



Republic of the Philippines  
 Supreme Court  
 Manila

SECOND DIVISION

REPUBLIC OF THE PHILIPPINES,  
*Petitioner,*

GR. No. 199194

- versus -

Present:

CARPIO,  
 BRION,  
 DEL CASTILLO,  
 MENDOZA, *and*  
 LEONEN, *JJ.*

JOSE B. SAREÑOGON, JR.,  
*Respondent.*

Promulgated:  
 10 FEB 2016

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DECISION

DEL CASTILLO, *J.:*

A petition for certiorari pursuant to Rule 65 of the Rules of Court is the proper remedy to challenge a trial court's declaration of presumptive death under Article 41 of The Family Code of the Philippines<sup>1</sup> (Family Code).<sup>2</sup>

This Petition for Review on *Certiorari*<sup>3</sup> assails the October 24, 2011 Decision<sup>4</sup> of the Court of Appeals (CA) in CA-GR. SP No. 04158-MIN dismissing the Petition for *Certiorari* filed by petitioner Republic of the Philippines (Republic).

*Factual Antecedents*

On November 4, 2008, respondent Jose B. Sareñogon, Jr. (Jose) filed a Petition<sup>5</sup> before the Regional Trial Court (RTC) of Ozamiz<sup>6</sup> City-Branch 15 for

<sup>1</sup> EXECUTIVE ORDER NO. 209.

<sup>2</sup> *Republic v. Cantor*, GR. No. 184621, December 10, 2013, 712 SCRA 1, 16-18.

<sup>3</sup> *Rollo*, pp. 9-40.

<sup>4</sup> *Id.* at 42-50; penned by Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Zenaida T. Galapate-Laguilles.

<sup>5</sup> *Id.* at 51-52.

<sup>6</sup> Also spelled as "Ozamis" in other parts of the CA Decision.

the declaration of presumptive death of his wife, Netchie S.<sup>7</sup> Sareñogon (Netchie).<sup>8</sup>

In an Amended Order dated February 11, 2009, the RTC set the Petition for initial hearing on April 16, 2009. It likewise directed the publication of said Order in a newspaper of general circulation in the cities of Tangub, Ozamiz and Oroquieta, all in the province of Misamis Occidental. Nobody opposed the Petition.<sup>9</sup> Trial then followed.<sup>10</sup>

Jose testified that he first met Netchie in Clarin, Misamis Occidental in 1991.<sup>11</sup> They later became sweethearts and on August 10, 1996, they got married in civil rites at the Manila City Hall.<sup>12</sup> However, they lived together as husband and wife for a month only because he left to work as a seaman while Netchie went to Hongkong as a domestic helper.<sup>13</sup> For three months, he did not receive any communication from Netchie.<sup>14</sup> He likewise had no idea about her whereabouts.<sup>15</sup> While still abroad, he tried to contact Netchie's parents, but failed, as the latter had allegedly left Clarin, Misamis Occidental.<sup>16</sup> He returned home after his contract expired.<sup>17</sup> He then inquired from Netchie's relatives and friends about her whereabouts, but they also did not know where she was.<sup>18</sup> Because of these, he had to presume that his wife Netchie was already dead.<sup>19</sup> He filed the Petition before the RTC so he could contract another marriage pursuant to Article 41 of the Family Code.<sup>20</sup>

Jose's testimony was corroborated by his older brother Joel Sareñogon, and by Netchie's aunt, Consuelo Sande.<sup>21</sup> These two witnesses testified that Jose and Netchie lived together as husband and wife only for one month prior to their leaving the Philippines for separate destinations abroad.<sup>22</sup> These two added that they had no information regarding Netchie's location.<sup>23</sup>

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<sup>7</sup> In *Rollo*, p. 53, Netchie's maiden name per a copy of their Marriage Contract dated August 10, 1996 is "Netchie S. Polistico".

<sup>8</sup> *Rollo*, p. 43.

<sup>9</sup> *Id.* at 54.

<sup>10</sup> *Id.* at 43.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 43-44 and 54.

<sup>17</sup> *Id.* at 44 and 54.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 44 and 55.

<sup>21</sup> *Id.* at 44 and 54.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

### ***Ruling of the Regional Trial Court***

In its Decision<sup>24</sup> dated January 31, 2011 in Spec. Proc. No. 045-08, the RTC held that Jose had established by preponderance of evidence that he is entitled to the relief prayed for under Article 41 of the Family Code.<sup>25</sup> The RTC found that Netchie had disappeared for more than four years, reason enough for Jose to conclude that his wife was indeed already dead.<sup>26</sup> The dispositive portion of the Decision reads:

VIEWED IN THE LIGHT OF THE FOREGOING, judgment is hereby rendered declaring respondent presumptively dead for purposes of remarriage of petitioner.

SO ORDERED.<sup>27</sup>

### ***Proceedings before the Court of Appeals***

On April 19, 2011, the Republic, through the Office of the Solicitor General (OSG), elevated the judgment of the RTC to the CA via a Petition for *Certiorari*<sup>28</sup> under Rule 65 of the Revised Rules of Court.

In its Decision<sup>29</sup> of October 24, 2011, the CA held that the Republic used the wrong recourse by instituting a petition for *certiorari* under Rule 65 of the Revised Rules of Court. The CA perceived no error at all in the RTC's judgment granting Jose's Petition for the declaration of the presumptive death of his wife, Netchie. The CA thus held in effect that the Republic's appeal sought to correct or review the RTC's alleged misappreciation of evidence which could not translate into excess or lack of jurisdiction amounting to grave abuse of discretion.<sup>30</sup> The CA noted that the RTC properly caused the publication of the Order setting the case for initial hearing.<sup>31</sup> The CA essentially ruled that, "[a] writ of *certiorari* may not be used to correct a lower court's evaluation of the evidence and factual findings. In other words, it is not a remedy for mere errors of judgment, which are correctible by an appeal."<sup>32</sup> The CA then disposed of the case in this wise:

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<sup>24</sup> Id. at 54-55; penned by Executive Judge Edmundo P. Pintac.

<sup>25</sup> Id. at 44 and 55.

<sup>26</sup> Id.

<sup>27</sup> Id. at 55.

<sup>28</sup> Id. at 42 and 44.

<sup>29</sup> Id. at 42-50.

<sup>30</sup> Id. at 49.

<sup>31</sup> Id.

<sup>32</sup> Id.

WHEREFORE, the petition for certiorari is dismissed.

SO ORDERED.<sup>33</sup>

### Issues

The Republic filed the instant Petition<sup>34</sup> raising the following issues:

THE HONORABLE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN ITS ASSAILED DECISION BECAUSE:

#### I

THE HONORABLE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW IN DISMISSING THE REPUBLIC'S PETITION FOR REVIEW ON CERTIORARI UNDER RULE 65, ON THE GROUND THAT THE PROPER REMEDY SHOULD HAVE BEEN TO APPEAL THE RTC DECISION, BECAUSE IMMEDIATELY FINAL AND EXECUTORY JUDGMENTS OR DECISIONS ARE NOT APPEALABLE UNDER THE EXPRESS PROVISION OF LAW.

#### II

THE ALLEGED EFFORTS OF RESPONDENT IN LOCATING HIS MISSING WIFE DO NOT SUFFICIENTLY SUPPORT A "WELL-FOUNDED BELIEF" THAT RESPONDENT'S ABSENT WIFE X X X IS PROBABLY DEAD.<sup>35</sup>

### *Petitioner's Arguments*

The Republic insists that a petition for *certiorari* under Rule 65 of the Revised Rules of Court is the proper remedy to challenge an RTC's immediately final and executory Decision on a presumptive death.<sup>36</sup>

The Republic claims that based on jurisprudence, Jose's alleged efforts in locating Netchie did not engender or generate a well-founded belief that the latter is probably dead.<sup>37</sup> It maintains that even as Jose avowedly averred that he exerted efforts to locate Netchie, Jose inexplicably failed to enlist the assistance of the relevant government agencies like the Philippine National Police, the National Bureau of Investigation, the Department of Foreign Affairs, the Bureau of Immigration, the Philippine Overseas Employment Administration, or the Overseas Workers Welfare Administration.<sup>38</sup> It likewise points out that Jose did not present any disinterested person to corroborate his allegations that the latter

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<sup>33</sup> Id. at 50.

<sup>34</sup> Id. at 9-40.

<sup>35</sup> Id. at 16-17.

<sup>36</sup> Id. at 17-27, 102-109.

<sup>37</sup> Id. at 27-35, 109-114.

<sup>38</sup> Id. at 31, 111-112.

was indeed missing and could not be found.<sup>39</sup> It also contends that Jose did not advert to circumstances, events, occasions, or situations that would prove that he did in fact make a comprehensive search for Netchie.<sup>40</sup> The Republic makes the plea that courts should ever be vigilant and wary about the propensity of some erring spouses in resorting to Article 41 of the Family Code for the purpose of terminating their marriage.<sup>41</sup>

Finally, the Republic submits that Jose did not categorically assert that he wanted to have Netchie declared presumptively dead because he intends to get married again, an essential premise of Article 41 of the Family Code.<sup>42</sup>

### ***Respondent's Arguments***

Jose counters that the CA properly dismissed the Republic's Petition because the latter's petition is erected upon the ground that the CA did not correctly weigh or calibrate the evidence on record, or assigned to the evidence its due worth, import or significance; and that such a ground does not avail in a petition for *certiorari* under Rule 65 of the Revised Rules of Court.<sup>43</sup> Jose also contends that the Republic should have instead filed a motion for reconsideration<sup>44</sup> of the RTC's Decision of January 31, 2011, reasoning out that a motion for reconsideration is a plain, speedy and adequate remedy in law. Jose furthermore submits that the RTC did not act arbitrarily or capriciously in granting his petition because it even dutifully complied with the publication requirement.<sup>45</sup> He moreover argues that to sustain the present petition would allow the executive branch to unduly make inroads into judicial territory.<sup>46</sup> Finally, he insists that the trial court's factual findings are entitled to great weight and respect as these were arrived after due deliberation.<sup>47</sup>

### **This Court's Ruling**

This Court finds the Republic's petition meritorious.

***A petition for certiorari under Rule 65 of the Rules of Court is the proper remedy to question the RTC's Decision in a summary proceeding for the***

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<sup>39</sup> Id. at 31-32, 112.

<sup>40</sup> Id. at 31, 112.

<sup>41</sup> Id. at 33-35, 113-114.

<sup>42</sup> Id. at 35-36, 114-115.

<sup>43</sup> Id. at 62-63, 90-92.

<sup>44</sup> Id. at 63, 93.

<sup>45</sup> Id. at 63-65, 92.

<sup>46</sup> Id. at 64, 92.

<sup>47</sup> Id. at 65, 92-93.

***declaration of presumptive death***

In the 2005 case of *Republic v. Bermudez-Lorino*,<sup>48</sup> we held that the RTC's Decision on a Petition for declaration of presumptive death pursuant to Article 41 of the Family Code is immediately final and executory. Thus, the CA has no jurisdiction to entertain a notice of appeal pertaining to such judgment.<sup>49</sup> Concurring in the result, Justice (later Chief Justice) Artemio Panganiban further therein pointed out that the correct remedy to challenge the RTC Decision was to institute a petition for *certiorari* under Rule 65, and not a petition for review under Rule 45.<sup>50</sup>

We expounded on this appellate procedure in *Republic v. Tango*.<sup>51</sup>

This case presents an opportunity for us to settle the rule on appeal of judgments rendered in summary proceedings under the Family Code and accordingly, refine our previous decisions thereon.

Article 238 of the Family Code, under Title XI: SUMMARY JUDICIAL PROCEEDINGS IN THE FAMILY LAW, establishes the rules that govern summary court proceedings in the Family Code:

ART. 238. Until modified by the Supreme Court, the procedural rules in this Title shall apply in all cases provided for in this Code requiring summary court proceedings. Such cases shall be decided in an expeditious manner without regard to technical rules.

In turn, Article 253 of the Family Code specifies the cases covered by the rules in chapters two and three of the same title. It states:

ART. 253. The foregoing rules in Chapters 2 and 3 hereof shall likewise govern summary proceedings filed under Articles 41, 51, 69, 73, 96, 124 and 217, insofar as they are applicable. (Emphasis supplied.)

In plain text, Article 247 in Chapter 2 of the same title reads:

ART. 247. The judgment of the court shall be immediately final and executory.

By express provision of law, the judgment of the court in a summary proceeding shall be immediately final and executory. As a matter of course, it follows that no appeal can be had of the trial court's judgment in a summary proceeding for the declaration of presumptive death of an absent spouse under Article 41 of the Family Code. It goes without saying, however, that an aggrieved party may file a petition for certiorari to question abuse of discretion

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<sup>48</sup> 489 Phil. 761 (2005).

<sup>49</sup> Id. at 768-769.

<sup>50</sup> *Republic v. Granada*, 687 Phil. 403, 408-409 (2012), citing *Republic v. Bermudez-Lorino*, supra.

<sup>51</sup> 612 Phil. 76 (2009).

amounting to lack of jurisdiction. Such petition should be filed in the Court of Appeals in accordance with the Doctrine of Hierarchy of Courts. To be sure, even if the Court's original jurisdiction to issue a writ of certiorari is concurrent with the RTCs and the Court of Appeals in certain cases, such concurrence does not sanction an unrestricted freedom of choice of court forum. x x x<sup>52</sup> (Citation omitted; Underscoring supplied)

“In sum, under Article 41 of the Family Code, the losing party in a summary proceeding for the declaration of presumptive death may file a petition for *certiorari* with the CA on the ground that, in rendering judgment thereon, the trial court committed grave abuse of discretion amounting to lack of jurisdiction. From the Decision of the CA, the aggrieved party may elevate the matter to this Court via a petition for review on *certiorari* under Rule 45 of the Rules of Court.”<sup>53</sup>

In fact, in *Republic v. Narceda*,<sup>54</sup> we held that the OSG availed of the wrong remedy when it filed a notice of appeal under Rule 42 with the CA to question the RTC's Decision declaring the presumptive death of Marina B. Narceda.<sup>55</sup>

Above all, this Court's ruling in *Republic v. Cantor*<sup>56</sup> made it crystal clear that the OSG properly availed of a petition for *certiorari* under Rule 65 to challenge the RTC's Order therein declaring Jerry Cantor as presumptively dead.

Based on the foregoing, it is clear that the Republic correctly availed of *certiorari* under Rule 65 of the Revised Rules of Court in assailing before the CA the aforesaid RTC's Decision.

***The “well-founded belief” requisite under Article 41 of the Family Code is complied with only upon a showing that sincere honest-to-goodness efforts had indeed been made to ascertain whether the absent spouse is still alive or is already dead***

We now proceed to determine whether the RTC properly granted Jose's Petition.

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<sup>52</sup> Id. at 82-83.

<sup>53</sup> *Republic v. Granada*, supra note 50 at 411.

<sup>54</sup> G.R. No. 182760, April 10, 2013, 695 SCRA 483.

<sup>55</sup> Id. at 489-490.

<sup>56</sup> Supra note 2 at 14-18.

Article 41 of the Family Code pertinently provides that:

Art. 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse. (83a)

In *Republic v. Cantor*,<sup>57</sup> we further held that:

Before a judicial declaration of presumptive death can be obtained, it must be shown that the prior spouse had been absent for four consecutive years and the present spouse had a well-founded belief that the prior spouse was already dead. Under Article 41 of the Family Code, there are four essential requisites for the declaration of presumptive death:

1. That the absent spouse has been missing for four consecutive years, or two consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391 of the Civil Code;
2. That the present spouse wishes to remarry;
3. That the present spouse has a well-founded belief that the absentee is dead; and,
4. That the present spouse files a summary proceeding for the declaration of presumptive death of the absentee.<sup>58</sup>  
(Underscoring supplied)

With respect to the third element (which seems to be the element that in this case invites extended discussion), the holding is that the –

mere absence of the spouse (even for such period required by the law), or lack of news that such absentee is still alive, failure to communicate [by the absentee spouse or invocation of the] general presumption on absence under the Civil Code [would] not suffice. This conclusion proceeds from the premise that Article 41 of the Family Code places upon the present spouse the burden of proving the additional and more stringent requirement of “well-founded belief” which can only be discharged upon a due showing of proper and honest-to-

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<sup>57</sup> Id.

<sup>58</sup> Id. at 18.



goodness inquiries and efforts to ascertain not only the absent spouse's whereabouts but, more importantly, that the absent spouse is [either] still alive or is already dead.

X X X X

The law did not define what is meant by “well-founded belief.” It depends upon the circumstances of each particular case. Its determination, so to speak, remains on a case-to-case basis. To be able to comply with this requirement, the present spouse must prove that his/her belief was the result of diligent and reasonable efforts and inquiries to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. It requires exertion of active effort (not a mere passive one).<sup>59</sup> (Emphasis omitted; underscoring supplied)

In the case at bar, the RTC ruled that Jose has “well-founded belief” that Netchie was already dead upon the following grounds:

(1) Jose allegedly tried to contact Netchie's parents while he was still out of the country, but did not reach them as they had allegedly left Clarin, Misamis Occidental;

(2) Jose believed/presumed that Netchie was already dead because when he returned home, he was not able to obtain any information that Netchie was still alive from Netchie's relatives and friends;

(3) Jose's testimony to the effect that Netchie is no longer alive, hence must be presumed dead, was corroborated by Jose's older brother, and by Netchie's aunt, both of whom testified that he (Jose) and Netchie lived together as husband and wife only for one month and that after this, there had been no information as to Netchie's whereabouts.

In the above-cited case of *Republic v. Cantor*,<sup>60</sup> this Court held that the present spouse (Maria Fe Espinosa Cantor) merely conducted a “passive search” because she simply made unsubstantiated inquiries from her in-laws, from neighbors and friends. For that reason, this Court stressed that the degree of diligence and reasonable search required by law is not met (1) when there is failure to present the persons from whom the present spouse allegedly made inquiries especially the absent spouse's relatives, neighbors, and friends, (2) when there is failure to report the missing spouse's purported disappearance or death to the police or mass media, and (3) when the present spouse's evidence might or would only show that the absent spouse chose not to communicate, but not necessarily that the latter was indeed dead.<sup>61</sup> The rationale for this palpably

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<sup>59</sup> *Republic v. Cantor*, supra note 2 at 20, citing *Republic v. Court of Appeals*, 513 Phil. 391, 397-398 (2005).

<sup>60</sup> Supra note 2.

<sup>61</sup> *Republic v. Cantor*, supra note 2 at 20-25, citing *Republic v. Court of Appeals*, supra, *Republic v. Granada*, supra note 50, and *Republic v. Nolasco*, G.R. No. 94053, March 17, 1993, 220 SCRA 20.

stringent or rigorous requirement has been marked out thus:

x x x [T]he Court, fully aware of the possible collusion of spouses in nullifying their marriage, has consistently applied the “strict standard” approach. This is to ensure that a petition for declaration of presumptive death under Article 41 of the Family Code is not used as a tool to conveniently circumvent the laws. Courts should never allow procedural shortcuts and should ensure that the stricter standard required by the Family Code is met. x x x

The application of this stricter standard becomes even more imperative if we consider the State’s policy to protect and strengthen the institution of marriage. Since marriage serves as the family’s foundation and since it is the state’s policy to protect and strengthen the family as a basic social institution, marriage should not be permitted to be dissolved at the whim of the parties. x x x

x x x [I]t has not escaped this Court’s attention that the strict standard required in petitions for declaration of presumptive death has not been fully observed by the lower courts. We need only to cite the instances when this Court, on review, has consistently ruled on the sanctity of marriage and reiterated that anything less than the use of the strict standard necessitates a denial. To rectify this situation, lower courts are now expressly put on notice of the strict standard this Court requires in cases under Article 41 of the Family Code.” (Citations omitted)<sup>62</sup>

Given the Court’s imposition of “strict standard” in a petition for a declaration of presumptive death under Article 41 of the Family Code, it must follow that there was no basis at all for the RTC’s finding that Jose’s Petition complied with the requisites of Article 41 of the Family Code, in reference to the “well-founded belief” standard. If anything, Jose’s pathetically anemic efforts to locate the missing Netchie are notches below the required degree of stringent diligence prescribed by jurisprudence. For, aside from his bare claims that he had inquired from alleged friends and relatives as to Netchie’s whereabouts, Jose did not call to the witness stand specific individuals or persons whom he allegedly saw or met in the course of his search or quest for the allegedly missing Netchie. Neither did he prove that he sought the assistance of the pertinent government agencies as well as the media. Nor did he show that he undertook a thorough, determined and unflagging search for Netchie, say for at least two years (and what those years were), and naming the particular places, provinces, cities, barangays or municipalities that he visited, or went to, and identifying the specific persons he interviewed or talked to in the course of his search.

**WHEREFORE**, the Petition is **GRANTED**. The Decision dated October 24, 2011 of the Court of Appeals in CA-GR. SP No. 04158-MIN is **REVERSED AND SET ASIDE**. The respondent’s Petition in said Spec. Proc. No. 045-08 is accordingly **DISMISSED**.

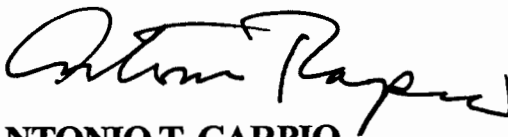
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<sup>62</sup> *Republic v. Cantor*; supra note 2 at 25-27.

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
*Associate Justice*  
*Chairperson*

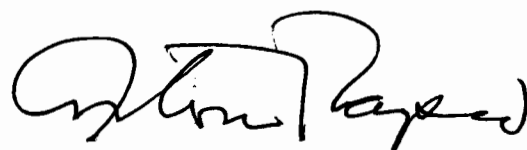
  
**ARTURO D. BRION**  
*Associate Justice*

  
**JOSE CATRAL MENDOZA**  
*Associate Justice*

*See dissenting opinion*  
  
**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*

**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*

