Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SPOUSES BENJAMIN C. MAMARIL AND SONIA P. MAMARIL, Petitioners,	**G.R. No. 179382**
- versus -	Present: CARPIO, *J.*, Chairperson, BRION DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.*
THE BOY SCOUT OF THE PHILIPPINES, AIB SECURITY AGENCY, INC., CESARIO PEÑA,* AND VICENTE GADDI. Respondents.	Promulgated: JAN 14 2013

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DECISION

PERLAS-BERNABE, *J.*:

This is a Petition for Review on *Certiorari* assailing the May 31, 2007 Decision[1] and August 16, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 75978. The dispositive portion of the said Decision reads:

> **WHEREFORE**, the Decision dated November 28, 2001 and the Order dated June 11, 2002 rendered by the Regional Trial Court of Manila, Branch 39 is hereby **MODIFIED** to the effect that only defendants AIB Security Agency, Inc., Cesario Peña and Vicente Gaddi are held jointly

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* Spelled as "Pena" in some parts of the records.

1 *Rollo*, pp. 11-22. Penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Apolinario D. Bruselas, Jr., concurring.

2 Id. at 24-25.

> and severally liable to pay plaintiffs-appellees Spouses Benjamin C. Mamaril and Sonia [P.] Mamaril the amount of Two Hundred Thousand Pesos (P200,000.00) representing the cost of the lost vehicle, and to pay the cost of suit. The other monetary awards are **DELETED** for lack of merit and/or basis.
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> Defendant-Appellant Boy Scout of the Philippines is absolved from any liability.
>
> **SO ORDERED**.[3]

The Antecedent Facts

Spouses Benjamin C. Mamaril and Sonia P. Mamaril (Sps. Mamaril) are jeepney operators since 1971. They would park their six (6) passenger jeepneys every night at the Boy Scout of the Philippines' (BSP) compound located at 181 Concepcion Street, Malate, Manila for a fee of ₱300.00 per month for each unit. On May 26, 1995 at 8 o'clock in the evening, all these vehicles were parked inside the BSP compound. The following morning, however, one of the vehicles with Plate No. DCG 392 was missing and was never recovered.[4] According to the security guards Cesario Peña (Peña) and Vicente Gaddi (Gaddi) of AIB Security Agency, Inc. (AIB) with whom BSP had contracted[5] for its security and protection, a male person who looked familiar to them took the subject vehicle out of the compound.

On November 20, 1996, Sps. Mamaril filed a complaint[6] for damages before the Regional Trial Court (RTC) of Manila, Branch 39, against BSP, AIB, Peña and Gaddi. In support thereof, Sps. Mamaril averred that the loss of the subject vehicle was due to the gross negligence of the above-named security guards on-duty who allowed the subject vehicle to be driven out by a stranger despite their agreement that only authorized drivers duly endorsed by the owners could do so. Peña and Gaddi even admitted their negligence

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3 Id. at 21-22.
4 Id. at 66.
5 Id. at 107-110. Guard Service Contract dated September 23, 1976.
6 Id. at 96-100. Docketed as Civil Case No. 96-80950.

during the ensuing investigation. Notwithstanding, BSP and AIB did not heed Sps. Mamaril's demands for a conference to settle the matter. They therefore prayed that Peña and Gaddi, together with AIB and BSP, be held liable for: (a) the value of the subject vehicle and its accessories in the aggregate amount of ₱300,000.00; (b) ₱275.00 representing daily loss of income/boundary reckoned from the day the vehicle was lost; (c) exemplary damages; (d) moral damages; (e) attorney's fees; and (f) cost of suit.

In its Answer,[7] BSP denied any liability contending that not only did Sps. Mamaril directly deal with AIB with respect to the manner by which the parked vehicles would be handled, but the parking ticket[8] itself expressly stated that the *"Management shall not be responsible for loss of vehicle or any of its accessories or article left therein."* It also claimed that Sps. Mamaril erroneously relied on the Guard Service Contract. Apart from not being parties thereto, its provisions cover only the protection of BSP's properties, its officers, and employees.

In addition to the foregoing defenses, AIB alleged that it has observed due diligence in the selection, training and supervision of its security guards while Peña and Gaddi claimed that the person who drove out the lost vehicle from the BSP compound represented himself as the owners' authorized driver and had with him a key to the subject vehicle. Thus, they contended that Sps. Mamaril have no cause of action against them.

The RTC Ruling

After due proceedings, the RTC rendered a Decision[9] dated November 28, 2001 in favor of Sps. Mamaril. The dispositive portion of the RTC decision reads:

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7 Id. at 117-118.
8 Id. at 101.
9 Id. at 60-74.

> WHEREFORE, judgment is hereby rendered ordering the defendants Boy Scout of the Philippines and AIB Security Agency, with security guards Cesario Pena and Vicente Gaddi: -
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> 1. To pay the plaintiffs jointly and severally the cost of the vehicle which is P250,000.00 plus accessories of P50,000.00;
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> 2. To pay jointly and severally to the plaintiffs the daily [loss] of the income/boundary of the said jeepney to be reckoned [from] its loss up to the final adjudication of the case, which is P275.00 a day;
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> 3. To pay jointly and severally to the plaintiffs moral damages in the amount of P50,000.00;
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> 4. To pay jointly and severally to the plaintiffs exemplary damages in the amount of P50,000.00;
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> 5. To pay jointly and severally the attorney's fees of P50,000.00 and appearances in court the amount of P1,500.00 per appearance; and
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> 6. To pay cost.
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> SO ORDERED.[10]

The RTC found that the act of Peña and Gaddi in allowing the entry of an unidentified person and letting him drive out the subject vehicle in violation of their internal agreement with Sps. Mamaril constituted gross negligence, rendering AIB and its security guards liable for the former's loss. BSP was also adjudged liable because the Guard Service Contract it entered into with AIB offered protection to all properties inside the BSP premises, which necessarily included Sps. Mamaril's vehicles. Moreover, the said contract stipulated AIB's obligation to indemnify BSP for all losses or damages that may be caused by any act or negligence of its security guards. Accordingly, the BSP, AIB, and security guards Peña and Gaddi were held jointly and severally liable for the loss suffered by Sps. Mamaril.

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[10] Id. at 73-74.

On June 11, 2002, the RTC modified its decision reducing the cost of the stolen vehicle from ₱250,000.00 to ₱200,000.00.[11]

Only BSP appealed the foregoing disquisition before the CA.

The CA Ruling

In its assailed Decision,[12] the CA affirmed the finding of negligence on the part of security guards Peña and Gaddi. However, it absolved BSP from any liability, holding that the Guard Service Contract is purely between BSP and AIB and that there was nothing therein that would indicate any obligation and/or liability on the part of BSP in favor of third persons, such as Sps. Mamaril. Nor was there evidence sufficient to establish that BSP was negligent.

It further ruled that the agreement between Sps. Mamaril and BSP was substantially a contract of lease whereby the former paid parking fees to the latter for the lease of parking slots. As such, the lessor, BSP, was not an insurer nor bound to take care and/or protect the lessees' vehicles.

On the matter of damages, the CA deleted the award of ₱50,000.00 representing the value of the accessories inside the lost vehicle and the ₱275.00 a day for loss of income in the absence of proof to support them. It also deleted the award of moral and exemplary damages and attorney's fees for lack of factual and legal bases.

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11 Id. at 124-129.
12 Id. at 11-22.

Sps. Mamaril's motion for reconsideration thereof was denied in the August 16, 2007 Resolution.[13]

Issues Before the Court

Hence, the instant petition based on the following assignment of errors, to wit:

> I.
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> THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN ABSOLVING RESPONDENT BOY SCOUT OF THE PHILIPPINES FROM ANY LIABILITY.
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> II.
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> THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS MISTAKE WHEN IT RULED THAT THE GUARD SERVICE CONTRACT IS PURELY BETWEEN BOY SCOUT OF THE PHILIPPINES AND AIB SECURITY AGENCY, INC., AND IN HOLDING THAT THERE IS ABSOLUTELY NOTHING IN THE SAID CONTRACT THAT WOULD INDICATE ANY OBLIGATION AND/OR LIABILITY ON THE PART OF THE PARTIES THEREIN IN FAVOR OF THIRD PERSONS, SUCH AS PETITIONERS HEREIN.
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> III.
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> THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN THE INTERPRETATION OF LAW WHEN IT CONSIDERED THE AGREEMENT BETWEEN BOY SCOUT OF THE PHILIPPINES AND PETITIONERS A CONTRACT OF LEASE, WHEREBY THE BOY SCOUT IS NOT DUTY BOUND TO PROTECT OR TAKE CARE OF [PETITIONERS'] VEHICLES.
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> IV.
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> THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED WHEN IT RULED THAT PETITIONERS ARE NOT ENTITLED TO DAMAGES AND ATTORNEY'S FEES.[14]

In fine, Sps. Mamaril maintain that: (1) BSP should be held liable for the loss of their vehicle based on the Guard Service Contract and the parking

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13 Id. at 24-25.
14 Id. at 44-45.

ticket it issued; and (2) the CA erred in deleting the RTC awards of damages and attorney's fees.

The Court's Ruling

The petition lacks merit.

Article 20 of the Civil Code provides that every person, who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same. Similarly, Article 2176 of the Civil Code states:

> Art. 2176. Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no preexisting contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

In this case, it is undisputed that the proximate cause of the loss of Sps. Mamaril's vehicle was the negligent act of security guards Peña and Gaddi in allowing an unidentified person to drive out the subject vehicle. Proximate cause has been defined as that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury or loss, and without which the result would not have occurred.[15] Moreover, Peña and Gaddi failed to refute Sps. Mamaril's contention[16] that they readily admitted being at fault during the investigation that ensued.

On the other hand, the records are bereft of any finding of negligence on the part of BSP. Hence, no reversible error was committed by the CA in absolving it from any liability for the loss of the subject vehicle based on fault or negligence.

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15 *Vallacar Transit, Inc. v. Catubig*, G.R. No. 175512, May 30, 2011, 649 SCRA 281, 295-296.
16 *Rollo*, pp. 73, 97, and 144 (TSN, November 28, 1997, p. 15).

Neither will the vicarious liability of an employer under Article 2180[17] of the Civil Code apply in this case. It is uncontested that Peña and Gaddi were assigned as security guards by AIB to BSP pursuant to the Guard Service Contract. Clearly, therefore, no employer-employee relationship existed between BSP and the security guards assigned in its premises. Consequently, the latter's negligence cannot be imputed against BSP but should be attributed to AIB, the true employer of Peña and Gaddi.[18]

In the case of *Soliman, Jr. v. Tuazon*,[19] the Court enunciated thus:

> It is settled that where the security agency, as here, recruits, hires and assigns the work of its watchmen or security guards, the agency is the employer of such guards and watchmen. Liability for illegal or harmful acts committed by the security guards attaches to the employer agency, and not to the clients or customers of such agency. As a general rule, a client or customer of a security agency has no hand in selecting who among the pool of security guards or watchmen employed by the agency shall be assigned to it; the duty to observe the diligence of a good father of a family in the selection of the guards cannot, in the ordinary course of events, be demanded from the client whose premises or property are protected by the security guards. The fact that a client company may give instructions or directions to the security guards assigned to it, does not, by itself, render the client responsible as an employer of the security guards concerned and liable for their wrongful acts or omissions. Those instructions or directions are ordinarily no more than requests commonly envisaged in the contract for services entered into with the security agency.[20]

Nor can it be said that a principal-agent relationship existed between BSP and the security guards Peña and Gaddi as to make the former liable for the latter's complained act. Article 1868 of the Civil Code states that "[b]y the contract of agency, a person binds himself to render some service or to

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[17] Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

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Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

x x x x

The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

[18] See *Jayme v. Apostol*, G.R. No. 163609, November 27, 2008, 572 SCRA 41, 53-54.

[19] G.R. No. 66207, May 18, 1992, 209 SCRA 47.

[20] Id. at 50-51. Citations omitted.

do something in representation or on behalf of another, with the consent or authority of the latter." The basis for agency therefore is representation,[21] which element is absent in the instant case. Records show that BSP merely hired the services of AIB, which, in turn, assigned security guards, solely for the protection of its properties and premises. Nowhere can it be inferred in the Guard Service Contract that AIB was appointed as an agent of BSP. Instead, what the parties intended was a pure principal-client relationship whereby for a consideration, AIB rendered its security services to BSP.

Notwithstanding, however, Sps. Mamaril insist that BSP should be held liable for their loss on the basis of the Guard Service Contract that the latter entered into with AIB and their parking agreement with BSP.

Such contention cannot be sustained.

Article 1311 of the Civil Code states:

> 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. The heir is not liable beyond the value of the property he received from the decedent.
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> If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

Thus, in order that a third person benefited by the second paragraph of Article 1311, referred to as a stipulation *pour autrui*, may demand its fulfillment, the following requisites must concur: (1) There is a stipulation in favor of a third person; (2) The stipulation is a part, not the whole, of the

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[21] *Loadmasters Customs Services, Inc. v. Glodel Brokerage Corp.*, G.R. No. 179446, January 10, 2011, 639 SCRA 69, 84.

contract; (3) The contracting parties clearly and deliberately conferred a favor to the third person – the favor is not merely incidental; (4) The favor is unconditional and uncompensated; (5) The third person communicated his or her acceptance of the favor before its revocation; and (6) The contracting parties do not represent, or are not authorized, by the third party.[22] However, none of the foregoing elements obtains in this case.

It is undisputed that Sps. Mamaril are not parties to the Guard Service Contract. Neither did the subject agreement contain any stipulation *pour autrui.* And even if there was, Sps. Mamaril did not convey any acceptance thereof. Thus, under the principle of relativity of contracts, they cannot validly claim any rights or favor under the said agreement.[23] As correctly found by the CA:

> First, the Guard Service Contract between defendant-appellant BSP and defendant AIB Security Agency is purely between the parties therein. It may be observed that although the whereas clause of the said agreement provides that defendant-appellant desires security and protection for its compound and all properties therein, as well as for its officers and employees, while inside the premises, the same should be correlated with paragraph 3(a) thereof which provides that the security agency shall indemnify defendant-appellant for all losses and damages suffered by it attributable to any act or negligence of the former's guards.
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> Otherwise stated, defendant-appellant sought the services of defendant AIB Security Agency for the purpose of the security and protection of its properties, as well as that of its officers and employees, so much so that in case of loss of [*sic*] damage suffered by it as a result of any act or negligence of the guards, the security agency would then be held responsible therefor. There is absolutely nothing in the said contract that would indicate any obligation and/or liability on the part of the parties therein in favor of third persons such as herein plaintiffs-appellees.[24]

Moreover, the Court concurs with the finding of the CA that the contract between the parties herein was one of lease[25] as defined under

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22 *Narvaez v. Alciso*, G.R. No. 165907, July 27, 2009, 594 SCRA 60, 67.
23 *Integrated Packaging Corp. v. CA*, G.R. No. 115117, June 8, 2000, 333 SCRA 170, 178.
24 *Rollo*, pp. 17-18.
25 Id. at 18.

Article 1643[26] of the Civil Code. It has been held that the act of parking a vehicle in a garage, upon payment of a fixed amount, is a lease.[27] Even in a majority of American cases, it has been ruled that where a customer simply pays a fee, parks his car in any available space in the lot, locks the car and takes the key with him, the possession and control of the car, necessary elements in bailment, do not pass to the parking lot operator, hence, the contractual relationship between the parties is one of lease.[28]

In the instant case, the owners parked their six (6) passenger jeepneys inside the BSP compound for a monthly fee of ₱300.00 for each unit and took the keys home with them. Hence, a lessor-lessee relationship indubitably existed between them and BSP. On this score, Article 1654 of the Civil Code provides that "[t]he lessor (BSP) is obliged: (1) to deliver the thing which is the object of the contract in such a condition as to render it fit for the use intended; (2) to make on the same during the lease all the necessary repairs in order to keep it suitable for the use to which it has been devoted, unless there is a stipulation to the contrary; and (3) to maintain the lessee in the peaceful and adequate enjoyment of the lease for the entire duration of the contract." In relation thereto, Article 1664 of the same Code states that "[t]he lessor is not obliged to answer for a mere act of trespass which a third person may cause on the use of the thing leased; but the lessee shall have a direct action against the intruder." Here, BSP was not remiss in its obligation to provide Sps. Mamaril a suitable parking space for their jeepneys as it even hired security guards to secure the premises; hence, it should not be held liable for the loss suffered by Sps. Mamaril.

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[26] Art. 1643. In the lease of things, one of the parties binds himself to give to another the enjoyment or use of a thing for a price certain, and for a period which may be definite or indefinite. However, no lease for more than ninety-nine years shall be valid.

[27] Tolentino, Civil Code of the Philippines, Vol. V, Reprinted 2002, pp. 204-205.

[28] Cited in the article *Liability of Parking Lot Operators for Car Thefts*, Washington and Lee Law Review 20.2 (1963): 362. <http://scholarlycommons.law.wlu.edu/wlulr/vol20/iss2/18.> (visited January 3, 2013).

It bears to reiterate that the subject loss was caused by the negligence of the security guards in allowing a stranger to drive out plaintiffs-appellants' vehicle despite the latter's instructions that only their authorized drivers may do so. Moreover, the agreement with respect to the ingress and egress of Sps. Mamaril's vehicles were coordinated only with AIB and its security guards,[29] without the knowledge and consent of BSP. Accordingly, the mishandling of the parked vehicles that resulted in herein complained loss should be recovered only from the tort feasors (Peña and Gaddi) and their employer, AIB; and not against the lessor, BSP. [30]

Anent Sps. Mamaril's claim that the exculpatory clause: *"Management shall not be responsible for loss of vehicle or any of its accessories or article left therein"* [31] contained in the BSP issued parking ticket was void for being a contract of adhesion and against public policy, suffice it to state that contracts of adhesion are not void per se. It is binding as any other ordinary contract and a party who enters into it is free to reject the stipulations in its entirety. If the terms thereof are accepted without objection, as in this case, where plaintiffs-appellants have been leasing BSP's parking space for more or less 20 years,[32] then the contract serves as the law between them.[33] Besides, the parking fee of P300.00 per month or P10.00 a day for each unit is too minimal an amount to even create an inference that BSP undertook to be an insurer of the safety of plaintiffs-appellants' vehicles.

On the matter of damages, the Court noted that while Sonia P. Mamaril testified that the subject vehicle had accessories worth around

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29 *Rollo*, p. 139 (TSN, November 28, 1997, p. 10).
30 *Goldstein v. Roces*, G.R. No. L-8697, March 30, 1916.
31 See supra note 6.
32 Sps. Mamaril parked their jeepneys inside the BSP compound since 1971. The loss of their vehicle occurred in 1995.
33 *Ong Lim Sing, Jr. v. FEB Leasing & Finance Corp.*, G.R. No. 168115, June 8, 2007, 524 SCRA 333, 347.

₱50,000.00, she failed to present any receipt to substantiate her claim.[34] Neither did she submit any record or journal that would have established the purported ₱275.00[35] daily earnings of their jeepney. It is axiomatic that actual damages must be proved with reasonable degree of certainty and a party is entitled only to such compensation for the pecuniary loss that was duly proven. Thus, absent any competent proof of the amount of damages sustained, the CA properly deleted the said awards.[36]

Similarly, the awards of moral and exemplary damages and attorney's fees were properly disallowed by the CA for lack of factual and legal bases. While the RTC granted these awards in the dispositive portion of its November 28, 2001 decision, it failed to provide sufficient justification therefor.[37]

WHEREFORE, premises considered, the instant petition is **DENIED.**The May 31, 2007 Decision and August 16, 2007 Resolution of the Court of Appeals in CA-G.R. CV No. 75978 are **AFFIRMED.**

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Associate Justice

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34 *Rollo*, p. 140 (TSN, November 28, 1997, p. 11).
35 Id.
36 *Macasaet v. R Transport Corp.*, G.R. No. 172446, October 10, 2007, 535 SCRA 503, 515.
37 *Dutch Boy Philippines, Inc. v. Seniel*, G.R. No. 170008, January 19, 2009, 576 SCRA 231, 241; *Cipriano v. CA*, G.R. No. 107968, October 30, 1996, 263 SCRA 719-720.

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Associate Justice
Chairperson, 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.

MARIA LOURDES P. A. SERENO
Chief Justice