ground for annulling the release when it is not shown that the employee has been forced to execute it."[45] Not having sufficiently proved that he was forced to sign said *Release, Waiver and Quitclaim*, Morales cannot expediently argue that quitclaims are looked upon with disfavor and considered ineffective to bar claims for the full measure of a worker's legal rights. This Court has held that not all quitclaims are *per se* invalid or against public policy, except (1) where there is clear proof that the waiver was wangled from an unsuspecting or gullible person, or (2) where the terms of settlement are unconscionable on their face.[46] These two instances are not present in this case.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit.

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42 *R.P. Dinglasan v. Construction, Inc. v. Atienza*, G.R. No. 156104, 29 June 2004, 433 SCRA 263, 271.

43 *Tolosa v. NLRC*, 449 Phil. 271, 284 (2003).

44 *Romago Electric Co., Inc. v. Court of Appeals*, 388 Phil. 964, 977 (2000).

45 *Coats Manila Bay, Inc. v. Ortega*, G.R. No. 172628, 13 February 2009, 579 SCRA 300, 312.

46 *Lacuesta v. Ateneo de Manila University*, G.R. No. 152777, 9 December 2005, 477 SCRA 217, 226, citing *Bogo Medellin Sugarcane Planters Asso., Inc. v. NLRC*, 357 Phil. 110, 126 (1998).

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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 were 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