EN BANC

G.R. No. 178083 – FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP), *Petitioner,* ***versus*** **PHILIPPINE AIRLINES, INC., PATRIA CHIONG and THE COURT OF APPEALS,** *Respondents.*

A.M. No. 11-10-1-SC - IN RE: LETTERS OF ATTY. ESTELITO P. MENDOZA RE: G.R. NO. 178083 – FLIGHT ATTENDANTS AND STEWARDS ASSOCIATION OF THE PHILIPPINES (FASAP) vs. PHILIPPINE AIRLINES, INC., ET AL.

Promulgated:

March 13, 2018

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CONCURRING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia.*

More often than not, judicial decisions, in determining compliance with legal requirements, fall prey to the technicalities created by statutory text and jurisprudential pronouncements, often denying recognition to even the most reasonable and most commonplace of exceptions. This is precisely what the case at bar presents, as the Court is yet again faced with the dilemma of whether or not requirements historically perpetuated as indispensable could reasonably be put aside in light of the factual circumstances surrounding the controversy.

Yet, before one delves into the factual circumstances and the merit of the Second Motion for Reconsideration (2nd MR) filed by Philippine Airlines, Inc. (PAL), it is but necessary that the procedural issues raised by the Petitioner and J. Leonen's dissent be sufficiently addressed.

Procedural Issues

As summarized by the *ponencia*, Petitioner argues that the October 4, 2011 Resolution of the Court is void for failure to comply with Section 14, Article VIII of the 1987 Constitution. More importantly, Petitioner submits that PAL's 2nd MR is a prohibited pleading considering that the July 22, 2008 Decision (2008 Decision) of the Court has already attained finality.

In a similar vein, the dissent posits that (a) the judgment in this case has become final and executory as early as November 4, 2009;[1] (b) "[t]he judgment here having attained finality, the Court *En Banc* – as if an appellate court reviewing a case that the Supreme Court has already reviewed three (3) times – cannot now take cognizance of the case and review it for the fourth time because, suddenly, the case became of sufficient importance to merit the Banc's attention[;]"[2] and (c) the Court *en banc* effectively admitted a third motion for reconsideration from the same party and hence a unanimous vote of this Court sitting *en banc* must be required to grant PAL's third motion for reconsideration.[3]

At the outset, and to address Petitioner's preliminary procedural issue, I express my concurrence with the conclusion of the *ponencia* that the October 4, 2011 Resolution of the Court is a valid issuance and is not violative of Section 14, Article VIII of the 1987 Constitution. As the *ponencia* explained "***any doubt on the validity of the recall order was removed because the Court upheld its issuance through the March 13, 2012 resolution***"[4] of the Court *en banc*.

a. Timeline

The specific dates and incidents that led to the Court *en banc* assuming jurisdiction over this case are narrated and clarified in the Resolution[5] dated March 13, 2012 (March 2012 Resolution) of the Court *en banc* in A.M. No. 11-10-1-SC. **These dates and incidents are no longer in dispute as they have already been settled and discussed by the Court *en banc* through its March 2012 Resolution**, which highlighted the following incidents:

(1) On July 22, 2008, the Court's Third Division ruled to grant the petition for review on *certiorari* filed by the Flight Attendants and Stewards Association of the Philippines (FASAP), finding PAL guilty of illegal dismissal (July 2008 Decision). PAL subsequently filed a Motion for Reconsideration (MR) seeking to reverse the July 2008 Decision rendered by the Court's Third Division.[6]

(2) Due to the inhibition and retirement of several justices, PAL's MR was handled by the Court's Special Third Division which, in turn, denied the MR with finality in a Resolution dated October 2, 2009 (October 2009 Resolution).[7]

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1 *J.* Leonen, Dissenting Opinion, p. 5.
2 Id. at 18.
3 Id. at 19.
4 Resolution, p. 16. Emphasis and underscoring supplied.
5 *In re: Letters of Atty. Mendoza re: G.R. No. 178083 – FASAP v. PAL, Inc., et al.*, 684 Phil. 55 (2012).
6 Id. at 74-75.
7 Id. at 76-77.

(3) On November 3, 2009, PAL filed a *Motion for Leave to File and Admit Motion for Reconsideration of the Resolution dated 2 October 2009 and 2nd Motion for Reconsideration of Decision dated 22 July 2008* (*Motion for Leave*).[8]

(4) On January 20, 2010, PAL's *Motion for Leave* was granted by a newly constituted regular Third Division.[9] As noted by the Court's March 2012 Resolution, "[t]his grant [by the regular Third Division] opened both the [July 2008] Decision and the [October 2009] Resolution x x x for review [and] effectively opened the whole case for review on the merits."[10]

(5) After the inhibition of Justice Velasco on January 17, 2011, the case was raffled to the Second Division. As narrated in the March 2012 Resolution, "[o]n September 7, 2011, the Court — through its Second Division as then constituted — resolved to deny with finality PAL's 2nd MR through an unsigned resolution."[11]

(6) Because of the series of changes and movement from one division to the other, PAL's counsel, Atty. Estelito Mendoza, wrote four letters addressed to the Clerk of Court specifically inquiring about which division acted on PAL's 2nd MR, the identity of the *ponente* and the rationale/basis for the designation of the *ponente* and the handling division — in view of the retirement of the previous *ponente* and the members of the Second Division and Special Second Division.[12]

(7) The legal considerations and issues raised as a result of Atty. Mendoza's letter are, to reiterate, extensively discussed in the March 2012 Resolution. As the Court *en banc* noted therein, the "unresolved questions were even further compounded in the course of the deliberations of the Members of the ruling Division when they were informed that the parties received the ruling on September 19, 2011, and this ruling would lapse to finality after the 15th day, or after October 4, 2011."[13] Thus, out of prudence, the Members of the ruling Division on September 30, 2011 recommended to the Chief Justice that (a) the September 7, 2011 Resolution (September 2011 Resolution) be recalled; and (b) the case be referred to the Court *en banc*.[14]

(8) On October 4, 2011, the Court *en banc* issued a Resolution (October 2011 Resolution) recalling the September 2011 Resolution and

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8 Id. at 77, 79.

9 For a detailed explanation regarding the changes in the membership of the Third Division that rendered the relevant Decision and Resolution, please refer to the Court *en banc*'s March 2012 Resolution in A.M. No. 11-10-1-SC. See id. at 74-85.

10 Id. at 79.

11 Id. at 85. Emphasis omitted.

12 Id. at 86-87.

13 Id. at 91. Emphasis omitted.

14 Id. at 91-92.

ordering the re-raffle of the case. As explained by the Court *en banc* in the March 2012 Resolution:

> As the narration in this Resolution shows, the Court acted on its own pursuant to its power to recall its own orders and resolutions before their finality. The October 4, 2011 Resolution was issued to determine the propriety of the September 7, 2011 Resolution given the facts that came to light after the ruling Division's examination of the records. x x x[15]

With the foregoing narration serving as the backdrop and context, it is easier now to see that the procedural issues raised by J. Leonen in his dissent have all been amply addressed by the March 2012 Resolution of the Court *en banc*.

b. Nature of the March 2012 Resolution in A.M. No. 11-10-1-SC

One of the preliminary objections that has been raised with respect to the March 2012 Resolution is that this was docketed as an administrative matter. Being an administrative matter, it is somewhat argued that such cannot affect and override whatever disposition the Court may have in a regular case. This argument, however, is belied by the March 2012 Resolution itself.

To be sure, while the March 2012 Resolution was docketed as an administrative matter, the whole intent behind it — as established through its narration and discussion — was precisely to extensively explain the circumstances under which the Court *en banc* (a) recalled the September 2011 Resolution; and (b) assumed jurisdiction over the case through the issuance of the October 2011 Resolution. And, in connection with the latter, it should be emphasized that this October 2011 Resolution was promulgated in relation to this present case or under G.R. No. 178083 — and not through a resolution of an administrative matter.

Stated otherwise, it is inaccurate to assert that the Court *en banc* assumed jurisdiction over the case via a disposition made in an administrative matter. To the contrary, the Court *en banc* already assumed jurisdiction through the October 2011 Resolution that was promulgated in G.R. No. 178083 and which recalled the September 2011 Resolution denying PAL's 2nd MR. **Thus, there is no mystery nor was it anomalous for the Court *en banc* to issue its March 2012 Resolution as this administrative matter was but an avenue to explain the Court *en banc*'s actions in the present case**. This is patently evident from the dispositive portion of the March 2012 Resolution, which provides:

> WHEREFORE, premises considered, ***we hereby confirm*** that the Court *en banc* has assumed jurisdiction over the resolution of the merits of the motions for reconsideration of Philippine Airlines, Inc., addressing our

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[15] Id. at 92. Emphasis omitted.

> July 22, 2008 Decision and October 2, 2009 Resolution; and that the September 7, 2011 ruling of the Second Division has been effectively recalled. x x x[16]

Clearly, based on the March 2012 Resolution and its detailed narration of the events that transpired within the Court, the Court's disposition in A.M. No. 11-10-1-SC did not override, but merely clarified, the Court *en banc's* actions and issuances in the present case (*i.e.*, G.R. No. 178083).

c. Finality of the 2008 Decision and 2009 Resolution

The primordial procedural concern, however, appears to be whether or not PAL's 2nd MR should be entertained considering that the Court's 2008 Decision and 2009 Resolution already attained finality (as insisted by the Petitioner and the dissent) and hence can no longer be entertained, modified, annulled or vacated by the Court *en banc*. This concern has been clearly addressed by the foregoing Timeline — meaning, that the Court *en banc* had already unequivocally declared and confirmed in the March 2012 Resolution that it had "assumed jurisdiction over the resolution of the merits of the motions for reconsideration of Philippine Airlines, Inc., addressing our July 22, 2008 Decision and October 2, 2009 Resolution; and that the September 7, 2011 ruling of the Second Division has been effectively recalled."[17]

As admitted by the dissenting opinion, "[a]s an exception, by leave of court, a party may file a second motion for reconsideration of the decision. The second motion for reconsideration may be subsequently granted 'in the higher interest of justice'"[18] This has long been affirmed by the Supreme Court in a long line of cases as exemplified by the Court *en banc's* pronouncement in *McBurnie v. Ganzon*[19]:

> At the outset, the Court emphasizes that second and subsequent motions for reconsideration are, as a general rule, prohibited. Section 2, Rule 52 of the Rules of Court provides that "[n]o second motion for reconsideration of a judgment or final resolution by the same party shall be entertained." The rule rests on the basic tenet of immutability of judgments. "At some point, a decision becomes final and executory and, consequently, all litigations must come to an end."
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> The general rule, however, against second and subsequent motions for reconsideration admits of settled exceptions. For one, the present Internal Rules of the Supreme Court, particularly Section 3, Rule 15 thereof, provides:
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> **Sec. 3. *Second motion for reconsideration.*** — The Court shall not entertain a second motion for

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16 Id. at 99. Emphasis in the original omitted; emphasis and underscoring supplied.
17 Id. Emphasis omitted.
18 *J.* Leonen, Dissenting Opinion, p. 6.
19 719 Phil. 680 (2013).

> reconsideration, and **any exception to this rule can only be granted in the higher interest of justice** by the Court *En Banc* upon a vote of at least two-thirds of its actual membership. There is reconsideration "in the higher interest of justice" **when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties.** A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.
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> x x x x (Emphasis ours)

In a line of cases, the Court has then entertained and granted second motions for reconsideration "in the higher interest of substantial justice," as allowed under the Internal Rules when the assailed decision is "legally erroneous," "patently unjust" and "potentially capable of causing unwarranted and irremediable injury or damage to the parties." In *Tirazona v. Philippine EDS Techno-Service, Inc. (PET, Inc.)*, we also explained that a second motion for reconsideration may be allowed in instances of "extraordinarily persuasive reasons and only after an express leave shall have been obtained." In *Apo Fruits Corporation v. Land Bank of the Philippines*, we allowed a second motion for reconsideration as the issue involved therein was a matter of public interest, as it pertained to the proper application of a basic constitutionally-guaranteed right in the government's implementation of its agrarian reform program. In *San Miguel Corporation v. NLRC*, the Court set aside the decisions of the LA and the NLRC that favored claimants-security guards upon the Court's review of San Miguel Corporation's second motion for reconsideration. In *Vir-Jen Shipping and Marine Services, Inc. v. NLRC, et al.*, the Court *en banc* reversed on a third motion for reconsideration the ruling of the Court's Division on therein private respondents' claim for wages and monetary benefits.[20]

In this instance, PAL received a copy of the October 2009 Resolution denying its Motion for Reconsideration of the 2008 Decision on October 20, 2009. On November 3, 2009, PAL asked for leave of court to file (a) an MR of the October 2009 Resolution; and (b) a 2nd MR of the 2008 Decision. On January 20, 2010, the Court, through the Third Division, granted PAL's *Motion for Leave*.

The fact that the Court granted PAL's motion for leave to file its 2nd MR means exactly that — that the 2nd MR is no longer prohibited and may be granted "in the higher interest of substantial justice" and for "extraordinarily persuasive reasons." Thus, with the Court admitting the 2nd MR, this meant that the 2008 Decision and the 2009 Resolution were **not** rendered executory and could not have been implemented. **To hold otherwise would be to render nugatory and illusory the Court *en banc's* action of allowing and accepting the 2nd MR**.

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[20] Id. at 700-702.

I am not unaware that there has been an instance where the Court has declared that the "grant of leave to file the Supplemental Motion for Reconsideration x x x did not prevent [a] Resolution from becoming final and executory."[21] I do not share the same view and believe that this declaration runs counter to the logic and very rationale of the Court's action of allowing the filing of a 2nd MR. Nevertheless, it should be noted that the Court in the same case admits that a second motion for reconsideration may still be granted and an entry of judgment lifted notwithstanding that the resolution has been deemed final and executory.[22] Thus, the lone fact that a decision and/or a resolution has attained finality does not negate the Court's power, in the higher interest of substantial justice, to entertain and grant subsequent motions for reconsideration filed by the parties. In fact, as this Court, in an *en banc* Resolution, lengthily explained:

> As a rule, a final judgment may no longer be altered, amended or modified, even if the alteration, amendment or modification is meant to correct what is perceived to be an erroneous conclusion of fact or law and regardless of what court, be it the highest Court of the land, rendered it. In the past, however, we have recognized exceptions to this rule by reversing judgments and recalling their entries in the interest of substantial justice and where special and compelling reasons called for such actions.
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> Notably, in *San Miguel Corporation v. National Labor Relations Commission*, *Galman v. Sandiganbayan*, *Philippine Consumers Foundation v. National Telecommunications Commission*, and *Republic v. de los Angeles*, we reversed our judgment on the **second** motion for reconsideration, while in *Vir-Jen Shipping and Marine Services v. National Labor Relations Commission*, we did so on a **third** motion for reconsideration. In *Cathay Pacific v. Romillo* and *Cosio v. de Rama*, we modified or amended our ruling on the second motion for reconsideration. More recently, in the cases of *Munoz v. Court of Appeals*, *Tan Tiac Chiong v. Hon. Cosico*, *Manotok IV v. Barque*, and *Barnes v. Padilla*, we **recalled entries of judgment** after finding that doing so was in the interest of substantial justice. In *Barnes*, we said:
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> > x x x Phrased elsewise, a final and executory judgment can no longer be attacked by any of the parties or be modified, directly or indirectly, even by the highest court of the land.
> >
> > However, this Court has relaxed this rule in order to serve substantial justice considering (a) **matters of life, liberty, honor or property**, (b) **the existence of special or compelling circumstances**, (c) **the merits of the case**, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.
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> > Invariably, rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in

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21 *Club Filipino, Inc. v. Bautista*, 750 Phil. 599, 616 (2015); penned by J. Leonen.

22 See id. at 616.

> technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflects this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself had already declared to be final. [Emphasis supplied.]
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> That the issues posed by this case are of transcendental importance is not hard to discern from these discussions. A constitutional limitation, guaranteed under no less than the all-important Bill of Rights, is at stake in this case: how can compensation in an eminent domain be "just" when the payment for the compensation for property already taken has been unreasonably delayed? To claim, as the assailed Resolution does, that only private interest is involved in this case is to forget that an expropriation involves the government as a necessary actor. It forgets, too, that under eminent domain, the constitutional limits or standards apply to government who carries the burden of showing that these standards have been met. Thus, to simply dismiss this case as a private interest matter is an extremely shortsighted view that this Court should not leave uncorrected.[23]

Thus, the power of the Court to entertain PAL's 2nd MR (and even a Third Motion for Reconsideration) and to grant such motion should the interest of substantial justice so warrant is undoubtedly clear and unequivocal. Accordingly, even on the assumption that this is PAL's Third Motion for Reconsideration (which, as explained, it is not), the power of the Court to grant PAL's motion is not negated.

d. Jurisdiction of the Court en banc to assume jurisdiction of the case

The next crucial issue that needs to be addressed is whether or not the Court *en banc* has the jurisdiction to resolve PAL's 2nd MR. Again, the answer has already been answered and explained in the March 2012 Resolution to be in the affirmative.

In this case, the dissent questions the transfer of this case to the Court *en banc* considering that no formal resolution was issued by the Second Division referring PAL's 2nd MR to the Court *en banc* pursuant to the Internal Rules of the Supreme Court (IRSC). However, as already stated, this issue regarding the Court e*n banc's* jurisdiction was already directly traversed by the Court *en banc* in its March 2012 Resolution in A.M. No. 11-10-1-SC.

First, as highlighted in the March 2012 Resolution, the Court *en banc* may act on matters and cases that it deems of sufficient importance to merit its attention as provided in Section 3(m), Rule 2 of the IRSC. PAL's 2nd MR and the interpretation of the conflicting provisions of the IRSC appears to

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23 *Apo Fruits Corporation v. Land Bank of the Phils.*, 647 Phil. 251, 288-290 (2010).

have been considered by the Court *en banc* to be of sufficient importance — such that the Court *en banc* assumed jurisdiction over the case.

In assailing Section 3(m), Rule 2 of the IRSC, the dissent relies on the dissenting opinion of J. Gonzaga-Reyes in *Firestone Ceramics v. Court of Appeals,*[24] in concluding that the residual power of the Court *en banc* to, on its own, take cognizance of Division cases is suspect. However, and with all due respect to J. Leonen, the dissenting opinion of J. Gonzaga-Reyes finds no application here. In *Firestone*, the Court *en banc* relied on a Resolution dated November 18, 1993 which, as pointed out by J. Gonzaga-Reyes, is an amendment to Sections 15 and 16, Rule 136 of the Rules of Court which deals with the form ("unglazed paper," margins, number of copies, etc.) of unprinted and printed papers to be filed with this Court. Thus, as concluded by J. Gonzaga-Reyes, the Resolution dated November 18, 1993 was clearly not intended to lay down new guidelines or rules for referral to the court *en banc* of cases assigned to a Division.[25]

However, in the case at hand, **Section 3, Rule 2 of the IRSC was clearly meant to lay down and establish the instances when a Court en banc may act on any case or matter** – unlike in *Firestone* where the Resolution relied upon essentially deals with the format of the pleadings filed before the Supreme Court. As explicitly provided in Section 3(m), Rule 2, the Court *en banc* may act on cases that it deems of sufficient importance to merit its attention. And at the risk of belaboring the point, the March 2012 Resolution — rendered six (6) years ago — clearly established that the Court *en banc* had made a judicious determination at that time that PAL and FASAP's case was of sufficient importance for it to assume jurisdiction.

More importantly, the March 2012 Resolution likewise establishes that it was the members of the Division (which rendered the recalled September 7, 2011 Resolution[26]) that referred the matter to the Court *en banc* — *albeit* no formal resolution was issued. As explicitly narrated in the March 2012 Resolution, since there was "[n]o unanimity among the Members of the ruling Division x x x on the unresolved legal questions[,] they concluded that the matter is best determined by the Court *en banc*."[27] It should be noted that the members of the Second Division, which issued the recalled September 7, 2011 ruling, unanimously concurred in the March 2012 Resolution and did not dispute the categorical declaration that they referred the matter on hand to the Court *en banc*. **Such referral by the members of the Ruling Division coupled with the Court *en banc's* decision to exercise its power to assume jurisdiction of a case with**

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24 389 Phil. 810 (2000).

25 Id. at 825.

26 The September 7, 2011 Resolution denied with finality PAL's second motion for reconsideration.

27 *In re: Letters of Atty. Mendoza re: G.R. No. 178083 – FASAP v. PAL, Inc., et al.*, supra note 5, at 93. Emphasis omitted.

sufficient importance should be sufficient legal basis for the Court *en banc* of today to decide the merits of the case now.

Finally, it should be stressed anew that the Court *en banc* already assumed jurisdiction through the October 2011 Resolution that was promulgated in G.R. No. 178083 (*i.e.*, recalling the September 2011 Resolution denying PAL's 2nd MR). This was "confirmed" by the Court *en banc's* March 2012 Resolution, the dispositive portion of which is again quoted below:

> WHEREFORE, premises considered, ***we hereby confirm*** that the Court *en banc* has assumed jurisdiction over the resolution of the merits of the motions for reconsideration of Philippine Airlines, Inc., addressing our July 22, 2008 Decision and October 2, 2009 Resolution; and that the September 7, 2011 ruling of the Second Division has been effectively recalled. x x x[28] (Emphasis in the original omitted; emphasis and underscoring supplied)

Thus, for the Court of today, or more specifically, the dissent, to question what has clearly and already been resolved at least six (6) years ago, is to second guess the wisdom of what, for all intents and purposes, is already a final disposition of this issue. In this sense, it can be rightly said that the October 2011 Resolution and March 2012 Resolution have become immutable.

e. Unanimous vote of the Court en banc

Anent the assertion that the unanimous vote of the Court sitting *en banc* must be required to grant PAL's motion for reconsideration (whether second or third), there is absolutely no legal or jurisprudential basis for such. Moreover, even applying *Fortich v. Corona*[29] by analogy as the dissent suggests[30] will not lead one to the conclusion that a unanimous vote is required. As the dissent itself narrated, it was only because the voting for the motion for reconsideration amounted to a tie (two-two) that the Decision of the Division was deemed upheld. Nowhere in *Fortich* did the Court even allude to requiring a unanimous vote.

Considering the foregoing, I agree with the *ponencia* that PAL's 2nd MR is not a prohibited pleading. Moreover, and as underscored by him, PAL's arguments in its 2nd MR sufficiently show that the assailed decision might have contravened established jurisprudence — clearly highlighting that the higher interests of substantial justice will be served if the 2008 Decision and the 2009 Resolution were to be revisited.

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28 Id. at 99.

29 352 Phil. 461 (1998); 359 Phil. 210 (1998); 371 Phil. 672 (1999).

30 *J.* Leonen, Dissenting Opinion, p. 21.

Substantial Issue: PAL's financial losses

There appears to be a question on the sufficiency of PAL's compliance with the substantiation requirements imposed by law for a valid retrenchment. To recall, PAL invoked substantial business losses as the reason behind its decision to downsize. To this end, it presented its petition for suspension of payments, as well as the June 23, 1998 Order of the Securities and Exchange Commission (SEC) approving the said petition for suspension of payments as proof of the same.

I agree with the *ponencia* when he points out that Petitioner's categorical admission of PAL's dire financial condition had discharged the burden to prove financial losses. As has been consistently held by this Court, a judicial admission no longer requires proof. An admission made in a pleading cannot be controverted by the party making such admission, and is conclusive as to such party. As succinctly explained by the Court in *Alfelor v. Halasan*[31]:

> x x x To the Court's mind, this admission constitutes a "deliberate, clear and unequivocal" statement; made as it was in the course of judicial proceedings, such statement qualifies as a judicial admission. A party who judicially admits a fact cannot later challenge that fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.[32] (Underscoring supplied)

The records amply show that Petitioner had categorically admitted PAL's grave financial condition during this time, as follows:

> [A.] At the outset, it must be pointed out that complainant was never opposed to the retrenchment program itself, as it understands respondent PAL's financial troubles. In fact, complainant religiously cooperated with respondents in their quest for a workable solution to the company-threatening problem. x x x[33]
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> [B.] It must be stressed that complainant was never opposed to respondent['s] retrenchment program as it truly understands respondent PAL's financial position. As a matter of fact, when it became apparent that the company was already in the brink of bankruptcy, complainant actively participated in fashioning out some workable solutions to the problem. x x x[34]

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31 520 Phil. 982 (2006).
32 Id. at 990-991.
33 *Rollo*, Vol. I, pp. 113-114.
34 Id. at 164-165.

> [C.] x x x The Philippines likewise incurred immense business misfortune affecting a multitude of industries, including respondent airline. Losses aggravated when concerted activities of the other unions, namely the Airline Pilots Association of the Philippines (ALPAP) and the Philippine Airlines Employees Association (PALEA), were held x x x FASAP did not believe that a strike would be beneficial to both parties and was of the opinion that the same would cause further losses on the part of the respondent airline to the detriment of both parties. x x x[35]
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> [D.] x x x It is worthy to note that complainant is not questioning the reason for adopting retrenchment. Complainant knows the financial woes of respondent airline. x x x[36]
>
> [E.] PAL encountered massive losses. This is beyond question. FASAP, in fact, is not questioning the business reverses PAL met. x x x[37]
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> [F.] In 1997, a severe massive economic crisis hit the whole of Asia and the Pacific region. Philippine businesses incurred immense losses. PAL was not spared from the harsh effects of the crisis as it too fell prey to financial reverses, x x x.[38]

The foregoing express, positive and categorical statements of Petitioner in its pleadings as regards the severe losses incurred by PAL qualify as judicial admissions, which dispense with proof or evidence.

In any event, I submit that PAL has sufficiently shown and established the financial losses that it incurred which resulted in the implementation of the retrenchment program.

I am aware of decisions which state that in cases where retrenchment is premised on substantial business losses, proof of such losses becomes the determining factor in proving the legitimacy of retrenchment;[39] and that the presentation of financial statements audited by independent auditors is required, as they best attest to a company's economic status and stand as the most authentic proof of losses.[40] However, I submit that these financial statements cannot be recognized as the sole proof of financial distress. This has been amply discussed in the case of *Blue Eagle Management, Inc. v. Naval*,[41] citing *Revidad v. National Labor Relations Commission,*[42] where it was declared that "proof of actual financial losses incurred by the company is not a condition *sine qua non* for retrenchment," and retrenchment may be undertaken by the employer to prevent even future losses. Said the Court:

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35 Id. at 176.
36 Id. at 196.
37 Id. at 549
38 Id. at 550.
39 See *Precision Electronics Corporation v. NLRC*, 258-A Phil. 449, 451-452 (1989).
40 See *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, 639 Phil. 1, 12 (2010). See also *Manatad v. Philippine Telegraph and Telephone Corporation,* 571 Phil. 494, 508-509 (2008).
41 785 Phil. 133, 156 (2016).
42 315 Phil. 372, 390 (1995).

> **In its ordinary connotation, the phrase "to prevent losses" means that retrenchment or termination of the services of some employees is authorized to be undertaken by the employer sometime before the anticipated losses are actually sustained or realized. It is not, in other words, the intention of the lawmaker to compel the employer to stay his hand and keep all his employees until after losses shall have in fact materialized.** If such an intent were expressly written into the law, that law may well be vulnerable to constitutional attack as unduly taking property from one man to be given to another.[43] (Emphasis supplied)

Given the foregoing, it would truly be derisive of this Court to maintain the necessity of presenting financial statements showing actual loss prior to a valid exercise of retrenchment.

Inasmuch as financial statements paint a clear picture of a company's finances, other clear indicators of substantial losses — if not more compelling evidence thereof — exist. Verily, **as clearly as financial statements demonstrate financial distress, a company's submission to corporate rehabilitation and receivership equally attests to, if not represents a more tangible manifestation of, financial reverses.**

The Court has, in fact, recognized corporate receivership and rehabilitation as a veritable indicator of substantial business losses that justifies retrenchment of employees. In *Clarion Printing House Inc. v. National Labor Relations Commission*,[44] for instance, the Petitioners therein argued that when a company is under receivership and a receiver is appointed to take control of its management and corporate affairs, one of the evident reasons is to prevent further losses of said company and protect its remaining assets from being dissipated; and that the submission of financial reports/statements prepared by independent auditors had been rendered moot and academic, the company having shut down its operations and having been placed under receivership by the SEC due to its inability to pay or comply with its obligations.[45]

The Court, in deciding the issue of whether undergoing receivership suffices as acceptable proof of financial losses, ruled as follows:

> From the above-quoted provisions of P.D. No. 902-A, as amended, **the appointment of a receiver or management committee by the SEC presupposes a finding that, *inter alia*, a company possesses sufficient property to cover all its debts but "foresees the impossibility of meeting them when they respectively fall due" and "there is imminent danger of dissipation, loss, wastage or destruction of assets of other properties or paralization of business operations."**
>
> **That the SEC,** mandated by law to have regulatory functions over corporations, partnerships or associations, **appointed *an interim* receiver**

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43 *Blue Eagle Management, Inc. v. Naval*, supra note 41, at 156.
44 500 Phil. 61 (2005).
45 Id. at 75-76.

> **for the EYCO Group of Companies on its petition in light of,** as quoted above, **the therein enumerated "factors beyond the control and anticipation of the management" rendering it unable to meet its obligation as they fall due, and thus resulting to "complications and problems . . . to arise that would impair and affect [its] operations..." shows that CLARION, together with the other member-companies of the EYCO Group of Companies, was suffering business reverses justifying, among other things, the retrenchment of its employees.**[46]
> (Emphasis and underscoring supplied)

In finding that receivership suffices as proof of severe financial reverses, it was therefore decided that retrenchment was justified and that there was no illegal dismissal despite Clarion's failure to present the necessary financial statements before the Labor Arbiter.

Given the foregoing, it is therefore clear that proof of losses is not exclusively limited to the presentation of financial statements, as equally compelling evidence such as having undergone rehabilitation is similarly acceptable. In this light, it should be noted that, in the current case, PAL has proffered similar evidence on its behalf, as it has more than once asserted and proved that the SEC has approved its petition for rehabilitation and has in fact appointed a receiver on two occasions by virtue of its financial condition, not to mention that Petitioner has similarly judicially admitted and recognized PAL's financial losses at that time. All these show that PAL had indeed been besieged by and suffered severe financial losses, which justify its resort to drastic cuts in personnel.

In addition, the Court has, in fact, recognized PAL's financial conditions on various occasions, and it has consequently ruled in the latter's favor, as it recognized that PAL was undergoing receivership. Consequently, claims filed against it were either rejected or shelved in view thereof, as in the cases of *Philippine Airlines, Inc. v. Philippine Airlines Employees Association*,[47] *Philippine Airlines, Inc. v. National Labor Relations Commission*,[48] *Philippine Airlines, Inc. v. Court of Appeals*,[49] *Philippine Airlines v. Court of Appeals and Koschinger*,[50] *Philippine Airlines, Inc. v. Sps. Kurangking*,[51] *Garcia v. Philippine Airlines, Inc.*[52] and *Philippine Airlines, Inc. v. Zamora*.[53]

The Court likewise recognized the urgency and gravity of PAL's financial distress in *Rivera v. Espiritu*[54] where it recognized that the carrier was financially beleaguered and faced with bankruptcy, as a result of its

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46 Id. at 79.
47 552 Phil. 118 (2007).
48 648 Phil. 238 (2010).
49 G.R. No. 123238, July 11, 2005 (Unsigned Resolution).
50 596 Phil. 500 (2009).
51 438 Phil. 375 (2002).
52 558 Phil. 328 (2007).
53 543 Phil. 546 (2007).
54 425 Phil. 169 (2002).

pilots' three-week strike and the subsequent four-day employee-wide strike involving 1,899 union members, requiring it to resort to downsizing and to seek rehabilitation.

Premises considered, PAL's substantial business losses therefore stand amply substantiated, despite the failure to timely present its financial statements. Disregarding such facts and blindly insisting on the timely presentation of financial statements would only be a superfluity given the confluence of all the above. This Court should not be so unreasonable as to turn a blind eye to the factual circumstances surrounding the controversy, if only to uphold the "general rule." With all these, PAL's claims of substantial financial losses should be upheld — and PAL's 2nd MR should be granted.

On the basis of the foregoing, I vote to **GRANT** the Motion for Reconsideration of the Resolution of October 2, 2009 and Second Motion for Reconsideration of the Decision of July 22, 2008 filed by respondents Philippine Airlines, Inc. and Patria Chiong. Accordingly, I concur with the *ponencia* in denying the *Motion for Reconsideration (Re: The Honorable Court's Resolution dated March 13, 2012)* filed by the Petitioner Flight Attendants and Stewards Association of the Philippines, setting aside the Decision dated July 22, 2008 and Resolution dated October 2, 2009, and affirming the Decision of the Court of Appeals dated August 23, 2006.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice