Republic of the Philippines
Supreme Court
Manila

**SECOND DIVISION**

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| **MA. GRACIA HAO and DANNY HAO,** Petitioners, | **G.R. No. 183345** |
| | Present: |
| | CARPIO, *J., Chairperson,* BRION, DEL CASTILLO, VILLARAMA, JR.,* and LEONEN, *JJ.* |
| - versus - | |
| | Promulgated: |
| **PEOPLE OF THE PHILIPPINES,** Respondent. | SEP 17 2014 |

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# DECISION

**BRION, *J.*:**

Before this Court is the petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, filed by Ma. Gracia Hao and Danny Hao (*petitioners*). They seek the reversal of the Court of Appeals' (*CA*) decision[2] dated February 28, 2006 and resolution[3] dated June 13, 2008 in CA-G.R. SP No. 86289. These CA rulings affirmed the February 26, 2004[4] and July 26, 2004[5] orders of the Regional Trial Court (*RTC*) of Manila, which respectively denied the petitioners' motion to defer arraignment and motion to lift warrant of arrest.[6]

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* Designated as Acting Member in lieu of Associate Justice Jose C. Mendoza, per Special Order No. 1767 dated August 27, 2014.

1 *Rollo,* p. 3-41.

2 Penned by Associate Justice Amelita G. Tolentino, and concurred in by Associate Justices Portia Aliño Hormachuelos and Vicente S.E. Veloso; id. at 45-59.

3 Id. at 61-63.

4 Id. at 172-176.

5 Id. at 186-187.

6 Id. at 160-171.

## Factual Antecedents

On July 11, 2003 private complainant Manuel Dy *y* Awiten (*Dy*) filed a criminal complaint against the petitioners and Victor Ngo (*Ngo*) for syndicated *estafa* penalized under Article 315(2)(a) of the Revised Penal Code (*RPC*), as amended, in relation with Presidential Decree (*PD*) No. 1689.[7]

Dy alleged that he was a long-time client of Asiatrust Bank, Binondo Branch where Ngo was the manager. Because of their good business relationship, Dy took Ngo's advice to deposit his money in an investment house that will give a higher rate of return. Ngo then introduced him to Ma. Gracia Hao (*Gracia*), also known as Mina Tan Hao, who presented herself as an officer of various reputable companies and an incorporator of State Resources Development Corporation (*State Resources*), the recommended company that can give Dy his higher investment return.[8]

Relying on Ngo and Gracia's assurances, Dy initially invested in State Resources the approximate amount of Ten Million Pesos (₱10,000,000.00). This initial investment earned the promised interests, leading Dy, at the urging of Gracia, to increase his investment to almost One Hundred Million Pesos (₱100,000,000.00). Dy increased his investments through several checks he issued in the name of State Resources.[9] In return, Gracia also issued several checks to Dy representing his earnings for his investment. Gracia issued checks in the total amount of One Hundred Fourteen Million, Two Hundred Eighty Six Thousand, Eighty Six Pesos and Fourteen Centavos (₱114,286,086.14). All these checks[10] were subsequently dishonored when Dy deposited them.

Dy sought the assistance of Ngo for the recovery of the amount of the dishonored checks. Ngo promised assistance, but after a few months, Dy found out that Ngo already resigned from Asiatrust Bank and could no longer be located. Hence, he confronted Gracia regarding the dishonored checks. He eventually learned that Gracia invested his money in the construction and realty business of Gracia's husband, Danny Hao (*Danny*). Despite their promises to pay, the petitioners never returned Dy's money.

On July 17, 2003, Dy filed a supplemental affidavit to include in the criminal complaint Chester De Joya, Allan Roxas, Samantha Roxas, Geraldine Chiong, and Lyn Ansuas – all incorporators and/or directors of State Resources.[11]

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7 Increasing the Penalty for Certain Forms of Swindling or *Estafa.*
8 *Rollo,* p. 64.
9 Id. at 68-70.
10 Id. at 71-84.
11 Id. at 87.

On the basis of Dy's complaint[12] and supplemental affidavit,[13] the public prosecutor filed an information[14] for syndicated *estafa* against the petitioners and their six co-accused. The case was docketed as Criminal Case No. 03-219952 and was raffled to respondent RTC of Manila, Branch 40.

Judge Placido Marquez issued warrants of arrest against the petitioners and the other accused. Consequently, petitioners immediately filed a motion to defer arraignment and motion to lift warrant of arrest. In their twin motions, they invoked the absence of probable cause against them and the pendency of their petition for review with the Department of Justice (*DOJ*).[15]

In its February 26, 2004 order, the trial court denied the petitioners' twin motions.[16] The petitioners moved for reconsideration but the trial court also denied this in its July 26, 2004 order.

Consequently, the petitioners filed a petition for *certiorari* under Rule 65 of the Rules of Court with the CA.

## The CA's Ruling

The CA affirmed the denial of the petitioners' motion to defer arraignment and motion to lift warrant of arrest.

In determining probable cause for the issuance of a warrant of arrest, a judge is mandated to personally evaluate the resolution of the prosecutor and its supporting evidence.[17] The CA noted that Judge Marquez only issued the warrants of arrest after his personal examination of the facts and circumstances of the case. Since the judge complied with the Rules, the CA concluded that no grave abuse of discretion could be attributed to him.[18]

In its decision, however, the CA opined that the evidence on record and the assertions in Dy's affidavits only show probable cause for the crime of simple *estafa*, not syndicated *estafa*. Under PD No. 1689, in order for syndicated *estafa* to exist, the swindling must have been committed by five or more persons, and the fraud must be against the general public or at least a group of persons. In his complaint-affidavit, Dy merely stated that he relied on the petitioners' false representations and was defrauded into parting with his money, causing him damage.[19] Since there was no evidence that State Resources was formed to defraud

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12 Id. at 64-66.
13 Id. at 87-90.
14 Id. at 157-159.
15 Id. at 47.
16 Id. at 48.
17 Id.
18 Id. at 51.
19 Id. at 55-56.

the public in general or that it was used to solicit money from other persons aside from Dy, then the offense charged should only be for simple *estafa.*[20]

Nevertheless, the CA found that the trial court did not commit grave abuse of discretion in issuing the warrants of arrest against the petitioners as there was still probable cause to believe that the petitioners committed the crime of simple *estafa*.[21]

## The Petition

The petitioners submit that an examination of Dy's affidavits shows inconsistencies in his cited factual circumstances. These inconsistencies, according to the petitioners, negate the existence of probable cause against them for the crime charged.

The petitioners also contend that it was only Ngo who enticed Dy to invest his money. As early as August 1995, State Resources had already been dissolved, thus negating the assertion that Dy advanced funds for this corporation.[22] They question the fact that it took Dy almost five years to file his complaint despite his allegation that he lost almost ₱100,000,000.00.[23]

Lastly, the petitioners claim that the warrants of arrest issued against them were null and void. Contrary to the trial court's findings, the CA noted in the body of its decision, that PD 1689 was inapplicable to their case. There was no evidence to show that State Resources was formed to solicit funds not only from Dy but also from the general public. Since simple *estafa* and syndicated *estafa* are two distinct offenses, then the warrants of arrest issued to petitioners were erroneous because these warrants pertained to two different crimes.[24]

## The Court's Ruling

We resolve to **DENY** the petition.

### *Procedural Consideration*

We note that the present petition questions the CA's decision and resolution on the petition for *certiorari* the petitioners filed with that court. At the CA, the petitioners imputed grave abuse of discretion against the trial court for the denial of their twin motions to defer arraignment and to lift warrant of arrest.

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20 Id. at 58.
21 Id. at 50.
22 Id. at 29-30.
23 Id. at 36.
24 Id. at 37-40.

This situation is similar to the procedural issue we addressed in the case of *Montoya v. Transmed Manila Corporation*[25] where we faced the question of how to review a Rule 45 petition before us, a CA decision made under Rule 65. We clarified in this cited case the kind of review that this Court should undertake given the distinctions between the two remedies. In Rule 45, we consider the correctness of the decision made by an inferior court. In contrast, a Rule 65 review focuses on jurisdictional errors.

As in *Montoya*, we need to scrutinize the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it. Thus, we need to examine the CA decision from the prism of **whether it correctly determined the presence or absence of grave abuse of discretion on the part of the trial court and not on the basis of whether the trial court's denial of petitioners' motions was strictly legally correct**. In question form, the question to ask is: did the CA correctly determine whether the trial court committed grave abuse of discretion in denying petitioners' motions to defer arraignment and lift warrant of arrest?

***Probable Cause for the Issuance of a Warrant of Arrest***

Under the Constitution[26] and the Revised Rules of Criminal Procedure,[27] a judge is mandated to **personally determine** the existence of probable cause after his **personal evaluation** of the prosecutor's resolution and the supporting evidence for the crime charged. These provisions command the judge to refrain from making a mindless acquiescence to the prosecutor's findings and to conduct his own examination of the facts and circumstances presented by both parties.

Section 5(a) of Rule 112, grants the trial court three options upon the filing of the criminal complaint or information. He may: a) dismiss the case if the evidence on record clearly failed to establish probable cause; b) issue a warrant of arrest if it finds probable cause; or c) order

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25 G.R. No. 183329, August 27, 2009, 597 SCRA 334.

26 Article III, Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

27 Rule 112, Section 5. *When warrant of arrest may issue.* — (a) *By the Regional Trial Court.* — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

the prosecutor to present additional evidence within five days from notice in case of doubt on the existence of probable cause.[28]

In the present case, the trial court chose to issue warrants of arrest to the petitioners and their co-accused. To be valid, these warrants must have been issued after compliance with the requirement that probable cause be personally determined by the judge. Notably at this stage, the judge is tasked to merely determine **the probability, not the certainty, of guilt of the accused.** In doing so, he need not conduct a *de novo* hearing; he only needs to personally review the prosecutor's initial determination and see if it is supported by substantial evidence.[29]

The records showed that Judge Marquez made a personal determination of the existence of probable cause to support the issuance of the warrants. The petitioners, in fact, did not present any evidence to controvert this. As the trial court ruled in its February 26, 2004 order:

> The non-arrest of all the accused or their refusal to surrender practically resulted in the suspension of arraignment exceeding the sixty (60) days counted from the filing of co-accused De Joya's motions, which may be considered a petition for review, and that of co-accused Spouses Hao's own petition for review. This is not to mention the delay in the resolution by the Department of Justice. **On the other hand, co-accused De Joya's motion to determine probable cause and co-accused Spouses Hao's motion to lift warrant of arrest have been rendered moot and academic with the issuance of warrants of arrest by this presiding judge after his personal examination of the facts and circumstances strong enough in themselves to support the belief that they are guilty of the crime that in fact happened**.[30] [Emphasis ours]

Under this situation, we conclude that Judge Marquez did not arbitrarily issue the warrants of arrest against the petitioners. As stated by him, the warrants were only issued after his personal evaluation of the factual circumstances that led him to believe that there was probable cause to apprehend the petitioners for their commission of a criminal offense.

### *Distinction between Executive and Judicial Determination of Probable Cause*

In a criminal prosecution, probable cause is determined at two stages. The first is at the executive level, where determination is made by the prosecutor during the preliminary investigation, before the filing of the criminal information. The second is at the judicial level, undertaken by the judge before the issuance of a warrant of arrest.

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[28] *People v. Hon. Dela Torre-Yadao,* G.R. Nos. 162144-54, November 13, 2012, 685 SCRA 264, 287.

[29] *People v. CA, Cerbo and Cerbo,* G.R. No. 126005, January 21, 1999, 301 SCRA 475, 486.

[30] *Rollo,* p. 175.

In the case at hand, the question before us relates to the judicial determination of probable cause. In order to properly resolve if the CA erred in affirming the trial court's issuance of the warrants of arrest against the petitioners, it is necessary to scrutinize the crime of *estafa*, whether committed as a simple offense or through a syndicate.

The crime of swindling or *estafa* is covered by Articles 315-316 of the RPC. In these provisions, the different modes by which *estafa* may be committed, as well as the corresponding penalties for each are outlined. One of these modes is *estafa* by means of deceit. Article 315(2)(a) of the RPC defines how this particular crime is perpetrated:

> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

Under this provision, *estafa* has the following elements: 1) the existence of a false pretense, fraudulent act or fraudulent means; 2) the execution of the false pretense, fraudulent act or fraudulent means prior to or simultaneously with the commission of the fraud; 3) the reliance by the offended party on the false pretense, fraudulent act or fraudulent means, which induced him to part with his money or property; and 4) as a result, the offended party suffered damage.[31]

As Dy alleged in his complaint-affidavit, Ngo and Gracia induced him to invest with State Resources and promised him a higher rate of return.[32] Because of his good business relationship with Ngo and relying on Gracia's attractive financial representations, Dy initially invested the approximate amount of ₱10,000,000.00.

This first investment earned profits. Thus, Dy was enticed by Gracia to invest more so that he eventually advanced almost ₱100,000,000.00[33] with State Resources. Gracia's succeeding checks representing the earnings of his investments, however, were all dishonored upon deposit.[34] He subsequently learned that the petitioners used his money for Danny's construction and realty business.[35] Despite repeated demands and the petitioners' constant assurances to pay, they never returned Dy's invested money and its supposed earnings.[36]

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31 *RCL Feeders Pte., Ltd. v. Hon. Perez*, 487 Phil. 211, 220-221 (2004).
32 *Rollo*, p. 64.
33 Id.
34 Id.
35 Id. at 65.
36 Id.

These cited factual circumstances show the elements of *estafa* by means of deceit. The petitioners induced Dy to invest in State Resources promising higher returns. But unknown to Dy, what occurred was merely a ruse to secure his money to be used in Danny's construction and realty business. The petitioners' deceit became more blatant when they admitted in their petition that as early as August 1995, State Resources had already been dissolved.[37] This admission strengthens the conclusion that the petitioners misrepresented facts regarding themselves and State Resources in order to persuade Dy to part with his money for investment with an inexistent corporation.

These circumstances all serve as indicators of the petitioners' deceit. "Deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another, so that he shall act upon it to his legal injury."[38]

Thus, had it not been for the petitioners' false representations and promises, Dy would not have placed his money in State Resources, to his damage. These allegations cannot but lead us to the conclusion that probable cause existed as basis to arrest the petitioners for the crime of *estafa* by means of deceit.

We now address the issue of whether *estafa* in this case was committed through a syndicate.

Under Section 1 of PD No. 1689,[39] there is syndicated *estafa* if the following elements are present: 1) *estafa* or other forms of swindling as defined in Articles 315 and 316 of the RPC was committed; 2) the *estafa* or swindling was committed by a syndicate of five or more persons; and 3) the fraud resulted in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "samahang nayon[s]," or farmers associations or **of funds solicited by corporations/associations from the general public**.[40]

The factual circumstances of the present case show that the first and second elements of syndicated *estafa* are present; there is probable cause for violation of Article 315(2)(a) of the RPC against the petitioners. Moreover, in Dy's supplemental complaint-affidavit, he alleged that the fraud perpetrated against him was committed, not only

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37 Id. at 30.

38 *Galvez and Guy v. Hon. Court of Appeals*, G.R. Nos. 187919, 187979, 188030, April 25, 2012, 671 SCRA 222, 232.

39 Section 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)", or farmers association, or of funds solicited by corporations/associations from the general public.

40 *People v. Balasa*, 356 Phil. 362, 395-396 (1998).

by Ngo and the petitioners, but also by the other officers and directors of State Resources. The number of the accused who allegedly participated in defrauding Dy exceeded five, thus satisfying the requirement for the existence of a syndicate.

However, the third element of the crime is patently lacking. The funds fraudulently solicited by the corporation must come from the general public. In the present case, no evidence was presented to show that aside from Dy, the petitioners, through State Resources, also sought investments from other people. Dy had no co-complainants alleging that they were also deceived to entrust their money to State Resources. The general public element was not complied with. Thus, no syndicated *estafa* allegedly took place, only simple *estafa* by means of deceit.

Despite this conclusion, we still hold that the CA did not err in affirming the trial court's denial of the petitioners' motion to lift warrant of arrest.

A warrant of arrest should be issued if the judge after personal evaluation of the facts and circumstances is convinced that probable cause exists that an offense was committed.

Probable cause for the issuance of a warrant of arrest is the existence of such facts and circumstances that would lead a reasonably discreet and prudent person to believe that an offense was committed by the person sought to be arrested.[41] This must be distinguished from the prosecutor's finding of probable cause which is for the filing of the proper criminal information. Probable cause for warrant of arrest is determined to address the necessity of **placing the accused under custody in order not to frustrate the ends of justice**.[42]

In *People v. Castillo and Mejia,*[43] we explained the distinction between the two kinds of probable cause determination:

> There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. **It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial**. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.

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41 *Allado v. Diokno*, G.R. No. 113630, May 5, 1994, 232 SCRA 192, 199-200.
42 *Mendoza v. People*, G.R. No. 197293, April 21, 2014.
43 G.R. No. 171188, June 19, 2009, 590 SCRA 95.

> **The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused.** The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.[44] [Emphasis ours]

With our conclusion that probable cause existed for the crime of simple *estafa* and that the petitioners have probably committed it, it follows that the issuance of the warrants of arrest against the petitioners remains to be valid and proper. To allow them to go scot-free would defeat rather than promote the purpose of a warrant of arrest, which is to put the accused in the court's custody to avoid his flight from the clutches of justice.

Moreover, we note that simple *estafa* and syndicated *estafa* are not two entirely different crimes. Simple *estafa* is a crime necessarily included in syndicated *estafa*. An offense is necessarily included in another offense when the essential ingredients of the former constitute or form a part of those constituting the latter.[45]

Under this legal situation, only a formal amendment of the filed information under Section 14, Rule 110 of the Rules of Court[46] is necessary; the warrants of arrest issued against the petitioners should not be nullified since probable cause exists for simple *estafa.*

***Suspension of Arraignment***

Under Section 11(c), Rule 116 of the Rules of Court, an arraignment may be suspended if there is a petition for review of the resolution of the prosecutor pending at either the DOJ, or the Office of the President. However, such period of suspension **should not exceed sixty (60) days counted from the filing of the petition with the reviewing office**.

As the petitioners alleged, they filed a petition for review with the DOJ on November 21, 2003. Since this petition had not been resolved

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44 Id. at 105-106.

45 *Ssgt. Pacoy v. Hon. Cajigal*, 560 Phil. 598, 609 (2007).

46 Section 14. *Amendment or substitution*. — A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party. (n)

If it appears at any time before judgment that a mistake has been made in charging the proper offense, the court shall dismiss the original complaint or information upon the filing of a new one charging the proper offense in accordance with section 19, Rule 119, provided the accused would not be placed in double jeopardy. The court may require the witnesses to give bail for their appearance at the trial. (14a)

yet, they claimed that their arraignment should be suspended indefinitely.

We emphasize that the right of an accused to have his arraignment suspended is not an unqualified right. In *Spouses Trinidad v. Ang,*[47] we explained that while the pendency of a petition for review is a ground for suspension of the arraignment, the Rules limit the deferment of the arraignment to a period of 60 days reckoned from the filing of the petition with the reviewing office. It follows, therefore, **that after the expiration of the 60-day period, the trial court is bound to arraign the accused or to deny the motion to defer arraignment.**[48]

As the trial court found in its February 26, 2004 order, the DOJ's delay in resolving the petitioners' petition for review had already exceeded 60 days. Since the suspension of the petitioners' arraignment was already beyond the period allowed by the Rules, the petitioners' motion to suspend completely lacks any legal basis.

As a final note, we observe that the resolution of this case had long been delayed because of the petitioners' refusal to submit to the trial court's jurisdiction and their erroneous invocation of the Rules in their favor. As there is probable cause for the petitioners' commission of a crime, their arrest and arraignment should now ensue so that this case may properly proceed to trial, where the merits of both the parties' evidence and allegations may be weighed.

**WHEREFORE**, premises considered, we hereby **DENY** the petition and **AFFIRM WITH MODIFICATION** the February 28, 2006 decision and June 13, 2008 resolution of the Court of Appeals in CA-G.R. SP No. 86289. We hereby order that petitioners Ma. Gracia Hao and Danny Hao be charged for simple *estafa* under Article 315(2)(a) of the Revised Penal Code, as amended and be arraigned for this charge. The warrants of arrest issued stand.

**SO ORDERED.**

**ARTURO D. BRION**
Associate Justice

**WE CONCUR:**

**ANTONIO T. CARPIO**
Associate Justice
Chairperson

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47 G.R. No. 192898, January 31, 2011, 641 SCRA 214.
48 Id. at 218.

**MARIANO C. DEL CASTILLO**
Associate Justice

**MARTIN S. VILLARAMA, JR.**
Associate Justice

**MARVIC M.V.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.

**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