Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

OLYMPIA HOUSING, INC.,
Petitioner,

- versus -

ALLAN LAPASTORA and IRENE UBALUBAO,
Respondents.

G.R. No. 187691

Present:

VELASCO, JR., *J.*,
Chairperson,
PERALTA,
VILLARAMA, JR.,
REYES, and
JARDELEZA, *JJ.*

Promulgated:
January 13, 2016

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DECISION

REYES, *J.*:

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court, assailing the Decision[2] dated April 28, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 103699, which affirmed the Decision dated December 28, 2007 and Resolution[3] dated February 29, 2008 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 30-03-00976-00.

The instant case stemmed from a complaint for illegal dismissal, payment of backwages and other benefits, and regularization of employment filed by Allan Lapastora (Lapastora) and Irene Ubalubao (Ubalubao) against Olympic Housing, Inc. (OHI), the entity engaged in the management of the

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1 *Rollo*, pp. 3-32.

2 Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Arturo G. Tayag and Myrna Dimaranan Vidal concurring; id. at 34-48.

3 Id. at 78-79.

Olympia Executive Residences (OER), a condominium hotel building situated in Makati City, owned by a Philippine-registered corporation known as the Olympia Condominium Corporation (OCC). The complaint, which was docketed as NLRC NCR Case No. 30-03-00976-00 (NLRC NCR CA No. 032043-02), likewise impleaded as defendants the part owner of OHI, Felix Limcaoco (Limcaoco), and Fast Manpower and Allied Services Company, Inc. (Fast Manpower). Lapastora and Ubalubao alleged that they worked as room attendants of OHI from March 1995 and June 1997, respectively, until they were placed on floating status on February 24, 2000, through a memorandum sent by Fast Manpower.[4]

To establish employer-employee relationship with OHI, Lapastora and Ubalubao alleged that they were directly hired by the company and received salaries directly from its operations clerk, Myrna Jaylo (Jaylo). They also claimed that OHI exercised control over them as they were issued time cards, disciplinary action reports and checklists of room assignments. It was also OHI which terminated their employment after they petitioned for regularization. Prior to their dismissal, they were subjected to investigations for their alleged involvement in the theft of personal items and cash belonging to hotel guests and were summarily dismissed by OHI despite lack of evidence.[5]

For their part, OHI and Limcaoco alleged that Lapastora and Ubalubao were not employees of the company but of Fast Manpower, with which it had a contract of services, particularly, for the provision of room attendants. They claimed that Fast Manpower is an independent contractor as it (1) renders janitorial services to various establishments in Metro Manila, with 500 janitors under its employ; (2) maintains an office where janitors assemble before they are dispatched to their assignments; (3) exercises the right to select, refuse or change personnel assigned to OHI; and (4) supervises and pays the wages of its employees.[6]

Reinforcing OHI's claims, Fast Manpower reiterated that it is a legitimate manpower agency and that it had a valid contract of services with OHI, pursuant to which Lapastora and Ubalubao were deployed as room attendants. Lapastora and Ubalubao were, however, found to have violated house rules and regulations and were reprimanded accordingly. It denied the employees' claim that they were dismissed and maintained they were only placed on floating status for lack of available work assignments.[7]

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4 Id. at 35.
5 Id. at 36.
6 Id.
7 Id. at 37.

Subsequently, on August 22, 2000, a memorandum of agreement was executed, stipulating the transfer of management of the OER from OHI to HSAI-Raintree, Inc. (HSAI-Raintree). Thereafter, OHI informed the Department of Labor and Employment (DOLE) of its cessation of operations due to the said change of management and issued notices of termination to all its employees. This occurrence prompted some union officers and members to file a separate complaint for illegal dismissal and unfair labor practice against OHI, OCC and HSAI-Raintree, docketed as NLRC NCR CN 30-11-04400-00 (CA No. 032193-02), entitled *Malonie D. Ocampo, et al. v. Olympia Housing, Inc., et al.* (*Ocampo v. OHI*). This complaint was, however, dismissed for lack of merit. The complainants therein appealed the said ruling to the NLRC.[8]

Meanwhile, on May 10, 2002, the Labor Arbiter (LA) rendered a Decision[9] in the instant case, holding that Lapastora and Ubalubao were regular employees of OHI and that they were illegally dismissed. The dispositive portion of the decision reads as follows:

> WHEREFORE, finding complainants to have been illegally dismissed and as regular employees of [OHI] the latter is ordered to reinstate complainants to their former position or substantially equal position without loss of seniority rights and benefits. [OHI] is further ordered to pay complainants backwages, service incentive leave pay and attorney's fees as follows:
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> 1. Backwages:
> [Lapastora] - P171,616.60 and
> [Ubalubao] - P170,573.44 from February 24, 2000 to date of decision which shall further be adjusted until their actual reinstatement.
> 2. P3,305.05 - ILP for Lapastora
> 3. P3,426.04 - SILP for Ubalubao
> 4. 10% of the money awards as attorney's fees.
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> Other claims are dismissed for lack of merit.
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> The claim against [Limcaoco] is hereby dismissed for lack of merit.
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> SO ORDERED.[10]

In ruling for the existence of employer-employee relationship, the LA held that OHI exercised control and supervision over Lapastora and Ubalubao through its supervisor, Anamie Lat. The LA likewise noted that documentary evidence consisting of time cards, medical cards and medical examination reports all indicated OHI as employer of the said employees.

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8 Id. at 37-38.
9 Id. at 83-95.
10 Id. at 94-95.

Moreover, the affidavit of OHI's housekeeping coordinator, Jaylo, attested to the fact that OHI is the one responsible for the selection of employees for its housekeeping department. OHI also paid the salaries of the housekeeping staff by depositing them to their respective ATM accounts. That there is a contract of services between OHI and Fast Manpower did not rule out the existence of employer-employee relationship between the former and Lapastora and Ubalubao as it appears that the said contract was a mere ploy to circumvent the application of pertinent labor laws particularly those relating to security of tenure. The LA pointed out that the business of OHI necessarily requires the services of housekeeping aides, room boys, chambermaids, janitors and gardeners in its daily operations, which is precisely the line of work being rendered by Lapastora and Ubalubao.[11]

Both parties appealed to the NLRC. OHI asseverated that the reinstatement of Lapastora and Ubalubao was no longer possible in view of the transfer of the management of the OER to HSAI-Raintree.[12]

On December 28, 2007, the NLRC rendered a decision, dismissing the appeal for lack of merit, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the appeals of both the respondents and the complainants are DISMISSED, and the Decision of the [LA] is hereby AFFIRMED. All other claims are dismissed for lack of merit.[13]

The NLRC held that OHI is the employer of Lapastora and Ubalubao since Fast Manpower failed to establish the fact that it is an independent contractor. Further, it ruled that the memorandum of agreement between OCC and HSAI-Raintree did not render the reinstatement of Lapastora and Ubalubao impossible since a change in the management does not automatically result in a change of personnel especially when the memorandum itself did not include a provision on that matter.[14]

Unyielding, OHI filed its Motion for Reconsideration[15] but the NLRC denied the same in a Resolution[16] dated February 29, 2008.

In the meantime, in *Ocampo v. OHI*, the NLRC rendered a Decision[17] dated November 22, 2002, upholding the validity of the cessation of OHI's operations and the consequent termination of all its employees. It stressed

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11 Id. at 89-91.
12 Id. at 39-40.
13 Id. at 146.
14 Id. at 41.
15 Id. at 146-160.
16 Id. at 78-79.
17 Id. at 116-128.

that the cessation of business springs from the management's prerogative to do what is necessary for the protection of its investment, notwithstanding adverse effect on the employees. The discharge of employees for economic reasons does not amount to unfair labor practice.[18] The said ruling of the NLRC was elevated on petition for *certiorari* to the CA, which dismissed the same in Resolutions dated November 28, 2003[19] and June 23, 2004.[20] The mentioned resolutions were appealed to this Court and were docketed as G.R. No. 164160, which was, however, denied in the Resolution[21] dated July 26, 2004 for failure to comply with procedural rules and lack of reversible error on the part of the CA.

Ruling of the CA

OHI, upon receipt of the adverse decision in NLRC NCR Case No. 30-03-00976-00, filed a Petition for *Certiorari*[22] with the CA, praying that the Decision dated December 28, 2007 and Resolution dated February 29, 2008 of the NLRC be set aside. It pointed out that in the related case of *Ocampo v. OHI*, the NLRC took into consideration the supervening events which transpired after the supposed termination of Lapastora and Ubalubao, particularly OHI's closure of business on October 1, 2000. The NLRC then likewise upheld the validity of the closure of business and the consequent termination of employees in favor of OHI, holding that the measures taken by the company were proper exercises of management prerogative. OHI argued that since the said disposition of the NLRC in *Ocampo v. OHI* was affirmed by both the CA and the Supreme Court, the principle of *stare decisis* becomes applicable and the issues that had already been resolved in the said case may no longer be relitigated.[23] At any rate, OHI argued that it could not be held liable for illegal dismissal since Lapastora and Ubalubao were not its employees.[24]

On April 28, 2009, the CA rendered a Decision[25] dismissing the petition, the dispositive portion of which reads as follows:

> **WHEREFORE**, the petition for certiorari is **DISMISSED**. The NLRC's Decision dated December 28, 2007 and Resolution dated February 29, 2008 in NLRC NCR Case No. 30-03-00976-00 (NLRC NCR CA No. 032043-02) are **AFFIRMED**.
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> **SO ORDERED**.[26]

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18 Id. at 123.
19 Id. at 129-130.
20 Id. at 131.
21 Id. at 133-134.
22 Id. at 49-75.
23 Id. at 63.
24 Id. at 68.
25 Id. at 34-48.
26 Id. at 47.

The CA ruled that OHI's cessation of operations on October 1, 2000 is not a supervening event because it transpired long before the promulgation of the LA's Decision dated May 10, 2002 in the instant case. In the same manner, the ruling of the NLRC in *Ocampo v. OHI* does not constitute *stare decisis* to the present petition because of the apparent dissimilarities in the attendant circumstances. For instance, *Ocampo v. OHI* was founded on the union members' allegation that OHI's claim of substantial financial losses to support closure of business lacked evidence, while in the instant case, Lapastora and Ubalubao claimed illegal dismissal on account of their being placed on floating status after they were implicated in a theft case. The differences in the facts and issues in the two cases rule out the invocation of the doctrine. The CA added that the prevailing jurisprudence is that the NLRC decision upholding the validity of the closure of business and retrenchment of employees resulting therefrom will not preclude it from decreeing the illegality of an employee's dismissal. Considering that OHI failed to prove that the memorandum of agreement between OCC and HSAI-Raintree had any effect on the employment of Lapastora and Ubalubao or that there is any other valid or authorized cause for their termination from employment, the CA concluded that they were unlawfully dismissed.[27]

Unyielding, OHI filed the instant petition, reiterating its arguments before the CA. It added that, even assuming that the facts warrant a finding of illegal dismissal, the cessation of operations of the company is a supervening event that should limit the award of backwages to Lapastora and Ubalubao until October 1, 2000 only and justify the deletion of the order of reinstatement. After all, it complied with the notice requirements of the DOLE for a valid closure of business.[28]

On April 4, 2011, Ubalubao, on her own behalf, filed a Motion to Dismiss/Withdraw Complaint and Waiver,[29] stating that she has decided to accept the financial assistance in the amount of ₱50,000.00 offered by OHI, in lieu of all the monetary claims she has against the company, as full and complete satisfaction of any judgment that may be subsequently rendered in her favor. She likewise informed the Court that she had willingly and knowingly executed a quitclaim and waiver agreement, releasing OHI from any liability. She thus prayed for the dismissal of the complaint she filed against OHI.

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27 Id. at 44-45.
28 Id. at 15.
29 Id. at 266-269.

In a Resolution[30] dated January 16, 2012, the Court granted Ubalubao's motion and considered the case closed and terminated as to her part, leaving Lapastora as the lone respondent in the present petition.

Ruling of the Court

Lapastora was illegally dismissed

Indisputably, Lapastora was a regular employee of OHI. As found by the LA, he has been under the continuous employ of OHI since March 3, 1995 until he was placed on floating status in February 2000. His uninterrupted employment by OHI, lasting for more than a year, manifests the continuing need and desirability of his services, which characterize regular employment. Article 280 of the Labor Code provides as follows:

> **Art. 280. Regular and casual employment.** The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

Based on records, OHI is engaged in the business of managing residential and commercial condominium units at the OER. By the nature of its business, it is imperative that it maintains a pool of housekeeping staff to ensure that the premises remain an uncluttered place of comfort for the occupants. It is no wonder why Lapastora, among several others, was continuously employed by OHI precisely because of the indispensability of their services to its business. The fact alone that Lapastora was allowed to work for an unbroken period of almost five years is all the same a reason to consider him a regular employee.

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30 Id. at 292-293.

The attainment of a regular status of employment guarantees the employee's security of tenure that he cannot be unceremoniously terminated from employment. "To justify fully the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just cause and that the employee was afforded due process prior to dismissal. As a complementary principle, the employer has the onus of proving with clear, accurate, consistent, and convincing evidence the validity of the dismissal."[31]

OHI miserably failed to discharge its burdens thus making Lapastora's termination illegal.

On the substantive aspect, it appears that OHI failed to prove that Lapastora's dismissal was grounded on a just or authorized cause. While it claims that it had called Lapastora's attention several times for tardiness, unexplained absences and loitering, it does not appear from the records that the latter had been notified of the company's dissatisfaction over his performance and that he was made to explain his supposed infractions. It does not even show from the records that Lapastora was ever disciplined because of his alleged tardiness. In the same manner, allegations regarding Lapastora's involvement in the theft of personal items and cash belonging to hotel guests remained unfounded suspicions as they were not proven despite OHI's probe into the incidents.

On the procedural aspect, OHI admittedly failed to observe the twin notice rule in termination cases. As a rule, the employer is required to furnish the concerned employee two written notices: (1) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and (2) a written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.[32] In the present case, Lapastora was not informed of the charges against him and was denied the opportunity to disprove the same. He was summarily terminated from employment.

OHI argues that no formal notices of investigation, notice of charges or termination was issued to Lapastora since he was not an employee of the company but of Fast Manpower.

The issue of employer-employee relationship between OHI and Lapastora had been deliberated and ruled upon by the LA and the NLRC in the affirmative on the basis of the evidence presented by the parties. The LA

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31 *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 205.

32 *Lynvil Fishing Enterprises, Inc., et al. v. Ariola, et al.*, 680 Phil. 696, 715 (2012).

ruled that Lapastora was under the effective control and supervision of OHI through the company supervisor. She gave credence to the pertinent records of Lapastora's employment, *i.e.*, timecards, medical records and medical examinations, which all indicated OHI as his employer. She likewise noted Fast Manpower's failure to establish its capacity as independent contractor based on the standards provided by law.

That there is an existing contract of services between OHI and Fast Manpower where both parties acknowledged the latter as the employer of the housekeeping staff, including Lapastora, did not alter established facts proving the contrary. The parties cannot evade the application of labor laws by mere expedient of a contract considering that labor and employment are matters imbued with public interest. It cannot be subjected to the agreement of the parties but rather on existing laws designed specifically for the protection of labor. Thus, it had been repeatedly stressed in a number of jurisprudence that "[a] party cannot dictate, by the mere expedient of a unilateral declaration in a contract, the character of its business, *i.e.*, whether as labor-only contractor or as job contractor, it being crucial that its character be measured in terms of and determined by the criteria set by statute."[33]

The Court finds no compelling reason to deviate from the findings of the LA and NLRC, especially in this case when the same was affirmed by the CA. It is settled that findings of fact made by LAs, when affirmed by the NLRC, are entitled not only to great respect but even finality and are binding on this Court especially when they are supported by substantial evidence.[34]

The principle of *stare decisis* is not applicable

Still, OHI argues that the legality of the closure of its business had been the subject of the separate case of *Ocampo v. OHI*, where the NLRC upheld the validity of the termination of all the employees of OHI due to cessation of operations. It asserts that since the ruling was affirmed by the CA and, eventually by this Court, the principle of *stare decisis* becomes applicable. Considering the closure of its business, Lapastora can no longer be reinstated and should instead be awarded backwages up to the last day of operations of the company only, specifically on October 1, 2000.[35]

In *Ting v. Velez-Ting*,[36] the Court elaborated on the principle of *stare decisis*, thus:

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33 *Almeda, et al. v. Asahi Glass Philippines, Inc.*, 586 Phil. 103, 116 (2008).
34 *Metro Transit Organization, Inc. v. NLRC*, 367 Phil. 259, 263 (1999).
35 *Rollo*, pp. 20-21.
36 601 Phil. 676 (2009).

> The principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by this Court in its final decisions. It is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. Basically, it is a bar to any attempt to relitigate the same issues, necessary for two simple reasons: economy and stability. In our jurisdiction, the principle is entrenched in Article 8 of the Civil Code.[37] (Citations omitted)

Verily, the import of the principle is that questions of law that have been decided by this Court and applied in resolving earlier cases shall be deemed the prevailing rule which shall be binding on future cases dealing on the same intricacies. Apart from saving the precious time of the Court, the application of this principle is essential to the consistency of the rulings of the Court which is significant in its role as the final arbiter of judicial controversies.

The CA correctly ruled that the principle of *stare decisis* finds no relevance in the present case. To begin with, there is no doctrine of law that is similarly applicable in both the present case and in *Ocampo v. OHI.* While both are illegal dismissal cases, they are based on completely different sets of facts and involved distinct issues. In the instant case, Lapastora cries illegal dismissal after he was arbitrarily placed on a floating status on mere suspicion that he was involved in theft incidents within the company premises without being given the opportunity to explain his side or any formal investigation of his participation. On the other hand, in *Ocampo v. OHI*, the petitioners therein questioned the validity of OHI's closure of business and the eventual termination of all the employees. Thus, the NLRC ruled upon both cases differently.

Nonetheless, the Court finds the recognition of the validity of OHI's cessation of business in the Decision dated November 22, 2002 of the NLRC, which was affirmed by the CA and this Court, a supervening event which inevitably alters the judgment award in favor of Lapastora. The NLRC noted that OHI complied with all the statutory requirements, including the filing of a notice of closure with the DOLE and furnishing written notices of termination to all employees effective 30 days from receipt.[38] OHI likewise presented financial statements substantiating its claim that it is operating at a loss and that the closure of business is necessary to avert further losses.[39] The action of the OHI, the NLRC held, is a valid exercise of management prerogative.

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37 Id. at 687.
38 *Rollo*, p. 197.
39 Id. at 199.

Thus, while the finding of illegal dismissal in favor of Lapastora subsists, his reinstatement was rendered a legal impossibility with OHI's closure of business. In *Galindez v. Rural Bank of Llanera, Inc.*,[40] the Court noted:

> Reinstatement presupposes that the previous position from which one had been removed still exists or there is an unfilled position more or less of similar nature as the one previously occupied by the employee. Admittedly, no such position is available. Reinstatement therefore becomes a legal impossibility. The law cannot exact compliance with what is impossible.[41]

Considering the impossibility of Lapastora's reinstatement, the payment of separation pay, in lieu thereof, is proper. The amount of separation pay to be given to Lapastora must be computed from March 1995, the time he commenced employment with OHI, until the time when the company ceased operations in October 2000.[42] As a twin relief, Lapastora is likewise entitled to the payment of backwages, computed from the time he was unjustly dismissed, or from February 24, 2000 until October 1, 2000 when his reinstatement was rendered impossible without fault on his part.[43]

Finally, for OHI's failure to prove the fact of payment, the Court sustains the award for the payment of service incentive leave pay and 13th month pay. The rule, as stated in *Mantle Trading Services, Inc. and/or Del Rosario v. NLRC, et al.*,[44] is that "the burden rests on the employer to prove payment, rather than on the employee to prove nonpayment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents — which will show that overtime, differentials, service incentive leave and other claims of workers have been paid — are not in the possession of the employee but in the custody and absolute control of the employer."[45] Considering that OHI did not dispute Lapastora's claim for nonpayment of the mentioned benefits and opted to disclaim employer-employee relationship, the presumption is that the said claims were not paid.

The award for attorney's fees of 10% of the monetary awards is likewise sustained considering that Lapastora was forced to litigate and, thus, incurred expenses to protect his rights and interests.[46]

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40 G.R. No. 84975, July 5, 1989, 175 SCRA 132.

41 Id. at 139, citing *Pizza Inn/Consolidated Foods Corp. v. NLRC*, 245 Phil. 738, 743 (1988).

42 *Industrial Timber Corporation v. NLRC*, 323 Phil. 753, 761 (1996).

43 *Golden Ace Builders, et al. v. Talde*, 634 Phil. 364, 371 (2010).

44 611 Phil. 570 (2009).

45 Id. at 581-582.

46 *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union, et al. v. Manila Water Company, Inc.*, 676 Phil. 262, 276 (2011).

WHEREFORE, the Decision dated April 28, 2009 of the Court of Appeals in CA-G.R. SP No. 103699 is **AFFIRMED with MODIFICATION** in that OHI is hereby **ORDERED** to pay Allan Lapastora the following: (1) separation pay, in lieu of reinstatement, computed from the time of his employment until the time of its closure of business, or from March 1995 to October 2000; (2) backwages, computed from the time of illegal dismissal until cessation of business, or from February 24, 2000 to October 1, 2000; (3) service incentive leave pay and 13th month pay; and (4) attorney's fees.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

FRANCIS H. JARDELEZA
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.

PRESBITERO J. VELASCO, JR.
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

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
FEB 15 2016