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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NAOAKI HIRAKAWA represented
by ERICA M. SHIBAMURA,
Petitioner,

G.R. No. 213230

Present:

-versus-

PERALTA, C.J., Chairperson,
CAGUIOA,
REYES, J., JR.
LAZARO-JAVIER, and
INTING*, JJ.

LOPZCOM REALTY
CORPORATION AND ATTY. GARI
M. TIONGCO,
Respondents.

Promulgated:

DEC 05 2019

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DECISION

LAZARO-JAVIER, J.:

Antecedents

The Proceedings Before the Trial Court

Respondent Lopzcom Realty Corporation is a domestic corporation engaged in realty development while respondent Atty. Gari Tiongco is Lopzcom's President and Chairman. Petitioner Naoaki Hirakawa is a Japanese National represented by his agent Erica Shibamura.¹

* Additional member per Special Order No. 2726.

¹ Rollo, p. 89.

In his Complaint² dated March 22, 2010,³ Hirakawa essentially alleged that on December 28, 1995, Takezo Sakai, acting for and on behalf of the stockholders and members of the Board of Directors of several corporations,⁴ sold to respondent Lopzcom represented by its President and Chairman Tiongco, for One Hundred Million Pesos (₱100,000,000.00) a ninety-two (92) hectare subdivision project known as Windfields Subdivision, in Consolacion, Cebu City. As payment, Tiongco delivered to Sakai nine (9) Westmont Bank postdated personal checks all payable to the latter.⁵

On September 30, 1996, Sakai assigned, transferred and conveyed to Hirakawa, all his rights and interest on the four (4) out of the nine (9) postdated checks, viz:⁶

- i. Check No. 016909 dated Oct. 30, 1996 for ₱5,000,000.00
- ii. Check No. 016910 dated Oct. 30, 1997 for ₱20,000,000.00
- iii. Check No. 016911 dated Oct. 30, 1998 for ₱20,000,000.00
- iv. Check No. 016912 dated Oct. 30 1999 for ₱20,000,000.00⁷

The total amount of the postdated checks assigned to Hirakawa was sixty-five million pesos (₱65,000,000.00). It represented Sakai's share in the sale proceeds of Windfields Subdivision. Lopzcom and Tiongco were informed of the assignment and agreed to be bound by it.⁸

Upon encashment of the first check, Hirakawa requested Lopzcom and Tiongco to replace the remaining postdated checks with new ones reflecting his name as payee. Respondents acceded and replaced the remaining checks with PDCP Development Bank postdated Check Nos. 0050992, 0050993 and 005994 all payable to Hirakawa. The new checks were all drawn against Tiongco's personal account in PDCP.⁹

When PDCP Check No. 0050992 became due on October 30, 1997, Tiongco requested Hirakawa not to deposit the same and asked for additional time within which to pay the obligation. He also offered to pay Hirakawa eighteen percent (18%) interest per annum for the overdue account, which the latter accepted. But PDCP Check Nos. 0050993 and 0050994 were dishonored on October 30, 1998 and October 30, 1999, respectively, because Tiongco's account was already closed.¹⁰

² *Id.* at 182-211.

³ Filed on June 22, 2010.

⁴ Cebu Arabella Builders Corporation, Maruni International Markets, Inc. and Royal Heights Golf Club of Cebu, Inc., and Royal Sports and Cultural Complex, Inc.

⁵ *Rollo*, 185-187.

⁶ *Id.* at 188-189.

⁷ *Id.* at 278.

⁸ *Id.* at 188.

⁹ *Id.* at 189-190.

¹⁰ *Id.* at 190-191.

On February 9, 1999, respondents proposed to assign to Hirakawa their shares of stock in a golf course project which they will develop through a joint venture with Sta. Lucia Realty Development Corporation, as full payment of their ₱40,000,000.00 outstanding obligation. Hirakawa agreed, hence, Lopzcom through Tiongco executed the Deed of Assignment in favor of Hirakawa.¹¹

In 2002, or three years after the execution of the Deed of Assignment, Hirakawa discovered that the golf course was never developed and no certificates of stock of the supposed golf course project were issued in his name. Hirakawa was, therefore, compelled to demand that Tiongco pay their outstanding obligation. The latter instead issued two (2) PNB postdated Check Nos. 0012469 and 0012470 for ₱20,000,000.00 each, payable on October 30, 2004 and October 30, 2005, respectively.¹²

When PNB check No. 0012469 became due on October 30, 2004, Tiongco pleaded for a one-year extension with eighteen percent (18%) interest per annum, to which Hirakawa again acceded. When the one-year extension period expired both checks still remained unfunded.¹³

On March 22, 2010, Hirakawa served respondents a final Notice of Demand for Payment of their outstanding obligation amounting to ₱60,000,000.00.¹⁴ Respondents' total payment for a period of thirteen (13) years or until September 2009 was only ₱28,000,000.00. As of December 2009, their indebtedness amounted to ₱114,027,812.22, inclusive of interest.¹⁵

But despite Hirakawa's final demand, respondents still failed to pay their obligation. On June 22, 2010, Hirakawa sued respondents for Breach of Contract and Attachment before the Regional Trial Court.

On October 1, 2010, the trial court issued an ex-parte writ of preliminary attachment against respondents' properties subject to the posting and approval of bond in the amount of ₱114,027,812.22.¹⁶

On October 11, 2010, respondents filed an Urgent Motion to Quash the writ of preliminary attachment. During the hearing thereof, the Branch Sheriff manifested that he already commenced garnishment proceedings on respondents' bank deposits. Respondents manifested their willingness to post counter-bond without objection from Hirakawa. Under Order dated October 21, 2010, the trial court discharged the Writ of Preliminary Attachment dated October 1, 2010 upon posting of respondents' counter-bond.¹⁷

¹¹ *Id.* at 191-193.

¹² *Id.* at 194-195.

¹³ *Id.* at 195.

¹⁴ *Id.* at 91.

¹⁵ *Id.*

¹⁶ *Id.* at 256-263.

¹⁷ *Id.* at 92.

Respondents then filed an undated Motion to Dismiss¹⁸ the complaint on grounds that not being a party to subject contract, Hirakawa had no cause of action against them; and Hirakawa had no legal capacity to file a suit. Hirakawa filed his comment/opposition to the motion.

The Trial Court's Ruling

By Order¹⁹ dated May 15, 2012, the trial court denied respondents' motion, *viz*:

As aptly argued by the plaintiff, the instant case is not only for breach of contract as the complaint also alleges plaintiff's claim for damages arising from defendants' alleged fraud thru misrepresentations and issuance of worthless checks and other deceits. Anent defendants' claim that plaintiff has no legal capacity to file the instant case, the same is also bereft of merit as juridical capacity is inherent in every natural person. Undeniably, plaintiff is a natural person.

WHEREFORE, the defendants' Motion to Dismiss filed on November 5, 2010 is hereby DENIED for lack of merit.²⁰

Respondents' Motion for Reconsideration was denied under Order²¹ dated August 28, 2012.

On November 5, 2012, respondents went up to seek affirmative relief from the Court of Appeals via a petition for certiorari under Rule 65 of the Revised Rules of Court.²²

Meanwhile, respondents filed before the trial court their Answer Ad Cautelam²³ dated May 29, 2013. They asserted that their obligation had been extinguished by payment and novation. Hirakawa admitted receipt of their ₱20,000,000.00 payments. They had also fully paid the balance of ₱40,000,000.00 through novation wherein they assigned shares of stock in their golf course project to Hirakawa. It was not true that the construction of the golf course project had not commenced. Hirakawa had no cause of action against them because a) Hirakawa was not a party in the contract between Lopzcom and Takezo Sakai; b) Hirakawa was not an assignee of the contract; c) Hirakawa was not authorized by the former owner of Windfields Subdivision to file the complaint; and d) Hirakawa being a foreign national had no personality to sue.²⁴

¹⁸ *Id.* at 266-273.

¹⁹ *Id.* at 301.

²⁰ *Id.*

²¹ *Id.* at 334.

²² *Id.* at 335-376.

²³ *Id.* at 478-507.

²⁴ *Id.*

The Court of Appeals' Ruling

By Decision²⁵ dated November 19, 2013, the Court of Appeals reversed. It noted that Hirakawa was not a party to the contract of sale and had no cause of action against respondents, thus:

WHEREFORE, the petition is GRANTED. The assailed Orders, dated May 15, 2012 and August 28, 2012 of the Public Respondent Regional Trial Court in Civil Case No. 72547 denying petitioners' motion to dismiss are hereby REVERSED AND SET ASIDE, in that the complaint for breach of contract is dismissed without prejudice to the filing of an appropriate action with the proper court.²⁶

Both parties sought a reconsideration.

By Resolution dated July 8, 2014²⁷ the Court of Appeals denied the parties' respective motions for reconsideration, viz:

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Clearly, Petitioners' assailed portion of Our decision, referring to Our statement that Private Respondent can file a new separate action for collection of sum of money against the petitioners or bring a criminal case for bouncing checks xxx, cannot be subjected to a motion for reconsideration as the same was merely a collateral opinion of the Court and not material to the resolution of the case, hence, not binding upon the parties.²⁸

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WHEREFORE, Private Respondent's motion for reconsideration, motion to set the case for oral argument, and Petitioners' partial motion for reconsideration are hereby DENIED for lack of merit. Our Decision, dated November 19, 2013 stands.²⁹

The Present Petition

Hirakawa now urges the Court to nullify the assailed dispositions, on ground of lack or excess of jurisdiction. He asserts that: (a) the purpose of Rule 65 is to correct errors of jurisdiction and not errors of judgment; (b) jurisdiction is determined from the allegations of the complaint not from its

²⁵ *Rollo*, pp. 88-99. Penned by Associate Justice Noel G. Tijam (now a retired member of this Court), with Associate Justices Romeo F. Barza and Ramon A. Cruz, concurring.

²⁶ *Rollo*, p. 99.

²⁷ *Id.* at 156-162.

²⁸ *Id.* at 159.

²⁹ *Id.* at 161.

denomination; c) the cause of action is determined from the allegation in the complaint.

On the other hand, respondents riposte that the petition should be dismissed, because Hirakawa has no cause of action against them. He was not allegedly a party in the Deed of Sale dated December 28, 1995, hence, he cannot sue for breach of contract based thereon.

Issue

Did the Court of Appeals gravely err in dismissing the complaint below due to Hirakawa's lack of cause of action against respondents?

Ruling

At the outset, the Court agrees with the Court of Appeals that Hirakawa is not a party in the Deed of Sale dated December 28, 1995. Under the civil law principle of relativity of contracts, contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof,³⁰ viz:

Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law xxx


For clarification, what Sakai assigned to Hirakawa on September 20, 1996, were his rights and interests over the four (4) PDCs which respondents issued him (Sakai), and not his interest in the Deed of Sale dated November 28, 1995 involving Windfields Subdivision. Therefore, he cannot sue for breach of contract insofar as such deed of sale is concern.

This brings Us to the question: May the complaint be dismissed outright on this ground alone?

On this score, We refer to the succeeding discussion.

The body rather than the title of the complaint determines the nature of the action.

³⁰ *Metropolitan Bank and Trust Co. v. Chiok*, 748 Phil. 392, 428 (2014).



Hirakawa's complaint is denominated as breach of contract and attachment. As stated, respondents moved to dismiss the complaint on ground of lack of cause of action.

On one hand, the trial court denied the motion because the complaint was in fact, not solely for breach of contract but also for damages arising from respondents' alleged fraud, issuance of worthless checks and other deceits.

On the other hand, the Court of Appeals reversed and dismissed the complaint in its entirety.

The complaint alleges:

9. On October 30, 1996 Plaintiff Naoaki Hirakawa, after due endorsement by the payees, deposited and collected WESTMONT BANK Check No. 016909 (Annex "I") for five million pesos (Php5,000,000.00) and thereafter requested defendant Atty. Gari Tiongco to change the payees of the Westmont Bank Check Nos. 016910 (Annex "J"); 016911 (Annex "K"); and 016912 (Annex "L") pursuant to the Deed of Assignment. Defendant Atty. Gari Tiongco knowing fully of the said assignment, agreed to Plaintiff's request and replaced the said checks and issued instead the following checks made payable to Plaintiff Naoaki Hirakawa and drawn on PDCP Development Bank as follows:³¹

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9.1 All the said Checks were drawn against the personal Account of Defendant ATTY. GARI TIONGCO at PDCP Development Bank-xxx³²

10. On October 30, 1997 when defendants' obligation became due, defendant Atty. Tiongco negotiated with Plaintiff not to deposit PDCP Check No. 0050992 for Php20,000,000.00 (Annex "N") and sought for more time within which to pay the obligation. Defendant Atty. Tiongco offered to pay Plaintiff an interest of Eighteen percent (18%) on the overdue account to which request of extension of time and offer of interest payment Plaintiff agreed to.³³

10.1 When PDCP Check No. 0050993 became due on October 30, 1998, it was deposited by Plaintiff but the said check was returned by the drawee bank for the reason "ACCOUNT CLOSED" [xxx]

11. Sometime on February 9, 1999, Defendant Lopzcom Realty Corporation represented by Defendant Atty. Gari M. Tiongco, as Chairman of the Board, inveigled Plaintiff to forego collection on its obligation for the PDCP Checks due in 1998 and 1999 in the amount of Forty Million Pesos (P40,000,000.00). Defendants executed a Deed of Assignment in favor of Plaintiff. The Pertinent provisions of the said agreement states:³⁴

³¹ *Rollo*, p. 189.

³² *Id.* at 190

³³ *Id.*

³⁴ *Id.* at 190-191.

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WHEREAS, the ASSIGNOR has an existing obligation with the ASSIGNEE IN THE TOTAL AMOUNT OF FORTY MILLION PESOS (P40,000,000.00) Philippine Currency, in connection with the purchase of the subdivision then known as the Windfields Subdivision in Tolo-tolo, Consolacion, Cebu.

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WHEREAS, the ASSIGNOR has offered to assign part of his golf shares as payment of their obligation to the ASSIGNEE with an initial value of P350,000.00 per share; and that the total shares the Assignor is willing to assign is 115 shares;

WHEREAS, the ASSIGNEE is willing to accept the assignment as full payment of the forty million obligation of the ASSIGNOR;³⁵

The complaint, thus, seeks the following relief:

WHEREFORE, it is respectfully prayed that pending trial on the merits of this case, a Writ of Preliminary Attachment be issued against defendants either ex-parte or upon motion with notice and hearing by the court and must require the sheriff of the court to attach so much of the property in the Philippines of the defendants not exempt from execution as [may] be sufficient to satisfy the applicant's demand including but not limited to Forty (40%) shares of stock of LOPZCOM REALTY CORPORATION pursuant to the stipulation in the DEED OF SALE (Annex "C") and/or such other amount or properties of Defendants as the Honorable Court may deem, sufficient and necessary to serve as security for the satisfaction of any judgment that may be recovered herein unless such party makes deposit or gives a bond as hereinafter provided in an amount equal to that fixed in the order, which may be the amount sufficient to satisfy the applicant, exclusive of costs; And that after due hearing on the principal cause of action, judgment be rendered and issued ordering:

1. Defendant Corporation LOPZCOM REALTY CORPORATION and defendant ATTY. GARI TIONGCO jointly and severally liable for Breach of Contract and thus pay Plaintiff, in cash, the sum of ONE HUNDRED FOURTEEN MILLION TWENTY SEVEN THOUSAND EIGHT HUNDRED TWELVE PESOS AND TWENTY TWO CENTAVOS (P114,027,812.22) inclusive of interest computed at the legal rate of Twelve (12%) Percent per annum from the stipulated dates of payment (i.e. October 1997, October 30, 1998 and October 30, 1999 respectively) up to December 2009 plus any other amount or interest that may be due to plaintiff up to the time of final judgment;
2. Defendant LOPZCOM REALTY CORPORATION and Defendant ATTY. GARI TIONGCO jointly and severally liable for wanton disregard for their contractual obligation and thus to pay Plaintiff damages as follows: MORAL DAMAGES for the mental and physical anguish caused to Plaintiff in the amount of Five Hundred Thousand Pesos (P500,000.00); ACTUAL DAMAGES for the

³⁵ *Id.* at 191-192.

unnecessary travel expenses, actual losses as well as unrealized profits of Plaintiff in the amount of Five Hundred Thousand Pesos (P500,000); And, to set as a deterrent to the serious [wrong doing] of, among others-the repeated issuance of unfunded checks, the amount of FIVE HUNDRED THOUSAND PESOS (P500,000.00) as EXEMPLARY DAMAGES;

3. Defendants jointly and severally liable to Plaintiff for Costs of Litigation and Attorney's [Fees] amounting to THREE MILLION PESOS (P3,000,000.00) and such other reliefs as the court may deem just and equitable under the circumstances.³⁶

Based on the allegations of the complaint, the cause or causes of action ultimately seeks payment of respondents' indebtedness of P114,027,812.22, and the corresponding claim for damages allegedly suffered by Hirakawa by reason of respondents' failure or refusal to settle their obligation.

Indeed, allegations in the body of the pleading or the complaint, and not its title or nomenclature, determine the nature of an action,³⁷ irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted.³⁸ Here, although the complaint was erroneously denominated as breach of contract, the allegations and the relief sought are plainly for collection of sum of money.

In *Sps. Pajares v. Remarkable Laundry and Dry Cleaning*, the Court explained the cause of actions which may arise from a breach of contract, viz:

Breach of contract may give rise to an action for specific performance or rescission of contract. It may also be the cause of action in a complaint for damages filed pursuant to Art. 1170 of the Civil Code. Specific performance is "the remedy of requiring exact performance of a contract in the specific form in which it was made, or according to the precise terms agreed upon. It is the actual accomplishment of a contract by a party bound to fulfill it." Rescission of contract under Article 1191 of the Civil Code, on the other hand, is a remedy available to the obligee when the obligor cannot comply with what is incumbent upon him. It is predicated on a breach of faith by the other party who violates the reciprocity between them. Rescission may also refer to a remedy granted by law to the contracting parties and sometimes even to third persons in order to secure reparation of damages caused them by a valid contract; by means of restoration of things to their condition in which they were prior to the celebration of the contract.³⁹

To repeat, what Hirakawa is simply asking for is the payment of the value of the checks assigned to him, its accrued interests, and the damages

³⁶ *Id.* at 209-210.

³⁷ *Fong v. Dueñas*, 759 Phil. 373, 383 (2015).

³⁸ *Anama v. Citibank, N.A. (formerly First National City Bank)*, G.R. No. 192048, December 13, 2017, 848 SCRA 459, 469; *City of Dumaguete v. Philippine Ports Authority*, 671 Phil. 610, 629 (2011).

³⁹ *Sps. Pajares v. Remarkable Laundry and Dry Cleaning*, 806 Phil. 39, 41-42 (2017).

he suffered by reason of respondents' failure to fund the checks assigned to him. He does not ask for rescission of contract or restoration of things or the parties' respective situation. It does not at all seek that Windfields Subdivision which is the subject of the Deed of Sale dated December 28, 1995 be delivered to him.

In sum, the case is a simple collection suit.

In *Bank Of Commerce v. Hon. Estela Perlas-Bernabe*⁴⁰ in her capacity as Presiding Judge of the Regional Trial of Makati City, Branch 142; *Bancapital Development Corporation; and Exchange Capital Corporation*,⁴¹ the Court ruled that the nature of a pleading is to be determined by the averments in it and not by its title. Hence, while petitioners Motion (to Recall the April 19, 2000 Order) was so denominated, it is not difficult to see that the remedy it was seeking was actually a reconsideration of the dismissal of the Receivership Case.

In *Philimare, Inc./Marlow Navigation Co., Ltd. V. Benedicto F. Suganob*,⁴² the Court treated the petition under Rule 43 as one filed under Rule 65. Rules of procedure may be relaxed to relieve a party of an injustice not commensurate with the degree of noncompliance with the process required. Moreover, averments in the pleadings, not the title, are controlling in determining the nature of the proceeding. Suganob categorized his petition before the Court of Appeals as a petition for review on certiorari (under Rule 43 of the Revised Rules of Civil Procedure). The contents of the petition, however, clearly revealed that the petition complied with the requirements of a petition for certiorari, albeit wrongly captioned as one for a petition for review under Rule 43. We emphasized that courts look beyond the form and consider substance as circumstances warrant. Thus, we ruled in that case that the Court of Appeals correctly treated Suganob's petition under Rule 43 as one being filed under Rule 65.

In *Fong v. Dueñas*,⁴³ the Court treated petitioner's complaint for sum of money and damages as one for rescission. A well-settled rule in procedural law is that the allegations in the body of the pleading or the complaint, and not its title, determine the nature of an action. An examination of Fong's complaint shows that although it was labeled as an action for a sum of money and damages, it was actually a complaint for rescission.

On the strength of *Bank of Commerce, Philimare, Inc./Marlow Navigation Co., Ltd., and Fong*, among others, the Court of Appeals should

⁴⁰ A member of this Court.

⁴¹ 648 Phil. 326, 338 (2010).

⁴² 579 Phil. 706, 712 (2008).

⁴³ 759 Phil. 373, 383 (2015).

not have decreed the dismissal of the case below but should have allowed it to proceed as one for collection of sum of money and damages.

Rules of Procedure are intended to promote and not defeat substantial justice.

Time and again, the Court has relaxed the observance of procedural rules to advance substantial justice to relieve a party of an injustice not commensurate with the degree of non-compliance with the process required. Rules of procedure should not be applied in a very technical sense when it defeats the purpose for which it had been enacted, *i.e.*, to ensure the orderly, just and speedy dispensation of cases.⁴⁴

Here, respondents do not deny the following facts: a) on September 30, 1996, Sakai assigned to Hiramawa four (4) out of the nine (9) checks which respondents issued him as consideration for respondents' purchase of the Windfields Subdivision;⁴⁵ b) as soon as Hiramawa had encashed the first check, respondents on Hiramawa's request, replaced the remaining checks with new ones, this time in Hiramawa's name as the payee;⁴⁶ c) after the lapse of almost three (3) years from September 30, 1996, respondents still owed Hiramawa a balance of ₱40,000,000.00; d) on February 9, 1999, respondents agreed to assign their shares of stock in a golf course which it will develop through a joint venture with Sta. Lucia Realty Development Corporation as full payment of their remaining obligation to Hiramawa in the amount of ₱40,000,000.00;⁴⁷ and e) no shares of stock, however, were actually issued to Hiramawa.

Indubitably, Hiramawa had waited fourteen (14) long years as of filing of the complaint in 2010, for Lopzcom and Tiongco's full payment of their obligation. But such payment seems to be not forthcoming. For while purporting to have assigned their shares of stock in the golf course project to Hiramawa as settlement of the remaining ₱40,000,000.00 indebtedness, respondents have not, to this date, delivered these shares of stock to Hiramawa.

Dismissing the complaint now after more than a decade of waiting for full payment would certainly be unjust for Hiramawa. The Court of Appeals' suggestion for Hiramawa to file a separate action for collection of sum of money, while in fact is already incorporated in the complaint, adds insult to injury. It certainly will not alleviate Hiramawa's situation here. To repeat,

⁴⁴ *Trajano v. Uniwide Sales Warehouse Club*, G.R. No. 190253, June 11, 2014, 726 SCRA 298, 308-309.

⁴⁵ *Rollo*, p. 481.

⁴⁶ *Id.*

⁴⁷ *Id.* at 482; 491-492.

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rules of procedure are intended to promote justice and efficacy in the judicial system and not as road blocks.

The case should, therefore, be remanded to the trial court for determination of the merits of Hirakawa's claim for sum of money with damages.

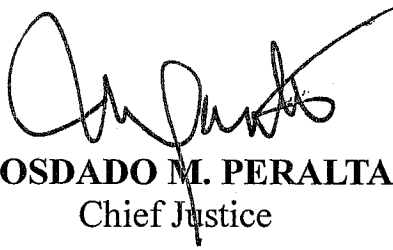
ACCORDINGLY, the Court **GRANTS** the petition, and **REVERSES** and **SET ASIDE** the Decision dated November 19, 2013 and Resolution dated July 8, 2014 of the Court of Appeals, in CA-G.R. SP No. 127233. The case is **REMANDED** to Regional Trial Court-Branch 154, Pasig City for resolution of the case on the merits with utmost dispatch.

SO ORDERED.



AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



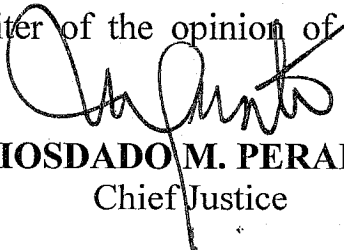
JOSE C. REYES, JR.
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.



DIOSDADO M. PERALTA
Chief Justice