



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SPOUSES LEHNER and LUDY G.R. No. 174240
MARTIRES,

Petitioners,

Present:

- versus -

VELASCO, JR., J., *Chairperson*,
PERALTA,
BERSAMIN,*
ABAD, and
LEONEN, JJ.

Promulgated:

MENELIA CHUA,

Respondent.

March 20, 2013

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DECISION

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Amended Decision,¹ as well as the Resolutions² of the Court of Appeals (CA), dated September 30, 2005, July 5, 2006 and August 28, 2006, respectively, in CA-G.R. CV No. 76388. The assailed Decision of the CA reversed and set aside its earlier Decision, dated April 30, 2004, in favor of petitioners. The July 5, 2006 Resolution denied petitioners' Motion for Reconsideration, while the August 28, 2006 Resolution denied petitioners' Second Motion for Reconsideration.

* Designated Acting Member, in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated March 18, 2013.

¹ Penned by Associate Justice Bienvenido L. Reyes (now a member of this Court), with Associate Justices Ruben T. Reyes (now a retired member of this Court) and Jose C. Mendoza (now a member of this Court), concurring; *rollo*, pp. 32-52.

² Annexes "B" and "C" to Petition, *rollo*, pp. 54-59.

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The factual and procedural antecedents of the case are as follows:

Subject of the instant controversy are twenty-four memorial lots located at the Holy Cross Memorial Park in Barangay Bagbag, Novaliches, Quezon City. The property, more particularly described as “Lot: 24 lots, Block 213, Section: Plaza of Heritage-Reg.,” is covered by Transfer Certificate of Title (TCT) No. 342914. Respondent, together with her mother, Florencia R. Calagos, own the disputed property. Their co-ownership is evidenced by a Deed of Sale and Certificate of Perpetual Care, denominated as Contract No. 31760, which was executed on June 4, 1992.³

On December 18, 1995, respondent borrowed from petitioner spouses the amount of ₱150,000.00. The loan was secured by a real estate mortgage over the abovementioned property. Respondent committed to pay a monthly interest of 8% and an additional 10% monthly interest in case of default.⁴ Respondent failed to fully settle her obligation.

Subsequently, without foreclosure of the mortgage, ownership of the subject lots were transferred in the name of petitioners via a Deed of Transfer.⁵

On June 23, 1997, respondent filed with the Regional Trial Court (RTC) of Quezon City a Complaint against petitioners, Manila Memorial Park Inc., the company which owns the Holy Cross Memorial Park, and the Register of Deeds of Quezon City, praying for the annulment of the contract of mortgage between her and petitioners on the ground that the interest rates imposed are unjust and exorbitant. Respondent also sought accounting to determine her liability under the law. She likewise prayed that the Register of Deeds of Quezon City and Manila Memorial Park, Inc. be directed to reconvey the disputed property to her.⁶

On November 20, 1998, respondent moved for the amendment of her complaint to include the allegation that she later discovered that ownership of the subject lots was transferred in the name of petitioners by virtue of a forged Deed of Transfer and Affidavit of Warranty. Respondent prayed that the Deed of Transfer and Affidavit of Warranty be annulled.⁷ In their

³ Exhibit “A,” records, p. 237.

⁴ Exhibit “D”/“7,” *id.* at 241.

⁵ Exhibit “B”/“8,” *id.* at 239.

⁶ Records, pp. 1-6.

⁷ *Id.* at 170-177.

Manifestation dated January 25, 1999, petitioners did not oppose respondent's motion.⁸ Trial ensued.

After trial, the RTC of Quezon City rendered a Decision in favor of petitioners, the dispositive portion of which reads, thus:

Wherefore, premises considered, judgment is hereby rendered against Menelia R. Chua and in favor of the Sps. Lehner Martires and Ludy Martires; and Manila Memorial Park Cemetery, Inc. as follows:

1. The Complaint is denied and dismissed for lack of merit;

2. The counterclaims are granted as follows:

a. Menelia R. Chua is ordered to pay the Sps. Martires the amount of ₱100,000.00 as moral damages; the amount of ₱50,000.00 as exemplary damages; and the amount of ₱30,000.00 as reasonable attorney's fees plus costs of suit.

b. Menelia R. Chua is ordered to pay Manila Memorial Park Cemetery, Inc. the amount of ₱30,000.00 as reasonable attorney's fees plus costs of suit.

SO ORDERED.⁹

On appeal, the CA affirmed, with modification, the judgment of the RTC, disposing as follows:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit, and the decision of the trial court dated 03 August 2002 is hereby **AFFIRMED** with **MODIFICATION** as to the amount of moral and exemplary damages, and attorney's fees. Plaintiff-appellant Menelia R. Chua is hereby ordered to pay the defendant-appellees Spouses Martires the amount of ₱30,000.00 as moral damages; ₱20,000.00 as exemplary damages; and attorney's fees of ₱10,000.00 plus costs of suit.

Insofar as defendant-appellee Manila Memorial Park Cemetery, Inc. is concerned, the attorney's fees awarded is reduced to ₱10,000.00 plus costs of suit.

SO ORDERED.¹⁰

⁸ *Id.* at 195.

⁹ *Id.* at 365-366.

¹⁰ CA *rollo*, p. 109. (Emphasis in the original)

The CA ruled that respondent voluntarily entered into a contract of loan and that the execution of the Deed of Transfer is sufficient evidence of petitioners' acquisition of ownership of the subject property.

Respondent filed a Motion for Reconsideration.¹¹ Petitioners opposed it.¹²

On September 30, 2005, the CA promulgated its assailed Amended Decision with the following dispositive portion:

WHEREFORE, the Court grants the movant's Motion for Reconsideration.

Accordingly, the decision of this Court dated April 30, 2004 in CA-G.R. CV No. 76388, which had affirmed the judgment of the Regional Trial Court of Quezon City, Branch 221, in Civil Case No. Q-97-31408, is **REVERSED** and **SET ASIDE**, and it is hereby declared that:

(1) The assailed decision dated August 3, 2002 of the Regional Trial Court of Quezon City Branch 221 in Civil Case No. Q-97-31408 is hereby **Reversed** with the following **MODIFICATIONS**, to wit:

(1) The Deed of Transfer dated July 3, 1996, as well as the Affidavit of Warranty, are hereby declared void ab initio;

(2) The loan of ₱150,000.00 is hereby subject to an interest of 12% per annum.

(3) The Manila Memorial Park Cemetery, Inc. and the Register of Deeds of Quezon City [are] hereby directed to cancel the registration or annotation of ownership of the spouses Martires on Lot: 24 lots, Block 213, Section: Plaza Heritage – Regular, Holy Cross Memorial Park, being a portion of Transfer Certificate of Title No. 342914 issued by the Register of Deeds of Quezon City, and revert registration of ownership over the same in the name of appellant Menelia R. Chua, and Florencia R. Calagos.

(4) The movant, Menelia R. Chua, is hereby ordered to pay the spouses Martires the amount of ₱150,000.00 plus interest of 12% per annum computed from December

¹¹ *Id.* at 113-125.

¹² *Id.* at 135-152.

18, 1995 up to the time of full payment thereof and, after deducting payments made in the total amount of ₱80,000.00, the same shall be paid within ninety (90) days from the finality of this decision. In case of failure to pay the aforesaid amount and the accrued interests from the period hereinstated, the property shall be sold at public auction to satisfy the mortgage debt and costs, and if there is an excess, the same is to be given to the owner.

No costs.

SO ORDERED.¹³

The CA reconsidered its findings and concluded that the Deed of Transfer which, on its face, transfers ownership of the subject property to petitioners, is, in fact, an equitable mortgage. The CA held that the true intention of respondent was merely to provide security for her loan and not to transfer ownership of the property to petitioners. The CA so ruled on the basis of its findings that: (1) the consideration, amounting to ₱150,000.00, for the alleged Deed of Transfer is unusually inadequate, considering that the subject property consists of 24 memorial lots; (2) the Deed of Transfer was executed by reason of the same loan extended by petitioners to respondent; (3) the Deed of Transfer is incomplete and defective; and (4) the lots subject of the Deed of Transfer are one and the same property used to secure respondent's ₱150,000.00 loan from petitioners.

Petitioners filed a Motion for Reconsideration,¹⁴ but the CA denied it in its Resolution dated July 5, 2006.

On July 26, 2006, petitioners filed a Second Motion for Reconsideration,¹⁵ but again, the CA denied it via its Resolution dated August 28, 2006.

Hence, the present petition based on the following grounds:

A. THE COURT OF APPEALS PATENTLY ERRED IN NOT UPHOLDING THE DEED OF TRANSFER EXECUTED BY THE

¹³ *Id.* at 183-184.

¹⁴ *Id.* at 185-195.

¹⁵ *Id.* at 260-270.

RESPONDENT IN FAVOR OF THE PETITIONERS BY RULING THAT:

1. The Deed of Transfer executed by respondent in favor of petitioners over the subject property was not entered in the Notarial Book of Atty. Francisco Talampas and reported in the Notarial Section of the Regional Trial Court of Makati City.
2. The Deed of Transfer was not duly notarized by Atty. Francisco Talampas inasmuch as there was no convincing proof that respondent appeared before Notary Public Atty. Talampas.

B. THE COURT OF APPEALS PATENTLY ERRED IN RULING THAT THE DEED OF TRANSFER EXECUTED BETWEEN THE RESPONDENT AND THE PETITIONERS CONSTITUTED AN EQUITABLE MORTGAGE CONSIDERING THAT:

1. Said issue was not raised in any pleading in the appellate and trial courts.
2. Respondent herself admitted that a separate mortgage was executed to secure the loan.¹⁶

The petition lacks merit.

At the outset, the instant petition should be denied for being filed out of time. Petitioners admit in the instant petition that: (1) on July 18, 2006, they received a copy of the July 5, 2006 Resolution of the CA which denied their Motion for Reconsideration of the assailed Amended Decision; (2) on July 26, 2006, they filed a Motion to Admit Second Motion for Reconsideration attaching thereto the said Second Motion for Reconsideration; (3) on September 5, 2006, they received a copy of the August 28, 2006 Resolution of the CA which denied their Motion to Admit as well as their Second Motion for Reconsideration; and (4) they filed the instant petition on October 20, 2006.

Section 2, Rule 45 of the Rules of Court provides that a petition for review on *certiorari* under the said Rule “shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from **or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment.**” Relative thereto, Section 2, Rule 52 of the same Rules provides that “[n]o **second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.**” Based on the abovementioned dates, the start

¹⁶ Rollo, pp. 16-17.

of the 15-day period for the filing of this petition should have been reckoned from July 18, 2006, the time of petitioners' receipt of the CA Resolution denying their Motion for Reconsideration, and not on September 5, 2006, the date when they received the CA Resolution denying their Second Motion for Reconsideration. Thus, petitioners should have filed the instant petition not later than August 2, 2006. It is wrong for petitioners to reckon the 15-day period for the filing of the instant petition from the date when they received the copy of the CA Resolution denying their Second Motion for Reconsideration. Since a second motion for reconsideration is not allowed, then unavoidably, its filing did not toll the running of the period to file an appeal by *certiorari*.¹⁷ Petitioners made a critical mistake in waiting for the CA to resolve their second motion for reconsideration before pursuing an appeal.

Perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional.¹⁸ For this reason, petitioners' failure to file this petition within the 15-day period rendered the assailed Amended CA Decision and Resolutions final and executory, thus, depriving this Court of jurisdiction to entertain an appeal therefrom.¹⁹ On this ground alone, the instant petition should be dismissed.

In any case, even granting, *arguendo*, that the present petition is timely filed, the Court finds no cogent reason to depart from the findings and conclusions of the CA in its disputed Amended Decision.

Anent the first assigned error, petitioners are correct in pointing out that notarized documents carry evidentiary weight conferred upon them with respect to their due execution and enjoy the presumption of regularity which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to falsity.²⁰ However, the presumptions that attach to notarized documents can be affirmed only so long as it is beyond dispute that the notarization was regular.²¹ A defective notarization will strip the document of its public character and reduce it to a private instrument.²² Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly-notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence.²³

¹⁷ *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424, 445.

¹⁸ *Ong v. Philippine Deposit Insurance Corp.*, G.R. No. 175116, August 18, 2010, 628 SCRA 415, 426.

¹⁹ *Id.*

²⁰ *Meneses v. Venturozo*, G.R. No. 172196, October 19, 2011, 659 SCRA 577, 586.

²¹ *Id.*

²² *Id.*

²³ *Id.*

In the present case, the CA has clearly pointed out the dubious circumstances and irregularities attendant in the alleged notarization of the subject Deed of Transfer, to wit: (1) the Certification²⁴ issued by the Clerk of Court of the Notarial Section of the RTC of Makati City which supposedly attested that a copy of the subject Deed of Transfer is on file with the said court, was contradicted by the Certification²⁵ issued by the Administrative Officer of the Notarial Section of the same office as well as by the testimony of the court employee who prepared the Certification issued by the Clerk of Court, to the effect that the subject Deed of Transfer cannot, in fact, be found in their files; (2) respondent's categorical denial that she executed the subject Deed of Transfer; and (3) the subject document did not state the date of execution and lacks the marital consent of respondent's husband.

Indeed, petitioners' heavy reliance on the Certification issued by the notary public who supposedly notarized the said deed, as well as the Certification issued by the Clerk of Court of the Notarial Section of the RTC of Makati City, is misplaced for the following reasons: *first*, the persons who issued these Certifications were not presented as witnesses and, as such, they could not be cross-examined with respect to the truthfulness of the contents of their Certifications; *second*, as mentioned above, these Certifications were contradicted by the Certification issued by the Administrative Officer of the Notarial Section of the RTC of Makati City as well as by the admission, on cross-examination, of the clerk who prepared the Certification of the Clerk of Court, that their office cannot, in fact, find a copy of the subject Deed of Transfer in their files;²⁶ and *third*, the further admission of the said clerk that the Certification, which was issued by the clerk of court and relied upon by petitioners, was not based on documents existing in their files, but was simply based on the Certification issued by the notary public who allegedly notarized the said Deed of Transfer.²⁷

Assuming further that the notarization of the disputed Deed of Transfer was regular, the Court, nonetheless, is not persuaded by petitioners' argument that such Deed is a sufficient evidence of the validity of the agreement between petitioners and respondent.

While indeed a notarized document enjoys the presumption of regularity, the fact that a deed is notarized is not a guarantee of the validity of its contents.²⁸ The presumption is not absolute and may be rebutted by

²⁴ Exhibit "20," records, p. 325.

²⁵ Exhibit "H," *id.* at 291.

²⁶ TSN, November 20, 2001, pp. 12-17.

²⁷ *Id.* at 7-17.

²⁸ *Lazaro v. Agustin*, G.R. No. 152364, April 15, 2010, 618 SCRA 298, 311; *San Juan v. Offrill*, G.R. No. 154609, April 24, 2009, 586 SCRA 439, 445-446.

clear and convincing evidence to the contrary.²⁹ In the present case, the presumption cannot be made to apply, because aside from the regularity of its notarization, the validity of the contents and execution of the subject Deed of Transfer was challenged in the proceedings below where its *prima facie* validity was subsequently overthrown by the questionable circumstances attendant in its supposed execution. These circumstances include: (1) the alleged agreement between the parties that the ownership of the subject property be simply assigned to petitioners instead of foreclosure of the contract of mortgage which was earlier entered into by them; (2) the Deed of Transfer was executed by reason of the loan extended by petitioners to respondent, the amount of the latter's outstanding obligation being the same as the amount of the consideration for the assignment of ownership over the subject property; (3) the inadequacy of the consideration; and (4) the claim of respondent that she had no intention of transferring ownership of the subject property to petitioners.

Based on the foregoing, the Court finds no cogent reason to depart from the findings of the CA that the agreement between petitioners and respondent is, in fact, an equitable mortgage.

An equitable mortgage has been defined as one which, although lacking in some formality, or form or words, or other requisites demanded by a statute, nevertheless reveals the intention of the parties to charge real property as security for a debt, there being no impossibility nor anything contrary to law in this intent.³⁰

One of the circumstances provided for under Article 1602 of the Civil Code, where a contract shall be presumed to be an equitable mortgage, is “where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.” In the instant case, it has been established that the intent of both petitioners and respondent is that the subject property shall serve as security for the latter's obligation to the former. As correctly pointed out by the CA, the circumstances surrounding the execution of the disputed Deed of Transfer would show that the said document was executed to circumvent the terms of the original agreement and deprive respondent of her mortgaged property without the requisite foreclosure.

²⁹ *Id;* *id.* at 446.

³⁰ *Muñoz, Jr. v. Ramirez*, G.R. No. 156125, August 25, 2010, 629 SCRA 38, 51; *Rockville Excel International Exim Corporation v. Culla*, G.R. No. 155716, October 2, 2009, 602 SCRA 128, 136.

With respect to the foregoing discussions, it bears to point out that in *Misena v. Rongavilla*,³¹ a case which involves a factual background similar to the present case, this Court arrived at the same ruling. In the said case, the respondent mortgaged a parcel of land to the petitioner as security for the loan which the former obtained from the latter. Subsequently, ownership of the property was conveyed to the petitioner via a Deed of Absolute Sale. Applying Article 1602 of the Civil Code, this Court ruled in favor of the respondent holding that the supposed sale of the property was, in fact, an equitable mortgage as the real intention of the respondent was to provide security for the loan and not to transfer ownership over the property.

Since the original transaction between the parties was a mortgage, the subsequent assignment of ownership of the subject lots to petitioners without the benefit of foreclosure proceedings, partakes of the nature of a *pactum commissorium*, as provided for under Article 2088 of the Civil Code.

Pactum commissorium is a stipulation empowering the creditor to appropriate the thing given as guaranty for the fulfillment of the obligation in the event the obligor fails to live up to his undertakings, without further formality, such as foreclosure proceedings, and a public sale.³²

In the instant case, evidence points to the fact that the sale of the subject property, as proven by the disputed Deed of Transfer, was simulated to cover up the automatic transfer of ownership in petitioners' favor. While there was no stipulation in the mortgage contract which provides for petitioners' automatic appropriation of the subject mortgaged property in the event that respondent fails to pay her obligation, the subsequent acts of the parties and the circumstances surrounding such acts point to no other conclusion than that petitioners were empowered to acquire ownership of the disputed property without need of any foreclosure.

Indeed, the Court agrees with the CA in not giving credence to petitioners' contention in their Answer filed with the RTC that respondent offered to transfer ownership of the subject property in their name as payment for her outstanding obligation. As this Court has held, all persons in need of money are liable to enter into contractual relationships whatever the condition if only to alleviate their financial burden albeit temporarily.³³ Hence, courts are duty-bound to exercise caution in the interpretation and resolution of contracts lest the lenders devour the borrowers like vultures do

³¹ 363 Phil. 361 (1999).

³² *Edralin v. Philippine Veterans Bank*, G.R. No. 168523, March 9, 2011, 645 SCRA 75, 89.

³³ *Bustamante v. Rosel*, 377 Phil. 436, 445 (1999).

with their prey.³⁴ Aside from this aforementioned reason, the Court cannot fathom why respondent would agree to transfer ownership of the subject property, whose value is much higher than her outstanding obligation to petitioners. Considering that the disputed property was mortgaged to secure the payment of her obligation, the most logical and practical thing that she could have done, if she is unable to pay her debt, is to wait for it to be foreclosed. She stands to lose less of the value of the subject property if the same is foreclosed, rather than if the title thereto is directly transferred to petitioners. This is so because in foreclosure, unlike in the present case where ownership of the property was assigned to petitioners, respondent can still claim the balance from the proceeds of the foreclosure sale, if there be any. In such a case, she could still recover a portion of the value of the subject property rather than losing it completely by assigning its ownership to petitioners.

As to the second assigned error, the Court is not persuaded by petitioners' contention that the issue of whether or not the subject Deed of Transfer is, in fact, an equitable mortgage was not raised by the latter either in the RTC or the CA.

It is true that, as a rule, no issue may be raised on appeal unless it has been brought before the lower tribunal for its consideration.³⁵ Higher courts are precluded from entertaining matters neither alleged in the pleadings nor raised during the proceedings below, but ventilated for the first time only in a motion for reconsideration or on appeal.³⁶ However, as with most procedural rules, this maxim is subject to exceptions.³⁷ In this regard, the Court's ruling in *Mendoza v. Bautista*³⁸ is instructive, to wit:

x x x Indeed, our rules recognize the broad discretionary power of an appellate court to waive the lack of proper assignment of errors and to consider errors not assigned. Section 8 of Rule 51 of the Rules of Court provides:

SEC. 8 *Questions that may be decided.* - No error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceedings therein will be considered, unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors.

³⁴ *Id.*

³⁵ *Ang v. Associated Bank*, G.R. No. 146511, September 5, 2007, 532 SCRA 244, 267.

³⁶ *Id.*

³⁷ *Id.*

³⁸ 493 Phil. 804 (2005).

Thus, an appellate court is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal in these instances: (a) grounds not assigned as errors but affecting jurisdiction over the subject matter; (b) matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (c) **matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice**; (d) matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (e) **matters not assigned as errors on appeal but closely related to an error assigned**; and (f) matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.³⁹

In the present case, petitioners must be reminded that one of the main issues raised by respondent in her appeal with the CA is the validity and due execution of the Deed of Transfer which she supposedly executed in petitioners' favor. The Court agrees with respondent that, under the factual circumstances obtaining in the instant case, the determination of the validity of the subject Deed of Transfer would necessarily entail or involve an examination of the true nature of the said agreement. In other words, the matter of validity of the disputed Deed of Transfer and the question of whether the agreement evidenced by such Deed was, in fact, an equitable mortgage are issues which are closely related, which can, thus, be resolved jointly by the CA.

WHEREFORE, the instant petition is **DENIED**. The assailed Amended Decision and Resolutions of the Court of Appeals, dated September 30, 2005, July 5, 2006 and August 28, 2006, respectively, in CA-G.R. CV No. 76388, are **AFFIRMED**.

SO ORDERED.

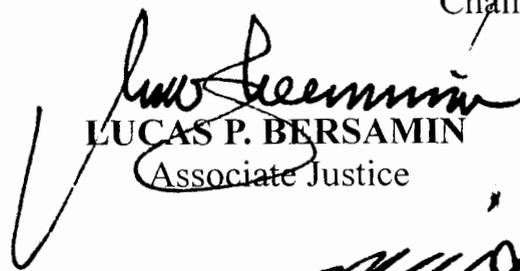

DIOSDADO M. PERALTA
Associate Justice

³⁹ *Id.* at 813-814. (Emphasis supplied)

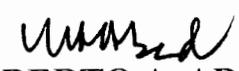
WE CONCUR:


PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson


LUCAS P. BERSAMIN

Associate Justice


ROBERTO A. ABAD

Associate Justice


MARVIC MARIO VICTOR F. LEONEN

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.


PRESBITERO J. VELASCO, JR.

Associate Justice
Chairperson, Third 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