



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

PHILIPPINE BANK OF  
COMMUNICATIONS,

Petitioner,

G.R. No. 179691

Present:

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

- versus -

Promulgated:

MARY ANN O. YEUNG,

Respondent.

DEC 04 2013 *HAN Cabalag Perfecto*

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DECISION

BRION, *J.*:

We resolve the petition for review on *certiorari*,<sup>1</sup> filed by the Philippine Bank of Communications (*petitioner*), to assail the decision<sup>2</sup> dated August 9, 2006 and the resolution<sup>3</sup> dated August 2, 2007 of the Court of Appeals (CA) in CA-G.R. SP. No. 82725. The CA decision reversed and set aside the orders dated November 10, 2003,<sup>4</sup> January 20, 2004,<sup>5</sup> and February 23, 2004 of the Regional Trial Court (RTC), Davao City, Branch 16, in other Case No. 212-03 granting the issuance of a writ of possession.

<sup>1</sup> Under Rule 45 of the Rules of Court; *rollo*, pp. 31-51.

<sup>2</sup> Penned by Associate Justice Antonio L. Villamor, and concurred in by Associate Justices Romulo V. Borja and Ramon R. Garcia; id. 8-18.

<sup>3</sup> Id. at 24-25.

<sup>4</sup> Id. at 91-92; penned by Presiding Judge Emmanuel C. Carpio.

<sup>5</sup> Id. at 103-104.

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### **The Factual Antecedents**

In order to secure a loan of ₱1,650,000.00 Mary Ann O. Yeung (*respondent*), represented by her attorney-in-fact, Mrs. Le Tio Yeung, executed on December 12, 1994 a Real Estate Mortgage over a property located in Davao City in favor of the petitioner. The mortgaged property was covered by Transfer Certificate of Title (*TCT*) No. T-187433, registered in the respondent's name. On May 2, 1996, the parties agreed to increase the amount of the loan to ₱1,950,000.00 as evidenced by an Amended Real Estate Mortgage.

After the respondent defaulted in her obligation, the petitioner initiated a petition for extrajudicial foreclosure of the mortgage, pursuant to Act No. 3135, as amended.<sup>6</sup> The mortgaged property was consequently foreclosed and sold at public auction for the sum of ₱2,594,750.00 to the petitioner which emerged as the highest bidder.

A provisional certificate of sale was issued by the sheriff and the sale was registered with the Register of Deeds. When the respondent failed to redeem the mortgage within the one year redemption period, the petitioner consolidated its ownership over the property, resulting to the cancellation of TCT No. T-187433 and to the issuance of TCT No. T-362374 in its name.

On September 15, 2003, the petitioner filed with the RTC an *ex parte* petition for the issuance of a writ of possession, docketed as Other Case No. 212-03.

On November 10, 2003, the RTC granted the petition. The respondent thereafter filed a motion for recall and/or revocation alleging that the writ of possession should not have been issued by the RTC because the petitioner failed to remit the surplus from the proceeds of the sale. When the motion was denied, the respondent filed a motion for reconsideration (*MR*) which the RTC likewise denied. Hence, the respondent brought the matter to the CA on *certiorari*.

In its August 9, 2006 decision,<sup>7</sup> the CA granted the petition and ruled that the RTC gravely abused its discretion when it ordered the issuance of a writ of possession. It found that the ₱2,594,750.00 bid price far exceeded the ₱1,950,000.00 mortgage obligation. Relying on the Court's pronouncement in *Sulit v. Court of Appeals*,<sup>8</sup> the CA ruled that the petitioner's failure to remit the surplus from the proceeds of the foreclosure sale (equivalent to 33% of the mortgage debt) was a valid ground to defer the issuance of a writ of possession for reasons of equity. It reversed the RTC orders and ordered

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<sup>6</sup> Act No. 3135 – An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages.

<sup>7</sup> *Supra* note 2.

<sup>8</sup> G.R. No. 119247, February 17, 1997, 268 SCRA 441, 452.

the petitioner to remit the excess from the proceeds of the foreclosure sale to the respondent.

The petitioner received a copy of the August 9, 2006 CA decision on September 1, 2006.<sup>9</sup> Hence, it had up to September 16, 2006 to file an MR.

On September 13, 2006, the petitioner filed an urgent motion for extension of time to file an MR, citing lack of material time due to change of counsel as its ground. It contended that in light of its counsel's withdrawal from the case on September 11, 2006, or during the reglementary period of filing an MR, it had to engage the services of another lawyer who required an additional time to thoroughly study the case. On September 23, 2006, or seven days from the expiry of the reglementary period to file an MR, the petitioner, through its new counsel, filed an MR.<sup>10</sup>

On March 7, 2007, the CA denied the petitioner's motion for extension of time to file an MR. The petitioner filed an MR dated April 10, 2007,<sup>11</sup> which the CA similarly denied.<sup>12</sup> The petitioner thereafter filed a petition for review on *certiorari* before this Court to assail the August 9, 2006 decision<sup>13</sup> and the August 2, 2007 resolution<sup>14</sup> of the CA.

### **The Petition**

The petitioner insists that the CA erred when it reversed the RTC's decision. It argues that the *Sulit* case on which the CA's decision was based, is not analogous to the present case. It submits that unlike *Sulit* (where the mortgagor still had an opportunity to redeem the property at the time of the filing of the petition for the issuance of a writ of possession), the respondent had failed to redeem the property within the one year redemption period, thus allowing the petitioner to consolidate its ownership over the property. It also insists that there was no excess or surplus from the proceeds of the foreclosure sale because the respondent's obligation covered the interests, the penalties, the attorney's fees and the foreclosure expenses.

In these lights, the petitioner maintains that the equitable circumstances found by the Court in *Sulit* do not obtain in the present case and the issuance of a writ of possession, being a ministerial duty of the courts, should be granted.

The petitioner lastly submits that the respondent is guilty of forum shopping because of her failure to disclose to the Court the pendency of a civil case for nullity of mortgage and foreclosure sale.

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<sup>9</sup> *Rollo*, at 31.

<sup>10</sup> *Id.* at 32.

<sup>11</sup> *Id.* at 119-122.

<sup>12</sup> *Id.* at 24.

<sup>13</sup> *Supra* note 2.

<sup>14</sup> *Supra* note 3.

### **The Case for the Respondent**

The respondent maintains that the August 9, 2006 CA decision assailed in this petition had been rendered final and executory by the petitioner's failure to seasonably file an MR within the reglementary period. She submits that having attained finality, the decision can no longer be modified or reviewed by this Court and the petition should thus be dismissed.

### **The Issues**

The petitioner raises the following issues:

- I. Whether circumstances exist in this case to warrant the liberal application of the rules on the reglementary period of filing appeals or MRs;
- II. Whether the case of *Sulit* is applicable to this case;
- III. Whether the petitioner is liable for any excess or surplus from the proceeds of the sale; and
- IV. Whether the respondent is guilty of forum shopping.

### **Our Ruling**

**We find the petition impressed with merit.**

#### ***a. Procedural Question Raised***

At the outset, we note that the petitioner's MR of the CA decision was filed out of time. Nevertheless, in accordance with the liberality that pervades the Rules of Court, and in the interest of justice under the peculiar circumstances of this case, we opt to take another look at the petitioner's reason for the late MR and thus consider the MR before the CA to be properly filed.

The general rule is that the failure of the petitioner to *timely* file an MR within the 15-day reglementary period fixed by law renders the decision or resolution final and executory.<sup>15</sup> The same rule applies in appeals. The filing and the perfection of an appeal in the manner and within the period prescribed by law are not only mandatory but also jurisdictional, and the failure to perfect an appeal has the effect of rendering the judgment final and executory.<sup>16</sup>

Consistent with this principle is the rule that no motion for extension of time to file an MR shall be allowed. The filing of a motion for extension

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<sup>15</sup> *Hilario v. People*, 574 Phil. 348, 361 (2008).

<sup>16</sup> *Almeda v. CA*, 354 Phil. 600, 607 (1998).

of time does not, by itself, interrupt the period fixed by law for the perfection of an appeal. A movant, upon filing of a motion, has no right to assume that it would be granted and should verify its status with the court; otherwise, he runs the risk of losing his right to appeal in the event the court subsequently denies his motion and the period of appeal had expired.

**This rule however, is not absolute.** In exceptional and meritorious cases, the Court has applied a liberal approach and relaxed the rigid rules of technical procedure.

In *Republic v. Court of Appeals*,<sup>17</sup> we allowed the perfection of the appeal of the Republic, despite the delay of six days, in order to prevent a gross miscarriage of justice. In that case, the Court considered the fact that the Republic stands to lose hundreds of hectares of land *already* titled in its name.

In *Ramos v. Bagasao*,<sup>18</sup> we permitted the delay of four days in the filing of a notice of appeal because the appellant's counsel of record was already dead at the time the trial court's decision was served.

In *Olacao v. National Labor Relations Commission*,<sup>19</sup> we also allowed the belated appeal of the appellant because of the injustice that would result if the appeal would be dismissed. We found that the subject matter in issue in that case had already been settled with finality in another case and the eventual dismissal of the appeal would have had the effect of ordering the appellant to make reparation to the appellee twice.

In *Siguenza v. Court of Appeals*,<sup>20</sup> we gave due course to the appeal and decided the case on the merits inasmuch as, on its face, it appeared to be impressed with merit.

Also in *Barnes v. Padilla*,<sup>21</sup> we allowed the liberal construction of the Rules of Court and suspended the rule that the filing of a motion for extension of time to file an MR does not toll the period of appeal, to serve substantial justice. We ruled that the suspension of the rules was not entirely attributable to the petitioner and the allowance of the petition would not in any way prejudice the respondents.

The reasons that the Court may consider in applying a liberal construction of the procedural rules were reiterated in *Sanchez v. Court of Appeals*,<sup>22</sup> to wit:

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<sup>17</sup> 379 Phil. 92, 94-102 (2000).

<sup>18</sup> No. L-51552, February 28, 1980, 96 SCRA 395, 396-397.

<sup>19</sup> G.R. No. 81390, August 29, 1989, 177 SCRA 38, 49.

<sup>20</sup> G.R. No. L-44050 July 16, 1985, 137 SCRA 570, 576-579.

<sup>21</sup> G.R. No. 160753, September 30, 2004, 439 SCRA 675.

<sup>22</sup> 452 Phil. 665, 674 (2003).

Aside from matters of life, liberty, honor or property which would warrant the suspension of the Rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that should be considered are the following: (a) the existence of special or compelling circumstances, (b) the merits of the case, (c) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (d) a lack of any showing that the review sought is merely frivolous and dilatory, and (e) the other party will not be unjustly prejudiced thereby.

Moreover, the Court has the discretion to suspend its rules when the circumstances of the case warrant. In *Aguam v. Court of Appeals*,<sup>23</sup> we held:

The court has discretion to dismiss or not to dismiss an appellant's appeal. It is a power conferred on the court, not a duty. The "discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case. xxx **Litigations must be decided on their merits and not on technicality.** xxx **It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.**

In the present case, we find the delay of 7 days, due to the withdrawal of the petitioner's counsel *during the reglementary period of filing an MR*, excusable in light of the merits of the case. Records show that the petitioner immediately engaged the services of a new lawyer to replace its former counsel and petitioned the CA to extend the period of filing an MR due to lack of material time to review the case. There is no showing that the withdrawal of its counsel was a contrived reason or an orchestrated act to delay the proceedings; the failure to file an MR within the reglementary period of 15 days was also not entirely the petitioner's fault, as it was not in control of its former counsel's acts.

Moreover, after a review of the contentions and the submissions of the parties, we agree that suspension of the technical rules of procedure is warranted in this case in view of the CA's erroneous application of legal principles and the substantial merits of the case. If the petition would be dismissed on technical grounds and without due consideration of its merits, the registered owner of the property shall, in effect, be barred from taking possession, thus allowing the absurd and unfair situation where the owner cannot exercise its right of ownership. This, the Court should not allow. In order to prevent the resulting inequity that might arise from the outright denial of this recourse – that is, the virtual affirmance of the writ's denial to the detriment of the petitioner's right of ownership – we give due course to this petition despite the late filing of the petitioner's MR before the CA.

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<sup>23</sup> 388 Phil. 587, 593-594; emphases ours, citations omitted.

*b. On the Issuance of a Writ of Possession*

We have consistently held that the purchaser can demand possession of the property even during the redemption period for as long as he files an *ex parte* motion under oath and post a bond in accordance with Section 7 of Act No. 3135, as amended.<sup>24</sup> Upon filing of the motion and the approval of the bond, the law also directs the court in express terms to issue the order for a writ of possession.

When the redemption period has expired and title over the property has been consolidated in the purchaser's name, a writ of possession can be demanded as a matter of right. The writ of possession shall be issued as a matter of course even without the filing and approval of a bond after consolidation of ownership and the issuance of a new TCT in the name of the purchaser. As explained in *Edralin v. Philippine Veterans Bank*,<sup>25</sup> the duty of the trial court to grant a writ of possession in these instances is also ministerial, and the court may not exercise discretion or judgment:

Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. In this regard, the bond is no longer needed. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title becomes merely a ministerial function. Effectively, the court cannot exercise its discretion.<sup>26</sup>

It is not disputed that the respondent failed to exercise her right of redemption within one year from the time of the registration of the sale. There is also no question that the property's title had already been transferred to the petitioner. As the actual owner of the property, it is not only necessary, but also just, to allow the petitioner to take possession of the property it owns. It is illogical if the person already owning the property will be barred from possessing it, in the absence of compelling and legitimate reasons to deny him possession.<sup>27</sup> Thus, we feel that the issuance of a writ of possession is in order.

*c. On the Exemption under Sulit v. Court of Appeals*

In setting aside the questioned RTC orders granting the petitioner a writ of possession, the CA relied on the Court's ruling in *Sulit v. Court of*

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<sup>24</sup> *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, G.R. No. 176019, January 12, 2011, 639 SCRA 405, 415.

<sup>25</sup> G.R. No. 168523, March 9, 2011, 645 SCRA 75, 86.

<sup>26</sup> Id. at 85-86.

<sup>27</sup> Id. at 90.

*Appeals*<sup>28</sup> where we held that the failure of the mortgagee to return to the mortgagor the surplus proceeds of the foreclosure sale carves out an exception to the general rule that a writ of possession should issue as a matter of course.

To have a better grasp of the reasons for the Court's ruling in the said case, below is a brief summary and analysis of *Sulit*.

*c.1 Summary of Sulit v. CA*

The case stemmed from the extra-judicial foreclosure conducted by the notary public where Sulit (creditor-mortgagee) emerged as the highest bidder for the amount of ₱7,000,000.00. It appears that Sulit failed to deliver the sale price's surplus equivalent to at least 40% of the mortgage debt to the notary public. Instead, he credited it to the satisfaction of the ₱4,000,000.00 debt. **During redemption period**, he petitioned for the issuance of a writ of possession which the trial court granted. From the order of the court, the debtor-mortgagor filed a petition for *certiorari* with the CA. The CA granted the writ of *certiorari* and directed Sulit to remit to the debtor the excess amount of his bid price.

When the case reached this Court, we considered Sulit's failure to deliver the surplus proceeds of the foreclosure sale an exception to the general rule that it is ministerial upon the court to issue a writ of possession even during the period of redemption upon the filing of a bond. We found that such failure was a sufficient justification for the non-issuance of the writ. We also ruled that equitable considerations demanded the deferment of the issuance of the writ as it would be highly unfair for the mortgagor, who as a redemptioner might choose to redeem the foreclosed property, to pay the equivalent amount of the bid clearly in excess of the total mortgage debt. We said:

The general rule that mere inadequacy of price is not sufficient to set aside a foreclosure sale is based on the theory that the lesser the price the easier it will be for the owner to effect the redemption. The same thing cannot be said where the amount of the bid is in excess of the total mortgage debt. **The reason is that in case the mortgagor decides to exercise his right of redemption, Section 30 of Rule 39 provides that the redemption price should be equivalent to the amount of the purchase price, plus one [percent] monthly interest up to the time of the redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last-named amount at the same rate.**

Applying this provision to the present case would be highly iniquitous if the amount required for redemption is based on ₱7,000,000.00, because that would mean exacting payment at a price unjustifiably higher than the real amount of the mortgage obligation. We

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<sup>28</sup>

*Supra* note 8, at 452.



need not elucidate on the obvious. Simply put, such a construction will undeniably be prejudicial to the substantive rights of private respondent and **it could even effectively prevent her from exercising the right of redemption.**”<sup>29</sup>

The said ruling cannot be applied in the present case. A proper appreciation and analysis of *Sulit* show that it cannot be cited in the present case because the factual milieu obtaining therein are not analogous or similar to those involved in the case before us.

c.2 Comparative Analysis of *Sulit* and the Present Case

As correctly noted by the petitioner, the one year redemption period in *Sulit* has not yet expired when the purchaser petitioned the trial court for the issuance of a writ of possession. In the present case, the redemption period has already expired and the title over the property had already been consolidated in the petitioner’s name. In *Sulit*, the inequity the court perceived to justify the deferment of the issuance of a writ of possession was present because the mortgagor, who at that time still had the right to exercise his right of redemption, was prevented from doing so. No such inequity appears in this case inasmuch as the mortgagor no longer has a right of redemption. In *Sulit*, the policy of the law to aid the redemptioner can still be upheld. The policy is no longer relevant in the present case since the mortgagee herself, allowed the redemption period to lapse without exercising her right.

We emphasize that for the *Sulit* exception to apply, the evil sought to be prevented must be present and the reason behind the exception should clearly exist. It should not be carelessly applied in cases where the reasons that justified it do not appear, more so where the factual milieu is different. As discussed above, the *Sulit* reasons and circumstances are not present here. The resulting injustice that we tried to avoid in *Sulit* does not exist. In the absence of any justification for the exception, the general rule should apply.

d. On the Issue of Surplus

The petitioner contends that there was no excess or surplus that needs to be returned to the respondent because her other outstanding obligations and those of her attorney-in-fact were paid out of the proceeds.

The relevant provision, Section 4 of Rule 68 of the Rules of Civil Procedure, mandates that:

Section 4. Disposition of proceeds of sale. – The amount realized from the foreclosure sale of the mortgaged property shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and when there shall be any balance or residue, after paying off the mortgage

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<sup>29</sup>

Id. at 453-454; citations omitted.

debt due, the same shall be paid to junior encumbrancers in the order of their priority, to be ascertained by the court, or if there be no such encumbrancers or there be a balance or residue after payment to them, then to the mortgagor or his duly authorized agent, or to the person entitled to it. [emphases and underscores ours)

Thus, in the absence of any evidence showing that the mortgage also covers the other obligations of the mortgagor, the proceeds from the sale should not be applied to them.

In the present case, while the petitioner claims that it was not obliged to pay any surplus because the balance from the proceeds was applied to the respondent's other obligations and to those of her attorney-in-fact, it failed, however, to show any supporting evidence showing that the mortgage extended to those obligations. The petitioner, as mortgagee/purchaser cannot just simply apply the proceeds of the sale in its favor and deduct from the balance the respondent's outstanding obligations not secured by the mortgage. Understood from this perspective, no reason exists to depart from the CA's ruling that the balance or excess, after deducting the mortgage debt of ₱1,950,000.00 plus the stipulated interest and the expenses of the foreclosure sale, must be returned to the respondent.

*e. On the Issue of Forum Shopping*

The petitioner's argument that the respondent is guilty of forum shopping by not disclosing the pendency of the case for nullity of foreclosure sale deserves scant consideration. Forum shopping is committed by a party who, having received an adverse judgment in one forum, seeks another opinion in another court, other than by appeal or the special civil action of *certiorari*. It is the institution of two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on *the same or related causes* and/or to grant the same or substantially the same reliefs.<sup>30</sup>

The test for determining whether a party has violated the rule against forum shopping is whether in the two (or more) cases, there is identity of parties, rights, causes of action, and reliefs sought, or whether the elements of *litis pendentia* are present. It is also material to determine whether a final judgment in one case, regardless of which party is successful, will amount to *res judicata* in the other.<sup>31</sup>

The motion for recall and to revoke the order for a writ of possession filed by the respondent before the trial court and the civil case for nullity of foreclosure sale are poles apart. This is also true with the petition for *certiorari* before the CA and the nullity case. Thus, even if the writ of possession is cancelled or revoked, as what happened in this case, the

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<sup>30</sup> *Young v. John Keng Seng*, 446 Phil. 823, 832 (2003).

<sup>31</sup> *Id.* at 833.

respondent will not be prevented from pursuing the nullity of the foreclosure sale, since the ruling of the court in the former does not amount to *res judicata* in the latter. Similarly, the filing of the petition for *certiorari* will not affect the pending civil case for nullity because the two actions may proceed independently and without prejudice to the outcome of each case.


Furthermore, there is no identity in the issues, causes of action and reliefs sought between the two cases. The issues in the two cases are totally different, as well as the reliefs prayed for by the respondent. In the motion, the respondent prays for the cancellation of the writ of possession, while in the civil case for nullity, the cancellation of the foreclosure sale itself. The same thing can be said of a petition for *certiorari* – where the respondent seeks to nullify the proceedings in the trial court on the ground of grave abuse of discretion – and the nullity of the foreclosure sale. We, therefore, rule that no forum shopping has been committed by the respondent.

**WHEREFORE**, the petition is **GRANTED**. The August 9, 2006 decision and the August 2, 2007 resolution of the Court of Appeals in CA-G.R. SP. No. 82725 are **MODIFIED** by ordering the Regional Trial Court of Davao City, Branch 16, to issue the corresponding writ of possession. The Court of Appeals' order to the Philippine Bank of Communications to remit to Mary Ann O. Yeung the balance or excess of the proceeds of the foreclosure sale, after deducting the mortgage debt of ₱1,950,000.00 plus the stipulated interest and the expenses of the foreclosure sale, is hereby **AFFIRMED**.

**SO ORDERED.**

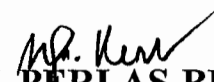
  
**ARTURO D. BRION**  
Associate Justice

WE CONCUR:

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson


  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
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.

**ANTONIO T. CARPIO**

Associate Justice

Chairperson

**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