



Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

ROSARIO BERENGUER-LANDERS A.C. No. 5119
and PABLO BERENGUER,

Complainants, Present:

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

- versus -

ATTY. ISABEL E. FLORIN,
ATTY. MARCELINO JORNALES
and ATTY. PEDRO VEGA,
Respondents.

Promulgated:

APR 17 2013

X-----X

DECISION

REYES, J.:

This is a complaint¹ for disbarment filed by Rosario Berenguer-Landers and Pablo Berenguer (complainants) against herein respondents Isabel E. Florin (Florin), Marcelino Jornales (Jornales) and Pedro Vega (Vega).

The factual antecedents are as follows:

Remedios Berenguer-Lintag, Carlo Berenguer and Belinda Berenguer-Aguirre, Rosario Berenguer-Landers and Pablo Berenguer (Berenguers) are the registered owners of a 58.0649-hectare land in Bibingcahan, Sorsogon, Sorsogon. Sometime in April 1998, a notice of

¹ Rollo, pp. 1-21.

coverage was issued by the Department of Agrarian Reform (DAR) regarding the acquisition of their landholding pursuant to Republic Act No. 6657 or the Comprehensive Agrarian Reform Program (CARP). The Berenguers protested and applied for the exclusion of their land with the DAR and for a notice to lift coverage based on the ground that their landholdings have been used exclusively for livestock pursuant to DAR Administrative Order No. 09.²

On October and November 1998, the DAR Secretary, without acting on the application for exclusion, cancelled the Berenguers' certificates of title on the land and issued Certificates of Land Ownership Award³ (CLOAs) in favor of the members of the Baribag Agrarian Reform Beneficiaries Development Cooperative (BARIBAG).

Eventually, DAR Regional Director Percival Dalugdug (Dalugdug) denied their application for exclusion from the CARP's coverage in the Order⁴ dated February 15, 1999 based on the Investigation Report dated February 9, 1999 submitted by the DAR Region V Investigation that said area sought to be excluded is principally devoted to coconuts and not the raising of livestock.⁵

Aggrieved, the Berenguers filed a **notice of appeal**⁶ with the Secretary of DAR.

While the case was pending appeal, BARIBAG filed a petition⁷ for the implementation of the Order dated February 15, 1999 before the Regional Agrarian Reform Adjudicator (RARAD). This was granted by Florin, as RARAD, in an Order⁸ dated March 15, 1999. Accordingly, Florin directed the issuance and implementation of the Writ of Possession.⁹

On March 19, 1999, the Berenguers filed a motion for reconsideration,¹⁰ claiming that they were denied due process as they were not furnished with a copy of BARIBAG's petition for implementation. Florin denied the motion for reconsideration for lack of merit in an Order¹¹ dated March 22, 1999.

² Id. at 23-30.

³ Id. at 185-203.

⁴ Id. at 31-36.

⁵ Id. at 33-35.

⁶ Id. at 37-44.

⁷ Id. at 45-47.

⁸ Id. at 76-78.

⁹ Id. at 204-206.

¹⁰ Id. at 89-92.

¹¹ Id. at 93-95.

On March 25, 1999, the Berenguers appealed¹² to the DAR Adjudication Board (DARAB). BARIBAG, on other hand, filed a Motion for the Issuance of a Writ of Possession.¹³ The Berenguers opposed¹⁴ the motion saying that the execution would be premature in view of their pending appeal before the DARAB. Nevertheless, BARIBAG still filed a Motion for the Appointment of a Special Sheriff.¹⁵

In his Order¹⁶ dated April 6, 1999, DAR Acting Secretary Conrado S. Navarro denied the Berenguers' appeal.

On April 8, 1999, Florin issued a Resolution,¹⁷ which granted BARIBAG's Motion for the Appointment of a Special Sheriff and ordered the issuance of the writ of possession prayed for.

On April 13, 1999, the Berenguers filed a motion to set aside¹⁸ the Resolution dated April 8, 1999, arguing that: the DARAB already acquired jurisdiction over case when they seasonably filed an appeal before it; and that Florin should have waited until the DARAB has decided the appeal. In an Order¹⁹ dated April 21, 1999, Florin denied the said motion prompting the Berenguers to move for her inhibition²⁰ on ground of partiality.

The Berenguers elevated the matter *via* petition for *certiorari* to the Court of Appeals (CA), docketed as CA-G.R. SP No. 51858, which was denied outright on procedural grounds, to wit: (1) copy of the assailed order bears the words "certified true copy" but the name and authority of the person certifying is not indicated as required in SC Circular No. 3-96, and the signature therein is illegible; (2) only one of the petitioners signed the certification on non-forum shopping which is an insufficient compliance of Section 1, Rule 65 of the 1997 Rules of Court; and (3) there is non-exhaustion of administrative remedies as the assailed order of the Regional Director is not directly reviewable by the CA.²¹

Undaunted, the Berenguers filed a second petition for *certiorari* with the CA, docketed as CA-G.R. SP No. 53174, which questioned the Orders dated March 15, 1999 and March 22, 1999 issued by Florin. The petition

¹² Id. at 96.

¹³ Id. at 97-99.

¹⁴ Id. at 100-104.

¹⁵ Id. at 105-106.

¹⁶ Id. at 48-54.

¹⁷ Id. at 111-113.

¹⁸ Id. at 114-120.

¹⁹ Id. at 123-125.

²⁰ Id. at 126-130.

²¹ Id. at 246.

was also denied on grounds of lack of jurisdiction and wrong mode of appeal.²²

Thus, Florin issued on April 21, 1999 a Writ of Possession²³ in favor of BARIBAG.

Florin subsequently directed the full implementation of the writ of possession pursuant to Rule 71 of the Rules of Court in spite of the Berenguers' protestations.²⁴

On June 3, 1999, the Berenguers moved to quash²⁵ the Writ of Possession, to no avail.

On August 4, 1999, the complainants filed the instant Complaint²⁶ for the disbarment of respondents Florin, Jornales, in his capacity as Assistant Regional Director for DAR, and Vega, in his capacity as DAR Legal Officer V, for allegedly conspiring and confederating in the commission of the following acts:

- A. ATTY. ISABEL E. FLORIN AS REGIONAL ADJUDICATOR KNOWINGLY RENDERING AN UNJUST JUDGEMENT, ORDERS AND RESOLUTIONS ADVERSE AND PREJUDICIAL TO THE INTEREST OF PETITIONERS[;]
- B. ISSUING AN ORDER AND GRANTING A WRIT OF EXECUTION EX-PARTE AND SUBSEQUENTLY ISSUING AND SIGNING THE WRIT OF POSSESSION WITHOUT CERTIFICATION OF FINALITY ISSUED BY THE PROPER OFFICER FULLY KNOWING THAT SHE HAS NO AUTHORITY AND TOTALLY DISREGARDING THE APPLICABLE RULES AND IN CONTRAVENTION WITH THE NEW RULES OF PROCEDURE OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD; FURTHER, HIDING THE WRIT OF POSSESSION FROM PETITIONERS INSPITE OF REQUEST FOR A COPY;
- C. REFUSING TO TAKE ACTION ON PLEADINGS FILED BY PETITIONERS THRU COUNSEL AND FAILING AND REFUSING TO CONDUCT A HEARING AS PRAYED FOR BY COUNSEL; FAILING AND REFUSING TO FORWARD THE APPEAL TO THE PROPER APPELLATE BOARD;

²² Id. at 249-250.

²³ Id. at 204-206.

²⁴ Id. at 291-293.

²⁵ Id. at 147-151.

²⁶ Id. at 1-21.

- D. UNWARRANTED INTERFERENCE IN LAWYER-CLIENT RELATIONSHIPS TO THE PREJUDICE OF PETITIONERS AND LAWYER; ABUSE OF AUTHORITY TO CITE COUNSEL FOR PETITIONER IN CONTEMPT AND ISSUING AN ORDER OF ARREST WITHOUT HEARING CONTRARY TO THE RULES OF COURT;
- E. ATTY. MARCELINO JORNALES AND ATTY. PEDRO VEGA, INSPITE OF THEIR KNOWLEDGE OF THE ILLEGALITY OF THE WRIT OF POSSESSION, PERSISTED AND ASSISTED IN THE ILLEGAL IMPLEMENTATION OF THE WRIT OF POSSESSION TO THE PREJUDICE OF LEGITIMATE FARMERS AND PETITIONERS[.]²⁷

Florin filed her Comment²⁸ stating, among others, that: (1) the writ of possession is anchored on the CLOAs issued by the Register of Deeds, and not on a final and executory decision that would require a certification of finality as prescribed by the DARAB rules; (2) Atty. Federico De Jesus (De Jesus), as Berenguers' counsel, was not furnished with a copy of the writ because it was not yet issued at the time when it was requested; (3) there was no intent to hide the writ; (4) when the writ of possession was finally signed, it was delivered to the sheriff for service and enforcement; (4) it was unfair to impute illegal acts against Vega and Jornales as DAR lawyers in view of the DAR's denial of the motion for a cease and desist order and because of the legal presumption of regularity in the performance of their duty; (5) the petitions for *certiorari* filed with the CA were both dismissed; and (6) the findings of DAR and the issuance of the CLOAs remain undisturbed. Florin also claimed that it is Atty. De Jesus who wants her disbarred and not the Berenguers.

In a separate Comment,²⁹ Vega denied the allegations against him arguing that: (1) the writ of possession is not illegal in the absence of a court order stating its invalidity; (2) he did not participate in the issuance of the writ of possession because he did not appear as the farmers' counsel; (3) the Legal Division he heads has no control or influence over the DARAB; and (4) his presence in the execution of the writ of possession was to ascertain that no violations against any law are committed by the person/s executing the writ.³⁰

Jornales' Comment,³¹ for his part, stated that: (1) the writ has no *prima facie* infirmity; (2) he is not privy to the issuance thereof; (3) he has no supervision and control over the DAR which issued the writ; and (4) he has no authority to determine the writ's validity or invalidity. Jornales

²⁷ Id. at 2.

²⁸ Id. at 175-178.

²⁹ Id. at 253-256.

³⁰ Id. at 254.

³¹ Id. at 259-261.

admitted, however, that he was in the meeting presided by the PNP Provincial Director of Sorsogon prior to the writ's implementation in his capacity as Regional Assistant Director for Operations of DAR Region V and not as a lawyer. He added that the disbarment complaint against him is not only malicious for lack of legal basis but is also meant to harass and intimidate DAR employees in implementing the CARP.³²

After the complainants filed their Consolidated Reply,³³ the case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

IBP Commissioner Milagros San Juan (Commissioner San Juan) recommended³⁴ that Florin be “[s]uspended from the practice of law for three (3) years for knowingly rendering an unjust judgment, Orders and Resolutions adverse and prejudicial to the interests of the Complainants.” Commissioner San Juan, meanwhile, recommended that the charges against Jornales and Vega be dismissed for failure of the complainants to substantiate the charges against them.³⁵

Commissioner San Juan's recommendation against Florin is based on the findings³⁶ of the CA in its Decision dated December 26, 2000 in CA-G.R. SP No. 53174,³⁷ which reads:

The Petition for Certiorari filed by the complainants before the Court of Appeals was treated as a petition for review and the court found the following errors:

“1) Respondent DAR Secretary has no jurisdiction over the subject properties being devoted to pasture and livestock and already classified as residential and industrial land, hence, outside the coverage of Republic Act 6657. (Comprehensive Agrarian Reform Law) The generation and issuance of Certificate of Landownership Award (CLOA) was therefore void;”

2) Being outside the coverage of CARL (Republic Act 6657), respondent Hon. Isabel E. Florin who is exercising delegated jurisdiction from the DARAB has no jurisdiction over Petitioners' Properties as held in *Krus na Ligas Farmer's Coop vs. University of the Philippines*; G.R. No. 107022[,] 8 December 1992[,] which is squarely in point with the case at bar.”

³² Id. at 259-260.

³³ Id. at 283-290.

³⁴ Id. at 327-340.

³⁵ Id. at 339-340.

³⁶ Id. at 337-339.

³⁷ Id. at 307-320.

Anent the issue regarding the qualified beneficiaries of the subject land, the Court ruled thus – “Assuming that the lands are indeed agricultural, we cannot understand why the DAR awarded them to members of respondent Baribag and not to the farmers in the area, in violation of Sec. 22 of the CARL x x x.”

The court further stated – “We cannot xxx close this discussion without mentioning our observation on the actuations of Regional Agrarian Reform Adjudicator Isabel Florin. Just why she issued a writ of execution and eventually a Writ of Possession in favor of respondent Baribag puzzles us no end. She knew that Baribag is not a party in petitioners’ application for exclusion filed with the Office of DAR Regional Director Percival Dalugdug. Obviously, she never acquired jurisdiction over Baribag. She also knew that petitioners appealed to the DAR Secretary from the Order of Regional Director Dalugdug dismissing petitioners’ application for exclusion. Clearly, such order was not yet final and executory when she issued the assailed writs of execution and possession. Thus, the writ are [sic] void and would be set aside.”³⁸

On May 26, 2006, the IBP Board of Governors adopted Resolution No. XVII-2006-282 modifying the recommended penalty, viz:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex “A”; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and for knowingly rendering an unjust Judgment, Orders and Resolutions, adverse and prejudicial to the interest of the complainants, Atty. Isabel F. Florin is hereby **SUSPENDED** from the practice of law for one (1) year. The charges against Atty. Marcelino Jornaes and Atty. Peter Vega are **DISMISSED** for failure of the complainants to substantiate the charges against Respondents.³⁹

In her opposition,⁴⁰ Florin averred that: (1) jurisdiction was acquired over BARIBAG at the time it filed a petition for the implementation of the Order dated February 15, 1999; (2) the DARAB has jurisdiction to issue the CLOAs; (3) as RARAD, she has concurrent jurisdiction with DARAB; (4) the Berenguers were not denied due process; and (5) the Berenguers never questioned the regularity of the DAR’s acquisition of their landholding nor did they file a petition for the cancellation of the CLOAs issued to BARIBAG.

³⁸ Id. at 337-339.

³⁹ Id. at 325.

⁴⁰ Id. at 354-381.

This Court agrees with the findings of the IBP Board of Governors but modifies the penalty to be imposed.

Rule 138, Section 27 of the Rules of Court provides:

SEC. 27. *Disbarment or suspension of attorneys by Supreme Court, grounds therefore.*—A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilful disobedience appearing as an attorney for a party without authority so to do. x x x.

In *Lahm III v. Mayor, Jr.*,⁴¹ the Court ruled that:

A lawyer may be suspended or disbarred for any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor. Gross misconduct is any inexcusable, shameful or flagrant unlawful conduct on the part of a person concerned with the administration of justice; *i.e.*, conduct prejudicial to the rights of the parties or to the right determination of the cause. The motive behind this conduct is generally a premeditated, obstinate or intentional purpose.⁴² (Citations omitted)

In the instant case, the Berenguers want this Court to impose disciplinary sanction against the three (3) respondents as members of the bar. The grounds asserted by the complainants in support of the charges against the respondents, however, are intrinsically connected with the discharge of their quasi-judicial functions. Nevertheless, in *Atty. Vitriolo v. Atty. Dasig*,⁴³ the Court already ruled that if a misconduct as a government official also constitutes a violation of his oath as a lawyer, then a lawyer may be disciplined by this Court as a member of the Bar, *viz*:

Generally speaking, a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of his duties as a government official. **However, if said misconduct as a government official also constitutes a violation of his oath as a lawyer, then he may be disciplined by this Court as a member of the Bar.**

x x x x

A member of the Bar who assumes public office does not shed his professional obligations. Hence, the Code of Professional Responsibility, promulgated on June 21, 1988, was not meant to

⁴¹ A.C. 7430, February 15, 2012, 666 SCRA 1.

⁴² Id. at 9.

⁴³ 448 Phil. 199 (2003).

govern the conduct of private practitioners alone, but of all lawyers including those in government service. This is clear from Canon 6⁴⁴ of said Code. Lawyers in government are public servants who owe the utmost fidelity to the public service. Thus, they should be more sensitive in the performance of their professional obligations, as their conduct is subject to the ever-constant scrutiny of the public.

x x x For a lawyer in public office is expected not only to refrain from any act or omission which might tend to lessen the trust and confidence of the citizenry in government, she must also uphold the dignity of the legal profession at all times and observe a high standard of honesty and fair dealing. **Otherwise said, a lawyer in government service is a keeper of the public faith and is burdened with high degree of social responsibility, perhaps higher than her brethren in private practice.**⁴⁵ (Citations omitted and emphasis ours)

Thus, in *Tadlip v. Atty. Borres, Jr.*,⁴⁶ the Court ruled that an administrative case against a lawyer for acts committed in his capacity as provincial adjudicator of the DARAB may be likened to administrative cases against judges considering that he is part of the quasi-judicial system of our government.⁴⁷

Similarly in this case, Florin, being part of the quasi-judicial system of our government, performs official functions of a RARAD that are akin to those of judges. Accordingly, the present controversy may be likened that of a judge whose decision, including the manner of rendition, is made subject of an administrative complaint.

Going now to the acts complained of, Section 29 of DAR Administrative Order No. 06-00 provides:

SEC. 29. *Effect of Appeal*.—Appeal to the Secretary, the Office of the President, or the Court of Appeals shall have the following effects:

(a) *Appeal from the Regional Director or Undersecretary to the Secretary*.—The appeal shall stay the order appealed from unless the Secretary directs execution pending appeal, as he may deem just, considering the nature and circumstances of the case ([Executive Order No. 292 \[1987\]](#), Book VII, Chapter 4, Sec. 21).

x x x x

⁴⁴ CANON 6. – These Canons shall apply to lawyers in government service in the discharge of their official task.

⁴⁵ Supra note 43, at 207-209.

⁴⁶ 511 Phil. 56 (2005).

⁴⁷ Id. at 64.

Based on the foregoing provision, the appeal of the Berenguers to the DAR Secretary clearly stayed the implementation of Regional Director Dalugdug's Order dated February 15, 1999. Moreover, it is the DAR Secretary who has jurisdiction to order execution pending appeal. Records reveal that there was no order by the DAR Secretary directing execution of the Order dated February 15, 1999 during the pendency of the Berenguers' appeal.

Corollarily, Rule 39 of the 1997 Rules of Court provides for the instances when execution may be had, namely: (1) after a decision or order has become final and executory;⁴⁸ (2) pending appeal, only upon good reasons to be stated in a special order after due hearing;⁴⁹ and (3) execution of several, separate or partial judgments.⁵⁰

Moreover, Rule XX of the 2009 Rules of the DARAB reads:

Sec. 1. Execution Upon Final Order or Decision.—Execution shall issue upon an order, resolution or decision that finally disposes of the action or proceeding. Such execution shall issue as a matter of course and upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

The Adjudicator concerned may, upon certification by the proper officer that a resolution, order or decision has been served to the counsel or representative on record and to the party himself, and has become final and executory, and, upon motion or *motu proprio*, issue a writ of execution ordering the DAR Sheriff or any DAR officer to enforce the same. In appropriate cases, the Board or any of its Members or its Adjudicator shall deputize and direct the Philippine National Police, Armed Forces of the Philippines or any of their component units or other law enforcement agencies in the enforcement of any final order, resolution or decision.

Sec. 2. Execution Pending Appeal. — Any motion for execution of the decision of the Adjudicator pending appeal shall be filed before the Board which may grant the same upon meritorious grounds, **upon the posting of a sufficient bond in the amount conditioned for the payment of damages which the aggrieved party may suffer**, in the event that the final order or decision is reversed on appeal, provided that the bond requirement shall not apply if the movant is a farmer-beneficiary/pauper litigant. (Emphasis ours)

In this case, the Order dated February 15, 1999 of DAR Regional Director Dalugdug denying the Berenguers' application for exclusion from CARP is yet to become final and executory as it was seasonably appealed to

⁴⁸ Section 1.

⁴⁹ Section 2(a).

⁵⁰ Section 2(b).

the DAR Secretary. There is also nothing in the records that will show whether BARIBAG posted a bond pursuant to the Rules.

While a judge may not be disciplined for error of judgment absent proof that such error was made with a conscious and deliberate intent to cause an injustice,⁵¹ the facts on hand prove otherwise. Florin's issuance of the writ of execution and writ of possession in order to fully implement Regional Director Dalugdug's Order dated February 15, 1999 clearly constitutes ignorance of the law for as a rule, a writ of execution is issued only after the subject judgment or order has already become final and executory.⁵² As aptly stated by IBP Commissioner San Juan, Florin ordered the issuance of such writs despite the pendency of the appeal with the DARAB.⁵³ Consequently, the Court finds merit in the recommendation of suspension.

As to the penalty –

Judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith or deliberate intent to do injustice will be administratively sanctioned.⁵⁴ In this case, it appears, however, that this is the first time that Florin has been made administratively liable. Although there is no showing that malice or bad faith attended the commission of the acts complained of, the same does not negate the fact that Florin executed an act that would cause an injustice to the Berenguers. To our mind, the act of issuing the writ of execution and writ of possession is not simply an honest error in judgment but an obstinate disregard of the applicable laws and jurisprudence.

With all these, the Court deems it reasonable to reconsider the penalty recommended and instead impose the penalty of suspension for three (3) months⁵⁵ without pay. As also held in *Rallos v. Judge Gako, Jr.*,⁵⁶ three (3) months suspension without pay was imposed against a judge after finding out that the ignorance of the law he committed was not tainted with bad faith.

With respect to the complaint against Jornaes and Vega, the Court agrees and adopts the finding of the IBP that no sufficient evidence was adduced to substantiate the charges against them. Hence, the complaint against them should be dismissed.

⁵¹ *Dipatuan v. Mangotara*, A.M. No. RTJ-09-2190, April 23, 2010, 619 SCRA 48, 55.

⁵² *Cabang v. Basay*, G.R. No. 180587, March 20, 2009, 582 SCRA 172, 182.

⁵³ *Rollo*, p. 339.

⁵⁴ *Atty. Claro v. Judge Efondo*, 494 Phil. 220, 228 (2005).

⁵⁵ *OSG v. De Castro*, A.M. No. RTJ-06-2018, October 15, 2007, 536 SCRA 29, 30-31.

⁵⁶ 398 Phil. 60 (2000).

WHEREFORE, in view of the foregoing, respondent **ATTY. ISABEL E. FLORIN** is found guilty of violating the Code of Professional Responsibility. Accordingly, she is penalized with **SUSPENSION** from the practice of law for **three (3) months** effective upon notice hereof. The complaint against Atty. Marcelino Jornales and Atty. Pedro Vega is **DISMISSED** for lack of sufficient evidence.


Let copies of this Decision be entered in her record as attorney and be furnished the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.




BIENVENIDO L. REYES
Associate Justice

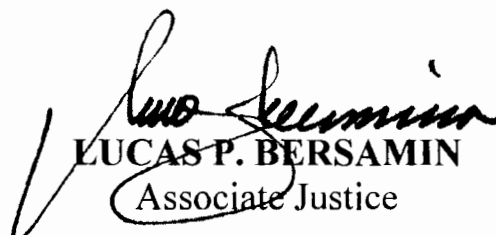
WE CONCUR:



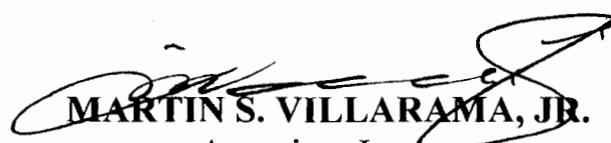
MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice