Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MARINA PORT SERVICES, INC.,* *Petitioner,*

- versus -

AMERICAN HOME ASSURANCE CORPORATION, *Respondent.*

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G.R. No. 201822

Present:

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

Promulgated:
12 AUG 2015

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DECISION

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] filed pursuant to Rule 45 of the Rules of Court assails the December 29, 2011 Decision[2] and May 8, 2012 Resolution[3] of the Court of Appeals (CA) in CA GR. CV No. 88321, which granted the appeal filed therein by respondent American Home Assurance Corporation (AHAC) and reversed and set aside the October 17, 2006 Decision[4] of the Regional Trial Court (RTC), Pasig City, Branch 271 dismissing AHAC's Complaint[5] for Damages against petitioner Marina Port Services, Inc. (MPSI).

Factual Antecedents

On September 21, 1989, Countercorp Trading PTE., Ltd. shipped from Singapore to the Philippines 10 container vans of soft wheat flour with seals intact on board the vessel M/V Uni Fortune. The shipment was insured against all risks by AHAC and consigned to MSC Distributor (MSC).

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* Now known as Asian Terminals, Inc.

1 *Rollo*, pp. 23-185, inclusive of Annexes "A" to "U."

2 CA *rollo*, pp. 86-95; penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Apolinario D. Bruselas, Jr.

3 Id. at 121-122.

4 Records, pp. 257-279; penned by Assisting Judge Paz Esperanza M. Cortes.

5 Id. at 1-2.

Upon arrival at the Manila South Harbor on September 25, 1989, the shipment was discharged in good and complete order condition and with safety seals in place to the custody of the arrastre operator, MPSI. After unloading and prior to hauling, agents of the Bureau of Customs officially broke the seals, opened the container vans, and examined the shipment for tax evaluation in the presence of MSC's broker and checker. Thereafter, the customs inspector closed the container vans and refastened them with safety wire seals while MSC's broker padlocked the same. MPSI then placed the said container vans in a back-to-back arrangement at the delivery area of the harbor's container yard where they were watched over by the security guards of MPSI and of the Philippine Ports Authority.

On October 10, 1989, MSC's representative, AD's Customs Services (ACS), took out five container vans for delivery to MSC. At the compound's exit, MPSI issued to ACS the corresponding gate passes for the vans indicating its turn-over of the subject shipment to MSC. However, upon receipt of the container vans at its warehouse, MSC discovered substantial shortages in the number of bags of flour delivered. Hence, it filed a formal claim for loss with MPSI.

From October 12 to 14, 1989 and pursuant to the gate passes issued by MPSI, ACS took out the remaining five container vans from the container yard and delivered them to MSC. Upon receipt, MSC once more discovered substantial shortages. Thus, MSC filed another claim with MPSI.

Per MSC, the total number of the missing bags of flour was 1,650 with a value of ₱257,083.00.

MPSI denied both claims of MSC. As a result, MSC sought insurance indemnity for the lost cargoes from AHAC. AHAC paid MSC the value of the missing bags of flour after finding the latter's claim in order. In turn, MSC issued a subrogation receipt in favor of AHAC.

Thereafter, AHAC filed a Complaint[6] for damages against MPSI before the RTC.

Ruling of the Regional Trial Court

AHAC averred in its Complaint that the partial loss of the bags of flour was due to the fault or negligence of MPSI since the loss happened while the shipment was still in MPSI's custody.

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6 Id.

MPSI, on the other hand, disclaimed any liability. It essentially maintained in its Answer[7] that the bags of flour were inside sealed container vans when it received the same; that it handled the subject shipment with the diligence required of it; and, that the container vans were turned over by it to MSC in the same condition that they were in at the time of their discharge from the vessel. MPSI likewise countered that the failure of MSC to request for a bad order survey belied the latter's claim for loss.

Trial then ensued.

On October 17, 2006, the RTC rendered a Decision[8] dismissing AHAC's Complaint. It held that while there was indeed a shortage of 1,650 sacks of soft wheat flour, AHAC's evidence failed to clearly show that the loss happened while the subject shipment was still under MPSI's responsibility. Hence, the dispositive portion of the RTC Decision:

> WHEREFORE, premises considered, the complaint is hereby DISMISSED.
>
> SO ORDERED.[9]

Ruling of the Court of Appeals

Aggrieved, AHAC appealed to the CA.

In its Decision[10] dated December 29, 2011, the CA stressed that in a claim for loss filed by a consignee, the burden of proof to show due compliance with the obligation to deliver the goods to the appropriate party devolves upon the arrastre operator. In consonance with this, a presumption of fault or negligence for the loss of the goods arises against the arrastre operator pursuant to Articles 1265[11] and 1981[12] of the Civil Code. In this case, the CA found that MPSI failed to discharge such burden and to rebut the aforementioned presumption. Thus, it was held liable

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7 Id. at 12-17.
8 Id. at 257-279.
9 Id. at 279.
10 CA *rollo*, pp. 86-95.
11 Article 1265 – Whenever the thing is lost in the possession of the debtor, it shall be presumed that the loss was due to his fault, unless there is proof to the contrary, and without prejudice to the provisions of Article 1165. This presumption does not apply in case of earthquake, flood, storm, or other natural calamity.
12 Article 1981 – When the thing deposited is delivered closed and sealed, the depositary must return it in the same condition, and he shall be liable for damages should the seal or lock be broken through his fault.

Fault on the part of the depositary is presumed, unless there is proof to the contrary.

As regards the value of the thing deposited, the statement of the depositor shall be accepted, when the forcible opening is imputable to the depositary, should there be no proof to the contrary. However, the courts may pass upon the credibility of the depositor with respect to the value claimed by him.

When the seal or lock is broken, with or without the depositary's fault, he shall keep the secret of the deposit.

to AHAC for the value of the missing bags of flour, *viz.*:

> We conclude that x x x MPSI was negligent in the handling and safekeeping of the subject shipment. It did not create and implement a more defined, concrete and effective measure to detect, curb and prevent the loss or pilferage of cargoes in its custody. This is manifested by the fact that [MPSI] never took any action to address such complaint even after it received the formal claim of loss in the first five (5) vans. As a consequence, more bags of flour were eventually lost or pilfered in the remaining container vans that were still in [MPSI's] custody at that time. Case law tells us that negligence is that conduct which creates undue risk of harm to another, the failure to observe that degree of care, precaution and vigilance which the circumstance[s] justly demand, whereby that other person suffers injury. Clearly, [MPSI] breached its arrastre obligations to the consignee for it failed to deliver said bags in good and complete condition.
>
> In view of MPSI's failure to exercise that degree of diligence, precaution and care the law [requires] of arrastre operators in the performance of their duties to the consignee, [MPSI] is legally bound to reimburse [AHAC] for the value of the missing bags of flour that it paid to MSC pursuant to the insurance policy.[13]

In view of the same, the said court disposed of the appeal in this wise:

> WHEREFORE, premises considered, the appeal is GRANTED. The Decision of the Regional Trial Court of Pasig City, Branch 271 dated 17 October 2006 is REVERSED and SET ASIDE. Appellee Marina Port Services, Inc. is ORDERED to pay appellant, American Home Assurance Corporation, the sum of Two Hundred Fifty Seven Thousand and Eighty Three Pesos (PhP257,083.00) with interest thereon at Six percent (6%) [*per annum*] from the filing of this complaint on 24 September 1990 until the decision becomes final and executory, and thereafter, at the rate of twelve (12) percent [*per annum*] until fully paid, and additionally, to pay the x x x sum of Fifty Thousand Pesos (PhP50,000.00) as attorney's fees.
>
> SO ORDERED.[14]

MPSI moved for reconsideration but the CA denied the same in its Resolution[15] dated May 8, 2012.

Hence, the present recourse.

Issue

The core issue to be resolved in this case is whether MPSI is liable for the loss of the bags of flour.

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13 CA *rollo*, pp. 93-94.
14 Id. at 94.
15 Id. at 121-122.

Our Ruling

There is merit in the Petition.

Albeit involving factual questions, the Court shall proceed to resolve this case since it falls under several exceptions to the rule that only questions of law are proper in a petition for review on certiorari.

At the outset, it is evident that the resolution of the instant case requires the scrutiny of factual issues which are, however, outside the scope of the present petition filed pursuant to Rule 45 of the Rules of Court. However, the Court held in *Asian Terminals, Inc. v. Philam Insurance Co., Inc.*[16] that:

> But while it is not our duty to review, examine and evaluate or weigh all over again the probative value of the evidence presented, the Court may nonetheless resolve questions of fact when the case falls under any of the following exceptions:
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> > (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[17]

The Court finds that the instant case falls under the aforementioned second, fourth, fifth, and seventh exceptions. Hence, it shall proceed to delve into factual matters essential to the proper determination of the merits of this case.

Several well-entrenched legal principles govern the relationship of an arrastre operator and a consignee.

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16 G.R. Nos. 181163, 181262, & 181319, July 24, 2013, 702 SCRA 88.

17 Id. at 102-103, citing *Insurance Company of North America v. Asian Terminals, Inc*., G.R. No. 180784, February 15, 2012, 666 SCRA 226, 236-237.

The relationship between an arrastre operator and a consignee is similar to that between a warehouseman and a depositor, or to that between a common carrier and the consignee and/or the owner of the shipped goods.[18] Thus, an arrastre operator should adhere to the same degree of diligence as that legally expected of a warehouseman or a common carrier[19] as set forth in Section 3[b] of the Warehouse Receipts [Act][20] and Article 1733 of the Civil Code.[21] As custodian of the shipment discharged from the vessel, the arrastre operator must take good care of the same and turn it over to the party entitled to its possession.[22]

In case of claim for loss filed by a consignee or the insurer as subrogee,[23] it is the arrastre operator that carries the burden of proving compliance with the obligation to deliver the goods to the appropriate party.[24] It must show that the losses were not due to its negligence or that of its employees.[25] It must establish that it observed the required diligence in handling the shipment.[26] Otherwise, it shall be presumed that the loss was due to its fault.[27] In the same manner, an arrastre operator shall be liable for damages if the seal and lock of the goods deposited and delivered to it as closed and sealed, be broken through its fault.[28] Such fault on the part of the arrastre operator is likewise presumed unless there is proof to the contrary.[29]

MPSI was able to prove delivery of the shipment to MSC in good and complete condition and with locks and seals intact.

It is significant to note that MPSI, in order to prove that it properly delivered the subject shipment consigned to MSC, presented 10 gate passes marked as Exhibits 4 to 13.[30] Each of these gate passes bore the duly identified

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18 *Asian Terminals, Inc. v. First Lepanto-Taisho Insurance Corporation*, G.R. No. 185964, June 16, 2014, 726 SCRA 415, 427.

19 Id. at 427-428.

20 Act No. 2137 (February 5, 1912).

Section 3. Form of Receipts; What Terms May Be Inserted. – A warehouseman may insert in a receipt, issued by him, any other terms and conditions: Provided, That such terms and conditions shall not:

x x x x

(b) In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

21 Article 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.

x x x x

22 *Asian Terminals, Inc. v. First Lepanto-Taisho Insurance Corporation*, supra note 18 at 428.

23 CIVIL CODE, ART. 1303. Subrogation transfers to the persons subrogated the credit with all the rights thereto appertaining, either against the debtor or against third person, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation.

24 *Asian Terminals, Inc. v. First Lepanto-Taisho Insurance Corporation*, supra note 18 at 428.

25 Id.

26 Id.

27 CIVIL CODE, Art. 1265.

28 CIVIL CODE, Art. 1981.

29 Id.

30 Records, pp. 188-197.

signature[31] of MSC's representative which serves, among others, as an acknowledgement that:

> Issuance of [the] Gate Pass constitutes delivery to and receipt by consignee of the goods as described above in good order and condition, unless an accompanying B.O. certificate duly issued and noted on the face of [the] Gate Pass appears.[32]

As held in *International Container Terminal Services, Inc. v. Prudential Guarantee & Assurance Co., Inc.*,[33] the signature of the consignee's representative on the gate pass is evidence of receipt of the shipment in good order and condition.[34]

Also, that MPSI delivered the subject shipment to MSC's representative in good and complete condition and with lock and seals intact is established by the testimonies of MPSI's employees who were directly involved in the processing of the subject shipment. Mr. Ponciano De Leon testified that as MPSI's delivery checker, he personally examined the subject container vans and issued the corresponding gate passes that were, in turn, countersigned by the consignee's representative. MPSI's other witness, Chief Claims Officer Sergio Icasiano (Icasiano), testified that the broker, as the consignee's representative, neither registered any complaints nor requested for an inspection, to wit:

> RE-DIRECT EXAMINATION:
> Atty. Laurente
>
> x x x x
>
> Q [A]fter receipt by the broker of the container van containing the cargo, do you require the broker to issue you a report or certification as to the appearance of the container van?
> A [W]e only rely on the gate pass.
>
> Q [A]nd you don't place there "the padlock is still intact or the wirings still intact"?
> A [I]t is stated in the gate pass, your Honor.
>
> x x x x
>
> Q [A]nd the findings [are counter-signed] by the representative of the broker also on the same date?
> A [Y[es, your honor.[35]
>
> x x x x

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31 Id.; marked as Exhibits 4-A to 13-A.
32 Id.
33 377 Phil. 1082 (1999).
34 Id. at 1091.
35 TSN, November 6, 1992, pp. 17-18.

RE-CROSS EXAMINATION
Atty. Laino

q [B]ut did you not say that in the gate pass it is stated there as to the external appearance of the container van?
a [T]here was no indication of any inspection of the container van x x x meaning the container vans were all in good condition, sir.

q [Y]ou said a [while] ago that you did not receive any complaint for broken seals, is it not?
a [Y]es, sir.

q [B]ut the complaint that you received indicates that there were losses.
a [W]e did not receive any complaint from the broker, sir.

q [I]f the broker will complain they have to file a request for inspection of the cargo so that they will know if there [are] shortages x x x.
a [Y]es, sir.

[C]ourt

q [A]nd if the broker would notice or detect [something] peculiar, the way the door of the container van appears whether close[d] or not, they have to request for an inspection[?]
a [Y]es, your honor.

q [O]r in the absence of the padlock or wirings, the broker will request for an inspection[?]
a [Y]es, your honor[;] they can require for the examination of the cargo.

q [B]ut there was no request at all by the broker?
a [T]here was none, your Honor.[36]

Verily, the testimonies of the aforementioned employees of MPSI confirm that the container vans, together with their padlocks and wirings, were in order at the time the gate passes were issued up to the time the said container vans were turned over to ACS.

AHAC justifies the failure of ACS to immediately protest the alleged loss or pilferage upon initial pick-up of the first batch of container vans. According to it, ACS could not have discovered the loss at that moment since the stripping of container vans in the pier area is not allowed. The Court cannot, however, accept such excuse. For one, AHAC's claim that stripping of the container vans is not allowed in the pier area is a mere allegation without proof. It is settled that "[m]ere allegations do not suffice; they must be substantiated by clear and convincing proof."[37] For another, even assuming that stripping of the container vans is indeed not allowed at the pier area, it is hard to believe that MSC or its

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[36] Id. at 18-19.
[37] *Aonan, Sr. v. Aonan, Jr.*, 550 Phil. 726, 738 (2007).

representative ACS has no precautionary measures to protect itself from any eventuality of loss or pilferage. To recall, ACS's representative signed the gate passes without any qualifications. This is despite the fact that such signature serves as an acknowledgment of ACS's receipt of the goods in good order and condition. If MSC was keen enough in protecting its interest, it (through ACS) should have at least qualified the receipt of the goods as subject to inspection, and thereafter arrange for such an inspection in an area where the same is allowed to be done. However, no such action or other similar measure was shown to have been undertaken by MSC. What is clear is that ACS accepted the container vans on its behalf without any qualification. As aptly observed by the RTC:

> During [the] period of turn-over of goods from the arrastre to [ACS], there had been no protest on anything on the part of consignee's representative x x x. Otherwise, the complaint would have been shown [on] the gate passes. In fact, each gate pass showed the date of delivery, the location of delivery, the truck number of the truck used in the delivery, the actual quantity of goods delivered, the numbers of the safety wires and padlocks of the vans and the signatures of the receiver. More importantly, the gate passes bared the fact that the shipments were turned-over by [MPSI] to [ACS] on the same dates of customs inspections and turnovers.[38]

There being no exception as to bad order, the subject shipment, therefore, appears to have been accepted by MSC, through ACS, in good order.[39] "It logically follows [then] that the case at bar presents no occasion for the necessity of discussing the diligence required of an [arrastre operator] or of the theory of [its] *prima facie* liability x x x, for from all indications, the shipment did not suffer loss or damage while it was under the care x x x of the arrastre operator x x x."[40]

Even in the light of Article 1981, no presumption of fault on the part of MPSI arises since it was not sufficiently shown that the container vans were re-opened or that their locks and seals were broken for the second time.

Indeed, Article 1981 of the Civil Code also mandates a presumption of fault on the part of the arrastre operator as follows:

> Article 1981. When the thing deposited is delivered closed and sealed, the depositary must return it in the same condition, and he shall be liable for damages should the seal or lock be broken through his fault.

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38 Records, p. 276.

39 *Bankers & Manufacturers Assurance Corporation v. Court of Appeals*, G.R. No. 80256, October 2, 1992, 214 SCRA 433, 436.

40 Id. at 436-437.

> Fault on the part of the depositary is presumed, unless there is proof to the contrary.
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> As regards the value of the thing deposited, the statement of the depositor shall be accepted, when the forcible opening is imputable to the depositary, should there be no proof to the contrary. However, the courts may pass upon the credibility of the depositor with respect to the value claimed by him.
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> When the seal or lock is broken, with or without the depositary's fault, he shall keep the secret of the deposit.

However, no such presumption arises in this case considering that it was not sufficiently shown that the container vans were re-opened or that their locks and seals were broken for the second time. As may be recalled, the container vans were opened by a customs official for examination of the subject shipment and were thereafter resealed with safety wires. While this fact is not disputed by both parties, AHAC alleges that the container vans were re-opened and this gave way to the alleged pilferage. The Court notes, however, that AHAC based such allegation solely on the survey report of the Manila Adjuster & Surveyors Company (MASCO). As observed by the RTC:

> AHAC x x x claim[s] that there were two instances when the seals were broken. [First], when the customs officer examined the shipment and had it resealed with safety wires. [Second], when the surveyor and consignee's broker visually inspected the shipment and allegedly found the safety wires of the customs officer to have been detached and missing which they then replaced. This second instance is only upon their say so as there is no x x x documentary or testimonial proof on the matter [other] than the [MASCO] survey report.[41]

However, the person who prepared the said report was not presented in court to testify on the same. Thus, the said survey report has no probative value for being hearsay. "It is a basic rule that evidence, whether oral or documentary, is hearsay, if its probative value is not based on the personal knowledge of the witness but on the knowledge of another person who is not on the witness stand."[42] Moreover, "an unverified and unidentified private document cannot be accorded probative value. It is precluded because the party against whom it is presented is deprived of the right and opportunity to cross-examine the person to whom the statements or writings are attributed. Its executor or author should be presented as a witness to provide the other party to the litigation the opportunity to question its contents. Being mere hearsay evidence, failure to present the author of the letter renders its contents suspect and of no probative value."[43]

There being no other competent evidence that the container vans were re-opened or that their locks and seals were broken for the second time, MPSI cannot

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41 Records, p. 274.

42 *Dela Llana v. Biong*, G.R. No. 182356, December 4, 2013, 711 SCRA 522, 535.

43 *Huang v. Philippine Hoteliers, Inc.*, G.R. No. 180440, December 5, 2012, 687 SCRA 162, 203-204.

be held liable for damages due to the alleged loss of the bags of flour pursuant to Article 1981 of the Civil Code.

At any rate, the goods were shipped under "Shipper's Load and Count" arrangement. Thus, protection against pilferage of the subject shipment was the consignee's lookout.

At any rate, MPSI cannot just the same be held liable for the missing bags of flour since the consigned goods were shipped under "Shipper's Load and Count" arrangement. "This means that the shipper was solely responsible for the loading of the container, while the carrier was oblivious to the contents of the shipment. Protection against pilferage of the shipment was the consignee's lookout. The arrastre operator was, like any ordinary depositary, duty-bound to take good care of the goods received from the vessel and to turn the same over to the party entitled to their possession, subject to such qualifications as may have validly been imposed in the contract between the parties. The arrastre operator was not required to verify the contents of the container received and to compare them with those declared by the shipper because, as earlier stated, the cargo was at the shipper's load and count. The arrastre operator was expected to deliver to the consignee only the container received from the carrier."[44]

All told, the Court holds that MPSI is not liable for the loss of the bags of flour.

WHEREFORE, the Petition is **GRANTED**. The Decision dated December 29, 2011 and Resolution dated May 8, 2012 of the Court of Appeals in CA-GR. CV No. 88321 are **REVERSED AND SET ASIDE**. The Decision dated October 17, 2006 of the Regional Trial Court, Branch 271, Pasig City in Civil Case No. 90-54517 is **REINSTATED** and the Complaint in the said case is **DISMISSED**.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

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[44] *International Container Terminal Services, Inc. (ICTSI) v. Prudential Guarantee & Assurance Co., Inc.*, supra note 33 at 1093-1094.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

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