Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

WALLEM MARITIME SERVICES, INC., REGINALDO A. OBEN and WALLEM SHIPMANAGEMENT, LTD., *Petitioners,*	**G.R. No. 202885**
	Present:
- versus -	CARPIO, *Chairperson,* DEL CASTILLO, MENDOZA, PERLAS-BERNABE,* *and* LEONEN, *JJ.*
EDWINITO V. QUILLAO, *Respondent.*	Promulgated: 20 JAN 2016

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DECISION

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari* assails the May 15, 2012 Decision[1] of the Court of Appeals (CA) in CA-GR. SP No. 122787. The CA affirmed the December 8, 2011 Decision[2] of the Panel of Voluntary Arbitrators (PVA), National Conciliation and Mediation Board in AC-0809-NCR-46-04-07-11, with modification that the amount to be jointly and severally paid by Wallem Maritime Services, Inc. (WMS) and Wallem Shipmanagement Ltd. (WSL) to Edwinito V. Quillao (respondent) is US$98,010.00 or its peso equivalent at the time of payment, instead of US$98,110.00. Also challenged is the August 1, 2012 CA Resolution[3] denying reconsideration of its Decision.

Factual Antecedents

WMS is a local manning agency, with Reginaldo A. Oben (Oben) as its

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* Per Special Order No. 2312 dated January 19, 2016.

1 CA *rollo*, pp. 447-466; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Elihu A. Ybañez and Samuel H. Gaerlan.

2 Id. at 43-68; the Panel of Voluntary Arbitrators was composed of Chairman Herminigildo C. Javen, with Hon. Leonardo B. Saulog and Hon. Allan S. Montano, as Members.

3 Id. at 520-521.

President and Manager.[4] On September 30, 2008, WMS, for and in behalf of its foreign principal, WSL, hired respondent as fitter aboard the vessel Crown Garnet for a period of nine months with a monthly salary of US$698.00.[5]

Respondent alleged that his employment was covered by a collective bargaining agreement (CBA) between the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP) and WSL – Hong Kong, represented by WMS.[6] He stated that after undergoing pre-employment medical examination, he was declared fit to work. He joined the vessel on October 4, 2008.[7]

Respondent averred that in January 2009, he started experiencing neck and lower back pain. In April 2009, he purportedly noticed numbness and weakness of his left hand. Respondent stated that towards the end of his contract, the Chief Engineer tried to convince him to extend his contract but he declined. The Chief Engineer then told him that he would report to their Superintendent respondent's ailment.[8]

Respondent further stated that he signed off from the vessel on July 13, 2009. Upon arrival in the Philippines on July 15, 2009, he was referred to the company-designated physician Dr. Ramon S. Estrada (Dr. Estrada) and was diagnosed of cervical radiculopathy, thoracic and lumbar spondylosis, as well as carpal tunnel syndrome of the left, and trigger finger, third digit of his right hand. He was also referred to Dr. Arnel V. Malaya (Dr. Malaya) for back rehabilation and to Dr. Ida Tacata, a specialist for hand surgery orthopedics.[9] He underwent carpal tunnel surgery on his left hand, and physical therapy (PT) sessions for his cervical and lumbar condition.[10]

On September 9, 2009, Dr. Estrada reported that respondent's carpal tunnel surgery was healing well. Respondent followed up with Dr. Malaya, his physiatrist, for his shoulder pain.[11] As of November 12, 2009, respondent had completed 24 PT sessions for his shoulder, upper back and cervical pain. However, the company-designated doctor declared that respondent was complaining of pain in these areas with poor response to therapy and medications. And because of complaint for low back pain, he advised respondent to defer PT sessions and seek the opinion of an orthopedic specialist.[12]

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4 Id. at 72.
5 Id. at 154.
6 Id. at 143, 155-192.
7 Id. at 143.
8 Id. at 144.
9 Id. at 45.
10 Id. at 145.
11 Id. at 131.
12 Id. at 132.

However, on November 23, 2009, the Legal Affairs Department of AMOSUP informed WMS of respondent's claim for disability benefits[13] and the clarificatory conference scheduled on November 27, 2009.

On November 24, 2009, respondent requested from the company-designated doctor the final assessment of his health condition but to no avail.[14]

Thereafter, grievance proceedings were held at the AMOSUP office regarding respondent's claim. Respondent admitted that after several meetings, he was advised to continue his PT sessions until March 15, 2010.[15]

On January 9, 2010, the company-designated doctor opined that respondent's chance of being declared fit to work was "quite good" provided he completes his remaining physical therapy sessions for about 4-6 weeks for his left hand pain and back pain. He also reported that respondent failed to return for his consultation since November 12, 2009.[16]

On February 5, 2010, upon referral of Dr. Malaya, respondent underwent EMG-NCV[17] test which revealed that: "1.) A severe chronic distal focal neuropathy of the left median nerve as in carpal tunnel syndrome. A moderately severe CTS is also seen on the left[; and,] 2.) Findings compatible with a chronic lumbar radiculopathy involving the right L4-5 spinal roots."[18]

On March 12, 2010, the company-designated doctor gave respondent a final disability rating of Grade 10, and made the following pronouncements:

> x x x [Respondent] was seen and re-evaluated by the physiatrist Dr. Malaya and with findings of no apparent improvement in his pain symptoms which is not compatible with all the tests and clinical evaluation/findings. He still complains of pain [on] the upper back and both hands, apparently with no significant improvement after several sessions of intensive physical therapy. Discontinuation of his rehabilitation program was advised by the specialist. With those developments, [I would declare that respondent's] condition is already at the stage of maximum medical wellness and no further treatment will improve his pain perception. Disability Grade 10 will be applicable to his present physical status under the POEA guidelines. x x x.[19]

On August 2, 2011, respondent consulted Dr. Renato P. Runas (Dr. Runas),

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13 Id. at 134.
14 Id. at 133, 145.
15 Id. at 145.
16 Id. at 135.
17 Electromyogram and Nerve Conduction Velocity
18 Id. at 217.
19 Id. at 136.

an independent orthopedic surgeon. Dr. Runas diagnosed him of being afflicted with cervical and lumbar spondylosis with nerve root compression.[20] On August 15, 2011, Dr. Runas opined that respondent "is not fit for further sea duty permanently in whatever capacity with a status equivalent to Grade 8" Impediment – moderate rigidity or 2/3 loss of trunk motion or lifting power.[21]

Respondent posited that he was entitled to permanent and total disability benefits because: he was declared fit to work prior to his last contract with petitioners; he sustained his illness in the course of and by reason of his work; despite surgery and PT, his condition did not improve; the company-designated physician did not assess the degree of his disability; his chosen physician declared him permanently unfit for sea duty; and, since repatriation, he had never been employed and his earning capacity had since then been impaired.[22]

For their part, WMS, WSL and Oben (petitioners) confirmed that respondent's employment with them was covered by a CBA; and that while he was aboard the vessel he complained of pain and finger numbness on his left hand. They affirmed that upon repatriation, they referred him to the company-designated physician, Dr. Estrada, as well as to Dr. Malaya for back rehabilitation, and to Dr. Ida Tacata for hand surgery.[23]

Petitioners stressed that when respondent filed a complaint before the AMOSUP on November 23, 2009, he was still undergoing treatment; and during which the company-designated physician had not yet given him a final disability assessment.[24] They insisted that the company-designated doctor failed to give an assessment within 120 days because respondent failed to appear for his consultations with the company-designated doctors.[25] They explained that although no assessment was issued within the 120-day period, respondent was given a final assessment on March 12, 2010, or within the 240-day maximum period for treatment.[26]

Ruling of the Panel of Voluntary Arbitrators

On December 8, 2011, the PVA rendered its Decision[27] for respondent, the dispositive portion of which reads:

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20 Id. at 146, 218-219.
21 Id. at 221-222.
22 Id. at 148-150.
23 Id. at 73.
24 Id. at 74, 78.
25 Id. at 80.
26 Id. at 82.
27 Id. at 27.

> WHEREFORE, premises considered, a decision is hereby rendered, ORDERING herein respondents Wallem Maritime Services[,] Inc. and/or Wallem Shipmanagement Ltd., to jointly and severally pay complainant Edwinito V. Quillao, the amount of Eighty Nine Thousands [sic] One Hundred US Dollars (US$89,100.00) as disability benefits, plus ten percent thereof as attorney's fees, or a total of Ninety Eight Thousands [sic] One Hundred Ten US Dollars (US$98,110.00) or its peso equivalent converted at the time of payment.
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> The complainant's prayer for exemplary [damages], moral damages and reimbursement of medical expenses are dismissed for sheer lack of merit.
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> x x x x
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> SO ORDERED.[28]

In ruling that respondent is entitled to permanent and total disability benefits, the PVA held that despite the lapse of 120 days, the company-designated doctor neither gave respondent an assessment on his condition nor issued a certificate on his fitness or unfitness for sea duty. The PVA also declared that the amount of disability should not be based on the schedule of disability gradings in the Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Vessels of the Philippine Overseas Employment Administration (POEA-SEC) considering that despite continuous treatment, he was not restored to his former health condition. The PVA disregarded petitioner's allegation of prematurity or lack of cause of action and medical abandonment reasoning that no final assessment was issued within 120 days and that Dr. Estrada discontinued respondent's rehabilitation based on his opinion that the latter already reached the maximum level of medical wellness. Moreover, the PVA lent more credence to the assessment of Dr. Runas ratiocinating that he is "an orthopedic surgeon specialist" vis-à-vis Dr. Estrada "who was not an orthopedic surgeon but a general and colorectal surgeon."[29] Finally, it also decreed that respondent was covered by the CBA from which his entitlement for disability benefits must be based.

Ruling of the Court of Appeals

Petitioners filed a Petition for Review with the CA arguing that the PVA seriously erred in finding them liable to pay respondent total disability benefits and attorney's fees.

On May 15, 2012, the CA rendered the assailed Decision,[30] the decretal portion of which reads:

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28 Id. at 68.
29 Id. at 64.
30 Id. at 447-466.

> WHEREFORE, premises considered, the Petition is DENIED for lack of merit. The Decision dated 08 December 2011 of the Panel of Voluntary Arbitrators, National Conciliation and Mediation Board in *AC-0809-NCR-46-04-07-11* is AFFIRMED with the correction that total amount to be jointly and severally paid by petitioners Wallem Maritime Services, Inc. and Wallem Shipmanagement Ltd. to respondent Edwinito V. Quillao is Ninety Eight Thousand and Ten US Dollars (US$98,010.00) or its peso equivalent converted at the time of payment, and not US$98,110.00.
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> Costs against petitioners.
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> SO ORDERED.[31]

Like the PVA, the CA gave more weight to the opinion of Dr. Runas explaining thus:

> While the company-designated physician Dr. Estrada, a general and colorectal surgeon, gave respondent a Grade 10 disability, he, however, utterly failed to issue any certification as to the fitness or unfitness of respondent to render further sea duties in any capacity. It was respondent's personal physician Dr. Runas, an orthopedic surgeon, who declared him as not fit for further sea duty permanently in whatever capacity, and assessed that he has an impediment Grade 8 (33.59%) moderate rigidity or 2/3 loss of trunk motion or lifting power.[32]

Moreover, the CA affirmed the PVA's ruling that respondent has a cause of action against petitioners "because they failed to pay his disability benefits."[33] It also agreed with the PVA that respondent is not guilty of medical abandonment because he was already pronounced to have reached the maximum level of wellness.[34] Finally, it held that in case of conflict between the medical opinion of the company-designated doctor and that of the seafarer's doctor-of-choice, the latter's opinion shall prevail because the "law looks tenderly on the laborer."[35]

On August 1, 2012, the CA denied petitioners' Motion for Reconsideration.[36]

Thus, petitioners filed this Petition stating that:

> I. x x x the Court of Appeals [erred] in awarding disability benefits in favor of respondent x x x despite the ruling of this Honorable Court in the recent case of CF Sharp Crew Management, Inc. x x x vs. x x x Taok x x x wherein this Honorable Court dismissed the complaint of seafarer Taok

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31 Id. at 463-464.
32 Id. at 461.
33 Id.
34 Id. at 462.
35 Id. at 463.
36 Id. at 520-521.

for lack of a cause of action. At the time of the filing of the complaint, the seafarer had no cause of action as he was still being treated and it was still undetermined whether he would be declared fit or permanently disabled by the company doctor.[37]

II. Assuming x x x respondent is entitled to disability benefits x x x his entitlement to disability benefits should be limited to Grade 10 as subsequently assessed by the company-designated physician.[38]

III. x x x the Court of Appeals [erred] in awarding disability benefits in favor of respondent x x x when it set aside the disability assessments given by the company-designated physician and gave credence to the assessment of respondent's own physician in clear contradiction of this Honorable Court's ruling in Santiago vs Pacbasin x x x upholding the disability grading assessment of the company-designated physician in the absence of an examination by a third doctor whose finding shall be final and binding. As the company-designated physician assessed respondent with a final disability assessment of Grade 10, respondent is only entitled to [US]$17,954.00 under the CBA.[39]

IV. x x x the Court of Appeals [erred] in awarding attorney's fees in favor of respondent x x x. No bad faith attended the denial of respondent's claims as the denial was based on just and legal grounds, to wit: respondent has no cause of action against petitioners as he was still undergoing treatment when he commenced his claim for permanent total disability benefits, he was guilty of medical abandonment and assuming respondent is still entitled to disability benefits despite the foregoing, he was only assessed a disability of Grade 10 by the company-designated physician.[40]

Issue

Is respondent entitled to permanent and total disability benefits?

Petitioners' Arguments

Petitioners maintain that respondent's right to permanent and total disability benefits only arises from the moment the company-designated doctor declares him permanently and totally disabled. Since the company-designated physician has not yet issued any certification when this case was filed, then, respondent has no cause of action against them. They assert that assuming they are liable, their liability is limited only to the disability rating as assessed by the company-designated doctor.

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37 *Rollo*, p. 47.
38 Id. at 50.
39 Id. at 55-56.
40 Id. at 61.

Moreover, petitioners insist that respondent was guilty of medical abandonment because after November 12, 2009, he stopped reporting to the company-designated physician. They add that at that time, the company-designated doctor opined that it was possible for respondent to be declared fit to work had he continued his remaining PT sessions.

Lastly, petitioners assert that they are not in bad faith in denying respondent's disability claims, thus, they should not be held liable for attorney's fees.

Respondent's Arguments

Respondent counters that he has a cause of action against petitioners. He claims that the lack of declaration from the company-designated physician prompted him to file a Complaint for disability benefits.

Respondent states that he is entitled to permanent and total disability benefits because the company-designated physician only arrived at a final assessment of his condition after more than 240 days from his repatriation. He argues that notwithstanding the assessments of the company-designated doctor and his chosen physician, his disability is deemed permanent and total by reason of his inability to perform customary work for more than 120 days; and his disability remained beyond 240 days.

Finally, respondent states that the award of attorney's fees is proper as he was compelled to litigate to protect his interest.

Our Ruling

The Court finds merit in the Petition.

We agree with petitioners' contention that at the time of filing of the Complaint, respondent has no cause of action because the company-designated physician has not yet issued an assessment on respondent's medical condition; moreover the 240-day maximum period for treatment has not yet lapsed. As reiterated by the Court in the recent case of *C.F. Sharp Crew Management, Inc. v. Obligado*,[41] the 120-day rule applies only when the complaint was filed prior to October 6, 2008; however, if the complaint was filed from October 6, 2008 onwards, the 240-day rule applies. Here, it is beyond dispute that the complaint for disability benefits was filed after October 6, 2008. Hence, the 240-day rule should apply. It was thus error on the part of the PVA to reckon respondent's

[41] G.R. No. 192389, September 23, 2015.

entitlement to permanent and total disability benefits based on the 120-day rule.

The records clearly show that respondent was still undergoing treatment when he filed the complaint. On November 12, 2009, the physiatrist even advised respondent to seek the opinion of an orthopedic specialist[42] Respondent, however, did not heed the advice, instead, he proceeded to file a Complaint on November 23, 2009 for disability benefits. And, it was only a day after its filing (or on November 24, 2009) that respondent requested from the company-designated doctor the latter's assessment on his medical condition.

Stated differently, respondent filed the Complaint within the 240-day period while he was still under the care of the company-designated doctor. Significantly, we note that respondent has not even consulted his doctor-of-choice before instituting his Complaint for disability benefits.

Clearly, the Complaint was premature. Respondent has no cause of action yet at the time of its filing as the company-designated doctor has no opportunity to definitely assess his condition because he was still undergoing treatment; and the 240-day period had not lapsed.[43] Moreover, he has no basis for claiming permanent and total disability benefits because he has not yet consulted his doctor-of-choice.

In addition, it is unclear if respondent was in fact medically repatriated or that he returned home under a finished contract. Respondent commenced his work aboard the vessel on October 4, 2008. He signed off from the vessel on July 12, 2009 (or July 13, 2009, as claimed by respondent) and arrived in the country on July 15, 2009. At any rate, considering that petitioners acknowledged that while still on the vessel, respondent complained of pain and numbness of hand, and upon his return, they referred him to the company-designated doctor for treatment, then we hold that petitioners considered respondent as a medically repatriated seafarer. Under these circumstances, the pertinent provisions of the Labor Code on disability benefits, including its Implementing Rules and Regulations, as well as those of the POEA-SEC apply here.

Accordingly, citing *Vergara v. Hammonia Maritime Services, Inc.*,[44] the Court in *Magsaysay Maritime Corporation v. National Labor Relations Commission*[45] harmonized the application of the Labor Code, its Rules and Regulations and the POEA-SEC in the determination of permanent and total disability in this manner:

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42 CA *rollo*, p. 132.

43 *New Filipino Maritime Agencies, Inc. v. Despabeladeras,* G.R. No. 209201, November 19, 2014.

44 588 Phil 895, 912 (2008).

45 G.R. No. 191903, June 19, 2013, 699 SCRA 197, 211-212.

> [T]he seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

Further, in *Ace Navigation Co. v. Garcia*[46] and *Carcedo v. Maine Marine Phils., Inc.*,[47] the Court pointed out that the 120 or 240-day period to determine the seafarer's disability or fitness to work is reckoned from his repatriation.

Here, respondent reported to the company-designated physician within three days from his arrival and was given medical attention. He was also referred to a physiatrist and to a surgeon for his hand operation. The company-designated physiatrist later advised him to consult an orthopedic specialist. Respondent, nonetheless, failed to abide by the rule that the company-designated physician is to determine his fitness to return to work or the degree of his disability within 240 days from his repatriation. As already discussed, respondent prematurely filed his Complaint for disability benefits prior to the lapse of the 240-day period.

Not only did respondent prematurely file his Complaint, he reneged on his duties to continue his treatment as necessary to improve his condition. In his Report dated January 9, 2010, the company-designated doctor made the following pronouncements:

> x x x [T]he chance of [respondent's] being declared fit to work is quite good on the premise that he [complete] his remaining therapy sessions (about 4-6 weeks more) for the left hand pain and back pain. However, in my 8th medical report dated November 12, 2009, I mentioned that during follow-up evaluation and interview with him, he complained of pain [on] the neck and additional pain of the lower back which was not originally present at the start of the treatment. I have also mentioned this to the physiatrist, Dr. Malaya[,] and there seem[s] to be an intent to prolong treatment and seek disability. [Respondent] did not report to my clinic after that day until the present time.[48]

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46 G.R. No. 207804, June 17, 2015.
47 G.R. No. 203804, April 15, 2015.
48 CA *rollo*, p. 135.

As we ruled in *Magsaysay*,[49] the Court cannot blame petitioners for holding that respondent abandoned his treatment. Respondent failed to reasonably explain his failure to report to the company-designated physician after November 12, 2009 until January 9, 2010. The only clear circumstance that transpired between these periods is that he already filed his Complaint on November 23, 2009.

Under Section 20(D) of the POEA-SEC "[n]o compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or **intentional breach of his duties**, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer." Respondent was duty-bound to comply with his medical treatment, PT sessions, including the recommended consultation to an orthopedic specialist in order to give the company-designated doctor the opportunity to determine his fitness to work or to assess the degree of his disability. His inability to continue his treatment after November 12, 2009 until January 9, 2010, without any valid explanation proves that he neglected his corresponding duty to continue his medical treatment.[50] Consequently, respondent's inability to regularly return for his treatment caused the regress of his condition, as shown by the statement of the company-designated doctor on January 9, 2010 as follows:

> On your query about the effect of the delay in the treatment program, this can prolong the period of treatment due to the fact that the physical therapy will have to start in accordance with his functional capacity at the present time.[51]

Moreover, on April 20, 2010, the company-designated physician reported that had respondent "been cooperative with his treatment and shown interest in improving his medical condition, it is possible to declare him fit to work on board as a fitter and in any capacity. For this reason, [he advised] that the permanent unfitness clause does not apply in his case."[52]

Furthermore, in his Affidavit[53] dated September 10, 2011, the company-designated physiatrist, Dr. Malaya, averred that respondent failed to report to him and to the company-designated doctor for the completion of his PT sessions. He added that respondent was referred to him for re-evaluation and resumption of therapy until March 8, 2010 but respondent did not report to him. He also shared the view of the company-designated doctor that had respondent been cooperative with his treatment and shown interest in improving his condition, it was possible to declare him fit to work as a fitter.

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49 Supra note 45 at 213-214.
50 *New Filipino Maritime Agencies, Inc. v. Despabeladeras,* supra note 43.
51 CA *rollo*, p. 135.
52 Id. at 137.
53 Id. at 138-139.

Respondent was well aware of the need for him to undergo and continue his PT sessions. He even admitted during the grievance proceedings on his disability claim that he was advised to continue his PT until March 15, 2010.[54]

Indeed, respondent did not comply with the terms of the POEA-SEC. The failure of the company-designated doctor to issue an assessment was not of his doing but resulted from respondent's refusal to cooperate and undergo further treatment. Such failure to abide with the procedure under the POEA-SEC results in his non-entitlement to disability benefits.[55]

Given these, the Court finds that the CA erred in affirming the PVA Decision that respondent is entitled to permanent and total disability benefits.

WHEREFORE, the Petition is **GRANTED**. The May 15, 2012 Decision and August 1, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 122787 are **REVERSED** and **SET ASIDE**. Accordingly, the Complaint is **DISMISSED** for lack of merit.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

JOSE CATRAL MENDOZA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

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54 Id. at 145.

55 *Splash Phils., Inc. v. Ruizo,* G.R. No. 193628, March 19, 2014, 719 SCRA 496, 509-510.

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