Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

DEPARTMENT OF EDUCATION, represented by its Regional Director,
Petitioner,

- *versus* -

DELFINA C. CASIBANG, ANGELINA C. CANAPI, ERLINDA C. BAJAN, LORNA G. GUMABAY, DIONISIA C. ALONZO, MARIA C. BANGAYAN and DIGNA C. BINAYUG,
Respondents.

G.R. No. 192268

Present:

VELASCO, JR., *J., Chairperson,*
PERALTA,
PEREZ,
REYES, and
JARDELEZA, *JJ.*

Promulgated:

January 27, 2016

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DECISION

PERALTA, *J.*:

For resolution of this Court is the Petition for Review on *Certiorari*, dated June 18, 2010, of petitioner Department of Education (*DepEd*), represented by its Regional Director seeking to reverse and set aside the Decision[1] dated April 29, 2010 of the Court of Appeals (*CA*) affirming the Decision[2] dated January 10, 2008 of the Regional Trial Court (*RTC*) of Tuguegarao City, Cagayan, Branch 5, declaring the respondents the owners of property in controversy and ordering the DepEd to pay the value of the property.

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1 Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Hakim S. Abdulwahid and Michael P. Elbinias, concurring, *rollo* pp. 27-37.

2 Penned by Judge Jezarene C. Aquino, *id.* at 52-57.

The antecedents follow:

The property in controversy is a seven thousand five hundred thirty-two (7,532) square meter portion of Lot 115 covered by Original Certificate of Title (*OCT*) No. O-627 registered under the name of Juan Cepeda, the respondents' late father.[3]

Sometime in 1965, upon the request of the then Mayor Justo Cesar Caronan, Cepeda allowed the construction and operation of a school on the western portion of his property. The school is now known as Solana North Central School, operating under the control and supervision of the petitioner *DepEd*.[4]

Despite Cepeda's death in 1983, the herein respondents and other descendants of Cepeda continued to tolerate the use and possession of the property by the school.[5]

Sometime between October 31, 2000 and November 2, 2000, the respondents entered and occupied a portion of the property. Upon discovery of the said occupation, the teachers of the school brought the matter to the attention of the barangay captain. The school officials demanded the respondents to vacate the property.[6] However, the respondents refused to vacate the property, and asserted Cepeda's ownership of the lot.[7]

On June 21, 2001, the DepEd filed a Complaint for Forcible Entry and Damages against respondents before the Municipal Circuit Trial Court (*MCTC*) of Solana-Enrile. The MCTC ruled in favor of the petitioner and directed respondents to vacate the premises.[8] On appeal, the RTC affirmed the decision of the MCTC.[9]

Thereafter, respondents demanded the petitioner to either pay rent, purchase the area occupied, or vacate the premises. DepEd did not heed the demand and refused to recognize the ownership of the respondents over the property.[10]

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3 *Id.* at 28.
4 *Id.*
5 *Id.*
6 *Id.* at 12.
7 *Id.* at 28.
8 *Id.* at 12.
9 *Id.* at 13.
10 *Id.* at 29.

On March 16, 2004, the respondents filed an action for Recovery of Possession and/or Sum of Money against the DepEd.[11] Respondents averred that since their late father did not have any immediate need of the land in 1965, he consented to the building of the temporary structure and allowed the conduct of classes in the premises. They claimed that they have been deprived of the use and the enjoyment of the portion of the land occupied by the school, thus, they are entitled to just compensation and reasonable rent for the use of property.[12]

In its Answer, the DepEd alleged that it owned the subject property because it was purchased by civic-minded residents of Solana, Cagayan from Cepeda. It further alleged that contrary to respondents' claim that the occupation is by mere tolerance, the property has always been occupied and used adversely, peacefully, continuously and in the concept of owner for almost forty (40) years.[13] It insisted that the respondents had lost whatever right they had over the property through laches.[14]

During the trial, respondents presented, *inter alia*, the OCT No. O-627 registered in the name of Juan Cepeda; Tax Declarations also in his name and the tax receipts showing that they had been paying real property taxes on the property since 1965.[15] They also presented the Technical Description of the lot by the Department of Environment and Natural Resources Land Management Services showing that the subject property was surveyed in the name of Cepeda and a certification from the Municipal Trial Court of Solana, Cagayan declaring that Lot 115 was the subject of Cad Case No. N-13 in LRC Cad. Record No. N-200 which was adjudicated to Cepeda.[16]

On the other hand, despite notice and reset of hearing, the DepEd failed to present its evidence or witness to substantiate its defense.[17]

Consequently, the RTC considered the case submitted for decision and rendered a Decision dated January 10, 2008, finding that the respondents are the owners of the subject property, thus:

> WHEREFORE, judgment is hereby rendered.
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> 1. Declaring plaintiffs as the owner of Lot 115 covered by Original Certificate of Title No. O-627.

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11 *Id.*
12 *Id.* at 40.
13 *Id.* at 47.
14 *Id.* at 13.
15 *Id.* at 53.
16 *Id.*
17 *Id.* at 30.

2. Ordering the reconveyance of the portion of the subject property occupied by the Solana North Central School, Solana, Cagayan. However, since restoration of possession of said portion by the defendant Department of Education is no longer feasible or convenient because it is now used for the school premises, the only relief available is for the government to pay due compensation which should have [been] done years ago.

   2.1 To determine due compensation for the Solana North Central School the basis should be the price or value of the property at the time of taking.

3. No pronouncement as to cost.

SO ORDERED.[18]

The DepEd, through the Office of the Solicitor General (*OSG*), appealed the case before the CA. In its appeal, the DepEd insisted that the respondents have lost their right over the subject property for their failure to assert the same for more than thirty (30) years, starting in 1965, when the Mayor placed the school in possession thereof.[19]

The CA then affirmed the decision of the RTC. The dispositive portion of the said decision reads:

> WHEREFORE, the appeal is DISMISSED, and the Decision dated 10 January 2008, of the Regional Trial Court, Branch 5, Tuguegarao, Cagayan in Civil Case No. 6336 for Recovery of Possession and/or Sum of Money; declaring plaintiffs as the owners of the property in controversy, and ordering the Department of Education to pay them the value of the property taken is AFFIRMED *in toto*.
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> SO ORDERED.[20]

Aggrieved, the DepEd, through the OSG, filed before this Court the present petition based on the sole ground that:

> THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S DECISION THAT THE RESPONDENTS' RIGHT TO RECOVER THE POSSESSION OF THE SUBJECT PROPERTY IS NOT BARRED BY PRESCRIPTION AND/OR LACHES.[21]

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18 *Id.* at 56-57.
19 *Id.* at 31.
20 *Id.* at 36.
21 *Id.* at 16.

This Court finds the petition without merit.

Laches, in a general sense, is the failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[22]

There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court, and since laches is an equitable doctrine, its application is controlled by equitable considerations. It cannot work to defeat justice or to perpetrate fraud and injustice.[23]

Laches is evidentiary in nature, a fact that cannot be established by mere allegations in the pleadings.[24] The following elements, as prescribed in the case of *Go Chi Gun, et al. v. Co Cho, et al.*,[25] must be present to constitute laches:

> x x x (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.[26]

To refute the respondents' claim that its possession of the subject lot was merely tolerated, the DepEd averred that it owned the subject property because the land was purchased by the civic-minded residents of Solana.[27] It further alleged that since it was the then Mayor who convinced Cepeda to allow the school to occupy the property and use the same, it believed in good faith that the ownership of the property was already transferred to it.[28]

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22 *Tijam v. Sibonghanoy*, 131 Phil. 556, 563 (1968).

23 *Romero v. Natividad*, 500 Phil. 322, 327 (2005).

24 *Aniceto Uy v. Court of Appeals, Mindanao Station, Cagayan de Oro City, et al.*, G.R. No. 173186, September 16, 2015.

25 96 Phil. 622, 637 (1954), citing 19 Am. Jur., 343-344.

26 *Go Chi Gun, et al. v. Co Cho, et al., supra.*

27 *Rollo*, p. 20.

28 *Id.* at 21.

However, the DepEd did not present, in addition to the deed of sale, a duly-registered certificate of title in proving the alleged transfer or sale of the property. Aside from its allegation, the DepEd did not adduce any evidence to the transfer of ownership of the lot, or that Cepeda received any consideration for the purported sale.

On the other hand, to support their claim of ownership of the subject lot, respondents presented the following: (1) the OCT No. O-627 registered in the name of Juan Cepeda;[29] (2) Tax Declarations in the name of Cepeda and the tax receipts showing the payment of the real property taxes on the property since 1965;[30] (3) Technical Description of the lot by the Department of Environment and Natural Resources Land Management Services, surveyed in the name of Cepeda;[31] and (4) Certification from the Municipal Trial Court of Solana, Cagayan declaring that Lot 115 was adjudicated to Cepeda.[32]

After a scrutiny of the records, this Court finds that the above were sufficient to resolve the issue on who had better right of possession. That being the case, it is the burden of the DepEd to prove otherwise. Unfortunately, the DepEd failed to present any evidence to support its claim that the disputed land was indeed purchased by the residents. By the DepEd's admission, it was the fact that the then Mayor of Solana, Cagayan convinced Cepeda to allow the school to occupy the property for its school site that made it believe that the ownership of the property was already transferred to it. We are not swayed by the DepEd's arguments. As against the DepEd's unsubstantiated self-serving claim that it acquired the property by virtue of a sale, the Torrens title of respondents must prevail.

It is undisputed that the subject property is covered by OCT No. O-627, registered in the name of the Juan Cepeda.[33] A fundamental principle in land registration under the Torrens system is that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein.[34] Thus, the certificate of title becomes the best proof of ownership of a parcel of land.[35]

As registered owners of the lots in question, the respondents have a right to eject any person illegally occupying their property. This right is imprescriptible. Even if it be supposed that they were aware of the petitioner's occupation of the property, and regardless of the length of that

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29 *Id.* at 53.
30 *Id.*
31 *Id.*
32 *Id.*
33 *Id.* at 28.
34 *Federated Realty Corporation v. Court of Appeals*, 514 Phil. 93, 104 (2005).
35 *Halili v. Court of Industrial Relations*, 326 Phil. 982, 991 (1996).

possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches.[36]

Case law teaches that those who occupy the land of another at the latter's tolerance or permission, without any contract between them, are necessarily bound by an implied promise that the occupants will vacate the property upon demand.[37]

In the case of *Sarona, et al. v. Villegas, et al.,*[38] this Court described what tolerated acts mean, in this language:

> Professor Arturo M. Tolentino states that acts merely tolerated are "those which **by reason of neighborliness or familiarity**, the owner of property allows his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who **permits them out of friendship or courtesy**." x x x. and, Tolentino continues, **even though "this is continued for a long time, no right will be acquired by prescription**." x x x[39]

It was out of respect and courtesy to the then Mayor who was a distant relative that Cepeda consented to the building of the school.[40] The occupancy of the subject property by the DepEd to conduct classes therein arose from what Professor Arturo Tolentino refers to as the sense of "neighborliness or familiarity" of Cepeda to the then Mayor that he allowed the said occupation and use of his property.

Professor Tolentino, as cited in the *Sarona* case, adds that tolerated acts are acts of little disturbances which a person, *in the interest of neighborliness or friendly relations*, permits others to do on his property, such as passing over the land, tying a horse therein, or getting some water from a well.[41] In tolerated acts, the said permission of the owner for the acts done in his property arises from an "impulse of sense of neighborliness or good familiarity with persons"[42] or out of "friendship or courtesy,"[43] and not out of duty or obligation. By virtue of tolerance that is considered as an

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36 *Spouses Esmaquel and Sordevilla v. Coprada*, 653 Phil. 96, 108 (2010).
37 *Rivera v. Rivera*, 453 Phil. 404, 411 (2003).
38 131 Phil. 365 (1968).
39 *Sarona, et al. v. Villegas, et al., supra,* at 372-373, per Sanchez, *J.* (Emphases supplied; citations omitted).
40 *Rollo*, p. 39.
41 *Sarona, et al. v. Villegas, et al., supra* note 38, at 372.
42 Pineda, *Law on Property*, 2009 ed., p. 321.
43 *Sarona, et al. v. Villegas, et al., supra* note 38, at 372.

authorization, permission, or license, acts of possession are realized or performed.[44]

Thus, in light of the DepEd's admission that it was the then Mayor who convinced Cepeda to allow its use of his property and in the absence of evidence that the same was indeed sold to it, the occupation and use as school site of the subject lot by the DepEd upon Cepeda's permission is considered a tolerated act. Cepeda allowed the use of his property out of his respect, courtesy and familiarity with the then Mayor who convinced him to allow the use of his property as a school site.

Considering that the occupation of the subject lot is by mere tolerance or permission of the respondents, the DepEd, without any contract between them, is bound by an implied promise that it will vacate the same upon demand. Hence, until such demand to vacate was communicated by the respondents to the DepEd, respondents are not required to do any act to recover the subject land, precisely because they knew of the nature of the DepEd's possession which is by mere tolerance.

Therefore, respondents are not guilty of failure or neglect to assert a right within a reasonable time. The nature of that possession by the DepEd has never changed from 1965 until the filing of the complaint for forcible entry against the respondents on June 21, 2001. It was only then that the respondents had knowledge of the adverse claim of the DepEd over the property. The respondents filed the action for recovery of possession on March 16, 2004 after they lost their appeal in the forcible entry case and upon the continued refusal of the DepEd to pay rent, purchase the lot or vacate the premises.[45]

Lastly, the DepEd maintains that the respondents' inaction for more than 30 years reduced their right to recover the subject property into a stale demand. It cited the case of *Eduarte v. CA*,[46] *Catholic Bishop of Balanga v. CA*,[47] *Mactan-Cebu International Airport Authority (MCIAA) v. Heirs of Marcelina L. Sero, et al.*[48] and *DepEd Division of Albay v. Oñate*[49] to bolster its claim that a registered owner may lose his right to recover the possession of his registered property by reason of laches. It alleged that the fact that the respondents possess the certificate of title of the property is of no moment since a registered landowner, like the respondents, lost their right to recover the possession of the registered property by reason of laches.

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44 *Id.* at 373.
45 *Rollo*, p. 35.
46 370 Phil. 18 (1999).
47 332 Phil. 206 (1996).
48 574 Phil. 755 (2008).
49 551 Phil. 633 (2007).

In the *Eduarte* case, the respondents therein knew of Eduarte's adverse possession of the subject lot as evidenced by their Joint Affidavit dated March 18, 1959. In the case of *Catholic Bishop of Balanga v. CA*, the petitioner, by its own admission, was aware of private respondent's occupation in the concept of owner of the lot donated in its behalf to private respondent's predecessor-in-interest in 1936. The subject lot in the case of *Mactan-Cebu International Airport Authority* was obtained through expropriation proceedings and registered in the name of the petitioner. In the *Oñate* case, no evidence was presented to show that the respondent or his predecessor-in-interest protested against the adverse possession of the disputed lot by the Municipality of Daraga and, subsequently, by the petitioner.

Unlike the cases cited by the DepEd, there was no solid evidentiary basis to establish that laches existed in the instant case. The DepEd failed to substantiate its claim of possession in the concept of an owner from the time it occupied the lot after Cepeda allowed it to use the same for a school site in 1965. The possession by the DepEd of the subject lot was clearly by mere tolerance, since it was not proven that it laid an adverse claim over the property by virtue of the purported sale.

Moreover, the trial court ruled that the DepEd is a builder in good faith. To be deemed a builder in good faith, it is essential that a person asserts title to the land on which he builds, *i.e.*, that he be a possessor in the concept of owner, and that he be unaware that there exists in his title or mode of acquisition any flaw which invalidates it.[50] However, there are cases where Article 448 of the Civil Code was applied beyond the recognized and limited definition of good faith, *e.g.*, cases wherein the builder has constructed improvements on the land of another with the consent of the owner.[51] The Court ruled therein that the structures were built in good faith in those cases that the owners knew and approved of the construction of improvements on the property.[52]

Despite being a possessor by mere tolerance, the DepEd is considered a builder in good faith, since Cepeda permitted the construction of building and improvements to conduct classes on his property. Hence, Article 448 may be applied in the case at bar.

Article 448, in relation to Article 546 of the Civil Code, provides for the rights of respondents as landowners as against the DepEd, a builder in good faith. The provisions respectively read:

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50 *Heirs of Victorino Sarili v. Lagrosa,* G.R. No. 193517, January 15, 2014, 713 SCRA 726, 741.

51 *Spouses Crispin and Teresa Aquino v. Spouses Eusebio and Josefina Aguilar,* G.R. No. 182754, June 29, 2015.

52 *Id.*

> Article 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing, or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof.
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> Article 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.
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> Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

In the case of *Bernardo v. Bataclan*,[53] the Court explicated that Article 448 provides a just and equitable solution to the impracticability of creating "forced co-ownership" by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity or to oblige the builder or planter to pay for the land and the sower to pay the proper rent.[54] The owner of the land is allowed to exercise the said options because his right is older and because, by the principle of accession, he is entitled to the ownership of the accessory thing.[55]

Thus, the two options available to the respondents as landowners are: (a) they may appropriate the improvements, after payment of indemnity representing the value of the improvements introduced and the necessary and useful expenses defrayed on the subject lots; or (b) they may oblige the DepEd to pay the price of the land. However, it is also provided under Article 448 that the builder cannot be obliged to buy the land if its value is considerably more than that of the improvements and buildings. If that is the case, the DepEd is not duty-bound to pay the price of the land should the value of the same be considerably higher than the value of the improvement introduced by the DepEd on the subject property. In which case, the law provides that the parties shall agree on the terms of the lease and, in case of disagreement, the court shall fix the terms thereof.

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53 66 Phil. 598 (1938).

54 *Bernardo v. Bataclan, supra,* at 602.

55 *Id.*

The RTC, as affirmed by the CA, ruled that the option of the landowner to appropriate after payment of the indemnity representing the value of the improvements introduced and the necessary and useful expenses defrayed on the subject lots is no longer feasible or convenient because it is now being used as school premises. Considering that the appropriation of improvements upon payment of indemnity pursuant to Article 546 by the respondents of the buildings being used by the school is no longer practicable and feasible, the respondents are thus left with the second option of obliging the DepEd to pay the price of the land or to require the DepEd to pay reasonable rent if the value of the land is considerably more than the value of the buildings and improvements.

Since the determination of the value of the subject property is factual in nature, this Court finds a need to remand the case to the trial court to determine its value. In case the trial court determines that the value of the land is considerably more than that of the buildings and improvements introduced, the DepEd may not be compelled to pay the value of the land, instead it shall pay reasonable rent upon agreement by the parties of the terms of the lease. In the event of a disagreement between the parties, the trial court shall fix the terms of lease.

Lastly, the RTC ruled that the basis of due compensation for the respondents should be the price or value of the property at the time of the taking. In the case of *Ballatan v. CA*,[56] the Court has settled that the time of taking is determinative of just compensation in expropriation proceedings but not in a case where a landowner has been deprived of the use of a portion of this land for years due to the encroachment of another.[57]

In such instances, the case of *Vda. de Roxas v. Our Lady's Foundation, Inc.*[58] is instructive. The Court elucidated therein that the computation of the value of the property should be fixed at the prevailing market value.[59] The reckoning period for valuing the property in case the landowner exercised his rights in accordance with Article 448 shall be at the time the landowner elected his choice.[60] Therefore, the basis for the computation of the value of the subject property in the instant case should be its present or current fair market value.

WHEREFORE, the Petition for Review on *Certiorari*, dated June 18, 2010, of petitioner Department of Education, represented by its Regional Director, is hereby **DENIED**. Accordingly, the Decision dated April 29,

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56 363 Phil. 408 (1999).
57 *Ballatan v CA, supra,* at 423.
58 G.R. No. 182378, March 6, 2013, 692 SCRA 578.
59 *Vda. de Roxas v. Our Lady's Foundation, Inc., supra,* at 584.
60 *Id.*

2010 of the Court of Appeals in CA-G.R. CV No. 90633, affirming the Decision dated January 10, 2008 of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 5, which declared the respondents the owners of property in controversy, is hereby **AFFIRMED.**

Accordingly, this case is **REMANDED** to the court of origin to determine the value of the subject property. If the value of the property is less than the value of the buildings and improvements, the Department of Education is ordered to pay such amount. If the value of the property is greater than the value of the buildings and improvements, the DepEd is ordered to pay reasonable rent in accordance with the agreement of the parties. In case of disagreement, the trial court shall fix the amount of reasonable rent.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

JOSE PORTUGAL PEREZ
Associate Justice

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
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

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
FEB 26 2016