



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**ALONZO GIPA, IMELDA
MAROLLANO, JUANITO
LUDOVICE, VIRGILIO GOJIT,
DEMAR BITANGCOR, FELIPE
MONTALBAN AND
DAISY M. PLACER,¹**

Petitioners,

- versus -

**SOUTHERN LUZON INSTITUTE as
represented by its Vice-President For
Operations and Corporate Secretary,
RUBEN G. ASUNCION,**
Respondent.

G.R. No. 177425

Present:

BRION,^{*} *Acting Chairperson,*
DEL CASTILLO,
PEREZ,
MENDOZA,^{**} *and*
PERLAS-BERNABE, JJ.

Promulgated:

JUN 18 2014 *HAR Cabalag Perfecto*

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DECISION

DEL CASTILLO, J.:

Suffice it to say that “[c]oncomitant to the liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.”² Those who seek exemption from the application of the rule have the burden of proving the existence of exceptionally meritorious reasons warranting such departure.³

Assailed in this Petition for Review on *Certiorari* is the December 20, 2006 Resolution⁴ of the Court of Appeals (CA) in CA-G.R. CV No. 85215 which dismissed for non-perfection herein petitioners’ appeal from the January 5, 2005 Decision⁵ of the Regional Trial Court (RTC), Branch 65, Sorsogon City in Civil

^{*} Per Special Order No. 1699 dated June 13, 2014.

^{**} Per Special Order No. 1696 dated June 13, 2014.

¹ Impleaded but not considered as petitioner in accordance with the disquisition made in this Decision.

² *Enriquez v. Enriquez*, 505 Phil. 193, 201 (2005).

³ *Id.*

⁴ CA *rollo*, pp. 108-111; penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Rebecca De Guia-Salvador and Magdangal M. De Leon.

⁵ Records, pp. 289-308; penned by Judge Adolfo G. Fajardo.

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Case No. 547-37. Likewise questioned is the CA Resolution⁶ dated March 30, 2007 which denied the Motion for Reconsideration thereto.

Factual Antecedents

On February 26, 1996, respondent Southern Luzon Institute (SLI), an educational institution in Bulan, Sorsogon, filed a Complaint⁷ for Recovery of Ownership and Possession with Damages against petitioners Alonzo Gipa, Imelda Marollano, Juanito Ludovice, Demar Bitangcor, Virgilio Gojit, Felipe Montalban and four others namely, Arturo Rogacion, Virgilio Gracela, Rosemarie Alvarez and Rosita Montalban (Rosita). During trial, defendant Rosita executed a Special Power of Attorney⁸ in favor of her sister Daisy M. Placer (Placer) authorizing the latter to represent her in the case and to sign any and all papers in relation thereto.

SLI alleged that it is the absolute owner of a 7,516-square meter parcel of land situated in Brgy. Poblacion, Bulan, Sorsogon covered by Original Certificate of Title (OCT) No. P-28928. However, petitioners and their co-defendants who had been informally occupying a portion of the said property refused to vacate the same despite demand. Hence, SLI sought that they be ordered to immediately vacate the premises, turn over the same to SLI, and pay compensatory damages, attorney's fees and cost of suit.

In their Answer with Counterclaim,⁹ petitioners and their co-defendants asserted that they did not heed SLI's demand to vacate as they believed that they have the right to stay on the said property. They relied on their occupation thereof and that of their predecessors-in-interest which, according to them, dates back to as early as 1950. Impugning SLI's claims, petitioners and their co-defendants averred that SLI had not even for a single moment taken possession of the subject property and was merely able to procure a title over the same thru fraud, bad faith and misrepresentation. By way of counterclaim, they prayed that they be declared the lawful possessors of the property; that OCT No. P-28928 be declared null and void; and, that SLI be ordered to pay them moral damages and litigation expenses.

Ruling of the Regional Trial Court

Finding SLI to have proven its ownership of the property by preponderance of evidence, the RTC rendered a Decision¹⁰ in its favor on January 5, 2005. The said court gave weight to SLI's documentary evidence showing the grant of its

⁶ CA rollo, pp. 119-122.

⁷ Records, pp. 1-3; see also Amended Complaint where SLI additionally alleged that the assessed value of the portion of the property occupied by petitioners and their co-defendants is more than ₱20,000.00, id at 63-65.

⁸ Id. at 143.

⁹ Id. at 26-30.

¹⁰ Id. at 289-308.

Miscellaneous Sales Application (MSA) over the subject property which became the basis for the issuance of title under its name, and the testimony of the Supervising Draftsman of the National Housing Authority (NHA) who categorically stated that the houses occupied by petitioners and their co-defendants were within the property of SLI per NHA's survey. It rejected, on the other hand, petitioners and their co-defendants' claim of title to the property. For one, the fact that SLI had an existing MSA over the property as far back as 1969 could not have been unknown to them. This is because several of the petitioners and their co-defendants filed Revocable Permit Applications over the same property which were denied on March 4, 1964, precisely because the areas applied for were already included in SLI's MSA. For another, the documentary evidence submitted by them consisted mostly of tax declarations and other documents which were self-serving and could not be considered as conclusive evidence of ownership. Hence, the RTC ruled:

WHEREFORE, premises considered, judgment is hereby rendered –

- a) Declaring plaintiff-SLI as absolute owner of that portion of Lot 4705 containing an area of SEVEN THOUSAND FIVE HUNDRED SIXTEEN (7,516) SQUARE METERS covered by “Katibayan ng Orihinal na Titolo Blg. P-28928”.
- b) Ordering herein defendants to vacate and relinquish the portions of lot 4705 belonging to the SLI that they are presently occupying illegally and to demolish the residential houses existing thereon at their own expense.
- c) To pay attorney's fee in the amount of Php10,000.00 jointly.
- d) And to pay the costs.

SO ORDERED.¹¹

Petitioners and their co-defendants filed a Notice of Appeal¹² which was granted by the RTC in its Order¹³ of January 27, 2005.

Ruling of the Court of Appeals

The CA, however, dismissed the appeal in its Resolution¹⁴ of August 26, 2005 since it was not shown that the appellate court docket fees and other lawful

¹¹ Id. at 308.

¹² Id. at 309.

¹³ Id. at 310.

¹⁴ CA *rollo*, p. 82; penned by Associate Justice Godardo A. Jacinto and concurred in by Associate Justices Bienvenido L. Reyes (now a member of this Court) and Rosalinda Asuncion-Vicente.

fees were paid.¹⁵ Petitioners and their co-defendants promptly filed a Motion for Reconsideration¹⁶ to which they attached a Certification¹⁷ from the RTC that they paid the appeal fee in the amount of ₱3,000.00 under Official Receipt No. 18091130 dated January 25, 2005. In view of this, the CA granted the said motion and consequently reinstated the appeal through a Resolution¹⁸ dated November 2, 2005.

Subsequently, however, the CA further required petitioners and their co-defendants, through a Minute Resolution¹⁹ dated March 1, 2006, to remit within ten days from notice the amount of ₱30.00 for legal research fund, which apparently was not included in the ₱3,000.00 appeal fee previously paid by them. Copy of the said resolution was received on March 13, 2006 by petitioners' counsel, Atty. Jose G. Gojar of the Public Attorney's Office.²⁰

Despite the lapse of nine months from their counsel's receipt of the said resolution, petitioners and their co-defendants, however, failed to comply with the CA's directive. Hence, the said court dismissed the appeal through its Resolution²¹ of December 20, 2006 in this wise:

Jurisprudence is replete that the nonpayment of the docket and other lawful fees within the reglementary period as provided under Section 4 of Rule 41 of the Revised Rules of [C]ourt is a ground for the dismissal of an appeal, as provided for under Section 1(c)[.] Rule 50 of the same Rule. We quote:

SECTION 1. Grounds for dismissal of appeal. – **An appeal may be dismissed by the Court of Appeals, on its own motion** or on that of the appellee, on the following grounds:

x x x

x x x

x x x

c. Failure of the appellant to pay the docket and other lawful fees as provided in Section 4 of Rule 41; x x x

¹⁵ Pursuant to Sec. 4, Rule 41 and Sec. 1 (c), Rule 50 of the Rules of Court which provide as follows:

SEC. 4. *Appellate court docket and other lawful fees.* – Within the period for taking an appeal, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the full amount of the appellate court docket and other lawful fees. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

SEC. 1. *Grounds for dismissal of appeal.* – An appeal may be dismissed by the Court of Appeals, on its motion or on that of the appellee, on the following grounds:

x x x x

(c) Failure of the appellant to pay the docket and other lawful fees as provided in section 5 of Rule 40 and section 4 of Rule 44.

¹⁶ CA *rollo*, pp. 83-84.

¹⁷ Id. at 85.

¹⁸ Id. at 102; penned by Associate Justice Godardo A. Jacinto and concurred in by Associate Justices Bienvenido L. Reyes (now a member of this Court) and Mario L. Guariña III.

¹⁹ Id. at 103.

²⁰ See Return Card, id. at 103, dorsal portion.

²¹ Id. at 108-111.

X X X X

In the instant case, appellants were given sufficient time to complete the payment of the appeal fees. Unfortunately, appellants still failed to comply with the said directive [despite the fact] that the amount of ₱30.00 involved is very little. Hence, appellants failed to perfect their appeal for failure to fully pay the appeal fees. They are deemed to have lost interest over the instant appeal.

X X X X

WHEREFORE, premises considered, the instant Appeal is hereby **DISMISSED**.

SO ORDERED.²²

Petitioners and their co-defendants filed a Motion for Reconsideration²³ invoking the principle of liberality in the application of technical rules considering that they have paid the substantial amount of ₱3,000.00 for docket and other legal fees and fell short only by the meager amount of ₱30.00. As compliance, they attached to the said motion a postal money order in the sum of ₱30.00 payable to the Clerk of Court of the CA.²⁴

The CA, however, was not swayed, hence, the denial of the Motion for Reconsideration in its Resolution²⁵ of March 30, 2007.

Issue

Petitioners and Placer now file this Petition for Review on *Certiorari* raising the lone issue of:

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE APPEAL FILED BY THE PETITIONERS FOR FAILURE TO REMIT THE MEAGER AMOUNT OF THIRTY PESOS (₱30.00) AFTER HAVING ADVANCED A SUBSTANTIAL PORTION OF THE DOCKET FEES.²⁶

It must, however, be noted at the outset that the caption of the present Petition includes Placer as one of the petitioners. In fact, the other petitioners even authorized her to sign the verification and certification of non-forum shopping in their behalf.²⁷ A review of the records, however, shows that she was not one of the defendants before the RTC. Her only participation therein was that she

²² Id. at 109-111; emphases in the original.

²³ Id. at 112-114.

²⁴ Postal Money Order No. 0007804; attached to p. 112 of the CA *rollo*.

²⁵ Id. at 119-122.

²⁶ *Rollo*, p. 19.

²⁷ Id. at 27-28.

represented her sister Rosita as one of the defendants by virtue of a Special Power of Attorney which the latter executed in her favor.²⁸ Notably in the present Petition, Placer appears to have been impleaded in her personal capacity and not as Rosita's representative. This cannot be done. It bears emphasizing that an appeal on *certiorari*, as in this case, is a continuation of the original suit.²⁹ Hence, the parties in the original suit must also be the parties in such an appeal.³⁰ Placer, therefore, not being a party in the complaint before the RTC has no personality to continue the same on appeal and cannot be considered as a petitioner. At the most, her only role in this Petition was to sign the verification and certification of non-forum shopping for and in behalf of petitioners.

The Parties' Arguments

Initially, petitioners invoke the liberal application of *technical* rules³¹ and contend that the fact that only the amount of ₱30.00 was not paid justifies relaxation of the same. Later in their Reply,³² however, petitioners concede that the payment of docket fees is not a mere technicality. Nevertheless, they point out that while full payment of docket fees is indispensable in the perfection of an appeal, the same admits of exceptions.³³ Their case falls under one of the exceptions, that is, in the name of substantial justice and fair play. According to petitioners, the dismissal of their appeal for failure to pay ₱30.00 runs counter to substantial justice and fair play as the same would deprive them of their right to justice and render ineffective the amount of ₱3,000.00, which despite being indigents, they undertook to pay. To support their case, petitioners cited *Andrea Camposagrado v. Pablo Camposagrado*³⁴ and *Spouses Gutierrez v. Spouses Valiente*³⁵ wherein the Court excused the insufficient payment of docket fees.

Moreover, petitioners raise in the said Reply, albeit for the first time, the argument that while Republic Act (RA) No. 9406³⁶ was still inexistent at the time

²⁸ Supra note 8.

²⁹ *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768, 780-781 (2004).

³⁰ Id. at 781.

³¹ See Petition for Review on *Certiorari*, rollo, pp. 13-23.

³² Id. at 100-104.

³³ The following are the exceptions to the strict application of the rules on payment of docket fees: "(1) most persuasive and weighty reasons; (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of the default; (4) the existence of special or compelling circumstances; (5) the merits of the case; (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) a lack of any showing that the review sought is merely frivolous and dilatory; (8) the other party will not be unjustly prejudiced thereby; (9) fraud, accident, mistake or excusable negligence without appellant's fault; (10) peculiar legal and equitable circumstances attendant to each case; (11) in the name of substantial justice and fair play; (12) importance of the issues involved; and (13) exercise of sound discretion by the judge guided by all the attendant circumstances." *Villena v. Rupisan*, 549 Phil. 146, 166-167 (2007).

³⁴ 506 Phil. 583 (2005).

³⁵ 579 Phil. 486 (2008).

³⁶ An Act Reorganizing and Strengthening the Public Attorney's Office (PAO), Amending for the Purpose Pertinent Provisions of Executive Order No. 292, Otherwise Known as the "Administrative Code of 1987", as Amended, Granting Special Allowance to PAO Officials and Lawyers, and Providing Funds Therefor.

their appeal was filed before the CA, Section 6³⁷ thereof which exempts PAO clients like themselves from the payment of docket and other fees should be given retroactive application.

For its part, SLI argues that since petitioners' appeal was not perfected due to insufficient payment of docket and other legal fees, the January 5, 2005 Decision of the RTC had already become final and executory. Further, the CA correctly dismissed petitioners' appeal because aside from the fact that petitioners failed to comply with the CA's directive to pay the lacking amount of ₱30.00 for a period of more than nine months from their counsel's receipt of notice, no plausible explanation was tendered by them for such failure.

Our Ruling

The Petition fails.

Payment of the full amount of appellate court docket and lawful fees is mandatory and jurisdictional; Relaxation of the rule on payment of appeal fee is unwarranted in this case.

Section 4, Rule 41 of the Rules of Court provides:

Sec. 4. *Appellate court docket and other lawful fees.* – **Within the period for taking an appeal**, the appellant shall pay to the clerk of court which rendered the judgment or final order appealed from, the **full amount of the appellate court docket and other lawful fees**. Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal. (Emphases supplied)

In *Gonzales v. Pe*,³⁸ the Court's explanation anent the requirement of full payment of docket and other lawful fees under the above-quoted provision was iterated, viz:

³⁷ Relevant portion of said section provides:

SEC. 6. New sections are hereby inserted in Chapter 5, Title III, Book IV of Executive Order No. 292 to read as follows:

x x x x

SEC. 16-D. *Exemption from Fees and Costs of the Suit.* - The clients of the PAO shall be exempt from payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal.

³⁸ G.R. No. 167398, August 8, 2011, 655 SCRA 176.

In *Far Corporation v. Magdaluyo*, as with other subsequent cases of the same ruling, the Court explained that the procedural requirement under Section 4 of Rule 41 is not merely directory, as the payment of the docket and other legal fees within the prescribed period is both mandatory and jurisdictional. It bears stressing that an appeal is not a right, but a mere statutory privilege. An ordinary appeal from a decision or final order of the RTC to the CA must be made within 15 days from notice. And within this period, the full amount of the appellate court docket and other lawful fees must be paid to the clerk of the court which rendered the judgment or final order appealed from. The requirement of paying the full amount of the appellate docket fees within the prescribed period is not a mere technicality of law or procedure. The payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appeal is not perfected. The appellate court does not acquire jurisdiction over the subject matter of the action and the Decision sought to be appealed from becomes final and executory. Further, under Section 1 (c), Rule 50, an appeal may be dismissed by the CA, on its own motion or on that of the appellee, on the ground of the non-payment of the docket and other lawful fees within the reglementary period as provided under Section 4 of Rule 41. The payment of the full amount of the docket fee is an indispensable step for the perfection of an appeal. In both original and appellate cases, the court acquires jurisdiction over the case only upon the payment of the prescribed docket fees.³⁹

Here, petitioners concede that payment of the full amount of docket fees within the prescribed period is not a mere technicality of law or procedure but a jurisdictional requirement. Nevertheless, they want this Court to relax the application of the rule on the payment of the appeal fee in the name of substantial justice and equity.

The Court is not persuaded.

The liberality which petitioners pray for has already been granted to them by the CA at the outset. It may be recalled that while petitioners paid a substantial part of the docket fees, they still failed to pay the **full** amount thereof since their payment was short of ₱30.00. Based on the premise that the questioned Decision of the RTC has already become final and executory due to non-perfection, the CA could have dismissed the appeal outright. But owing to the fact that only the meager amount of ₱30.00 was lacking and considering that the CA may opt not to proceed with the case until the docket fees are paid,⁴⁰ it still required petitioners, even if it was already beyond the reglementary period, to complete their payment of the appeal fee within 10 days from notice. Clearly, the CA acted conformably with the pronouncement made in *Camposagrado*, a case cited by petitioners, that “[a] party’s failure to pay the appellate docket fee within the reglementary period confers only a discretionary and not a mandatory power to dismiss the proposed appeal. Such discretionary power should be used in the exercise of the court’s

³⁹ Id. at 186-187; citations omitted.

⁴⁰ Under Sec. 5, Rule 141 of the Rules of Court, if fees are not paid, the court may refuse to proceed with the action until they are paid and may dismiss the appeal or the action or proceeding.

sound judgment in accordance with the tenets of justice and fair play with great deal of circumspection, considering all attendant circumstances and must be exercised wisely and prudently, never capriciously, with a view to substantial justice.”⁴¹

The CA’s leniency over petitioners’ cause did not end there. Although they were given only 10 days to remit the ₱30.00 deficiency, the said court allowed an even longer period of nine months to lapse, apparently in the hope that petitioners’ compliance would be on its way. But as no payment was remitted, it was constrained to finally dismiss the appeal for non-perfection. Surprisingly, petitioners were again heard of when they filed a Motion for Reconsideration to which they attached a postal money order of ₱30.00. Nevertheless, they did not offer any plausible explanation either as to why they, at the start, failed to pay the correct docket fees or why they failed to comply with the CA’s directive for them to remit the ₱30.00-deficiency. Instead, they focused on begging the CA for leniency, arguing that the meager amount of the deficiency involved justifies relaxation of the rules. What is worse is that even if the CA already took note of the lack of such explanation in its Resolution denying petitioners’ motion for reconsideration, petitioners, up to now, have not attempted to tender one in this Petition and instead continue to capitalize on substantial justice, fair play and equity to secure a reversal of the dismissal of their appeal. The Court cannot, therefore, help but conclude that there is really no plausible reason behind the said omission.

Suffice it to say that “[c]oncomitant to the liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.”⁴² Those who seek exemption from the application of the rule have the burden of proving the existence of exceptionally meritorious reason warranting such departure.⁴³ Petitioners’ failure to advance any explanation as to why they failed to pay the correct docket fees or to complete payment of the same within the period allowed by the CA is thus fatal to their cause. Hence, a departure from the rule on the payment of the appeal fee is unwarranted.

Neither do the cases cited by petitioners help because they are not in point. Unlike in this case, the CA in *Camposagrado* no longer required the petitioners therein to complete the payment of the appeal fee by remitting the ₱5.00 deficiency but just dismissed the appeal outright. Moreover, a justifiable reason for the insufficient payment was tendered by petitioners in the said case, *i.e.*, that they relied on the assessment made by the collection officer of the court and honestly believed that the amount collected from them was that which is mandated by the Rules.

⁴¹ *Andrea Camposagrado v. Pablo Camposagrado*, supra note 34 at 589.

⁴² *Enriquez v. Enriquez*, supra note 2.

⁴³ *Id.*

The same thing goes true with *Gutierrez*. In fact, the pronouncement made in *Sun Insurance Office, Ltd. v. Asuncion*,⁴⁴ as cited in *Gutierrez*, even militates against petitioners. It was reiterated therein that the rule that “a court acquires jurisdiction over any case only upon payment of the prescribed docket fees does not apply where the party does not deliberately intend to defraud the court in payment of docket fees, and manifests its willingness to abide by the rules **by paying additional docket fees when required by the court.**”⁴⁵ As may be recalled, petitioners in this case did not immediately remit the deficient amount of ₱30.00 when required by the CA and only did so after the lapse of more than nine months when their appeal was already dismissed.

The Court need not belabor the issue of the retroactive application of Section 6 of RA 9406.

“The purpose of a reply is to deny or allege facts in denial of new matters alleged by way of defense in the answer,”⁴⁶ or in this case, in the comment to the petition. “It is not the office or function of a reply to set up or introduce a new [issue] or to amend or amplify the [Petition].”⁴⁷ The issue of whether Section 6 of RA 9406 should be given retroactive application in order to exempt petitioners from payment of docket fees was therefore improperly introduced in petitioners’ Reply. Moreover, “[t]he rule in pleadings and practice is that no new issue in a case can be raised in a pleading which by due diligence could have been raised in previous pleadings.”⁴⁸ Here, petitioners at the outset could have very well raised the said issue in the Petition since at the time of its filing on June 7, 2007, RA 9406 was already in effect.⁴⁹ However, they failed to do so. Besides, for this Court to take cognizance of the same is to offend the basic rules of fair play, justice and due process since SLI had no chance to propound its argument in connection thereto. This is because even if it wanted to, SLI could not anymore do so in its Memorandum as no new issues or arguments may be raised in the said pleading, it being only the summation of the parties’ previous pleadings.⁵⁰ For these reasons, the Court sees no need to belabor the issue of the retroactive application of Section 6 of RA 9406.

All told, the Court finds the CA’s dismissal of the appeal interposed by petitioners in order.

⁴⁴ 252 Phil. 280 (1989).

⁴⁵ *Spouses Gutierrez v. Spouses Valiente*, supra note 35 at 498. Emphases supplied.

⁴⁶ *Magnolia Corporation v. National Labor Relations Commission*, 320 Phil. 408, 420 (1995).

⁴⁷ *Id.*

⁴⁸ *Pineda v. Court of Appeals (Former Ninth Division)*, G.R. No. 181643, November 17, 2010, 635 SCRA 274, 283.

⁴⁹ Approved on March 23, 2007.

⁵⁰ A.M. No. 99-2-04-SC dated November 21, 2000.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The assailed Resolutions dated December 20, 2006 and March 30, 2007 of the Court of Appeals in CA-G.R. CV No. 85215 are **AFFIRMED**.

SO ORDERED.



MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ARTURO D. BRION
Associate Justice
Acting Chairperson


JOSE PORTUGAL PEREZ
Associate Justice


JOSE CATRAL MENDOZA
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.

**ARTURO D. BRION**

*Associate Justice
Acting Chairperson*

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, 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

