

Republic of the Philippines
 Supreme Court
 Manila
 EN BANC

SUPREME COURT OF THE PHILIPPINES
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RHODORA J. CADIAO,
 Petitioner,

G.R. No. 251995

Present:

PERALTA, *C.J.*,
Chairperson,
 PERLAS-BERNABE,
 LEONEN,*
 CAGUIOA,
 GESMUNDO,
 HERNANDO,
 CARANDANG,
 LAZARO-JAVIER,
 INTING,
 ZALAMEDA,
 M. LOPEZ,
 DELOS SANTOS,
 GAERLAN,
 ROSARIO, and
 J. LOPEZ, *JJ.*

- versus -

COMMISSION ON AUDIT,
 Respondent.

Promulgated:

January 26, 2021

Done - Li. A. Lopez - Gorkel

X-----X

DECISION

CARANDANG, J.:

This Petition for *Certiorari*¹ seeks to nullify the Decision² dated March 16, 2017 and the Resolution³ dated January 6, 2020 of the Commission on Audit (respondent) in Decision No. 2017-066 and Decision No. 2020-012, respectively, finding Rhodora J. Cadiao (petitioner), then Vice-Governor of Antique, liable for the Notice of Disallowance (ND) No.

* On official business.
 1 Rollo, pp. 3-18.
 2 Id. at 22-27.
 3 Id. at 28-30.

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2011-0004-101(08)⁴ dated June 8, 2011 in the amount of ₱2,950,000.00 representing the grant of financial assistance to the *Liga ng mga Barangay*, Antique Chapter, intended for the payment of insurance premiums.

The records show that on July 30, 2008, then Antique Governor Salvacion Perez approved *Sangguniang Panlalawigan* (SP) Resolution No. 163A-2008⁵ dated July 24, 2008, adopting Appropriations Ordinance No. 2008-05 relative to the Supplemental Budget No. 3 General Fund for fiscal year 2008 of the province with appropriations amounting to ₱44,049,802.00. These appropriations included the grant of financial assistance to the *Liga ng mga Barangay* in the amount of ₱2,950,000.00 chargeable against the 20% Development Fund for Fiscal Year (FY) 2008.⁶

On post audit, the Audit Team Leader (ATL) and the Supervising Auditor (SA) issued ND No. 2011-0004-101(08)⁷ disallowing the payment of the insurance premiums of the *Punong Barangays* in the amount of ₱2,950,000.00, citing the following reasons:

- a) the insurance coverage of the 590 *Punong Barangays* is already provided by the Government Service Insurance System pursuant to Section 522⁸ of Republic Act No. (R.A.) 7160, otherwise known as the “Local Government Code of 1991.” Moreso, the funds are provided every year in the General Appropriations Act as mandated by R.A. 6942.⁹ Therefore, the financial assistance to the *Liga ng mga Barangay* is irregular and/or illegal because said disbursement is for the same purpose of paying the insurance premiums of the 590 *Punong Barangays* which may be viewed as additional allowance and compensation;
- b) the said financial assistance to the *Liga ng mga Barangay*, which is intended for the payment of insurance premiums, is not among the enumerated project which can be charged to the 20% development fund as per DILG-DBM Joint Memorandum Circular No. 1, s. 2005;¹⁰ and
- c) Section 468 of R.A. 7160 has no mention that the SP has the power or the authority to provide group and additional insurance coverage to *barangay* officials, thus, the financial assistance

⁴ Id. at 38-41.

⁵ Id. at 32-37.

⁶ Id. at 33-35.

⁷ Id. at 38-41.

⁸ Section 522. Insurance Coverage. – The Government Service Insurance System (GSIS) shall establish and administer an appropriate system under which the punong barangay, the members of the sangguniang barangay, the barangay secretary, the barangay treasurer, and the members of the barangay tanod shall enjoy insurance coverage as provided in this Code and other pertinent laws. For this purpose, the GSIS is hereby directed to undertake an actuarial study, issue rules and regulations, determine the premiums payable, and recommend to Congress the amount of appropriations needed to support the system. The amount needed for the implementation of the said insurance shall be included in the annual General Appropriations Act.

⁹ An Act Increasing the Insurance Benefits of Local Government Officials and Providing Funds Therefor.

¹⁰ Guidelines on the Appropriation and Utilization of the 20% of the Annual Internal Revenue Allotment for Development Projects.

provided under the subject resolution has no legal basis.¹¹

The persons named liable in the disallowance with their respective participations were as follows:

PERSONS LIABLE	POSITION/DESIGNATION	NATURE OF PARTICIPATION IN THE TRANSACTION
Salvacion Perez	Provincial Governor	<ul style="list-style-type: none"> • Certified in the OBR that charges to appropriation/allotment are necessary, lawful and under her direct supervision and that supporting documents are valid and proper. • Approved payment in the disbursement voucher • Approved SP Resolution No. 163-08 dated July 24, 2008
Rhodora Cadio	Vice-Governor/Presiding officer	Attested/approved SP Resolution No. 163-08 to adopt Appropriation Ordinance No. 2008-05 appropriating funds under Supplemental Budget No. 3 General Fund FY 2008
Benjamin Juanitas	Board Member, Majority Floor Leader	Approved SP Resolution No. 163-08 to adopt Appropriation Ordinance No. 2008-05 appropriating funds under Supplemental Budget No. 3 General Fund FY 2008
Vincent Piccio III	Senior Board Member	
Calixto Zaldivar III	Board Member, Asst. Majority Floor Leader	
Rosie Dimamay	SP Members	
Dante Beriong		
Errol Santillan		
Fernando Corvera		
J. Tobias Javier		
Alfonso Combong, Jr.		
Edgar Denosta	<i>Ex-officio</i> Member/PCL President Antique Chapter	
Carlos Palacios	<i>Ex-Officio</i> Member/President <i>Liga ng mga Barangay</i> /contracting party/Representative <i>Liga ng mga Barangay</i>	
Kenny Olandres	<i>Ex-officio</i> Member/SK Federation President	

¹¹ Rollo, pp. 38-39.

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Vicente Maguad	Supervising Administrative Officer/OIC Provincial Accountant	Certified that allotment is obligated for the purpose and supporting documents are complete
Pacifico Galindo Jr.	Provincial Budget Officer	Certified existence of available appropriation
Oscar Maranon	OIC Provincial Treasurer	Certified availability of funds
Juliana Cepe	Provincial Planning Development Coordinator	Reviewed the proposed expenditure and work and financial plan
Zoilo Bernarndo Tubianos	Provincial Administrator	Recommended the approval of the propose expenditure and quarterly work and financial plan ¹²

Thereafter, SP Members Javier, Dimamay, and Denosta (appellants) filed an appeal before the Commission on Audit Regional Office (COA RO), questioning their inclusion as one of the persons liable for the transaction and praying that they should be excluded from among the persons liable for the disallowance arguing that: (a) they did not vote for the approval of the subject resolution; (b) the approved Minutes would show that Javier and Denosta registered their respective abstentions during the voting while Dimamay had not voted for being out of the session hall; and (c) the Minutes was not seconded in masse and in fact there was an objection from SP Member Piccio.¹³

In their answer, the ATL and the SA recommended that Javier, Dimamay, and Denosta be excluded from among the persons named liable for the disallowance.¹⁴

Ruling of the Commission on Audit Regional Office

The COA RO rendered its Decision¹⁵ dated February 24, 2015, granting the appeal and thereby excluding Javier, Dimamay, Denosta, as well as Piccio III, from liability.¹⁶

At the outset, the COA RO said that in order to resolve the case, there must first be a determination of appellants' role in the approval of the subject resolution covering the budget for the insurance premium of the 590 *Punong Barangays*. Section 16.1 of COA Circular No. 2009-006¹⁷ provides that:

16.1. The liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of disallowance/charge; (b)

¹² Id. at 39-40.

¹³ Id. at 44-45.

¹⁴ Id. at 45.

¹⁵ Id. at 42-47.

¹⁶ Id. at 42-47.

¹⁷ Prescribing the use of the Rules and Regulations on Settlement of Accounts.

the duties and responsibilities of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government.

Pursuant to this, the COA RO held that the acts of Javier, Denosta, and Piccio, were reflected in the following excerpt of the Minutes¹⁸ of the 24th regular session of the Provincial Board of Antique held on July 24, 2008:

Members Combong this time said that since there is no serious hindrance to the passage of Supplemental Budget No. 3 he moves for its approval duly seconded by Member Beriong and objected by Member Piccio. And since there was an objection the Chair ruled for the division of the house. With six (6) members voting in favor in the person of members Juanitas, Beriong, Corvera, Combong, Olandres and Zaldivar with one (1) against in the person of Member Piccio with two (2) abstentions in the person of Members Javier and Denosta the motion was carried.¹⁹

The COA RO held that the Minutes was clear that Javier and Denosta abstained from voting. There were 12 board members present, and only nine registered their votes with six in favor of the approval of the resolution. The COA RO noted the fact that Dimamay, including Santillan and Palacios failed to cast their vote because they were out of the session hall when the subject resolution was put into a vote. The COA RO also noted Dimamay's active participation during the session questioning the aid to ABC League of Antique which is the subject of the ND.²⁰

The COA RO further said that the auditors committed a reversible error when they held Piccio as among the persons liable for approving the subject resolution since it was very clear that Piccio voted against its adoption. Thus, even though Piccio did not file an appeal or a motion for exclusion from liability, the COA RO deemed it proper to exclude him among the persons liable in the ND.²¹

Since the COA RO's decision resulted to a modification of the ND issued by excluding the appellants as persons liable, the decision is not yet final and subject to automatic review pursuant to Section 7²² Rule V of the 2009 Revised Rules of Procedure of the COA.²³

¹⁸ *Rollo*, pp. 59-72.

¹⁹ *Id.* at 46.

²⁰ *Id.*

²¹ *Id.*

²² Section 7. Power of Director on Appeal. – The Director may affirm, reverse, modify or alter the decision of the Auditor. If the Director reverses, modifies or alters the decision of the Auditor, the case shall be elevated directly to the Commission Proper for automatic review of the Directors' decision. The dispositive portion of the Director's decision shall categorically state that the decision is not final and is subject to automatic review by the CP.

²³ *Rollo*, p. 46.

Ruling of the Commission on Audit

In its Decision²⁴ dated March 16, 2017, respondent affirmed the Decision of the COA RO.

Thereafter, petitioner filed a Motion for Reconsideration²⁵ dated April 6, 2017 arguing that: (1) she had no evident participation in the approval of the subject resolution; and (2) her participation was only to the extent of a presiding officer.²⁶

In a Resolution²⁷ dated January 6, 2020, respondent denied the Motion. Respondent noted the fact that petitioner did not file an appeal from the subject ND and that she was not among the appellants of the decision that she wanted the commission to reconsider. Thus, pursuant to Section 17.1²⁸ of the 2009 Rules and Regulations on the Settlement of Accounts,²⁹ the subject ND as to petitioner had long been final and executory six months after her receipt thereof on August 8, 2011.³⁰

Respondent further said, that even if the technicalities were set aside, the motion would still be denied because the Minutes of the 24th regular session showed that petitioner actively participated, as the presiding officer, in the approval of the subject resolution. Having signed the same, petitioner attested to the regularity of the transaction.³¹

Petitioner's Arguments

Aggrieved, petitioner filed the instant petition arguing that she should not be made liable for the subject ND because her participation as then Vice-Governor in the SP of Antique was limited only to her being its presiding officer when the subject resolution was passed. She maintains that she did not vote for nor against the passage of the subject resolution and merely attested to the same.³²

Respondent's Arguments

In its Comment,³³ the Office of the Solicitor General, on behalf of respondent, argues that petitioner failed to interpose a timely appeal before the COA RO within the reglementary period of six months from her receipt

²⁴ Supra note 2.

²⁵ *Rollo*, pp. 48-56.

²⁶ *Id.* at 49.

²⁷ Supra note 3.

²⁸ Section 17.1 Any person aggrieved by a disallowance or charge may within six (6) months from receipt of the notice, appeal in writing as prescribed in these Rules. A disallowance or charge not appealed within the period prescribed shall become final and executory.

²⁹ As prescribed in COA Circular No. 2009-006 dated September 15, 2009.

³⁰ *Rollo*, p. 29.

³¹ *Id.*

³² *Id.* at 11-15.

³³ *Id.* at 85-98.

of the ND on August 11, 2011, thereby making her liability final by the lapse of the six-month period.³⁴

Respondent said that petitioner could not benefit from the appeal taken by appellants because the circumstances in which the COA RO held her accountable are personal and distinct to her.³⁵

While it is true that petitioner did not vote and only attested to the passage of the resolution, the respondent held that petitioner's remarks would show that she actively participated and supported the granting of financial assistance to the *Liga ng mga Barangay*:

Before the Chair would recognize Member Corvera and his own concerns, the Chair said that it is just excited and elated regarding the Aid to ABC League of Antique. [She] asked whether it is a new project or a new scheme that the provincial government has given insurance to all Punong Barangays in the Province of Antique.

x x x x

At this point the Chair commended Director Maza for lobbying it to the Governor for the Chair itself heard Director Maza asking the Governor and explaining and the Governor deemed it necessary for the Punong Barangays hence it was included in the supplemental Budget.³⁶

According to respondent, they plainly considered petitioner's authority and position in determining the extent of her participation and liability. As the presiding officer, petitioner's statements before the SP bore great weight in influencing the casting of the votes, hence, the above statements show that petitioner actively participated in the approval of the said resolution.³⁷

Issue

The main issue in this case is whether respondent acted with grave abuse of discretion in including petitioner among the persons named liable for reimbursement of the disallowed amount under the subject ND.

Ruling of the Court

The petition is meritorious.

To begin with, petitioner's appeal to the respondent was timely filed. In the case of *Liwanag v. Commission on Audit*,³⁸ the Court held that:

³⁴ Id. at 91.

³⁵ Id.

³⁶ Id. at 93-94.

³⁷ Id. at 94.

³⁸ G.R. No. 218241, August 6, 2019.

The respondent insists that the petitioner did not file the petition for review with the COA Proper within the 6-month reglementary period provided under Section 3 Rule VII of the 2009 RRPC. On the other hand, the petitioner counters that his appeal was timely because the disallowances were the proper subject of an automatic review in view of the increase of the disallowed amounts from P14,556,195.00 to P26,462,024.00.

We sustain the petitioner.

The assailed NDs originally totaled P14,556,195.00. However, the Regional Director, in dismissing the appeal, concluded that the decision was not yet final but still subject to the "automatic review by the Commission Proper pursuant to Section 7, Rule V of the 2009 Revised Rules of Procedure of the Commission on Audit."

x x x x

If it was subject to the automatic review by the COA Proper, the decision approving the disallowances did not attain finality. On that basis, the motion for reconsideration filed by the petitioner was superfluous and unnecessary.³⁹ (Citations omitted)

Similarly, in this case, the Court observed the fact that the ND was the proper subject of an automatic review in view of the exclusion of appellants as persons liable which resulted to a modification of the ND. Thus, the Decision⁴⁰ dated February 24, 2015 of the COA RO clearly stated that the decision was not yet final but still subject to "automatic review pursuant to Section 7, Rule V of the 2009 Revised Rules of Procedure of the Commission on Audit."⁴¹ Since the decision of the COA RO was still subject to the automatic review by the respondent, the decision approving the ND did not yet attain finality.

Moreover, the antecedent facts that gave rise to the disallowed transaction under the subject ND is not disputed. The Court is not called upon to inquire into the nature and propriety of the disallowance issued by respondent's Auditors. What is at issue here is petitioner's participation in the passage of SP Resolution 163A-2008. Hence, the Court is asked to determine whether the vice-governor, as the presiding officer of the SP, should be included in the persons held liable for the subject ND.

Here, petitioner, then Vice-Governor of Antique, was the presiding officer of the SP for the years 2007 to 2010. Following the SP's casting of votes for the passage of the resolution granting financial assistance to the *Liga ng mga Barangay* in the form of payment of insurance premiums of the

³⁹ Id.

⁴⁰ Supra note 15.

⁴¹ Supra note 15 at 47.

Punong Barangays, petitioner attested the passage of the said resolution by affixing her signature thereto.

Under Section 49 of RA 7160, the vice-governor, as presiding officer, is a member of the SP and is mandated to vote only to break a tie, thus:

Section 49. Presiding Officer. (a) The vice-governor shall be the presiding officer of the sangguniang panlalawigan; the city vice-mayor, of the sangguniang panlungsod; the municipal vice-mayor, of the sangguniang bayan; and the punong barangay, of the sangguniang barangay. The presiding officer shall vote only to break a tie.

In the case of *Javier v. Cadio*,⁴² the Court ruled that the vice-governor, as the presiding officer, shall be considered a part of the SP for purposes of ascertaining if a quorum exists. In determining the number which constitutes as the majority vote, the vice-governor is excluded. The vice-governor's right to vote is merely contingent and arises only when there is a tie to break.⁴³

The Vice Governor, however, does not represent any particular group. As a Presiding Officer, his or her mandate is to ensure that the SP effectively conducts its business for the general welfare of the entire province. Logically then, the Vice Governor should be the *embodiment of impartiality*. As the Presiding Officer of the SP, he or she is without liberty to readily take sides, or to cast a vote to every question put upon the body. It follows then that the law cannot reasonably require that the Vice Governor be included in the determination of the required number of votes necessary to resolve a matter every time the SP votes on an issue. It bears stressing though that while the Vice Governor does not enjoy full rights of participation in the floors of the SP, as the holder of the body politic's general mandate, the power to render conclusion to an issue when there is a deadlock, pertains to him or her. Thus, Section 49 of the LGC is explicit that "the presiding officer shall vote only to break a tie."⁴⁴

In this case, however, there was no tie to break. The subject resolution received the required number of affirmative votes. Consequently, petitioner had no hand and cannot therefore be held liable for passage of the resolution.

The Minutes⁴⁵ of the SP was clear as to the presence of a quorum when the resolution was passed. It showed that 12 members plus the vice-governor attended the session. It also indicated how many members were actually present when the body voted on the motions leading to the adoption of the subject resolution. The Minutes revealed that there were nine

⁴² 792 Phil. 294 (2016).

⁴³ Id. at 306.

⁴⁴ Id. at 308-309.

⁴⁵ *Rollo*, pp. 59-72.

registered votes, with six members voting for the approval of the subject resolution, namely: Juanitas, Beriong, Corvera, Combong, Olandres, and Zaldivar. There was one who voted against its adoption in the person of Piccio, with two abstentions in the person of Javier and Denosta. There were three members, namely: Dimamay, Santillan and Palacios, who failed to cast their vote because they were out of the session hall when the resolution was put into a vote.⁴⁶

The core of respondent's argument focuses only on the assumption that since petitioner attested to the passage of the resolution, then she should be held liable. Respondent plainly concluded that as the presiding officer, the statements that petitioner made during the session might prejudice the casting of the votes.⁴⁷

In this regard, COA Circular No. 2009-00611 or the Rules and Regulations for the Settlement of Accounts, Section 16.1 provides that:

Section 16.1 The Liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus: x x x.

The fact that petitioner is the presiding officer of the SP and the Vice-Governor of Antique does not automatically include her among the persons liable for the disallowance. Petitioner could not be held liable simply because she was the final approving authority for the passage of the subject resolution. The actions taken by petitioner involved the very functions she had to discharge in the performance of her official duties as the presiding officer of the SP. She could not, therefore, be held civilly liable for such acts unless there is a clear showing of bad faith, malice, or gross negligence.

The mere signature of petitioner in the passage of the resolution without anything more could not be considered as a presumption of liability. It should be recalled that mere signature does not result to a liability of the official involved without any showing of irregularity on the document's face such that a detailed examination would be warranted. Liability depends upon the wrong committed and not solely by reason of being the head of a government agency.⁴⁸

Further, it would be unjust to include petitioner among the persons named liable in the disallowance not only because petitioner was not the one directly responsible for the passage of the resolution, but also because there

⁴⁶ Id. at 46.

⁴⁷ Id. at 93-94.

⁴⁸ *Joson v. Commission on Audit*, 820 Phil. 485, 502-503 (2017).



was no showing that petitioner was ill-motivated or that she had personally profited from the transaction. It is, therefore, unjust enrichment to the prejudice of petitioner to make her personally liable for the disallowed amount considering that the resulting transaction is being enjoyed and utilized by the *Punong Barangays* of Antique.

The Court also noted the fact that the COA RO subsequently excluded other SP members named liable in the subject ND, particularly Member Piccio, who did not file an appeal or a motion for exclusion from liability. In excluding Piccio, the COA RO said that it was very clear that Piccio voted against the adoption of the subject resolution. According to the COA RO, the appellants were named liable in the ND on the basis of their participation in the approval of the resolution. There being no factual basis on their participation in the approval of the resolution, their inclusion as one of the persons liable in the disallowance has no leg to stand on.⁴⁹

In line with this, petitioner should be excluded from the persons named liable in the subject ND. The basis of petitioner's participation in the approval of the resolution arose from the fact that she is the presiding officer of the SP and has to affix her signature to attest to the passage of the resolution. Evidently, this involved the exact functions that petitioner had to discharge in the performance of her official duties. Consequently, respondent committed grave abuse of its discretion when it held petitioner personally liable for the subject disallowance,⁵⁰ thus, the Court absolves petitioner from liability.

WHEREFORE, the petition is **GRANTED**. The Decision dated March 16, 2017 and the Resolution dated January 6, 2020 of the Commission on Audit in Decision No. 2017-066 and Decision No. 2020-012, respectively, are hereby **REVERSED** and **SET ASIDE**, insofar as it held petitioner Rhodora J. Cadio liable for the amount in the Notice of Disallowance No. 2011-0004-101(08) dated June 8, 2011 in amount of ₱2,950,000.00 representing the grant of financial assistance to the *Liga ng mga Barangay*, Antique Chapter, intended for the payment of insurance premiums of the *Punong Barangays* of Antique.

SO ORDERED.


ROSALIND D. CARANDANG
Associate Justice

⁴⁹ Supra note 15 at 46.

⁵⁰ Supra note 2 at 26; supra note 3 at 30.

WE CONCUR:



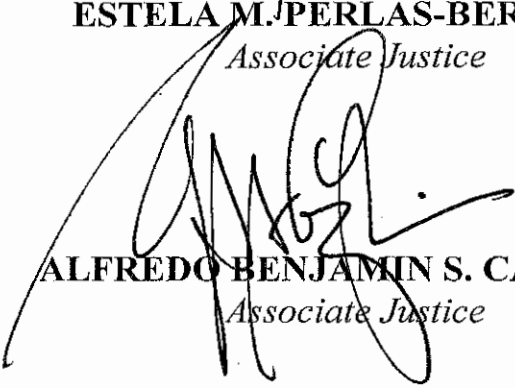
DIOSDADO M. PERALTA
Chief Justice



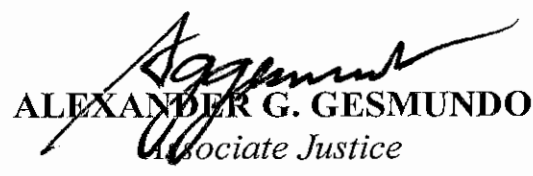
ESTELA M. PERLAS-BERNABE
Associate Justice

(on official business)

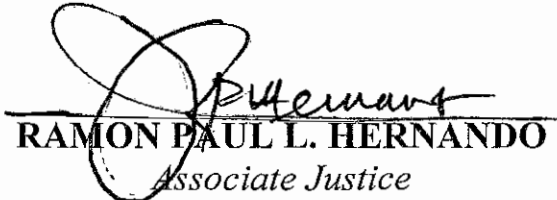
MARVIC MARIO VICTOR F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice



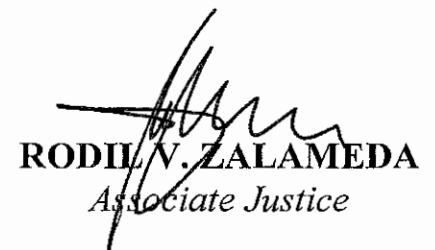
RAMON PAUL L. HERNANDO
Associate Justice



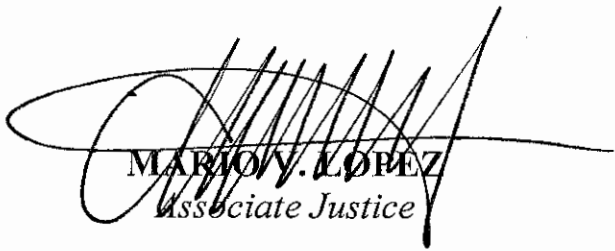
AMY C. LAZARO-JAVIER
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



RODIL V. ZALAMEDA
Associate Justice



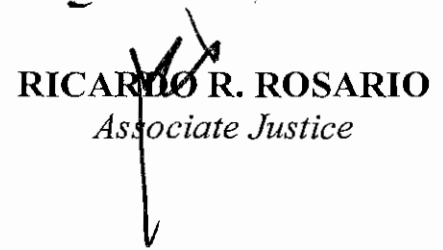
MARIO V. LOPEZ
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



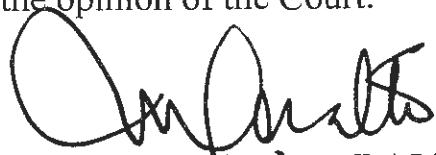
RICARDO R. ROSARIO
Associate Justice




JHOSEP Y. LOPEZ
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.



DIOSDADO M. PERALTA
Chief Justice

Certified True Copy

ANNA-LI R. PAPA-GOMBIO
Deputy Clerk of Court En Banc
OCC En Banc, Supreme Court