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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CLAUDIA'S KITCHEN, INC. and ENZO SQUILLANTINI, Petitioners,	**G.R. No. 221096**
	Present:
- versus -	CARPIO,* *J.*, PERALTA,** *Acting Chairperson,* MENDOZA, LEONEN, and MARTIRES, *JJ.*
MA. REALIZA S. TANGUIN, Respondent.	Promulgated: 28 JUN 2017

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DECISION

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to modify the April 15, 2015 Decision[1] and October 13, 2015 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 130332, which modified the November 29, 2012 Decision[3] and April 4, 2013 Resolution[4] of the National Labor Relations Commission *(NLRC)* in NLRC NCR CN. 01-01520-11/ NLRC LAC No. 02-000693-12, a case for illegal dismissal.

The Antecedents

Respondent Ma. Realiza S. Tanguin *(Tanguin)* was employed by petitioner Claudia's Kitchen, Inc. *(Claudia's Kitchen)* on June 20, 2001. She performed her functions as a billing supervisor in Manila Jockey Club's Turf

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* On Official Leave.

** Per Special Order No. 2445 dated June 16, 2017.

[1] Penned by Associate Justice Edwin D. Sorongon with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Ricardo R. Rosario, concurring; *rollo*, p. 35-A-48.

[2] Id. at 49-50.

[3] Penned by Presiding Commissioner Leonardo L. Leonida with Commissioner Mercedes R. Posada-Lacap, concurring; Commissioner Dolores M. Peralta Beley, on leave; id. at 89-99.

[4] Id. at 82-87.

Club Building in San Lazaro Leisure and Business Park *(SLLBP),* Carmona, Cavite. Her duties and responsibilities involved 1) Sorting and preparing suppliers' billing statements; 2) Releasing check payments to the suppliers after being approved and signed by the management; 3) Giving job assignment to employees; 4) Training and conducting orientation of new employees and monitoring their progress; 5) Encoding daily and monthly menu production; 6) Preparing and submitting weekly and monthly inventory and sales reports to the head office; 7) Handling petty cash funds and depositing daily and weekly collections; and 8) Programming cash register.

Tanguin averred that on October 26, 2010, she was placed on preventive suspension by Marivic Lucasan *(Lucasan)*, Human Resources Manager, for allegedly forcing her co-employees to buy silver jewelry from her during office hours and inside the company premises. On the same date, she was directed by Lucasan to submit her written explanation on the matter. Tanguin admitted that she was selling silver jewelry, but she denied that she did so during office hours. On October 30, 2010, she was barred by a security guard from entering the company premises. She was informed by her co-employees, namely Khena Nama, Jordan Lopez and Rose Marie Esquejo that they were forced to write letters against her, or else they would be terminated from their work.

For their part, Claudia's Kitchen and Enzo Squillantini, its President, *(petitioners)* countered that in October 2010, they received reports from some employees that Tanguin was allegedly forcing some of them to buy silver jewelry from her during office hours and inside the company premises, which the latter admitted. In order to conduct a thorough investigation, she was placed under preventive suspension on October 26, 2010. On October 27, 2010, the petitioners sent Tanguin a letter requiring her to submit a written explanation as to why she should not be charged for conducting business within the company premises and during office hours. During her suspension, the petitioners discovered her habitual tardiness and gross negligence in the computation of the total number of hours worked by her co-employees. Subsequently, they sent letters to her, to wit:

1. First Notice – sent on November 17, 2010 requiring Tanguin to report to the Head Office on November 19, 2010 at 10:00 o'clock in the morning to explain her alleged infractions;[5]

2. Second Notice – sent on November 24, 2010 requiring Tanguin to explain the charges against her;[6]

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[5] Id. at 205.
[6] Id. at 206.

3. Third Notice – sent on November 25, 2010 requiring Tanguin to report to the Head Office and to explain the charges against her;[7]

4. Letter – sent on December 1, 2010 **reminding Tanguin that she was still an employee** of Claudia's Kitchen and directing her to report back to work;[8] and

5. Final Letter – sent on December 2, 2010 requiring Tanguin to report for work on December 3, 2010 at 10:00 a.m.[9]

Tanguin, however, failed to act on these notices.

The LA Ruling

In a Decision,[10] dated December 22, 2011, the LA ruled that Tanguin's preventive suspension was justified because, as supervisor, she was in possession of the company's cash fund and collections. It stressed that she was not illegally dismissed. Nevertheless, the LA ordered the petitioners to pay Tanguin her unpaid salary. The *fallo* reads:

> WHEREFORE, a Decision is hereby rendered declaring that Complainant was not illegally DISMISSED. Respondents are hereby ordered to pay Complainant her salary from October 10 to 25, 2010 as follows:
>
> UNPAID SALARY
>
> 10/10- 25/10 – 15 days
> ₱13,600/26 x 15 = ₱7,846.15
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> All other claims are DISMISSED for lack of merit.
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> SO ORDERED.[11]

Unsatisfied, Tanguin elevated an appeal before the NLRC.

The NLRC Ruling

In its November 29, 2012 Decision, the NLRC partly granted Tanguin's appeal. It opined that there was no scintilla of proof that she was dismissed from service. It pointed out that it was she who chose not to report for work despite receipt of notices requiring her to report to the head office.

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[7] Id. at 210.
[8] Id. at 211.
[9] Id. at 212.
[10] Penned by Labor Arbiter Lilia S. Savari; id. at 132-142
[11] Id. at 142.

It stated that the nature of her position as billing supervisor, whereby she held company funds and gave job assignments to the employees, was sufficient basis for the preventive suspension.

The NLRC, however, found that Tanguin did not abandon her work when she failed to report for work despite notice. It stated that the filing of the complaint for illegal dismissal negated the claim of abandonment. The NLRC concluded that there was neither dismissal nor abandonment. Thus, she should be reinstated to her former position, but without backwages. The dispositive portion reads:

> **WHEREFORE,** premises considered, the instant appeal is **PARTLY GRANTED.** The decision dated December 22, 2011 insofar as the money award is concerned is affirmed *in toto.* However, appellees are directed to reinstate appellant to her former position or to a similar equivalent position without loss of seniority rights and other privileges sans backwages.
>
> SO ORDERED.[12]

Unconvinced, the petitioners filed a partial motion for reconsideration thereto. In its April 4, 2013 Resolution, the NLRC denied the same.

Aggrieved, the petitioners filed a petition for *certiorari* with the CA.

The CA Ruling

In its assailed decision, dated April 15, 2015, the CA modified the NLRC ruling. It wrote that reinstatement was not proper because such remedy was applicable only to illegally dismissed employees. It added that the petitioners did not dismiss her from employment as evidenced by several notices sent to her requiring her to report back to work and to explain the charges against her.

The CA, however, applied the doctrine of strained relations and ordered the payment of separation pay to Tanguin instead of compelling the petitioners to accept her in their employ. It opined that she was employed as a billing supervisor and such a sensitive position required no less than the trust and confidence of her employer as she was routinely charged with the care and custody of the funds and property of her employer; and that as a necessary consequence of the judicial controversy, an atmosphere of antipathy and antagonism may be generated as to adversely affect her efficiency and productivity if she would be reinstated. Hence, the CA disposed the case in this wise:

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[12] Id. at 98-99.

> **WHEREFORE**, in view of the foregoing premises, the petition is **PARTLY GRANTED.** The Decision of the NLRC dated November 29, 2012 and the April 4, 2013 Resolution of the National Labor Relations Commission (NLRC) NLRC NCR CN. 01-01520-11/ NLRC LAC No. 02-000693-12 are hereby **MODIFIED** as follows:
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> 1. Private respondent Ma. Realiza S. Tanguin is not entitled to reinstatement in view of the strained relationship between her and the petitioners;
> 2. In view of the petitioners' assertion of the doctrine of strained relations, they are in effect dismissing private respondent Tanguin on the ground of loss of confidence; and
> 3. As a measure of social justice, We award separation pay in favor of private respondent Ma. Realiza S. Tanguin.
>
> Accordingly, let this case be remanded to the Labor Arbiter for the computation of the proper separation pay of private respondent Tanguin within fifteen (15) days from notice hereof.
>
> SO ORDERED.[13]

The petitioners moved for reconsideration, but their motion was denied by the CA in the assailed October 13, 2015 Resolution.

ISSUE

WHETHER SEPARATION PAY IN LIEU OF REINSTATEMENT MAY BE AWARDED TO AN EMPLOYEE WHO WAS NOT DISMISSED FROM EMPLOYMENT.

The petitioners argued that the CA erred in awarding separation pay in the absence of any authorized cause for termination of employment; and that its conclusion that it sought to terminate respondent due to loss of confidence was refuted by the evidence on record.

In her Comment,[14] dated April 25, 2016, Tanguin averred that the petitioners sent her notices to return to work only after she had filed an illegal dismissal complaint against them before the Labor Arbiter; that on October 27, 2010, she was barred from entering her workplace by Martin Martinez, the Cost Comptroller; and that the charges of negligence in computing the number of hours worked by her co-employees and habitual tardiness were merely concocted.

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[13] Id. at 47.
[14] Id. at 235-246.

In their Reply,[15] dated January 4, 2017, the petitioners contended that separation pay could not be awarded on the ground of social justice when the dismissal was based on the just causes under Article 282 of the Labor Code; and that to grant separation pay in her favor would unjustly reward her for her infractions.

The Court's Ruling

Respondent was not dismissed from employment

In cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause.[16] But before the employer must bear the burden of proving that the dismissal was legal, the employees must first establish by substantial evidence that indeed they were dismissed. If there is no dismissal, then there can be no question as to the legality or illegality thereof.[17] In *Machica v. Roosevelt Services Center, Inc.,*[18] the Court enunciated:

> The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners.[19]

Tanguin miserably failed to discharge this burden. She simply alleged that a security guard barred her from entering her workplace. Yet, she offered no evidence to prove the same. Absent any evidence that she was prevented from entering her workplace, what remained was her bare allegation, which could not certainly be considered substantial evidence. At any rate, granting that she was barred, there was a lawful basis therefor as she had been placed under preventive suspension pending investigation.

On the other hand, the petitioners were able to prove that they did not dismiss Tanguin from employment because she was still under investigation as evidenced by several notices[20] requiring her to report to work and submit an explanation as to the charges hurled against her. In fact, in its December 1, 2010 letter, they reminded her that she was still an employee of Claudia's Kitchen.

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[15] Id. at 279-292.
[16] *Ledesma, Jr. v. National Labor Relations Commission,* 562 Phil. 939, 951 (2007).
[17] *Exodus International Construction Corporation v. Biscocho, et al.,* 659 Phil. 142, 154 (2011).
[18] 523 Phil. 199 (2006).
[19] Id. at 209-210.
[20] *Rollo*, pp. 205-212.

Instead of answering the allegations against her, she opted to file an illegal dismissal complaint with the Labor Arbiter. Clearly, her complaint for illegal dismissal was premature, if not pre-emptive.

There was no abandonment on the part of respondent

The Court further agrees with the findings of the LA, the NLRC and the CA that Tanguin was not guilty of abandonment. *Tan Brothers Corporation of Basilan City v. Escudero*[21] extensively discussed abandonment in labor cases:

> As defined under established jurisprudence, abandonment is the deliberate and unjustified refusal of an employee to resume his employment. It constitutes neglect of duty and is a just cause for termination of employment under paragraph (b) of Article 282 [now Article 296] of the Labor Code. **To constitute abandonment, however, there must be a clear and deliberate intent to discontinue one's employment without any intention of returning. In this regard, two elements must concur: (1) failure to report for work or absence without valid or justifiable reason; and (2) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.** Otherwise stated, absence must be accompanied by overt acts unerringly pointing to the fact that the employee simply does not want to work anymore. It has been ruled that the employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning.[22] [Emphasis supplied]

In this case, records are bereft of any indication that Tanguin's failure to report for work was with a clear intent to sever her employment relationship with the petitioners. Mere absence or failure to report for work, even after a notice to return to work has been served, is not enough to amount to an abandonment of employment.[23]

Moreover, Tanguin's act of filing a complaint for illegal dismissal with prayer for reinstatement negates any intention to abandon her employment.[24] On the theory that the same is proof enough of the desire to return to work, the immediate filing of a complaint for illegal dismissal, more so when it includes a prayer for reinstatement, has been held to be totally inconsistent with a charge of abandonment.[25] To reiterate,

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[21] 713 Phil. 392 (2013).
[22] Id. at 400-401.
[23] *New Ever Marketing, Inc. v. Court of Appeals*, 501 Phil. 575, 586 (2005).
[24] *Pentagon Steel Corporation v. Court of Appeals*, 608 Phil. 682, 696-697 (2009).
[25] *Chavez v. NLRC*, 489 Phil. 444, 460 (2005).

abandonment of position is a matter of intention and cannot be lightly inferred, much less legally presumed, from certain equivocal acts.[26]

The grant of separation pay in lieu of reinstatement has no legal basis

Separation pay is warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 298[27] and 299[28] of the Labor Code, as well as in cases of illegal dismissal where reinstatement is no longer feasible.[29] On the other hand, an employee dismissed for any of the just causes enumerated under Article 297[30] of the same Code, being causes attributable to the employee's fault, is not, as a general rule, entitled to separation pay. The non-grant of such right to separation pay is premised on the reason that an erring employee should not benefit from their wrongful acts.[31] Under Section 7,[32] Rule I, Book VI of the Omnibus Rules Implementing the Labor Code, such dismissed employee is nonetheless entitled to whatever rights, benefits,

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[26] *Mallo v. Southeast Asian College, Inc.*, G.R. No. 212861, October 14, 2015.

[27] As renumbered pursuant to Department Advisory No. 01, Series of 2015.

Formerly Article 283. Closure of Establishment and Reduction of Personnel. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[28] Formerly Article 284. Disease as Ground for Termination. — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to (1/2) one-half month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[29] *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa-Katipunan*, 629 Phil. 247, 257 (2010).

[30] Formerly Article 282. Termination by Employer. — An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or wilful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and

(e) Other causes analogous to the foregoing.

[31] *Security Bank Savings Corp. v. Singson*, G.R. No. 214230, February 10, 2016.

[32] Section 7. Termination of employment by employer. — The just causes for terminating the services of an employee shall be those provided in Article 283 of the Code. The separation from work of an employee for a just cause does not entitle him to the termination pay provided in the Code, without prejudice, however, to whatever rights, benefits, and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

and privileges he may have under the applicable individual or collective agreement with the employer or voluntary employer policy or practice.

As an exception, case law allows the grant of separation pay or financial assistance to a legally-dismissed employee as a measure of social justice or on grounds of equity. In *Philippine Long Distance Telephone Co. v. NLRC (PLDT)*,[33] the Court allowed the grant when the employee was validly dismissed for causes other than serious misconduct or those reflecting on his moral character.

The payment of separation pay and reinstatement are exclusive remedies.[34] The payment of separation pay replaces the legal consequences of reinstatement to an employee who was illegally dismissed.[35] To award separation pay in lieu of reinstatement to an employee who was never dismissed by his employer would only give *imprimatur* to the unacceptable act of an employee who is facing charges related to his employment, but instead of addressing the complaint against him, he opted to file an illegal dismissal case against his employer.

In sum, separation pay is only awarded to a dismissed employee in the following instances: 1) in case of closure of establishment under Article 298 [formerly Article 283] of the Labor Code; 2) in case of termination due to disease or sickness under Article 299 [formerly Article 284] of the Labor Code; 3) as a measure of social justice in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character;[36] 4) where the dismissed employee's position is no longer available;[37] 5) when the continued relationship between the employer and the employee is no longer viable due to the strained relations between them;[38] or 6) when the dismissed employee opted not to be reinstated, or the payment of separation benefits would be for the best interest of the parties involved.[39] In all of these cases, the grant of separation pay presupposes that the employee to whom it was given was dismissed from employment, whether legally or illegally. In fine, as a general rule, separation pay in lieu of reinstatement could not be awarded to an employee whose employment was not terminated by his employer.

In *Dee Jay's Inn and Café v. Rañeses*,[40] the Court wrote that in **"a case where the employee was neither found to have been dismissed nor to have abandoned his/her work, the general course of action is for the**

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[33] 247 Phil. 641 (1988).
[34] *Bani Rural Bank Inc. v. De Guzman, et al.*, 721 Phil. 84,100 (2013).
[35] Id.
[36] *PLDT v. NLRC*, supra note 33.
[37] *Bani Rural Bank Inc. v. De Guzman, et al.*, supra note 34.
[38] *Leopard Security and Investigation Agency v. Quitoy*, 704 Phil. 449, 459 (2013).
[39] *Bani Rural Bank Inc. v. De Guzman, et al.*, supra note 34.
[40] G.R. No. 191823, October 5, 2016.

Court to dismiss the complaint, direct the employee to return to work, and order the employer to accept the employee."

There were cases, however, wherein the Court awarded separation pay in lieu of reinstatement to the employee even after a finding that there was neither dismissal nor abandonment. In *Nightowl Watchman & Security Agency, Inc. v. Lumahan (Nightowl)*,[41] the Court awarded separation pay in view of the findings of the NLRC that respondent stopped reporting for work for more than ten (10) years and never returned, based on the documentary evidence of petitioner.

The circumstances in this case, however, does not warrant an application of the exception. Thus, the general rule that no separation pay may be awarded to an employee who was not dismissed obtains in this case. In this regard, it is only proper for Tanguin to report back to work and for the petitioners to accept her, without prejudice to the on-going investigation against her.

No strained relations between the parties

Finally, the doctrine of strained relations, upon which the CA relied on to support its award of separation pay to Tanguin, has also no application in this case.

Under the doctrine of strained relations, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[42]

Strained relations must be demonstrated as a fact.[43] The doctrine of strained relations should not be used recklessly or applied loosely nor be based on impression alone.[44]

The CA, in declaring that the relations of the parties are so strained such that reinstatement is no longer feasible, merely stated that it would not be equitable for the petitioners to be ordered to maintain Tanguin in their employ for it may only inspire vindictiveness on the part of the latter and

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[41] G.R. No. 212096, October 14, 2015.
[42] *Bank of Lubao, Inc. v. Manabat and National Labor Relations Commission*, 680 Phil. 792, 801 (2012).
[43] *Paguio Transport Corporation v. NLRC*, 356 Phil. 158, 171 (1998).
[44] *Tenazas, et al. v. R. Villegas Taxi Transport*, G.R. No. 192998, April 2, 2014, 720 SCRA 467, 484.

that the filing of the illegal dismissal case created an atmosphere of antipathy and antagonism between the parties.[45]

That Tanguin would be spiteful towards the petitioners, however, is a mere presumption without any factual basis. Further, the filing of an illegal dismissal case alone is not sufficient reason to engender a conclusion that the relationship between employer and employee is already strained. The doctrine on strained relations cannot be applied indiscriminately since every labor dispute almost invariably results in strained relations; otherwise, reinstatement can never be possible simply because some hostility is engendered between the parties as a result of their disagreement.[46] Finally, it must be noted that Tanguin herself is asking for her reinstatement, the same being one of the reliefs she prayed for in her Appeal[47] before the NLRC and even in her Comment[48] to the petition for review filed by the petitioners.

To recapitulate, there was neither dismissal nor abandonment. At the time Tanguin initiated the illegal dismissal case, the complaint had no basis. The *status quo ante* was that she was being asked to explain the accusation against her. Instead of complying, she opted to file a complaint for illegal dismissal. It was premature, if not pre-emptive, which the Court cannot tolerate or accommodate. At this time, her plea for reinstatement, backwages and/or separation pay cannot be granted. Respondent should return to work and answer the complaints against her and the petitioners should accept her, without prejudice to the result of the investigation against her.

WHEREFORE, the petition is **GRANTED**. Respondent Ma. Realiza S. Tanguin is hereby ordered to **RETURN TO WORK** within fifteen days from the receipt of this decision. Petitioners Claudia's Kitchen, Inc. and Enzo Squillantini are likewise ordered to **ACCEPT** respondent Ma. Realiza S. Tanguin, without prejudice to the result of the investigation against her.

SO ORDERED.

JOSE CATRAL MENDOZA
Associate Justice

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[45] *Rollo*, p. 46.
[46] *Capili v. NLRC*, 337 Phil. 210, 216 (1997).
[47] *Rollo*, p. 154.
[48] Id. at 245.

WE CONCUR:

(On Official Leave)
ANTONIO T. CARPIO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson

MARVIC M.V.F. LEONEN
Associate Justice

SAMUEL R. MARTIRES
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.

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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