



Republic of the Philippines
Supreme Court
Manila.

SECOND DIVISION

HEIRS OF GREGORIO LOPEZ, G.R. No. 193551
represented by Rogelia Lopez, et al.,
Petitioners,

Present:

CARPIO, J., *Chairperson*,
BRION,
DEL CASTILLO,
MENDOZA, and
LEONEN, JJ.

-versus-

DEVELOPMENT BANK OF THE
PHILIPPINES [Now substituted by
Philippine Investment Two (SPV-
AMC), Inc.],
Respondents.

Promulgated:

19 NOV 2014

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DECISION

LEONEN, J.:

This case involves the application of the doctrine on innocent purchaser or mortgagee for value. It also involves the application of the doctrines on sales by persons who are not owners of the property.

This is a Rule 45 petition¹ filed on October 15, 2010, assailing the Court of Appeals May 8, 2009 decision² and August 16, 2010 resolution.³ The Court of Appeals reversed and set aside the Regional Trial Court's December 27, 2005 decision,⁴ which ordered the nullification of the affidavit

¹ Rollo, pp. 11-34.

² Id. at 61-69.

³ Id. at 77-78.

⁴ Id. at 55-60.

of self-adjudication executed by Enrique Lopez, and the documents relating to the sale and mortgage of the property to respondent Development Bank of the Philippines.

Gregoria Lopez owned a 2,734-square-meter property in Bustos, Bulacan.⁵ She died on March 19, 1922⁶ and was survived by her three sons: Teodoro Lopez, Francisco Lopez, and Carlos Lopez.⁷ Tax Declaration No. 613 was issued under the names of Teodoro, Francisco, and Carlos.⁸

Teodoro, Francisco, and Carlos died.⁹ Only Teodoro was survived by children: Gregorio, Enrique, Simplicio, and Severino.¹⁰

Petitioners in this case are Simplicio substituted by his daughter Eliza Lopez, and the heirs of Gregorio and Severino.¹¹ Enrique is deceased.¹²

Petitioners discovered that on November 29, 1990, Enrique executed an affidavit of self-adjudication declaring himself to be Gregoria Lopez's only surviving heir, thereby adjudicating upon himself the land in Bulacan.¹³ He sold the property to Marietta Yabut.¹⁴

Petitioners demanded from Marietta the nullification of Enrique's affidavit of self-adjudication and the deed of absolute sale.¹⁵ They also sought to redeem Enrique's one-fourth share.¹⁶ Marietta, who was already in possession of the property, refused.¹⁷

Sometime in 1993, Marietta obtained a loan from Development Bank of the Philippines (DBP) and mortgaged the property to DBP as security.¹⁸ At the time of the loan, the property was covered by Tax Declaration No. 18727, with the agreement that the land shall be brought under the Torrens system.¹⁹ On July 26, 1993, an original certificate of title was issued in Marietta's name.²⁰ Marietta and DBP "executed a supplemental document

⁵ Id. at 56 and 62.

⁶ Id. at 62.

⁷ Id. at 56 and 62.

⁸ Id. at 56.

⁹ Id. at 56. Teodoro died on December 10, 1933.

¹⁰ Id. at 56 and 63.

¹¹ Id. at 57 and 63.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 57.

¹⁶ Id.

¹⁷ Id.

¹⁸ Id. at 57 and 64.

¹⁹ Id. at 64.

²⁰ Id.

dated 28 February 1995 placing the subject [property] within the coverage of the mortgage.”²¹ The mortgage was annotated to the title.²²

Sometime between 1993 and 1994, petitioners filed a complaint²³ and an amended complaint²⁴ with the Regional Trial Court for the annulment of document, recovery of possession, and reconveyance of the property. They prayed that judgment be rendered, ordering the annulment of Enrique’s affidavit of self-adjudication, the deed of sale executed by Enrique and Marietta, and the deed of real estate mortgage executed by Marietta in favor of DBP.²⁵ Petitioners also prayed for the reconveyance of their three-fourth share in the property, their exercise of their right of redemption of Enrique’s one-fourth share, as well as attorney’s fees and costs of suit.²⁶

Petitioners caused the annotation of a notice of lis pendens at the back of the original certificate of title.²⁷ The annotation was inscribed on June 27, 1994.²⁸

Marietta failed to pay her loan to DBP.²⁹ “DBP instituted foreclosure proceedings on the . . . land.”³⁰ It was “awarded the sale of the [property] as the highest bidder.”³¹ “The Certificate of Sale was registered with the Register of Deeds . . . on 11 September 1996.”³² Marietta failed to redeem the property.³³ The title to the property was “consolidated in favor of DBP.”³⁴

On December 27, 2005, the Regional Trial Court ruled in favor of petitioners.³⁵ The Regional Trial Court found that the affidavit of self-adjudication and the deed of absolute sale did not validly transfer to Marietta the title to the property.³⁶ Enrique could not transfer three-fourths of the property since this portion belonged to his co-heirs.³⁷ The Regional Trial Court also found that Marietta was not an innocent purchaser for value because when the deed of absolute sale was executed, the property was only

²¹ Id.

²² Id. at 45 and 64. The annotation was inscribed on March 8, 1994.

²³ Id. at 64–65.

²⁴ Id. at 39–43.

²⁵ Id. at 55.

²⁶ Id.

²⁷ Id. at 57.

²⁸ Id. at 68.

²⁹ Id. at 64.

³⁰ Id.

³¹ Id.

³² Id.

³³ Id.

³⁴ Id.

³⁵ Id. at 55–60.

³⁶ Id. at 58–59.

³⁷ Id.

covered by a tax declaration in the name of the heirs of Gregoria Lopez,³⁸ thus:

[Marietta] should have looked further into the veracity of vendor Enrique Lopez' claim of ownership over the subject property considering that he has not presented her any other proof of his ownership when the said Deed of Absolute Sale was executed other than his mere allegation of ownership thereof.³⁹

Hence, the issuance of the original certificate of title would not protect Marietta. Title is not vested through a certificate.⁴⁰ At best, Marietta's ownership over the subject property would cover only Enrique's share.⁴¹

The Regional Trial Court also found that DBP was not a mortgagee in good faith because at the time of the execution of the mortgage contract, a certificate of title was yet to be issued in favor of Marietta.⁴² Marietta's title at that time was still based on a tax declaration.⁴³ Based on jurisprudence, a tax declaration is not a conclusive proof of ownership.⁴⁴ The DBP should have exerted due diligence in ascertaining Marietta's title to the property.⁴⁵

The Regional Trial Court ordered the nullification of Enrique's affidavit of self-adjudication, the sale of the three-fourth portion of the subject property in favor of Marietta, the reconveyance of the three-fourth share of the property in favor of petitioners, the nullification of the real estate mortgage executed in favor of DBP, and the surrender of possession of the property to petitioners.⁴⁶ The trial court also ordered DBP to pay attorney's fees.

DBP, substituted by Philippine Investment Two (PI Two), appealed to the Court of Appeals.⁴⁷

The Court of Appeals reversed the decision of the Regional Trial Court in the decision⁴⁸ promulgated on May 8, 2009. It held that DBP was a mortgagee in good faith:

[W]ith the absence of any evidence to show that the DBP was ever privy to the fraudulent execution of the late Enrique Lopez' [sic] affidavit

³⁸ Id. at 58.

³⁹ Id.

⁴⁰ Id. at 59.

⁴¹ Id.

⁴² Id. at 59–60.

⁴³ Id. at 60.

⁴⁴ Id. at 58.

⁴⁵ Id. at 60.

⁴⁶ Id.

⁴⁷ Id. at 65.

⁴⁸ Id. at 61–69.

of Adjudication over the subject land, the right of the former over the same must be protected and respected by reason of public policy.⁴⁹

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, the appeal is GRANTED. The 27 December 2005 Decision of the Regional Trial Court is hereby REVERSED and SET ASIDE as to defendant-appellant Development Bank of the Philippines and dismissing the complaint against the latter [now substituted by Philippine Investment Two (SPV-AMC), Inc.]⁵⁰

The Court of Appeals denied petitioners' motion for reconsideration on August 16, 2010.⁵¹

Petitioners filed a Rule 45 petition⁵² before this court on October 15, 2010.

The issue in this case is whether the property was validly transferred to Marietta and, eventually, to DBP.

Petitioners argued that the Court of Appeals erred in its application of the doctrine on "innocent purchaser for value."⁵³ DBP should have exercised diligence in ascertaining Marietta's claim of ownership since at the time of the mortgage, the property was only covered by a tax declaration under Marietta's name.⁵⁴ As a financial institution of which "greater care and prudence"⁵⁵ is required, DBP should not have relied on the face of a certificate of title to the property.⁵⁶

On the other hand, DBP's position, citing *Blanco v. Esquierdo*,⁵⁷ was that since its participation in Enrique's execution of the affidavit of self-adjudication was not shown on record, it could not have been aware that there was any irregularity in the sale in favor of Marietta and in her title to the property.⁵⁸ Moreover, Marietta was in possession of the property at the time of the contract with DBP.⁵⁹ Therefore, DBP should enjoy the protection accorded to innocent purchasers for value.⁶⁰

⁴⁹ Id. at 68.

⁵⁰ Id. at 68–69.

⁵¹ Id. at 77.

⁵² Id. at 11–38.

⁵³ Id. at 21–29.

⁵⁴ Id. at 27–28.

⁵⁵ Id. at 30.

⁵⁶ Id. at 30–31.

⁵⁷ 110 Phil. 494 (1960) [Per J. Gutierrez David, En Banc].

⁵⁸ *Rollo*, pp. 93–94.

⁵⁹ Id. at 94.

⁶⁰ Id. at 95.

We find merit in the petition.

I

Validity of Enrique's affidavit and the sale to Marietta

We have consistently upheld the principle that “no one can give what one does not have.”⁶¹ A seller can only sell what he or she owns, or that which he or she does not own but has authority to transfer, and a buyer can only acquire what the seller can legally transfer.⁶²

This principle is incorporated in our Civil Code. It provides that in a contract of sale, the seller binds himself to transfer the ownership of the thing sold, thus:

Art. 1458. By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

The seller cannot perform this obligation if he or she does not have a right to convey ownership of the thing. Hence, Article 1459 of the Civil Code provides:

Art. 1459. The thing must be licit and the vendor must have a right to transfer the ownership thereof at the time it is delivered.

Title or rights to a deceased person's property are immediately passed to his or her heirs upon death.⁶³ The heirs' rights become vested without need for them to be declared “heirs.”⁶⁴ Before the property is partitioned, the heirs are co-owners of the property.⁶⁵

In this case, the rights to Gregoria Lopez's property were automatically passed to her sons — Teodoro, Francisco, and Carlos — when she died in 1922.⁶⁶ Since only Teodoro was survived by children, the rights to the property ultimately passed to them when Gregoria Lopez's sons

⁶¹ “*Nemo dat quod non habet*”; *Daclag v. Macahilig*, 582 Phil. 138, 153 (2008) [Per J. Austria-Martinez, Third Division]; *Segura v. Segura*, 247-A Phil. 449, 458 (1988) [Per J. Cruz, First Division].

⁶² *Daclag v. Macahilig*, 582 Phil. 138, 153 (2008) [Per J. Austria-Martinez, Third Division].

⁶³ CIVIL CODE, art. 777. The rights to the succession are transmitted from the moment of the death of the decedent. *Bonilla v. Barcena*, 163 Phil. 516, 520 (1976) [Per J. Martin, First Division], citing *Baun v. Heirs of Baun*, 53 Phil. 654, 658 (1929) [Per J. Johnson, En Banc].

⁶⁴ *Bonilla v. Barcena*, 163 Phil. 516, 520 (1976) [Per J. Martin, First Division], citing *Morales, et al. v. Yañez*, 98 Phil. 677, 679 (1956) [Per J. Bengzon, En Banc].

⁶⁵ CIVIL CODE, art. 1078.

⁶⁶ CIVIL CODE, arts. 961, 962, 978, and 979.

died.⁶⁷ The children entitled to the property were Gregorio, Simplicio, Severino, and Enrique.

Gregorio, Simplicio, Severino, and Enrique became co-owners of the property, with each of them entitled to an undivided portion of only a quarter of the property. Upon their deaths, their children became the co-owners of the property, who were entitled to their respective shares, such that the heirs of Gregorio became entitled to Gregorio's one-fourth share, and Simplicio's and Severino's respective heirs became entitled to their corresponding one-fourth shares in the property.⁶⁸

The heirs cannot alienate the shares that do not belong to them. Article 493 of the Civil Code provides:

Art. 493. Each co-owner shall have the full ownership of his part and of the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

Since Enrique's right to the property was limited to his one-fourth share, he had no right to sell the undivided portions that belonged to his siblings or their respective heirs. Any sale by one heir of the rest of the property will not affect the rights of the other heirs who did not consent to the sale. Such sale is void with respect to the shares of the other heirs.

Regardless of their agreement, Enrique could only convey to Marietta his undivided one-fourth share of the property, and Marietta could only acquire that share. This is because Marietta obtained her rights from Enrique who, in the first place, had no title or interest over the rest of the property that he could convey.

This is despite Enrique's execution of the affidavit of self-adjudication wherein he declared himself to be the only surviving heir of Gregoria Lopez. The affidavit of self-adjudication is invalid for the simple reason that it was false. At the time of its execution, Enrique's siblings were still alive and entitled to the three-fourth undivided share of the property. The affidavit of self-adjudication did not have the effect of vesting upon Enrique ownership or rights to the property.

⁶⁷ CIVIL CODE, arts. 961, 962, 978, 979, and 1003–1010.

⁶⁸ CIVIL CODE, arts. 961, 962, 978, and 979.

The issuance of the original certificate of title in favor of Marietta does not cure Enrique's lack of title or authority to convey his co-owners' portions of the property. Issuance of a certificate of title is not a grant of title over petitioners' undivided portions of the property.⁶⁹ The physical certificate of title does not vest in a person ownership or right over a property.⁷⁰ It is merely an evidence of such ownership or right.⁷¹

Marietta could acquire valid title over the whole property if she were an innocent purchaser for value. An innocent purchaser for value purchases a property without any notice of defect or irregularity as to the right or interest of the seller.⁷² He or she is without notice that another person holds claim to the property being purchased.⁷³

As a rule, an ordinary buyer may rely on the certificate of title issued in the name of the seller.⁷⁴ He or she need not look "beyond what appears on the face [of the certificate of title]."⁷⁵ However, the ordinary buyer will not be considered an innocent purchaser for value if there is anything on the certificate of title that arouses suspicion, and the buyer failed to inquire or take steps to ensure that there is no cloud on the title, right, or ownership of the property being sold.

Marietta cannot claim the protection accorded by law to innocent purchasers for value because the circumstances do not make this available to her.

In this case, there was no certificate of title to rely on when she purchased the property from Enrique. At the time of the sale, the property was still unregistered. What was available was only a tax declaration issued under the name of "Heirs of Lopez."

"The defense of having purchased the property in good faith may be availed of only where registered land is involved and the buyer had relied in good faith on the clear title of the registered owner."⁷⁶ It does not apply when the land is not yet registered with the Registry of Deeds.

⁶⁹ *Naval v. Court of Appeals*, 518 Phil. 271, 282–283 (2006) [Per J. Ynares-Santiago, First Division], citing *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*, 451 Phil. 368, 377 (2003) [Per J. Panganiban, Third Division].

⁷⁰ *Id.*; *Carino v. Insular Government*, 212 U.S. 449, 463 (1909).

⁷¹ *Id.*

⁷² *See also Green Acres Holdings, Inc. v. Cabral*, G.R. No. 175542, June 5, 2013, 697 SCRA 266, 285–286 [Per J. Villarama, Jr., First Division].

⁷³ *Id.*

⁷⁴ *See also San Roque Realty v. Republic*, 559 Phil. 264, 280 (2007) [Per J. Nachura, Third Division].

⁷⁵ *Id.*

⁷⁶ *Daclag v. Macahilig*, 582 Phil. 138, 157 (2008) [Per J. Austria-Martinez, Third Division].

At the very least, the unregistered status of the property should have prompted Marietta to inquire further as to Enrique's right over the property. She did not. Hence, she was not an innocent purchaser for value. She acquired no title over petitioners' portions of the property.

II Validity of the mortgage

One of the requisites of a valid mortgage contract is ownership of the property being mortgaged.⁷⁷ Article 2085 of the Civil Code enumerates the requisites of a mortgage contract:

Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:

- (1) That they be constituted to secure the fulfilment of a principal obligation;
- (2) That the pledgor or mortgagor be the absolute owner of the thing pledged or mortgaged;
- (3) That the persons constituting the pledge or mortgage have the free disposal of their property, and in the absence thereof, that they be legally authorized for the purpose.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

Applying this provision and having established that Marietta acquired no valid title or ownership from Enrique over the undivided portions of the property, this court finds that no valid mortgage was executed over the same property in favor of DBP. Without a valid mortgage, there was also no valid foreclosure sale and no transfer of ownership of petitioners' undivided portions to DBP.

In other words, DBP acquired no right over the undivided portions since its predecessor-in-interest was not the owner and held no authority to convey the property.

As in sales, an exception to this rule is if the mortgagee is a "mortgagee in good faith."⁷⁸ This exception was explained in *Torbela v. Rosario*:

Under this doctrine, even if the mortgagor is not the owner of the mortgaged property, the mortgage contract and any foreclosure sale arising therefrom are given effect by reason of public policy. This

⁷⁷ *Torbela v. Rosario*, G.R. No. 140528, December 7, 2011, 661 SCRA 633, 667 [Per J. Leonardo-De Castro, First Division].

⁷⁸ *Id.*

principle is based on the rule that all persons dealing with property covered by a Torrens Certificate of Title, as buyers or mortgagees, are not required to go beyond what appears on the face of the title. This is the same rule that underlies the principle of "innocent purchasers for value." The prevailing jurisprudence is that a mortgagee has a right to rely in good faith on the certificate of title of the mortgagor to the property given as security and in the absence of any sign that might arouse suspicion, has no obligation to undertake further investigation. Hence, even if the mortgagor is not the rightful owner of, or does not have a valid title to, the mortgaged property, the mortgagee in good faith is, nonetheless, entitled to protection.⁷⁹

DBP claims that it is covered by this exception. DBP is mistaken. The exception applies when, at the time of the mortgage, the mortgagor has already obtained a certificate of title under his or her name.⁸⁰ It does not apply when, as in this case, the mortgagor had yet to register the property under her name.⁸¹

The facts show that DBP disregarded circumstances that should have aroused suspicion. For instance, at the time of the mortgage with DBP, Marietta only had a tax declaration under her name to show that she was the owner of the property. A tax declaration, by itself, neither proves ownership of property nor grants title. Yet, DBP agreed to accept the property as security even though Marietta's claim was supported only by the tax declaration, and a certificate of title was yet to be issued under her name.

Granting that Marietta was in possession of the property, DBP should have inquired further as to Marietta's rights over the property since no certificate of title was issued to her. DBP took the risks attendant to the absence of a certificate of title. It should bear the burden of checking the ownership as well as the validity of the deed of sale. This is despite the eventual issuance of a certificate of title in favor of Marietta.

The rule on "innocent purchasers or [mortgagees] for value" is applied more strictly when the purchaser or the mortgagee is a bank. Banks are expected to exercise higher degree of diligence in their dealings, including those involving lands. Banks may not rely simply on the face of the certificate of title.

⁷⁹ Id. at 667–668; *See also Bank of Commerce v. San Pablo, Jr.*, 550 Phil. 805, 820–821 (2007) [Per J. Chico-Nazario, Third Division], *citing Cavite Development Bank v. Spouses Lim*, 381 Phil. 355, 368 (2000) [Per J. Mendoza, Second Division] *as cited in Ereña v. Querrer-Kauffman*, 525 Phil. 381, 401–402 (2006) [Per J. Callejo, Sr., First Division].

⁸⁰ *See also Bank of Commerce v. San Pablo, Jr.*, 550 Phil. 805, 821 (2007) [Per J. Chico-Nazario, Third Division]. In this case, the mortgagor mortgaged another's property based on a special power of attorney. The certificate of title was not under his name. Hence, the mortgagee never dealt with the registered owner of the property.

⁸¹ Id.

Thus, in *Cruz v. Bancom Finance Corporation*,⁸² this court ruled that:

Respondent . . . is not an ordinary mortgagee; it is a mortgagee-bank. As such, unlike private individuals, it is expected to exercise greater care and prudence in its dealings, including those involving registered lands. A banking institution is expected to exercise due diligence before entering into a mortgage contract. The ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of its operations.⁸³ (Citations omitted)

DBP failed to exercise the degree of diligence required of banks when it accepted the unregistered property as security for Marietta's loan despite circumstances that should have aroused its suspicion.

Citing *Blanco v. Esquierdo*, DBP argued that since it did not participate in the dealings between Enrique and Marietta, it should be considered as an innocent mortgagee for value.

Blanco involves an alleged widow of the deceased who adjudicated to herself the deceased's property and thereafter mortgaged the property to DBP.⁸⁴ The brothers and sisters of the deceased filed an action for the annulment of the affidavit executed by the alleged widow and the cancellation of the certificate of title under her name.⁸⁵ The trial court ordered the cancellation of the certificate of title issued to the alleged widow, including the registration of the mortgage deed.⁸⁶

In *Blanco*, this court declared that DBP was a mortgagee in good faith, thus:

The trial court, in the decision complained of, made no finding that the defendant mortgagee bank was a party to the fraudulent transfer of the land to Fructuosa Esquierdo. Indeed, there is nothing alleged in the complaint which may implicate said defendant mortgagee in the fraud, or justify a finding that it acted in bad faith. On the other hand, the certificate of title was in the name of the mortgagor Fructuosa Esquierdo when the land was mortgaged by her to the defendant bank. Such being the case, the said defendant bank, as mortgagee, had the right to rely on what appeared in the certificate and, in the absence of anything to excite suspicion, was under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the face of said certificate. (De Lara, et al. vs. Ayroso, 95 Phil., 185; 50 Off. Gaz., [10] 4838; Joaquin vs. Madrid, et al., 106 Phil., 1060). Being thus an innocent mortgagee for value, its right

⁸² 429 Phil. 225 (2002) [Per J. Panganiban, Third Division].

⁸³ Id. at 239.

⁸⁴ *Blanco v. Esquierdo*, 110 Phil. 494, 496 (1960) [Per J. Gutierrez David, En Banc].

⁸⁵ Id.

⁸⁶ Id. at 497.

or lien upon the land mortgaged must be respected and protected, even if the mortgagor obtained her title thereto thru fraud.⁸⁷

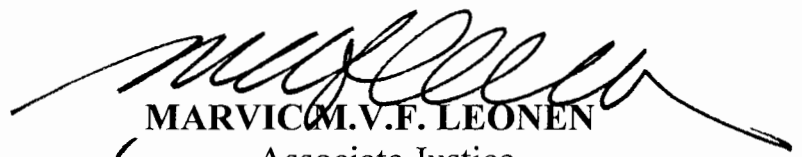
DBP's reliance on *Blanco* is misplaced. In *Blanco*, the certificate of title had already been issued under the name of the mortgagor when the property was mortgaged to DBP. This is not the situation in this case.

To reiterate, the protection accorded to mortgagees in good faith cannot be extended to mortgagees of properties that are not yet registered or registered but not under the mortgagor's name.

Therefore, the Regional Trial Court did not err in ordering the nullification of the documents of sale and mortgage. Contracts involving the sale or mortgage of unregistered property by a person who was not the owner or by an unauthorized person are void.

WHEREFORE, the petition is **GRANTED**. The decision of the Court of Appeals dated May 8, 2009 and its resolution dated August 16, 2010 are reversed and **SET ASIDE**. The December 27, 2005 decision of the Regional Trial Court is **REINSTATED**.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice

⁸⁷ Id. at 497-498.