



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PRIVATIZATION and MANAGEMENT G.R. No. 200402
OFFICE,

Petitioner, Present:

- versus -

STRATEGIC ALLIANCE
DEVELOPMENT CORPORATION
and/or PHILIPPINE ESTATE
CORPORATION,

Respondent.

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

Promulgated:

JUN 13 2013

X ----- X

DECISION

SERENO, CJ:

Before this Court is a Rule 45 Petition, seeking a review of the Court of Appeals (CA) Decision¹ dated 27 January 2012 in CA-G.R. CV No. 96368, which affirmed the Decision² dated 1 July 2010 of the Regional Trial Court (RTC) in Civil Case No. 05-882. The RTC directed petitioner Privatization and Management Office (PMO) to award the auctioned Philippine National Construction Corporation (PNCC) shares, receivables, and securities owned by the Philippine government to respondent Strategic Alliance Development Corporation (STRADEC).

The facts are as follows:

As established by Administrative Order No. 397,³ the indebtedness of PNCC to various government financial institutions was transferred to the National Government (NG) through the Committee on Privatization

¹ *Rollo*, pp. 118-148. The CA Decision was penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Stephen C. Cruz and Amy C. Lazaro-Javier concurring.

² *Id.* at 149-170. The RTC Decision was penned by Presiding Judge Zenaida T. Galapate-Laguilles.

³ Administrative Order No. 397 (1998).

(COP)/Asset Privatization Trust (APT) and the Bureau of Treasury pursuant to Proclamation No. 50⁴ and Administrative Order No. 64.⁵

Consequently, APT slated the privatization of PNCC in order to generate maximum cash recovery for the government. Thus, sometime in July of 2000, it announced the holding of a public bidding on 30 October 2000 involving the “as is, where is basis” package sale of stocks, receivables, and securities owned by the National Government in the PNCC.

Dong-A Consortium, which was formed by respondent STRADEC and Dong-A Pharmaceuticals, signified its intention to bid. As a prospective bidder, it received the accompanying bid documents given by APT. It also acknowledged⁶ and signed the Asset Specific Bidding Rules (ASBR),⁷ which reads:

2. Due Diligence

x x x x

2.2 The conduct of due diligence is at the **option of the prospective bidders**. Failure of the bidder to conduct due diligence shall be at his sole risk and no relief for error or omission will be given.

x x x x

3. Bid Price

3.1 The Indicative Price for the Shares, Receivables and the Securities shall be **announced on the day of the bidding**.

x x x x

4. Evaluation of Bid

4.1 The winning bidder shall be the bidder who submits the **highest total bid offer** for both the shares and receivables, who complies with all terms and conditions contained in this ASBR, x x x.

x x x x

4.3. APT **reserves the right to reject any or all bids, including the highest bid**, or to waive any defect or required formality therein.

⁴ Proclaiming and Launching a Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or the Assets thereof, and Creating the Committee on Privatization and the Asset Privatization Trust (1986).

⁵ Approving the Identification of and Transfer to the National Government of Certain Assets and Liabilities of the Philippine Export and Foreign Loan Guarantee Corporation and the National Development Company (1988).

⁶ *Rollo*, p. 207. Bidder's Acknowledgment signed by Byoung Hyun Suh.

⁷ *Id.* at 196-207. Asset Specific Bidding Rules for the Sale of the National Government's Share in the Receivables and Securities of the National Government from the Philippine National Construction Corporation.

4.4. The evaluation of the bids and **award of the sale** shall be subject to applicable laws, rules and regulations as well as all existing governmental approval requirements.

x x x x

5. Bidder's Responsibility

x x x x

5.2 x x x. The consequences of failure to examine and carefully interpret the bid documents shall be borne by the bidder and such bidder shall not be entitled to relief for its error or omission. The delivery or release by APT, NG, or PNCC to the bidders of any financial or operating data or any information regarding the shares and receivables **shall not give rise to warranty** with respect to such data or information.

x x x x

6. Preparation of Bids

x x x x

6.4. By submitting its Bid Offer and Bid Deposit on the date of the bidding, the Bidder shall be deemed to have **signified its acceptance** of the terms and conditions of the bidding, including the terms and conditions of this ASBR and Sale Purchase Agreement.

10. Award of Sale

x x x x

10.1. APT Marketing Department shall determine the highest bidder in accordance with Section 4 hereof and submit a report and the appropriate **recommendation** to the APT Board of Trustees **for consideration**. Thereafter, the APT Board of Trustees shall **endorse** its recommendation to the Committee on Privatization (COP) for approval.

10.2. **After** the necessary approvals and clearances are obtained from the APT Board and the COP, APT shall issue a Notice of Award of Sale to the winning bidder.⁸ (Emphases supplied)

On 30 October 2000, APT conducted the bid. It first declared that Dong-A Consortium, Pacific Infrastructure Development International,⁹ and Philippine Exporters Confederation¹⁰ qualified as bidders. Thereafter, it announced that the indicative price of the PNCC properties was seven billion pesos (₱7,000,000,000).

⁸ Id. at 199-220.

⁹ Id. at 223-224. The Asset Specific Bidding Form indicated that the bidding entity was properly named Consortium of Ernest Fritz D. Server and Pacific Infrastructure Development Ltd.

¹⁰ Id. at 240-241. The Asset Specific Bidding Form indicated that the bidding entity was properly named Sergio Ortiz Luis, Jr./Korea Asia Assets Ltd. (Consortium).

The bidders were shocked with the valuation. Relying on their own due diligence examinations, they protested that the indicative price was too high, considering the financial statements and bid documents given by APT. Notwithstanding their protests, APT continued with the bidding and opened the bid envelopes. As illustrated below, none of the bid offers met the indicative price:

Bidder	Bid Price
Dong-A Consortium	₱1,228,888,800
Pacific Infrastructure Development International	₱536,888,888
Philippine Exporters Confederation	₱420,000,000 ¹¹

The next day, APT faxed a letter to Dong-A Consortium informing the latter that its offer had been rejected. The letter reads in part:

We regret to inform you that the APT Board of Trustees, in a special meeting held after the bidding, resolved to reject your bid as it was way below the Indicative Price of Seven Billion Pesos (₱7,000,000,000.00) set by the Committee on Privatization.¹²

Dong-A Consortium responded and stressed to APT that the former’s offer was not only the highest, but was also competitive and most advantageous to the government.¹³ Dong-A Consortium then asked for reconsideration and requested the award of the PNCC properties.¹⁴

On 31 December 2000, the term of APT expired. By virtue of Executive Order No. 323,¹⁵ petitioner PMO was organized to implement the disposition of the government-acquired assets, including the PNCC shares. PMO thus took over the correspondences involving the bid. It communicated to Dong-A Consortium that the decision of the Board of Trustees of the APT had already been confirmed by the COP; hence, the decision to reject the bid stood.¹⁶

On 3 October 2005, STRADEC filed a Complaint for Declaration of Right to a Notice of Award and/or Damages on behalf of Dong-A Consortium against PMO and PNCC.¹⁷ It contested the high indicative price that caused it to lose the bid. STRADEC also pushed for the reduction of the

¹¹ Id. At 120-121.
¹² Id. at 245.
¹³ Id. at 246.
¹⁴ Id. at 248.
¹⁵ Constituting an Inter-Agency Privatization Council and Creating a Privatization and Management Office under the Department of Finance for the Continuing Privatization of Government Assets and Corporations (2001).
¹⁶ *Rollo*, pp. 255-256. Letter dated 15 March 2001.
¹⁷ Id. at 263-275.

indicative price and demanded that a Notice of Award of the PNCC properties be issued in its favor.

PMO answered by asserting the provisions of the ASBR.¹⁸ According to PMO, the rules give the government the right to reject bid offers, including the highest bid. Hence, PMO argued that STRADEC had no legal right to demand the issuance of a Notice of Award even after having submitted the highest bid. PNCC claimed that STRADEC was merely “sour graping” over its loss. Furthermore, STRADEC had allegedly failed to establish any act of PNCC with respect to the manner of the bidding that would create a cause of action against the latter.¹⁹

During pretrial, the parties entered into several stipulations.²⁰ Significantly, they agreed that to be issued the Notice of Award, the winning bidder must satisfy and comply with all of the ASBR’s terms and conditions, including the indicative price. They also stipulated that Dong-A Consortium had extensively conducted due diligence prior to the bid. Subsequently, its auditor informed the court that PNCC had been operating at a loss and that it puzzled them why APT never gave the basis of the indicative price, especially in the light of the finances of PNCC.

Siding with the bidder, the RTC ruled that PMO had committed grave abuse of discretion in refusing to explain the basis of the indicative price. The trial court explained that since competitive public bidding is vested with public interest, it then follows that the government has an affirmative duty to disclose its reasons for rejecting a bid. The court concluded that the refusal to explain the indicative price constituted a violation of the public’s right to information and the State’s policy of full transparency in transactions involving public interest.

Pushing its directives further, the trial court directed the issuance of the Notice of Award in favor of Dong-A Consortium. In so adjudging, it had appreciated the fact that (1) the latter submitted the highest bid; (2) the offer was threefold higher than the next bid, and hence appeared most advantageous to the government; and (3) Dong-A Consortium conducted an extensive due diligence examination based on the bid documents furnished by APT.

Hence, the dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

¹⁸ Id. at 276-291.

¹⁹ Id. at 353-363.

²⁰ Id. at 418-419. RTC Order dated 6 November 2008.

- 1) Defendant PMO is **directed to issue a Notice of Award of Sale** to the Dong-A Consortium, herein represented by plaintiff STRADEC, the National Government's shares of stock in the Philippine National Construction Corporation (PNCC), and the receivables of the National Government in the form of advances to PNCC, all future receivables of the National Government from PNCC and the securities related thereto, under the procedure stated in the Asset Specific Bidding Rules (ASBR) for the public auction held on October 30, 2000;
- 2) Defendants PMO and PNCC are **directed to pay plaintiff**, jointly and severally, the sum of PHP 500,000.00 as and by way of exemplary damages; and the further sum of PHP 500,000.00 as and by way of attorney's fees and costs of suit.

SO ORDERED.²¹ (Emphases in the original)

Aggrieved, PMO and PNCC appealed before the CA. PNCC argued that the factors mentioned by the RTC were immaterial and that none of them could justify the latter's directive to issue a Notice of Award in favor of Dong-A Consortium. PNCC also denied having any legal obligation to disclose the basis of the indicative price. For its part, PMO contended that the bidding held on 30 October 2000 was transparent, regular, and conducted in accordance with the ASBR; and that the RTC therefore had no reason to alter the outcome of the bid.

In its assailed Decision, the CA emphasized that competitive public bidding must be fair, legitimate and honest. From this standard, it went on to state that PMO must not only reveal the basis of the indicative price, but must also award the sale of the PNCC assets to Dong-A Consortium.

Heavily quoting the RTC, the CA states:²²

x x x. **A reading of the decisional rules on reservation of the right to reject cautions, however, against injustice, unfairness, arbitrariness, fraudulent acts or grave abuse of discretion.** A contrary conclusion would be anathema to the purposes for which public biddings are founded to give the public the best possible advantages through open competition – as it would give the unscrupulous a plain escape to rig the bidding process.

Applying now the foregoing precedents, this Court is persuaded to rule that then APT (now PMO) had the duty to disclose the basis for its rejection of the highest bid submitted by the Dong-A Consortium. For as the *evidence* shows, the plaintiff's bid was *threefold than the next highest bid*, and appeared, at that point, to be the most advantageous to the government. As to how the gargantuan amount of PHP7.0 Billion pesos as the Indicative Price was arrived at, and which was invoked as the sole basis for the rejection of the plaintiff's bid, should have been at least clarified or explained in conformity with the expected *degree of transparency in any public bidding*. The sending out of demand letters to then APT demanding disclosure of the basis for the stated Indicative Price

²¹ Id. at 169-170.

²² Id. at 146-147.

is not disputed by the defendants as they opted not to present any countervailing evidence. Verily, the evaluation and calibration of evidence necessarily involves consideration of factual issues. Plaintiff's evidence shows that it carefully weighed its bases in coming up with the bid that it offered. It did not participate in the *bidding exercise blindly or unarmed with the relevant informations*. Defendants provided plaintiff herein varied documents prior to the bidding or specifically during the due diligence examination. Needless to state, these documents were pivotal in the plaintiff's estimate of the proper bid to submit. As has been disclosed by the evidence, plaintiff conducted a due diligence examination with the guidance of its own financial expert. x x x (Emphasis in the original)

PNCC moved for reconsideration, but the motion is still pending in the CA. On the other hand, PMO proceeded directly to this Court via a Rule 45 Petition.

In its pleading, PMO raises several issues, including the *locus standi* of STRADEC and the prescription of action. But principally, PMO contests the directives of the courts *a quo* to issue the Notice of Award to Dong-A Consortium.

RULING OF THE COURT

At the heart of this case is whether PMO can be compelled to award Dong-A Consortium the PNCC assets that it values at seven billion pesos (₱7,000,000,000) for only ₱1,228,888,800. For a fraction of the valuation, respondent claims entitlement on the grounds that (1) the people's right to information has been violated; (2) it submitted the highest bid; and (3) it conducted due diligence.

The people's right to information does not warrant the award of the bid to Dong-A Consortium.

The courts *a quo* held that because of the people's constitutional right to information on matters of public concern,²³ petitioner has a duty to disclose the derivation of the indicative price to respondent. The failure to disclose the information allegedly entitles respondent to the issuance of the Notice of Award.

We rule that whether or not the people's right to information has been violated by APT's failure to disclose the basis of the indicative price, that right **cannot** be used as a ground to direct the issuance of the Notice of Award to Dong-A Consortium. Under the ASBR, respondent must at least match the indicative price in order to win.

²³ CONSTITUTION, Art. III, Sec. 7.

Under the circumstances, the right to information, at most, affords to the claimant access to records, documents, and papers – which *only* means the opportunity to inspect and copy them at his expense.²⁴ This interpretation resonates in the deliberations of the 1987 Constitutional Commission:²⁵

FR. BERNAS. Just one observation, Mr. Presiding Officer. I want to comment that Section 6 (referring to Section 7, Article III on the right to information) talks about the right of the people to information, and **corresponding to every right is a duty**. In this particular case, corresponding to this right of the people is precisely the duty of the State **to make available** whatever information there may be needed that is of public concern. Section 6 is very broadly stated so that it covers anything that is of public concern. It would seem also that the advantage of Section 6 is that it challenges citizens to be active in seeking information rather than being dependent on whatever the State may release to them. (Emphasis supplied)

The right to information allows the public to hold public officials accountable to the people and aids them in engaging in public discussions leading to the formulation of government policies and their effective implementation.²⁶ By itself, it does not extend to causing the award of the sale of government assets in failed public biddings. Thus, assuming that Dong-A Consortium may access the records for the purpose of validating the indicative price under the right to information, it does not follow that respondent is entitled to the award.

This Court cannot condone the incongruous interpretation of the courts *a quo* that the public's right to information merits both an explanation of the indicative price and an *automatic award* of the bid to Dong-A Consortium.

This interpretation is illogical considering that, in order to win a bid, bidders could simply demand explanations *ad infinitum*. Government agencies would then be required to discuss each and every method of computation used in arriving at a valuation. As a result, the bidders would unduly exhaust the time, efforts, and resources of all participants in the process. Worse, this stance could open the courts to a multitude of suits assailing the iterations of the bidding evaluations. We cannot allow such distorted interpretation of the transparency requirement of public bidding, as an interpretation that causes inconvenience and absurdity is not favored.²⁷

²⁴ *Chavez v. Public Estates Authority and Amari Coastal Bay Development Corporation*, G.R. No. 133250, 9 July 2002.

²⁵ V RECORD, CONSTITUTIONAL COMMISSION 26 (24 September 1986).

²⁶ *Supra* note 24.

²⁷ *Southern Cross Cement Corporation v. Cement Manufacturers Association of the Philippines*, 503 Phil. 485, 524 (2005).

Notably, even if the computations for arriving at the ₱7,000,000,000 valuation were explained, none of the participants would have won, since all of their offers were way below the indicative price.

Likewise, the submission of the highest bid and the conduct of due diligence do not justify an award to Dong-A Consortium.

The courts *a quo* also directed the issuance of the Notice of Award in favor of Dong-A Consortium, because it submitted the highest bid, which appeared to be the most advantageous to the government, and because it conducted due diligence. Like the previous ground alleged as discussed above, these matters are irrelevant.

Obligations arising from agreements have the force of law between the contracting parties and should be complied with in good faith.²⁸ Here, the ASBR sets forth the terms and conditions under which an award will be given. During the pretrial, both parties agreed that a bidder wins only after satisfying and complying with all the terms and conditions of the ASBR, including matching the indicative price. Since Dong-A Consortium failed to match the indicative price, it could not have been considered a winner, and, is not entitled to a Notice of Award.

Article 1326 of the Civil Code, which specifically tackles offer and acceptance of bids, provides that advertisements for bidders are simply invitations to make proposals, and that an advertiser is not bound to accept the highest bidder unless the contrary appears. In the present case, Section 4.3 of the ASBR explicitly states that APT reserves the right to reject any or all bids, including the highest bid. Undoubtedly, APT has a legal right to reject the offer of Dong-A Consortium, notwithstanding that it submitted the highest bid.

In *Leoquinco v. The Postal Savings Bank*²⁹ and *C & C Commercial Corporation v. Menor*,³⁰ we explained that this right to reject bids signifies that the participants of the bidding process cannot compel the party who called for bids to accept the bid or execute a deed of sale in the former's favor. Thus, we similarly rule that PMO cannot be forced to award the sale of the PNCC shares in favor of Dong-A Consortium.

Both the RTC and the CA unfortunately ignored the failure of Dong-A Consortium to match the indicative price. They highlighted instead that the

²⁸ CIVIL CODE, Art. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

²⁹ 47 Phil. 772 (1925), cited in ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES, VOLUME IV 441 (1973).

³⁰ G.R. No. L-28360, 27 January 1983, 120 SCRA 112.

bidder conducted an extensive due diligence examination based on the documents that the APT had given to it.

Whether or not the bidder conducts due diligence is its business decision. It does not bind the government to give Dong-A Consortium the award. Furthermore, the ASBR insulates the government from suits based on inaccurate data in the bidder's due diligence examinations. Section 5.2 reads:

5.2 x x x. The consequences of failure to examine and carefully interpret the bid documents shall be borne by the bidder and such bidder shall not be entitled to relief for its error or omission. The delivery or release by APT, NG, or PNCC to the bidders of any financial or operating data or any information regarding the shares and receivables **shall not give rise to warranty** with respect to such data or information. (Emphasis supplied)

Worse, by putting emphasis on Dong-A Consortium's own due diligence examination, respondent and the courts *a quo* gave a premium to the bidder's valuation over that of APT.

Even in the spirit of open market competition in public biddings,³¹ there is no imposition on the government to sell at prices that are equal, higher, or lower compared with those commanded by the market. We cannot fault APT for deciding to sell the PNCC assets for ₱7,000,000,000, even if we put into the equation the fact that the acquired corporation has been operating at a loss as testified to by the financial auditor of Dong-A Consortium.

To substitute the valuation of Dong-A Consortium for that of APT is to unduly interfere with the judgment of a government agency tasked to liquidate nonperforming assets of the government. APT and PMO are mandated to determine the most advantageous prices that will improve the financial situation of the government. Given that discretion, they cannot be directed by the courts to do a particular act or be enjoined from doing an act within their prerogatives.³²

Therefore, we rule against the instant issuance of the Notice of Award to a bidder who claims that its valuation is more correct. As in *Republic v. Nolasco*,³³ we remind the public:

³¹ *J.G. Summit Holdings, Inc. v. Court of Appeals*, supra note 4, citing *National Food Authority v. Court of Appeals*, 323 Phil. 558, 574 (1996); further citing *Danville Maritime, Inc. v. Commission on Audit*, G.R. No. 85285, 256 Phil. 1092 (1989) and *Malaga v. Penachos, Jr.*, G.R. No. 86695, 33 September 1992, 213 SCRA 516 (1992).

³² *First United Constructors Corporation v. Poro Point Management Corporation*, G.R. No. 178799, 19 January 2009, 576 SCRA 311, 321.

³³ 496 Phil. 853, 883-884 (2005).

More importantly, the Court, the parties, and the public at large are bound to respect the fact that official acts of the Government, including those performed by governmental agencies such as the DPWH, are clothed with the presumption of regularity in the performance of official duty and cannot be **summarily**, prematurely and capriciously set aside. x x x There is perhaps a more cynical attitude fostered within the popular culture, or even through anecdotal traditions. Yet, such default pessimism is not embodied in our system of laws, which presumes that the State and its elements act correctly unless otherwise proven. To infuse within our legal philosophy a contrary, gloomy pessimism would assure that the State would bog down, wither and die. (Emphasis supplied)

A Writ of Mandamus will not issue to compel the issuance of the Notice of Award to Dong-A Consortium.

As accurately depicted by the OSG, to compel the issuance of a Notice of Award is tantamount to a prayer for the issuance of a writ of mandamus. Mandamus, however, will not issue to control or review the exercise of discretion by a public officer on whom the law imposes the right or duty to exercise judgment in reference to any matter in which the officer is required to act.³⁴ Respondent has no cause of action to compel APT to award the bid to Dong-A Consortium.

Neither can mandamus be issued unless a clear right of the bidder is shown. Mandamus does not lie if the right is doubtful.³⁵ Here, as discussed, Dong-A Consortium has no right to receive the award, since it failed to match the indicative price.

Petitioner cannot be compelled to accept the bid of Dong-A Consortium since this forced consent treads on the government's freedom to contract. The freedom of persons to enter into contracts is a policy of the law,³⁶ and courts should move with all necessary caution and prudence when interfering with it.³⁷

It must be remembered that in the field of competitive public bidding, the owner of the property to be auctioned – the government – enjoys a wide latitude of discretion and autonomy in choosing the terms of the agreement.³⁸ This principle is especially true in this case, since the policy decision then³⁹ was for APT to liquidate nonperforming assets of the government in order to recover losses. Therefore, absent any abuse of

³⁴ *Mata v. San Diego*, 159 Phil. 771, 779 (1975).

³⁵ *COMELEC v. Quijano-Padilla*, 438 Phil. 72, 91 (2002).

³⁶ *Ferrazzini v. Gsell*, 34 Phil. 697, 709 (1916).

³⁷ *Gabriel v. Monte de Piedad*, 71 Phil. 497, 500 (1941).

³⁸ *Bureau Veritas v. Office of the President*, G.R. No. 101678, 3 February 1992, 205 SCRA 705, 717.

³⁹ *J.G. Summit Holdings, Inc. v. Court of Appeals*, supra note 4, at 594.

discretion, injustice, unfairness or fraudulent acts,⁴⁰ this Court refrains⁴¹ from discrediting the judgment call of APT to prefatorily refuse any offer that fell below the indicative price.

The APT was fair to all the bidders when it informed all of them of the indicative price.

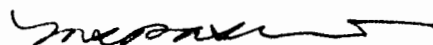
This Court concludes by emphasizing that indeed, APT **informed the bidders** of its reason for declining the bids. It rejected the bids on the simple ground that none of the bidders' offer prices matched the indicative price. In fact, Dong-A Consortium's offer of ₱1,228,888,800 drastically fell 82.44% short of ₱7,000,000,000.

By straightforwardly applying the criteria for denying bids under the ASBR, APT was fair to the bidders consistent with the standards extricated from *Agan, Jr. v. PIATCO*,⁴² *PEA v. Bolinao Security and Investigation Service, Inc.*,⁴³ and *J.G. Summit Holdings, Inc. v. Court of Appeals*.⁴⁴ In these cases, we held that, ultimately, the essence of competitive public bidding is the placement of bidders on equal footing.

In fine, this Court maintains that it is unjust to force the government to award the PNCC shares to a bidder at a drastically lower value. Corollary to this finding, this Court deletes the grant of exemplary damages and attorney's fees grounded on the supposed arbitrariness and bad faith of petitioner. With these definitive conclusions addressing the main issue, there is no longer any need for us to discuss the other matters involved.⁴⁵

IN VIEW THEREOF, the 16 March 2012 Petition for Review on Certiorari filed by petitioner is **GRANTED**. Consequently, the 27 January 2012 Decision of the Court of Appeals in CA-G.R. CV No. 96368 is **REVERSED**.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

⁴⁰ *PEA v. Bolinao Security and Investigation Service, Inc.*, supra note 3, at 176.

⁴¹ *J.G. Summit Holdings, Inc. v. Court of Appeals*, supra note 4, at 594.


⁴² 450 Phil. 744 (2003).

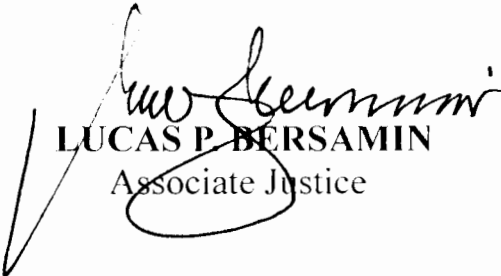
⁴³ 509 Phil. 157, 177 (2005).

⁴⁴ 490 Phil. 579 (2005).


⁴⁵ *Frauenthorff v. Castro*, 193 Phil. 629 (1981).

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
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