Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

VICENTE A. BERNARDO and RESURRECCION BERNARDO, doing business under the name and style of VIREX ENTERPRISES, Petitioners,	**G.R. No. 195584**
	Present:
	PERLAS-BERNABE, *S.A.J.*, *Chairperson*, HERNANDO, INTING, GAERLAN, *and* DIMAAMPAO, *JJ.*
- versus -	
MARCIAL O. DIMAYA, Respondent.	Promulgated: NOV 10 2021

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DECISION

GAERLAN, *J.*:

This is a Petition for Review on *Certiorari*[1] filed by petitioners Vicente A. Bernardo (Mr. Bernardo) and Resurreccion Bernardo, doing business under the name and style of Virex Enterprises (collectively, petitioners), assailing the Decision[2] dated July 15, 2010 and Resolution[3] date February 11, 2011 of the Court of Appeals (CA) in CA-G.R. SP. No. 109968, which denied the petitioners' petition for *certiorari*.

Antecedent Facts

Virex Enterprises is a service center engaged in the installation of air-conditioning units. For each installation job, Virex Enterprises sends out a team consisting of a team leader and two helpers. A Tools/Materials Request

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1 *Rollo*, pp. 7-16.
2 Id. at 20-27; penned by Associate Justice Apolinario D. Bruselas, Jr., concurred in by Associate Justices Mario L. Guariña III and Rodil V. Zalameda (now a Member of this Court).
3 Id. at 33.

Form is filled out by a team leader before and after the completion of each job to account for and liquidate all items that were used and returned by the team.[4]

Sometime in July 2007, Virex Enterprises received an installation job request from a customer. A surveyor from Virex Enterprises visited the site and made an initial estimate of the costs for the installation job. On July 13, 2007, Virex Enterprises sent Marcial Dimaya (Dimaya), Emir Tiongson (Tiongson), and Randy Roxas (Roxas) to carry out the job. As the team leader, Dimaya requested the materials they needed. However, during the installation, Dimaya's team used a drain pipe which was not included in their request form. They also received an additional ₱300.00 from the client that was not declared to the management. Further, the transaction was not entered in their service report while the official receipt was left blank. After the installation job, Dimaya did not endorse the unused or excess materials and instead requested Tiongson to turn over the unused materials.[5]

The following day, the Virex Enterprises' storekeeper noticed that the drain pipe and some excess materials such as copper tubes and wires were missing among the materials that Dimaya's team had turned over. An investigation of the incident revealed that Dimaya's team installed a drain pipe that was not in their request form and that they received an additional ₱300.00 from the client, which amount was distributed among Dimaya's team members. Per the petitioners' policy, Dimaya's team was fined double the amount of the missing items to be paid through salary deduction. According to the petitioners, Dimaya refused to pay the penalty[6] and, thereafter, stopped reporting to work.[7]

For his part, Dimaya denied that the amount of ₱300.00 his team received was specifically for the drain pipe. He explained that he and his team members received the amount in good faith that it was given to them as tip for the installation of the air-conditioning unit.[8] Further, he denied abandoning his job. He claimed that Mr. Bernardo made it clear that he was being dismissed from work on two separate occasions when Mr. Bernardo told him, "*Huwag ka muna magpakita sa akin, mainit ang dugo ko sayo!*" and "*Tapos na tayo!*"[9] This prompted him to file a complaint for illegal dismissal before the Labor Arbiter (LA).

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4 Id. at 9.
5 Id. at 10.
6 Id.
7 Id. at 14.
8 Id. at 45.
9 Id. at 40.

Ruling of the Labor Arbiter

In a Decision[10] dated March 27, 2008, the LA ruled that Dimaya was illegally dismissed from employment. According to the LA, not a single memorandum was addressed to Dimaya requiring him to explain about receiving his share in the ₱300.00 from the job order.[11] Also, the burden of proof to show that there was unjustified refusal to go back to work rests on the employer. The petitioners never presented any evidence of sending a letter to Dimaya requiring him to return to work. The LA awarded Dimaya his backwages but to be computed only until the date he refused the petitioners' offer of reinstatement during the hearing on August 14, 2007.[12] Since reinstatement was no longer feasible, he was granted separation pay, as well as other monetary awards,[13] *viz.*:

> WHEREFORE, judgment is hereby rendered finding complainant to have been illegally dismissed from his employment. Concomitantly, respondents Virex Enterprises, Resurreccion and Vicente all surnamed Bernardo are in solidum held liable to pay Marcial C. Dimaya the following: backwages, separation pay, holiday pay, service incentive leave pay, 13th month pay and unpaid salaries from June 30 to July 14, 2007.
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> [Ten] percent of the total award as attorney's fees.
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> The computation [of] the Computation & Examination Unit [of] this Commission is made part of the Decision.
>
> Other claims are dismissed for lack of merit.
>
> The complaint against Gold Home Appliances is dismissed.
>
> SO ORDERED.[14]

The LA also concluded that as an installer of air conditioning units to clients outside the petitioners' office premises, Dimaya was a field personnel; and so, Dimaya's claim of overtime pay was denied.[15]

The petitioners lodged their appeal before the National Labor Relations Commission (NLRC), challenging the LA's Decision.

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10 Id. at 61-74; penned by Labor Arbiter Ermita T. Abrasaldo-Cuyuca.
11 Id. at 68.
12 Id. at 70.
13 Id. at 69-70
14 Id. at 73-74
15 Id. at 71-72.

Ruling of the NLRC

The NLRC dismissed the appeal through a Resolution[16] dated January 14, 2009, on account of the petitioners' failure to attach a certificate of non-forum shopping to their memorandum of appeal, to wit:

> IN VIEW OF THE FOREGOING, the instant Appeal is hereby DISMISSED for non-perfection in the manner prescribed by law and the Rules of this Commission.
>
> SO ORDERED.[17]

The petitioners filed a motion for reconsideration with motion to admit a certificate of non-forum shopping. They alleged that the non-inclusion of the certificate was not deliberate and was only a product of mistake or excusable negligence.[18] In order to rectify their omission, they submitted a certification of non-forum shopping, which was attached to their motion.[19] On June 8, 2009, the NLRC denied the motion for lack of merit.[20]

Unperturbed, the petitioners filed a petition for *certiorari* under Rule 65 before the CA.

Ruling of the CA

On July 15, 2010, the CA promulgated its Decision dismissing the petitioners' appeal. The CA explained that no grave abuse of discretion attended the dismissal of the appeal. The petitioners had not presented any persuasive reason for the court to be liberal even *pro hac vice*.[21] Also, evidentiary matters and findings of fact such as issues on the monetary award and whether Dimaya is a field personnel pertain to errors of judgment which a *certiorari* petition, being limited in scope, may not properly address.[22] The petition was disposed of in this wise:

> WHEREFORE, the foregoing reasons considered, the instant petition is DISMISSED.

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16 Records, pp. 162-165; penned by Presiding Commissioner Benedicto R. Palacol and concurred in by Commissioners Isabel G. Panganiban-Ortiguerra and Nieves E. Vivar de Castro.
17 Records, p. 164.
18 Id. at 166.
19 Id.
20 Id. at 172-174.
21 Id. at 26.
22 Id. at 26-27.

IT IS SO ORDERED.[23]

The petitioners filed a motion for reconsideration, which the CA denied through a Resolution[24] dated February 11, 2011.

In the present petition for review on *certiorari*, petitioners aver that the dismissal of their appeal due to their failure to attach a certification of non-forum shopping to their appeal memorandum hindered the rendition of just and equitable reliefs.[25] As regards the claim of illegal dismissal, petitioners denied that Dimaya was terminated from employment. They argue that Dimaya refused to pay the penalty unlike his co-workers, Tiongson and Roxas. In saying "*Huwag ka muna magpakita sa akin, mainit ang dugo ko sa iyo*," Mr. Bernardo merely expressed the management's displeasure not only over the violations committed by Dimaya's team, but also over Dimaya's intransigence in his refusal to obey petitioners' policy after he admitted his transgression.[26]

As regards Mr. Bernardo's remark "*Tapos na tayo*," petitioners allege that the statement was not addressed to Dimaya, but was spoken by Mr. Bernardo during a phone call with a certain Aron Villanueva (Villanueva), which call was made at the moment when the management was about to impose the sanctions upon Dimaya. This was construed by Dimaya as being directed at him.[27] In support of this claim, petitioners submitted an Affidavit[28] of Villanueva, wherein he attested that Mr. Bernardo uttered "*Tapos na tayo*" during their conversation over the phone.

Petitioners assert that Dimaya abandoned his work as he refused to report to duty on account of his stricken conscience or his affected ego due to the anomaly he had committed. They insist that Dimaya's grave misconduct consists of: a) the installation of an additional drain pipe; b) the non-reporting of the additional job in the service report; c) the charging and collection of ₱300.00 from the client without the management's knowledge; d) the non-issuance of an official receipt for the collection made; and e) the apportionment among the members of the collected amount.[29]

They further bewail the grant of monetary awards such as holiday pay and service incentive leave pay, given that the LA held that Dimaya was a

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23 Id. at 27.
24 Id. at 33
25 Id. at 11.
26 Id. at 10.
27 Id. at 11
28 Records, p. 90.
29 *Rollo*, p. 14.

field personnel.[30] Furthermore, they pray that the Emergency Cost of Living Allowance (ECOLA), attorney's fees, and 13th month pay based on the computation appended to the LA's Decision be recomputed for their lack of clear basis.[31]

Issues

I.

Whether the circumstances in the present case warrant a relaxation in the application of the rules of procedure.

II.

Whether Dimaya was illegally dismissed from employment.

Ruling of the Court

The petition is partly meritorious.

As a general rule, "findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only great respect but even finality."[32] However, the NLRC and the CA did not delve into the facts of this present case and dwelled heavily on the absence of the certificate of non-forum shopping. In light of this, the Court is constrained to review the facts of this case if only to prevent a miscarriage of justice.

Under the 2005 Revised Rules of Procedure of the NLRC, the prevailing rule at the time of the filing of the appeal, a certification of non-forum shopping is a requirement for the perfection of an appeal, thus:

> Section 4. *Requisites For Perfection Of Appeal.* - a) The appeal shall be: 1) filed within the reglementary period provided in Section 1 of this Rule; 2) verified by the appellant himself in accordance with Section 4, Rule 7 of the Rules of Court, as amended; 3) in the form of a memorandum of appeal which shall state the grounds relied upon and the arguments in support thereof, the relief prayed for, and with a statement of the date the appellant received the appealed decision, resolution or order; 4) in three (3) legibly typewritten or printed copies; and 5) accompanied by i) proof of payment of the required appeal fee; ii) posting of a cash or surety bond as provided in Section 6 of this Rule; iii) **a certificate of non-forum**

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30 Id. at 12.

31 Id. at 13.

32 *Marlow Navigation Philippines, Inc. v. Heirs of Ricardo Ganal*, 810 Phil. 956, 961 (2017).

> **shopping**; and iv) proof of service upon the other parties. (Emphasis supplied)

Given the substantive issues raised by the petitioners, the Court finds justification to liberally apply the rules of procedure in the present case. In *McBurnie v. Ganzon*,[33] the Court held:

> It is also recognized that in some instances, the prudent action towards a just resolution of a case is for the Court to suspend rules of procedure, for "the power of this Court to suspend its own rules or to except a particular case from its operations whenever the purposes of justice require it, cannot be questioned."[34]

Additionally, it is stated under Rule VII, Section 10 of the 2005 Revised Rules of Procedure of the NLRC that each case must be reasonably resolved according to its facts and in the furtherance of due process, thus:

> SECTION 10. Technical rules not binding. — The rules of procedure and evidence prevailing in courts of law and equity shall not be controlling and the Commission shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law procedure, all in the interest of due process.

Now, onto the merits of the instant case, the Court finds that Dimaya was dismissed from employment, albeit, for a just cause.

In Dimaya's statement[35] which was written in the vernacular, he admitted to installing a two-meter drain pipe and receiving additional payment from the client but argued that his team members were responsible for the violations, thus:

> Pagkakamali- naglagay po ako ng 2 meters blue pipe drain
>
> Ano ang dapat mong gawin- Sorry po kung nagkamali ak[o]
>
> x x x x
>
> Nagbigay po ng 300 ang may ari, hindi ko po alam kung ano ang napag usapan po nila ni Emir, siya po ang kausap. Sabi po ni Emir ay pang mirienda daw po namin.
>
> Nagtanong po si Emir, paano daw yong inilagay ko na drain pipe na 2 meters, sabi ko po sabihin mo na naglagay tayo ng 2 meter blue pipe. Kung magbigay di tanggapin mo.. un lang po.

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33 719 Phil. 680 (2013).
34 Id. at 702.
35 *Rollo*, p. 50.

> Yung mga kaputol na wire at [copper tube], si Randy po ang nagpulot sa baba di ko ma sure, kung inilagay sa loob ng tray o hindi...
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> Kaya ko po ipinagbilin kay Emir mga gamit po sa compan[y] na ipa check, kaya po di ako nagtagal, sumama kasi po ang baby ko, anak po. Umuwi na po ako. Tinanong ko lang po bakit agad nakarating po agad sa inyo, yung kunting problema, pwede naman natin kausapin muna mga kasama ko. Un lang po.[36]

In his Comment,[37] Dimaya contends that it was Tiongson, and not he, who had to account for the tools and items that were used for the project. He argues that Tiongson requested and received the tools they used for the installation project. Thus, Dimaya cannot be held guilty of negligence over the missing items.[38]

Dimaya's stance is seriously flawed. A review of the records reveals that while there is the slightest possibility that Dimaya and his team may have been mistaken on the ₱300.00 as tip from their client, and it was Tiongson who was in charge of accounting for the tools used, it remains undisputed that all three members of their team were aware of and categorically admitted to the installation of a two-meter pipe which was not in the request form. Expectedly, the petitioners would look for the materials that were missing or unaccounted for upon the team members' return. When Dimaya's team failed to account for the missing items and finally admitted to their lapses, the management fined them for the missing materials. But with his sole excuse that it was Tiongson who was responsible for the missing items, Dimaya refused to pay the fine. It bears emphasis that Dimaya was the team leader for that specific installation project; thus, he was responsible for the team's undertakings.

With respect to the penalty which an employer may impose upon an erring employee, and whether an employer may terminate an employee from work, the Labor Code provides that an employee may be terminated for just cause:

> ART. 297. [282] Termination by employer. - An employer may terminate an employment for any of the following causes:
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> **(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;**
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> (b) Gross and habitual neglect by the employee of his duties;

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36 Id. at 10.
37 Id. at 35- 46.
38 Id. at 43.

> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
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> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
>
> (e) Other causes analogous to the foregoing. (Emphasis ours)

In *Adamson University Faculty and Employees Union v. Adamson University*,[39] the Court, citing *National Labor Relations Commission v. Salgarino*,[40] reiterated what constitutes serious misconduct:

> Misconduct is defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character and implies wrongful intent and not mere error of judgment. The misconduct to be serious within the meaning of the act must be of such a grave and aggravated character and not merely trivial or unimportant. Such misconduct, however serious, must nevertheless be in connection with the work of the employee to constitute just cause from his separation.
>
> In order to constitute serious misconduct which will warrant the dismissal of an employee under paragraph (a) of Article 282 of the Labor Code, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been performed with wrongful intent.[41]

Dimaya and his team's failure to account for the drain pipe, copper tubes, and wires that his team had used to install a client's air conditioning unit constitutes misconduct, although not serious in nature. The petitioners have a policy that all materials used for a project have to be accounted for, and failure to do so warrants a penalty of fine, which is twice the cost of the lost materials.[42] It is worthy to point out that at this stage, such error committed by an employee does not warrant the penalty of dismissal. Thus, Dimaya and his team members were rightfully fined the amount of ₱764.00 each.

However, Dimaya's subsequent acts such as his unjustified refusal to comply with the company policy and passing the blame on his team members for their violations imply his wrongful intent and willful disobedience. His statement "*tinanong ko lang po bakit agad nakarating po agad sa inyo, yung kunting problema, pwede naman natin kausapin muna mga kasama ko*" is telling of his frustration, if not, intent to hide the matter from the management.

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39 G.R. No. 227070, March 09, 2020.
40 529 Phil. 355 (2006).
41 Id. at 368-369.
42 Records, p. 48.

It was his obstinate and unjustified refusal to comply with company policy after committing a violation that warrants his dismissal. Verily, had he only chosen to pay the penalty, as his co-workers did, this case would have ended with a different outcome.

Nevertheless, Dimaya was not accorded procedural due process in his dismissal from work. In *Santos v. Integrated Pharmaceutical Inc.*,[43] the Court explained:

> x x x If the dismissal is based on a just cause under Article 282 of the Labor Code, as in this case, the employer must give the employee two written notices and conduct a hearing. The first written notice is intended to apprise the employee of the particular acts or omissions for which the employer seeks her dismissal; while the second is intended to inform the employee of the employer's decision to terminate him.[44]

While the petitioners maintain that Dimaya was not dismissed from work, the circumstances reveal otherwise. Dimaya committed an infraction at work for which he was meted the penalty of fine but he refused to pay the same, whereas his co-workers complied with the penalty imposed. Mr. Bernardo on two separate occasions, told him, "*Huwag ka muna magpakita sa akin, mainit ang dugo ko sayo!*" and "*Tapos na tayo!*" Dimaya's version that he did not abandon his work is more credible than the narrative espoused by the petitioners.

"[T]he burden of proof to show that there was unjustified refusal to go back to work rests on the employer."[45] Notably, no letter to return to work was sent to Dimaya if he indeed refused to report to work. In *Demex Rattancraft, Inc. v. Leron*,[46] the Court held:

> Abandonment of work has been construed as "a clear and deliberate intent to discontinue one's employment without any intention of returning back." To justify the dismissal of an employee on this ground, two (2) elements must concur, namely: "(a) the failure to report for work or absence without valid or justifiable reason; and, (b) a clear intention to sever the employer-employee relationship."

The petitioners failed to support their allegations that Dimaya abandoned his work. As the party alleging abandonment, the petitioners must support their allegations with substantial evidence. "Substantial evidence is

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43 789 Phil. 477 (2016).
44 Id. at 494-495.
45 *Doctor v. NII Enterprises*, 821 Phil. 251, 268 (2017).
46 820 Phil. 693 (2017), citing *Flores v. Nuestro*, 243 Phil. 712, 715 (1988) and *Pare v. National Labor Relations Commission*, 376 Phil. 288, 292 (1999).

the amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion."[47] Aside from their bare allegations that Dimaya had stopped reporting for work, no evidence was presented to support this assertion.

That said, in *Agabon v. NLRC*, (*Agabon*)[48] the Court held that the lack of statutory due process does not nullify the dismissal, or render it illegal, or ineffectual. But for disregarding the employee's statutory right, the employer must indemnify the employee in the form of nominal damages. The Court set the amount of nominal damages at ₱30,000.00, *viz.*:

> The violation of the petitioners' right to statutory due process by the private respondent warrants the payment of indemnity in the form of nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances. Considering the prevailing circumstances in the case at bar, we deem it proper to fix it at P30,000.00. We believe this form of damages would serve to deter employers from future violations of the statutory due process rights of employees. At the very least, it provides a vindication or recognition of this fundamental right granted to the latter under the Labor Code and its Implementing Rules.[49]

Following the above disquisition, for the petitioners' failure to comply with the twin-notice requirement in dismissing Dimaya from employment, they are liable for nominal damages in the amount of ₱30,000.00.

As to the award of holiday pay and service incentive leave, the petitioners profess that based on the LA's ruling, Dimaya was a field personnel, hence, not entitled to these monetary benefits. To determine whether an employee is a field personnel or not, the Court refers to *Auto Bus Transport Systems, Inc. v. Bautista*,[50] where it was enunciated:

> [I]t is necessary to stress that the definition of a "field personnel" is not merely concerned with the location where the employee regularly performs his duties but also with the fact that the employee's performance is unsupervised by the employer. As discussed above, field personnel are those who regularly perform their duties away from the principal place of business of the employer *and whose actual hours of work in the field cannot be determined with reasonable certainty*. Thus, in order to conclude whether an employee is a field employee, it is also necessary to ascertain if actual hours of work in the field can be determined with reasonable certainty by the employer.[51]

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47 *Hubilla v. HSY Marketing Ltd., Co.*, 823 Phil. 358, 374-375 (2018).
48 485 Phil. 248 (2004).
49 Id. at 288.
50 497 Phil. 863 (2005).
51 Id. at 874.

Since the records are bereft of any data to show that Dimaya's actual hours of work in the field cannot be determined with reasonable certainty, the Court cannot ascribe to the petitioners' view that Dimaya worked as a field personnel. Nor can the LA's conclusion on this regard be upheld since no basis was given in ruling that Dimaya was a field personnel. Considering the foregoing, the Court maintains the awards of holiday pay and service incentive leave to Dimaya.

The petitioners finally dispute the award of attorney's fees since there is no proof that Dimaya was entitled thereto.[52] In *Stradcom Corporation v. Orpilla*,[53] the Court deleted the attorney's fees awarded to an employee who was dismissed from work considering that the employee was dismissed for a just cause. In consonance with the Court's finding that Dimaya was dismissed for serious misconduct, which is a just cause, the award of attorney's fees must likewise be deleted.

WHEREFORE, premises considered, the petition is **PARTLY GRANTED**. The Decision dated July 15, 2010 and Resolution dated February 11, 2011 of the Court of Appeals in CA-G.R. SP. No. 109968 are hereby **REVERSED AND SET ASIDE**. Petitioners Vicente A. Bernardo and Resurreccion Bernardo, doing business under the name and style of Virex Enterprises, are **ORDERED to PAY** Marcial O. Dimaya unpaid holiday pay, service incentive leave pay, 13th month pay, salaries from June 30 to July 14, 2007, and nominal damages in the amount of ₱30,000.00. All monetary awards granted shall earn legal interest at the rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid. The award of backwages, separation pay, and attorney's fees are hereby **DELETED**.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

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52 *Rollo*, p. 13
53 834 Phil. 749 (2018).

WE CONCUR:

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice