



Republic of the Philippines  
**Supreme Court**  
Manila

**FIRST DIVISION**

**RAFAEL JOSE CONSING, JR.,**      **G.R. No. 161075**  
**Petitioner,**

Present:

- versus -

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

Promulgated:

**PEOPLE OF THE PHILIPPINES,**  
**Respondent.**

**JUL 15 2013**

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**DECISION**

**BERSAMIN, J.:**

An independent civil action based on fraud initiated by the defrauded party does not raise a prejudicial question to stop the proceedings in a pending criminal prosecution of the defendant for *estafa* through falsification. This is because the result of the independent civil action is irrelevant to the issue of guilt or innocence of the accused.

**The Case**

On appeal is the amended decision promulgated on August 18, 2003,<sup>1</sup> whereby the Court of Appeals (CA) granted the writ of *certiorari* upon petition by the State in C.A.-G.R. No. 71252 entitled *People v. Hon. Winlove M. Dumayas, Presiding Judge, Branch 59, Regional Trial Court, Makati City and Rafael Consing, Jr.*, and set aside the assailed order issued on November 26, 2001 by the Regional Trial Court (RTC), Branch 59, in Makati City deferring the arraignment of petitioner in Criminal Case No.

<sup>1</sup> *Rollo*, pp. 34-35; penned by Associate Justice Eliezer R. de los Santos (retired/deceased), with the concurrence of Associate Justice Romeo A. Brawner (later Presiding Justice, but already retired and now deceased) and Associate Justice Regalado E. Maambong (retired/deceased).

00-120 entitled *People v. Rafael Consing, Jr.* upon his motion on the ground of the existence of a prejudicial question in the civil cases pending between him and the complainant in the trial courts in Pasig City and Makati City.

### **Antecedents**

Petitioner negotiated with and obtained for himself and his mother, Cecilia de la Cruz (de la Cruz) various loans totaling ₱18,000,000.00 from Unicapital Inc. (Unicapital). The loans were secured by a real estate mortgage constituted on a parcel of land (property) covered by Transfer Certificate of Title (TCT) No. T-687599 of the Registry of Deeds for the Province of Cavite registered under the name of de la Cruz.<sup>2</sup> In accordance with its option to purchase the mortgaged property, Unicapital agreed to purchase one-half of the property for a total consideration of ₱21,221,500.00. Payment was effected by off-setting the amounts due to Unicapital under the promissory notes of de la Cruz and Consing in the amount of ₱18,000,000.00 and paying an additional amount of ₱3,145,946.50. The other half of the property was purchased by Plus Builders, Inc. (Plus Builders), a joint venture partner of Unicapital.<sup>3</sup>

Before Unicapital and Plus Builders could develop the property, they learned that the title to the property was really TCT No. 114708 in the names of Po Willie Yu and Juanito Tan Teng, the parties from whom the property had been allegedly acquired by de la Cruz. TCT No. 687599 held by De la Cruz appeared to be spurious.<sup>4</sup>

On its part, Unicapital demanded the return of the total amount of ₱41,377,851.48 as of April 19, 1999 that had been paid to and received by de la Cruz and Consing, but the latter ignored the demands.<sup>5</sup>

On July 22, 1999, Consing filed Civil Case No. 1759 in the Pasig City Regional Trial Court (RTC) (Pasig civil case) for injunctive relief, thereby seeking to enjoin Unicapital from proceeding against him for the collection of the ₱41,377,851.48 on the ground that he had acted as a mere agent of his mother.

On the same date, Unicapital initiated a criminal complaint for *estafa* through falsification of public document against Consing and de la Cruz in the Makati City Prosecutor's Office.<sup>6</sup>

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<sup>2</sup> Id. at 57-58.

<sup>3</sup> Id. at 58.

<sup>4</sup> Id.

<sup>5</sup> Id.

<sup>6</sup> Id.

On August 6, 1999, Unicapital sued Consing in the RTC in Makati City (Civil Case No. 99-1418) for the recovery of a sum of money and damages, with an application for a writ of preliminary attachment (Makati civil case).<sup>7</sup>

On January 27, 2000, the Office of the City Prosecutor of Makati City filed against Consing and De la Cruz an information for *estafa* through falsification of public document in the RTC in Makati City (Criminal Case No. 00-120), which was assigned to Branch 60 (Makati criminal case).<sup>8</sup>

On February 15, 2001, Consing moved to defer his arraignment in the Makati criminal case on the ground of existence of a prejudicial question due to the pendency of the Pasig and Makati civil cases. On September 25, 2001, Consing reiterated his motion for deferment of his arraignment, citing the additional ground of pendency of CA-G.R. SP No. 63712 in the CA. On November 19, 2001, the Prosecution opposed the motion.<sup>9</sup>

On November 26, 2001, the RTC issued an order suspending the proceedings in the Makati criminal case on the ground of the existence of a prejudicial question, and on March 18, 2001, the RTC denied the Prosecution's motion for reconsideration.<sup>10</sup>

The State thus assailed in the CA the last two orders of the RTC in the Makati criminal case *via* petition for *certiorari* (C.A.-G.R. SP No. 71252).

On May 20, 2003, the CA promulgated its decision in C.A.-G.R. SP No. 71252,<sup>11</sup> dismissing the petition for *certiorari* and upholding the RTC's questioned orders, explaining:

Is the resolution of the Pasig civil case prejudicial to the Cavite and Makati criminal cases?

We hold that it is. The resolution of the issue in the Pasig case, i.e. whether or not private respondent may be held liable in the questioned transaction, will determine the guilt or innocence of private respondent Consing in both the Cavite and Makati criminal cases.

The analysis and comparison of the Pasig civil case, Makati criminal case, Makati civil case and Cavite criminal case show that: (1) the parties are identical; (2) the transactions in controversy are identical; (3) the Transfer Certificate of Titles (TCT) involved are identical; (4) the questioned Deeds of Sale/Mortgage are identical; (5) the dates in question

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<sup>7</sup> Id. at 77-88.

<sup>8</sup> Id. at 58-59.

<sup>9</sup> Id. at 59.

<sup>10</sup> Id.

<sup>11</sup> Id. at 57-63.

are identical; and (6) the issue of private respondent's culpability for the questioned transactions is identical in all the proceedings.

As discussed earlier, not only was the issue raised in the Pasig civil case identical to or intimately related to the criminal cases in Cavite and Makati. The similarities also extend to the parties in the cases and the TCT and Deed of Sale/ Mortgage involved in the questioned transactions.

The respondent Judge, in ordering the suspension of the arraignment of private respondent in the Makati case, in view of CA-G.R. SP No. 63712, where Unicapital was not a party thereto, did so pursuant to its mandatory power to take judicial notice of an official act of another judicial authority. It was also a better legal tack to prevent multiplicity of action, to which our legal system abhors.

Applying the *Tuanda* ruling, the pendency of CA-G.R. SP No. 63712 may be validly invoked to suspend private respondent's arraignment in the Makati City criminal case, notwithstanding the fact that CA-G.R. SP No. 63712 was an offshoot, merely, in the Cavite criminal case.<sup>12</sup>

In the meanwhile, on October 13, 1999, Plus Builders commenced its own suit for damages against Consing (Civil Case No. 99-95381) in the RTC in Manila (Manila civil case).<sup>13</sup>

On January 21, 2000, an information for *estafa* through falsification of public document was filed against Consing and De la Cruz in the RTC in Imus, Cavite, docketed as Criminal Case No. 7668-00 and assigned to Branch 21 (Cavite criminal case). Consing filed a motion to defer the arraignment on the ground of the existence of a prejudicial question, *i.e.*, the pendency of the Pasig and Manila civil cases. On January 27, 2000, however, the RTC handling the Cavite criminal case denied Consing's motion. Later on, it also denied his motion for reconsideration. Thereafter, Consing commenced in the CA a special civil action for *certiorari* with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction (C.A.-G.R. SP No. 63712), seeking to enjoin his arraignment and trial in the Cavite criminal case. The CA granted the TRO on March 19, 2001, and later promulgated its decision on May 31, 2001, granting Consing's petition for *certiorari* and setting aside the January 27, 2000 order of the RTC, and permanently enjoining the RTC from proceeding with the arraignment and trial until the Pasig and Manila civil cases had been finally decided.

Not satisfied, the State assailed the decision of the CA in this Court (G.R. No. 148193), praying for the reversal of the May 31, 2001 decision of the CA. On January 16, 2003, the Court granted the petition for review in

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<sup>12</sup> Id. at 61-62.

<sup>13</sup> Raffled to Branch 12.

G.R. No. 148193, and reversed and set aside the May 31, 2001 decision of the CA,<sup>14</sup> viz:

In the case at bar, we find no prejudicial question that would justify the suspension of the proceedings in the criminal case (the Cavite criminal case). The issue in Civil Case No. SCA 1759 (the Pasig civil case) for Injunctive Relief is whether or not respondent (Consing) merely acted as an agent of his mother, Cecilia de la Cruz; while in Civil Case No. 99-95381 (the Manila civil case), for Damages and Attachment, the question is whether respondent and his mother are liable to pay damages and to return the amount paid by PBI for the purchase of the disputed lot. Even if respondent is declared merely an agent of his mother in the transaction involving the sale of the questioned lot, he cannot be adjudged free from criminal liability. An agent or any person may be held liable for conspiring to falsify public documents. Hence, the determination of the issue involved in Civil Case No. SCA 1759 for Injunctive Relief is irrelevant to the guilt or innocence of the respondent in the criminal case for estafa through falsification of public document.

Likewise, the resolution of PBI's right to be paid damages and the purchase price of the lot in question will not be determinative of the culpability of the respondent in the criminal case for even if PBI is held entitled to the return of the purchase price plus damages, it does not *ipso facto* follow that respondent should be held guilty of estafa through falsification of public document. Stated differently, a ruling of the court in the civil case that PBI should not be paid the purchase price plus damages will not necessarily absolve respondent of liability in the criminal case where his guilt may still be established under penal laws as determined by other evidence.

Moreover, neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other. Under Rule 111, Section 3 of the Revised Rules on Criminal Procedure, in the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action.

Thus, in *Rojas v. People*, the petitioner was accused in a criminal case for violation of Article 319 of the Revised Penal Code, for executing a new chattel mortgage on personal property in favor of another party without consent of the previous mortgagee. Thereafter, the offended party filed a civil case for termination of management contract, one of the causes of action of which consisted of petitioner having executed a chattel mortgage while the previous chattel mortgage was still valid and subsisting. Petitioner moved that the arraignment and trial of the criminal case be held in abeyance on the ground that the civil case was a prejudicial question, the resolution of which was necessary before the criminal proceedings could proceed. The trial court denied the suspension of the criminal case on the ground that no prejudicial question exist. We affirmed the order of the trial court and ruled that:

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<sup>14</sup> *People v. Consing, Jr.*, G.R. No. 148193, January 16, 2003, 395 SCRA 366, 370-372.

... the resolution of the liability of the defendant in the civil case on the eleventh cause of action based on the fraudulent misrepresentation that the chattel mortgage the defendant executed in favor of the said CMS Estate, Inc. on February 20, 1957, that his D-6 “Caterpillar” Tractor with Serial No. 9-U-6565 was “free from all liens and encumbrances” will not determine the criminal liability of the accused in the said Criminal Case No. 56042 for violation of paragraph 2 of Article 319 of the Revised Penal Code. . . . (i) That, even granting for the sake of argument, a prejudicial question is involved in this case, the fact remains that both the crime charged in the information in the criminal case and the eleventh cause of action in the civil case are based upon fraud, hence both the civil and criminal cases could proceed independently of the other pursuant to Article 33 of the new Civil Code which provides: “In cases of defamation, fraud and physical injuries, a civil action for damages, entirely separate and distinct from the criminal action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.” (j) That, therefore, the act of respondent judge in issuing the orders referred to in the instant petition was not made with “grave abuse of discretion.”

In the instant case, Civil Case No. 99-95381, for Damages and Attachment on account of the alleged fraud committed by respondent and his mother in selling the disputed lot to PBI is an independent civil action under Article 33 of the Civil Code. As such, it will not operate as a prejudicial question that will justify the suspension of the criminal case at bar.<sup>15</sup>

Turning back to the Makati criminal case, the State moved for the reconsideration of the adverse decision of the CA, citing the ruling in G.R. No. 148193, *supra*, to the effect that the Pasig and Manila civil cases did not present a prejudicial question that justified the suspension of the proceedings in the Cavite criminal case, and claiming that under the ruling in G.R. No. 148193, the Pasig and Makati civil cases did not raise a prejudicial question that would cause the suspension of the Makati criminal case.

In his opposition to the State’s motion for reconsideration, Consing contended that the ruling in G.R. No. 148193 was not binding because G.R. No. 148193 involved Plus Builders, which was different from Unicapital, the complainant in the Makati criminal case. He added that the decision in G.R. No. 148193 did not yet become final and executory, and could still be reversed at any time, and thus should not control as a precedent to be relied upon; and that he had acted as an innocent attorney-in-fact for his mother, and should not be held personally liable under a contract that had involved property belonging to his mother as his principal.

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<sup>15</sup> The ruling in G.R. No. 148193 became final and executory.

On August 18, 2003, the CA amended its decision, reversing itself. It relied upon the ruling in G.R. No. 148193, and held thusly:

CA-G.R. SP No. 63712 is similar with the case at bench. The transactions in controversy, the documents involved; the issue of the respondent's culpability for the questioned transactions are all identical in all the proceedings; and it deals with the same parties with the exception of private complainant Unicapital.

However, the Supreme Court, upon review of CA-G.R. SP No. 63712, *People of the Philippines vs. Rafael Jose Consing, Jr.* (G.R. No. 148193, January 16, 2003) held that "Civil Case No. 99-95381, for Damages and attachment on account of alleged fraud committed by respondent and his mother in selling the disputed lot to Plus Builders, Inc. is an independent civil action under Article 33 of the Civil Code. As such, it will not operate as a prejudicial question that will justify the suspension of the criminal case at bar." In view of the aforementioned decision of the Supreme Court, We are thus amending Our May 20, 2003 decision.

WHEREFORE, the petitioner's motion for reconsideration is GRANTED. The Orders dated November 26, 2001 and March 18, 2002 issued by the respondent Judge are hereby REVERSED and SET ASIDE. Respondent Judge is hereby ordered to proceed with the hearing of Criminal Case No. 00-120 with dispatch.

SO ORDERED.<sup>16</sup>

Consing filed a motion for reconsideration,<sup>17</sup> but the CA denied the motion through the second assailed resolution of December 11, 2003.<sup>18</sup>

Hence, this appeal by petition for review on *certiorari*.

### Issue

Petitioner reiterates his contention that the decision in G.R. No. 148193 was not controlling in relation to C.A.-G.R. No. 71252, which involved Plus Builders, not Unicapital, the complainant in Criminal Case No. 00-120. He posits that in arriving at its amended decision, the CA did not consider the pendency of the Makati civil case (Civil Case No. 99-1418), which raised a prejudicial question, considering that the resolution of such civil action would include the issue of whether he had falsified a certificate of title or had willfully defrauded Unicapital, the resolution of either of which would determine his guilt or innocence in Criminal Case No. 00-120.

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<sup>16</sup> *Rollo*, pp. 34-35.

<sup>17</sup> *Id.* at 39-55.

<sup>18</sup> *Id.* at 37-38.

In its comment,<sup>19</sup> the Office of the Solicitor General (OSG) counters that Unicapital brought the Makati civil case as an independent civil action intended to exact civil liability separately from Criminal Case No. 00-120 in a manner fully authorized under Section 1(a) and Section 2, Rule 111 of the *Rules of Court*.<sup>20</sup> It argues that the CA correctly took cognizance of the ruling in G.R. No. 148193, holding in its challenged amended decision that the Makati civil case, just like the Manila civil case, was an independent civil action instituted by virtue of Article 33 of the *Civil Code*; that the Makati civil case did not raise a prejudicial question that justified the suspension of Criminal Case No. 00-120; and that as finally settled in G.R. No. 148193, the Pasig civil case did not also raise any prejudicial question, because the sole issue thereat was whether Consing, as the mere agent of his mother, had any obligation or liability toward Unicapital.

In his reply,<sup>21</sup> Consing submits that the Pasig civil case that he filed and Unicapital's Makati civil case were not intended to delay the resolution of Criminal Case No. 00-120, nor to pre-empt such resolution; and that such civil cases could be validly considered determinative of whether a prejudicial question existed to warrant the suspension of Criminal Case No. 00-120.

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<sup>19</sup> Id. at 104-117.

<sup>20</sup> Section 1. *Institution of criminal and civil actions*. – (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate, or exemplary damages without specifying the amount thereof in the complaint or information, the filing fees therefore shall constitute a first lien on the judgment awarding such damages.

Where the amount of damages, other than actual, is specified in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court.

Except as otherwise provided in these Rules, no filing fees shall be required for actual damages.

No counterclaim, cross-claim or third-party complaint may be filed by the accused in the criminal case, but any cause of action which could have been the subject thereof may be litigated in a separate civil action.

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Sec. 2. When separate civil action is suspended. – After the criminal action has been commenced, the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action.

If the criminal action is filed after the said civil action has already been instituted, the latter shall be suspended in whatever state it may be found before judgment on the merits. The suspension shall last until final judgment is rendered in the criminal action. Nevertheless, before judgment on the merits rendered in the civil action, the same may, upon motion of the offended party, be consolidated with the criminal action in the court trying the criminal action. In case of consolidation, the evidence already adduced in the civil action shall be deemed automatically reproduced in the criminal action without prejudice to the right of the prosecution to cross-examine the witness presented by the offended party in the criminal case and of the parties to present additional evidence. The consolidated criminal and civil actions shall be tried and decided jointly.

During the pendency of the criminal action, the running period of prescription of the civil action which cannot be instituted separately or whose proceeding has been suspended shall be tolled.

The extinction of the penal action does not carry with it extinction of the civil action. However, the civil action based on delict shall be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist.

<sup>21</sup> *Rollo*, pp. 120-126.



Did the CA err in reversing itself on the issue of the existence of a prejudicial question that warranted the suspension of the proceedings in the Makati criminal case?

### **Ruling**

The petition for review on *certiorari* is absolutely meritless.

Consing has hereby deliberately chosen to ignore the firm holding in the ruling in G.R. No. 148193 to the effect that the proceedings in Criminal Case No. 00-120 could not be suspended because the Makati civil case was an independent civil action, while the Pasig civil case raised no prejudicial question. That was wrong for him to do considering that the ruling fully applied to him due to the similarity between his case with Plus Builders and his case with Unicapital.

A perusal of Unicapital's complaint in the Makati civil case reveals that the action was predicated on fraud. This was apparent from the allegations of Unicapital in its complaint to the effect that Consing and de la Cruz had acted in a "wanton, fraudulent, oppressive, or malevolent manner in offering as security and later object of sale, a property which they do not own, and foisting to the public a spurious title."<sup>22</sup> As such, the action was one that could proceed independently of Criminal Case No. 00-120 pursuant to Article 33 of the *Civil Code*, which states as follows:

Article 33. In cases of defamation, fraud, and physical injuries a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

It is well settled that a civil action based on defamation, fraud and physical injuries may be independently instituted pursuant to Article 33 of the *Civil Code*, and does not operate as a prejudicial question that will justify the suspension of a criminal case.<sup>23</sup> This was precisely the Court's thrust in G.R. No. 148193, thus:

Moreover, neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other. Under Rule 111, Section 3 of the Revised Rules on Criminal Procedure, in the cases provided in Articles 32, 33, 34 and 2176 of the

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<sup>22</sup> *Rollo*, p. 83.

<sup>23</sup> *Samson v. Daway*, G.R. Nos. 160054-55, July 21, 2004, 434 SCRA 612, 620-621; *Rojas v. People*, No. L-22237, May 31, 1974, 57 SCRA 243, 246.

Civil Code, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action.

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In the instant case, Civil Case No. 99-95381, for Damages and Attachment on account of the alleged fraud committed by respondent and his mother in selling the disputed lot to PBI is an independent civil action under Article 33 of the Civil Code. As such, it will not operate as a prejudicial question that will justify the suspension of the criminal case at bar.<sup>24</sup>

Contrary to Consing's stance, it was not improper for the CA to apply the ruling in G.R. No. 148193 to his case with Unicapital, for, although the Manila and Makati civil cases involved different complainants (*i.e.*, Plus Builders and Unicapital), the civil actions Plus Builders and Unicapital had separately instituted against him were undeniably of similar mold, *i.e.*, they were both based on fraud, and were thus covered by Article 33 of the *Civil Code*. Clearly, the Makati criminal case could not be suspended pending the resolution of the Makati civil case that Unicapital had filed.

As far as the Pasig civil case is concerned, the issue of Consing's being a mere agent of his mother who should not be criminally liable for having so acted due to the property involved having belonged to his mother as principal has also been settled in G.R. No. 148193, to wit:

In the case at bar, we find no prejudicial question that would justify the suspension of the proceedings in the criminal case (the Cavite criminal case). The issue in Civil Case No. SCA 1759 (the Pasig civil case) for Injunctive Relief is whether or not respondent (Consing) merely acted as an agent of his mother, Cecilia de la Cruz; while in Civil Case No. 99-95381 (the Manila civil case), for Damages and Attachment, the question is whether respondent and his mother are liable to pay damages and to return the amount paid by PBI for the purchase of the disputed lot. **Even if respondent is declared merely an agent of his mother in the transaction involving the sale of the questioned lot, he cannot be adjudged free from criminal liability. An agent or any person may be held liable for conspiring to falsify public documents. Hence, the determination of the issue involved in Civil Case No. SCA 1759 for Injunctive Relief is irrelevant to the guilt or innocence of the respondent in the criminal case for estafa through falsification of public document.**<sup>25</sup> (Words in parentheses supplied; bold underscoring supplied for emphasis)

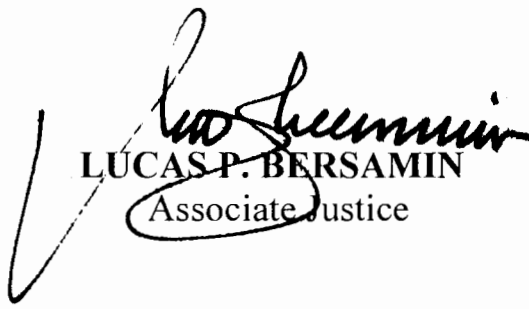
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<sup>24</sup> Supra note 14, at 371-372.

<sup>25</sup> Id. at 370-371.


**WHEREFORE**, the Court **AFFIRMS** the amended decision promulgated on August 18, 2003; and **ORDERS** petitioner to pay the costs of suit.

**SO ORDERED.**



LUCAS P. BERSAMIN  
Associate Justice

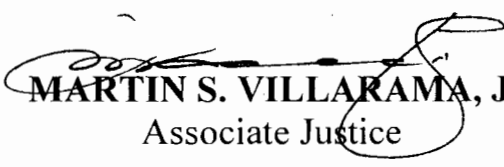
**WE CONCUR:**



MARIA LOURDES P. A. SERENO  
Chief Justice



TERESITA J. LEONARDO-DE CASTRO  
Associate Justice



MARTIN S. VILLARAMA, JR.  
Associate Justice



BIENVENIDO L. REYES  
Associate Justice

### **CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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